

## Attachment III

## **31.1 New York Comprehensive System Planning Process (“CSPP”)**

### **31.1.1 Definitions**

Throughout Sections 31.1 through 31.7, the following capitalized terms shall have the meanings set forth in this subsection:

**Affected TO:** The Transmission Owner who receives written notification of a dispute related to a Local Transmission Planning Process pursuant to Section 31.2.1.3.1.

**Bounded Region:** A Load Zone or Zones within an area that is isolated from the rest of the NYCA as a result of constrained interface limits.

**CARIS:** The Congestion Assessment and Resource Integration Study for economic planning developed by the ISO in consultation with the Market Participants and other interested parties pursuant to Section 31.3 of this Attachment Y.

**CRP:** The Comprehensive Reliability Plan as approved by the ISO Board of Directors pursuant to this Attachment Y.

**CSPP:** The Comprehensive System Planning Process set forth in this Attachment Y, and in the Interregional Planning Protocol, which covers reliability planning, economic planning, Public Policy Requirements planning, cost allocation and cost recovery, and the interregional planning process.

**Developer:** A person or entity, including a Transmission Owner, sponsoring or proposing a project pursuant to this Attachment Y.

**ESPWG:** The Electric System Planning Work Group, or any successor work group or committee designated to fulfill the functions assigned to the ESPWG in this tariff.

**Gap Solution:** A solution to a Reliability Need that is designed to be temporary and to strive to be compatible with permanent market-based proposals. A permanent regulated solution, if appropriate, may proceed in parallel with a Gap Solution.

**Interregional Planning Protocol:** The Amended and Restated Northeastern ISO/RTO Planning Coordination Protocol, or any successor to that protocol.

**Interregional Transmission Project:** A transmission facility located in two or more transmission planning regions that is evaluated under the Interregional Planning Protocol and proposed to address an identified Reliability Need, congestion identified in the CARIS, or a transmission need driven by a Public Policy Requirement pursuant to Order No. 1000 and the provisions of this Attachment Y.

**IPTF:** The Interregional Planning Task Force, or any successor ISO stakeholder working group or committee, designated to fulfill the functions assigned to the IPTF in this tariff.

**ISO/RTO Region:** One or more of the three ISO or RTO regions known as PJM, ISO-New England, and NYISO, which are the “Parties” to the Interregional Planning Protocol.

**LCR:** An abbreviation for the term Locational Minimum Installed Capacity Requirement, as defined in the ISO Open Access Transmission Tariff.

**Loss of Load Expectation (“LOLE”):** A measure used to determine the amount of resources needed to minimize the possibility of an involuntary loss of firm electric load on the New York State Bulk Power Transmission Facilities.

**LTP:** The Local Transmission Owner Plan, developed by each Transmission Owner, which describes its respective plans that may be under consideration or finalized for its own Transmission District.

**LTP Dispute Resolution Process (“DRP”):** The process for resolution of disputes relating to a Transmission Owner’s LTP set out in Section 31.2.1.3.

**LTPP:** The Local Planning Process conducted by each Transmission Owner for its own Transmission District.

**Management Committee:** The standing committee of the ISO of that name created pursuant to the ISO Agreement.

**Net CONE:** The value representing the cost of new entry, net of energy and ancillary services revenues, utilized by the ISO in establishing the ICAP Demand Curves pursuant to Section 5 of the ISO Market Services Tariff.

**New York State Bulk Power Transmission Facilities (“BPTFs”):** The facilities identified as the New York State Bulk Power Transmission Facilities in the annual Area Transmission Review submitted to NPCC by the ISO pursuant to NPCC requirements.

**NPCC:** The Northeast Power Coordinating Council, or any successor organization.

**NYCA Free Flow Test:** A NYCA unconstrained internal transmission interface test, performed by the ISO to determine if a Reliability Need is the result of a statewide resource deficiency or a transmission limitation.

**NYDPS:** The New York State Department of Public Service, as defined in the New York Public Service Law.

**NYISO Load and Capacity Data Report:** As defined in Section 25 of the ISO OATT.

**NYPSC:** The New York Public Service Commission, as defined in the New York Public Service Law.

**Operating Committee:** The standing committee of the NYISO of that name created pursuant to the ISO Agreement.

**Order No. 1000:** The Final Rule entitled Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities, issued by the Commission on July 21, 2011, in Docket RM10-23-001, as modified on rehearing, or upon appeal. (See FERC Stats & Regs. ¶ 31,323 (2011) (“Order No. 1000”), on reh’g and clarification, 139 FERC ¶ 61,132 (“Order No. 1000-A”), on reh’g and clarification, 141 FERC ¶ 61,044 (2012) (“Order No. 1000-B”).

**Other Developers:** Parties or entities sponsoring or proposing to sponsor regulated economic projects, transmission solutions driven by Public Policy Requirements, or regulated solutions to Reliability Needs who are not Transmission Owners.

**Public Policy Transmission Planning Process:** The process by which the ISO solicits needs for transmission driven by Public Policy Requirements, evaluates all solutions on a comparable basis, and selects the more efficient or cost effective transmission solution, if any, for eligibility for cost allocation under the ISO Tariffs.

**Public Policy Transmission Need:** A transmission need identified by the NYPSC that is driven by a Public Policy Requirement pursuant to Sections 31.4.2.1 through 31.4.2.3.

**Public Policy Transmission Planning Report:** The report approved by the ISO Board of Directors pursuant to this Attachment Y on the ISO’s evaluation of all proposed solutions to an identified Public Policy Transmission Need pursuant to Section 31.4.6 and the ISO’s selection of a proposed transmission solution, if any, that is the more efficient or cost effective solution to the identified Public Policy Transmission Need pursuant to Section 31.4.8.

**Public Policy Requirement:** A federal or New York State statute or regulation, including a NYPSC order adopting a rule or regulation subject to and in accordance with the State Administrative Procedure Act, any successor statute, or any duly enacted law or regulation passed by a local governmental entity in New York State, that may relate to transmission planning on the BPTFs.

**Reliability Criteria:** The electric power system planning and operating policies, standards, criteria, guidelines, procedures, and rules promulgated by the North American Electric Reliability Corporation (“NERC”), Northeast Power Coordinating Council (“NPCC”), and the New York State Reliability Council (“NYSRC”), as they may be amended from time to time.

**Reliability Need:** A condition identified by the ISO as a violation or potential violation of one or more Reliability Criteria.

**Responsible Transmission Owner:** The Transmission Owner or Transmission Owners designated by the ISO, pursuant to Section 31.2.4.3, to prepare a proposal for a regulated backstop solution to a Reliability Need or to proceed with a regulated solution to a Reliability Need. The Responsible Transmission Owner will normally be the Transmission Owner in whose Transmission District the ISO identifies a Reliability Need.

**RNA:** The Reliability Needs Assessment as approved by the ISO Board under this Attachment.

**RNA Base Case:** The model(s) representing the New York State Power System over the Study Period.

**Site Control:** Documentation reasonably demonstrating: (1) ownership of, a leasehold interest in, or a right to develop a site or right of way for the purpose of constructing a proposed project; (2) an option to purchase or acquire a leasehold site or right of way for such purpose; or (3) an exclusivity or other business relationship between the Transmission Owner, or Other Developer, and the entity having the right to sell, lease, or grant the Transmission Owner, or Other Developer, the right to possess or occupy a site or right of way for such purpose.

**Study Period:** The ten-year time period evaluated in the RNA and the CRP.

**Target Year:** The calendar year in which a Reliability Need arises, as determined by the ISO pursuant to Section 31.2.

**TPAS:** The Transmission Planning Advisory Subcommittee, or any successor work group or committee designated to fulfill the functions assigned to TPAS pursuant to this Attachment.

**Trigger Date:** The date by which the ISO must request implementation of a regulated backstop solution or an alternative regulated solution pursuant to Section 31.2.8 in order to meet a Reliability Need.

**Viability and Sufficiency Assessment:** The results of the ISO's assessment of the viability and sufficiency of proposed solutions to a Reliability Need under Section 31.2.5 or a Public Policy Transmission Need under Section 31.4.6, as applicable.

All other capitalized terms shall have the meanings provided for them in the ISO's Tariffs.

### **31.1.2 Reliability Planning Process**

Sections 31.2.1 through 31.2.13 of this Attachment Y describe the process that the ISO, the Transmission Owners, and Market Participants and other interested parties shall follow for planning to meet the Reliability Needs of the BPTFs. The objectives of the process are to:

(1) evaluate the Reliability Needs of the BPTFs pursuant to Reliability Criteria (2) identify, through the development of appropriate scenarios, factors and issues that might adversely impact the reliability of the BPTFs; (3) provide a process whereby solutions to identified needs are proposed, evaluated on a comparable basis, and implemented in a timely manner to ensure the

reliability of the system; (4) provide a process by which the ISO will select the more efficient or cost effective regulated transmission solution to satisfy the Reliability Need for eligibility for cost allocation under the ISO Tariffs; (5) provide an opportunity first for the implementation of market-based solutions while ensuring the reliability of the BPTFs; and (6) coordinate the ISO's reliability assessments with neighboring Control Areas.

The ISO will provide, through the analysis of historical system congestion costs, information about historical congestion including the causes for that congestion so that Market Participants and other stakeholders can make appropriately informed decisions. See Appendix A.

### **31.1.3 Transmission Owner Planning Process**

The Transmission Owners will continue to plan for their transmission systems, including the BPTFs and other NYS Transmission System facilities. The planning process of each Transmission Owner is referred to herein as the LTPP, and the plans resulting from the LTPP are referred to herein as LTPs, whether under consideration or finalized. Each Transmission Owner will be responsible for administering its LTPP and for making provisions for stakeholder input into its LTPP. The ISO's role in the LTPP is limited to the procedural activities described in this Attachment Y.

The finalized portions of the LTPs periodically prepared by the Transmission Owners will be used as inputs to the CSPP described in this Attachment Y. Each Transmission Owner will prepare an LTP for its transmission system in accordance with the procedures described in Section 31.2.1.

#### **31.1.4 Economic Planning Process**

Sections 31.3.1 and 31.3.2 of this Attachment Y describe the process that the ISO, the Transmission Owners, and Market Participants shall follow for economic planning to identify and reduce current and future projected congestion on the BPTFs. The objectives of the economic planning process are to: (1) project congestion on the BPTFs over the ten-year planning period of this CSPP, (2) identify, through the development of appropriate scenarios, factors that might produce or increase congestion, (3) provide a process whereby projects to reduce congestion identified in the economic planning process are proposed and evaluated on a comparable basis in a timely manner, (4) provide an opportunity for the development of market-based solutions to reduce the congestion identified, and (5) coordinate the ISO's congestion assessments and economic planning process with neighboring Control Areas.

#### **31.1.5 Public Policy Requirements Planning Process**

Section 31.4 of this Attachment Y describes the planning process that the ISO, and all interested parties, shall follow to consider Public Policy Requirements that drive the need for expansions or upgrades to BPTFs. The objectives of the Public Policy Requirements planning process are to: (1) allow Market Participants and other interested parties to propose transmission needs that they believe are being driven by Public Policy Requirements and for which transmission solutions should be evaluated, (2) provide a process by which the NYPSC will, with input from the ISO, Market Participants, and other interested parties, identify the transmission needs, if any, for which transmission solutions should be evaluated, (3) provide a process whereby all solutions to Public Policy Transmission Needs are proposed and evaluated on a comparable basis, (4) provide a process by which the ISO will select the more efficient or cost effective regulated transmission solution, if any, to satisfy the Public Policy Transmission Need

for eligibility for cost allocation under the ISO Tariffs; (5) provide a cost allocation methodology for regulated transmission projects that have been selected by the ISO, and (6) coordinate the ISO's Public Policy Transmission Planning Process with neighboring Control Areas.

#### **31.1.6 Interregional Planning Process**

The ISO, the Transmission Owners, and Market Participants and other interested parties shall coordinate system planning activities with neighboring planning regions (*i.e.*, the ISO/RTO Regions and adjacent portions of Canada). The Interregional Planning Protocol includes a description of the committee structure, processes, and procedures through which system planning activities are openly and transparently coordinated by the ISO/RTO Regions. The objective of the interregional planning process is to contribute to the on-going reliability and the enhanced operational and economic performance of the ISO/RTO Regions through: (1) exchange of relevant data and information; (2) coordination of procedures to evaluate certain interconnection and transmission service requests; (3) periodic comprehensive interregional assessments; (4) identification and evaluation of potential Interregional Transmission Projects that can address regional needs in a manner that may be more efficient or cost-effective than separate regional solutions, in accordance with the requirements of Order No. 1000; (5) allocation of costs among the ISO/RTO Regions of Interregional Transmission Projects, identified in accordance with the Interregional Planning Protocol and approved by each region, pursuant to the cost allocation methodology set forth in Section 31.5.7 herein. The planning activities of the ISO/RTO Regions shall be conducted consistent with the planning criteria of each ISO/RTO Region's regional reliability organization(s) as well as the relevant local reliability entities. The ISO/RTO Regions shall periodically produce a Northeastern Coordinated System Plan that integrates the system plans of all of the ISO/RTO Regions.



### **31.1.7 Enrollment in the ISO's Transmission Planning Region**

For purposes of any matter addressed by this Attachment Y, participation in the ESPWG, IPTF and TPAS shall be open to any interested entity, irrespective of whether that entity has become a Party to the ISO Agreement. Any entity may enroll in the ISO's transmission planning region in order to fully participate in the ISO's governance process by becoming a Party to the ISO Agreement, as set forth in Section 2.02 of the ISO Agreement. An owner of transmission in New York State may become a Transmission Owner by: (i) satisfying the definition of a Transmission Owner in Article 1 of the ISO Agreement and (ii) executing the ISO/TO Agreement or an agreement with the ISO under terms comparable to the ISO/TO Agreement and turning over operational control of its transmission facilities to the ISO. As of October 15, 2013, the Transmission Owners are: (1) Central Hudson Gas & Electric Corporation, (2) Consolidated Edison Company of New York, Inc., (3) New York State Electric & Gas Corporation, (4) Niagara Mohawk Power Corporation, (5) Orange and Rockland Utilities, Inc., (6) Rochester Gas and Electric Corporation, (7) the Power Authority of the State of New York, and (8) Long Island Lighting Company d/b/a LIPA.

### **31.1.8 NYISO Implementation and Administration**

31.1.8.1 The ISO shall adopt procedures for the implementation and administration of the CSPP set forth in this Attachment Y and the Interregional Planning Protocol, and shall revise those procedures as and when necessary. Such procedures will be incorporated in the ISO's manuals, including ISO's Comprehensive System Planning Process Manual. The ISO Procedures shall provide for the open and transparent coordination of the CSPP to allow Market Participants and all other interested parties to have a meaningful opportunity to

participate in each stage of the CSPP through the meetings conducted in accordance with the ISO system of collaborative governance. Confidential Information and Critical Energy Infrastructure Information exchanged through the CSPP shall be subject to the protections for such information contained in the ISO's tariffs and procedures, including this Attachment Y and Attachment F of the NYISO OATT.

31.1.8.2 The ISO Procedures shall include a schedule for the collection and submission of data and the preparation of models to be used in the studies contemplated under this tariff. That schedule shall provide for a rolling two-year cycle of studies and reports conducted in each of the ISO planning processes (reliability, economic and public policy) as part of the Comprehensive System Planning Process. Each cycle commences with the LTPP providing input into the reliability planning process. The CARIS study under Section 31.3 of this Attachment Y will commence upon completion of the viability and sufficiency analysis performed pursuant to Section 31.2.5.7, as part of the CRP process. The Public Policy Transmission Planning Process will to the extent practicable run in parallel with the reliability planning process, provided that the NYPSC's issuance of a written statement pursuant to Section 31.4.2.1 will occur after the draft RNA study results are posted. If the CRP cannot be completed within a two-year cycle, the ISO will notify stakeholders and provide an estimated completion date and an explanation of the reasons the additional time is required. As further detailed in Sections 31.2, 31.3, 31.4, and 31.5, the interregional planning process shall be conducted in parallel with the reliability planning process, the economic planning

process, and the Public Policy Requirements planning process to identify and evaluate Interregional Transmission Projects that may more efficiently or cost-effectively meet the needs of the region than a regional transmission project.

- 31.1.8.3 The ISO Procedures shall be designed to allow the coordination of the ISO's planning activities with those of the ISO/RTO Regions, NERC, NPCC, the NYSRC, and other regional reliability organizations so as to develop consistency of the models, databases, and assumptions utilized in making reliability and economic determinations.
- 31.1.8.4 The ISO Procedures shall facilitate the timely identification and resolution of all substantive and procedural disputes that arise out of the CSPP. Any party participating in the CSPP and having a dispute arising out of the CSPP may seek to have its dispute resolved in accordance with ISO governance procedures during the course of the CSPP. If the party's dispute is not resolved in this manner as a part of the plan development process, the party may invoke formal dispute resolution procedures administered by the ISO that are the same as those available to Transmission Customers under Section 11 of the ISO Market Administration and Control Area Services Tariff. Disputes arising out of the LTPP shall be addressed by the LTPP set forth in Section 31.2.1.3 of this Attachment Y.
- 31.1.8.5 Except for those cases where the ISO OATT provides that an individual customer shall be responsible for the cost, or a specified share of the cost, of an individually requested study related to interconnection or to system expansion or to congestion and resource integration, the study costs incurred by the ISO as a

result of its administration of the CSPP will be recovered from all customers through and in accordance with Rate Schedule 1 of the ISO OATT.

## **31.2 Reliability Planning Process**

### **31.2.1 Local Transmission Owner Planning Process**

#### **31.2.1.1 Scope**

##### **31.2.1.1.1 Criteria, Assumptions and Data**

Each Transmission Owner will post on its website the planning criteria and assumptions currently used in its LTPP as well as a list of any applicable software and/or analytical tools currently used in the LTPP. Customers, Market Participants and other interested parties may review and comment on the planning criteria and assumptions used by each Transmission Owner, as well as other data and models used by each Transmission Owner in its LTPP. The Transmission Owners will take into consideration any comments received. Any planning criteria or assumptions for a Transmission Owner's BPTFs will meet or exceed any applicable NERC, NPCC or NYSRC criteria. The LTPP shall include a description of the needs addressed by the LTPP as well as the assumptions, applicable planning criteria and methodology utilized and the Public Policy Requirements considered. A link to each Transmission Owner's website will be posted on the ISO website.

##### **31.2.1.1.2 Consideration of Transmission Needs Driven by Public Policy Requirements**

###### **31.2.1.1.2.1 Procedures for the Identification of Transmission Needs Driven by Public Policy Requirements in Local Transmission Plans and for the Consideration of Transmission Solutions**

In developing its LTP, each Transmission Owner shall consider whether there is a transmission need on its system that is being driven by a Public Policy Requirement. The LTP will identify any transmission project included in the LTP as a solution to a transmission need being driven by a Public Policy Requirement. In evaluating potential transmission solutions, the

Transmission Owner will give consideration to the objectives of the Public Policy Requirement(s) driving the need for transmission.

#### **31.2.1.1.2.2 Determination of Local Transmission Needs Driven by Public Policy Requirements**

As part of its LTP process pursuant to Section 31.2.1.2 below, each Transmission Owner will consider whether there is a transmission need on its local system that is being driven by a Public Policy Requirement for which a local transmission solution should be evaluated, including needs proposed by market participants and other interested parties. A market participant or other interested party proposing a transmission need on a Transmission Owner's local system driven by a Public Policy Requirement shall submit its proposal to the ISO and the relevant Transmission Owner, and will identify the specific Public Policy Requirement that is driving the proposed transmission need and an explanation of why a local transmission upgrade is necessary to implement the Public Policy Requirement. Any proposed local system transmission need will be posted on the ISO website. The ISO will transmit proposed transmission needs on a Transmission Owner's local system driven by Public Policy Requirements to the NYDPS, with a request that the NYDPS review the proposals and provide the relevant Transmission Owner with input to assist the Transmission Owner in its determination. The Transmission Owner, after considering the input provided by the NYDPS and any information provided by a market participant or other party, will determine whether there are transmission needs driven by Public Policy Requirements for which local transmission solutions should be evaluated. The Transmission Owner will post on its website a list of the transmission needs driven by Public Policy Requirements for which local transmission solutions should be evaluated, with an explanation of why the Transmission Owner identified those transmission needs and declined to identify other proposed transmission needs.

### **31.2.1.1.2.3 Evaluation of Proposed Local Transmission Solutions**

In evaluating potential transmission solutions, if any, the Transmission Owner will give consideration to the objectives of the Public Policy Requirement driving the need for a local transmission solution. The Transmission Owner will evaluate solutions to identified transmission needs, including transmission solutions proposed by market participants and other parties for inclusion in its LTP. The Transmission Owner, in consultation with the NYDPS, will evaluate proposed transmission solutions on its local system to determine the more efficient or cost-effective transmission solutions. The Transmission Owner will consider the relative costs and benefits of proposed transmission solutions and their impact on the Transmission Owner's transmission system and its customers. Any local transmission solution identified by the Transmission Owner through the LTP process will be reviewed with stakeholders as part of each Transmission Owner's regular LTP process and will be included in the Transmission Owner's subsequent LTP. In conducting its evaluation the Transmission Owner will use criteria that are relevant to the Public Policy Requirement driving the transmission need, which may include its published local planning criteria and assumptions.

### **31.2.1.2 Process Timeline**

31.2.1.2.1 Each Transmission Owner, in accordance with a schedule set forth in the ISO Procedures, will post its current LTP on its website for review and comment by interested parties sufficiently in advance of the time for submission to the ISO for input to its RNA so as to allow adequate time for stakeholder review and comment. Each LTP will include:

- identification of the planning horizon covered by the LTP,
- data and models used,

- reliability needs, needs driven by Public Policy Requirements, and other needs addressed,
- potential solutions under consideration, and,
- a description of the transmission facilities covered by the plan.

31.2.1.2.2 To the extent the current LTP utilizes data or inputs, related to the ISO's planning process, not already reported by the ISO in Form 715 and referenced on its website, any such data will be provided to the ISO at the time each Transmission Owner posts criteria and planning assumptions in accordance with Section 31.2.1.1 and will be posted by the ISO on its website subject to any confidentiality or Critical Energy Infrastructure Information restrictions or requirements.

31.2.1.2.3 Each planning cycle, the ISO shall hold one or more stakeholder meetings of the ESPWG and TPAS at which each Transmission Owner's current LTP will be discussed. Such meetings will be held either at the Transmission Owner's Transmission District, or at an ISO location. The ISO shall post notice of the meeting and shall disclose the agenda and any other material distributed prior to the meeting.

31.2.1.2.4 Interested parties may submit written comments to a Transmission Owner with respect to its current LTP within thirty days after the meeting. Each Transmission Owner shall list on its website, as part of its LTP, the person and/or location to which comments should be sent by interested parties. All comments will be posted on the ISO website. Each Transmission Owner will consider comments received in developing any modifications to its LTP. Any such modification will be explained in its current LTP posted on its website pursuant to



Section 31.2.1.2.2 above and discussed at the next meeting held pursuant to Section 31.2.1.2.3 above.

31.2.1.2.5 Each planning cycle, each Transmission Owner will submit the finalized portions of its current LTP to the ISO as contemplated in Section 31.2.2.4.2 below for timely inclusion in the RNA.

### **31.2.1.3 ISO Evaluation of Transmission Owner Local Transmission Plans in Relation to Regional and Local Transmission Needs**

The ISO will review the Transmission Owner LTPs as they relate to the BPTFs as set forth in Section 31.2.2.4.2. The ISO will also evaluate whether a regional transmission solution – including, but not limited to, regional transmission solutions proposed by Developers pursuant to this Attachment Y – could satisfy an identified regional transmission need on the BPTFs that impacts more than one Transmission District more efficiently or more cost effectively than a local transmission solution identified in a Transmission Owner’s LTP in accordance with Section 31.2.6.4.2 for the satisfaction of a regional Reliability Need, Section 31.3.1.3.6 for the reduction of congestion identified in CARIS, or Section 31.4.7.2 for the satisfaction of a Public Policy Transmission Need. The ISO will report the results of its evaluation solely for informational purposes in the relevant ISO planning report prepared under this Attachment Y, and the Transmission Owners shall not be required to revise their LTPs based on the results of the ISO’s evaluation.

### **31.2.1.4 LTP Dispute Resolution Process**

#### **31.2.1.4.1 Disputes Related to the LTPP; Objective; Notice**

Disputes related to the LTPP are subject to the DRP. The objective of the DRP is to assist parties having disputes in communicating effectively and resolving disputes as

expeditiously as possible. Within fifteen (15) calendar days of the presentation by a Transmission Owner of its LTP to the ESPWG and TPAS, a party with a dispute shall notify in writing the Affected TO, the ISO, the ESPWG and TPAS of its intention to utilize the DRP. The notice shall identify the specific issue in dispute and describe in sufficient detail the nature of the dispute.

#### **31.2.1.4.2 Review by the ESPWG/TPAS**

The issue raised by a party with a dispute shall be reviewed and discussed at a joint meeting of the ESPWG and the TPAS in an effort to resolve the dispute. The party with a dispute and the Affected TO shall have an opportunity to present information concerning the issue in dispute to the ESPWG and the TPAS.

#### **31.2.1.4.3 Information Discussions**

To the extent the ESPWG and the TPAS are unable to resolve the dispute, the dispute will be subject to good faith informal discussions between the party with a dispute and the Affected TO. Each of those parties will designate a senior representative authorized to enter into informal discussions and to resolve the dispute. The parties to the dispute shall make a good faith effort to resolve the dispute through informal discussions as promptly as practicable.

#### **31.2.1.4.4 Alternative Dispute Resolution**

In the event that the parties to the dispute are unable to resolve the dispute through informal discussions within sixty (60) days, or such other period as the parties may agree upon, the parties may, by mutual agreement, submit the dispute to mediation or any other form of alternative dispute resolution. The parties shall attempt in good faith to resolve the dispute in accordance with a mutually agreed upon schedule but in no event may the schedule extend

beyond ninety (90) days from the date on which the parties agreed to submit the dispute to alternative dispute resolution.

#### **31.2.1.4.5 Notice of Results of Dispute Resolution**

The Affected TO shall notify the ISO and ESPWG and TPAS of the results of the DRP and update its LTP to the extent necessary. The ISO shall use in its planning process the LTP provided by the Affected TO.

#### **31.2.1.4.6 Rights Under the Federal Power Act**

Nothing in the DRP shall affect the rights of any party to file a complaint with the Commission under relevant provisions of the FPA.

#### **31.2.1.4.7 Confidentiality**

All information disclosed in the course of the DRP shall be subject to the same protections accorded to confidential information and CEII by the ISO under its confidentiality and CEII policies.

### **31.2.2 Reliability Needs Assessment**

#### **31.2.2.1 General**

The ISO shall prepare and publish the RNA as described below. The RNA will identify Reliability Needs. The ISO shall also designate in the RNA the Responsible Transmission Owner with respect to each Reliability Need.

#### **31.2.2.2 Interested Party Participation in the Development of the RNA**

The ISO shall develop the RNA in consultation with Market Participants and all other interested parties. TPAS will have responsibility consistent with ISO Procedures for review of the ISO's reliability analyses. ESPWG will have responsibility consistent with ISO Procedures

for providing commercial input and assumptions to be used in the development of reliability assessment scenarios provided under Section 31.2.2.5, and in the reporting and analysis of historic congestion costs. Coordination and communication will be established and maintained between these two groups and ISO staff to allow Market Participants and other interested parties to participate in a meaningful way during each stage of the CSPP. The ISO staff shall report any majority and minority views of these collaborative governance work groups when it submits the RNA to the Operating Committee for a vote, as provided below.

### **31.2.2.3 Preparation of the Reliability Needs Assessment**

31.2.2.3.1 The ISO shall evaluate bulk power system needs in the RNA over the Study Period.

31.2.2.3.2 The starting point for the development of the RNA Base Case will be the system as defined for the FERC Form No. 715 Base Case. The ISO shall develop this system representation to be used for its evaluations of the Study Period by primarily using: (1) the most recent NYISO Load and Capacity Data Report published by the ISO on its web site; (2) the most recent versions of ISO reliability analyses and assessments provided for or published by NERC, NPCC, NYSRC, and neighboring Control Areas; (3) information reported by neighboring Control Areas such as power flow data, forecasted load, significant new or modified generation and transmission facilities, and anticipated system conditions that the ISO determines may impact the BPTFs; and (4) data submitted pursuant to paragraph 31.2.2.4 below. The details of the development of the RNA Base Case are contained in the ISO Procedures. The RNA Base Case shall also include Interregional Transmission Projects that have been approved by the NYPSC

transmission siting process and meet the base case inclusion requirements in the ISO Procedures.

31.2.2.3.3 The ISO shall assess the RNA Base Case to determine whether the BPTFs meet all Reliability Criteria for both resource and transmission adequacy in each year, and report the results of its evaluation in the RNA. Transmission analyses will include thermal, voltage, short circuit, and stability studies. Then, if any Reliability Criteria are not met in any year, the ISO shall perform additional analyses to determine whether additional resources and/or transmission capacity expansion are needed to meet those requirements, and to determine the Target Year of need for those additional resources and/or transmission. A short circuit assessment will be performed for the tenth year of the Study Period. The study will not seek to identify specific additional facilities. Reliability Needs will be defined in terms of total deficiencies relative to Reliability Criteria and not necessarily in terms of specific facilities.

#### **31.2.2.4 Planning Participant Data Input**

31.2.2.4.1 At the ISO's request, Market Participants, Developers, and other parties shall provide, in accordance with the schedule set forth in the ISO Procedures, the data necessary for the development of the RNA. This data will include but not be limited to (1) existing and planned additions to the New York State Transmission System (to be provided by Transmission Owners and municipal electric utilities); (2) proposals for merchant transmission facilities (to be provided by merchant Developers); (3) generation additions and retirements (to be provided by generator owners and Developers); (4) demand response programs (to be provided

by demand response providers); and (5) any long-term firm transmission requests made to the ISO.

31.2.2.4.2 The Transmission Owners shall submit their current LTPs referenced in Section 31.1.3 and Section 31.2.1 to the ISO. The Transmission Owners and the ISO will coordinate with each other in reviewing the LTPs. The ISO will review the Transmission Owners' LTPs, as they relate to BPTFs, to determine whether they will meet reliability needs identified in the LTPs, recommend an alternate means to resolve the local needs from a regional perspective pursuant to Section 31.2.6.4, and indicate if it is not in agreement with a Transmission Owner's proposed additions. The ISO shall report its determinations under this section in the RNA and in the CRP.

31.2.2.4.3 All data received from Market Participants, Developers, and other parties shall be considered in the development of the system representation for the Study Period in accordance with the ISO Procedures.

#### **31.2.2.5 Reliability Scenario Development**

The ISO, in consultation with the ESPWG and TPAS, shall develop reliability scenarios addressing the Study Period. Variables for consideration in the development of these reliability scenarios include but are not limited to: load forecast uncertainty, fuel prices and availability, new resources, retirements, transmission network topology, and limitations imposed by proposed environmental or other legislation.

#### **31.2.2.6 Evaluation of Reliability Scenarios**

The ISO will conduct additional reliability analyses for the reliability scenarios developed pursuant to paragraph 31.2.2.5. These evaluations will test the robustness of the needs

assessment studies conducted under paragraphs 31.2.2.3. This evaluation will only identify conditions under which Reliability Criteria may not be met. It will not identify or propose additional Reliability Needs. In addition, the ISO will perform appropriate sensitivity studies to determine whether Reliability Needs previously identified can be mitigated through alternate system configurations or operational modes. The Reliability Needs may increase in some reliability scenarios and may decrease, or even be eliminated, in others. The ISO shall report the results of these evaluations in the RNA.

#### **31.2.2.7 Consequences for Other Regions**

The ISO will coordinate with the ISO/RTO Regions to identify the consequences of the reliability transmission projects on such ISO/RTO Regions using the respective planning criteria of such ISO/RTO Regions. The ISO shall report the results in the CRP. The ISO shall not bear the costs of required upgrades in another region.

#### **31.2.2.8 Reliability Needs Assessment Report Preparation**

Once all the analyses described above have been completed, ISO staff will prepare a draft of the RNA including discussion of its assumptions, Reliability Criteria, and results of the analyses and, if necessary, designate the Responsible Transmission Owner. One or more compensatory MW/ Load adjustment scenarios will be developed by the ISO as a guide to the development of proposed solutions to meet the identified Reliability Need.

### **31.2.3 RNA Review Process**

#### **31.2.3.1 Collaborative Governance Process**

The draft RNA shall be submitted to both TPAS and the ESPWG for review and comment. The ISO shall make available to any interested party sufficient information to

replicate the results of the draft RNA. The information made available will be electronically masked and made available pursuant to a process that the ISO reasonably determines is necessary to prevent the disclosure of any Confidential Information or Critical Energy Infrastructure Information contained in the information made available. Market Participants and other interested parties may submit at any time optional suggestions for changes to ISO rules or procedures which could result in the identification of additional resources or market alternatives suitable for meeting Reliability Needs. Following completion of the TPAS and ESPWG review, the draft RNA reflecting the revisions resulting from the TPAS and ESPWG review, shall be forwarded to the Operating Committee for discussion and action. The ISO shall notify the Business Issues Committee of the date of the Operating Committee meeting at which the draft RNA is to be presented. Following the Operating Committee vote, the draft RNA will be transmitted to the Management Committee for discussion and action.

#### **31.2.3.2 Board Action**

Following the Management Committee vote, the draft RNA, with working group, Operating Committee, and Management Committee input, will be forwarded to the ISO Board for review and action. Concurrently, the draft RNA will be provided to the Market Monitoring Unit for its review and consideration of whether market rules changes are necessary to address an identified failure, if any, in one of the ISO's competitive markets. The Board may approve the RNA as submitted, or propose modifications on its own motion. If any changes are proposed by the Board, the revised RNA shall be returned to the Management Committee for comment. The Board shall not make a final determination on a revised RNA until it has reviewed the Management Committee comments. Upon approval by the Board, the ISO shall issue the final RNA to the marketplace by posting it on its web site.



The responsibilities of the Market Monitoring Unit that are addressed in the above section of this Attachment are also addressed in Section 30.4.6.8.2 of the Market Monitoring Plan, Attachment O to the ISO Services Tariff.

#### **31.2.3.3 Needs Assessment Disputes**

Notwithstanding any provision to the contrary in this Attachment, the ISO OATT, or the NYISO Services Tariff, in the event that a Market Participant raises a dispute solely within the NYPSC's jurisdiction relating to the final conclusions or recommendations of the RNA, a Market Participant may refer such dispute to the NYPSC for resolution. The NYPSC's final determination shall be binding, subject only to judicial review in the courts of the State of New York pursuant to Article 78 of the NYCPLR.

#### **31.2.3.4 Public Information Sessions**

In order to provide ample exposure for the marketplace to understand the identified Reliability Needs, the ISO will provide various opportunities for Market Participants and other potentially interested parties to discuss the final RNA. Such opportunities may include presentations at various ISO Market Participant committees, focused discussions with various industry sectors, and/or presentations in public venues.

### **31.2.4 Development of Solutions to Reliability Needs**

#### **31.2.4.1 Eligibility and Qualification Criteria for Developers and Projects**

For purposes of fulfilling the requirements of the Developer qualification criteria in this Section 31.2.4.1 and its subsections, the term "Developer" includes Affiliates, as that term is defined in Section 2 of the ISO Services Tariff and Section 1 of the ISO OATT. To the extent that a Developer relies on Affiliate(s) to satisfy any or all of the qualification criteria set forth in

Section 31.2.4.1.1.1, the Affiliate(s) shall provide to the ISO: (i) the information required in Section 31.2.4.1.1.1 to demonstrate its capability to satisfy the applicable qualification criteria, and (ii) a notarized officer's certificate, signed by an authorized officer of the Affiliate with signatory authority, in a form acceptable to the ISO, certifying that the Affiliate will participate in the Developer's project in the manner described by the Developer and will abide by the requirements set forth in this Attachment Y, the ISO Tariffs, and ISO Procedures related and applicable to the Affiliate's participation.

#### **31.2.4.1.1 Developer Qualification and Timing**

The ISO shall provide each Developer with an opportunity to demonstrate that it has or can draw upon the financial resources, technical expertise, and experience needed to finance, develop, construct, operate and maintain a transmission project to meet identified Reliability Needs. The ISO shall consider the qualifications of each Developer in an evenhanded and non-discriminatory manner, treating Transmission Owners and Other Developers alike.

##### **31.2.4.1.1.1 Developer Qualification Criteria**

The ISO shall make a determination on the qualification of a Developer to propose to develop a transmission project as a solution to an identified Reliability Need based on the following criteria:

- 31.2.4.1.1.1.1 The technical and engineering qualifications and experience of the Developer relevant to the development, construction, operation and maintenance of a transmission facility, including evidence of the Developer's demonstrated capability to adhere to standardized construction, maintenance, and operating practices and to contract with third parties to develop, construct, maintain, and/or operate transmission facilities;

31.2.4.1.1.1.2 The current and expected capabilities of the Developer to develop and construct a transmission facility and to operate and maintain it for the life of the facility. If the Developer has previously developed, constructed, maintained or operated transmission facilities, the Developer shall provide the ISO a description of the transmission facilities (not to exceed ten) that the Developer has previously developed, constructed, maintained or operated and the status of those facilities, including whether the construction was completed, whether the facility entered into commercial operations, whether the facility has been suspended or terminated for any reason, and evidence demonstrating the ability of the Developer to address and timely remedy any operational failure of the facilities; and

31.2.4.1.1.1.3 The Developer's current and expected capability to finance, or its experience in arranging financing for, transmission facilities. For purposes of the ISO's determination, the Developer shall provide the ISO:

- (1) evidence of its demonstrated experience financing or arranging financing for transmission facilities, if any, including a description of such projects (not to exceed ten) over the previous ten years, the capital costs and financial structure of such projects, a description of any financing obtained for these projects through rates approved by the Commission or a state regulatory agency, the financing closing date of such projects, and whether any of the projects are in default;
- (2) its audited annual financial statements from the most recent three years and its most recent quarterly financial statement, or equivalent information;
- (3) its credit rating from Moody's Investor Services, Standard & Poor's, or Fitch, or equivalent information, if available;

- (4) a description of any prior bankruptcy declarations, material defaults, dissolution, merger or acquisition by the Developer or its predecessors or subsidiaries occurring within the previous five years; and
- (5) such other evidence that demonstrates its current and expected capability to finance a project to solve a Reliability Need.

31.2.4.1.1.1.4 A detailed plan describing how the Developer – in the absence of previous experience financing, developing, constructing, operating, or maintaining transmission facilities – will finance, develop, construct, operate, and maintain a transmission facility, including the financial, technical, and engineering qualifications and experience and capabilities of any third parties with which it will contract for these purposes.

#### **31.2.4.1.1.2 Developer Qualification Determination**

Any Developer seeking to become qualified may submit the required information, or update any previously submitted information, at any time. The ISO shall treat on a confidential basis in accordance with the requirements of its Code of Conduct in Attachment F of the ISO OATT any non-public financial qualification information that is submitted to the ISO by the Developer under Section 31.2.4.1.1.1.3 and is designated by the Developer as “Confidential Information.” The ISO shall within 15 days of a Developer’s submittal, notify the Developer if the information is incomplete. If the submittal is deemed incomplete, the Developer shall submit the additional information within 30 days of the ISO’s request. The ISO shall notify the Developer of its qualification status within 30 days of receiving all necessary information. A Developer shall retain its qualification status for a three-year period following the notification date; *provided, however*, that the ISO may revoke this status if it determines that there has been a

material change in the Developer's qualifications and the Developer no longer meets the qualification requirements. A Developer that has been qualified shall inform the ISO within thirty days of any material change to the information it provided regarding its qualifications and shall submit to the ISO each year its most recent audited annual financial statement when available. At the conclusion of the three-year period or following the ISO's revocation of a Developer's qualification status, the Developer may re-apply for a qualification status under this section.

Any Developer determined by the ISO to be qualified under this section shall be eligible to propose a regulated transmission project as a solution to an identified Reliability Need and shall be eligible to use the cost allocation and cost recovery mechanism for regulated transmission projects set forth in Section 31.5 of this Attachment Y and Rate Schedule 10, Section 6.10, of the ISO OATT for any approved project.

#### **31.2.4.2 Interregional Transmission Projects**

Interregional Transmission Projects may be proposed as regulated backstop solutions, alternative regulated solutions, or market-based solutions. Interregional Transmission Projects proposed as regulated backstop solutions, alternative regulated solutions or market-based solutions shall be subject to the applicable requirements of the reliability planning process of this Attachment Y.

#### **31.2.4.3 Regulated Backstop Solutions**

31.2.4.3.1 When a Reliability Need is identified in any RNA issued under this tariff, the ISO shall request and the Responsible Transmission Owner shall provide to the ISO, as set forth in Section 31.2.5 below, a proposal for a regulated solution or combination of solutions that shall serve as a backstop to meet the Reliability

Need if requested by the ISO due to the lack of sufficient viable market-based solutions to meet such Reliability Needs identified for the Study Period. The Responsible Transmission Owner shall be eligible to recover its costs for developing its proposal and seeking necessary approvals under Rate Schedule 10 of the ISO OATT. Regulated backstop solutions may include generation, transmission, or demand side resources. Such proposals may include reasonable alternatives that would effectively address the Reliability Need; provided however, the Responsible Transmission Owner's obligation to propose and implement regulated backstop solutions under this tariff is limited to regulated transmission solutions. Prior to providing its response to the RNA, each Responsible Transmission Owner will present for discussion at the ESPWG and TPAS any updates in its LTP that impact a Reliability Need identified in the RNA. The ISO will present at the ESPWG and TPAS any updates to its determination under Section 31.2.2.4.2 with respect to the Transmission Owners' LTPs. Should more than one regulated backstop solution be proposed by a Responsible Transmission Owner to address a Reliability Need, it will be the responsibility of that Responsible Transmission Owner to determine which of the regulated backstop solutions will proceed following a finding by the ISO under Section 31.2.8 of this Attachment Y. The determination by the Responsible Transmission Owner will be made prior to the approval of the CRP which precedes the Trigger Date for the regulated backstop solution with the longest lead time. Contemporaneous with the request to the Responsible Transmission Owner, the ISO shall solicit market-based and alternative regulated responses as

set forth in Sections 31.2.4.5 and 31.2.4.7, which shall not be a formal RFP process.

#### **31.2.4.4 Qualifications for Regulated Backstop Solutions**

31.2.4.4.1 The submission of a regulated backstop solution to a Reliability Need for purposes of the ISO's evaluation under Section 31.2.5 of the viability and sufficiency of the proposed solution and the determination of the Trigger Date for the proposed solution shall include, at a minimum, the following details: (1) contact information; (2) the lead time necessary to complete the project, including, if available, the construction windows in which the Responsible Transmission Owner can perform construction and what, if any, outages may be required during these periods; (3) a description of the project, including type, size, and geographic and electrical location, as well as planning and engineering specifications and drawings as appropriate; (4) evidence of a commercially viable technology, (5) a major milestone schedule; (6) the schedule for obtaining any permits and other certifications, if available; (7) status of ISO interconnection studies and interconnection agreement, if available; and (8) status of equipment availability and procurement, if available.

31.2.4.4.2 The submission of a regulated backstop solution to a Reliability Need for purposes of the ISO's evaluation of the proposed solution for possible selection as the more efficient or cost effective solution to the Reliability Need shall include, at a minimum, the following details: (1) updates to the information required under Section 31.2.4.4.1; (2) the schedule for obtaining required permits and other certifications; (3) a demonstration of Site Control or a schedule for obtaining such

control; (4) the status of any contracts (other than an Interconnection Agreement) that are under negotiation or in place, including any contracts with third-party contractors; (5) status of ISO interconnection studies and interconnection agreement; (6) status of equipment availability and procurement; (7) evidence of financing or ability to finance the project; (8) capital cost estimates for the project; (9) a description of permitting or other risks facing the project at the stage of project development, including evidence of the reasonableness of project cost estimates, all based on the information available at the time of the submission; and (10) any other information requested by the ISO.

A Responsible Transmission Owner shall submit the following information to indicate the status of any contracts: (i) copies of all final contracts the ISO determines are relevant to its consideration, or (ii) where one or more contracts are pending, a timeline on the status of discussions and negotiations with the relevant documents and when the negotiations are expected to be completed. The final contracts shall be submitted to the ISO when available. The ISO shall treat on a confidential basis in accordance with the requirements of its Code of Conduct in Attachment F of the ISO OATT any contract that is submitted to the ISO and is designated by the Responsible Transmission Owner as “Confidential Information.”

A Responsible Transmission Owner shall submit the following information to indicate the status of any required permits: (i) copies of all final permits received that the ISO determines are relevant to its consideration, or (ii) where one or more permits are pending, the completed permit application(s) with



information on what additional actions must be taken to meet the permit requirements and a timeline providing the expected timing for finalization and receipt of the final permit(s). The final permits shall be submitted to the ISO when available.

A Responsible Transmission Owner shall submit the following information, as appropriate, to indicate evidence of financing by it or any Affiliate upon which it is relying for financing: (i) evidence of self-financing or project financing through approved rates or the ability to do so, (ii) copies of all loan commitment letter(s) and signed financing contract(s), or (iii) where such financing is pending, the status of the application for any relevant financing, including a timeline providing the status of discussions and negotiations of relevant documents and when the negotiations are expected to be completed. The final contracts or approved rates shall be submitted to the ISO when available.

31.2.4.4.3 If the regulated backstop solution does not meet the Reliability Needs , the ISO will provide sufficient information to the Responsible Transmission Owner to determine how the regulated backstop should be modified to meet the identified Reliability Needs. The Responsible Transmission Owner will make necessary changes to its proposed regulated backstop solution to address reliability deficiencies identified by the ISO, and submit a revised proposal to the ISO for review and approval.

#### **31.2.4.5 Market-Based Responses**

At the same time that a proposal for a regulated backstop solution is requested from the Responsible Transmission Owner under Section 31.2.4.3, the ISO shall also request market-

based responses from the market place. Subject to the execution of appropriately drawn confidentiality agreements and the Commission's standards of conduct, the ISO and the appropriate Transmission Owner or Transmission Owners shall provide any party who wishes to develop such a response access to the data that is necessary to develop its response. Such data shall only be used for the purposes of preparing a market-based response to a Reliability Need under this section. Such responses will be open on a comparable basis to all resources, including generation, demand response providers, and merchant transmission Developers.

#### **31.2.4.6 Qualifications for a Valid Market-Based Response**

The submission of a proposed market-based solution must include, at a minimum:

(1) contact information; (2) the lead time necessary to complete the project, including, if available, the construction windows in which the Developer can perform construction and what, if any, outages may be required during these periods; (3) a description of the project, including type, size, and geographic and electrical location, as well as planning and engineering specifications and drawings as appropriate; (4) evidence of a commercially viable technology; (5) a major milestone schedule; (6) a schedule for obtaining any required permits and other certifications; (7) a demonstration of Site Control or a schedule for obtaining Site Control; (8) the status of any contracts (other than an Interconnection Agreement) that are under negotiation or in place; (9) the status of ISO interconnection studies and interconnection agreement; (10) the status of equipment availability and procurement; (11) evidence of financing or ability to finance the project; and (12) any other information requested by the ISO.

A Developer shall submit the following information to indicate the status of any contracts: (i) copies of all final contracts the ISO determines are relevant to its consideration, or (ii) where one or more contracts are pending, a timeline on the status of discussions and

negotiations with the relevant documents and when the negotiations are expected to be completed. The final contracts shall be submitted to the ISO when available. The ISO shall treat on a confidential basis in accordance with the requirements of its Code of Conduct in Attachment F of the ISO OATT any contract that is submitted to the ISO and is designated by the Developer as “Confidential Information.”

A Developer shall submit the following information to indicate the status of any required permits: (i) copies of all final permits received that the ISO determines are relevant to its consideration, or (ii) where one or more permits are pending, the completed permit application(s) with information on what additional actions must be taken to meet the permit requirements and a timeline providing the expected timing for finalization and receipt of the final permit(s). The final permits shall be submitted to the ISO when available.

A Developer shall submit the following information, as appropriate, to indicate evidence of financing by it or any Affiliate upon which it is relying for financing: (i) copies of all loan commitment letter(s) and signed financing contract(s), or (ii) where such financing is pending, the status of the application for any relevant financing, including a timeline providing the status of discussions and negotiations of relevant documents and when the negotiations are expected to be completed. The final contracts shall be submitted to the ISO when available.

Failure to provide any data requested by the ISO within the timeframe set forth in Section 31.2.5.1 of this Attachment Y will result in the rejection of the proposed market-based solution from further consideration during that planning cycle.

#### **31.2.4.7 Alternative Regulated Responses**

31.2.4.7.1 The ISO will request alternative regulated responses to Reliability Needs at the same time that it requests market-based responses and regulated backstop

solutions. Such proposals may include reasonable alternatives that would effectively address the identified Reliability Need.

31.2.4.7.2 In response to the ISO's request, Other Developers may develop alternative regulated proposals for generation, demand side alternatives, and/or other solutions to address a Reliability Need and submit such proposals to the ISO. Transmission Owners, at their option, may submit additional proposals for regulated solutions to the ISO. Transmission Owners and Other Developers may submit such proposals to the NYDPS for review at any time. Subject to the execution of appropriately drawn confidentiality agreements and the Commission's standards of conduct, the ISO and the appropriate Transmission Owner(s) shall provide Other Developers access to the data that is needed to develop their proposals. Such data shall be used only for purposes of preparing an alternative regulated proposal in response to a Reliability Need.

#### **31.2.4.8 Qualifications for Alternative Regulated Solutions**

31.2.4.8.1 The submission of an alternative regulated solution to a Reliability Need for purposes of the ISO's evaluation under Section 31.2.5 of the viability and sufficiency of the proposed solution and the determination of the Trigger Date for the proposed solution shall include, at a minimum, the following details: (1) contact information; (2) the lead time necessary to complete the project, including, if available, the construction windows in which the Other Developer or Transmission Owner can perform construction and what, if any, outages may be required during these periods; (3) a description of the project, including type, size, and geographic and electrical location, as well as planning and engineering

specifications and drawings as appropriate; (4) evidence of a commercially viable technology; (5) a major milestone schedule; (6) the schedule for obtaining any permits and other certifications, if available; (7) status of ISO interconnection studies and interconnection agreement, if available; and (8) status of equipment availability and procurement, if available.

31.2.4.8.2 The submission of a proposed alternative regulated solution to a Reliability Need for purposes of the ISO's evaluation of the proposed solution for possible selection as the more efficient or cost effective solution for the Reliability Need must include, at a minimum: (1) updates to the information required under Section 31.2.4.8.1; (2) a demonstration of Site Control or a schedule for obtaining Site Control; (3) the status of any contracts (other than an Interconnection Agreement) that are under negotiation or in place, including any contracts with third-party contractors; (4) the status of any interconnection studies and interconnection agreement; (5) the schedule for obtaining any required permits and other certifications; (6) the status of equipment availability and procurement; (7) evidence of financing or ability to finance the project; (8) capital cost estimates for the project; (9) a description of permitting or other risks facing the project at the stage of project development, including evidence of the reasonableness of project cost estimates, all based on the information available at the time of the submission; and (10) any other information requested by the ISO.

An Other Developer or Transmission Owner shall submit the following information to indicate the status of any contracts: (i) copies of all final contracts the ISO determines are relevant to its consideration, or (ii) where one or more

contracts are pending, a timeline on the status of discussions and negotiations with the relevant documents and when the negotiations are expected to be completed. The final contracts shall be submitted to the ISO when available. The ISO shall treat on a confidential basis in accordance with the requirements of its Code of Conduct in Attachment F of the ISO OATT any contract that is submitted to the ISO and is designated by the Other Developer or Transmission Owner as “Confidential Information.”

An Other Developer or Transmission Owner shall submit the following information to indicate the status of any required permits: (i) copies of all final permits received that the ISO determines are relevant to its consideration, or (ii) where one or more permits are pending, the completed permit application(s) with information on what additional actions must be taken to meet the permit requirements and a timeline providing the expected timing for finalization and receipt of the final permit(s). The final permits shall be submitted to the ISO when available.

An Other Developer or Transmission Owner shall submit the following information, as appropriate, to indicate evidence of financing by it or any Affiliate upon which it is relying for financing: (i) evidence of self-financing or project financing through approved rates or the ability to do so, (ii) copies of all loan commitment letter(s) and signed financing contract(s), or (iii) where such financing is pending, the status of the application for any relevant financing, including a timeline providing the status of discussions and negotiations of

relevant documents and when the negotiations are expected to be completed. The final contracts or approved rates shall be submitted to the ISO when available.

31.2.4.8.3 Failure to provide any data requested by the ISO within the timeframe provided in Sections 31.2.5.1 and 31.2.6.1 of this Attachment Y will result in the rejection of the proposed alternative regulated solution from further consideration during that planning cycle. A proponent of a proposed alternative regulated solution must notify the ISO immediately of any material change in status of a proposed alternative regulated solution. For purposes of this provision, a material change includes, but is not limited to, a change in the financial viability of the developer, a change in the siting status of the project, or a change in a major element of the project's development. If the ISO, at any time, learns of a material change in the status of a proposed alternative regulated solution, it may, at that time, make a determination as to the continued viability of the proposed alternative regulated solution.

#### **31.2.4.9 Additional Solutions**

Should the ISO determine that it has not received adequate regulated backstop or market-based solutions to satisfy the Reliability Need, the ISO may, in its discretion, solicit additional regulated backstop or market-based solutions. Other Developers or Transmission Owners may submit additional alternative regulated solutions for the ISO's consideration at that time.

### **31.2.5 ISO Evaluation of Viability, Sufficiency, and Trigger Date of Proposed Solutions to Reliability Needs**

#### **31.2.5.1 Timing for Submittal of Project Information and Developer Qualification Information and Opportunity to Provide Additional Information**

Within 60 days after a request for solutions to a Reliability Need is made by the ISO after completion of the RNA, a Developer proposing a solution to an identified Reliability Need shall submit to the ISO for purposes of its evaluation the project information, as applicable, for: (i) a proposed regulated backstop solution under Section 31.2.4.4.1, (ii) a proposed market-based solution under Section 31.2.4.6, or (iii) a proposed alternative regulated solution under Section 31.2.4.8.1 of this Attachment Y.

Any Developer that the ISO has determined under Section 31.2.4.1.1.2 or as set forth in this Section 31.2.5.1 below to be qualified to propose to develop a project as a transmission solution to an identified Reliability Need may submit the required project information; *provided, however*, that: (i) the Developer shall provide a non-refundable application fee of \$10,000 and (ii) based on the actual identified need, the ISO may request that the qualified Developer provide additional Developer qualification information. Any Developer that has not been determined by the ISO to be qualified, but that wants to propose to develop a project, must submit to the ISO the information required for Developer qualification under Section 31.2.4.1.1 within 30 days after a request for solutions is made by the ISO. The ISO shall within 30 days of a Developer's submittal of its Developer qualification information, notify the Developer if this information is incomplete. The Developer shall submit additional Developer qualification information or project information required by the ISO within 15 days of the ISO's request. A Developer that fails to submit the additional Developer qualification information or the required project information will not be eligible for its project to be considered in that planning cycle.



### **31.2.5.2 Comparable Evaluation of All Proposed Solutions**

The ISO shall evaluate: (i) any proposed market-based solution submitted by a Developer pursuant to Section 31.2.4.5, (ii) any proposed regulated backstop solution submitted by a Responsible Transmission Owner pursuant to Section 31.2.4.3, and (iii) any proposed alternative regulated solution submitted by a Transmission Owner or Other Developer pursuant to Section 31.2.4.7. The ISO will evaluate whether each proposed solution is viable and is sufficient to satisfy the identified Reliability Need by the need date pursuant to Sections 31.2.5.3 and 31.2.5.4. The proposed solutions may include multiple components and resource types. When evaluating proposed solutions to Reliability Needs from any Developer, all resource types – generation, transmission, demand response, or a combination of these resource types – shall be considered on a comparable basis as potential solutions to the Reliability Needs identified. All solutions will be evaluated in the same general time frame.

### **31.2.5.3 Evaluation of Viability of Proposed Solution**

The ISO will determine the viability of a solution – transmission, generation, demand response, or a combination of these resource types – proposed to satisfy a Reliability Need. For purposes of its analysis, the ISO will evaluate whether: (i) the Developer has provided the required Developer qualification data pursuant to Section 31.2.4.1 and the required project information data under Sections 31.2.4.4.1, 31.2.4.6, or 31.2.4.8.1; (ii) the proposed solution is technically practicable; (iii) the Developer has indicated possession of, or an approach for acquiring, any necessary rights-of-way, property, and facilities that will make the proposal reasonably feasible in the required timeframe; and (iv) the proposed solution can be completed in the required timeframe. If the ISO determines that the proposed solution is not viable and, for regulated solutions, the Developer does not address any identified deficiency pursuant to Section

31.2.5.6, the ISO shall reject the proposed solution from further consideration during that planning cycle.

#### **31.2.5.4 Evaluation of Sufficiency of Proposed Solution**

The ISO will perform a comparable analysis of each proposed solution – transmission, generation, demand response, or a combination of these resource types – through the Study Period to identify whether it satisfies the Reliability Need(s). The ISO will evaluate each solution to determine whether the solution proposed by the Developer fully eliminates the Reliability Need(s). If the ISO determines that a proposed regulated solution is not sufficient and the Developer does not address any identified deficiency pursuant to Section 31.2.5.6, the ISO shall reject the proposed regulated solution from further consideration during that planning cycle.

#### **31.2.5.5 Establishment of Trigger Date of Proposed Regulated Solutions**

Upon receipt of all Developers' proposed regulated solutions pursuant to Section 31.2.5.1, the ISO will notify all Developers if any Developer has proposed a lead time for the implementation of its regulated solution that could result in a Trigger Date for the regulated solution within thirty-six months of the date of the ISO's presentation of the Viability and Sufficiency Assessment to the ESPWG, provided that the ISO will not disclose the identity of such Developer or the details of its project at that time. The ISO will independently analyze the lead time proposed by each Developer for the implementation of its regulated solution. The ISO will use the Developer's estimate and the ISO's analysis to establish the ISO's Trigger Date for each regulated solution. The ISO will also establish benchmark lead times for proposed market-based solutions.

#### **31.2.5.6 Resolution of Deficiencies**

Following initial review of the proposals, as described above, ISO staff will identify any reliability deficiencies in each of the proposed solutions. The Responsible Transmission Owner, Transmission Owner or Other Developer will discuss any identified deficiencies with the ISO staff. Other Developers and Transmission Owners that propose alternative regulated solutions shall have the option to remedy their proposals to address any deficiency within 30 days of notification by the ISO. With respect to regulated backstop solutions proposed by a Responsible Transmission Owner pursuant to Section 31.2.4.3, the Responsible Transmission Owner shall make necessary changes to its proposed backstop solution to address any reliability deficiencies identified by the ISO, and submit a revised proposal to the ISO for review within 30 days. The ISO shall review all such revised proposals to determine whether the identified deficiencies have been resolved.

#### **31.2.5.7 ISO Report of Evaluation Results**

The ISO shall present its Viability and Sufficiency Assessment to stakeholders, interested parties, and the NYDPS for comment and will indicate at that time whether any of the proposed regulated solutions found to be viable and sufficient under this Section 31.2.5 will have a Trigger Date within thirty-six months of the date of the ISO's presentation of the Viability and Sufficiency Assessment to the ESPWG.

The ISO shall report in the CRP the results of its evaluation under this Section 31.2.5: (i) whether each proposed regulated backstop solution, alternative regulated solution, and market-based solution is viable and is sufficient to satisfy the identified Reliability Need by the need date, and (ii) the Trigger Dates for the proposed regulated solutions.

### **31.2.6 ISO Evaluation and Selection of Proposed Regulated Transmission Solutions**

#### **31.2.6.1 Submission of Project Information for Selection of Proposed Regulated Transmission Solution**

If the ISO determines that the Trigger Date of any Developer's proposed regulated solution that was found to be viable and sufficient under Section 31.2.5 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 request that all Developers of regulated transmission solutions that the ISO determined were viable and sufficient submit to the ISO their project information, as applicable, for: (i) a proposed regulated backstop transmission solution under Section 31.2.4.4.2, or (ii) a proposed alternative regulated transmission solution under Section 31.2.4.8.2. If the ISO determines that none of the Developers' proposed regulated solutions that were found to be viable and sufficient under Section 31.2.5 have a Trigger Date that will occur within the thirty-six month period, the ISO will not request further project information, perform the evaluation, or make a selection of a more efficient or cost effective regulated solution under this Section 31.2.6 for that planning cycle.

The ISO will make its request, if necessary, for project information under this Section 31.2.6.1 sufficiently in advance of the earliest Trigger Date of the viable and sufficient regulated solutions to enable the ISO to evaluate and select the more efficient or cost effective transmission solution. Upon the ISO's request for project information, the Developer shall submit such information for its regulated transmission solution within thirty (30) days or such other additional period as the ISO determines is reasonable. The Developer shall submit additional project information required by the ISO within 15 days of the ISO's request. A Developer that fails to submit the required project information will not be eligible for its project to be considered in that planning cycle.

#### **31.2.6.2 Study Deposit for Proposed Regulated Transmission Solutions**

A Developer that proposes a regulated backstop transmission solution or an alternative regulated transmission solution to satisfy the identified Reliability Need shall submit to the ISO, at the same time that it provides the project information required pursuant to Section 31.2.6.1, a study deposit of \$100,000, which shall be applied to study costs and subject to refund as described in this Section 31.2.6.2.

The ISO shall charge, and a Developer proposing a regulated backstop transmission solution or an alternative regulated transmission solution shall pay, the actual costs of the ISO's evaluation of the Developer's proposed transmission solution for purposes of the ISO's selection of the more efficient or cost effective transmission solution to satisfy a Reliability Need for cost allocation purposes, including costs associated with the ISO's use of subcontractors. The ISO will track its staff and administrative costs, including any costs associated with using subcontractors, that it incurs in performing the evaluation of a Developer's proposed transmission solution under this Section 31.2.6 and any supplemental evaluation or re-evaluation of the proposed transmission solution. If the ISO or its subcontractors perform study work for multiple proposed transmission solutions on a combined basis, the ISO will allocate the costs of the combined study work equally among the applicable Developers. The ISO shall invoice the Developer monthly for study costs incurred by the ISO in evaluating the Developer's proposed transmission solution as described above. Such invoice shall include a description and an accounting of the study costs incurred by the ISO and estimated subcontractor costs. The Developer shall pay the invoiced amount within thirty (30) calendar days of the ISO's issuance of the monthly invoice. The ISO shall continue to hold the full amount of the study deposit until settlement of the final monthly invoice; *provided, however*, if a Developer: (i) does not pay its monthly invoice within the timeframe described above, or (ii) does not pay a disputed amount

into an independent escrow account as described below, the ISO may draw upon the study deposit to recover the owed amount. If the ISO must draw on the study deposit, the ISO shall provide notice to the Developer, and the Developer shall within thirty (30) calendar days of such notice make payments to the ISO to restore the full study deposit amount. If the Developer fails to make such payments, the ISO may halt its evaluation of the Developer's proposed transmission solution and may disqualify the Developer's proposed transmission solution from further consideration. After the conclusion of the ISO's evaluation of the Developer's proposed transmission solution or if the Developer: (i) withdraws its proposed transmission solution or (ii) fails to pay an invoiced amount and the ISO halts its evaluation of the proposed transmission solution, the ISO shall issue a final invoice and refund to the Developer any portion of the Developer's study deposit submitted to the ISO under this Section 31.2.6.2 that exceeds outstanding amounts that the ISO has incurred in evaluating that Developer's proposed transmission solution, including interest on the refunded amount calculated in accordance with Section 35.19a(a)(2) of FERC's regulations. The ISO shall refund the remaining portion within sixty (60) days of the ISO's receipt of all final invoices from its subcontractors and involved Transmission Owners.

In the event of a Developer's dispute over invoiced amounts, the Developer shall: (i) timely pay any undisputed amounts to the ISO, and (ii) pay into an independent escrow account the portion of the invoice in dispute, pending resolution of such dispute. If the Developer fails to meet these two requirements, then the ISO shall not be obligated to perform or continue to perform its evaluation of the Developer's proposed transmission solution. Disputes arising under this section shall be addressed through the Dispute Resolution Procedures set forth in Section 2.16 of the ISO OATT and Section 11 of the ISO Services Tariff. Within thirty (30) Calendar

Days after resolution of the dispute, the Developer will pay the ISO any amounts due with interest calculated in accordance with Section 35.19a(a)(2) of FERC's regulations.

### **31.2.6.3 Evaluation of System Impact of Proposed Regulated Transmission Solution**

A proposed regulated transmission solution that will have a significant adverse impact on the reliability of the New York State Transmission System shall not be eligible for selection by the ISO under Section 31.2.6.5. The ISO shall evaluate the system impacts for the entire Study Period of a proposed regulated transmission solution that the ISO has determined under Section 31.2.5 is viable and sufficient. The ISO shall perform power flow and short circuit studies for the proposed regulated transmission solutions and additional studies, as appropriate. If the ISO identifies a significant adverse impact based on these studies, the ISO shall request that the Developer make an adjustment to its proposed regulated transmission solution to address this impact and remain eligible for selection. The Developer shall submit the adjustment within 30 days of the ISO's notification.

If the Developer modifies its proposed regulated transmission solution, the ISO shall confirm that the adjusted solution still satisfies the viability and sufficiency requirements set forth in Section 31.2.5. If the ISO determines that the proposed regulated transmission solution does not satisfy the viability and sufficiency requirements or continues to have a significantly adverse impact on the reliability of the New York State Transmission System, the ISO shall remove the proposed solution from further consideration during that planning cycle.

#### **31.2.6.4 Evaluation of Regional Transmission Solutions to Address Local and Regional Reliability Needs More Efficiently or More Cost Effectively Than Local Transmission Solutions**

The ISO will review the LTPs as they relate to BPTFs. The results of the ISO's analysis will be reported in the CRP.

##### **31.2.6.4.1 Evaluation of Regional Transmission Solutions to Address Local Reliability Needs Identified in Local Transmission Plans More Efficiently or More Cost Effectively than Local Transmission Solutions**

The ISO, using engineering judgment, will determine whether proposed regional transmission solutions on the BPTFs may more efficiently or cost effectively satisfy reliability needs identified in the LTPs. If the ISO identifies that a regional transmission solution on the BPTFs has the potential to more efficiently or cost effectively satisfy the reliability need identified in the LTPs, it will perform a sensitivity analysis to determine whether the proposed regional transmission solution on the BPTFs would satisfy the reliability needs identified in the LTPs. If the ISO determines that the proposed regional transmission solutions on the BPTFs would satisfy the reliability need, the ISO will evaluate the proposed regional transmission solution using the metrics set forth in Section 31.2.6.5.1 to determine whether it may be a more efficient or cost effective solution on the BPTFs to satisfy the reliability needs identified in the LTPs than the local solutions proposed in the LTPs.

##### **31.2.6.4.2 Evaluation of Regional Transmission Solutions to Address Regional Reliability Needs More Efficiently or More Cost Effectively than Local Transmission Solutions**

As referenced in Section 31.2.1.3, the ISO, using engineering judgment, will determine whether a regional transmission solution might more efficiently or more cost effectively satisfy an identified regional Reliability Need on the BPTFs that impacts more than one Transmission District than any local transmission solutions identified by the Transmission Owners in their



LTPs in the event the LTPs specify such transmission solutions are included to address local reliability needs.

#### **31.2.6.5 ISO Selection of More Efficient or Cost Effective Transmission Solution for Cost Allocation Purposes**

A proposed regulated transmission solution – including a regulated backstop transmission solution submitted by a Responsible Transmission Owner pursuant to Section 31.2.4.3 and an alternative regulated transmission solution submitted by a Transmission Owner or Other Developer pursuant to Section 31.2.4.7 – that the ISO has determined satisfies the viability and sufficiency requirements in Section 31.2.5 and the system impact requirements in Section 31.2.6.3 shall be eligible under this Section 31.2.6.5 for selection in the CRP for the purpose of cost allocation and recovery under the ISO Tariffs. The ISO shall evaluate any eligible proposed regulated transmission solutions for the planning cycle using the metrics set forth in Section 31.2.6.5.1 below. For purposes of this evaluation, the ISO will review the information submitted by the Developer and determine whether it is reasonable and how such information should be used for purposes of the ISO evaluating each metric. The ISO may engage an independent consultant to review the reasonableness and comprehensiveness of the information submitted by the Developer and may rely on the independent consultant's analysis in evaluating each metric. The ISO shall select in the CRP for cost allocation purposes the more efficient or cost effective transmission solution to satisfy a Reliability Need in the manner set forth in Section 31.2.6.5.2 below.

##### **31.2.6.5.1 Metrics for Evaluating More Efficient or Cost Effective Regulated Transmission Solution to Satisfy Reliability Need**

In determining which of the eligible proposed regulated transmission solutions is the more efficient or cost effective solution to satisfy the Reliability Need, the ISO will consider, and

will consult with the NYDPS regarding, the following metrics set forth in this Section 31.2.6.5.1 and rank each proposed solution based on the quality of its satisfaction of these metrics:

31.2.6.5.1.1 The capital cost estimates for the proposed regulated transmission solutions, including the accuracy of the proposed estimates. For this evaluation, the Developer shall provide the ISO with credible capital cost estimates for its proposed solution, with itemized supporting work sheets that identify all material and labor cost assumptions, and related drawings to the extent applicable and available. The work sheets should include an estimated quantification of cost variance, providing an assumed plus/minus range around the capital cost estimate.

The estimate shall include all components that are needed to meet the Reliability Need throughout the Study Period. To the extent information is available, the Developer should itemize: material and labor cost by equipment, engineering and design work, permitting, site acquisition, procurement and construction work, and commissioning needed for the proposed solution, all in accordance with Good Utility Practice. For each of these cost categories, the Developer should specify the nature and estimated cost of all major project components and estimate the cost of the work to be done at each substation and/or on each feeder to physically and electrically connect each facility to the existing system. The work sheets should itemize to the extent applicable and available all equipment for: (i) the proposed project; (ii) interconnection facilities (including Attachment Facilities and Direct Assignment Facilities); and (iii) System Upgrade Facilities, System Deliverability Upgrades, Network Upgrades, and Distribution Upgrades.

31.2.6.5.1.2 The cost per MW ratio of the proposed regulated transmission solutions.

For this evaluation, the ISO will first determine the present worth, in dollars, of the total capital cost of the proposed solution in current year dollars. The ISO will then determine the MW value of the solution by summing the Reliability Need, in MW, with the additional improvement, in MW, that the proposed solution offers beyond serving the Reliability Need. The ISO will then determine the cost per MW ratio by dividing the present worth of the total capital cost by the MW value.

31.2.6.5.1.3 The expandability of the proposed regulated transmission solution. The

ISO will consider the impact of the proposed solution on future construction. The ISO will also consider the extent to which any subsequent expansion will continue to use this proposed solution within the context of system expansion.

31.2.6.5.1.4 The operability of the proposed regulated transmission solution. The ISO

will consider how the proposed solution may affect additional flexibility in operating the system, such as dispatch of generation, access to operating reserves, access to ancillary services, or ability to remove transmission for maintenance. The ISO will also consider how the proposed solution may affect the cost of operating the system, such as how it may affect the need for operating generation out of merit for reliability needs, reducing the need to cycle generation, or providing more balance in the system to respond to system conditions that are more severe than design conditions.

31.2.6.5.1.5 The performance of the proposed regulated transmission solution. The

ISO will consider how the proposed project may affect the utilization of the system (*e.g.* interface flows, percent loading of facilities).

31.2.6.5.1.6 The extent to which the Developer of a proposed regulated transmission solution has the property rights, or ability to obtain the property rights, required to implement the solution. The ISO will consider whether the Developer: (i) already possesses the rights of way necessary to implement the solution; (ii) has completed a transmission routing study, which (a) identifies a specific routing plan with alternatives, (b) includes a schedule indicating the timing for obtaining siting and permitting, and (c) provides specific attention to sensitive areas (e.g., wetlands, river crossings, protected areas, and schools); or (iii) has specified a plan or approach for determining routing and acquiring property rights.

31.2.6.5.1.7 The potential issues associated with delay in constructing the proposed regulated transmission solution consistent with the major milestone schedule and the schedule for obtaining any permits and other certifications as required to timely meet the need.

#### **31.2.6.5.2 ISO Selection of More Efficient or Cost Effective Regulated Transmission Solution to Satisfy Reliability Need**

The ISO shall select under this Section 31.2.6.5.2 the proposed regulated transmission solution, if any, that is the more efficient or cost effective transmission solution proposed in the planning cycle to satisfy the identified Reliability Need. The ISO shall report the selected regulated transmission solution in the CRP. The selected regulated transmission solution reported in the CRP shall be eligible to be triggered by the ISO to satisfy the identified Reliability Need pursuant to Section 31.2.8 at any point within thirty-six months of the date of the ISO's presentation of the Viability and Sufficiency Assessment to the ESPWG. An Other Developer or Transmission Owner of an alternative regulated transmission project shall not be eligible for cost allocation and cost recovery under the ISO OATT for its project unless its

project is selected pursuant to this Section 31.2.6.5.2. Once such project is selected, the Other Developer or Transmission Owner shall be eligible for cost allocation and cost recovery under the ISO OATT for its project. Within thirty (30) days of the ISO's selection of an alternative regulated transmission solution, the Other Developer or Transmission Owner shall submit to the ISO for the ISO's approval a proposed schedule and scope of work that describe the preparation work, if any, that the Developer must perform prior to the Trigger Date of the project, including a good faith estimate of the costs of such work. Costs will be recovered when the project is completed or halted in accordance with the cost recovery requirements set forth in Rate Schedule 10 of the ISO OATT, or as otherwise determined by the Commission. Actual project cost recovery, including any issues related to cost recovery and project cost overruns, will be submitted to and decided by the Commission.

### **31.2.7 Comprehensive Reliability Plan**

Following the ISO's evaluation of the proposed market-based and regulated solutions to Reliability Need(s), the ISO will prepare a draft CRP that sets forth the ISO's findings regarding the viability and sufficiency of solutions, the trigger dates of regulated solutions, and any recommendations that implementation of regulated solutions (which may be a Gap Solution) is necessary to ensure system reliability. The draft CRP will reflect any input from the NYDPS. If the CRP cannot be completed in the two-year planning cycle, the ISO will notify stakeholders and provide an estimated completion date and an explanation of the reasons the additional time is required.

The ISO will include in the draft CRP the list of Developers that qualify pursuant to Section 31.2.4.1 and will identify the proposed solutions that it has determined under Section 31.2.5 are viable and sufficient to satisfy the identified Reliability Need(s) by the need date. The

ISO will identify in the CRP the regulated backstop solution that the ISO has determined will meet the Reliability Need by the need date and the Responsible Transmission Owner. If the ISO determines at the time of the issuance of the CRP that sufficient market-based solutions will not be available in time to meet a Reliability Need, and finds that it is necessary to take action to ensure reliability, it will state in the CRP that the development of regulated solutions (regulated backstop or alternative regulated solution) is necessary. The draft CRP will also include the results of the ISO's analysis of the LTPs consistent with Section 31.2.6.4.

The draft CRP shall indicate whether the ISO has determined that the Trigger Date to any proposed regulated solution will occur within thirty-six months of the date of ISO's presentation of the Viability and Sufficiency Assessment to the ESPWG. If the Trigger Date of any proposed regulated solution will occur within the thirty-six month period and the ISO makes a selection of the more efficient or cost effective transmission solution under Section 31.2.6.5.2, the draft CRP shall include the regulated transmission solution selected for cost allocation purposes pursuant to Section 31.2.6.5.2 as the more efficient or cost effective transmission solution to satisfy the Reliability Need(s) and shall indicate whether that transmission solution should be triggered. If: (i) none of the proposed regulated solutions has a Trigger Date within the thirty-six month period, or (ii) the Trigger Date of any proposed regulated solution will occur within the thirty-six month period but the ISO determines in its discretion that it is not necessary at that time to select a more efficient or cost effective transmission solution under Section 31.2.6.5.2 prior to the completion of the CRP, the draft CRP will not select a regulated transmission solution. If: (i) the Trigger Date of any proposed regulated solution will occur within the thirty-six month period, and (ii) the ISO selects a more efficient or cost effective solution subsequent to the completion of the CRP but prior to the completion of that thirty-six month period, the ISO shall issue an

updated CRP report pursuant to Section 31.2.7.3 that includes the regulated transmission solution selected for cost allocation purposes pursuant to Section 31.2.6.5.2 as the more efficient or cost effective transmission solution to satisfy the Reliability Need(s) and shall indicate whether that transmission solution should be triggered.

The draft CRP shall include a comparison of a proposed regional solution to an identified Reliability Need to an Interregional Transmission Project identified and evaluated under the “Analysis and Consideration of Interregional Transmission Projects” section of the Interregional Planning Protocol, if any. An Interregional Transmission Project proposed in the ISO’s reliability planning process may be selected as a market based response, regulated backstop solution, or an alternative regulated solution under the provisions of the ISO’s reliability planning process.

#### **31.2.7.1 Collaborative Governance Process**

The ISO staff shall submit the draft CRP to the TPAS and ESPWG for review and comment. The ISO shall make available to any interested party sufficient information to replicate the results of the draft CRP. The information made available will be electronically masked and made available pursuant to a process that the ISO reasonably determines is necessary to prevent the disclosure of any Confidential Information or Critical Energy Infrastructure Information contained in the information made available. Following completion of the TPAS and ESPWG review, the draft CRP reflecting the revisions resulting from the TPAS and ESPWG review shall be forwarded to the Operating Committee for a discussion and action. The ISO shall notify the Business Issues Committee of the date of the Operating Committee meeting at which the draft CRP is to be presented. Following the Operating Committee vote, the draft CRP will be transmitted to the Management Committee for a discussion and action.

#### **31.2.7.2 Board Review, Consideration, and Approval of CRP**

Following the Management Committee vote, the draft CRP, with working group, Operating Committee, and Management Committee input, will be forwarded to the ISO Board for review and action. Concurrently, the draft CRP will also be provided to the Market Monitoring Unit for its review and consideration of whether market rule changes are necessary to address an identified failure, if any, in one of the ISO's competitive markets. The Board may approve the draft CRP as submitted or propose modifications on its own motion, including the recommendations regarding the selection of transmission projects for cost allocation and cost recovery under the ISO Tariffs if such selection will occur during that planning cycle. If any changes are proposed by the Board, the revised CRP shall be returned to the Management Committee for comment. The Board shall not make a final determination on the draft CRP until it has reviewed the Management Committee comments. Upon final approval by the Board, the ISO shall issue the CRP to the marketplace by posting the CRP on its website. The ISO will provide the CRP to the appropriate regulatory agency(ies) for consideration and appropriate action.

The responsibilities of the Market Monitoring Unit that are addressed in the above section of Attachment Y to the ISO OATT are also addressed in Section 30.4.6.8.3 of the Market Monitoring Plan, Attachment O to the ISO Services Tariff.

#### **31.2.7.3 Updated CRP Report**

If, pursuant to Section 31.2.7, the ISO identifies a proposed regulated transmission solution as the more efficient or cost effective transmission solution following the completion of the CRP, the ISO will prepare a draft updated CRP report that indicates the regulated transmission solution recommended for selection for cost allocation purposes pursuant to Section



31.2.6.5.2 as the more efficient or cost effective transmission solution to satisfy the Reliability Need(s) and shall indicate whether that transmission solution should be triggered at that time. The draft updated CRP report shall be reviewed in accordance with the stakeholder process set forth in Section 31.2.7.1 and will be then forwarded to the ISO Board for its review and action pursuant to Section 31.2.7.2.

#### **31.2.7.4 Reliability Disputes**

Notwithstanding any provision to the contrary in this Attachment, the ISO OATT, or the ISO Services Tariff, in the event that a Market Participant or other interested party raises a dispute solely within the NYPSC's jurisdiction concerning ISO's final determination in the CRP that a proposed solution will or will not meet a Reliability Need, a Market Participant or other interested party seeking further review shall refer such dispute to the NYPSC for resolution, as provided for in the ISO Procedures. The NYPSC's final determination of such disputes shall be binding, subject only to judicial review in the courts of the State of New York pursuant to Article 78 of the New York Civil Practice Law and Rules.

#### **31.2.7.5 Posting of Approved Solutions**

The ISO shall post on its website a list of all Developers that have undertaken a commitment to the ISO to build a project (which may be a regulated backstop solution, market-based response, alternative regulated response or gap solution) that is necessary to ensure system reliability, as identified in the CRP and approved by the appropriate governmental agency(ies) and/or authority(ies).

## **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 that sufficient market-based solutions are timely progressing to meet the Reliability Need by the need date. 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, (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 Responsible Transmission Owner that it should submit the regulated backstop solution 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 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; (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 Other Developer or Transmission Owner that it should submit the selected alternative regulated transmission solution 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 Other Developer or Transmission Owner 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 Other Developer or Transmission Owner of the selected alternative regulated transmission solution, including, but not limited

to, reviewing: (i) whether the Developer 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 Developer is timely progressing against the milestones set forth in the Development Agreement; and (iii) the status of the Developer's obtaining required permits or authorizations, including whether the Developer has received its Article VII 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 Responsible Transmission Owner to proceed with a 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 Responsible Transmission Owner shall proceed with due diligence to develop its regulated backstop solution in accordance with Good Utility Practice and to submit its proposed solution 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 Responsible Transmission Owner that its regulated backstop solution is no longer needed and will not be triggered. In such case, the 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; (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 Responsible Transmission Owner that proposed the regulated backstop solution and the Other Developer or Transmission Owner that proposed the selected alternative regulated transmission solution that they should submit the proposed solutions 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 Responsible Transmission Owner, Other Developer or 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 If the selected regulated transmission solution is an alternative regulated transmission solution, the ISO shall tender the Other Developer or Transmission Owner that proposed the selected alternative regulated transmission solution – as soon as reasonably practicable considering the project’s Trigger Date following the ISO’s selection of the proposed solution – a draft Development Agreement with draft appendices 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. The ISO and the Developer shall finalize the Development Agreement and appendices and negotiate concerning any disputed provisions. For purposes of finalizing the Development Agreement, the ISO shall provide the Developer with the date by which the selected project must be in-service to satisfy the Reliability Need, and the ISO and Developer shall develop the description and dates for the milestones necessary to develop and construct the selected project by the required in-service date, including the milestones for obtaining all necessary authorizations. Unless otherwise agreed by the ISO and the Developer, the Developer 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 Developer determines that negotiations are at an impasse, it may

request in writing that the ISO file the Development Agreement in unexecuted form with the Commission. If the Development Agreement resulting from the negotiation between the ISO and the Developer 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 Developer 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 Developer. 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 Developer 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 Developer'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 Developer 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. The Connecting Transmission Owner(s) and Affected Transmission Owner(s) that are identified in Attachment X of the ISO OATT in connection with the selected alternative regulated transmission solution shall act in good faith in timely

performing their obligations that are required for the Developer to satisfy its obligations under the Development Agreement.

31.2.8.1.8 Other Developers and Transmission Owners proposing alternative regulated solutions that the ISO has determined 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 Responsible Transmission Owner, 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 (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 Responsible Transmission Owner to proceed with a regulated backstop solution 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 Other Developer or Transmission Owner of the selected alternative regulated transmission solution, including, but not limited to, reviewing: (i) whether the Developer 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 Developer is timely progressing against the milestones set forth in the Development Agreement; and (iii) the status of the Developer's obtaining required permits or authorizations, including whether the Developer has received its Article VII 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 Responsible Transmission Owner up to that point, including reasonable and necessary expenses incurred to implement an orderly termination of the project, will be recoverable by the 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 Other Developer or Transmission Owner, post such notice on its website, and will state in the next CRP if it determines that the 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.

If a selected alternative regulated transmission solution is halted by the ISO, all of the costs incurred and commitments made by the Other Developer or Transmission Owner up to that point, including reasonable and necessary expenses incurred to implement an orderly termination of the project, will be recoverable by the Other Developer or Transmission Owner under the cost recovery mechanism in Rate Schedule 10 of this tariff.

31.2.8.2.3 Once the Responsible Transmission Owner receives state regulatory approval of the regulated backstop solution, or, if state regulatory approval is not required, once the Responsible Transmission Owner receives necessary regulatory approval, the entry of a market-based solution or an alternative regulated transmission solution 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 Other Developer or Transmission Owner receives its state regulatory approval or any

other necessary regulatory approval of its triggered alternative regulated transmission solution, the entry of a market-based solution will not result in the halting by the ISO of the regulated transmission solution 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, will be recoverable by the Responsible Transmission Owner, Other Developer, or Transmission Owner 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, will be recoverable under the ISO cost recovery mechanism in Rate Schedule 10 of the ISO OATT by the Responsible Transmission Owner, Other Developer, or Transmission Owner regardless of the nature of the solution.

31.2.8.2.7 If a material modification to the regulated backstop solution or the alternative regulated transmission solution 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 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 Responsible Transmission Owner, Other Developer, or Transmission Owner 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 Responsible Transmission Owner, Other Developer or Transmission Owner 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 of Responsible Transmission Owner, Other Developer, or Transmission Owner to Complete Triggered Regulated Solution**

31.2.10.1 If: (i) the regulated transmission solution selected and triggered by the ISO is an alternative regulated transmission solution, and (ii) one of the following events occur: (A) the Other Developer or Transmission Owner that proposed the alternative regulated transmission solution 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) an effective Development Agreement is terminated under the terms of the agreement prior to the completion of the term of the agreement, the ISO may take the following actions as soon as practicable after the occurrence of the event:

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

31.2.10.1.2 The ISO may revoke its selection of the alternative regulated transmission solution and the eligibility of the Other Developer or Transmission Owner to recover its costs for the project; *provided, however*, the Other Developer or Transmission Owner may recover its costs to the extent provided in Sections 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 If the ISO determines that it must identify a solution prior to the approval of the CRP for the next planning cycle to satisfy the Reliability Need by the need date, the ISO may: (i) direct the Responsible Transmission Owner to proceed with its regulated backstop solution if it has not yet been halted by the ISO pursuant to

Section 31.2.8.2.1, (ii) request that the Responsible Transmission Owner complete the selected alternative regulated transmission solution, and/or (iii) proceed with the Gap Solution process under Section 31.2.11.

31.2.10.1.4 If the Responsible Transmission Owner agrees to complete the selected alternative regulated transmission solution, the Responsible Transmission Owner and the Other Developer or Transmission Owner that proposed the selected alternative regulated transmission solution 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 Developer's rights-of-way under law, conveyance, or contract, and (iii), if the Developer 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 Developer 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: (i) the regulated transmission solution selected and triggered by the ISO is the Responsible Transmission Owner's regulated backstop solution or the 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 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.

31.2.11.4 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 report the results of its evaluation to the party making the proposal 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.

31.2.11.5 Gap Solution proposals submitted under Sections 31.2.11.3 and 31.2.11.4 shall be designed to be temporary solutions and to strive to be compatible with permanent market-based proposals.

31.2.11.6 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 term “Confidential Information” shall include 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 Information.”

31.2.12.2 For regulated backstop solutions and plans submitted by the Responsible Transmission Owner in response to the findings of the RNA, the ISO shall

maintain the confidentiality of same until the ISO and the Responsible Transmission Owner have agreed that the Responsible Transmission Owner has submitted viable and sufficient regulated backstop solutions and plans to meet the Reliability Needs identified in an RNA and the Responsible Transmission Owner consents to the ISO's inclusion of the proposed solution in the CRP. Thereafter, the ISO shall disclose the regulated backstop solutions and plans to the Market Participants; however, any preliminary cost estimates that may have been provided to the ISO shall not be disclosed.

31.2.12.3 For an alternative regulated response, the ISO shall determine, after consulting with the Developer thereof, whether the response 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. Thereafter, the ISO shall disclose the alternative regulated response to the Market Participants and other interested parties; however, any preliminary cost estimates that may have been provided to the ISO shall not be disclosed.

31.2.12.4 For a market-based response, the ISO shall maintain the confidentiality of 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.

31.2.12.5 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 shall assess the continued viability of such projects 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.

## **31.2 Reliability Planning Process**

### **31.2.1 Local Transmission Owner Planning Process**

#### **31.2.1.1 Scope**

##### **31.2.1.1.1 Criteria, Assumptions and Data**

Each Transmission Owner will post on its website the planning criteria and assumptions currently used in its LTPP as well as a list of any applicable software and/or analytical tools currently used in the LTPP. Customers, Market Participants and other interested parties may review and comment on the planning criteria and assumptions used by each Transmission Owner, as well as other data and models used by each Transmission Owner in its LTPP. The Transmission Owners will take into consideration any comments received. Any planning criteria or assumptions for a Transmission Owner's BPTFs will meet or exceed any applicable NERC, NPCC or NYSRC criteria. The LTPP shall include a description of the needs addressed by the LTPP as well as the assumptions, applicable planning criteria and methodology utilized and the Public Policy Requirements considered. A link to each Transmission Owner's website will be posted on the ISO website.

##### **31.2.1.1.2 Consideration of Transmission Needs Driven by Public Policy Requirements**

###### **31.2.1.1.2.1 Procedures for the Identification of Transmission Needs Driven by Public Policy Requirements in Local Transmission Plans and for the Consideration of Transmission Solutions**

In developing its LTP, each Transmission Owner shall consider whether there is a transmission need on its system that is being driven by a Public Policy Requirement. The LTP will identify any transmission project included in the LTP as a solution to a transmission need being driven by a Public Policy Requirement. In evaluating potential transmission solutions, the

Transmission Owner will give consideration to the objectives of the Public Policy Requirement(s) driving the need for transmission.

#### **31.2.1.1.2.2 Determination of Local Transmission Needs Driven by Public Policy Requirements**

As part of its LTP process pursuant to Section 31.2.1.2 below, each Transmission Owner will consider whether there is a transmission need on its local system that is being driven by a Public Policy Requirement for which a local transmission solution should be evaluated, including needs proposed by market participants and other interested parties. A market participant or other interested party proposing a transmission need on a Transmission Owner's local system driven by a Public Policy Requirement shall submit its proposal to the ISO and the relevant Transmission Owner, and will identify the specific Public Policy Requirement that is driving the proposed transmission need and an explanation of why a local transmission upgrade is necessary to implement the Public Policy Requirement. Any proposed local system transmission need will be posted on the ISO website. The ISO will transmit proposed transmission needs on a Transmission Owner's local system driven by Public Policy Requirements to the NYDPS, with a request that the NYDPS review the proposals and provide the relevant Transmission Owner with input to assist the Transmission Owner in its determination. The Transmission Owner, after considering the input provided by the NYDPS and any information provided by a market participant or other party, will determine whether there are transmission needs driven by Public Policy Requirements for which local transmission solutions should be evaluated. The Transmission Owner will post on its website a list of the transmission needs driven by Public Policy Requirements for which local transmission solutions should be evaluated, with an explanation of why the Transmission Owner identified those transmission needs and declined to identify other proposed transmission needs.



### **31.2.1.1.2.3 Evaluation of Proposed Local Transmission Solutions**

In evaluating potential transmission solutions, if any, the Transmission Owner will give consideration to the objectives of the Public Policy Requirement driving the need for a local transmission solution. The Transmission Owner will evaluate solutions to identified transmission needs, including transmission solutions proposed by market participants and other parties for inclusion in its LTP. The Transmission Owner, in consultation with the NYDPS, will evaluate proposed transmission solutions on its local system to determine the more efficient or cost-effective transmission solutions. The Transmission Owner will consider the relative costs and benefits of proposed transmission solutions and their impact on the Transmission Owner's transmission system and its customers. Any local transmission solution identified by the Transmission Owner through the LTP process will be reviewed with stakeholders as part of each Transmission Owner's regular LTP process and will be included in the Transmission Owner's subsequent LTP. In conducting its evaluation the Transmission Owner will use criteria that are relevant to the Public Policy Requirement driving the transmission need, which may include its published local planning criteria and assumptions.

### **31.2.1.2 Process Timeline**

31.2.1.2.1 Each Transmission Owner, in accordance with a schedule set forth in the ISO Procedures, will post its current LTP on its website for review and comment by interested parties sufficiently in advance of the time for submission to the ISO for input to its RNA so as to allow adequate time for stakeholder review and comment. Each LTP will include:

- identification of the planning horizon covered by the LTP,
- data and models used,

- reliability needs, needs driven by Public Policy Requirements, and other needs addressed,
- potential solutions under consideration, and,
- a description of the transmission facilities covered by the plan.

31.2.1.2.2 To the extent the current LTP utilizes data or inputs, related to the ISO's planning process, not already reported by the ISO in Form 715 and referenced on its website, any such data will be provided to the ISO at the time each Transmission Owner posts criteria and planning assumptions in accordance with Section 31.2.1.1 and will be posted by the ISO on its website subject to any confidentiality or Critical Energy Infrastructure Information restrictions or requirements.

31.2.1.2.3 Each planning cycle, the ISO shall hold one or more stakeholder meetings of the ESPWG and TPAS at which each Transmission Owner's current LTP will be discussed. Such meetings will be held either at the Transmission Owner's Transmission District, or at an ISO location. The ISO shall post notice of the meeting and shall disclose the agenda and any other material distributed prior to the meeting.

31.2.1.2.4 Interested parties may submit written comments to a Transmission Owner with respect to its current LTP within thirty days after the meeting. Each Transmission Owner shall list on its website, as part of its LTP, the person and/or location to which comments should be sent by interested parties. All comments will be posted on the ISO website. Each Transmission Owner will consider comments received in developing any modifications to its LTP. Any such modification will be explained in its current LTP posted on its website pursuant to

Section 31.2.1.2.2 above and discussed at the next meeting held pursuant to Section 31.2.1.2.3 above.

31.2.1.2.5 Each planning cycle, each Transmission Owner will submit the finalized portions of its current LTP to the ISO as contemplated in Section 31.2.2.4.2 below for timely inclusion in the RNA.

### **31.2.1.3 ISO Evaluation of Transmission Owner Local Transmission Plans in Relation to Regional and Local Transmission Needs**

The ISO will review the Transmission Owner LTPs as they relate to the BPTFs as set forth in Section 31.2.2.4.2. The ISO will also evaluate whether a regional transmission solution – including, but not limited to, regional transmission solutions proposed by Developers pursuant to this Attachment Y – could satisfy an identified regional transmission need on the BPTFs that impacts more than one Transmission District more efficiently or more cost effectively than a local transmission solution identified in a Transmission Owner’s LTP in accordance with Section 31.2.6.4.2 for the satisfaction of a regional Reliability Need, Section 31.3.1.3.6 for the reduction of congestion identified in CARIS, or Section 31.4.7.2 for the satisfaction of a Public Policy Transmission Need. The ISO will report the results of its evaluation solely for informational purposes in the relevant ISO planning report prepared under this Attachment Y, and the Transmission Owners shall not be required to revise their LTPs based on the results of the ISO’s evaluation.

### **31.2.1.4 LTP Dispute Resolution Process**

#### **31.2.1.4.1 Disputes Related to the LTPP; Objective; Notice**

Disputes related to the LTPP are subject to the DRP. The objective of the DRP is to assist parties having disputes in communicating effectively and resolving disputes as

expeditiously as possible. Within fifteen (15) calendar days of the presentation by a Transmission Owner of its LTP to the ESPWG and TPAS, a party with a dispute shall notify in writing the Affected TO, the ISO, the ESPWG and TPAS of its intention to utilize the DRP. The notice shall identify the specific issue in dispute and describe in sufficient detail the nature of the dispute.

#### **31.2.1.4.2 Review by the ESPWG/TPAS**

The issue raised by a party with a dispute shall be reviewed and discussed at a joint meeting of the ESPWG and the TPAS in an effort to resolve the dispute. The party with a dispute and the Affected TO shall have an opportunity to present information concerning the issue in dispute to the ESPWG and the TPAS.

#### **31.2.1.4.3 Information Discussions**

To the extent the ESPWG and the TPAS are unable to resolve the dispute, the dispute will be subject to good faith informal discussions between the party with a dispute and the Affected TO. Each of those parties will designate a senior representative authorized to enter into informal discussions and to resolve the dispute. The parties to the dispute shall make a good faith effort to resolve the dispute through informal discussions as promptly as practicable.

#### **31.2.1.4.4 Alternative Dispute Resolution**

In the event that the parties to the dispute are unable to resolve the dispute through informal discussions within sixty (60) days, or such other period as the parties may agree upon, the parties may, by mutual agreement, submit the dispute to mediation or any other form of alternative dispute resolution. The parties shall attempt in good faith to resolve the dispute in accordance with a mutually agreed upon schedule but in no event may the schedule extend

beyond ninety (90) days from the date on which the parties agreed to submit the dispute to alternative dispute resolution.

#### **31.2.1.4.5 Notice of Results of Dispute Resolution**

The Affected TO shall notify the ISO and ESPWG and TPAS of the results of the DRP and update its LTP to the extent necessary. The ISO shall use in its planning process the LTP provided by the Affected TO.

#### **31.2.1.4.6 Rights Under the Federal Power Act**

Nothing in the DRP shall affect the rights of any party to file a complaint with the Commission under relevant provisions of the FPA.

#### **31.2.1.4.7 Confidentiality**

All information disclosed in the course of the DRP shall be subject to the same protections accorded to confidential information and CEII by the ISO under its confidentiality and CEII policies.

### **31.2.2 Reliability Needs Assessment**

#### **31.2.2.1 General**

The ISO shall prepare and publish the RNA as described below. The RNA will identify Reliability Needs. The ISO shall also designate in the RNA the Responsible Transmission Owner with respect to each Reliability Need.

#### **31.2.2.2 Interested Party Participation in the Development of the RNA**

The ISO shall develop the RNA in consultation with Market Participants and all other interested parties. TPAS will have responsibility consistent with ISO Procedures for review of the ISO's reliability analyses. ESPWG will have responsibility consistent with ISO Procedures

for providing commercial input and assumptions to be used in the development of reliability assessment scenarios provided under Section 31.2.2.5, and in the reporting and analysis of historic congestion costs. Coordination and communication will be established and maintained between these two groups and ISO staff to allow Market Participants and other interested parties to participate in a meaningful way during each stage of the CSPP. The ISO staff shall report any majority and minority views of these collaborative governance work groups when it submits the RNA to the Operating Committee for a vote, as provided below.

### **31.2.2.3 Preparation of the Reliability Needs Assessment**

31.2.2.3.1 The ISO shall evaluate bulk power system needs in the RNA over the Study Period.

31.2.2.3.2 The starting point for the development of the RNA Base Case will be the system as defined for the FERC Form No. 715 Base Case. The ISO shall develop this system representation to be used for its evaluations of the Study Period by primarily using: (1) the most recent NYISO Load and Capacity Data Report published by the ISO on its web site; (2) the most recent versions of ISO reliability analyses and assessments provided for or published by NERC, NPCC, NYSRC, and neighboring Control Areas; (3) information reported by neighboring Control Areas such as power flow data, forecasted load, significant new or modified generation and transmission facilities, and anticipated system conditions that the ISO determines may impact the BPTFs; and (4) data submitted pursuant to paragraph 31.2.2.4 below. The details of the development of the RNA Base Case are contained in the ISO Procedures. The RNA Base Case shall also include Interregional Transmission Projects that have been approved by the NYPSC

transmission siting process and meet the base case inclusion requirements in the ISO Procedures.

31.2.2.3.3 The ISO shall assess the RNA Base Case to determine whether the BPTFs meet all Reliability Criteria for both resource and transmission adequacy in each year, and report the results of its evaluation in the RNA. Transmission analyses will include thermal, voltage, short circuit, and stability studies. Then, if any Reliability Criteria are not met in any year, the ISO shall perform additional analyses to determine whether additional resources and/or transmission capacity expansion are needed to meet those requirements, and to determine the Target Year of need for those additional resources and/or transmission. A short circuit assessment will be performed for the tenth year of the Study Period. The study will not seek to identify specific additional facilities. Reliability Needs will be defined in terms of total deficiencies relative to Reliability Criteria and not necessarily in terms of specific facilities.

#### **31.2.2.4 Planning Participant Data Input**

31.2.2.4.1 At the ISO's request, Market Participants, Developers, and other parties shall provide, in accordance with the schedule set forth in the ISO Procedures, the data necessary for the development of the RNA. This data will include but not be limited to (1) existing and planned additions to the New York State Transmission System (to be provided by Transmission Owners and municipal electric utilities); (2) proposals for merchant transmission facilities (to be provided by merchant Developers); (3) generation additions and retirements (to be provided by generator owners and Developers); (4) demand response programs (to be provided

by demand response providers); and (5) any long-term firm transmission requests made to the ISO.

31.2.2.4.2 The Transmission Owners shall submit their current LTPs referenced in Section 31.1.3 and Section 31.2.1 to the ISO. The Transmission Owners and the ISO will coordinate with each other in reviewing the LTPs. The ISO will review the Transmission Owners' LTPs, as they relate to BPTFs, to determine whether they will meet reliability needs identified in the LTPs, recommend an alternate means to resolve the local needs from a regional perspective pursuant to Section 31.2.6.4, and indicate if it is not in agreement with a Transmission Owner's proposed additions. The ISO shall report its determinations under this section in the RNA and in the CRP.

31.2.2.4.3 All data received from Market Participants, Developers, and other parties shall be considered in the development of the system representation for the Study Period in accordance with the ISO Procedures.

#### **31.2.2.5 Reliability Scenario Development**

The ISO, in consultation with the ESPWG and TPAS, shall develop reliability scenarios addressing the Study Period. Variables for consideration in the development of these reliability scenarios include but are not limited to: load forecast uncertainty, fuel prices and availability, new resources, retirements, transmission network topology, and limitations imposed by proposed environmental or other legislation.

#### **31.2.2.6 Evaluation of Reliability Scenarios**

The ISO will conduct additional reliability analyses for the reliability scenarios developed pursuant to paragraph 31.2.2.5. These evaluations will test the robustness of the needs



assessment studies conducted under paragraphs 31.2.2.3. This evaluation will only identify conditions under which Reliability Criteria may not be met. It will not identify or propose additional Reliability Needs. In addition, the ISO will perform appropriate sensitivity studies to determine whether Reliability Needs previously identified can be mitigated through alternate system configurations or operational modes. The Reliability Needs may increase in some reliability scenarios and may decrease, or even be eliminated, in others. The ISO shall report the results of these evaluations in the RNA.

#### **31.2.2.7 Consequences for Other Regions**

The ISO will coordinate with the ISO/RTO Regions to identify the consequences of the reliability transmission projects on such ISO/RTO Regions using the respective planning criteria of such ISO/RTO Regions. The ISO shall report the results in the CRP. The ISO shall not bear the costs of required upgrades in another region.

#### **31.2.2.8 Reliability Needs Assessment Report Preparation**

Once all the analyses described above have been completed, ISO staff will prepare a draft of the RNA including discussion of its assumptions, Reliability Criteria, and results of the analyses and, if necessary, designate the Responsible Transmission Owner. One or more compensatory MW/ Load adjustment scenarios will be developed by the ISO as a guide to the development of proposed solutions to meet the identified Reliability Need.

### **31.2.3 RNA Review Process**

#### **31.2.3.1 Collaborative Governance Process**

The draft RNA shall be submitted to both TPAS and the ESPWG for review and comment. The ISO shall make available to any interested party sufficient information to

replicate the results of the draft RNA. The information made available will be electronically masked and made available pursuant to a process that the ISO reasonably determines is necessary to prevent the disclosure of any Confidential Information or Critical Energy Infrastructure Information contained in the information made available. Market Participants and other interested parties may submit at any time optional suggestions for changes to ISO rules or procedures which could result in the identification of additional resources or market alternatives suitable for meeting Reliability Needs. Following completion of the TPAS and ESPWG review, the draft RNA reflecting the revisions resulting from the TPAS and ESPWG review, shall be forwarded to the Operating Committee for discussion and action. The ISO shall notify the Business Issues Committee of the date of the Operating Committee meeting at which the draft RNA is to be presented. Following the Operating Committee vote, the draft RNA will be transmitted to the Management Committee for discussion and action.

#### **31.2.3.2 Board Action**

Following the Management Committee vote, the draft RNA, with working group, Operating Committee, and Management Committee input, will be forwarded to the ISO Board for review and action. Concurrently, the draft RNA will be provided to the Market Monitoring Unit for its review and consideration of whether market rules changes are necessary to address an identified failure, if any, in one of the ISO's competitive markets. The Board may approve the RNA as submitted, or propose modifications on its own motion. If any changes are proposed by the Board, the revised RNA shall be returned to the Management Committee for comment. The Board shall not make a final determination on a revised RNA until it has reviewed the Management Committee comments. Upon approval by the Board, the ISO shall issue the final RNA to the marketplace by posting it on its web site.

The responsibilities of the Market Monitoring Unit that are addressed in the above section of this Attachment are also addressed in Section 30.4.6.8.2 of the Market Monitoring Plan, Attachment O to the ISO Services Tariff.

#### **31.2.3.3 Needs Assessment Disputes**

Notwithstanding any provision to the contrary in this Attachment, the ISO OATT, or the NYISO Services Tariff, in the event that a Market Participant raises a dispute solely within the NYPSC's jurisdiction relating to the final conclusions or recommendations of the RNA, a Market Participant may refer such dispute to the NYPSC for resolution. The NYPSC's final determination shall be binding, subject only to judicial review in the courts of the State of New York pursuant to Article 78 of the NYCPLR.

#### **31.2.3.4 Public Information Sessions**

In order to provide ample exposure for the marketplace to understand the identified Reliability Needs, the ISO will provide various opportunities for Market Participants and other potentially interested parties to discuss the final RNA. Such opportunities may include presentations at various ISO Market Participant committees, focused discussions with various industry sectors, and/or presentations in public venues.

### **31.2.4 Development of Solutions to Reliability Needs**

#### **31.2.4.1 Eligibility and Qualification Criteria for Developers and Projects**

For purposes of fulfilling the requirements of the Developer qualification criteria in this Section 31.2.4.1 and its subsections, the term "Developer" includes Affiliates, as that term is defined in Section 2 of the ISO Services Tariff and Section 1 of the ISO OATT. To the extent that a Developer relies on Affiliate(s) to satisfy any or all of the qualification criteria set forth in

Section 31.2.4.1.1.1, the Affiliate(s) shall provide to the ISO: (i) the information required in Section 31.2.4.1.1.1 to demonstrate its capability to satisfy the applicable qualification criteria, and (ii) a notarized officer's certificate, signed by an authorized officer of the Affiliate with signatory authority, in a form acceptable to the ISO, certifying that the Affiliate will participate in the Developer's project in the manner described by the Developer and will abide by the requirements set forth in this Attachment Y, the ISO Tariffs, and ISO Procedures related and applicable to the Affiliate's participation.

#### **31.2.4.1.1 Developer Qualification and Timing**

The ISO shall provide each Developer with an opportunity to demonstrate that it has or can draw upon the financial resources, technical expertise, and experience needed to finance, develop, construct, operate and maintain a transmission project to meet identified Reliability Needs. The ISO shall consider the qualifications of each Developer in an evenhanded and non-discriminatory manner, treating Transmission Owners and Other Developers alike.

##### **31.2.4.1.1.1 Developer Qualification Criteria**

The ISO shall make a determination on the qualification of a Developer to propose to develop a transmission project as a solution to an identified Reliability Need based on the following criteria:

31.2.4.1.1.1.1 The technical and engineering qualifications and experience of the Developer relevant to the development, construction, operation and maintenance of a transmission facility, including evidence of the Developer's demonstrated capability to adhere to standardized construction, maintenance, and operating practices and to contract with third parties to develop, construct, maintain, and/or operate transmission facilities;

31.2.4.1.1.1.2 The current and expected capabilities of the Developer to develop and construct a transmission facility and to operate and maintain it for the life of the facility. If the Developer has previously developed, constructed, maintained or operated transmission facilities, the Developer shall provide the ISO a description of the transmission facilities (not to exceed ten) that the Developer has previously developed, constructed, maintained or operated and the status of those facilities, including whether the construction was completed, whether the facility entered into commercial operations, whether the facility has been suspended or terminated for any reason, and evidence demonstrating the ability of the Developer to address and timely remedy any operational failure of the facilities; and

31.2.4.1.1.1.3 The Developer's current and expected capability to finance, or its experience in arranging financing for, transmission facilities. For purposes of the ISO's determination, the Developer shall provide the ISO:

- (1) evidence of its demonstrated experience financing or arranging financing for transmission facilities, if any, including a description of such projects (not to exceed ten) over the previous ten years, the capital costs and financial structure of such projects, a description of any financing obtained for these projects through rates approved by the Commission or a state regulatory agency, the financing closing date of such projects, and whether any of the projects are in default;
- (2) its audited annual financial statements from the most recent three years and its most recent quarterly financial statement, or equivalent information;
- (3) its credit rating from Moody's Investor Services, Standard & Poor's, or Fitch, or equivalent information, if available;

- (4) a description of any prior bankruptcy declarations, material defaults, dissolution, merger or acquisition by the Developer or its predecessors or subsidiaries occurring within the previous five years; and
- (5) such other evidence that demonstrates its current and expected capability to finance a project to solve a Reliability Need.

31.2.4.1.1.4 A detailed plan describing how the Developer – in the absence of previous experience financing, developing, constructing, operating, or maintaining transmission facilities – will finance, develop, construct, operate, and maintain a transmission facility, including the financial, technical, and engineering qualifications and experience and capabilities of any third parties with which it will contract for these purposes.

#### **31.2.4.1.1.2 Developer Qualification Determination**

Any Developer seeking to become qualified may submit the required information, or update any previously submitted information, at any time. The ISO shall treat on a confidential basis in accordance with the requirements of its Code of Conduct in Attachment F of the ISO OATT any non-public financial qualification information that is submitted to the ISO by the Developer under Section 31.2.4.1.1.3 and is designated by the Developer as “Confidential Information.” The ISO shall within 15 days of a Developer’s submittal, notify the Developer if the information is incomplete. If the submittal is deemed incomplete, the Developer shall submit the additional information within 30 days of the ISO’s request. The ISO shall notify the Developer of its qualification status within 30 days of receiving all necessary information. A Developer shall retain its qualification status for a three-year period following the notification date; *provided, however*, that the ISO may revoke this status if it determines that there has been a

material change in the Developer's qualifications and the Developer no longer meets the qualification requirements. A Developer that has been qualified shall inform the ISO within thirty days of any material change to the information it provided regarding its qualifications and shall submit to the ISO each year its most recent audited annual financial statement when available. At the conclusion of the three-year period or following the ISO's revocation of a Developer's qualification status, the Developer may re-apply for a qualification status under this section.

Any Developer determined by the ISO to be qualified under this section shall be eligible to propose a regulated transmission project as a solution to an identified Reliability Need and shall be eligible to use the cost allocation and cost recovery mechanism for regulated transmission projects set forth in Section 31.5 of this Attachment Y and Rate Schedule 10, Section 6.10, of the ISO OATT for any approved project.

#### **31.2.4.2 Interregional Transmission Projects**

Interregional Transmission Projects may be proposed as regulated backstop solutions, alternative regulated solutions, or market-based solutions. Interregional Transmission Projects proposed as regulated backstop solutions, alternative regulated solutions or market-based solutions shall be subject to the applicable requirements of the reliability planning process of this Attachment Y.

#### **31.2.4.3 Regulated Backstop Solutions**

31.2.4.3.1 When a Reliability Need is identified in any RNA issued under this tariff, the ISO shall request and the Responsible Transmission Owner shall provide to the ISO, as set forth in Section 31.2.5 below, a proposal for a regulated solution or combination of solutions that shall serve as a backstop to meet the Reliability

Need if requested by the ISO due to the lack of sufficient viable market-based solutions to meet such Reliability Needs identified for the Study Period. The Responsible Transmission Owner shall be eligible to recover its costs for developing its proposal and seeking necessary approvals under Rate Schedule 10 of the ISO OATT. Regulated backstop solutions may include generation, transmission, or demand side resources. Such proposals may include reasonable alternatives that would effectively address the Reliability Need; provided however, the Responsible Transmission Owner's obligation to propose and implement regulated backstop solutions under this tariff is limited to regulated transmission solutions. Prior to providing its response to the RNA, each Responsible Transmission Owner will present for discussion at the ESPWG and TPAS any updates in its LTP that impact a Reliability Need identified in the RNA. The ISO will present at the ESPWG and TPAS any updates to its determination under Section 31.2.2.4.2 with respect to the Transmission Owners' LTPs. Should more than one regulated backstop solution be proposed by a Responsible Transmission Owner to address a Reliability Need, it will be the responsibility of that Responsible Transmission Owner to determine which of the regulated backstop solutions will proceed following a finding by the ISO under Section 31.2.8 of this Attachment Y. The determination by the Responsible Transmission Owner will be made prior to the approval of the CRP which precedes the Trigger Date for the regulated backstop solution with the longest lead time. Contemporaneous with the request to the Responsible Transmission Owner, the ISO shall solicit market-based and alternative regulated responses as



set forth in Sections 31.2.4.5 and 31.2.4.7, which shall not be a formal RFP process.

#### **31.2.4.4 Qualifications for Regulated Backstop Solutions**

31.2.4.4.1 The submission of a regulated backstop solution to a Reliability Need for purposes of the ISO's evaluation under Section 31.2.5 of the viability and sufficiency of the proposed solution and the determination of the Trigger Date for the proposed solution shall include, at a minimum, the following details: (1) contact information; (2) the lead time necessary to complete the project, including, if available, the construction windows in which the Responsible Transmission Owner can perform construction and what, if any, outages may be required during these periods; (3) a description of the project, including type, size, and geographic and electrical location, as well as planning and engineering specifications and drawings as appropriate; (4) evidence of a commercially viable technology, (5) a major milestone schedule; (6) the schedule for obtaining any permits and other certifications, if available; (7) status of ISO interconnection studies and interconnection agreement, if available; and (8) status of equipment availability and procurement, if available.

31.2.4.4.2 The submission of a regulated backstop solution to a Reliability Need for purposes of the ISO's evaluation of the proposed solution for possible selection as the more efficient or cost effective solution to the Reliability Need shall include, at a minimum, the following details: (1) updates to the information required under Section 31.2.4.4.1; (2) the schedule for obtaining required permits and other certifications; (3) a demonstration of Site Control or a schedule for obtaining such

control; (4) the status of any contracts (other than an Interconnection Agreement) that are under negotiation or in place, including any contracts with third-party contractors; (5) status of ISO interconnection studies and interconnection agreement; (6) status of equipment availability and procurement; (7) evidence of financing or ability to finance the project; (8) capital cost estimates for the project; (9) a description of permitting or other risks facing the project at the stage of project development, including evidence of the reasonableness of project cost estimates, all based on the information available at the time of the submission; and (10) any other information requested by the ISO.

A Responsible Transmission Owner shall submit the following information to indicate the status of any contracts: (i) copies of all final contracts the ISO determines are relevant to its consideration, or (ii) where one or more contracts are pending, a timeline on the status of discussions and negotiations with the relevant documents and when the negotiations are expected to be completed. The final contracts shall be submitted to the ISO when available. The ISO shall treat on a confidential basis in accordance with the requirements of its Code of Conduct in Attachment F of the ISO OATT any contract that is submitted to the ISO and is designated by the Responsible Transmission Owner as “Confidential Information.”

A Responsible Transmission Owner shall submit the following information to indicate the status of any required permits: (i) copies of all final permits received that the ISO determines are relevant to its consideration, or (ii) where one or more permits are pending, the completed permit application(s) with

information on what additional actions must be taken to meet the permit requirements and a timeline providing the expected timing for finalization and receipt of the final permit(s). The final permits shall be submitted to the ISO when available.

A Responsible Transmission Owner shall submit the following information, as appropriate, to indicate evidence of financing by it or any Affiliate upon which it is relying for financing: (i) evidence of self-financing or project financing through approved rates or the ability to do so, (ii) copies of all loan commitment letter(s) and signed financing contract(s), or (iii) where such financing is pending, the status of the application for any relevant financing, including a timeline providing the status of discussions and negotiations of relevant documents and when the negotiations are expected to be completed. The final contracts or approved rates shall be submitted to the ISO when available.

31.2.4.4.3 If the regulated backstop solution does not meet the Reliability Needs , the ISO will provide sufficient information to the Responsible Transmission Owner to determine how the regulated backstop should be modified to meet the identified Reliability Needs. The Responsible Transmission Owner will make necessary changes to its proposed regulated backstop solution to address reliability deficiencies identified by the ISO, and submit a revised proposal to the ISO for review and approval.

#### **31.2.4.5 Market-Based Responses**

At the same time that a proposal for a regulated backstop solution is requested from the Responsible Transmission Owner under Section 31.2.4.3, the ISO shall also request market-

based responses from the market place. Subject to the execution of appropriately drawn confidentiality agreements and the Commission's standards of conduct, the ISO and the appropriate Transmission Owner or Transmission Owners shall provide any party who wishes to develop such a response access to the data that is necessary to develop its response. Such data shall only be used for the purposes of preparing a market-based response to a Reliability Need under this section. Such responses will be open on a comparable basis to all resources, including generation, demand response providers, and merchant transmission Developers.

#### **31.2.4.6 Qualifications for a Valid Market-Based Response**

The submission of a proposed market-based solution must include, at a minimum:

(1) contact information; (2) the lead time necessary to complete the project, including, if available, the construction windows in which the Developer can perform construction and what, if any, outages may be required during these periods; (3) a description of the project, including type, size, and geographic and electrical location, as well as planning and engineering specifications and drawings as appropriate; (4) evidence of a commercially viable technology; (5) a major milestone schedule; (6) a schedule for obtaining any required permits and other certifications; (7) a demonstration of Site Control or a schedule for obtaining Site Control; (8) the status of any contracts (other than an Interconnection Agreement) that are under negotiation or in place; (9) the status of ISO interconnection studies and interconnection agreement; (10) the status of equipment availability and procurement; (11) evidence of financing or ability to finance the project; and (12) any other information requested by the ISO.

A Developer shall submit the following information to indicate the status of any contracts: (i) copies of all final contracts the ISO determines are relevant to its consideration, or (ii) where one or more contracts are pending, a timeline on the status of discussions and

negotiations with the relevant documents and when the negotiations are expected to be completed. The final contracts shall be submitted to the ISO when available. The ISO shall treat on a confidential basis in accordance with the requirements of its Code of Conduct in Attachment F of the ISO OATT any contract that is submitted to the ISO and is designated by the Developer as “Confidential Information.”

A Developer shall submit the following information to indicate the status of any required permits: (i) copies of all final permits received that the ISO determines are relevant to its consideration, or (ii) where one or more permits are pending, the completed permit application(s) with information on what additional actions must be taken to meet the permit requirements and a timeline providing the expected timing for finalization and receipt of the final permit(s). The final permits shall be submitted to the ISO when available.

A Developer shall submit the following information, as appropriate, to indicate evidence of financing by it or any Affiliate upon which it is relying for financing: (i) copies of all loan commitment letter(s) and signed financing contract(s), or (ii) where such financing is pending, the status of the application for any relevant financing, including a timeline providing the status of discussions and negotiations of relevant documents and when the negotiations are expected to be completed. The final contracts shall be submitted to the ISO when available.

Failure to provide any data requested by the ISO within the timeframe set forth in Section 31.2.5.1 of this Attachment Y will result in the rejection of the proposed market-based solution from further consideration during that planning cycle.

#### **31.2.4.7 Alternative Regulated Responses**

31.2.4.7.1 The ISO will request alternative regulated responses to Reliability Needs at the same time that it requests market-based responses and regulated backstop

solutions. Such proposals may include reasonable alternatives that would effectively address the identified Reliability Need.

31.2.4.7.2 In response to the ISO's request, Other Developers may develop alternative regulated proposals for generation, demand side alternatives, and/or other solutions to address a Reliability Need and submit such proposals to the ISO. Transmission Owners, at their option, may submit additional proposals for regulated solutions to the ISO. Transmission Owners and Other Developers may submit such proposals to the NYDPS for review at any time. Subject to the execution of appropriately drawn confidentiality agreements and the Commission's standards of conduct, the ISO and the appropriate Transmission Owner(s) shall provide Other Developers access to the data that is needed to develop their proposals. Such data shall be used only for purposes of preparing an alternative regulated proposal in response to a Reliability Need.

#### **31.2.4.8 Qualifications for Alternative Regulated Solutions**

31.2.4.8.1 The submission of an alternative regulated solution to a Reliability Need for purposes of the ISO's evaluation under Section 31.2.5 of the viability and sufficiency of the proposed solution and the determination of the Trigger Date for the proposed solution shall include, at a minimum, the following details: (1) contact information; (2) the lead time necessary to complete the project, including, if available, the construction windows in which the Other Developer or Transmission Owner can perform construction and what, if any, outages may be required during these periods; (3) a description of the project, including type, size, and geographic and electrical location, as well as planning and engineering

specifications and drawings as appropriate; (4) evidence of a commercially viable technology; (5) a major milestone schedule; (6) the schedule for obtaining any permits and other certifications, if available; (7) status of ISO interconnection studies and interconnection agreement, if available; and (8) status of equipment availability and procurement, if available.

31.2.4.8.2 The submission of a proposed alternative regulated solution to a Reliability Need for purposes of the ISO's evaluation of the proposed solution for possible selection as the more efficient or cost effective solution for the Reliability Need must include, at a minimum: (1) updates to the information required under Section 31.2.4.8.1; (2) a demonstration of Site Control or a schedule for obtaining Site Control; (3) the status of any contracts (other than an Interconnection Agreement) that are under negotiation or in place, including any contracts with third-party contractors; (4) the status of any interconnection studies and interconnection agreement; (5) the schedule for obtaining any required permits and other certifications; (6) the status of equipment availability and procurement; (7) evidence of financing or ability to finance the project; (8) capital cost estimates for the project; (9) a description of permitting or other risks facing the project at the stage of project development, including evidence of the reasonableness of project cost estimates, all based on the information available at the time of the submission; and (10) any other information requested by the ISO.

An Other Developer or Transmission Owner shall submit the following information to indicate the status of any contracts: (i) copies of all final contracts the ISO determines are relevant to its consideration, or (ii) where one or more

contracts are pending, a timeline on the status of discussions and negotiations with the relevant documents and when the negotiations are expected to be completed. The final contracts shall be submitted to the ISO when available. The ISO shall treat on a confidential basis in accordance with the requirements of its Code of Conduct in Attachment F of the ISO OATT any contract that is submitted to the ISO and is designated by the Other Developer or Transmission Owner as “Confidential Information.”

An Other Developer or Transmission Owner shall submit the following information to indicate the status of any required permits: (i) copies of all final permits received that the ISO determines are relevant to its consideration, or (ii) where one or more permits are pending, the completed permit application(s) with information on what additional actions must be taken to meet the permit requirements and a timeline providing the expected timing for finalization and receipt of the final permit(s). The final permits shall be submitted to the ISO when available.

An Other Developer or Transmission Owner shall submit the following information, as appropriate, to indicate evidence of financing by it or any Affiliate upon which it is relying for financing: (i) evidence of self-financing or project financing through approved rates or the ability to do so, (ii) copies of all loan commitment letter(s) and signed financing contract(s), or (iii) where such financing is pending, the status of the application for any relevant financing, including a timeline providing the status of discussions and negotiations of



relevant documents and when the negotiations are expected to be completed. The final contracts or approved rates shall be submitted to the ISO when available.

31.2.4.8.3 Failure to provide any data requested by the ISO within the timeframe provided in Sections 31.2.5.1 and 31.2.6.1 of this Attachment Y will result in the rejection of the proposed alternative regulated solution from further consideration during that planning cycle. A proponent of a proposed alternative regulated solution must notify the ISO immediately of any material change in status of a proposed alternative regulated solution. For purposes of this provision, a material change includes, but is not limited to, a change in the financial viability of the developer, a change in the siting status of the project, or a change in a major element of the project's development. If the ISO, at any time, learns of a material change in the status of a proposed alternative regulated solution, it may, at that time, make a determination as to the continued viability of the proposed alternative regulated solution.

#### **31.2.4.9 Additional Solutions**

Should the ISO determine that it has not received adequate regulated backstop or market-based solutions to satisfy the Reliability Need, the ISO may, in its discretion, solicit additional regulated backstop or market-based solutions. Other Developers or Transmission Owners may submit additional alternative regulated solutions for the ISO's consideration at that time.

### **31.2.5 ISO Evaluation of Viability, Sufficiency, and Trigger Date of Proposed Solutions to Reliability Needs**

#### **31.2.5.1 Timing for Submittal of Project Information and Developer Qualification Information and Opportunity to Provide Additional Information**

Within 60 days after a request for solutions to a Reliability Need is made by the ISO after completion of the RNA, a Developer proposing a solution to an identified Reliability Need shall submit to the ISO for purposes of its evaluation the project information, as applicable, for: (i) a proposed regulated backstop solution under Section 31.2.4.4.1, (ii) a proposed market-based solution under Section 31.2.4.6, or (iii) a proposed alternative regulated solution under Section 31.2.4.8.1 of this Attachment Y.

Any Developer that the ISO has determined under Section 31.2.4.1.1.2 or as set forth in this Section 31.2.5.1 below to be qualified to propose to develop a project as a transmission solution to an identified Reliability Need may submit the required project information; *provided, however*, that: (i) the Developer shall provide a non-refundable application fee of \$10,000 and (ii) based on the actual identified need, the ISO may request that the qualified Developer provide additional Developer qualification information. Any Developer that has not been determined by the ISO to be qualified, but that wants to propose to develop a project, must submit to the ISO the information required for Developer qualification under Section 31.2.4.1.1 within 30 days after a request for solutions is made by the ISO. The ISO shall within 30 days of a Developer's submittal of its Developer qualification information, notify the Developer if this information is incomplete. The Developer shall submit additional Developer qualification information or project information required by the ISO within 15 days of the ISO's request. A Developer that fails to submit the additional Developer qualification information or the required project information will not be eligible for its project to be considered in that planning cycle.

### **31.2.5.2 Comparable Evaluation of All Proposed Solutions**

The ISO shall evaluate: (i) any proposed market-based solution submitted by a Developer pursuant to Section 31.2.4.5, (ii) any proposed regulated backstop solution submitted by a Responsible Transmission Owner pursuant to Section 31.2.4.3, and (iii) any proposed alternative regulated solution submitted by a Transmission Owner or Other Developer pursuant to Section 31.2.4.7. The ISO will evaluate whether each proposed solution is viable and is sufficient to satisfy the identified Reliability Need by the need date pursuant to Sections 31.2.5.3 and 31.2.5.4. The proposed solutions may include multiple components and resource types. When evaluating proposed solutions to Reliability Needs from any Developer, all resource types – generation, transmission, demand response, or a combination of these resource types – shall be considered on a comparable basis as potential solutions to the Reliability Needs identified. All solutions will be evaluated in the same general time frame.

### **31.2.5.3 Evaluation of Viability of Proposed Solution**

The ISO will determine the viability of a solution – transmission, generation, demand response, or a combination of these resource types – proposed to satisfy a Reliability Need. For purposes of its analysis, the ISO will evaluate whether: (i) the Developer has provided the required Developer qualification data pursuant to Section 31.2.4.1 and the required project information data under Sections 31.2.4.4.1, 31.2.4.6, or 31.2.4.8.1; (ii) the proposed solution is technically practicable; (iii) the Developer has indicated possession of, or an approach for acquiring, any necessary rights-of-way, property, and facilities that will make the proposal reasonably feasible in the required timeframe; and (iv) the proposed solution can be completed in the required timeframe. If the ISO determines that the proposed solution is not viable and, for regulated solutions, the Developer does not address any identified deficiency pursuant to Section

31.2.5.6, the ISO shall reject the proposed solution from further consideration during that planning cycle.

#### **31.2.5.4 Evaluation of Sufficiency of Proposed Solution**

The ISO will perform a comparable analysis of each proposed solution – transmission, generation, demand response, or a combination of these resource types – through the Study Period to identify whether it satisfies the Reliability Need(s). The ISO will evaluate each solution to determine whether the solution proposed by the Developer fully eliminates the Reliability Need(s). If the ISO determines that a proposed regulated solution is not sufficient and the Developer does not address any identified deficiency pursuant to Section 31.2.5.6, the ISO shall reject the proposed regulated solution from further consideration during that planning cycle.

#### **31.2.5.5 Establishment of Trigger Date of Proposed Regulated Solutions**

Upon receipt of all Developers' proposed regulated solutions pursuant to Section 31.2.5.1, the ISO will notify all Developers if any Developer has proposed a lead time for the implementation of its regulated solution that could result in a Trigger Date for the regulated solution within thirty-six months of the date of the ISO's presentation of the Viability and Sufficiency Assessment to the ESPWG, provided that the ISO will not disclose the identity of such Developer or the details of its project at that time. The ISO will independently analyze the lead time proposed by each Developer for the implementation of its regulated solution. The ISO will use the Developer's estimate and the ISO's analysis to establish the ISO's Trigger Date for each regulated solution. The ISO will also establish benchmark lead times for proposed market-based solutions.

#### **31.2.5.6 Resolution of Deficiencies**

Following initial review of the proposals, as described above, ISO staff will identify any reliability deficiencies in each of the proposed solutions. The Responsible Transmission Owner, Transmission Owner or Other Developer will discuss any identified deficiencies with the ISO staff. Other Developers and Transmission Owners that propose alternative regulated solutions shall have the option to remedy their proposals to address any deficiency within 30 days of notification by the ISO. With respect to regulated backstop solutions proposed by a Responsible Transmission Owner pursuant to Section 31.2.4.3, the Responsible Transmission Owner shall make necessary changes to its proposed backstop solution to address any reliability deficiencies identified by the ISO, and submit a revised proposal to the ISO for review within 30 days. The ISO shall review all such revised proposals to determine whether the identified deficiencies have been resolved.

#### **31.2.5.7 ISO Report of Evaluation Results**

The ISO shall present its Viability and Sufficiency Assessment to stakeholders, interested parties, and the NYDPS for comment and will indicate at that time whether any of the proposed regulated solutions found to be viable and sufficient under this Section 31.2.5 will have a Trigger Date within thirty-six months of the date of the ISO's presentation of the Viability and Sufficiency Assessment to the ESPWG.

The ISO shall report in the CRP the results of its evaluation under this Section 31.2.5: (i) whether each proposed regulated backstop solution, alternative regulated solution, and market-based solution is viable and is sufficient to satisfy the identified Reliability Need by the need date, and (ii) the Trigger Dates for the proposed regulated solutions.

### **31.2.6 ISO Evaluation and Selection of Proposed Regulated Transmission Solutions**

#### **31.2.6.1 Submission of Project Information for Selection of Proposed Regulated Transmission Solution**

If the ISO determines that the Trigger Date of any Developer's proposed regulated solution that was found to be viable and sufficient under Section 31.2.5 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 request that all Developers of regulated transmission solutions that the ISO determined were viable and sufficient submit to the ISO their project information, as applicable, for: (i) a proposed regulated backstop transmission solution under Section 31.2.4.4.2, or (ii) a proposed alternative regulated transmission solution under Section 31.2.4.8.2. If the ISO determines that none of the Developers' proposed regulated solutions that were found to be viable and sufficient under Section 31.2.5 have a Trigger Date that will occur within the thirty-six month period, the ISO will not request further project information, perform the evaluation, or make a selection of a more efficient or cost effective regulated solution under this Section 31.2.6 for that planning cycle.

The ISO will make its request, if necessary, for project information under this Section 31.2.6.1 sufficiently in advance of the earliest Trigger Date of the viable and sufficient regulated solutions to enable the ISO to evaluate and select the more efficient or cost effective transmission solution. Upon the ISO's request for project information, the Developer shall submit such information for its regulated transmission solution within thirty (30) days or such other additional period as the ISO determines is reasonable. The Developer shall submit additional project information required by the ISO within 15 days of the ISO's request. A Developer that fails to submit the required project information will not be eligible for its project to be considered in that planning cycle.

#### **31.2.6.2 Study Deposit for Proposed Regulated Transmission Solutions**

A Developer that proposes a regulated backstop transmission solution or an alternative regulated transmission solution to satisfy the identified Reliability Need shall submit to the ISO, at the same time that it provides the project information required pursuant to Section 31.2.6.1, a study deposit of \$100,000, which shall be applied to study costs and subject to refund as described in this Section 31.2.6.2.

The ISO shall charge, and a Developer proposing a regulated backstop transmission solution or an alternative regulated transmission solution shall pay, the actual costs of the ISO's evaluation of the Developer's proposed transmission solution for purposes of the ISO's selection of the more efficient or cost effective transmission solution to satisfy a Reliability Need for cost allocation purposes, including costs associated with the ISO's use of subcontractors. The ISO will track its staff and administrative costs, including any costs associated with using subcontractors, that it incurs in performing the evaluation of a Developer's proposed transmission solution under this Section 31.2.6 and any supplemental evaluation or re-evaluation of the proposed transmission solution. If the ISO or its subcontractors perform study work for multiple proposed transmission solutions on a combined basis, the ISO will allocate the costs of the combined study work equally among the applicable Developers. The ISO shall invoice the Developer monthly for study costs incurred by the ISO in evaluating the Developer's proposed transmission solution as described above. Such invoice shall include a description and an accounting of the study costs incurred by the ISO and estimated subcontractor costs. The Developer shall pay the invoiced amount within thirty (30) calendar days of the ISO's issuance of the monthly invoice. The ISO shall continue to hold the full amount of the study deposit until settlement of the final monthly invoice; *provided, however*, if a Developer: (i) does not pay its monthly invoice within the timeframe described above, or (ii) does not pay a disputed amount

into an independent escrow account as described below, the ISO may draw upon the study deposit to recover the owed amount. If the ISO must draw on the study deposit, the ISO shall provide notice to the Developer, and the Developer shall within thirty (30) calendar days of such notice make payments to the ISO to restore the full study deposit amount. If the Developer fails to make such payments, the ISO may halt its evaluation of the Developer's proposed transmission solution and may disqualify the Developer's proposed transmission solution from further consideration. After the conclusion of the ISO's evaluation of the Developer's proposed transmission solution or if the Developer: (i) withdraws its proposed transmission solution or (ii) fails to pay an invoiced amount and the ISO halts its evaluation of the proposed transmission solution, the ISO shall issue a final invoice and refund to the Developer any portion of the Developer's study deposit submitted to the ISO under this Section 31.2.6.2 that exceeds outstanding amounts that the ISO has incurred in evaluating that Developer's proposed transmission solution, including interest on the refunded amount calculated in accordance with Section 35.19a(a)(2) of FERC's regulations. The ISO shall refund the remaining portion within sixty (60) days of the ISO's receipt of all final invoices from its subcontractors and involved Transmission Owners.

In the event of a Developer's dispute over invoiced amounts, the Developer shall: (i) timely pay any undisputed amounts to the ISO, and (ii) pay into an independent escrow account the portion of the invoice in dispute, pending resolution of such dispute. If the Developer fails to meet these two requirements, then the ISO shall not be obligated to perform or continue to perform its evaluation of the Developer's proposed transmission solution. Disputes arising under this section shall be addressed through the Dispute Resolution Procedures set forth in Section 2.16 of the ISO OATT and Section 11 of the ISO Services Tariff. Within thirty (30) Calendar



Days after resolution of the dispute, the Developer will pay the ISO any amounts due with interest calculated in accordance with Section 35.19a(a)(2) of FERC's regulations.

### **31.2.6.3 Evaluation of System Impact of Proposed Regulated Transmission Solution**

A proposed regulated transmission solution that will have a significant adverse impact on the reliability of the New York State Transmission System shall not be eligible for selection by the ISO under Section 31.2.6.5. The ISO shall evaluate the system impacts for the entire Study Period of a proposed regulated transmission solution that the ISO has determined under Section 31.2.5 is viable and sufficient. The ISO shall perform power flow and short circuit studies for the proposed regulated transmission solutions and additional studies, as appropriate. If the ISO identifies a significant adverse impact based on these studies, the ISO shall request that the Developer make an adjustment to its proposed regulated transmission solution to address this impact and remain eligible for selection. The Developer shall submit the adjustment within 30 days of the ISO's notification.

If the Developer modifies its proposed regulated transmission solution, the ISO shall confirm that the adjusted solution still satisfies the viability and sufficiency requirements set forth in Section 31.2.5. If the ISO determines that the proposed regulated transmission solution does not satisfy the viability and sufficiency requirements or continues to have a significantly adverse impact on the reliability of the New York State Transmission System, the ISO shall remove the proposed solution from further consideration during that planning cycle.

#### **31.2.6.4 Evaluation of Regional Transmission Solutions to Address Local and Regional Reliability Needs More Efficiently or More Cost Effectively Than Local Transmission Solutions**

The ISO will review the LTPs as they relate to BPTFs. The results of the ISO's analysis will be reported in the CRP.

##### **31.2.6.4.1 Evaluation of Regional Transmission Solutions to Address Local Reliability Needs Identified in Local Transmission Plans More Efficiently or More Cost Effectively than Local Transmission Solutions**

The ISO, using engineering judgment, will determine whether proposed regional transmission solutions on the BPTFs may more efficiently or cost effectively satisfy reliability needs identified in the LTPs. If the ISO identifies that a regional transmission solution on the BPTFs has the potential to more efficiently or cost effectively satisfy the reliability need identified in the LTPs, it will perform a sensitivity analysis to determine whether the proposed regional transmission solution on the BPTFs would satisfy the reliability needs identified in the LTPs. If the ISO determines that the proposed regional transmission solutions on the BPTFs would satisfy the reliability need, the ISO will evaluate the proposed regional transmission solution using the metrics set forth in Section 31.2.6.5.1 to determine whether it may be a more efficient or cost effective solution on the BPTFs to satisfy the reliability needs identified in the LTPs than the local solutions proposed in the LTPs.

##### **31.2.6.4.2 Evaluation of Regional Transmission Solutions to Address Regional Reliability Needs More Efficiently or More Cost Effectively than Local Transmission Solutions**

As referenced in Section 31.2.1.3, the ISO, using engineering judgment, will determine whether a regional transmission solution might more efficiently or more cost effectively satisfy an identified regional Reliability Need on the BPTFs that impacts more than one Transmission District than any local transmission solutions identified by the Transmission Owners in their

LTPs in the event the LTPs specify such transmission solutions are included to address local reliability needs.

#### **31.2.6.5 ISO Selection of More Efficient or Cost Effective Transmission Solution for Cost Allocation Purposes**

A proposed regulated transmission solution – including a regulated backstop transmission solution submitted by a Responsible Transmission Owner pursuant to Section 31.2.4.3 and an alternative regulated transmission solution submitted by a Transmission Owner or Other Developer pursuant to Section 31.2.4.7 – that the ISO has determined satisfies the viability and sufficiency requirements in Section 31.2.5 and the system impact requirements in Section 31.2.6.3 shall be eligible under this Section 31.2.6.5 for selection in the CRP for the purpose of cost allocation and recovery under the ISO Tariffs. The ISO shall evaluate any eligible proposed regulated transmission solutions for the planning cycle using the metrics set forth in Section 31.2.6.5.1 below. For purposes of this evaluation, the ISO will review the information submitted by the Developer and determine whether it is reasonable and how such information should be used for purposes of the ISO evaluating each metric. The ISO may engage an independent consultant to review the reasonableness and comprehensiveness of the information submitted by the Developer and may rely on the independent consultant's analysis in evaluating each metric. The ISO shall select in the CRP for cost allocation purposes the more efficient or cost effective transmission solution to satisfy a Reliability Need in the manner set forth in Section 31.2.6.5.2 below.

##### **31.2.6.5.1 Metrics for Evaluating More Efficient or Cost Effective Regulated Transmission Solution to Satisfy Reliability Need**

In determining which of the eligible proposed regulated transmission solutions is the more efficient or cost effective solution to satisfy the Reliability Need, the ISO will consider, and

will consult with the NYDPS regarding, the following metrics set forth in this Section 31.2.6.5.1 and rank each proposed solution based on the quality of its satisfaction of these metrics:

31.2.6.5.1.1 The capital cost estimates for the proposed regulated transmission solutions, including the accuracy of the proposed estimates. For this evaluation, the Developer shall provide the ISO with credible capital cost estimates for its proposed solution, with itemized supporting work sheets that identify all material and labor cost assumptions, and related drawings to the extent applicable and available. The work sheets should include an estimated quantification of cost variance, providing an assumed plus/minus range around the capital cost estimate.

The estimate shall include all components that are needed to meet the Reliability Need throughout the Study Period. To the extent information is available, the Developer should itemize: material and labor cost by equipment, engineering and design work, permitting, site acquisition, procurement and construction work, and commissioning needed for the proposed solution, all in accordance with Good Utility Practice. For each of these cost categories, the Developer should specify the nature and estimated cost of all major project components and estimate the cost of the work to be done at each substation and/or on each feeder to physically and electrically connect each facility to the existing system. The work sheets should itemize to the extent applicable and available all equipment for: (i) the proposed project; (ii) interconnection facilities (including Attachment Facilities and Direct Assignment Facilities); and (iii) System Upgrade Facilities, System Deliverability Upgrades, Network Upgrades, and Distribution Upgrades.

31.2.6.5.1.2 The cost per MW ratio of the proposed regulated transmission solutions.

For this evaluation, the ISO will first determine the present worth, in dollars, of the total capital cost of the proposed solution in current year dollars. The ISO will then determine the MW value of the solution by summing the Reliability Need, in MW, with the additional improvement, in MW, that the proposed solution offers beyond serving the Reliability Need. The ISO will then determine the cost per MW ratio by dividing the present worth of the total capital cost by the MW value.

31.2.6.5.1.3 The expandability of the proposed regulated transmission solution. The

ISO will consider the impact of the proposed solution on future construction. The ISO will also consider the extent to which any subsequent expansion will continue to use this proposed solution within the context of system expansion.

31.2.6.5.1.4 The operability of the proposed regulated transmission solution. The ISO

will consider how the proposed solution may affect additional flexibility in operating the system, such as dispatch of generation, access to operating reserves, access to ancillary services, or ability to remove transmission for maintenance. The ISO will also consider how the proposed solution may affect the cost of operating the system, such as how it may affect the need for operating generation out of merit for reliability needs, reducing the need to cycle generation, or providing more balance in the system to respond to system conditions that are more severe than design conditions.

31.2.6.5.1.5 The performance of the proposed regulated transmission solution. The

ISO will consider how the proposed project may affect the utilization of the system (*e.g.* interface flows, percent loading of facilities).

31.2.6.5.1.6 The extent to which the Developer of a proposed regulated transmission solution has the property rights, or ability to obtain the property rights, required to implement the solution. The ISO will consider whether the Developer: (i) already possesses the rights of way necessary to implement the solution; (ii) has completed a transmission routing study, which (a) identifies a specific routing plan with alternatives, (b) includes a schedule indicating the timing for obtaining siting and permitting, and (c) provides specific attention to sensitive areas (e.g., wetlands, river crossings, protected areas, and schools); or (iii) has specified a plan or approach for determining routing and acquiring property rights.

31.2.6.5.1.7 The potential issues associated with delay in constructing the proposed regulated transmission solution consistent with the major milestone schedule and the schedule for obtaining any permits and other certifications as required to timely meet the need.

#### **31.2.6.5.2 ISO Selection of More Efficient or Cost Effective Regulated Transmission Solution to Satisfy Reliability Need**

The ISO shall select under this Section 31.2.6.5.2 the proposed regulated transmission solution, if any, that is the more efficient or cost effective transmission solution proposed in the planning cycle to satisfy the identified Reliability Need. The ISO shall report the selected regulated transmission solution in the CRP. The selected regulated transmission solution reported in the CRP shall be eligible to be triggered by the ISO to satisfy the identified Reliability Need pursuant to Section 31.2.8 at any point within thirty-six months of the date of the ISO's presentation of the Viability and Sufficiency Assessment to the ESPWG. An Other Developer or Transmission Owner of an alternative regulated transmission project shall not be eligible for cost allocation and cost recovery under the ISO OATT for its project unless its

project is selected pursuant to this Section 31.2.6.5.2. Once such project is selected, the Other Developer or Transmission Owner shall be eligible for cost allocation and cost recovery under the ISO OATT for its project. Within thirty (30) days of the ISO's selection of an alternative regulated transmission solution, the Other Developer or Transmission Owner shall submit to the ISO for the ISO's approval a proposed schedule and scope of work that describe the preparation work, if any, that the Developer must perform prior to the Trigger Date of the project, including a good faith estimate of the costs of such work. Costs will be recovered when the project is completed or halted in accordance with the cost recovery requirements set forth in Rate Schedule 10 of the ISO OATT, or as otherwise determined by the Commission. Actual project cost recovery, including any issues related to cost recovery and project cost overruns, will be submitted to and decided by the Commission.

### **31.2.7 Comprehensive Reliability Plan**

Following the ISO's evaluation of the proposed market-based and regulated solutions to Reliability Need(s), the ISO will prepare a draft CRP that sets forth the ISO's findings regarding the viability and sufficiency of solutions, the trigger dates of regulated solutions, and any recommendations that implementation of regulated solutions (which may be a Gap Solution) is necessary to ensure system reliability. The draft CRP will reflect any input from the NYDPS. If the CRP cannot be completed in the two-year planning cycle, the ISO will notify stakeholders and provide an estimated completion date and an explanation of the reasons the additional time is required.

The ISO will include in the draft CRP the list of Developers that qualify pursuant to Section 31.2.4.1 and will identify the proposed solutions that it has determined under Section 31.2.5 are viable and sufficient to satisfy the identified Reliability Need(s) by the need date. The

ISO will identify in the CRP the regulated backstop solution that the ISO has determined will meet the Reliability Need by the need date and the Responsible Transmission Owner. If the ISO determines at the time of the issuance of the CRP that sufficient market-based solutions will not be available in time to meet a Reliability Need, and finds that it is necessary to take action to ensure reliability, it will state in the CRP that the development of regulated solutions (regulated backstop or alternative regulated solution) is necessary. The draft CRP will also include the results of the ISO's analysis of the LTPs consistent with Section 31.2.6.4.

The draft CRP shall indicate whether the ISO has determined that the Trigger Date to any proposed regulated solution will occur within thirty-six months of the date of ISO's presentation of the Viability and Sufficiency Assessment to the ESPWG. If the Trigger Date of any proposed regulated solution will occur within the thirty-six month period and the ISO makes a selection of the more efficient or cost effective transmission solution under Section 31.2.6.5.2, the draft CRP shall include the regulated transmission solution selected for cost allocation purposes pursuant to Section 31.2.6.5.2 as the more efficient or cost effective transmission solution to satisfy the Reliability Need(s) and shall indicate whether that transmission solution should be triggered. If: (i) none of the proposed regulated solutions has a Trigger Date within the thirty-six month period, or (ii) the Trigger Date of any proposed regulated solution will occur within the thirty-six month period but the ISO determines in its discretion that it is not necessary at that time to select a more efficient or cost effective transmission solution under Section 31.2.6.5.2 prior to the completion of the CRP, the draft CRP will not select a regulated transmission solution. If: (i) the Trigger Date of any proposed regulated solution will occur within the thirty-six month period, and (ii) the ISO selects a more efficient or cost effective solution subsequent to the completion of the CRP but prior to the completion of that thirty-six month period, the ISO shall issue an



updated CRP report pursuant to Section 31.2.7.3 that includes the regulated transmission solution selected for cost allocation purposes pursuant to Section 31.2.6.5.2 as the more efficient or cost effective transmission solution to satisfy the Reliability Need(s) and shall indicate whether that transmission solution should be triggered.

The draft CRP shall include a comparison of a proposed regional solution to an identified Reliability Need to an Interregional Transmission Project identified and evaluated under the “Analysis and Consideration of Interregional Transmission Projects” section of the Interregional Planning Protocol, if any. An Interregional Transmission Project proposed in the ISO’s reliability planning process may be selected as a market based response, regulated backstop solution, or an alternative regulated solution under the provisions of the ISO’s reliability planning process.

#### **31.2.7.1 Collaborative Governance Process**

The ISO staff shall submit the draft CRP to the TPAS and ESPWG for review and comment. The ISO shall make available to any interested party sufficient information to replicate the results of the draft CRP. The information made available will be electronically masked and made available pursuant to a process that the ISO reasonably determines is necessary to prevent the disclosure of any Confidential Information or Critical Energy Infrastructure Information contained in the information made available. Following completion of the TPAS and ESPWG review, the draft CRP reflecting the revisions resulting from the TPAS and ESPWG review shall be forwarded to the Operating Committee for a discussion and action. The ISO shall notify the Business Issues Committee of the date of the Operating Committee meeting at which the draft CRP is to be presented. Following the Operating Committee vote, the draft CRP will be transmitted to the Management Committee for a discussion and action.

#### **31.2.7.2 Board Review, Consideration, and Approval of CRP**

Following the Management Committee vote, the draft CRP, with working group, Operating Committee, and Management Committee input, will be forwarded to the ISO Board for review and action. Concurrently, the draft CRP will also be provided to the Market Monitoring Unit for its review and consideration of whether market rule changes are necessary to address an identified failure, if any, in one of the ISO's competitive markets. The Board may approve the draft CRP as submitted or propose modifications on its own motion, including the recommendations regarding the selection of transmission projects for cost allocation and cost recovery under the ISO Tariffs if such selection will occur during that planning cycle. If any changes are proposed by the Board, the revised CRP shall be returned to the Management Committee for comment. The Board shall not make a final determination on the draft CRP until it has reviewed the Management Committee comments. Upon final approval by the Board, the ISO shall issue the CRP to the marketplace by posting the CRP on its website. The ISO will provide the CRP to the appropriate regulatory agency(ies) for consideration and appropriate action.

The responsibilities of the Market Monitoring Unit that are addressed in the above section of Attachment Y to the ISO OATT are also addressed in Section 30.4.6.8.3 of the Market Monitoring Plan, Attachment O to the ISO Services Tariff.

#### **31.2.7.3 Updated CRP Report**

If, pursuant to Section 31.2.7, the ISO identifies a proposed regulated transmission solution as the more efficient or cost effective transmission solution following the completion of the CRP, the ISO will prepare a draft updated CRP report that indicates the regulated transmission solution recommended for selection for cost allocation purposes pursuant to Section

31.2.6.5.2 as the more efficient or cost effective transmission solution to satisfy the Reliability Need(s) and shall indicate whether that transmission solution should be triggered at that time. The draft updated CRP report shall be reviewed in accordance with the stakeholder process set forth in Section 31.2.7.1 and will be then forwarded to the ISO Board for its review and action pursuant to Section 31.2.7.2.

#### **31.2.7.4 Reliability Disputes**

Notwithstanding any provision to the contrary in this Attachment, the ISO OATT, or the ISO Services Tariff, in the event that a Market Participant or other interested party raises a dispute solely within the NYPSC's jurisdiction concerning ISO's final determination in the CRP that a proposed solution will or will not meet a Reliability Need, a Market Participant or other interested party seeking further review shall refer such dispute to the NYPSC for resolution, as provided for in the ISO Procedures. The NYPSC's final determination of such disputes shall be binding, subject only to judicial review in the courts of the State of New York pursuant to Article 78 of the New York Civil Practice Law and Rules.

#### **31.2.7.5 Posting of Approved Solutions**

The ISO shall post on its website a list of all Developers that have undertaken a commitment to the ISO to build a project (which may be a regulated backstop solution, market-based response, alternative regulated response or gap solution) that is necessary to ensure system reliability, as identified in the CRP and approved by the appropriate governmental agency(ies) and/or authority(ies).

## **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 that sufficient market-based solutions are timely progressing to meet the Reliability Need by the need date. 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, (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 Responsible Transmission Owner that it should submit the regulated backstop solution 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 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; (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 Other Developer or Transmission Owner that it should submit the selected alternative regulated transmission solution 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 Other Developer or Transmission Owner 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 Other Developer or Transmission Owner of the selected alternative regulated transmission solution, including, but not limited

to, reviewing: (i) whether the Developer 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 Developer is timely progressing against the milestones set forth in the Development Agreement; and (iii) the status of the Developer's obtaining required permits or authorizations, including whether the Developer has received its Article VII 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 Responsible Transmission Owner to proceed with a 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 Responsible Transmission Owner shall proceed with due diligence to develop its regulated backstop solution in accordance with Good Utility Practice and to submit its proposed solution 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 Responsible Transmission Owner that its regulated backstop solution is no longer needed and will not be triggered. In such case, the 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; (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 Responsible Transmission Owner that proposed the regulated backstop solution and the Other Developer or Transmission Owner that proposed the selected alternative regulated transmission solution that they should submit the proposed solutions 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 Responsible Transmission Owner, Other Developer or 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 If the selected regulated transmission solution is an alternative regulated transmission solution, the ISO shall tender the Other Developer or Transmission Owner that proposed the selected alternative regulated transmission solution – as soon as reasonably practicable considering the project’s Trigger Date following the ISO’s selection of the proposed solution – a draft Development Agreement with draft appendices 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. The ISO and the Developer shall finalize the Development Agreement and appendices and negotiate concerning any disputed provisions. For purposes of finalizing the Development Agreement, the ISO shall provide the Developer with the date by which the selected project must be in-service to satisfy the Reliability Need, and the ISO and Developer shall develop the description and dates for the milestones necessary to develop and construct the selected project by the required in-service date, including the milestones for obtaining all necessary authorizations. Unless otherwise agreed by the ISO and the Developer, the Developer 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 Developer determines that negotiations are at an impasse, it may



request in writing that the ISO file the Development Agreement in unexecuted form with the Commission. If the Development Agreement resulting from the negotiation between the ISO and the Developer 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 Developer 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 Developer. 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 Developer 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 Developer'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 Developer 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. The Connecting Transmission Owner(s) and Affected Transmission Owner(s) that are identified in Attachment X of the ISO OATT in connection with the selected alternative regulated transmission solution shall act in good faith in timely

performing their obligations that are required for the Developer to satisfy its obligations under the Development Agreement.

31.2.8.1.8 Other Developers and Transmission Owners proposing alternative regulated solutions that the ISO has determined 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 Responsible Transmission Owner, 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 (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 Responsible Transmission Owner to proceed with a regulated backstop solution 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 Other Developer or Transmission Owner of the selected alternative regulated transmission solution, including, but not limited to, reviewing: (i) whether the Developer 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 Developer is timely progressing against the milestones set forth in the Development Agreement; and (iii) the status of the Developer's obtaining required permits or authorizations, including whether the Developer has received its Article VII 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 Responsible Transmission Owner up to that point, including reasonable and necessary expenses incurred to implement an orderly termination of the project, will be recoverable by the 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 Other Developer or Transmission Owner, post such notice on its website, and will state in the next CRP if it determines that the 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.

If a selected alternative regulated transmission solution is halted by the ISO, all of the costs incurred and commitments made by the Other Developer or Transmission Owner up to that point, including reasonable and necessary expenses incurred to implement an orderly termination of the project, will be recoverable by the Other Developer or Transmission Owner under the cost recovery mechanism in Rate Schedule 10 of this tariff.

31.2.8.2.3 Once the Responsible Transmission Owner receives state regulatory approval of the regulated backstop solution, or, if state regulatory approval is not required, once the Responsible Transmission Owner receives necessary regulatory approval, the entry of a market-based solution or an alternative regulated transmission solution 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 Other Developer or Transmission Owner receives its state regulatory approval or any

other necessary regulatory approval of its triggered alternative regulated transmission solution, the entry of a market-based solution will not result in the halting by the ISO of the regulated transmission solution 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, will be recoverable by the Responsible Transmission Owner, Other Developer, or Transmission Owner 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, will be recoverable under the ISO cost recovery mechanism in Rate Schedule 10 of the ISO OATT by the Responsible Transmission Owner, Other Developer, or Transmission Owner regardless of the nature of the solution.

31.2.8.2.7 If a material modification to the regulated backstop solution or the alternative regulated transmission solution 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 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 Responsible Transmission Owner, Other Developer, or Transmission Owner 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 Responsible Transmission Owner, Other Developer or Transmission Owner 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 of Responsible Transmission Owner, Other Developer, or Transmission Owner to Complete Triggered Regulated Solution**

31.2.10.1 If: (i) the regulated transmission solution selected and triggered by the ISO is an alternative regulated transmission solution, and (ii) one of the following events occur: (A) the Other Developer or Transmission Owner that proposed the alternative regulated transmission solution 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) an effective Development Agreement is terminated under the terms of the agreement prior to the completion of the term of the agreement, the ISO may take the following actions as soon as practicable after the occurrence of the event:

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

31.2.10.1.2 The ISO may revoke its selection of the alternative regulated transmission solution and the eligibility of the Other Developer or Transmission Owner to recover its costs for the project; *provided, however*, the Other Developer or Transmission Owner may recover its costs to the extent provided in Sections 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 If the ISO determines that it must identify a solution prior to the approval of the CRP for the next planning cycle to satisfy the Reliability Need by the need date, the ISO may: (i) direct the Responsible Transmission Owner to proceed with its regulated backstop solution if it has not yet been halted by the ISO pursuant to

Section 31.2.8.2.1, (ii) request that the Responsible Transmission Owner complete the selected alternative regulated transmission solution, and/or (iii) proceed with the Gap Solution process under Section 31.2.11.

31.2.10.1.4 If the Responsible Transmission Owner agrees to complete the selected alternative regulated transmission solution, the Responsible Transmission Owner and the Other Developer or Transmission Owner that proposed the selected alternative regulated transmission solution 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 Developer's rights-of-way under law, conveyance, or contract, and (iii), if the Developer 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 Developer 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: (i) the regulated transmission solution selected and triggered by the ISO is the Responsible Transmission Owner's regulated backstop solution or the 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 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.

31.2.11.4 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 the effective date of Section 5.18 of the Services Tariff and the ICAP Ineligible Forced Outage followed a Forced Outage that began after the effective date of Section 5.18 of the Services Tariff. 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.

31.2.11.5 Gap Solution proposals submitted under Sections 31.2.11.3 and 31.2.11.4 shall be designed to be temporary solutions and to strive to be compatible with permanent market-based proposals.

31.2.11.6 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 term “Confidential Information” shall include 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 Information.”

31.2.12.2 For regulated backstop solutions and plans submitted by the Responsible Transmission Owner in response to the findings of the RNA, the ISO shall maintain the confidentiality of same until the ISO and the Responsible Transmission Owner have agreed that the Responsible Transmission Owner has submitted viable and sufficient regulated backstop solutions and plans to meet the Reliability Needs identified in an RNA and the Responsible Transmission Owner consents to the ISO’s inclusion of the proposed solution in the CRP. Thereafter, the ISO shall disclose the regulated backstop solutions and plans to the Market Participants; however, any preliminary cost estimates that may have been provided to the ISO shall not be disclosed.

31.2.12.3 For an alternative regulated response, the ISO shall determine, after consulting with the Developer thereof, whether the response 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. Thereafter, the ISO shall disclose the alternative regulated response to the Market Participants and other interested parties; however, any preliminary cost estimates that may have been provided to the ISO shall not be disclosed.

31.2.12.4 For a market-based response, the ISO shall maintain the confidentiality of 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.

31.2.12.5 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 shall assess the continued viability of such projects 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.



## **31.4 Public Policy Transmission Planning Process**

### **31.4.1 General**

The Public Policy Transmission Planning Process shall consist of three steps: (1) identification of Public Policy Transmission Needs that should be evaluated by the ISO; (2) requests for specific proposed solutions to address those Public Policy Transmission Needs identified for evaluation and the evaluation of those specific solutions; and (3) selection of the more efficient or cost-effective transmission solution, if any, to satisfy the Public Policy Transmission Need to be eligible for cost allocation. Sections 31.4.2.1 through 31.4.2.3 provide for identification of transmission needs driven by Public Policy Requirements and warranting evaluation by the ISO. The ISO shall request and evaluate specific proposed solutions to address such needs. The ISO shall select the more efficient or cost-effective transmission solution to satisfy such needs. The Public Policy Transmission Planning Process will be conducted on a two-year cycle, unless requested by the NYPSC to be conducted out of that cycle. If the Public Policy Transmission Planning Process cannot be completed in the two-year cycle, the ISO will notify stakeholders and provide an estimated completion date and an explanation of the reasons the additional time is required. The NYPSC's issuance of a written statement pursuant to Section 31.4.2.1 below will occur after the draft RNA study results are posted.

### **31.4.2 ISO and Interested Party Identification and Posting of Proposed Transmission Needs**

At the start of each public policy planning cycle, the ISO will provide a 60-day period to allow any stakeholder or interested party to submit to the ISO, or for the ISO on its own initiative to identify, a proposed transmission need that it believes is being driven by a Public Policy Requirement and for which transmission solutions should be requested and evaluated. Each

submittal will identify the Public Policy Requirement(s) that the party believes is driving the need for transmission, propose criteria for the evaluation of transmission solutions to that need, and describe how the construction of transmission will fulfill the Public Policy Requirement(s).

For submittals to identify transmission needs pursuant to Section 31.4.2.1, the ISO will post all submittals on its website after the end of the 60-day period, and will submit to the NYPSC all submittals proposed by stakeholders, other interested parties, and any additional transmission needs and criteria identified by the ISO. For submittals to identify transmission needs that require a physical modification to transmission facilities in the Long Island Transmission District pursuant to Section 31.4.2.3, the ISO will post all submittals on its website after the end of the 60-day period, and will provide to the NYPSC and the Long Island Power Authority all submittals proposed by stakeholders, other interested parties, and any additional transmission needs and criteria identified by the ISO.

#### **31.4.2.1 Identification and Determination of Transmission Needs Driven by Public Policy Requirements**

The NYPSC will review all proposed transmission need(s) and, with input from the ISO and interested parties, identify the transmission needs, if any, for which specific transmission solutions should be requested and evaluated. The NYPSC will develop procedures to govern the process by which it will review proposed transmission need(s), which procedures shall: ensure that such process is open and transparent, provide the ISO and interested parties a meaningful opportunity to participate in such process, provide input regarding the NYPSC's considerations, and result in the development of a written determination as required by law, inclusive of the input provided by the ISO and interested parties. In addition, the NYPSC may, on its own, identify a transmission need driven by a Public Policy Requirement. Any such transmission need identified by the NYPSC on its own shall be described by the NYPSC in accordance with

the requirements for stakeholder submittals set forth in Section 31.4.2, and shall be identified and posted to the ISO's website prior to NYPSC's issuance of the required written statement discussed below in this Section 31.4.2.1 so as to provide the ISO and interested parties an opportunity to provide input to the NYPSC relating thereto.

The ISO shall assist the NYPSC in its analyses as requested. The NYPSC may also request that the ISO, pursuant to Section 3.8.1 of the ISO OATT, conduct an evaluation of alternative options to address the transmission needs.

The NYPSC shall issue a written statement that identifies the relevant Public Policy Requirements driving transmission needs and explains why it has identified the Public Policy Transmission Needs for which transmission solutions will be requested by the ISO. The statement shall also explain why transmission solutions to other suggested transmission needs should not be requested. The NYPSC's statement may also provide additional criteria for the evaluation of transmission solutions and non-transmission projects, and the type of analyses that it will request from the ISO.

If the NYPSC does not identify any transmission needs driven by Public Policy Requirements, it will provide confirmation of that conclusion to the ISO, and the ISO shall not request solutions. The ISO shall post the NYPSC's statement on the ISO's website.

#### **31.4.2.2 Disputes of NYPSC Determinations**

In the event that a dispute is raised solely within the NYPSC's jurisdiction relating to any NYPSC decision to either accept or deny a proposed transmission need as one for which transmission solutions should be requested, the dispute shall be addressed through judicial review in the courts of the State of New York pursuant to Article 78 of the New York Civil Practice Law and Rules.

### **31.4.2.3 Identification and Determination of Transmission Needs Within the Long Island Transmission District Driven by Public Policy Requirements**

The Long Island Power Authority, pursuant to its jurisdiction under Title 1-A of Article 5 (§1020 et seq.) of the Public Authorities Law of the State of New York, shall identify and determine whether a Public Policy Requirement drives the need for a physical modification to transmission facilities in the Long Island Transmission District. The identification and determination of such transmission needs shall be consistent with Section 31.4.2.1, as further supplemented by this Section 31.4.2.3. The Long Island Power Authority shall have no authority to identify a transmission need outside of the Long Island Transmission District.

Based on the information provided by the ISO pursuant to Section 31.4.2, the Long Island Power Authority shall review whether a proposed Public Policy Requirement drives the need for a physical modification to transmission facilities in the Long Island Transmission District. In addition, the following requirements shall apply to the Long Island Power Authority:

- (i) The Long Island Power Authority shall consult with the NYDPS on the identification of transmission needs driven by a Public Policy Requirement solely within the Long Island Transmission District;
- (ii) Upon completion of its review, the Long Island Power Authority shall issue a written statement explaining whether a Public Policy Requirement drives the need for a physical modification to transmission facilities solely within the Long Island Transmission District, and the Long Island Power Authority shall describe the consultation undertaken with the NYDPS;
- (iii) In conjunction with the issuance of its written statement, the Long Island Power Authority shall transmit to, and request that, the NYPSC review and determine whether a transmission need solely within the Long Island Transmission District

identified by the Long Island Power Authority as being driven by a Public Policy Requirement should be considered a Public Policy Transmission Need for evaluation by the ISO and potential eligibility for selection and regional cost allocation under the ISO tariff. Any transmission need within the Long Island Transmission District that has been identified by the Long Island Power Authority, but which the NYPSC has not determined to be a Public Policy Transmission Need that would be evaluated by the ISO, shall be addressed under the Long Island Power Authority's Local Transmission Plan.

- (iv) The determination of whether there is a transmission need solely within the Long Island Transmission District is the sole responsibility of the Long Island Power Authority;
- (v) The NYDPS and Long Island Power Authority shall consult and coordinate on procedures to be adopted by the NYPSC and Long Island Power Authority to ensure that their respective determinations under this Section 31.4.2.3, including any NYPSC determination that there is a Public Policy Transmission Need within the Long Island Transmission District that should be evaluated by the ISO, are completed, publicly posted and transmitted to the ISO at the same time as the NYPSC makes its final determinations pursuant to Section 31.4.2.1; and
- (vi) In the event that a dispute is raised solely within the Long Island Power Authority's jurisdiction relating to a decision by the Long Island Power Authority to either accept or deny a proposed transmission need solely within the Long Island Transmission District, the dispute shall be addressed through judicial

review in the courts of the State of New York pursuant to Article 78 of the New York Civil Practice Law and Rules.

### **31.4.3 Request for Proposed Solutions**

The ISO will request specific proposed transmission solutions to a Public Policy Transmission Need identified pursuant to Sections 31.4.2.1 through 31.4.2.3, including any proposed Interregional Transmission Project that has been identified and evaluated in accordance with the “Analysis and Consideration of Interregional Transmission Projects” section of the Interregional Planning Protocol. The ISO shall also accept specific proposed non-transmission solutions to a Public Policy Transmission Need identified by the pursuant to Sections 31.4.2.1 through 31.4.2.3.

#### **31.4.3.1 Request for Proposed Solutions**

Following posting of a determination pursuant to Sections 31.4.2.1 through 31.4.2.3, the ISO will provide a 60-day period for Transmission Owners and Other Developers to propose specific solutions, whether transmission or non-transmission, to address the Public Policy Transmission Needs. Any proposed transmission needs that are under appeal pursuant to Section 31.4.2.2 or Section 31.4.2.3(vi) may be addressed with proposed solutions, if required, following the resolution of that appeal.

#### **31.4.3.2 Requests for Solutions**

To ensure that there will be a response to a Public Policy Transmission Need , the NYPSC may request the appropriate Transmission Owner(s) or Other Developer, as identified by the NYPSC, to propose a transmission solution for a Public Policy Transmission Need. With respect to a transmission need identified by the Long Island Power Authority and determined to

be a Public Policy Transmission Need, by the NYPSC pursuant to Section 31.4.2.3, the Long Island Power Authority's Board of Trustees may request that an appropriate Transmission Owner(s) or Other Developer propose a transmission or non-transmission solution for a Public Policy Transmission Need. A request for the provision of a transmission or non-transmission solution by either the NYDPS/NYPSC or the Long Island Power Authority's Board of Trustees, pursuant to this section, is supplementary to, and not to the exclusion of, the submission of proposed projects pursuant to Section 31.4.3.1. Costs incurred by a Transmission Owner or Other Developer in preparing a proposed transmission solution in response to a request under this Section 31.4.3.2 will be recoverable under Section 31.5.6.

#### **31.4.3.3 Consequences for Other Regions**

The ISO will coordinate with the ISO/RTO Regions to identify the consequences of a transmission solution driven by Public Policy Requirements on such neighboring ISO/RTO Regions using the respective planning criteria of such ISO/RTO Regions. The ISO shall report the results in its Public Policy Transmission Planning Report. The ISO shall not bear the costs of required upgrades in another region.

#### **31.4.4 Eligibility and Qualification Criteria for Developers and Projects**

For purposes of fulfilling the requirements of the Developer qualification criteria in this Section 31.4.4 and its subsections, the term "Developer" includes Affiliates, as that term is defined in Section 2 of the ISO Services Tariff and Section 1 of the ISO OATT. To the extent that a Developer relies on Affiliate(s) to satisfy any or all of the qualification criteria set forth in Section 31.4.4.1.1, the Affiliate(s) shall provide to the ISO: (i) the information required in Section 31.4.4.1.1 to demonstrate its capability to satisfy the applicable qualification criteria and (ii) a notarized officer's certificate, signed by an authorized officer of the Affiliate with signatory

authority, in a form acceptable to the ISO, certifying that the Affiliate will participate in the Developer's project in the manner described by the Developer and will abide by the requirements set forth in this Attachment Y, the ISO Tariffs, and ISO Procedures, related and applicable to the Affiliate's participation.

#### **31.4.4.1 Developer Qualification and Timing**

The ISO shall provide each Developer with an opportunity to demonstrate that it has or can draw upon the financial resources, technical expertise, and experience needed to finance, develop, construct, operate, and maintain a transmission solution to a Public Policy Transmission Need. The ISO shall consider the qualification of each Developer in an evenhanded and non-discriminatory manner, treating Transmission Owners and Other Developers alike.

##### **31.4.4.1.1 Developer Qualification Criteria**

The ISO shall make a determination on the qualification of a Developer to propose to develop a transmission project as a transmission solution to a Public Policy Transmission Need based on the following criteria:

31.4.4.1.1.1 The technical and engineering qualifications and experience of the Developer relevant to the development, construction, operation and maintenance of a transmission facility, including evidence of the Developer's demonstrated capability to adhere to standardized construction, maintenance, and operating practices and to contract with third parties to develop, construct, maintain, and/or operate transmission facilities;

31.4.4.1.1.2 The current and expected capabilities of the Developer to develop and construct a transmission facility and to operate and maintain it for the life of the facility. If the Developer has previously developed, constructed, maintained or



operated transmission facilities, the Developer shall provide the ISO a description of the transmission facilities (not to exceed ten) that the Developer has previously developed, constructed, maintained or operated and the status of those facilities, including whether the construction was completed, whether the facility entered into commercial operations, whether the facility has been suspended or terminated for any reason, and evidence demonstrating the ability of the Developer to address and timely remedy any operational failure of the facilities; and

31.4.4.1.1.3 The Developer's current and expected capability to finance, or its experience in arranging financing for, transmission facilities. For purposes of the ISO's determination, the Developer shall provide the ISO:

- (1) evidence of its demonstrated experience financing or arranging financing for transmission facilities, if any, including a description of such projects (not to exceed ten) over the previous ten years, the capital costs and financial structure of such projects, a description of any financing obtained for these projects through rates approved by the Commission or a state regulatory agency, the financing closing date of such projects, and whether any of the projects are in default;
- (2) its audited annual financial statements from the most recent three years and its most recent quarterly financial statement or equivalent information, if available;
- (3) its credit rating from Moody's Investor Services, Standard & Poor's, or Fitch or equivalent information, if available;
- (4) a description of any prior bankruptcy declarations, material defaults, dissolution, merger or acquisition by the Developer or its predecessors or subsidiaries occurring within the previous five years; and

- (5) such other evidence that demonstrates its current and expected capability to finance a project to solve a Public Policy Transmission Need.

31.4.4.1.1.4 A detailed plan describing how the Developer – in the absence of previous experience financing, developing, constructing, operating, or maintaining transmission facilities – will finance, develop, construct, operate, and maintain a transmission facility, including the financial, technical, and engineering qualifications and experience and capabilities of any third parties with which it will contract for these purposes.

#### **31.4.4.1.2 Developer Qualification Determination**

Any Developer seeking to be qualified may submit the required information, or update any previously submitted information, at any time. The ISO shall treat on a confidential basis in accordance with the requirements of its Code of Conduct in Attachment F of the ISO OATT any non-public financial qualification information that is submitted to the ISO by the Developer under Section 31.4.4.1.1.3 and is designated by the Developer as “Confidential Information.” The ISO shall within 15 days of a Developer’s submittal, notify the Developer if the information is incomplete. If the submittal is deemed incomplete, the Developer shall submit the additional information within 30 days of the ISO’s request. The ISO shall notify the Developer of its qualification status within 30 days of receiving all necessary information. A Developer shall retain its qualification status for a three-year period following the notification date; *provided, however*, that the ISO may revoke this status if it determines that there has been a material change in the Developer’s qualifications and the Developer no longer meets the qualification requirements. A Developer that has been qualified shall inform the ISO within thirty days of any material change to the information it provided regarding its qualifications and shall submit to the

ISO each year its most recent audited annual financial statement when available. At the conclusion of the three-year period or following the ISO's revocation of a Developer's qualification status, the Developer may re-apply for a qualification status under this section.

Any Developer determined by the ISO to be qualified under this section shall be eligible to propose a regulated transmission project as a transmission solution to a Public Policy Transmission Need and shall be eligible to use the cost allocation and cost recovery mechanism for regulated transmission projects set forth in Section 31.5 of this Attachment Y and the appropriate rate schedule for any approved project.

#### **31.4.4.2 Information Requirements for Projects**

The ISO shall consider the criteria in Section 31.4.5.1 when determining whether a proposed project is eligible to be offered as a transmission solution to a Public Policy Transmission Need.

#### **31.4.4.3 Timing for Submittal of Project Information and Developer Qualification Information and Opportunity to Provide Additional Information**

The required project information shall be submitted within 60 days of the ISO's request for solutions to a Public Policy Transmission Need. Any Developer that the ISO has determined under Section 31.4.4.1.2 of this Attachment Y to be qualified to propose to develop a transmission project as a transmission solution to a Public Policy Transmission Need may submit the required project information; *provided, however*, that based on the actual identified need that requires resolution, the ISO may request that the qualified Developer provide additional Developer qualification information.

Any Developer that has not been determined by the ISO to be qualified, but that wants to propose to develop a project, must submit to the ISO the information required for Developer

qualification under Section 31.4.4.1 within 30 days after a request for solutions is made by the ISO. The ISO shall within 30 days of a Developer's submittal of its Developer qualification information, notify the Developer if this information is incomplete. The Developer shall submit additional Developer qualification information or project information required by the ISO within 15 days of the ISO's request. A Developer that fails to submit the additional Developer qualification information or the required project information will not be eligible for its project to be considered in that planning cycle.

#### **31.4.4.4. Application Fee and Study Deposit for Proposed Regulated Transmission Solutions**

Within sixty (60) days of the ISO's request for solutions to a Public Policy Transmission Need, a Developer that proposes a regulated transmission solution to satisfy the identified Public Policy Transmission Need shall submit to the ISO, along with the project information required pursuant to Section 31.4.4.3, a non-refundable application fee of \$10,000 and a study deposit of \$100,000, which shall be applied to study costs and subject to refund as described in this Section 31.4.4.4.

The ISO shall charge, and a Developer proposing a regulated transmission solution shall pay, the actual costs of the ISO's evaluation of the Developer's proposed transmission solution for purposes of the ISO's selection of the more efficient or cost effective transmission solution to satisfy a Public Policy Transmission Need for cost allocation purposes, including costs associated with the ISO's use of subcontractors. The ISO will track its staff and administrative costs, including any costs associated with using subcontractors, that it incurs in performing the evaluation of a Developer's proposed transmission solution under Sections 31.4.7, 31.4.8, and 31.4.9 and any supplemental evaluation or re-evaluation of the proposed transmission solution. If the ISO or its subcontractors perform study work for multiple proposed transmission solutions

on a combined basis, the ISO will allocate the costs of the combined study work equally among the applicable Developers.

The ISO shall invoice the Developer monthly for study costs incurred by the ISO in evaluating the Developer's proposed transmission solution as described above. Such invoice shall include a description and an accounting of the study costs incurred by the ISO and estimated subcontractor costs. The Developer shall pay the invoiced amount within thirty (30) calendar days of the ISO's issuance of the monthly invoice. The ISO shall continue to hold the full amount of the study deposit until settlement of the final monthly invoice; *provided, however*, if a Developer: (i) does not pay its monthly invoice within the timeframe described above, or (ii) does not pay a disputed amount into an independent escrow account as described below, the ISO may draw upon the study deposit to recover the owed amount. If the ISO must draw on the study deposit, the ISO shall provide notice to the Developer, and the Developer shall within thirty (30) calendar days of such notice make payments to the ISO to restore the full study deposit amount. If the Developer fails to make such payments, the ISO may halt its evaluation of the Developer's proposed transmission solution and may disqualify the Developer's proposed transmission solution from further consideration. After the conclusion of the ISO's evaluation of the Developer's proposed transmission solution or if the Developer: (i) withdraws its proposed transmission solution or (ii) fails to pay an invoiced amount and the ISO halts its evaluation of the proposed transmission solution, the ISO shall issue a final invoice and refund to the Developer any portion of the Developer's study deposit submitted to the ISO under this Section 31.4.4.4 that exceeds outstanding amounts that the ISO has incurred in evaluating that Developer's proposed transmission solution, including interest on the refunded amount calculated in accordance with Section 35.19a(a)(2) of FERC's regulations. The ISO shall refund

the remaining portion within sixty (60) days of the ISO's receipt of all final invoices from its subcontractors and involved Transmission Owners.

In the event of a Developer's dispute over invoiced amounts, the Developer shall: (i) timely pay any undisputed amounts to the ISO, and (ii) pay into an independent escrow account the portion of the invoice in dispute, pending resolution of such dispute. If the Developer fails to meet these two requirements, then the ISO shall not be obligated to perform or continue to perform its evaluation of the Developer's proposed transmission solution. Disputes arising under this section shall be addressed through the Dispute Resolution Procedures set forth in Section 2.16 of the ISO OATT and Section 11 of the ISO Services Tariff. Within thirty (30) Calendar Days after resolution of the dispute, the Developer will pay the ISO any amounts due with interest calculated in accordance with Section 35.19a(a)(2) of FERC's regulations.

### **31.4.5 Actual Project Proposals**

The ISO will process all project proposals for transmission solutions for Public Policy Transmission Needs.

#### **31.4.5.1 Project Information Requirements**

Any Developer seeking to offer a transmission solution for Public Policy Transmission Needs must provide, at a minimum, the following details: (1) contact information; (2) the lead time necessary to complete the project, including, if available, the construction windows in which the Developer can perform construction and what, if any, outages may be required during these periods; (3) a description of the project, including type, size, and geographic and electrical location, as well as planning and engineering specifications as appropriate; (4) evidence of a commercially viable technology; (5) a major milestone schedule; (6) a schedule for obtaining any required permits and other certifications; (7) a demonstration of Site Control or a schedule

for obtaining such control; (8) status of any contracts (other than an Interconnection Agreement) that are under negotiations or in place, including any contracts with third-party contractors; (9) status of ISO interconnection studies and interconnection agreement; (10) status of equipment availability and procurement; (11) evidence of financing or ability to finance the project; (12) capital cost estimates for the project; (13) a description of permitting or other risks facing the project at the stage of project development, including evidence of the reasonableness of project cost estimates all based on the information available at the time of the submission; and (14) any other information requested by the ISO.

A Developer shall submit the following information to indicate the status of any contracts: (i) copies of all final contracts the ISO determines are relevant to its consideration, or (ii) where one or more contracts are pending, a timeline on the status of discussions and negotiations with the relevant documents and when the negotiations are expected to be completed. The final contracts shall be submitted to the ISO when available. The ISO shall treat on a confidential basis in accordance with the requirements of its Code of Conduct in Attachment F of the ISO OATT any contract that is submitted to the ISO and is designated by the Developer as “Confidential Information.”

A Developer shall submit the following information to indicate the status of any required permits: (i) copies of all final permits received that the ISO determines are relevant to its consideration, or (ii) where one or more permits are pending, the completed permit application(s) with information on what additional actions must be taken to meet the permit requirements and a timeline providing the expected timing for finalization and receipt of the final permit(s). The final permits shall be submitted to the ISO when available.

A Developer shall submit the following information, as appropriate, to indicate evidence of financing by it or any Affiliate upon which it is relying for financing: (i) evidence of self-financing or project financing through approved rates or the ability to do so, (ii) copies of all loan commitment letter(s) and signed financing contract(s), or (iii) where such financing is pending, the status of the application for any relevant financing, including a timeline providing the status of discussions and negotiations of relevant documents and when the negotiations are expected to be completed. The final contracts or approved rates shall be submitted to the ISO when available.

Failure to provide any data requested by the ISO within the timeframe provided in Section 31.4.4.3 of this Attachment Y will result in the rejection of the proposed solution from further consideration during that planning cycle.

#### **31.4.6 ISO Evaluation of Proposed Solutions to Public Policy Transmission Needs**

##### **31.4.6.1 Evaluation Time Period**

The ISO will study a proposed project using the RNA Base Case and compensatory MWs as needed to resolve the Reliability Needs over the ten-year Study Period. The ISO will extend the most recent reliability and economic planning models for modeling solutions for Public Policy Transmission Needs by up to an additional twenty years following the Study Period, as appropriate based upon the Public Policy Requirement and the identified Public Policy Transmission Need.

##### **31.4.6.2 Comparable Evaluation of All Proposed Solutions**

The ISO shall evaluate any proposed solution submitted by a Developer to a Public Policy Transmission Need. The ISO will evaluate whether each proposed solution is viable



pursuant to Section 31.4.6.3 below and is sufficient to satisfy the Public Policy Transmission Need by the need date pursuant to Section 31.4.6.4. The proposed solution may include multiple components and resource types. When evaluating proposed solutions to a Public Policy Transmission Need from any Developer, the ISO shall consider all resource types – including generation, transmission, demand response, or a combination of these resource types – on a comparable basis as potential solutions. All solutions will be evaluated in the same general time frame.

#### **31.4.6.3 Evaluation of Viability of Proposed Solution**

The ISO will determine the viability of a solution – transmission, generation, demand response, or a combination of these resource types – proposed to satisfy a Public Policy Transmission Need. For purposes of its analysis, the ISO will evaluate whether: (i) the Developer has provided the required Developer qualification data pursuant to Section 31.4.4 and the required project information data under Section 31.4.5.1; (ii) the proposed solution is technically practicable; (iii) the Developer has indicated possession of, or an approach for acquiring, any necessary rights-of-way, property, and facilities that will make the proposal reasonably feasible in the required timeframe; and (iv) the proposed solution can be completed in the required timeframe. If the ISO determines that the proposed solution is not viable, the ISO shall reject the proposed solution from further consideration during that planning cycle.

#### **31.4.6.4 Evaluation of Sufficiency of Proposed Solution**

The ISO will perform a comparable analysis of each proposed solution – transmission, generation, demand response, or a combination of these resource types – to confirm that the proposed solution satisfies the Public Policy Transmission Need. The ISO will evaluate each solution to measure the degree to which the proposed solution independently satisfies the Public

Policy Transmission Need, including the evaluation criteria provided by the NYPSC. If the ISO determines that the proposed solution is not sufficient, the ISO shall reject the proposed solution from further consideration during that planning cycle.

#### **31.4.6.5 ISO Report of Evaluation Results**

The ISO will present its Viability and Sufficiency Assessment to stakeholders, interested parties, and the NYPSC for comment. The ISO shall report in the Public Policy Transmission Planning Report the results of its evaluation under this Section 31.4.6 of whether each proposed solution is viable and is sufficient to satisfy the identified Public Policy Transmission Need by the need date.

#### **31.4.6.6 NYPSC Determination on Whether to Proceed with Evaluation of Transmission Solutions to a Public Policy Transmission Need**

Following the ISO's presentation of the Viability and Sufficiency Assessment, the NYPSC will review the Viability and Sufficiency Assessment and will issue an order, subject to and in accordance with the State Administrative Procedure Act, explaining whether the NYISO should continue to evaluate transmission solutions to a Public Policy Transmission Need or whether non-transmission solutions should be pursued. If the NYPSC concludes that non-transmission solutions should be pursued, the NYPSC will indicate in its order that there is no longer a transmission need driven by a Public Policy Requirement that requires the ISO's evaluation of potential transmission solutions. In such case, the ISO will not perform an evaluation, or make a selection of, a more efficient or cost-effective transmission solution under Sections 31.4.7, 31.4.8, 31.4.9, and 31.4.10 for that planning cycle.

### **31.4.7 Evaluation of Regional Transmission Solutions to Address Local and Regional Needs Driven by Public Policy Requirements More Efficiently or More Cost Effectively Than Local Transmission Solutions**

The ISO will review the LTPs as they relate to the BPTFs. The ISO will include the results of its analysis in its Public Policy Transmission Planning Report, as approved by the ISO Board.

#### **31.4.7.1 Evaluation of Regional Transmission Solutions to Address Local Needs Driven By Public Policy Requirements Identified in Local Transmission Plans More Efficiently or More Cost Effectively than Local Transmission Solutions**

The ISO, using engineering judgment, will determine whether any proposed regional transmission solution on the BPTFs more efficiently or cost-effectively satisfies any needs driven by a Public Policy Requirement identified in the LTPs. If the ISO identifies that a regional transmission solution has the potential to more efficiently or cost effectively satisfy the needs driven by a Public Policy Requirement identified in the LTPs, it will perform a sensitivity analysis to determine whether the proposed regional transmission solution on the BPTFs would satisfy the needs driven by a Public Policy Requirement identified in the LTPs. If the ISO determines that the proposed regional transmission solutions would satisfy the need, the ISO will evaluate the proposed regional transmission solution using the metrics set forth in Section 31.4.8.1 below to determine whether it may be a more efficient or cost effective solution on the BPTFs to the needs driven by a Public Policy Requirement identified in the LTPs than the local solutions proposed in the LTPs.

#### **31.4.7.2 Evaluation of Regional Transmission Solution to Address Regional Public Policy Transmission Needs More Efficiently or More Cost Effectively than Local Transmission Solutions**

As referenced in Section 31.2.1.3, the ISO, using engineering judgment, will determine whether a regional transmission solution might more efficiently or more cost effectively satisfy an identified regional Public Policy Transmission Need on the BPTFs that impacts more than one Transmission District than any local transmission solutions identified by the Transmission Owners in their LTPs in the event the LTPs specify that such transmission solutions are included to address local transmission needs driven by Public Policy Requirements.

#### **31.4.8 ISO Selection of More Efficient or Cost Effective Transmission Solution to Satisfy a Public Policy Transmission Need**

A proposed regulated transmission solution submitted by a Transmission Owner or Other Developer that the ISO has determined satisfies the viability and sufficiency requirements in Section 31.4.6 shall be eligible under this Section 31.4.8 for selection in the Public Policy Transmission Planning Report for the purpose of cost allocation under the ISO Tariffs. The ISO shall evaluate any eligible proposed regulatory transmission solutions for the public policy planning cycle using the metrics set forth in Section 31.4.8.1 below. For purposes of this evaluation, the ISO will review the information submitted by the Developer and determine whether it is reasonable and how such information should be used for purposes of the ISO evaluating each metric. The ISO may engage an independent consultant to review the reasonableness and comprehensiveness of the information submitted by the Developer and may rely on the independent consultant's analysis in evaluating each metric. The ISO shall select in the Public Policy Transmission Planning Report for cost allocation purposes the more efficient or cost effective transmission solution to satisfy a Public Policy Transmission Need in the manner set forth in Section 31.4.8.2 below.

#### **31.4.8.1 Metrics for Evaluating More Efficient or Cost Effective Regulated Transmission Solution to Satisfy Public Policy Transmission Need**

In determining which of the eligible proposed regulated transmission solutions is the more efficient or cost effective solution to satisfy the Public Policy Transmission Need, the ISO will consider, and will consult with the NYDPS regarding, the metrics set forth below in this Section 31.4.8.1 and rank each proposed solution based on the quality of its satisfaction of these metrics:

31.4.8.1.1 The capital cost estimates for the proposed regulated transmission solutions, including the accuracy of the proposed estimates. For this evaluation, the Developer shall provide the ISO with credible capital cost estimates for its proposed solution, with itemized supporting work sheets that identify all material and labor cost assumptions, and related drawings to the extent applicable and available. The work sheets should include an estimated quantification of cost variance, providing an assumed plus/minus range around the capital cost estimate.

The estimate shall include all components that are needed to meet the Public Policy Transmission Need. To the extent information is available, the Developer should itemize: material and labor cost by equipment, engineering and design work, permitting, site acquisition, procurement and construction work, and commissioning needed for the proposed solution, all in accordance with Good Utility Practice. For each of these cost categories, the Developer should specify the nature and estimated cost of all major project components and estimate the cost of the work to be done at each substation and/or on each feeder to physically and electrically connect each facility to the existing system. The work sheets should itemize to the extent applicable and available all equipment for: (i) the

proposed project, (ii) interconnection facilities (including Attachment Facilities and Direct Assignment Facilities), and (iii) System Upgrade Facilities, System Deliverability Upgrades, Network Upgrades, and Distribution Upgrades.

31.4.8.1.2 The cost per MW ratio of the proposed regulated transmission solutions.

For this evaluation, the ISO will first determine the present worth, in dollars, of the total capital cost of the proposed solution in current year dollars. The ISO will then determine the cost per MW ratio by dividing the capital cost by the MW value of increased transfer capability.

31.4.8.1.3 The expandability of the proposed regulated transmission solution. The ISO will consider the impact of the proposed solution on future construction. The ISO will also consider the extent to which any subsequent expansion will continue to use this proposed solution within the context of system expansion.

31.4.8.1.4 The operability of the proposed regulated transmission solution. The ISO will consider how the proposed solution may affect additional flexibility in operating the system, such as dispatch of generation, access to operating reserves, access to ancillary services, or ability to remove transmission for maintenance. The ISO will also consider how the proposed solution may affect the cost of operating the system, such as how it may affect the need for operating generation out of merit for reliability needs, reducing the need to cycle generation, or providing more balance in the system to respond to system conditions that are more severe than design conditions.

- 31.4.8.1.5 The performance of the proposed regulated transmission solution. The ISO will consider how the proposed project may affect the utilization of the system (e.g. interface flows, percent loading of facilities).
- 31.4.8.1.6 The extent to which the Developer of a proposed regulated transmission solution has the property rights, or ability to obtain the property rights, required to implement the solution. The ISO will consider whether the Developer: (i) already possesses the rights of way necessary to implement the solution; (ii) has completed a transmission routing study, which (a) identifies a specific routing plan with alternatives, (b) includes a schedule indicating the timing for obtaining siting and permitting, and (c) provides specific attention to sensitive areas (e.g., wetlands, river crossings, protected areas, and schools); or (iii) has specified a plan or approach for determining routing and acquiring property rights.
- 31.4.8.1.7 The potential issues associated with delay in constructing the proposed regulated transmission solution consistent with the major milestone schedule and the schedule for obtaining any permits and other certifications as required to timely meet the need.
- 31.4.8.1.8 The ISO shall apply any criteria specified by the Public Policy Requirement or provided by the NYPSC and perform the analyses requested by the NYPSC, to the extent compliance with such criteria and analyses are feasible.
- 31.4.8.1.9 The ISO, in consultation with stakeholders, shall, as appropriate, consider other metrics in the context of the Public Policy Requirement, such as: change in production costs; LBMP; losses; emissions; ICAP; TCC; congestion; impact on transfer limits; and deliverability.

#### **31.4.8.2 ISO Selection of More Efficient or Cost Effective Regulated Transmission Solution to Satisfy Public Policy Transmission Need**

The ISO shall identify under this Section 31.4.8 the proposed regulated transmission solution, if any, that is the more efficient or cost effective transmission solution proposed in the public policy planning cycle to satisfy the Public Policy Transmission Need. The ISO shall include the more efficient or cost effective transmission solution in the Public Policy Transmission Planning Report. The Developer of a regulated transmission project shall be eligible to recover costs for the project only if the project is selected by the ISO, provided that the Developer may recover costs as determined by the Commission. Costs will be recovered when the project is completed pursuant to a rate schedule filed with and accepted by the Commission in accordance with the cost recovery requirements set forth in Section 31.5.6.5, or as otherwise determined by the Commission. Actual project cost recovery, including any issues related to cost recovery and project cost overruns, will be submitted to and decided by the Commission.

Any selection of a project by the ISO under Section 31.4.8, including but not limited to the selection of a project that involves the physical modification of facilities within the Long Island Transmission District, shall not affect the obligation and responsibility of the project proponent to apply for, and receive, all necessary authorizations or permits required by federal or state law for such project.

#### **31.4.9 Evaluation of Impact of Proposed Transmission Solution on ISO Wholesale Electricity Markets**

The ISO shall evaluate using the metrics set forth in Section 31.4.8.1.9 the impacts on the ISO-administered wholesale electricity markets of a proposed transmission solution that the ISO



has determined under Section 31.4.6 is viable and sufficient. The ISO shall include the results of its analysis in the Public Policy Transmission Planning Report.

#### **31.4.10 Public Policy Transmission Planning Report**

Following the ISO's evaluation of the proposed solutions to Public Policy Transmission Need(s), the ISO will prepare a draft Public Policy Transmission Planning Report that sets forth the ISO's assumptions, inputs, methodologies and the results of its analyses. The draft Public Policy Transmission Planning Report will reflect any input from the NYDPS.

The ISO will include in the draft Public Policy Transmission Planning Report the list of Developers and projects that qualify pursuant to Sections 31.4.4 and 31.4.5 and will identify the proposed solutions that it has determined under Section 31.4.6 are viable and sufficient to satisfy the identified Public Policy Transmission Need(s). The draft Public Policy Transmission Planning Report shall also include the regulated transmission solution, if any, that the ISO staff recommends for selection for cost allocation purposes pursuant to Section 31.4.8 as the more efficient or cost effective transmission solution to satisfy the Public Policy Transmission Need(s). The draft Public Policy Transmission Planning Report will also include the results of the ISO's analysis of the LTPs consistent with Section 31.4.7.

The draft Public Policy Transmission Planning Report shall include a comparison of a proposed regional solution to an identified Public Policy Transmission Need to an Interregional Transmission Project, if any, identified and evaluated under the "Analysis and Consideration of Interregional Transmission Projects" section of the Interregional Planning Protocol. An Interregional Transmission Project proposed in the ISO's Public Policy Transmission Planning Process may be selected as a regulated transmission solution under the provisions of this process.

#### **31.4.10.1 Collaborative Governance Process**

The draft Public Policy Transmission Planning Report shall be submitted to both TPAS and the ESPWG for review and comment. Concurrently, the draft report will be provided to the Market Monitoring Unit for its review and consideration. The Market Monitoring Unit's evaluation will be provided to the Management Committee prior to the Management Committee's advisory vote. The ISO shall make available to any interested party sufficient information to replicate the results of the draft Public Policy Transmission Planning Report. The information made available will be electronically masked and made available pursuant to a process that the ISO reasonably determines is necessary to prevent the disclosure of any Confidential Information or Critical Energy Infrastructure Information contained in the information made available. Following completion of that review, the draft report reflecting the revisions resulting from the TPAS and ESPWG review shall be forwarded to the Business Issues Committee and the Management Committee for discussion and an advisory vote.

#### **31.4.10.2 Board Review, Consideration, and Approval of Public Policy Transmission Planning Report**

Following the Management Committee vote, the draft Public Policy Transmission Planning Report, with Business Issues Committee and Management Committee input, will be forwarded to the ISO Board for review and action. Concurrently, the Market Monitoring Unit's evaluation will be provided to the Board. The Board may approve the Public Policy Transmission Planning Report as submitted or propose modifications on its own motion, including a determination not to select a transmission project to satisfy the Public Policy Transmission Need. If any changes are proposed by the Board, the revised report shall be returned to the Management Committee for comment. The Board shall not make a final determination on a revised report until it has reviewed the Management Committee comments,

including comments regarding the Market Monitoring Unit's evaluation. Upon approval by the Board, the ISO shall issue the report to the marketplace by posting it on its website. If the ISO Board determines not to select a transmission project under this Section 31.4.10.2, the Board shall state the reasons for its determination.

The responsibilities of the Market Monitoring Unit that are addressed in the above Section of Attachment Y to the ISO OATT are also addressed in Section 30.4.6.8.5 of the Market Monitoring Plan, Attachment O to the ISO Services Tariff.

#### **31.4.11 ISO Monitoring of Selected Transmission Projects**

The ISO shall monitor transmission projects selected by the ISO as the more efficient or cost effective transmission solutions to Public Policy Transmission Needs to confirm that they continue to develop consistent with the conditions, actions, or schedules for the transmission projects.

#### **31.4.12 Posting of Approved Solutions**

The ISO shall post on its website a list of all Developers who have accepted the terms and conditions of an Article VII certificate under the New York Public Service Law, or any successor statute, or any other applicable permits to build a project in response to a need driven by a Public Policy Requirement.

#### **31.4.13 Confidentiality of Solutions**

31.4.13.1 The term "Confidential Information" shall include all proposed solutions to Public Policy Transmission Needs that are submitted to the ISO in response to a request for solutions under Section 31.4.3 of this Attachment Y if the Developer of that solution designates the solution as "Confidential Information."

31.4.13.2      The ISO shall maintain the confidentiality of the Developer's proposed solution and plans designated as "Confidential Information" until the ISO determines that the Developer's proposed solution and plans are viable and sufficient to meet the Public Policy Transmission Need and the Developer consents to the ISO's inclusion of the proposed solution in the Public Policy Transmission Planning Report. Thereafter, the ISO shall disclose the proposed solution to Market Participants. However, any preliminary cost estimates that may have been provided to the ISO shall not be disclosed.

## **31.7      Appendices**

## **APPENDIX A - REPORTING OF HISTORIC AND PROJECTED CONGESTION**

### **1.0 General**

As part of its CSPP, the ISO will prepare summaries and detailed analysis of historic and projected congestion across the NYS Transmission System. This will include analysis to identify the significant causes of historic congestion in an effort to help Market Participants and other interested parties distinguish persistent and addressable congestion from congestion that results from one time events or transient adjustments in operating procedures that may or may not recur. This information will assist Market Participants and other stakeholders to make appropriately informed decisions.

### **2.0 Definition of Cost of Congestion**

The ISO will report the cost of congestion as the change in bid production costs that results from transmission congestion. The following elements of congestion-related costs also will be reported: (i) impact on load payments; (ii) impact on generator payments; and (iii) hedged and unhedged congestion payments.

The determination of the change in bid production costs and the other elements of congestion will be based upon the difference in costs between the actual constrained system prices computed in the ISO's Day-Ahead Market and a simulation of an unconstrained system. The simulation shall be developed by the use of the PROBE model approved by the ISO Operating Committee on January 22, 2004 or by such other software as may provide the required congestion information.

### **3.0 Analysis**

Each RNA will include the ISO's summaries and detailed analysis of the prior year's congestion across the NYS Transmission System. The ISO's analysis will identify the significant causes of the historic congestion.

Each study of projected congestion for economic planning will include the results of the ISO's analysis conducted in accordance with Section 31.3.1 of this Attachment Y. The ISO's analysis will identify the significant causes of the projected congestion.

### **4.0 Detailed Cause Analysis for Unusual Events**

The ISO will perform an analysis to identify unusual events causing significant congestion levels. Such analysis will include the following elements: (i) identification of major transmission or generation outages; and (ii) quantification of the market impact of relieving historic constraints.

Some of the information necessary to this analysis may constitute critical energy infrastructure information and will need to be handled with appropriate confidentiality limitations to protect national security interests.

### **5.0 Summary Reports**

The ISO will prepare various reports of historic and projected congestion costs. Historic congestion reports will be based upon the actual congestion data from the ISO Day-Ahead Market, and will include summaries, aggregated by month and calendar year, such as: (i) NYCA; (ii) by zone; (iii) by contingency in rank order; (iv) by constraint in rank order; (v) total dollars; and (vi) number of hours. Results of projected congestion studies conducted pursuant to Section 31.3.1 of this Attachment Y will include summaries of selected additional metrics and scenarios.

These reports will be based upon the foregoing definitions of congestion.

## **APPENDIX B - PROCEDURE FOR FORECASTING THE NET REDUCTIONS IN TCC REVENUES THAT WOULD RESULT FROM A PROPOSED PROJECT**

For the purpose of determining the allocation of costs associated with a proposed project as described in Section 31.5.4.4 of this Attachment Y, the ISO shall use the procedure described herein to forecast the net reductions in TCC revenues allocated to Load in each Load Zone as a result of a proposed project.

### **Definitions**

The following definitions will apply to this appendix:

**Pre-CARIS Centralized TCC Auction:** The last Centralized TCC Auction that had been completed as of the date the input assumptions were determined for the CARIS in which the Project was identified as a candidate for development under the provisions of this Attachment Y.

**Project:** The proposed transmission project for which the evaluation of the net benefits forecasted for Load in each Load Zone, as described in Section 31.5.4.4.2 of this Attachment Y, is being performed.

**TCC Revenue Factor:** A factor that is intended to reflect the expected ratio of (1) revenue realized in the TCC auction from the sale of a TCC to (2) the Congestion Rents that a purchaser of that TCC would expect to realize. The value to be used for the TCC Revenue Factor shall be stated in the ISO Procedures.

### **Steps 1 Through 6 of the Procedure**

For each Project, the ISO will perform Steps 1 through 6 of this procedure twice for each of the ten (10) years following the proposed commercial operation date of the Project: once under the assumption that the Project is in place in each of those years, and once under the assumption that the Project is not in place in each of those years.

### ***Forecasting the Value of Grandfathered TCCs and TCC Auction Revenue***

**Step 1.** The ISO shall forecast Congestion Rents collected on the New York electricity system in each year, which shall be equal to:

(a) the product of:

(i) the forecasted Congestion Component of the Day-Ahead LBMP for each hour at each Load Zone or Proxy Generator Bus and



(ii) forecasted withdrawals scheduled in that hour in that Load Zone or Proxy Generator Bus,

summed over all locations and over all hours in that year, minus:

(b) the product of:

(i) the forecasted Congestion Component of the Day-Ahead LBMP for each hour at each Generator bus or Proxy Generator Bus and

(ii) forecasted injections scheduled in that hour at that Generator bus or Proxy Generator Bus,

summed over all locations and over all hours in that year.

**Step 2.** The ISO shall forecast:

(a) payments in each year associated with any Incremental TCCs that the ISO projects would be awarded in conjunction with that Project (which will be zero for the calculation that is performed under the assumption that the Project is not in place);

(b) payments in each year associated with any Incremental TCCs that the ISO has awarded, or that the ISO projects it would award, in conjunction with other projects that have entered commercial operation or are expected to enter commercial operation before the Project enters commercial operation; and

(c) payments that would be made to holders of Grandfathered Rights and imputed payments that would be made to the Primary Holders of Grandfathered TCCs that would be in effect in each year, under the following assumptions:

(i) all Grandfathered Rights and Grandfathered TCCs expire at their stated expiration dates;

(ii) imputed payments to holders of Grandfathered Rights are equal to the payments that would be made to the Primary Holder of a TCC with the same Point of Injection and Point of Withdrawal as that Grandfathered Right; and

(iii) in cases where a Grandfathered TCC is listed in Table 1 of Attachment M of the ISO OATT, the number of those TCCs held by their Primary Holders shall be set to the number of such TCCs remaining at the conclusion of the ETCNL reduction procedure conducted before the Pre-CARIS Centralized TCC Auction.

**Step 3.** The ISO shall forecast TCC auction revenues for each year by subtracting:

(a) the forecasted payments calculated for that year in Steps 2(a), 2(b) and 2(c) of this procedure

from:

- (b) the forecasted Congestion Rents calculated for that year in Step 1 of this procedure, and multiplying the difference by the TCC Revenue Factor.

### ***Forecasting the Allocation of TCC Auction Revenues Among the Transmission Owners***

**Step 4.** The ISO shall forecast the following:

- (a) payments in each year to the Primary Holders of Original Residual TCCs and
- (b) payments in each year to the Primary Holders of TCCs that correspond to the amount of ETCNL remaining at the conclusion of the ETCNL reduction procedure conducted before the Pre-CARIS Centralized TCC Auction,

and multiply each by the TCC Revenue Factor to determine the forecasted payments to the Primary Holders of Original Residual TCCs and the Transmission Owners that have been allocated ETCNL.

**Step 5.** The ISO shall forecast residual auction revenues for each year by subtracting:

- (a) the sum of the forecasted payments for each year to the Primary Holders of Original Residual TCCs and the Transmission Owners that have been allocated ETCNL, calculated in Step 4 of this procedure

from:

- (b) forecasted TCC auction revenues for that year calculated in Step 3 of this procedure.

**Step 6.** The ISO shall forecast each Transmission Owner's share of residual auction revenue for each year by multiplying:

- (a) the forecast of residual auction revenue calculated in Step 5 of this procedure and
- (b) the ratio of:
  - (i) the amount of residual auction revenue allocated to that Transmission Owner in the Pre-CARIS Centralized TCC Auction to
  - (ii) the total amount of residual auction revenue allocated in the Pre-CARIS Centralized TCC Auction.

### **Steps 7 Through 10 of the Procedure**

The ISO will perform Steps 7 through 10 of this procedure once for each of the ten (10) years following the proposed commercial operation date of the Project, using the results of the preceding calculations performed both under the assumption that the Project is in place in each of those years, and under the assumption that the Project is not in place in each of those years.

### ***Forecasting the Impact of the Project on TSC Offsets and the NTAC Offset***

**Step 7.** The ISO shall calculate the forecasted net impact of the Project on the TSC offset for each megawatt-hour of electricity consumed by Load in each Transmission District (other than the NYPA Transmission District) in each year by:

(a) summing the following, each forecasted for that Transmission District for that year under the assumption that the Project is in place:

(i) forecasted Congestion Rents associated with any Incremental TCCs that the ISO has awarded, or that the ISO projects it would award, as calculated in Step 2(b) of this procedure, in conjunction with other projects that have entered commercial operation or are expected to enter commercial operation before the Project enters commercial operation, if those Congestion Rents would affect the TSC for that Transmission District;

(ii) forecasted Congestion Rents associated with any Grandfathered TCCs and forecasted imputed Congestion Rents associated with any Grandfathered Rights held by the Transmission Owner serving that Transmission District that would be paid to that Transmission Owner for that year, as calculated in Step 2(c) of this procedure, if those Congestion Rents would affect the TSC for that Transmission District;

(iii) the payments that are forecasted to be made for that year to the Primary Holders of Original Residual TCCs and ETCNL that have been allocated to the Transmission Owner serving that Transmission District, as calculated in Step 4 of this procedure; and

(iv) that Transmission District's forecasted share of residual auction revenues for that year, as calculated in Step 6 of this procedure for the Transmission Owner serving that Transmission District;

(b) subtracting the sum of items (i) through (iv) above, each forecasted for that Transmission District for that year under the assumption that the Project is not in place; and

(c) dividing this difference by the amount of Load forecasted to be served in that Transmission District in that year, stated in terms of megawatt-hours, net of any Load served by municipally owned utilities that is not subject to the TSC.

**Step 8.** The ISO shall calculate the forecasted net impact of the Project on the NTAC offset for each megawatt-hour of electricity consumed by Load in each year by:

(a) summing the following, each forecasted for that year under the assumption that the Project is in place:

(i) forecasted Congestion Rents associated with any Incremental TCCs that the ISO has awarded, or that the ISO projects it would award, as calculated in Step 2(b) of this procedure, in conjunction with other projects that have entered commercial operation

or are expected to enter commercial operation before the Project enters commercial operation, if those Congestion Rents would affect the NTAC;

(ii) forecasted Congestion Rents associated with any Grandfathered TCCs and forecasted imputed Congestion Rents associated with any Grandfathered Rights held by NYPA that would be paid to NYPA for that year, as calculated in Step 2(c) of this procedure, if those Congestion Rents would affect the NTAC;

(iii) the payments that are forecasted to be made for that year to NYPA in association with Original Residual TCCs allocated to NYPA, as calculated in Step 4 of this procedure; and

(iv) NYPA's forecasted share of residual auction revenues for that year, as calculated in Step 6 of this procedure;

(b) subtracting the sum of items (i) through (iv) above, each forecasted for that year under the assumption that the Project is not in place; and

(c) dividing this difference by the amount of Load expected to be served in the NYCA in that year, stated in terms of megawatt-hours, net of any Load served by municipally owned utilities that is not subject to the NTAC.

### ***Forecasting the Net Impact of the Project on TCC Revenues Allocated to Load in Each Zone***

**Step 9.** The ISO shall calculate the forecasted net impact of the Project in each year in each Load Zone on payments made in conjunction with TCCs and Grandfathered Rights that benefit Load but which do not affect TSCs or the NTAC, which shall be the sum of:

(a) Forecasted Congestion Rents paid or imputed to municipally owned utilities serving Load in that Load Zone that own Grandfathered Rights or Grandfathered TCCs that were not included in the calculation of the TSC offset in Step 7(a)(ii) of this procedure or the NTAC offset in Step 8(a)(ii) of this procedure, which the ISO shall calculate by:

(i) summing forecasted Congestion Rents that any such municipally owned utilities serving Load in that Load Zone would be paid for that year in association with any such Grandfathered TCCs and any forecasted imputed Congestion Rents that such a municipally owned utility would be paid for that year in association with any such Grandfathered Rights, as calculated in Step 2(c) of this procedure under the assumption that the Project is in place; and

(ii) subtracting forecasted Congestion Rents that any such municipally owned utilities would be paid for that year in association with any such Grandfathered TCCs, and any forecasted imputed Congestion Rents that such a municipally owned utility would be paid for that year in association with any such Grandfathered Rights, as calculated in Step 2(c) of this procedure under the assumption that the Project is not in place.

(b) Forecasted Congestion Rents collected from Incremental TCCs awarded in conjunction with projects that were previously funded through this procedure, if those Congestion Rents are used to reduce the amount that Load in that Load Zone must pay to fund such projects, which the ISO shall calculate by:

(i) summing forecasted Congestion Rents that would be collected for that year in association with any such Incremental TCCs, as calculated in Step 2(b) of this procedure under the assumption that the Project is in place; and

(ii) subtracting forecasted Congestion Rents that would be collected for that year in association with any such Incremental TCCs, as calculated in Step 2(b) of this procedure under the assumption that the Project is not in place.

**Step 10.** The ISO shall calculate the forecasted net reductions in TCC revenues allocated to Load in each Load Zone as a result of a proposed Project by summing the following:

(a) the product of:

(i) the forecasted net impact of the Project on the TSC offset for each megawatt-hour of electricity consumed by Load, as calculated for each Transmission District (other than the NYPA Transmission District) in Step 7 of this procedure; and

(ii) the number of megawatt-hours of energy that are forecasted to be consumed by Load in that year, in the portion of that Transmission District that is in that Load Zone, for Load that is subject to the TSC;

summed over all Transmission Districts;

(b) the product of:

(i) the forecasted net impact of the Project on the NTAC offset for each megawatt-hour of electricity consumed by Load, as calculated in Step 8 of this procedure; and

(ii) the number of megawatt-hours of energy that are forecasted to be consumed by Load in that year in that Load Zone, for Load that is subject to the NTAC; and

(c) the forecasted net impact of the Project on payments and imputed payments made in conjunction with TCCs and Grandfathered Rights that benefit Load but which do not affect TSCs or the NTAC, as calculated in Step 9 of this procedure.

### **Additional Notes Concerning the Procedure**

For the purposes of Steps 2(c) and 4(b) of this procedure, the ISO will utilize the currently effective version of Attachment L of the ISO OATT to identify Existing Transmission Agreements and Existing Transmission Capacity for Native Load.

Each Transmission Owner, other than NYPA, will inform the ISO of any Grandfathered Rights and Grandfathered TCCs it holds whose Congestion Rents should be taken into account in Step 7 of this procedure because those Congestion Rents affect its TSC.

NYPA will inform the ISO of any Grandfathered Rights and Grandfathered TCCs it holds whose Congestion Rents should be taken into account in Step 8 of this procedure because those Congestion Rents affect the NTAC.

## **APPENDIX C – DEVELOPMENT AGREEMENT**

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**THIS DEVELOPMENT AGREEMENT** (“Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_ 20\_\_, by and between \_\_\_\_\_, a [corporate description] organized and existing under the laws of the State/Commonwealth of \_\_\_\_\_ (“Developer”), and 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”). Developer or NYISO each may be referred to as a “Party” or collectively referred to as the “Parties.”

## **RECITALS**

**WHEREAS**, the NYISO administers the Comprehensive System Planning Process (“CSPP”) in the New York Control Area pursuant to the terms set forth in Attachment Y of the NYISO’s Open Access Transmission Tariff (“OATT”), as accepted by the Federal Energy Regulatory Commission (“FERC”);

**WHEREAS**, as part of the CSPP, the NYISO administers a reliability planning process pursuant to which the reliability of the New York State Bulk Power Transmission Facilities is assessed over a ten-year Study Period; Reliability Need(s) that may arise over this period are identified; proposed solutions to the identified need(s) are solicited by the NYISO; and the more efficient or cost-effective transmission solution to satisfy the identified need(s) is selected by the NYISO and reported in the NYISO’s Comprehensive Reliability Plan report;

**WHEREAS**, the Developer has proposed an alternative regulated transmission solution to satisfy an identified Reliability Need (“Transmission Project”);

**WHEREAS**, the NYISO has selected the Developer’s Transmission Project as the more efficient or cost-effective transmission solution to satisfy an identified Reliability Need and has directed the Developer to proceed with the Transmission Project pursuant to Section 31.2.8.1 of Attachment Y of the OATT;

**WHEREAS**, the Developer has agreed to obtain the required authorizations and approvals from Governmental Authorities needed for the Transmission Project, to develop and construct the Transmission Project, and to abide by the related requirements in Attachment Y of the OATT, the ISO Tariffs, and the ISO Procedures;

**WHEREAS**, the Developer and the NYISO have agreed to enter into this Agreement pursuant to Section 31.2.8.1.6 of Attachment Y of the OATT for the purpose of ensuring that the Transmission Project will be constructed and in service in time to satisfy the Reliability Need (“Required Project In-Service Date”); and

**WHEREAS**, the Developer has agreed to construct, and the NYISO has requested that the Developer proceed with construction of, the Transmission Project to address the identified Reliability Need by the Required Project In-Service Date.

**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 31.1.1 of Attachment Y of the OATT or, if not therein, in Article 1 of the OATT.

**Advisory Milestones** shall mean the milestones set forth in the Development Schedule in Attachment C to this Agreement that are not Critical Path Milestones.

**Applicable Laws and Regulations** shall mean: (i) 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, and (ii) all applicable requirements of the ISO Tariffs, ISO Procedures, and ISO Related Agreements.

**Applicable Reliability Organizations** shall mean the NERC, the NPCC, and the NYSRC.

**Applicable Reliability Requirements** shall mean the requirements, criteria, rules, standards, and guidelines, as they may be amended and modified and in effect from time to time, of: (i) the Applicable Reliability Organizations, (ii) the Connecting Transmission Owner(s), (iii) *[to insert the name(s) of any other Transmission Owners or developers whose transmission facilities the NYISO has determined may be impacted by the Transmission Project]*, and (iv) any Affected System Operator as defined in Attachment X of the OATT; *provided, however*, that no Party shall waive its right to challenge the applicability or validity of any requirement, criteria, rule, standard, or guideline as applied to it in the context of this Agreement.

**Breach** shall have the meaning set forth in Article 7.1 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.

**Change of Control** shall mean a change in ownership of more than 50% of the membership or ownership interests or other voting securities of the Developer to a third party in one or more related transactions, or any other transaction that has the effect of transferring control of the Developer to a third party.

**Confidential Information** shall mean any information that is defined as confidential by Article 11.2.

**Connecting Transmission Owner** shall have the meaning set forth in Attachment X of the OATT.

**Critical Path Milestones** shall mean the milestones identified as such in the Development Schedule in Attachment C to this Agreement that must be met for the Transmission Project to be constructed and operating by the Required Project In-Service Date.

**Default** shall mean the failure of a Party in Breach of this Agreement to cure such Breach in accordance with Article 7.2 of this Agreement.

**Developer** shall have the meaning set forth in the introductory paragraph.

**Development Schedule** shall mean the schedule of Critical Path Milestones and Advisory Milestones set forth in Appendix C to this Agreement.

**Distribution System** shall mean the Transmission Owner's facilities and equipment used to distribute electricity that are subject to FERC jurisdiction, and are subject to the NYISO's Standard Large Facility Interconnection Procedures or Small Generator Interconnection Procedures under FERC Order Nos. 2003 and/or 2006. The term Distribution System shall not include LIPA's distribution facilities.

**Effective Date** shall mean the date upon which this Agreement becomes effective as determined in Article 2.1 of this Agreement.

**FERC** shall mean the Federal Energy Regulatory Commission or its successor.

**Force Majeure** shall mean any cause or occurrence affecting the ability of a Party hereto to perform its obligations under this Agreement, which cause or occurrence is beyond the reasonable control of the Party affected, not reasonably foreseeable by such Party, not due to an act or omission of the Party affected, and which could not have been avoided by the exercise of reasonable diligence.

**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 practice, 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, public authority, 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 the NYISO, the Developer, the Connecting Transmission Owner(s), or any Affiliate thereof.

**In-Service Date** shall mean that date upon which the Transmission Project is available to transmit electricity consistent with the Project Description set forth in Appendix A to this Agreement and available to provide Transmission Service under the NYISO Tariffs.

**ISO/TO Agreement** shall mean the Agreement Between the New York Independent System Operator and Transmission Owners, as filed with and accepted by the Commission in *Cent. Hudson Gas & Elec. Corp., et al.*, 88 FERC ¶ 61,138 (1999) in Docket Nos. ER97-1523, *et al.*, and as amended or supplemented from time to time, or any successor agreement thereto.

**New York State Transmission System** shall mean the entire New York State electrical 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.

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

**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.

**OATT** shall mean the NYISO's Open Access Transmission Tariff, as filed with the Commission, and as amended or supplemented from time to time, or any successor tariff thereto.

**Party or Parties** shall mean the NYISO, the Developer, or both.

**Point of Interconnection** shall mean the point or points at which the Developer's Transmission Project will interconnect to the New York State Transmission System or Distribution System.

**Project Description** shall mean the description of the Transmission Project set forth in Appendix A to this Agreement that is consistent with the project selected by the NYISO Board of Directors as the more efficient or cost-effective transmission solution to the identified Reliability Need.

**Reliability Planning Process Manual** shall mean the NYISO's manual adopted by the NYISO stakeholder Operating Committee describing the NYISO's procedures for implementing the reliability planning process component of the NYISO's Comprehensive System Planning Process, as the manual is amended or supplemented from time to time, or any successor manual thereto.

**Required Project In-Service Date** shall mean the In-Service Date by which the Transmission Project must be constructed and operating to satisfy the Reliability Need, as specified in the Development Schedule set forth in Appendix C to this Agreement.

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

**Significant Modification** shall mean a Developer's proposed modification to its Transmission Project that: (i) could impair the Transmission Project's ability to meet the identified Reliability Need, (ii) could delay the In-Service Date of the Transmission Project beyond the Required Project In-Service Date, or (iii) would constitute a material change to the project information submitted by the Developer under Attachment Y of the OATT for use by the NYISO in its selection of the Transmission Project as the more efficient or cost-effective transmission solution to meet the identified Reliability Need.

**Scope of Work** shall mean the description of the work required to implement the Transmission Project as set forth in Appendix B to this Agreement. The Scope of Work shall be drawn from the Developer's submission of the Required Data Submission for Solutions to Reliability Needs, which is set forth in Attachment C of the NYISO Reliability Planning Manual, as may be updated as agreed upon by the Parties, and shall include, but not be limited to, a description of: the acquisition of required rights-of-ways, the work associated with the licensing, design, financing, environmental and regulatory approvals, engineering, procurement of equipment, construction, installation, testing, and commissioning of the Transmission Project; the relevant technical requirements, standards, and guidelines pursuant to which the work will be performed; the major equipment and facilities to be constructed and/or installed in connection with the Transmission Project, and the cost estimates for the work associated with the Transmission Project.

**Transmission Owner Technical Standards** shall mean the technical requirements and standards (*e.g.*, equipment or facilities electrical and physical capabilities, design characteristics, or construction requirements), as those requirements and standards are amended and modified and in effect from time to time, of: (i) the Connecting Transmission Owner(s), (ii) *[to insert the name(s) of any other Transmission Owners or developers whose transmission facilities the NYISO has determined may be impacted by the Transmission Project]*, and (iii) any Affected System Operator as defined in Attachment X of the OATT.

**Transmission Project** shall mean Developer's proposed alternative regulated transmission solution selected by the NYISO as the more efficient or cost-effective transmission solution to satisfy a Reliability Need as described in the Project Description set forth in Appendix A to this Agreement..

## **ARTICLE 2. EFFECTIVE DATE AND TERM**

### **2.1. Effective Date**

This Agreement shall become effective on the date it has been executed by all Parties; *provided, however*, if the Agreement is filed with FERC as a non-conforming or an unexecuted agreement pursuant to Section 31.2.8.1.6 of Attachment Y of the OATT, the Agreement shall become effective on the effective date accepted by FERC.

## **2.2. Filing**

If the Agreement must be filed with FERC pursuant to Section 31.2.8.1.6 of Attachment Y of the OATT, the NYISO shall file this Agreement for acceptance with FERC within the timeframe set forth for the filing in Section 31.2.8.1.6 of Attachment Y of the OATT. The Developer shall cooperate in good faith with the NYISO with respect to such filing and provide any information requested by the NYISO to comply with Applicable Laws and Regulations. Any Confidential Information shall be treated in accordance with Article 11.2 of this Agreement.

## **2.3. Term of Agreement**

Subject to the termination provisions in Article 8 of this Agreement, this Agreement shall remain in effect from the Effective Date until: (i) the Developer executes an operating agreement with the NYISO, and (ii) the Transmission Project: (A) has been completed in accordance with the terms and conditions of this Agreement, and (B) is in-service; *provided, however*, that the terms of this Agreement shall continue in effect to the extent provided in Article 14 of this Agreement.

# **ARTICLE 3. TRANSMISSION PROJECT DEVELOPMENT AND CONSTRUCTION**

## **3.1. Application for Required Authorizations and Approvals**

The Developer shall timely seek and obtain all authorizations and approvals from Governmental Authorities required to develop, construct, and operate the Transmission Project by the Required Project In-Service Date. The required authorizations and approvals shall be listed in the Scope of Work in Appendix B to this Agreement. The Developer shall seek and obtain the required authorizations and approvals in accordance with the milestones set forth in the Development Schedule in Appendix C to this Agreement. The milestones for obtaining the required authorizations and approvals shall be included in the Development Schedule as Critical Path Milestones and Advisory Milestones, as designated by the Parties under Article 3.3.1. The Developer shall notify the NYISO in accordance with the notice requirements in Article 3.3 if it has reason to believe that it may be unable to timely obtain or is denied an approval or authorization by a Governmental Authority required for the development, construction, or operation of the Transmission Project, or if such approval or authorization is withdrawn or modified.

## **3.2. Development and Construction of Transmission Project**

The Developer shall design, engineer, procure, install, construct, test and commission the Transmission Project in accordance with: (i) the terms of this Agreement, including, but not limited to, the Project Description in Appendix A to this Agreement, the Scope of Work in Appendix B to this Agreement, and the Development Schedule in Appendix C to this Agreement; (ii) Applicable Reliability Requirements; (iii) Applicable Laws and Regulations; (iv) Good Utility Practice; (v) the Transmission Owner Technical Standards, and (vi) any

interconnection agreement(s) entered into by and among the NYISO, Developer, and Connecting Transmission Owner(s) for the Transmission Project to interconnect to the New York State Transmission System or Distribution System.

### **3.3. Milestones**

- 3.3.1. The NYISO shall provide the Developer with the Required Project In-Service Date in accordance with Section 31.2.8.1.6 of Attachment Y of the OATT. Prior to executing and/or filing this Agreement with FERC, the NYISO and the Developer shall agree to the Critical Path Milestones and Advisory Milestones set forth in the Development Schedule in Appendix C to this Agreement for the development, construction, and operation of the Transmission Project by the Required Project In-Service Date in accordance with Section 31.2.8.1.6 of Attachment Y of the OATT.
- 3.3.2. The Developer shall meet the Critical Path Milestones in accordance with the Development Schedule set forth in Appendix C to this Agreement. The Developer's inability or failure to meet a Critical Path Milestone specified in the Development Schedule, as such Critical Path Milestone may be amended with the agreement of the NYISO under this Article 3.3, shall constitute a Breach of this Agreement under Article 7.1.
- 3.3.3. The Developer shall notify the NYISO thirty (30) Calendar Days prior to the date of each Critical Path Milestone specified in the Development Schedule whether it will meet the Critical Path Milestone by the specified date; *provided*, however, that notwithstanding this requirement:
  - (i) the Developer shall notify the NYISO as soon as reasonably practicable, and no later than fifteen (15) Calendar Days, following the Developer's discovery of a potential delay in meeting a Critical Path Milestone, including a delay caused by a Force Majeure event; and
  - (ii) the NYISO may request in writing at any time, and Developer shall submit to the NYISO within five (5) Business Days of the request, a written response indicating whether the Developer will meet, or has met, a Critical Path Milestone and providing all required supporting documentation for its response.
- 3.3.4. The Developer shall not make a change to a Critical Path Milestone without the prior written consent of the NYISO. To request a change to a Critical Path Milestone, the Developer must: (i) inform the NYISO in writing of the proposed change to the Critical Path Milestone and the reason for the change, including the occurrence of a Force Majeure event, (ii) submit to the NYISO a revised Development Schedule containing any necessary changes to Critical Path Milestones and Advisory Milestones that provide for the Transmission Project to be completed and achieve its In-Service Date no later than the Required Project In-Service Date, and (iii) submit a notarized officer's certificate certifying the Developer's capability to complete the Transmission Project in accordance with the modified schedule. If the Developer: (i) must notify the NYISO of a potential delay in meeting a Critical Path Milestone in accordance with one of the notification



requirements in Section 3.3.3 or (ii) is requesting a change to a Critical Path Milestone to cure a Breach in Section 7.2, the Developer shall submit any request to change the impacted Critical Path Milestone(s) within the relevant notification timeframe set forth in Section 3.3.3 or the cure period set forth in Section 7.2, as applicable. The NYISO will promptly review Developer's requested change. The Developer shall provide the NYISO with all required information to assist the NYISO in making its determination and shall be responsible for the costs of any study work the NYISO performs in making its determination. If the Developer demonstrates to the NYISO's satisfaction that the delay in meeting a Critical Path Milestone will not delay the Transmission Project's In-Service Date beyond the Required Project In-Service Date, then the NYISO's consent to extending the Critical Path Milestone date will not be unreasonably withheld, conditioned, or delayed. The NYISO's written consent to a revised Development Schedule proposed by the Developer will satisfy the amendment requirements in Article 15.7, and the NYISO will not be required to file the revised Development Schedule with FERC.

- 3.3.5. Within fifteen (15) Calendar Days of the Developer's discovery of a potential delay in meeting an Advisory Milestone, the Developer shall inform the NYISO of the potential delay and describe the impact of the delay on meeting the Critical Path Milestones. The Developer may extend an Advisory Milestone date upon informing the NYISO of such change; *provided, however*, that if the change to the Advisory Milestone will delay a Critical Path Milestone, the NYISO's written consent to make such change is required as described in Article 3.3.4.

### **3.4. Modifications to Transmission Project**

The Developer shall not make a Significant Modification to the Transmission Project without the prior written consent of the NYISO, including, but not limited to, modifications necessary for the Developer to obtain required approvals or authorizations from Governmental Authorities. The NYISO's determination regarding a Significant Modification to the Transmission Project under this Agreement shall be separate from, and shall not replace, the NYISO's review and determination of Material Modifications to the Transmission Project under Attachment X of the OATT. The Developer may request that the NYISO review whether a modification to the Transmission Project would constitute a Significant Modification. The Developer shall provide the NYISO with all required information to assist the NYISO in making its determination regarding a Significant Modification and shall be responsible for the costs of any study work the NYISO must perform in making its determination. If the Developer demonstrates to the NYISO's satisfaction that its proposed Significant Modification: (i) does not impair the Transmission Project's ability to satisfy the identified Reliability Need, (ii) does not delay the In-Service Date of the Transmission Project beyond the Required Project In-Service Date, and (iii) does not change the grounds upon which the NYISO selected the Transmission Project as the more efficient or cost-effective transmission solution to the identified Reliability Need, the NYISO's consent to the Significant Modification will not be unreasonably withheld, conditioned, or delayed. The NYISO's performance of this review shall not constitute its consent to delay the completion of any Critical Path Milestone.

### **3.5. Billing and Payment**

The NYISO shall charge, and the Developer shall pay, the actual costs of: (i) any study work performed by the NYISO or its subcontractor(s) under Articles 3.3 and 3.4, or (ii) any assessment of the Transmission Project by the NYISO or its subcontractor(s) under Article 3.7. The NYISO will invoice Developer on a monthly basis for the expenses incurred by the NYISO each month, including estimated subcontractor costs, computed on a time and material basis. The Developer shall pay invoiced amounts to the NYISO within thirty (30) Calendar Days of the NYISO's issuance of a monthly invoice. In the event the Developer disputes an amount to be paid, the Developer shall pay the disputed amount to the NYISO, pending resolution of the dispute. To the extent the dispute is resolved in the Developer's favor, the NYISO will net the disputed amount, including interest calculated from Developer's date of payment at rates applicable to refunds under FERC regulations, against any current amounts due from the Developer and pay the balance to the Developer. This Article 3.5 shall survive the termination, expiration, or cancellation of this Agreement.

### **3.6. Project Monitoring**

The Developer shall provide regular status reports to the NYISO in accordance with the monitoring requirements set forth in the Development Schedule, the Reliability Planning Process Manual and Attachment Y of the OATT.

### **3.7. Right to Inspect**

Upon reasonable notice, the NYISO or its subcontractor shall have the right to inspect the Transmission Project for the purpose of assessing the progress of the development and construction of the Transmission Project and satisfaction of milestones. The exercise or non-exercise by the NYISO or its subcontractor of this right shall not be construed as an endorsement or confirmation of any element or condition of the development or construction of the Transmission Project, or as a warranty as to the fitness, safety, desirability or reliability of the same. Any such inspection shall take place during normal business hours, shall not interfere with the construction of the Transmission Project and shall be subject to such reasonable safety and procedural requirements as the Developer shall specify.

### **3.8. Exclusive Responsibility of Developer**

As between the Parties, the Developer shall be solely responsible for all planning, design, engineering, procurement, construction, installation, management, operations, safety, and compliance with Applicable Laws and Regulations, Applicable Reliability Requirements, and Transmission Owner Technical Standards associated with the Transmission Project, including, but not limited to, scheduling, meeting Critical Path Milestones and Advisory Milestones, timely requesting review and consent to any project modifications, and obtaining all necessary permits, siting, and other regulatory approvals. The NYISO shall have no responsibility and shall have no liability regarding the management or supervision of the Developer's development of the

Transmission Project or the compliance of the Developer with Applicable Laws and Regulations, Applicable Reliability Requirements, and Transmission Owner Technical Standards. The NYISO shall cooperate with the Developer in good faith in providing information to assist the Developer in obtaining all approvals and authorizations from Governmental Authorities required to develop, construct, and operate the Transmission Project by the Required Project In-Service Date, including information describing the NYISO's basis for selecting the Transmission Project as the more efficient or cost-effective transmission solution to satisfy an identified Reliability Need.

### **3.9. Subcontractors**

- 3.9.1. Nothing in this Agreement shall prevent a Party from using the services of any subcontractor as it deems appropriate to perform its obligations under this Agreement; provided, *however*, that each Party shall require, and shall provide in its contracts with its subcontractors, that its subcontractors comply with all applicable terms and conditions of this Agreement in providing such services; *provided, further*, that each Party shall remain primarily liable to the other Party for the performance of such subcontractor.
- 3.9.2. The creation of any subcontractor 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 Party for the acts or omissions of any subcontractor the hiring Party hires as if no subcontract had been made.

### **3.10. No Services or Products Under NYISO Tariffs**

This Agreement does not constitute a request for, nor agreement by the NYISO to provide, Transmission Service, interconnection service, Energy, Ancillary Services, Installed Capacity, Transmission Congestion Contracts or any other services or products established under the ISO Tariffs. If Developer wishes to receive or supply such products or services, the Developer must make application to do so under the applicable provisions of the ISO Tariffs, ISO Related Agreements, and ISO Procedures.

### **3.11. Tax Status**

Each Party shall cooperate with the other Party to maintain each Party's tax status to the extent the Party's tax status is impacted by this Agreement. Nothing in this agreement is intended to affect the tax status of any Party.

## **ARTICLE 4. COORDINATION WITH THIRD PARTIES**

### **4.1. Interconnection Requirements for Transmission Project**

The Developer shall satisfy all requirements set forth in Attachments X and S of the OATT applicable to a "Merchant Transmission Facility" to interconnect the Transmission

Project to the New York State Transmission System or Distribution System by the Required Project In-Service Date, including, but not limited to, submitting an Interconnection Request, participating in all necessary studies, and executing, and/or requesting the NYISO to file for FERC acceptance, an interconnection agreement; *provided, however*, if the Developer is a Transmission Owner, the Developer shall instead satisfy all applicable transmission expansion requirements set forth in Sections 3.7 and 4.5 of the OATT.

If the NYISO determines that the proposed interconnection of a Large Generating Facility, Small Generating Facility, or Merchant Transmission Facility under Attachments X or Z of the OATT could affect the Transmission Project, the Developer shall participate in the interconnection process as an Affected System Operator in accordance with the requirements set forth in Section 30.3.5 of Attachment X of the OATT. If the NYISO determines that a proposed transmission expansion under Sections 3.7 and 4.5 of the OATT could affect the Transmission Project, the Developer shall participate in the transmission expansion process as an affected Transmission Owner in accordance with the requirements set forth in Sections 3.7 and 4.5 of the OATT.

#### **4.2. Interconnection with Affected System**

If part of the Transmission Project will affect the facilities of an Affected System as defined in Attachment X of the OATT, the Developer shall satisfy the requirements of the Affected System Operator, as defined in Attachment X of the OATT, for the interconnection of the Transmission Project.

#### **4.3. Coordination of Interregional Transmission Project**

If the Transmission Project is or seeks to become an Interregional Transmission Project selected by the NYISO and by the transmission provider in one or more neighboring transmission planning region(s) to address an identified Reliability Need, the Developer shall coordinate its development and construction of the Transmission Project in New York with its responsibilities in the relevant neighboring transmission planning region(s) and must satisfy the applicable planning requirements of the relevant transmission planning region(s).

### **ARTICLE 5. OPERATION REQUIREMENTS FOR THE TRANSMISSION PROJECT**

If the Developer is a Transmission Owner, the Developer shall comply with the operating requirements set forth in the ISO/TO Agreement. If the Developer is not a Transmission Owner, the Developer shall: (i) execute, and/or obtain a FERC accepted, interconnection agreement for the Transmission Project in accordance with the requirements in Attachment X of the OATT; (ii) satisfy the applicable requirements set forth in the interconnection agreement and ISO Procedures for the safe and reliable operation of the Transmission Project consistent with the Project Description set forth in Appendix A by the In-Service Date, including satisfying all applicable testing, metering, communication, system protection, switching, start-up, and synchronization requirements; (iii) enter into required operating protocols as determined by the NYISO; (iv) register with NERC as a Transmission Owner and be certified as a Transmission

Operator, and comply with all NERC Reliability Standards and Applicable Reliability Requirements applicable to Transmission Owners and Transmission Operators; and (v) prior to energizing the Transmission Project, execute an operating agreement with the NYISO.

## **ARTICLE 6. INSURANCE**

The Developer shall, at its own expense, maintain in force throughout the period of this Agreement, and until released by the NYISO, the following minimum insurance coverages, with insurers authorized to do business in the state of New York and rated “A- (minus) VII” or better by A.M. Best & Co. (or if not rated by A.M. Best & Co., a rating entity acceptable to the NYISO):

- 6.1 Workers’ Compensation and Employers’ Liability Insurance providing statutory benefits in accordance with the laws and regulations of New York State under NCCI Coverage Form No. WC 00 00 00, as amended or supplemented from time to time, or an equivalent form acceptable to the NYISO; *provided, however*, if the Transmission Project will be located in part outside of New York State, Developer shall maintain such Employers’ Liability Insurance coverage with a minimum limit of One Million Dollars (\$1,000,000).
- 6.2 Commercial General Liability Insurance – under ISO Coverage Form No. CG 00 01 (04/13), as amended or supplemented from time to time, or an equivalent form acceptable to the NYISO – with minimum limits of Two Million Dollars (\$2,000,000) per occurrence/Four Million Dollars (\$4,000,000) aggregate combined single limit for personal injury, bodily injury, including death and property damage.
- 6.3 Commercial Business Automobile Liability Insurance – under ISO Coverage Form No. CA 00 01 10 13, as amended or supplemented from time to time, or an equivalent form acceptable to the NYISO – 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.
- 6.4 Umbrella/Excess Liability Insurance over and above the Employers’ Liability, Commercial General Liability, and Commercial Business Automobile Liability Insurance coverage, with a minimum combined single limit of Twenty-Five Million Dollars (\$25,000,000) per occurrence/Twenty-Five Million Dollars (\$25,000,000) aggregate.
- 6.5 Builder’s Risk Insurance in a reasonably prudent amount consistent with Good Utility Practice.
- 6.6 The Commercial General Liability Insurance, Commercial Business Automobile Liability Insurance and Umbrella/Excess Liability Insurance policies of the Developer shall name the NYISO and its respective directors, officers, agents, servants and employees (“NYISO Parties”) as additional insureds. For Commercial General Liability Insurance, the Developer shall name the NYISO Parties as additional insureds under the following ISO form numbers, as amended or supplemented from time to time, or an equivalent form acceptable to the NYISO: (i) ISO Coverage Form No. CG 20 37 04 13 (“Additional

Insured – Owners, Lessees or Contractors – Completed Operations”) and (ii) (A) ISO Coverage Form No. CG 20 10 04 13 (“Additional Insured – Owner, Lessees or Contractors – Scheduled Person or Organization”), or (B) ISO Coverage Form No. CG 20 26 04 13 (“Additional Insured – Designated Person or Organization”). For Commercial Business Automobile Liability Insurance, the Developer shall name the NYISO Parties as additional insureds under ISO Coverage Form No. CA 20 48 10 13 (“Designated Insured for Covered Autos Liability Coverage”), as amended or supplemented from time to time, or an equivalent form acceptable to the NYISO.

- 6.7 All policies shall contain provisions whereby the insurers waive all rights of subrogation in accordance with the provisions of this Agreement against the NYISO Parties and provide thirty (30) Calendar days advance written notice to the NYISO Parties prior to non-renewal, cancellation or any material change in coverage or condition.
- 6.8 The Commercial General Liability Insurance, Commercial Business Automobile Liability Insurance and Umbrella/Excess 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. The Developer shall be responsible for its respective deductibles or retentions.
- 6.9 The Commercial General Liability Insurance, Commercial Business Automobile Liability Insurance and Umbrella/Excess Liability Insurance policies, if written on a Claims First Made Basis in a form acceptable to the NYISO, 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 an extended reporting period (ERP) or a separate policy, if agreed by the Developer and the NYISO.
- 6.10 The requirements contained herein as to the types and limits of all insurance to be maintained by the Developer are not intended to and shall not in any manner, limit or qualify the liabilities and obligations assumed by the Developer under this Agreement.
- 6.11 The Developer shall provide certification of all insurance required in this Agreement, executed by each insurer or by an authorized representative of each insurer: (A) within ten (10) days following: (i) execution of this Agreement, or (ii) the NYISO’s date of filing this Agreement if it is filed unexecuted with FERC, and (B) as soon as practicable after the end of each fiscal year or at the renewal of the insurance policy and in any event within thirty (30) days thereafter.
- 6.12 Notwithstanding the foregoing, the Developer may self-insure to meet the minimum insurance requirements of Articles 6.2 through 6.10 to the extent it maintains a self-insurance program; *provided that*, the Developer’s senior 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 6.2 through 6.10. For any period of time that the Developer’s senior debt is unrated by Standard & Poor’s or is rated at less than

investment grade by Standard & Poor's, the Developer shall comply with the insurance requirements applicable to it under Articles 6.2 through 6.11. In the event that the Developer is permitted to self-insure pursuant to this Article 6.12, it shall notify the NYISO 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 6.11.

- 6.13 The Developer and the NYISO 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.
- 6.14 Notwithstanding the minimum insurance coverage types and amounts described in this Article 6, the Developer: (i) shall also maintain any additional insurance coverage types and amounts required under Applicable Laws and Regulations, including New York State law, and under Good Utility Practice for the work performed by the Developer and its subcontractors under this Agreement, and (ii) shall satisfy the requirements set forth in Articles 6.6 through 6.13 with regard to the additional insurance coverages, including naming the NYISO Parties as additional insureds under these policies.

## **ARTICLE 7. BREACH AND DEFAULT**

### **7.1. Breach**

A Breach of this Agreement shall occur when: (i) the Developer notifies the NYISO in writing that it will not proceed to develop the Transmission Project for reasons other than those set forth in Articles 8.1(i) through (iv); (ii) the Developer fails to meet a Critical Path Milestone, as the milestone may be extended with the agreement of the NYISO under Article 3.3.4 of this Agreement, set forth in the Development Schedule in Appendix C to this Agreement; (iii) the Developer makes a Significant Modification to the Transmission Project without the prior written consent of the NYISO; (iv) the Developer fails to pay a monthly invoice within the timeframe set forth in Article 3.5; (v) the Developer misrepresents a material fact of its representations and warranties set forth in Article 12; (vi) a Party assigns this Agreement in a manner inconsistent with the terms of Article 10 of this Agreement; (vii) the Developer fails to comply with any other material term or condition of this Agreement; (viii) a custodian, receiver, trustee or liquidator of the Developer, or of all or substantially all of the assets of the Developer, is appointed in any proceeding brought by the Developer; or (ix) any such custodian, receiver, trustee, or liquidator is appointed in any proceeding brought against the Developer that is not discharged within ninety (90) Days after such appointment, or if the Developer consents to or acquiesces in such appointment.

### **7.2. Default**

Upon a Breach, the non-Breaching Party shall give written notice of the Breach to the Breaching Party describing in reasonable detail the nature of the Breach and, where known and applicable, the steps necessary to cure such Breach, including whether and what such steps must

be accomplished to complete the Transmission Project by the Required Project In-Service Date. The Breaching Party shall have thirty (30) Calendar Days from receipt of the Breach notice to cure the Breach, or such other period of time as may be agreed upon by the Parties; *provided, however*, that if the Breach is the result of a Developer's inability or failure to meet a Critical Path Milestone, the Developer may only cure the Breach if either: (i) it meets the Critical Path Milestone within the cure period and demonstrates to the NYISO's satisfaction that, notwithstanding its failure to timely meet the Critical Path Milestone, the Transmission Project will achieve its In-Service Date no later than the Required Project In-Service Date, or (ii) the Developer requests in writing within the cure period, and the NYISO consents to, a change to the missed Critical Path Milestone in accordance with Article 3.3.4. If the Breach is cured within such timeframe, the Breach specified in the notice shall cease to exist. If the Breaching Party does not cure its Breach within this timeframe or cannot cure the Breach in a manner that provides for the Transmission Project to be completed by the Required Project In-Service Date, the non-Breaching Party shall have the right to declare a Default and terminate this Agreement pursuant to Article 8.1.

### **7.3. Remedies**

Upon the occurrence of an event of Default, the non-defaulting Party shall be entitled: (i) to commence an action to require the defaulting Party to remedy such Default and specifically perform its duties and obligations hereunder in accordance with the terms and conditions hereof; and (ii) to exercise such other rights and remedies as it may have in equity or at law; *provided, however*, the NYISO's liability under this Agreement shall be limited to the extent set forth in Article 9.1. No remedy conferred by any provision of this Agreement is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies shall not constitute a waiver of the right to pursue other available remedies. This Article 7.3 shall survive the termination, expiration, or cancellation of this Agreement.

## **ARTICLE 8. TERMINATION**

### **8.1. Termination by the NYISO**

The NYISO may terminate this Agreement by providing written notice of termination to the Developer in the event that: (i) the Transmission Project is halted pursuant to Section 31.2.8.2.2 of Attachment Y of the OATT; (ii) the Developer notifies the NYISO that it is unable to or has not received the required approvals or authorizations by Governmental Authorities required to develop, construct, and operate the Transmission Project by the Required Project In-Service Date; (iii) the Developer notifies the NYISO that its required approvals or authorizations by Governmental Authorities have been withdrawn by the Governmental Authorities; (iv) the Developer cannot complete the Transmission Project by the Required Project In-Service Date for any reason, including the occurrence of a Force Majeure event; or (v) the NYISO declares a default pursuant to Article 7.2 of this Agreement. The NYISO will provide the written notice of termination within fifteen (15) Business Days of its determination under Articles 8.1 (i), (iv), or



(v) or its receipt of notice from the Developer under Articles 8.1(ii) or (iii), which notice will specify the date of termination. If the Agreement was filed and accepted by FERC pursuant to Section 31.2.8.1.6 of Attachment Y of the OATT, the NYISO will, following its provision of a notice of termination to the Developer, promptly file with FERC for its acceptance a notice of termination of this Agreement.

In the event of termination under Articles 8.1(i), (ii), or (iii), the Developer may be eligible for cost recovery under the OATT in the manner set forth in Attachment Y and Schedule 10 of the OATT. In the event of termination under Articles 8.1(iv) or (v), the Developer must seek any cost recovery from FERC. In the event of termination for any reason under this Article 8.1, the Developer shall use commercially reasonable efforts to mitigate the costs, damages, and charges arising as a consequence of termination and any transfer or winding up of the Transmission Project.

## **8.2. Reporting of Inability to Comply with Provisions of Agreement**

Notwithstanding the notification requirements in Article 3 and this Article 8 of this Agreement, each Party shall notify the other Party promptly upon the notifying Party becoming aware of its inability to comply with any provision of this Agreement. The Parties agree to cooperate with each other and provide necessary information regarding such inability to comply, including the date, duration, reason for inability to comply, and corrective actions taken or planned to be taken with respect to such inability to comply.

## **8.3. Transmission Project Transfer Rights Upon Termination**

If the NYISO terminates this Agreement pursuant to Article 8.1, the NYISO shall have the right, but shall not be required, to request an entity other than the Developer to complete the Transmission Project. The NYISO may exercise this right by providing the Developer with written notice within sixty (60) days after the date on which this Agreement is terminated. If the NYISO exercises its right under this Article 8.3, the Developer shall work cooperatively with the NYISO's designee pursuant to the requirements set forth in Section 31.2.10.1.4 of Attachment Y of the OATT to implement the transition, including entering into good faith negotiations with the NYISO's designee to transfer the Transmission Project to the NYISO's designee. All liabilities under this Agreement existing prior to such transfer shall remain with the Developer, unless otherwise agreed upon by the Developer and the NYISO's designee as part of their good faith negotiations regarding the transfer. This Article 8.3 shall survive the termination, expiration, or cancellation of this Agreement.

# **ARTICLE 9. LIABILITY AND INDEMNIFICATION**

## **9.1. Liability**

Notwithstanding any other provision in the NYISO's tariffs and agreements to the contrary, the NYISO shall not be liable, whether based on contract, indemnification, warranty,

equity, tort, strict liability, or otherwise, to the Developer or any Transmission Owner, NYISO Market Participant, third party or any other person for any damages whatsoever, including, without limitation, direct, incidental, consequential (including, without limitation, attorneys' fees and litigation costs), punitive, special, multiple, exemplary, or indirect damages arising or resulting from any act or omission in any way associated with this Agreement, except in the event the NYISO is found liable for gross negligence or intentional misconduct in the performance of its obligations under this Agreement, in which case the NYISO's liability for damages shall be limited only to direct actual damages. This Article 9.1 shall survive the termination, expiration, or cancellation of this Agreement.

## **9.2. Indemnity**

Notwithstanding any other provision in the NYISO's tariffs and agreements to the contrary, the Developer shall at all times indemnify and save harmless, as applicable, the NYISO, its directors, officers, employees, trustees, and agents or each of them from any and all damages (including, without limitation, any consequential, incidental, direct, special, indirect, exemplary or punitive damages and economic costs), losses, claims, including claims and actions relating to injury to or death of any person or damage to property, liabilities, judgments, demands, suits, recoveries, costs and expenses, court costs, attorney and expert fees, and all other obligations by or to third parties, arising out of, or in any way resulting from, or associated with, this Agreement, *provided, however*, that the Developer shall not have any indemnification obligation under this Article 9.2 with respect to any loss to the extent the loss results from the gross negligence or intentional misconduct of the NYISO. This Article 9.2 shall survive the termination, expiration, or cancellation of this Agreement.

## **ARTICLE 10. ASSIGNMENT**

This Agreement may be assigned by a Party only with the prior written consent of the other Party; *provided that*:

- (i) any Change of Control shall be considered an assignment under this Article 10 and shall require the other Party's prior written consent;
- (ii) an assignment by the Developer shall be contingent upon the Developer or assignee demonstrating to the satisfaction of the NYISO prior to the effective date of the assignment that: (A) the assignee has the technical competence, financial ability, and materials, equipment, and plans to comply with the requirements of this Agreement and to construct and place in service the Transmission Project by the Required Project In-Service Date consistent with the assignor's cost estimates for the Transmission Project; and (B) the assignee satisfies the requirements for a qualified developer pursuant to Section 31.2.4.1.1 of Attachment Y of the OATT; and
- (iii) the Developer shall have the right to assign this Agreement, without the consent of the NYISO, for collateral security purposes to aid in providing financing for the Transmission Project and shall promptly notify the NYISO of any such assignment; *provided, however*, that such assignment shall be subject to the following: (i) prior to or

upon the exercise of the secured creditor's, trustee's, or mortgagee's assignment rights pursuant to said arrangement, the secured creditor, the trustee, or the mortgagee will notify the NYISO of the date and particulars of any such exercise of assignment right(s), and (ii) the secured creditor, trustee, or mortgagee must demonstrate to the satisfaction of the NYISO that any entity that it proposes to complete the Transmission Project meets the requirements for the assignee of a Developer described in Article 10(ii).

For all assignments by any Party, the assignee must assume in a writing, to be provided to the other Party, all rights, duties, and obligations of the assignor arising under this Agreement, including the insurance requirements in Article 6 of this Agreement. 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 reasons thereof, absent the written consent of the other Party. Where required, consent to assignment will not be unreasonably withheld, conditioned, or delayed. Any attempted assignment that violates this Article 10 is void and ineffective, is a Breach of this Agreement under Article 7.1 and may result in the termination of this Agreement under Articles 8.1 and 7.2.

## **ARTICLE 11. INFORMATION EXCHANGE AND CONFIDENTIALITY**

### **11.1. Information Access**

Subject to Applicable Laws and Regulations, each Party shall make available to the other Party information necessary to carry out obligations and responsibilities under this Agreement and Attachment Y of the OATT. The Parties shall not use such information for purposes other than to carry out their obligations or enforce their rights under this Agreement or Attachment Y of the OATT.

### **11.2. Confidentiality**

11.2.1 Confidential Information shall mean: (i) all detailed price information and vendor contracts; (ii) any confidential and/or proprietary information provided by one Party to the other Party that is clearly marked or otherwise designated "Confidential Information"; and (iii) information designated as Confidential Information by the NYISO Code of Conduct contained in Attachment F of the OATT; *provided, however*, that Confidential Information does not include information: (i) in the public domain or that has been previously publicly disclosed; (ii) required by an order of a Governmental Authority to be publicly submitted or divulged (after notice to the other Party); or (iii) necessary to be divulged in an action to enforce this Agreement.

11.2.2 The NYISO shall treat any Confidential Information it receives in accordance with the requirements of the NYISO Code of Conduct contained in Attachment F of the OATT. If the Developer receives Confidential Information, it shall hold such information in confidence, employing at least the same standard of care to protect the Confidential Information obtained from the NYISO as it employs to protect its own Confidential Information. Each Party shall not disclose the other Party's Confidential Information to

any third party or to the public without the prior written authorization of the Party providing the information, except: (i) to the extent required for the Parties to perform their obligations under this Agreement, the ISO Tariffs, ISO Related Agreements, or ISO Procedures, or (ii) to fulfill legal or regulatory requirements, provided that if the Party must submit the information to a Governmental Authority in response to a request by the Governmental Authority on a confidential basis, the Party required to disclose the information shall request under applicable rules and regulations that the information be treated as confidential and non-public by the Governmental Authority.

## **ARTICLE 12. REPRESENTATIONS, WARRANTIES, AND COVENANTS**

### **12.1. General**

The Developer makes the following representations, warranties, and covenants, which are effective as to the Developer during the full time this Agreement is effective:

### **12.2. Good Standing**

The Developer 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. The Developer is qualified to do business in the state or states in which the Transmission Project is located. The Developer 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 to perform and carry out covenants and obligations on its part under and pursuant to this Agreement.

### **12.3. Authority**

The Developer 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 the Developer, enforceable against the Developer 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).

### **12.4. 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 the Developer, or any judgment, license, permit, order, material agreement or instrument applicable to or binding upon the Developer or any of its assets.

## **12.5. Consent and Approval**

The Developer has sought or obtained, or, in accordance with this Agreement will seek or obtain, such 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.

## **12.6. Compliance with All Applicable Laws and Regulations**

The Developer will comply with all Applicable Laws and Regulations, including all approvals, authorizations, orders, and permits issued by any Governmental Authority; all Applicable Reliability Requirements, and all applicable Transmission Owner Technical Standards in the performance of its obligations under this Agreement.

## **ARTICLE 13. DISPUTE RESOLUTION**

If a dispute arises under this Agreement, the Parties shall use the dispute resolution process described in Article 11 of the NYISO's Services Tariff, as such process may be amended from time to time. Notwithstanding the process described in Article 11 of the NYISO's Services Tariff, the NYISO may terminate this Agreement in accordance with Article 8 of this Agreement.

## **ARTICLE 14. SURVIVAL**

The rights and obligations of the Parties in this Agreement shall survive the termination, expiration, or cancellation of this Agreement to the extent necessary to provide for the determination and enforcement of said obligations arising from acts or events that occurred while this Agreement was in effect. The remedies and rights and obligation upon termination provisions in Articles 7.3 and 8.3 of this Agreement, the liability and indemnity provisions in Article 9, and the billing and payment provisions in Article 3.5 of this Agreement shall survive termination, expiration, or cancellation of this Agreement.

## **ARTICLE 15. MISCELLANEOUS**

### **15.1. Notices**

Any notice or request made to or by any Party regarding this Agreement shall be made to the Parties, as indicated below:

NYISO:

[Insert contact information.]

Developer:

[Insert contact information.]

## **15.2. Entire Agreement**

Except as described below in this Section 15.2, this Agreement, including all Appendices attached hereto, constitutes the entire agreement between the Parties with reference to the subject matter hereof, and supersedes all prior and contemporaneous understandings of 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 that constitute any part of the consideration for, or any condition to, either Party's compliance with its obligation under this Agreement.

Notwithstanding the foregoing, this Agreement is in addition to, and does not supersede or limit the Developer's and NYISO's rights and responsibilities, under any interconnection agreement(s) entered into by and among the NYISO, Developer, and Connecting Transmission Owner(s) for the Transmission Project to interconnect to the New York State Transmission System or Distribution System, as such interconnection agreements may be amended, supplemented, or modified from time to time.

## **15.3. 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.

## **15.4. Force Majeure**

The occurrence of a Force Majeure event shall not excuse non-performance of any obligations under this Agreement.

## **15.5. Disclaimer**

Except as provided in this Agreement, the Parties make no other representations, warranties, covenants, guarantees, agreements or promises regarding the subject matter of this Agreement.

## **15.6. No NYISO Liability for Review or Approval of Developer Materials**

No review or approval by the NYISO or its subcontractor(s) of any agreement, document, instrument, drawing, specifications, or design proposed by the Developer nor any inspection carried out by the NYISO or its subcontractor(s) pursuant to this Agreement shall relieve the Developer from any liability for any negligence in its preparation of such agreement, document,

instrument, drawing, specification, or design, or its carrying out of such works; or for its failure to comply with the Applicable Laws and Regulations, Applicable Reliability Requirements, and Transmission Owner Technical Standards with respect thereto, nor shall the NYISO be liable to the Developer or any other person by reason of its or its subcontractor's review or approval of an agreement, document, instrument, drawing, specification, or design or such inspection.

#### **15.7. Amendment**

The Parties may by mutual agreement amend this Agreement, including the Appendices to this Agreement, by a written instrument duly executed by both of the Parties. If the Agreement was filed and accepted by FERC pursuant to Section 31.2.8.1.6 of Attachment Y of the OATT, the NYISO shall promptly file the amended Agreement for acceptance with FERC.

#### **15.8. No Third Party Beneficiaries**

With the exception of the indemnification rights of the NYISO's directors, officers, employees, trustees, and agents under Article 9.2, 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 their permitted assigns.

#### **15.9. 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, or duty of this Agreement. Any waiver of this Agreement shall, if requested, be provided in writing.

#### **15.10. 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, such Appendix to this Agreement, or such Section of this Agreement, 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”.

#### **15.11. Severability**

Each provision of this Agreement shall be considered severable and if, for any reason, any provision is determined by a court or regulatory authority of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect and shall in no way be affected, impaired, or invalidated, and such invalid, void, or unenforceable provision should be replaced with valid and enforceable provision or provisions that otherwise give effect to the original intent of the invalid, void, or unenforceable provision.

#### **15.12. 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.

#### **15.13. 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 otherwise bind, any other Party.

#### **15.14. Headings**

The descriptive headings of the various Articles and Sections of this Agreement have been inserted for convenience of reference only and are of no significance in the interpretation or construction of this Agreement.

#### **15.15. Governing Law**

This Agreement shall be governed, as applicable, by: (i) the Federal Power Act, and (ii) the substantive law of the State of New York, without regard to any conflicts of laws provisions thereof (except to the extent applicable, Sections 5-1401 and 5-1402 of the New York General Obligations Law).



#### **15.16. Jurisdiction and Venue**

Any legal action or judicial proceeding regarding a dispute arising out of or relating to this Agreement or any performance by either Party pursuant thereto that: (i) is within the primary or exclusive jurisdiction of FERC shall be brought in the first instance at FERC, or (ii) is not within the primary or exclusive jurisdiction of FERC shall be brought in, and fully and finally resolved in, either, as applicable, the courts of the State of New York situated in Albany County, New York or the United States District Court of the Northern District of New York situated in Albany, New York.

**IN WITNESS WHEREFORE**, the Parties have executed this Agreement in duplicate originals, each of which shall constitute an original Agreement between the Parties.

**NYISO**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**[Insert name of Developer]**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Appendix A  
Project Description

Appendix B  
Scope of Work

## Appendix C Development Schedule

*[To be prepared by Developer consistent with the Developer's project information submission, pursuant to Attachment C of the Reliability Planning Process Manual, and subject to acceptance by the NYISO, as required by Article 3.3 of this Agreement.]*

The Developer shall demonstrate to the NYISO that it timely meets the following Critical Path Milestones and Advisory Milestones and that such milestones remain in good standing.

**Critical Path Milestones:** *[To be developed with consideration of each of the work plan requirements submitted by the Developer pursuant to Attachment C to the Reliability Planning Process Manual and presented herein according to the sequence of the critical path. The NYISO anticipates that the Developer's critical path schedule will include many of the example milestones set forth below and that most of the other example milestones will be included as Advisory Milestones. The composition and sequence of the Critical Path Milestones will differ depending on the Developer's Transmission Project and schedule.]*

**Advisory Milestones:** *[To include in Development Schedule other milestones (e.g., periodic project review meetings) that are not determined to be on the critical path, but that will be monitored by the Developer and reported to NYISO.]*

*[Example Milestones:*

- *Interconnection studies (e.g. Interconnection Feasibility Study, SIS, SRIS, Class Year Interconnection Facilities Study)*
- *Siting activities (e.g. locating line routing, access roads, and substation site location options)*
- *Environmental impact studies (relative to siting options)*
- *Engineering (initial)*
- *Permitting and regulatory activities (e.g. Certificate of Environmental Compatibility and Public Need)*
- *Public outreach plan*
- *Initiation of negotiation of key contracts and financing*
- *Acquisition of all necessary approvals and authorizations of Governmental Authorities, including identification of all required regulatory approvals*
- *Closing of project financing*
- *Completion of key contracts*

- *Engineering (detailed)*
- *Procurement of major equipment and materials*
- *Environmental management & construction plan (for Article VII certification)*
- *Acquisition of [all or %] required rights of way and property / demonstration of site control*
- *Surveying and geotechnical assessment (relative to line and station layouts)*
- *Execution, or filing of unexecuted version, of interconnection agreement*
- *Engineering (completed)*
- *Delivery of major electrical equipment*
- *Line and substation site work including milestones for foundations, towers, conductor stringing, equipment delivery and installation, substation controls and communication, security, etc.*
- *Construction outage and restoration coordination plan*
- *Completion, verification and testing*
- *Operating and maintenance agreements and instructions*
- *In-Service Date*
- *Required Project In-Service Date]*