

### **30.13 Miscellaneous**

#### **30.13.1 Confidentiality**

Certain information exchanged by the Parties during the administration of these Large Facility Interconnection Procedures shall constitute confidential information ("Confidential Information") and shall be subject to this Section 30.13.1.

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

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

##### **30.13.1.1 Scope**

Confidential Information shall not include information that the receiving Party can demonstrate: (1) is generally available to the public other than as a result of a disclosure by the receiving Party; (2) was in the lawful possession of the receiving Party on a non-confidential basis before receiving it from the disclosing Party; (3) was supplied to the receiving Party without restriction by a third party, who, to the knowledge of the receiving Party after due inquiry, was under no obligation to the disclosing Party to keep such information confidential; (4) was independently developed by the receiving Party without

reference to Confidential Information of the disclosing Party; (5) is, or becomes, publicly known, through no wrongful act or omission of the receiving Party or Breach of the Standard Large Generator Interconnection Agreement; or (6) is required, in accordance with Section 30.13.1.6, Order of Disclosure, to be disclosed by any Governmental Authority or is otherwise required to be disclosed by law or subpoena, or is necessary in any legal proceeding establishing rights and obligations under the Standard Large Generator Interconnection Agreement. Information designated as Confidential Information will no longer be deemed confidential if the Party that designated the information as confidential notifies the other Party that it no longer is confidential.

#### **30.13.1.2 Release of Confidential Information**

No Party shall release or disclose Confidential Information to any other person, except to its Affiliates (limited by FERC Standards of Conduct requirements), employees, consultants, or to parties who may be or considering providing financing to or equity participation with Developer, or to potential purchasers or assignees of Developer, on a need-to-know basis in connection with these procedures, unless such person has first been advised of the confidentiality provisions of this Section 30.13.1 and has agreed to comply with such provisions. Notwithstanding the foregoing, a Party providing Confidential Information to any person shall remain primarily responsible for any release of Confidential Information in contravention of this Section 30.13.1.

#### **30.13.1.3 Rights**

Each Party retains all rights, title, and interest in the Confidential Information that each Party discloses to another Party. The disclosure by each Party to the other Parties of Confidential Information shall not be deemed a waiver by any Party or any other person or entity of the right to protect the Confidential Information from public disclosure.

#### **30.13.1.4 No Warranties**

By providing Confidential Information, no Party makes any warranties or representations as to its accuracy or completeness. In addition, by supplying Confidential Information, no Party obligates itself to provide any particular information or Confidential Information to the other Parties nor to enter into any further agreements or proceed with any other relationship or joint venture.

#### **30.13.1.5 Standard of Care**

Each Party shall use at least the same standard of care to protect Confidential Information it receives as it uses to protect its own Confidential Information from unauthorized disclosure, publication or dissemination. Each Party may use Confidential Information solely to fulfill its obligations to the other Parties under these procedures or its regulatory requirements, including the NYISO OATT and NYISO Services Tariff. The NYISO shall, in all cases, treat the information it receives in accordance with the requirements of Attachment F to the NYISO OATT.

#### **30.13.1.6 Order of Disclosure**

If a court or a Government Authority or entity with the right, power, and apparent authority to do so requests or requires any Party, by subpoena, oral deposition, interrogatories, requests for production of documents, administrative order, or otherwise, to disclose Confidential Information, that Party shall provide the other Parties with prompt notice of such request(s) or requirement(s) so that the other Parties may seek an appropriate protective order or waive compliance with the terms of the Standard Large Generator Interconnection Agreement. Notwithstanding the absence of a protective order or waiver, the Party may disclose such Confidential Information which, in the opinion of its counsel, the Party is legally compelled to disclose. Each Party will use Reasonable Efforts to obtain reliable assurance that confidential treatment will be accorded any Confidential Information so furnished.

### **30.13.1.7 Remedies**

The Parties agree that monetary damages would be inadequate to compensate a Party for another Party's Breach of its obligations under this Section 30.13.1. Each Party accordingly agrees that the other Parties shall be entitled to equitable relief, by way of injunction or otherwise, if the first Party Breaches or threatens to Breach its obligations under this Section 30.13.1, which equitable relief shall be granted without bond or proof of damages, and the receiving Party shall not plead in defense that there would be an adequate remedy at law. Such remedy shall not be deemed an exclusive remedy for the Breach of this Section 30.13.1, but shall be in addition to all other remedies available at law or in equity. The Parties further acknowledge and agree that the covenants contained herein are necessary for the protection of legitimate business interests and are reasonable in scope. No Party, however, shall be liable for indirect, incidental, or consequential or punitive damages of any nature or kind resulting from or arising in connection with this Section 30.13.1.

### **30.13.1.8 Disclosure to FERC, its Staff, or a State**

Notwithstanding anything in this Section 30.13.1 to the contrary, and pursuant to 18 C.F.R. section 1b.20, if FERC or its staff, during the course of an investigation or otherwise, requests information from one of the Parties that is otherwise required to be maintained in confidence pursuant to these Large Facility Interconnection Procedures or the NYISO OATT, the Party shall provide the requested information to FERC or its staff, within the time provided for in the request for information. In providing the information to FERC or its staff, the Party must, consistent with 18 C.F.R. section 388.112, request that the information be treated as confidential and non-public by FERC and its staff and that the information be withheld from public disclosure. Parties are prohibited from notifying the other Parties prior to the release of the Confidential Information to the Commission or its staff. The Party shall notify the other Parties to the LGIA when its is notified by FERC or its staff that a request to release Confidential Information has been received by FERC, at which time either of the Parties may

respond before such information would be made public, pursuant to 18 C.F.R. section 388.112.

Requests from a state regulatory body conducting a confidential investigation shall be treated in a similar manner consistent with applicable state rules or regulations. A Party shall not be liable for any losses, consequential or otherwise, resulting from that Party divulging Confidential Information pursuant to a FERC or state regulatory body request under this paragraph.

**30.13.1.9** Subject to the exception in Section 30.13.1.8, no Party shall disclose Confidential Information to any person not employed or retained by the Party possessing the Confidential Information, except to the extent disclosure is (i) required by law; (ii) reasonably deemed by the disclosing Party to be required to be disclosed in connection with a dispute between or among the Parties, or the defense of litigation or dispute; (iii) otherwise permitted by consent of the supplying Party, such consent not to be unreasonably withheld; or (iv) necessary to fulfill its obligations under these Large Facility Interconnection Procedures, the NYISO OATT or NYISO Services Tariff. Prior to any disclosures of a Party's Confidential Information under this subparagraph, or if any third party or Governmental Authority makes any request or demand for any of the information described in this subparagraph, the disclosing Party agrees to promptly notify the other Parties in writing and agrees to assert confidentiality and cooperate with the other Parties in seeking to protect the Confidential Information from public disclosure by confidentiality agreement, protective order or other reasonable measures.

**30.13.1.10** This provision shall not apply to any information that was or is hereafter in the public domain (except as a result of a Breach of this provision).

**30.13.1.11** The NYISO and Connecting Transmission Owner shall, at Developer's election, destroy, in a confidential manner, or return the Confidential Information provided at the time of Confidential Information is no longer needed.

**30.13.2 Delegation of Responsibility**

The NYISO may use the services of subcontractors as it deems appropriate to perform its obligations under these Large Facility Interconnection Procedures. The NYISO shall remain primarily liable to the Developer for the performance of such subcontractors and compliance with its obligations under these Large Facility Interconnection Procedures. The subcontractor shall keep all information provided confidential and shall use such information solely for the performance of such obligation for which it was provided and no other purpose.

**30.13.3 Obligation for Study Costs and Study Deposits**

**30.13.3.1** NYISO shall charge and Developer shall pay the actual costs of the Interconnection Studies incurred by the NYISO and Transmission Owner. If a number of Interconnection Studies are conducted concurrently as a combined study, except for a Facilities Study, each Developer shall pay an equal share of the actual cost of the combined study. However, no Developer electing to be evaluated only for ERIS shall be responsible for any cost of any CRIS evaluation in the combined study. Beginning with Class Year 2008, Developers shall be responsible for Facilities Study costs in the following manner: (1) each Developer shall pay the actual cost of studying the Attachment Facilities for its own Large Facility, and (2) the Developer of each Large Facility in a Class Year shall pay an equal share of all other Facilities Study costs (*i.e.*, those not related to Attachment Facilities). However, no Developer electing to be evaluated only for ERIS shall be responsible for any cost of any CRIS evaluation in the

Facilities Study. In (1) above, if more than one Large Facility contribute to the need for particular Attachment Facilities, the Developers of those Large Facilities shall share equally in the cost to study those Attachment Facilities. Any difference between the study deposit and the actual cost of the applicable Interconnection Study shall be paid by or refunded, except as otherwise provided herein, to Developer or offset against the cost of any future Interconnection Studies associated with the applicable Interconnection Request prior to beginning of any such future Interconnection Studies. Any invoices for Interconnection Studies shall include a detailed and itemized accounting of the cost of each Interconnection Study. Developer shall pay any such undisputed costs within thirty (30) Calendar Days of receipt of an invoice therefore. Neither the NYISO nor Connecting Transmission Owner shall be obligated to perform or continue to perform any studies unless Developer has paid all undisputed amounts in compliance herewith.

**30.13.3.2** The study deposit requirements contained in this Attachment X were modified effective January 17, 2010. Developers with projects in the interconnection queue as of January 17, 2010 will be responsible for the modified deposit at the next step in the study process, as more fully described below.

**30.13.3.2.1** The \$10,000 deposit these Developers provided with their Interconnection Request will be refundable to the extent actual study costs are less than the deposit.

**30.13.3.2.2** Such Developers commencing an Interconnection Feasibility Study that do not have a fully executed Interconnection Feasibility Study Agreement as of January 17, 2010 must provide the applicable modified deposit for Interconnection Feasibility Studies.

**30.13.3.2.3** Such Developers commencing an Interconnection System Reliability Impact

Study that do not have a fully executed Interconnection System Reliability Impact Study

Agreement as of January 17, 2010 must provide the applicable modified deposit for

Interconnection System Reliability Impact Studies.

**30.13.4 Third Parties Conducting Studies**

If (i) at the time of the signing of an Interconnection Study Agreement there is disagreement as to the estimated time to complete an Interconnection Study, (ii) the Developer receives notice pursuant to Sections 30.6.3, 30.7.4 or 30.8.3 that the NYISO will not complete an Interconnection Study within the applicable timeframe for such Interconnection Study, or (iii) the Developer receives neither the Interconnection Study nor a notice under Sections 30.6.3, 30.7.4 or 30.8.3 within the applicable timeframe for such Interconnection Study, then the Developer may request the NYISO to utilize a consultant or other third party reasonably acceptable to Developer and NYISO to perform such Interconnection Study under the direction of the NYISO. At other times, the NYISO may also utilize a Connecting Transmission Owner or other third party to perform such Interconnection Study, either in response to a general request of the Developer, or on its own volition. In all cases, use of a third party shall be in accord with Article 26 of the LGIA (Subcontractors) and limited to situations where the NYISO determines that doing so will help maintain or accelerate the study process for the Developer's pending Interconnection Request and not interfere with the NYISO's progress on Interconnection Studies for other pending Interconnection Requests. In cases where the Developer requests to use a third party to perform such Interconnection Study, Developer, NYISO and Connecting Transmission Owner shall negotiate all of the pertinent terms and conditions, including reimbursement arrangements and the estimated study completion date and study review deadline. The NYISO shall convey all workpapers, data bases, study results and all other supporting documentation prepared to date with respect to the Interconnection Request as soon as practicable upon Developer's request subject to the confidentiality



provision in Section 30.13.1. In any case, such third party contract may be entered into with either the Developer or the NYISO at the NYISO's discretion. If a Developer enters into a third party study contract, Developer shall provide the study to NYISO and the Connecting Transmission Owner for review, and such third party study contract shall provide for reimbursement by Developer of NYISO's and Connecting Transmission Owner's actual cost of participating in and reviewing the study. In the case of (iii) above in this Section 30.13.4, the Developer maintains its right to submit a claim to Dispute Resolution to recover the costs of such third party study. Such third party shall be required to comply with these Large Facility Interconnection Procedures, Article 26 of the LGIA (Subcontractors), and the relevant NYISO OATT procedures and protocols as would apply if the NYISO were to conduct the Interconnection Study and shall use the information provided to it solely for purposes of performing such services and for no other purposes. The NYISO and Connecting Transmission Owner shall cooperate with such third party and Developer to complete and issue the Interconnection Study in the shortest reasonable time.

### **30.13.5 Disputes**

#### **30.13.5.1 Submission**

In the event any Party has a dispute, or asserts a claim, that arises out of or in connection with the LGIA, these Standard Large Facility Interconnection Procedures, or their performance (a "Dispute"), such Party shall provide the other Parties with written notice of the Dispute ("Notice of Dispute"). Such Dispute shall be referred to a designated senior representative of each Party for resolution on an informal basis as promptly as practicable after receipt of the Notice of Dispute by the other Parties. In the event the designated representatives are unable to resolve the claim or dispute through unassisted or assisted negotiations within thirty (30) Calendar Days of the other Parties' receipt of the Notice of Dispute, such Dispute may, upon mutual agreement of the Parties, be submitted to arbitration and resolved in accordance with the arbitration procedures set forth below. In the event the Parties do not agree to submit such Dispute to arbitration, each Party may exercise whatever rights and remedies it

may have in equity or at law consistent with the terms of the Standard Large Generator Interconnection Agreement.

#### **30.13.5.2 External Arbitration Procedures**

Any arbitration initiated under these procedures shall be conducted before a single neutral arbitrator appointed by the Parties. If the Parties fail to agree upon a single arbitrator within ten (10) Calendar Days of the submission of the Dispute to arbitration, each Party shall choose one arbitrator who shall sit on a three-member arbitration panel. The arbitrators so chosen shall within twenty (20) Calendar Days select one of them to chair the arbitration panel. In each case, the arbitrators shall be knowledgeable in electric utility matters, including electric transmission and bulk power issues, and shall not have any current or past substantial business or financial relationships with any party to the arbitration (except prior arbitration). The arbitrator(s) shall provide each of the Parties an opportunity to be heard and, except as otherwise provided herein, shall conduct the arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("Arbitration Rules") and any applicable FERC regulations or RTO rules; provided, however, in the event of a conflict between the Arbitration Rules and the terms of this Section 30.13, the terms of this Section 30.13 shall prevail.

#### **30.13.5.3 Arbitration Decisions**

Unless otherwise agreed by the Parties, the arbitrator(s) shall render a decision within ninety (90) Calendar Days of appointment and shall notify the Parties in writing of such decision and the reasons therefor. The arbitrator(s) shall be authorized only to interpret and apply the provisions of the LGIA and LFIP and shall have no power to modify or change any provision of the LGIA and LFIP in any manner. The decision of the arbitrator(s) shall be final and binding upon the Parties, and judgment on the award may be entered in any court having jurisdiction. The decision of the arbitrator(s) may be appealed solely on the grounds that the conduct of the arbitrator(s), or the decision itself, violated the standards set forth

in the Federal Arbitration Act or the Administrative Dispute Resolution Act. The final decision of the arbitrator must also be filed with FERC if it affects jurisdictional rates, terms and conditions of service, Attachment Facilities, or System Upgrade Facilities.

#### **30.13.5.4 Costs**

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

### **30.13.6 Local Furnishing Bonds and Other Tax-Exempt Financing**

#### **30.13.6.1 Connecting Transmission Owners and Affected Transmission Owner(s) that Own Facilities Financed by Local Furnishing Bonds or Other Tax-Exempt Bonds**

This provision is applicable only to a Connecting Transmission Owner or Affected Transmission Owner(s) that has financed facilities with tax-exempt bonds including, but not limited to, Local Furnishing Bonds ("Tax-Exempt Bonds"). Notwithstanding any other provision of this LGIA and LFIP, neither NYISO nor Connecting Transmission Owner shall be required to provide interconnection service to Developer, nor shall any Connecting Transmission Owner or Affected Transmission Owner be required to construct System Upgrade Facilities or System Deliverability Upgrades, pursuant to this LGIA and LFIP, if the provision of such interconnection service or such construction would jeopardize the tax-exempt status of any Tax-Exempt Bonds or impair the ability of Connecting Transmission Owner or Affected Transmission Owner(s) to issue future tax-exempt obligations. For purposes of this provision, Tax-Exempt Bonds shall include the obligations of the Long Island Power Authority, NYPA and Consolidated Edison Company of New York, Inc., the interest on which is not included in gross income under the Internal Revenue Code.

### **30.13.6.2 Alternate Procedures for Requesting Interconnection Service**

If Connecting Transmission Owner or Affected Transmission Owner(s) determines that the provision of interconnection service requested by Developer would jeopardize the tax-exempt status of any Tax-Exempt Bond(s) used to finance its facilities that would be used in providing such interconnection service, or impair its ability to issue future tax-exempt obligations, Connecting Transmission Owner or Affected Transmission Owner(s) shall advise Developer and NYISO within thirty (30) Calendar days of receipt of the Interconnection Request.

Developer thereafter may renew its request for interconnection using the process specified in Article 5.2(ii) of the NYISO OATT.