

## **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 ISO Code of Conduct contained in Attachment F to the ISO 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 ISO OATT and NYISO Services Tariff. The ISO shall, in all cases, treat the information it receives in accordance with the requirements of Attachment F to the ISO 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 ISO 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 ISO 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 ISO 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 ISO may use the services of subcontractors as it deems appropriate to perform its obligations under these Large Facility Interconnection Procedures. The ISO 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** The ISO shall charge and Developer shall pay the actual costs of the Interconnection Studies incurred by the ISO and Transmission Owner. If a number of Interconnection Studies are conducted concurrently as a combined study, except for a Class Year Interconnection 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 and any Class Year Project that

that elects, pursuant to Section 25.7.7.1 of Attachment S, to withdraw from the Class Year Interconnection Facilities Study, withdraw its CRIS request or elect to have no System Deliverability Upgrade identified to make the project deliverable at its level of requested CRIS, shall not be responsible for any additional detailed studies required for System Deliverability Upgrades. Beginning with the Class Year subsequent to Class Year 2012, Class Year Projects shall be responsible for Class Year Interconnection Facilities Study costs in the following manner: (1) each Class Year Project shall pay the actual cost of studying the Attachment Facilities, Interconnection Facilities and Distribution Upgrades for its own facility; (2) each Class Year Project shall pay the actual cost of studying Local System Upgrade Facilities for its own facility; and (3) each Class Year Project in a Class Year shall pay an equal share of all other Class Interconnection Facilities Study costs (*i.e.*, those not related to Attachment Facilities, Interconnection Facilities, Distribution Upgrades or Local System Upgrade Facilities). With respect to the costs of studying the Attachment Facilities, Interconnection Facilities and Distribution Upgrades referenced above, if more than one Class Year Project contributes to the need for particular Attachment Facilities, Interconnection Facilities or Distribution Upgrades, those Class Year Projects shall share equally in the cost to study those Attachment Facilities, Interconnection Facilities or Distribution Upgrades. With respect to the costs of studying the Local System Upgrade Facilities referenced above, if more than one Class Year Project contributes to the need for particular Local System Upgrade Facilities, those Class Year Projects shall share equally in the cost to study those

Local System Upgrade 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 the Class Year Project 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 must be submitted to the ISO within sixty (60) days of completion of the subject Interconnection Study and shall include a detailed and itemized accounting of the cost of each Interconnection Study. Developers and Interconnection Customers shall pay any such undisputed costs within thirty (30) Calendar Days of receipt of an invoice therefore. Neither the ISO nor Connecting Transmission Owner shall be obligated to perform or continue to perform any studies unless Developer (or Interconnection Customer, as applicable) has paid all undisputed amounts in compliance herewith.

#### **30.13.4 Third Parties Conducting Studies**

If (i) at the time that ISO provides a good faith estimate of the time to complete or at the time of the signing of an Interconnection Facilities 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 ISO 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 ISO to utilize a consultant or other third party reasonably acceptable to the Developer and the

ISO to perform such Interconnection Study under the direction of the ISO. At other times, the ISO 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 ISO determines that doing so will help maintain or accelerate the study process for the Developer's pending Interconnection Request and not interfere with the ISO'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, the Developer, the ISO 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 ISO 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 the Developer's request subject to the confidentiality provision in Section 30.13.1. In any case, such third-party study contract may be entered into with either the Developer or the ISO at the ISO's discretion. If a Developer enters into a third-party study contract, the Developer shall provide the study to the ISO and the Connecting Transmission Owner for review, and such third-party study contract shall provide for reimbursement by the Developer of the ISO'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 ISO OATT procedures and protocols as would apply if the ISO 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 ISO 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, Distribution Upgrades 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.

#### **30.13.5.5 Non-Binding Dispute Resolution Procedures**

If a Party has submitted a Notice of Dispute pursuant to Section 30.13.5.1 and the Parties are unable to resolve the claim or dispute through unassisted or assisted negotiations within the thirty (30) Calendar Days provided in that section, and the Parties cannot reach mutual agreement to pursue the Section 30.13.5 arbitration process, a Party may request that the ISO engage in Non-binding Dispute Resolution pursuant to this section by providing written notice to the ISO (“Request for Non-Binding Dispute Resolution”). Such Request for Non-Binding Disputes Resolution shall contain: (i) the name of the Party making the request, (ii) an indication of the Developer, Connecting Transmission Owner, Affected Transmission Owner, and/or other potentially affected parties, to the extent known, (iii) a description of the dispute with sufficient detail to apprise the ISO, Developer, Connecting Transmission Owner, Affected Transmission Owner, and/or other potentially affected parties the nature of the claim, (vi) copies of any materials that the Developer has relied on to support its initial Notice of Dispute pursuant to Section 30.13.5.1, if applicable, and (v) citations to the ISO Tariffs and other relevant materials upon which the Party’s dispute relies. Conversely, any Party may file a Request for Non-Binding Dispute Resolution pursuant to this section without first seeking mutual agreement to pursue the Section 30.13.5 arbitration process. The process in Section 30.13.5.5 shall serve as an alternative to, and not a replacement of, the Section 30.13.5 arbitration process. Pursuant to this process, the ISO must within thirty (30) Calendar Days of receipt of the Request for Non-

Binding Dispute Resolution appoint a neutral decision-maker that is an independent subcontractor that shall not have any current or past substantial business or financial relationships with either Party. Any individual appointed as a neutral decision-maker shall make known to the disputing parties any such disqualifying relationship or interest and a new neutral decision-maker shall be appointed, unless express written consent is provided by each Party to the dispute.

Unless otherwise agreed by the Parties, the neutral decision-maker shall render a decision within sixty (60) Calendar Days of appointment and shall notify the Parties in writing of such decision and reasons therefore. This neutral decision-maker shall be authorized only to interpret and apply the provisions of the Standard Large Facility Interconnection Procedures and Standard Large Generator Interconnection Agreement and shall have no power to modify or change any provision of the Standard Large Facility Interconnection Procedures and Large Generator Interconnection Agreement in any manner. The result reached in this process is not binding, but, unless otherwise agreed, the Parties may cite the record and decision in the non-binding dispute resolution process in future dispute resolution processes, including in a Section 30.13.5 arbitration, or in a Federal Power Act section 206 complaint. Each Party shall be responsible for its own costs incurred during the process and the cost of the neutral decision-maker shall be divided equally among each Party to the dispute.

### **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 the ISO 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 a Connecting Transmission Owner or Affected Transmission Owner(s) determines that the provision of interconnection service requested by a 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 the Developer and the ISO within thirty (30) Calendar days of receipt of the Interconnection Request.

The Developer thereafter may renew its request for interconnection using the process specified in Section 30.3 of the ISO OATT.