

## Attachment I

## **6.10 Schedule 10 - Rate Mechanism for the Recovery of the Regulated Transmission Facilities Charge (“RTFC”)**

### **6.10.1 Applicability**

#### **6.10.1.1 Eligible Projects**

This Schedule establishes the Regulated Transmission Facilities Charge (“RTFC”) for the recovery of the costs of a regulated transmission project that is eligible for cost recovery in accordance with the Comprehensive System Planning Process requirements set forth in Attachment Y of the ISO OATT.<sup>1</sup> A Transmission Owner, Unregulated Transmitting Utility,<sup>2</sup> or Other Developer may recover through the RTFC the costs that it is eligible to recover pursuant to Attachment Y of the ISO OATT related to: (i) a regulated backstop transmission solution proposed by a Responsible Transmission Owner pursuant to Section 31.2.4.3.1 of Attachment Y of the ISO OATT and the ISO/TO Reliability Agreement or an Operating Agreement; (ii) an alternative regulated transmission solution that the ISO has selected pursuant to Section 31.2.6.5.2 of Attachment Y of the ISO OATT as the more efficient or cost-effective solution to a Reliability Need; or (iii) a regulated transmission Gap Solution proposed by a Responsible Transmission Owner pursuant to Section 31.2.11.4 of Attachment Y of the ISO OATT; (iv) an alternative regulated Transmission Gap Solution that has been determined by the appropriate state regulatory agency(ies) as the preferred solution to a Reliability Need pursuant to Section 31.2.11.5 of Attachment Y of the ISO OATT; (v) a Regulated Economic Transmission Project that has been approved pursuant to Section 31.5.4.6 of Attachment Y of the ISO OATT; (vi) a Designated Public Policy Project that is a Public Policy Transmission Project, or a part of a Public Policy Transmission Project, that the ISO has selected pursuant to Section 31.4.8.2 of Attachment Y of the ISO OATT as the more efficient or cost-effective solution to a Public Policy Transmission Need; (vii) a Public Policy Transmission Project proposed by a Developer in

response to a request by the NYPSC or Long Island Power Authority in accordance with Section 31.4.3.2 of Attachment Y of the ISO OATT; or (viii) the portion of an Interregional Transmission Project selected by the ISO in the CSPP that is allocated to the NYISO region pursuant to Section 31.5.7 of Attachment Y of the ISO OATT. For purposes of this Schedule, such a transmission project is referred to as an “Eligible Project.” The costs incurred for an Eligible Project by LIPA or NYPA will be billed and collected under a separate LIPA RTFC or NYPA RTFC, as applicable, as described in Section 6.10.5.

<sup>1</sup>Capitalized terms used in this Schedule that are not defined in this Schedule shall have the meaning set forth in Section 31.1.1 of Attachment Y of the ISO OATT and, if not therein, in Section 1 of the OATT.

<sup>2</sup>An “Unregulated Transmitting Utility” is a Transmission Owner, such as LIPA and NYPA, that, pursuant to Section 201(f) of the Federal Power Act, is not subject to the Commission’s jurisdiction under Sections 205 and 206(a) of the Federal Power Act.

#### **6.10.1.2 Projects Not Eligible for Cost Recovery Through the RTFC**

This Schedule does not apply to projects that are not eligible pursuant to Attachment Y of the ISO OATT for cost allocation and recovery under the ISO OATT, including, but not limited to: (i) projects undertaken by Transmission Owners through the Local Transmission Owner Planning Processes pursuant to Section 31.1.3 and Section 31.2.1 of Attachment Y of the ISO OATT; (ii) market-based solutions to transmission needs identified in the CSPP; (iii) any non-transmission components of an Eligible Project (e.g., generation, energy efficiency, or demand response resources); (iv) transmission Short-Term Reliability Process Solutions selected in the Short-Term Reliability Process pursuant to Attachment FF of the ISO OATT and eligible for cost recovery through Schedule 16 (Section 6.16) of the ISO OATT; (v) transmission facilities eligible for cost recovery through another rate schedule of the ISO OATT; and (vi) facilities for which costs are recovered through the Transmission Service Charge (“TSC”) or the NYPA

Transmission Adjustment Charge (“NTAC”) determined in accordance with Attachment H of the ISO OATT.

### **6.10.2 Revenue Requirement for RTFC**

The RTFC (including a LIPA RTFC or NYPA RTFC, as applicable) shall be calculated in accordance with the formula set forth in Section 6.10.3 using the revenue requirement of the Transmission Owner, Unregulated Transmitting Utility, or Other Developer, as applicable, necessary to recover the costs of an Eligible Project. The revenue requirement to be used in the calculation and recovery of the RTFC for a Transmission Owner or Other Developer, other than an Unregulated Transmitting Utility, is described in Section 6.10.4. The development of a revenue requirement and recovery of costs for an Eligible Project by an Unregulated Transmitting Utility through a NYPA RTFC or a LIPA RTFC, as applicable, is described in Section 6.10.5.

If an Eligible Project involves the construction of a facility identified as a Highway System Deliverability Upgrade in a completed Class Year Interconnection Facilities Study, the Project Cost Allocation for which has been accepted and Security posted by at least one Class Year Developer, the project cost and resulting revenue requirement will be reduced to the extent permitted by Section 25.7.12.3.3 of Attachment S of the ISO OATT.

### **6.10.3 Calculation and Recovery of RTFC and Payment of Recovered Revenue**

6.10.3.1 The ISO will calculate and bill an RTFC (or a LIPA RTFC or NYPA RTFC, as applicable) separately for each Eligible Project in accordance with this Section 6.10.3. The ISO shall collect the RTFC from LSEs. The LSEs, including Transmission Owners, competitive LSEs, municipal systems, and any other LSEs, serving Load in the Load Zones and/or Subzones to which the costs of the

Eligible Project have been allocated (each a “Responsible LSE”) shall pay the RTFC. The cost of each Eligible Project shall be allocated as follows: (i) the costs of an Eligible Project that is eligible for cost allocation and recovery through the Reliability Planning Process shall be allocated in accordance with Section 31.5.3 of Attachment Y of the ISO OATT; (ii) the costs of an Eligible Project that is eligible for cost allocation and recovery through the Economic Planning Process shall be allocated in accordance with Section 31.5.4 of Attachment Y of the ISO OATT; (iii) the costs of an Eligible Project that is eligible for cost allocation and recovery through the Public Policy Transmission Planning Process shall be allocated in accordance with Section 31.5.5 of Attachment Y of the ISO OATT; and (iv) the costs of an Eligible Project that is eligible for cost allocation and recovery as an Interregional Transmission Project shall be allocated in accordance with Section 31.5.7 of Attachment Y of the ISO OATT.

6.10.3.2 The revenue requirement established by the Transmission Owner or Other Developer pursuant to Section 6.10.4 and an Unregulated Transmitting Utility pursuant to Section 6.10.5 will be the basis for the applicable RTFC Rate (\$/MWh) that shall be charged by the ISO to each Responsible LSE based on its Actual Energy Withdrawals as set forth in Section 6.10.3.5.

6.10.3.3 The Developer shall request Incremental TCCs with respect to the Eligible Project in accordance with the requirements of Section 19.2.4 of Attachment M of the ISO OATT and receive any Incremental TCCs to the extent awarded by the ISO pursuant to such request. As it relates solely to the Eligible Project, the Developer shall not be a “Transmission Owner” for purposes of Section 20.2.5 or

Section 20.3.7 of Attachment N of the ISO OATT and accordingly shall not receive an allocation of Net Congestion Rents under Section 20.2.5 of Attachment N of the ISO OATT or Net Auction Revenues under Section 20.3.7 of Attachment N of the ISO OATT.

The Developer shall in relation to any Eligible Project exercise its right to obtain and maintain in effect all Incremental TCCs, including temporary Incremental TCCs, to which it has rights under Section 19.2.4 of Attachment M of the ISO OATT and shall take the actions required to do so in accordance with the procedures specified therein. Notwithstanding Sections 19.2.4.7 and 19.2.4.8 of Attachment M of the ISO OATT, Incremental TCCs created and awarded to the Developer as a result of implementation of an Eligible Project shall not be eligible for sale in Secondary Markets. Incremental TCCs that may be created and awarded to the Developer as a result of the implementation of an Eligible Project, shall be offered by the Developer in all rounds of the six month Sub-Auction of each Centralized TCC Auction conducted by the ISO. The ISO shall disburse the associated auction revenues to the Developer. The total amount of the auction revenues disbursed to the Developer pursuant to this Section 6.10.3.3 shall be used in the calculation of the RTFC Rate, as set forth in Section 6.10.3.5. Incremental TCCs associated with an Eligible Project shall continue to be offered for the duration of the Incremental TCCs, established pursuant to the terms of Attachment M of the ISO OATT.

The revenue offset discussed in this Section 6.10.3.3 shall commence upon the first payment of revenues related to Incremental TCCs associated with

the implementation of an Eligible Project on or after the date the RTFC is implemented. The RTFC and the revenue offset related to Incremental TCCs associated with the implementation of an Eligible Project shall not require and shall not be dependent upon a reopening or review of: (i) the Developer's revenue requirements for the RTFC of another Eligible Project pursuant to this Section 6.10 of the ISO OATT, (ii) the Developer's revenue requirement for charges set forth in another rate schedule of the ISO OATT, or (iii) the Transmission Owners' revenue requirements for the TSCs or NTAC set forth in Attachment H of the ISO OATT.

6.10.3.3.1 With respect to the Eligible Project only, the Developer shall receive the outage charges described herein and shall not be charged O/R-t-S Congestion Rent Shortfall Charges, U/D Congestion Rent Shortfall Charges, O/R-t-S Auction Revenue Shortfall Charges or U/D Auction Revenue Shortfall Charges or be paid O/R-t-S Congestion Rent Surplus Payments, U/D Congestion Rent Surplus Payments, O/R-t-S Auction Revenue Surplus Payments or U/D Auction Revenue Surplus Payments under Section 20.2.4 and Section 20.3.6 of Attachment N of the ISO OATT. Outage charges related to any Incremental TCCs awarded by the ISO for an Eligible Project shall be assessed to the Developer, and payable by the Developer to the ISO, pursuant to Section 19.2.4 of Attachment M of the ISO OATT for an Expander not subject to Section 20.2.5 of Attachment N of the ISO OATT for any hour in the Day-Ahead Market during which an Expansion, associated with an Eligible Project, is modeled to be wholly or partially out of service.

6.10.3.4 The billing units for the RTFC Rate for the Billing Period shall be based on the Actual Energy Withdrawals available for the current Billing Period for those Load Zones and/or Subzones allocated the costs of the project in the manner described in Section 6.10.3.1.

### 6.10.3.5 Cost Recovery Methodology

The ISO shall calculate the RTFC for each Eligible Project for each Responsible LSE as follows:

**Step 1: Calculate the \$ assigned to each Load Zone or Subzone (as applicable)**

$$RTFC_{p,z,B} = (AnnualRR_{p,B} - IncrementalTransmissionRightsRevenue_{p,B} + OutageCostAdjustment_{p,B}) \times (ZonalCostAllocation_{z,p})$$

**Step 2: Calculate a per-MWh Rate for each Load Zone or Subzone (as applicable)**

$$RTFCRate_{p,z,B} = RTFC_{p,z,B} / MWh_{z,B}$$

**Step 3: Calculate charge for each Billing Period for each Responsible LSE in each Load Zone or Subzone (as applicable)**

$$Charge_{B,l,z,p} = RTFCRate_{p,z,B} * MWh_{l,z,B}$$

**Step 4: Calculate charge for each Billing Period for each Responsible LSE across all Load Zones or Subzones (as applicable)**

$$Charge_{B,l,p} = \sum_{z \in Z} (Charge_{B,l,z,p})$$

Where,

l = the relevant Responsible LSE;

p = an individual Eligible Project;

z = an individual Load Zone or Subzone, as applicable;

Z = set of ISO Load Zones or Subzones as applicable;



$B$  = the relevant Billing Period;

$MWh_{z,B}$  = Actual Energy Withdrawals in Load Zone or Subzone, as applicable,  $z$  aggregated across all hours in Billing Period  $B$ ;

$MWh_{l,z,B}$  = Actual Energy Withdrawals for Responsible LSE  $l$  in Load Zone or Subzone, as applicable,  $z$  aggregated across all hours in Billing Period  $B$ ;

$AnnualRR_{p,B}$  = the pro rata share of the annual revenue requirement for each Eligible Project  $p$  as discussed in Section 6.10.2 above, allocated for Billing Period  $B$ ;

$IncrementalTransmissionRightsRevenue_{p,B}$  = the auction revenue derived from the sale of Incremental TCCs plus Incremental TCC payments received by the Developer pursuant to Section 20.2.3 of Attachment N of the ISO OATT for each Eligible Project  $p$ , as discussed in Section 6.10.3.3 above, allocated for Billing Period  $B$ . The revenues from the sale of Incremental TCCs in the ISO's six month Sub-Auctions of each Centralized TCC Auction shall be allocated uniformly across all hours of the Billing Period;

$OutageCostAdjustment_{p,B}$  = the Outage charges determined pursuant to Section 6.10.3.3.1 above for any hour in the Day-Ahead Market during which the Eligible Project  $p$  is modeled to be wholly or partially out of service aggregated across all hours in Billing Period  $B$ ; and

$ZonalCostAllocation_{z,p}$  = the proportion of the cost of Eligible Project  $p$  allocated to Load Zone or Subzone, as applicable,  $z$ , in the manner described in Section 6.10.3.1 above;

6.10.3.6        The NYISO will collect the appropriate RTFC revenues each Billing Period and remit those revenues to the appropriate Transmission Owner, Unregulated Transmitting Utility, or Other Developer in accordance with the NYISO's billing and settlement procedures; *provided, however*, that LIPA will be responsible for billing and collecting the costs of an Eligible Project undertaken by LIPA that are allocated to customers within the Long Island Transmission District in accordance with Section 6.10.5.2.1.

#### **6.10.4        Recovery of Costs Incurred by Transmission Owner or Other Developer**

6.10.4.1        The RTFC shall be used as the cost recovery mechanism for the recovery of the costs of an Eligible Project undertaken by a Transmission Owner or Other Developer, other than an Unregulated Transmitting Utility, which project is

authorized by the Commission to recover costs under this rate mechanism; *provided, however*, nothing in this cost recovery mechanism shall be deemed to create any additional rights for a Transmission Owner or Other Developer to proceed with a regulated transmission project that it does not otherwise have at law. Subject to the requirements in Section 6.10.6, the costs that may be included in the revenue requirement for calculating the RTFC pursuant to Section 6.10.3 include all reasonably incurred costs, as determined by the Commission, related to the preparation of proposals for, and the development, financing, construction, operation, and maintenance of, an Eligible Project, including those costs explicitly permitted for recovery pursuant to Attachment Y of the ISO OATT. These costs include, but are not limited to, a reasonable return on investment and any incentives for the construction of transmission projects approved under Section 205 or Section 219 of the Federal Power Act and the Commission's regulations implementing those sections.

6.10.4.2 The period for cost recovery will be determined by the Commission and will begin if and when the Eligible Project enters into service, is halted, or as otherwise determined by the Commission, including for the recovery of CWIP or other permissible cost recovery. The Transmission Owner/Other Developer, or, at its request, the ISO, shall either make a Section 205 filing with the Commission or make an informational filing under a formula rate to provide for the Commission's review and approval or acceptance of the project cost and resulting revenue requirement to be recovered through the RTFC. The filing may include all reasonably incurred costs specified in Section 6.10.4.1 of this Schedule that are

related to the Transmission Owner's or the Other Developer's undertaking an Eligible Project. The filing must be consistent with the Transmission Owner's or the Other Developer's project proposal made to and evaluated by the ISO pursuant to Attachment Y. If the Eligible Project is a Designated Public Policy Project for which the Developer proposed a Cost Cap, the Developer must also satisfy the requirements in Section 6.10.6 in its filing. The Transmission Owner or Other Developer shall bear the burden of resolving all concerns about the contents of the filing that might be raised in such proceeding. The ISO will begin to calculate and bill the RTFC in accordance with the period for cost recovery determined by the Commission after the Commission has accepted or approved the filing or otherwise allowed the filing to go into effect pursuant to a formula rate.

#### **6.10.5 Recovery of Costs by an Unregulated Transmitting Utility**

6.10.5.1 Subject to the requirements in Section 6.10.6, the costs that may be included in the revenue requirement for an Eligible Project undertaken by an Unregulated Transmitting Utility include all reasonably incurred costs related to the preparation of proposals for, and the development, financing, construction, operation, and maintenance of, an Eligible Project, including those costs explicitly permitted for recovery pursuant to Attachment Y of the ISO OATT, as well as a reasonable return on investment. Except as otherwise provided in Section 6.10.5.2.1, for any recovery of a revenue requirement by an Unregulated Transmitting Utility under the RTFC, the period of cost recovery will be determined by the Commission and will begin if and when the Eligible Project

enters into service, is halted, or as otherwise determined by the Commission, including for the recovery of CWIP or other permissible cost recovery. Except as otherwise provided in Section 6.10.5.2.1, the ISO will begin to calculate and bill the RTFC for an Unregulated Transmitting Utility pursuant to Section 6.10.3 in accordance with the period for cost recovery determined by the Commission after the Commission has accepted or approved the filing of its revenue requirement or otherwise allowed the filing to go into effect pursuant to a formula rate.

#### **6.10.5.2 Cost Recovery for LIPA**

Any costs incurred for an Eligible Project undertaken by LIPA, as an Unregulated Transmitting Utility, that are eligible for recovery under Section 6.10.5.1 under a LIPA RTFC shall be recovered over the period established by Long Island Power Authority's Board of Trustees as follows:

6.10.5.2.1 For costs to LIPA customers: Cost will be recovered pursuant to a rate recovery mechanism approved by the Long Island Power Authority's Board of Trustees pursuant to Article 5, Title 1-A of the New York Public Authorities Law, Sections 1020-f(u) and 1020-s. Upon approval of the rate recovery mechanism, LIPA shall provide to the ISO, for purposes of inclusion within the ISO OATT and filing with the Commission on an informational basis only, a description of the rate recovery mechanism, the costs of the Eligible Project, and the rate that LIPA will charge and collect from responsible entities within the Long Island Transmission District in accordance with the ISO cost allocation methodology pursuant to Section 31.5 of Attachment Y of the ISO OATT.

6.10.5.2.2 For Costs to Other Transmission Districts, As Applicable: Where the ISO determines that there are Responsible LSEs serving Load outside of the Long Island Transmission District that should be allocated a portion of the costs of the Eligible Project undertaken by LIPA, LIPA shall coordinate with and inform the ISO of the amount of such costs. Such costs will be an allocable amount of the cost base recovered through the recovery mechanism described in Section 6.10.5.2.1 in accordance with the formula set forth in Section 6.10.3.5. Such costs of the Eligible Project allocable to Responsible LSEs serving Load outside of the Long Island Transmission District shall constitute the “revenue requirement.” The ISO shall file the revenue requirement with the Commission if requested to do so by LIPA, for Commission review under the same “comparability” standard as is applied to review of changes in LIPA’s TSC under Attachment H of the ISO OATT. The filing must be consistent with LIPA’s project proposal made to and evaluated by the ISO pursuant to Attachment Y. If the Eligible Project is a Designated Public Policy Project for which LIPA proposed a Cost Cap, LIPA must also satisfy the requirements in Section 6.10.6 in its filing. LIPA shall intervene in support of such filing at the Commission and shall bear the burden of resolving all concerns about the contents of the filing that might be raised in such proceeding. Upon the Commission’s acceptance for filing of LIPA’s revenue requirement and using the procedures described in Sections 6.10.3.1 through 6.10.3.5 of this Schedule, the ISO shall calculate a separate LIPA RTFC based on the revenue requirement and shall bill for LIPA the LIPA RTFC as a separate line item to the Responsible LSEs serving Load in

Transmission Districts located outside of the Long Island Transmission District.

The ISO shall remit the revenues collected to LIPA in accordance with the ISO's billing and settlement procedures.

#### **6.10.5.3 Cost Recovery for NYPA**

Any costs incurred for an Eligible Project undertaken by NYPA, as an Unregulated Transmitting Utility, that are eligible for recovery under Section 6.10.5.1 shall be recovered under a NYPA RTFC as described herein. A reasonable return on investment for an Eligible Project undertaken by NYPA may include any incentives for construction of transmission projects available under Section 205 or Section 219 of the Federal Power Act and the Commission's regulations implementing those sections, as determined by the Commission.

6.10.5.3.1 NYPA shall coordinate with and inform the ISO of the amount of the costs it incurred in undertaking an Eligible Project. Such costs shall constitute the revenue requirement. Either the ISO shall make a Section 205 filing with the Commission on behalf of NYPA or NYPA shall make an informational filing under a formula rate with the Commission, of the revenue requirement. The filing must be consistent with NYPA's project proposal made to and evaluated by the ISO pursuant to Attachment Y. If the Eligible Project is a Designated Public Policy Project for which NYPA proposed a Cost Cap, NYPA must also satisfy the requirements in Section 6.10.6 in its filing. NYPA shall intervene in support of such filing at the Commission and shall bear the burden of resolving all concerns about the contents of the filing that might be raised in such proceeding, including being solely responsible for making any arguments or reservations regarding its status as a non-Commission-jurisdictional utility and the appropriate standard for

Commission review of its revenue requirement. After the Commission has accepted or approved the filing or otherwise allowed the filing to go into effect pursuant to a formula rate, the ISO shall calculate in accordance with Sections 6.10.3.1 through 6.10.3.5 of this Schedule a separate NYPA RTFC based on the revenue requirement and bill for NYPA the NYPA RTFC to the Responsible LSEs. The ISO shall remit the revenues collected to NYPA in accordance with the ISO's billing and settlement procedures.

6.10.5.4 Savings Clause. The inclusion in the ISO OATT or in a filing with the Commission pursuant to Section 6.10.5 of the revenue requirement for recovery of costs incurred by an Unregulated Transmitting Utility, including LIPA or NYPA, related to an Eligible Project undertaken pursuant to Attachment Y of the ISO OATT, as provided for in this Section 6.10.5, or the inclusion of such revenue requirement in the LIPA RTFC or NYPA RTFC, shall not be deemed to modify the treatment of such rates as non-jurisdictional pursuant to Section 201(f) of the FPA.

**6.10.6 Designated Entity's Responsibility to Include Cost Cap in Rate Filing for Designated Public Policy Project.**

6.10.6.1 If the Designated Entity of an Eligible Project is: (i) a Designated Entity for the Designated Public Policy Project that is a Public Policy Transmission Project, or part of a Public Policy Transmission Project, selected by the ISO pursuant to Sections 31.4.8.2 and 31.4.11 of Attachment Y to the ISO OATT and (ii) the Designated Entity submitted the Public Policy Transmission Project that resulted in the Designated Public Policy Project, the Designated Entity shall file with the Commission as part of its required rate filing for cost recovery under

Sections 6.10.4 or 6.10.5, as applicable, any Cost Cap that it proposed for the Public Policy Transmission Project, including any excusing conditions described in Section 6.10.6.2. The Designated Entity shall not seek to recover through its transmission rates or through any other means costs for the Included Capital Costs above its agreed-upon Cost Cap, except as permitted for excusing conditions in Section 6.10.6.2.

- 6.10.6.2 The Cost Cap that the Designated Entity files at the Commission may provide for the following excusing conditions, which shall be included in the Development Agreement for the Designated Entity's Designated Public Policy Project and which shall excuse the Designated Entity from the Cost Cap on recovering the Included Capital Costs of its Designated Public Policy Project only to the extent the costs arise from one of the following excusing conditions:
- A. Transmission Project changes, delays, or additional costs that are due to the actions or omissions of the ISO, Connecting Transmission Owner(s), Interconnecting Transmission Owner(s), Affected Transmission Owner(s), or other Designated Entity(ies) responsible for completing other parts of the Public Policy Transmission Project;
  - B. A Force Majeure event as defined in the Development Agreement and subject to the Force Majeure requirements in Section 15.5 of the Development Agreement;
  - C. Changes in laws or regulations, including but not limited to applicable taxes;
  - D. Material modifications to scope or routing arising from siting processes under Public Service Law Article VII or applicable local laws as determined by the New York State Public Service Commission or local governments respectively; and



E. Actions or inactions of regulatory or governmental entities, and court orders.

6.10.6.3 If the Designated Entity proposed a soft Cost Cap, the Designated Entity must achieve the percentage cost sharing that it submits to the ISO in its proposal either: (i) through foregoing rate recovery of that percentage of capital costs in excess of the soft Cost Cap or (ii) through an alternative rate mechanism that may adjust rate recovery through only a reduction in the return on equity and any applicable incentives solely on the amount in excess of the soft Cost Cap. The alternative rate mechanism must achieve a rate recovery reduction for the percentage of Included Capital Costs in excess of the soft Cost Cap that is equal to or better for ratepayers in the total long run revenue requirement on a present value basis for the Designated Public Policy Project compared to that which would be achieved under option (i) based on the percentage cost sharing that the Designated Entity proposed to the ISO.

6.10.6.4 The Designated Entity's Cost Cap and the excusing conditions shall be included in the Development Agreement with the Designated Entity and will be implemented and enforced through rate proceedings at the Commission or the appropriate legal action initiated by the ISO.

6.10.6.5 Except as set forth in this Section 6.10.6, all matters concerning a Designated Entity's recovery of the costs of its Designated Public Policy Project shall be submitted to and decided at the Commission in accordance with the procedures set forth in Sections 6.10.4 and 6.10.5, as applicable.



## 22.1 Definitions

Whenever used in these Transmission Interconnection Procedures with initial capitalization, the following terms shall have the meanings specified in this Section 22.1. Terms used in these procedures with initial capitalization that are not defined in this Section 22.1 shall have the meanings specified in Sections 30.1 of Attachment X, Section 25.1.2 of Attachment S, Section 31.1.1 of Attachment Y, or Section 38.1 of Attachment FF of the ISO OATT, or, if not defined therein, in Section 1 of the ISO OATT or Section 2 of the ISO Services Tariff.

**Applicable Reliability Standards** shall mean the requirements and guidelines of the Applicable Reliability Councils, and the Transmission District, to which the Developer's Transmission Project is directly interconnected, as those requirements and guidelines are amended and modified and in effect from time to time; provided that no Party shall waive its right to challenge the applicability or validity of any requirement or guideline as applied to it in the context of the Transmission Interconnection Procedures.

**Base Case** shall mean the base case power flow, short circuit, and stability data bases used for the Transmission Interconnection Studies by the ISO, Connecting Transmission Owner, or the Transmission Developer, as described in Section 22.6.1 of the Transmission Interconnection Procedures.

**Connecting Transmission Owner** shall mean the New York public utility or authority (or its designated agent) that (i) owns facilities used for the transmission of Energy in interstate commerce and provides Transmission Service under the Tariff, or (ii) owns, leases or otherwise possesses an interest in the portion of the New York State Transmission System at the Point of Interconnection. If a Transmission Project interconnects to more than one Connecting Transmission Owner, the term Connecting Transmission Owner as it appears in this Attachment P shall be read to include all of the Transmission Project's Connecting Transmission Owners.

**Facilities Study** shall mean the study conducted pursuant to Section 22.9 of this Attachment P to determine a list of facilities required to reliably interconnect the Transmission Project (including Network Upgrade Facilities) as identified in the System Impact Study, the cost of those facilities, and the time required to interconnect the Transmission Project with the New York State Transmission System.

**Facilities Study Agreement** shall mean the agreement described in Section 22.9.1 of this Attachment P.

**In-Service Date** shall mean the date upon which the Transmission Project is energized consistent with the provisions of the Transmission Project Interconnection Agreement and available to provide Transmission Service under the NYISO Tariffs.

**Network Upgrade Facilities** shall mean the least costly configuration of commercially available components of electrical equipment that can be used, consistent with good utility practice and Applicable Reliability Requirements, to make the modifications or additions to the New York State Transmission System that are required for the proposed Transmission Project to connect reliably to the system in a manner that meets the NYISO Transmission Interconnection Standard.

**NYISO Transmission Interconnection Standard** shall mean the reliability standard that must be met by any Transmission Project proposing to connect to the New York State Transmission System. The standard is designed to ensure reliable access by the proposed project to the New York State Transmission System.

**Optional Feasibility Study** shall mean the preliminary evaluation of the system impact and cost of interconnecting a Transmission Project to the New York State Transmission System conducted at the option of the Transmission Developer pursuant to Section 22.7 of this Attachment P.

**Optional Feasibility Study Agreement** shall mean the agreement described in Section 22.7.1 of this Attachment P.

**Party or Parties** shall mean any entity or entities subject to the requirements of these Transmission Interconnection Procedures.

**Point of Interconnection** shall mean the point(s) where the Transmission Project connects to the New York State Transmission System.

**Queue Position** shall mean the order of a valid Interconnection Request, Study Request, or Transmission Interconnection Application relative to all other such pending requests, that is established based upon the date and time of receipt of the valid request by NYISO, unless specifically provided otherwise in an applicable transition rule set forth in Attachment P, Attachment X or Attachment Z to the ISO OATT.

**Reasonable Efforts** shall mean, with respect to an action required to be attempted or taken by a Party under the Transmission Interconnection Procedures, efforts that are timely and consistent with Good Utility Practice and are otherwise substantially equivalent to those a Party would use to protect its own interests.

**Scoping Meeting** shall mean the meeting described in Section 22.4.2.4.

**Security** shall mean a bond, irrevocable letter of credit, parent company guarantee or other form of security from an entity with an investment grade rating, executed for the benefit of the Connecting Transmission Owner, and/or Affected System Operator, meeting the commercially reasonable requirements of the Connecting Transmission Owner, or Affected System Operator with which it is required to be posted pursuant to Section 22.9.3 of this Attachment P.

**System Impact Study** shall mean the study conducted pursuant to Section 22.8 of this Attachment P that evaluates the impact of the proposed Transmission Project on the safety and reliability of the New York State Transmission System and, if applicable, an Affected System, to determine what Network Upgrade Facilities are needed for the proposed Transmission Project to

connect reliably to the New York State Transmission System in a manner that meets the NYISO Transmission Interconnection Standard described in Section 22.6.4 of this Attachment P.

**System Impact Study Agreement** shall mean the agreement described in Section 22.8.1 of this Attachment P.

**Transmission Interconnection Application** shall mean the Transmission Developer's request, in the form of Appendix 1 to the Transmission Interconnection Procedures, to interconnect a Transmission Project to the New York State Transmission System.

**Transmission Developer** shall mean any entity, including the Connecting Transmission Owner or any of its Affiliates or subsidiaries that proposes to interconnect its Transmission Project with the New York State Transmission System.

**Transmission Interconnection Studies** shall mean any of the following studies: the Optional Feasibility Study, the System Impact Study, and the Facilities Study described in the Transmission Interconnection Procedures.

**Transmission Project** shall be a Transmission Developer's proposed transmission facility or facilities that collectively satisfy the definition of Transmission Project in Section 22.3.1.

**Transmission Project Interconnection Agreement** shall mean the interconnection agreement applicable to a Transmission Interconnection Application pertaining to a Transmission Project that is entered into in accordance with Section 22.11.

## **22.2 Scope and Application**

### **22.2.1 Application of Transmission Interconnection Procedures**

The Transmission Interconnection Procedures (“TIP”) in Sections 22.2.1 through 22.13 apply to the processing of a Transmission Interconnection Application pertaining to a Transmission Project proposing to interconnect to the New York State Transmission System.

#### **22.2.2 Comparability**

The ISO shall receive, process and analyze all Transmission Interconnection Applications in a timely manner as set forth in the Transmission Interconnection Procedures. As described herein, the ISO will process and analyze all Transmission Interconnection Applications with independence and impartiality, in cooperation with and with input from the Transmission Developers, Connecting Transmission Owners and other Market Participants. The ISO will perform, oversee or review the Transmission Interconnection Studies to ensure compliance with the Transmission Interconnection Procedures. The ISO will use the same Reasonable Efforts in processing and analyzing Transmission Interconnection Applications from all Transmission Developers, whether or not the Transmission Projects are owned by a Transmission Owner, its subsidiaries or Affiliates, or others.

#### **22.2.3 No Applicability to Transmission Service or Other Services**

Nothing in these Transmission Interconnection Procedures shall constitute a request for Transmission Service or confer upon a Transmission Developer any right to receive Transmission Service. Nothing in these Transmission Interconnection Procedures shall constitute a request for, nor agreement to provide, any energy, Ancillary Services or Installed Capacity under the ISO Services Tariff.

## **22.3 Transmission Projects Subject to Transmission Interconnection Procedures**

### **22.3.1 Definition of a Transmission Project**

**22.3.1.1** A Transmission Project, as defined in this Section 22.3.1, shall be subject to the Transmission Interconnection Procedures in this Attachment P.

**22.3.1.2** Except as otherwise provided in Section 22.3.1.3, a Transmission Project shall include a Transmission Developer's proposed new transmission facility that will interconnect to the New York State Transmission System or a Transmission Developer's proposed upgrade – an improvement to, addition to, or replacement of a part of an existing transmission facility – to the New York State Transmission System.

**22.3.1.3** Notwithstanding the definition of Transmission Project in Section 22.3.1.2, the following transmission facilities will not be a Transmission Project that is subject to these Transmission Interconnection Procedures: (i) a Class Year Transmission Project as defined in Attachment X to the ISO OATT, or (ii) a new transmission facility or upgrade proposed by a Transmission Owner in its Local Transmission Owner Plan or NYPA transmission plan that is not subject to the ISO's competitive selection process in the ISO's Comprehensive System Planning Process in Attachment Y of the ISO OATT or the ISO's Short-Term Reliability Process in Attachment FF of the ISO OATT and for which the Transmission Owner is not seeking cost allocation under the ISO OATT. A proposed controllable line for which the proposing entity is seeking CRIS to receive UDRs shall be subject to the interconnection requirements in Attachments S and X of the ISO OATT. A Transmission Owner's proposed new transmission facility or upgrade that is not a Transmission Project shall be subject to the transmission

expansion requirements in Section 3.7 of the ISO OATT.

### **22.3.2 Entering Service Early to Maintain System Reliability**

If a Transmission Developer requests to enter into service prior to the completion of all Transmission Interconnection Studies and the completion of any required Network Upgrade Facilities, the Connecting Transmission Owner and the ISO will permit to the Transmission Project's early entry into service if: (i) there is a Transmission Project Interconnection Agreement for the Transmission Project, and (ii) the ISO and Connecting Transmission Owner(s) have determined that the Transmission Project can enter into service without violating Applicable Laws and Regulations, Applicable Reliability Standards, Good Utility Practice, and the Transmission Project Interconnection Agreement.

### **22.3.3 Procedures for Interconnection Requests and Study Requests Submitted Prior to the Effective Date of the Transmission Interconnection Procedures**

#### **22.3.3.1 Queue Position for Pending Requests**

**22.3.3.1.1** Any Transmission Developer assigned one or more Queue Position(s) for its Transmission Project prior to the effective date of these Transmission Interconnection Procedures as a Developer for an Interconnection Request submitted pursuant to Attachment X of the ISO OATT or for a Study Request submitted pursuant to Sections 3.7 or 4.5 of the OATT shall retain that Queue Position and may, as applicable, consolidate multiple Queue Positions that collectively address the Transmission Project into one Queue Position.

**22.3.3.1.2** If an agreement for one of the Interconnection Studies under Attachment X of the ISO OATT or the System Impact Study or Facilities Study under Sections 3.7 or 4.5 of the OATT for a Transmission Project has not been executed



as of the effective date of these Transmission Interconnection Procedures, then such study, and any subsequent studies, shall be processed in accordance with these Transmission Interconnection Procedures.

**22.3.3.1.3** If an agreement for one of the Interconnection Studies under Attachment X of the ISO OATT or the System Impact Study or Facilities Study under Sections 3.7 or 4.5 of the OATT for a Transmission Project has been executed prior to the effective date of these Transmission Interconnection Procedures, the Transmission Developer (previously referred to as the Developer or Eligible Customer) that executed the agreement may elect to either complete such study in accordance with the terms of such agreement or to execute the agreement for the comparable study, and to proceed, under these Transmission Interconnection Procedures. If the Transmission Developer elects to complete the study under Attachment X of the OATT or Sections 3.7 or 4.5 of the OATT, the Transmission Developer will proceed with any subsequent studies for the Transmission Project in accordance with the Transmission Interconnection Procedures.

**22.3.3.1.4** If an interconnection agreement for a facility that satisfies the definition of Transmission Project in Section 22.3.1 has been submitted to the Commission for approval before the effective date of these Transmission Interconnection Procedures, then the interconnection agreement would be grandfathered.

### **22.3.3.2 Transition Period**

To the extent necessary, the ISO and Transmission Developers with an outstanding request under Attachment X of the ISO OATT or Sections 3.7 or 4.5 of the OATT (*i.e.*, an Interconnection Request or a Study Request) for which an interconnection agreement has not

been submitted to the Commission for approval as of the effective date of these Transmission Interconnection Procedures) shall transition to these procedures within a reasonable period of time not to exceed sixty (60) Calendar Days. The use of the term “outstanding request” herein shall mean any Interconnection Request or Study Request, on the effective date of these Transmission Interconnection Procedures: (i) that has been submitted but not yet accepted by the ISO; (ii) where the related interconnection agreement has not yet been submitted to the Commission for approval in executed or unexecuted form, (iii) where the relevant agreements for Interconnection Studies under Attachment X of the ISO OATT or the System Impact Study or Facilities Study under Sections 3.7 or 4.5 of the OATT have not yet been executed, or (iv) where any of the relevant Interconnection Studies under Attachment X of the ISO OATT or the System Impact Study or Facilities Study under Sections 3.7 or 4.5 of the OATT are in process but not yet completed. Any Transmission Developer with an outstanding request as of the effective date of these Transmission Interconnection Procedures may request a reasonable extension of any deadline, otherwise applicable, if necessary to avoid undue hardship or prejudice to its Transmission Interconnection Application. A reasonable extension shall be granted by the ISO to the extent consistent with the intent and process provided for under these Transmission Interconnection Procedures.

#### **22.3.4 New Transmission Provider**

If the ISO transfers its control of the New York State Transmission System to a successor transmission provider during the period when a Transmission Interconnection Application is pending, the ISO shall transfer to the successor transmission provider any amount of the deposit or payment with interest thereon that exceeds the cost that it incurred to evaluate the request for interconnection. Any difference between such net amount and the deposit or payment required

by these Transmission Interconnection Procedures shall be paid by or refunded to the Transmission Developer, as appropriate. The ISO shall coordinate with the successor transmission provider to complete any Transmission Interconnection Applications (including Transmission Interconnection Studies), as appropriate, that the ISO has begun but has not completed. If the ISO has tendered a draft Transmission Project Interconnection Agreement to the Transmission Developer but the Transmission Developer has not either executed that interconnection agreement or requested the filing of an unexecuted Transmission Project Interconnection Agreement with FERC, unless otherwise provided, the Transmission Developer must complete negotiations with the successor transmission provider.

## **22.4 Transmission Interconnection Application**

### **22.4.1 General**

A Transmission Developer proposing to interconnect a Transmission Project to the New York State Transmission System shall submit to the ISO a Transmission Interconnection Application in the form of Appendix 1 to these Transmission Interconnection Procedures. The Transmission Interconnection Application must be accompanied by a non-refundable application fee of \$10,000. The application fee shall be divided equally between the ISO and Connecting Transmission Owner(s). If the ISO selects a Public Policy Transmission Project and designates the project or a portion of the project to a Designated Entity other than the original Developer pursuant to the provisions of Attachment Y of the ISO OATT, the Designated Entity that is not the original Developer of the project may (i) join an ongoing Transmission Interconnection Application that covers the entire Public Policy Transmission Project with the agreement of the original Transmission Developer and be jointly and severally responsible for the study costs, or (ii) submit a separate Transmission Interconnection Application for its Designated Public Policy Project pursuant to the requirements in this Article 22.4. In the event that the Designated Entity submits a separate Transmission Interconnection Application and the Designated Public Policy Project is a project component(s) of a Transmission Project with an existing Transmission Interconnection Application, such component(s) will be removed from the existing Transmission Interconnection Application and such change to the Transmission Project shall not constitute a material modification in accordance with Section 22.5.4.2.

### **22.4.2 Valid Transmission Interconnection Application**

#### **22.4.2.1 Initiating a Transmission Interconnection Application**

To initiate a Transmission Interconnection Application, a Transmission Developer must

submit a \$10,000 non-refundable application fee and a completed application in the form of Appendix 1. The expected In-Service Date of the Transmission Project provided at the time of the submission of the Transmission Interconnection Application, and updates to the In-Service Date submitted after submission of the Transmission Interconnection Application, shall be no more than ten (10) years from the date the Transmission Interconnection Application is received by the ISO, subject to demonstration of reasonable progress of development of the Transmission Project.

#### **22.4.2.2 Acknowledgment and Notification of Transmission Interconnection Application**

The ISO shall acknowledge receipt of the Transmission Interconnection Application within five (5) Business Days of receipt of the request and attach a copy of the received Transmission Interconnection Application to the acknowledgement it returns to the Transmission Developer. At the same time, the ISO shall forward a copy of the Transmission Interconnection Application and its acknowledgement to the Connecting Transmission Owner(s) with whom the Transmission Developer is proposing to connect; *provided, however*, that any Transmission Interconnection Application that is submitted for a proposed project subject to the ISO's competitive selection process in the ISO's Comprehensive System Planning Process in Attachment Y to the ISO OATT or the ISO's Short-Term Reliability Process in Attachment FF of the ISO OATT shall not be forwarded to the Connecting Transmission Owner(s) until the close of the applicable solicitation window.

#### **22.4.2.3 Deficiencies in Transmission Interconnection Application**

A Transmission Interconnection Application will not be considered to be a valid application until all items in Section 22.4.2.1 have been received by the ISO and the applicable

solicitation window has closed for any Transmission Interconnection Application that is submitted for a proposed project subject to the ISO's competitive selection process in the ISO's Comprehensive System Planning Process in Attachment Y to the ISO OATT or the ISO's Short-Term Reliability Process in Attachment FF of the ISO OATT. If a Transmission Interconnection Application fails to meet the requirements set forth in Section 22.4.2.1, the ISO shall notify the Transmission Developer and the Connecting Transmission Owner(s) within five (5) Business Days of receipt of the initial Transmission Interconnection Application of the reasons for such failure and that the Transmission Interconnection Application does not constitute a valid application. However, for any Transmission Interconnection Application that is submitted for a proposed project subject to the ISO's competitive selection process in the ISO's Comprehensive System Planning Process in Attachment Y to the ISO OATT or the ISO's Short-Term Reliability Process in Attachment FF of the ISO OATT and that fails to meet the requirements set forth in Section 22.4.2.1, the ISO shall notify the Transmission Developer and the Connecting Transmission Owner(s) no later than five (5) Business Days following the close of the applicable solicitation window. The Transmission Developer shall provide the ISO the additional requested information needed to constitute a valid application within ten (10) Business Days after receipt of such notice. The ISO shall promptly forward such information to the Connecting Transmission Owner(s); *provided, however*, for any Transmission Interconnection Application that is submitted for a proposed project subject to the ISO's competitive selection process in the ISO's Comprehensive System Planning Process in Attachment Y of the ISO OATT or the ISO's Short-Term Reliability Process in Attachment FF of the ISO OATT, such information will not be forwarded to the Connecting Transmission Owner(s) until the close of the applicable solicitation window. Failure by the Transmission Developer to comply with this Section 22.4.2.3 shall be

treated in accordance with Section 22.4.5.

#### **22.4.2.4 Scoping Meeting**

Within ten (10) Business Days after receipt of a valid Transmission Interconnection Application, the ISO shall establish a date agreeable to the Transmission Developer and the Connecting Transmission Owner(s) for the Scoping Meeting. The date shall be no later than thirty (30) Calendar Days from receipt of the valid Transmission Interconnection Application, unless otherwise mutually agreed upon by the Parties.

The purposes of the Scoping Meeting shall be to discuss whether the Transmission Developer elects to pursue an Optional Feasibility Study or proceed to a System Impact Study for its Transmission Project, to discuss alternative interconnection options, to exchange information including any transmission data that would reasonably be expected to impact such interconnection options, to analyze such information and to determine the potential feasible Points of Interconnection. The ISO, Connecting Transmission Owner(s), and the Transmission Developer will bring to the meeting such technical data, including, but not limited to: (i) general facility loadings, (ii) general stability issues, (iii) general short circuit issues, (iv) general voltage issues, (v) general reliability issues, and (vi) general system protection issues, as may be reasonably required to accomplish the purpose of the meeting. The ISO, Connecting Transmission Owner(s) and the Transmission Developer will also bring to the meeting personnel and other resources as may be reasonably required to accomplish the purpose of the meeting in the time allocated for the meeting. The Transmission Developer shall in writing within five (5) Business Days of this meeting: (i) make its election as to whether it will pursue an Optional Feasibility Study or proceed to a System Impact Study for its Transmission Project, and (ii) designate the Point(s) of Interconnection for the Transmission Project. The duration of the

meeting shall be sufficient to accomplish its purpose.

If (i) a Transmission Developer that elects pursuant to Section 22.4.1 to submit a new Transmission Interconnection Application for its Designated Public Policy Project that is a component of a Transmission Project that is already subject to a Transmission Interconnection Application; (ii) the Transmission Project subject to the original Transmission Interconnection Application has a completed SIS; and (iii) there have been no material modifications to the Transmission Project, including the Designated Public Policy Project, since the ISO performed the SIS pursuant to the original Transmission Interconnection Application, then the ISO, Transmission Developer(s) of the new Transmission Interconnection Application, and Connecting Transmission Owner can agree to proceed directly to the Facilities Study with the new Transmission Interconnection Application. Such agreement to proceed directly to the Facilities Study shall not be unreasonably withheld.

### **22.4.3 OASIS Posting**

The ISO will maintain on its OASIS a list of all valid Transmission Interconnection Applications. The list will identify, for each Transmission Interconnection Application: (i) the maximum summer and winter megawatt electrical output, if applicable; (ii) the location by county and state; (iii) the station or transmission line or lines where the interconnection will be made; (iv) the projected In-Service Date; (v) the status of the Transmission Interconnection Application, including Queue Position; (vi) the identity of the Transmission Developer; (vii) the availability of any studies related to the Transmission Interconnection Application; (viii) the date of the Transmission Interconnection Application; (ix) the type of the Transmission Project to be constructed; and (x) for Transmission Interconnection Applications that have not resulted in a completed interconnection, an explanation as to why it was not completed. Before holding a



Scoping Meeting with an Affiliate of a Connecting Transmission Owner and that Connecting Transmission Owner, the ISO shall post on its OASIS an advance notice of its intent to do so. The ISO shall post to its OASIS site any deviations from the study timelines set forth herein. Transmission Interconnection Study reports shall be posted to the ISO password-protected website subsequent to the meeting between the Transmission Developer, the ISO and the Connecting Transmission Owner(s) to discuss the applicable study results. The ISO shall also post any known deviations in date proposed by the Transmission Project in Section 22.4.3(iv), above.

#### **22.4.4 Coordination with Affected Systems**

The ISO will coordinate the conduct of any studies required to determine the impact of the Transmission Interconnection Application on Affected Systems with Affected System Operators. The ISO will include those results on Affected Systems in its applicable Transmission Interconnection Study within the time frame specified in these Transmission Interconnection Procedures. The ISO will also include results, if available, on other Affected Systems. The ISO will invite such Affected System Operators to all meetings held with the Transmission Developer as required by these Transmission Interconnection Procedures. The Transmission Developer will cooperate with the ISO in all matters related to the conduct of studies and the determination of modifications to Affected Systems. An Affected System Operator shall cooperate with the ISO and Connecting Transmission Owner(s) with whom interconnection has been requested in all matters related to the conduct of studies and the determination of modifications to Affected Systems.

#### **22.4.5 Withdrawal**

The Transmission Developer may withdraw its Transmission Interconnection Application

at any time by written notice of such withdrawal to the ISO. In addition, if the Transmission Developer fails to adhere to all requirements of these Transmission Interconnection Procedures, except as provided in Section 22.13.5 (Disputes), the ISO shall deem the Transmission Interconnection Application to be withdrawn and shall provide written notice to the Transmission Developer of the deemed withdrawal and an explanation of the reasons for such deemed withdrawal. Upon receipt of such written notice, the Transmission Developer shall have a cure period of fifteen (15) Business Days in which to either respond with information or actions that cures the deficiency or to notify the ISO of its intent to pursue Dispute Resolution.

Withdrawal following the end of the cure period shall result in the loss of the Transmission Developer's Queue Position. If a Transmission Developer disputes the withdrawal and loss of its Queue Position, then during Dispute Resolution, the Transmission Developer's Transmission Interconnection Application is eliminated from the queue until such time that the outcome of Dispute Resolution would restore its Queue Position. A Transmission Developer that withdraws or is deemed to have withdrawn its Transmission Interconnection Application shall pay to the ISO and Connecting Transmission Owner(s) all costs that the ISO and Connecting Transmission Owner(s) prudently incur with respect to that Transmission Interconnection Application prior to the receipt of notice described above. The Transmission Developer must pay all monies due to the ISO and Connecting Transmission Owner(s) before it is allowed to obtain any Transmission Interconnection Study data or results.

The ISO shall (i) update the OASIS Queue Position posting and (ii) refund to the Transmission Developer any portion of the Transmission Developer's deposit or study payments that exceeds the costs that the ISO has incurred, including interest calculated in accordance with section 35.19a(a)(2) of FERC's regulations. In the event of such withdrawal, the ISO and

Connecting Transmission Owner(s), subject to the confidentiality provisions of Section 22.13.1, shall provide, at the Transmission Developer's request, all information that the ISO and Connecting Transmission Owner(s) developed for any completed study conducted up to the date of withdrawal of the Transmission Interconnection Application.

## **22.5 Queue Position**

### **22.5.1 General**

The ISO shall assign a Queue Position based upon the date and time of receipt of the valid Transmission Interconnection Application; provided that, if the sole reason a Transmission Interconnection Application is not valid is the lack of required information on the application form, and the Transmission Developer provides such information in accordance with Section 22.4.2.3, then the ISO shall assign the Transmission Developer a Queue Position based on the date the application form was originally filed. The Queue Position of each Transmission Interconnection Application will be used to determine the order of performing the Transmission Interconnection Studies. A higher queued Transmission Interconnection Application is one that has been placed “earlier” in the queue in relation to another Transmission Interconnection Application that is lower queued.

### **22.5.2 Clustering**

At the ISO’s option, Transmission Interconnection Applications may be studied serially or in clusters for the purpose of the System Impact Study or Facilities Study.

### **22.5.3 Transferability of Queue Position**

A Transmission Developer may transfer its Queue Position to another entity only if such entity acquires the specific Transmission Project identified in the Transmission Interconnection Application and the Point(s) of Interconnection do not change. As a result of such a transfer, the acquiring entity shall become the Transmission Developer of the specific Transmission Project identified in the Transmission Interconnection Application.

### **22.5.4 Modifications**

The Transmission Developer shall submit to the ISO, in writing, modifications to any

information provided in the Transmission Interconnection Application. The Transmission Developer shall retain its Queue Position if the modifications are permitted in accordance with Section 22.5.4.1, or are determined not to be material modifications pursuant to Section 22.5.4.3.

**22.5.4.1** Prior to the parties' execution of the System Impact Study Agreement, the Transmission Developer may make any modification to the information provided in the Transmission Interconnection Application.

**22.5.4.2** Following the parties' execution of the System Impact Study Agreement, a Transmission Developer may not make any modification to the proposed Transmission Project, except for changes to the project's electrical characteristics that the ISO determines do not constitute a material modification; *provided, however,* that a Transmission Developer may modify a Transmission Project that is selected by the ISO as the more efficient or cost effective solution in the ISO's Public Policy Transmission Planning Process to remove components of the Transmission Project that were designated to a Designated Entity, as defined in Attachment Y to the ISO OATT, other than the Transmission Developer and for which the Designated Entity submits a separate Transmission Interconnection Application pursuant to Section 22.4.1 for the components of the Transmission Project requested to be removed.

**22.5.4.3** The ISO shall evaluate a modification to the Transmission Project's electrical characteristics and will inform the Transmission Developer in writing of whether the modifications constitute a material modification. The ISO shall commence and perform any necessary additional studies as soon as practicable, but in no event shall the ISO commence such studies later than thirty (30)

Calendar Days after receiving notice of Transmission Developer's request. Any additional studies resulting from such modification shall be done at Transmission Developer's cost.

**22.5.4.4** If the ISO determines that a Transmission Developer's modification to its Transmission Project constitute a material modification, the Transmission Developer must perform a new System Impact Study for its modified Transmission Project, subject to the execution of a new System Impact Study Agreement and the provision of the required study deposit.

**22.5.4.5** Modifications to a Transmission Project that are permitted under this Section 22.5.4 for the purposes of the Transmission Interconnection Procedures may not be permitted under the separate requirements of the Comprehensive System Planning Process in accordance with Attachment Y of the ISO OATT or the Short-Term Reliability Process in accordance with Attachment FF of the ISO OATT.

## **22.6 Base Case for Transmission Interconnection Procedures and NYISO Transmission Interconnection Standard**

### **22.6.1 Base Case Data**

The power flow, short circuit, and stability data bases, hereinafter referred to as Base Cases, shall include the following that will be based upon either the ISO's fifth year or tenth year case included in the most recent FERC Form No. 715: (i) all existing generation and transmission facilities identified in the ISO's most recent NYISO Load and Capacity Data Report, excluding those facilities that are subject to Class Year cost allocation but for which Class Year cost allocations have not been accepted; (ii) all planned projects subject to Attachment S of the ISO OATT that have accepted their cost allocation in a prior Class Year cost allocation process and System Upgrade Facilities and System Deliverability Upgrades associated with those projects except that System Deliverability Upgrades where construction has been deferred pursuant to Section 25.7.12.2 and 25.7.12.3 of Attachment S of the ISO OATT will only be included if construction of the System Deliverability Upgrades has been triggered under Section 25.7.12.3 of Attachment S of the ISO OATT; (iii) all generation and transmission retirements and derates identified in the NYISO Load and Capacity Data Report as scheduled to occur during the study period for the Transmission Interconnection Study; (iv) Transmission Projects that have met the following milestones: (1) have been triggered (if subject to the Reliability Planning Process), selected (if subject to the Short-Term Reliability Process), selected (if subject to the Public Policy Transmission Planning Process), or approved by beneficiaries (if subject to the Economic Planning Process); (2) have a completed System Impact Study (if applicable); (3) have a determination pursuant to Article VII that the Article VII application filed for the facility is in compliance with Public Service Law §122 (*i.e.*, "deemed complete") (if applicable); and (4) are making reasonable progress under the applicable Attachments Y or FF

planning process (if applicable); (v) transmission projects identified as “firm” by the Connecting Transmission Owner and either (1) have commenced a Facilities Study (if applicable) and have an Article VII application deemed complete (if applicable); or (2) are under construction and scheduled to be in-service within 12 months and (vi) all other changes to existing facilities, other than changes that are subject to Class Year cost allocation but that have not accepted their Class Year cost allocation, that are identified in the NYISO Load and Capacity Data Report or reported by Market Participants to the NYISO as scheduled to occur during the study period for the Transmission Interconnection Study. If the ISO has triggered multiple Transmission Projects under its Reliability Planning Process, the ISO will include in the base case the selected Transmission Project until or unless that project is halted or its Development Agreement is terminated, in which case the ISO will include in the base case the regulated backstop solution. If the proposed Transmission Project is related to or in response to a system condition not reflected in the above requirements, the ISO may, as appropriate, amend the Base Cases to take that system condition into account in evaluating the proposed Transmission Project.

#### **22.6.2 Release of Base Case Data**

The ISO or Connecting Transmission Owner, depending upon which of those Parties possesses the data requested, shall provide base power flow, short circuit and stability databases, including all underlying assumptions and contingency lists, to the Transmission Developer upon request. All Parties shall treat Confidential Information in accordance with Section 22.13.1 of these Transmission Interconnection Procedures. The ISO and Connecting Transmission Owner are permitted to require that the Transmission Developer sign a non-disclosure agreement before the release of Confidential Information or Critical Energy Infrastructure Information in the Base Case data.



### **22.6.3 The Transmission Interconnection Studies**

All Transmission Projects must interconnect in compliance with the NYISO Transmission Interconnection Standard. The ISO evaluates a Transmission Interconnection Application for compliance with the NYISO Transmission Interconnection Standard throughout the Transmission Interconnection Study process. The Transmission Interconnection Studies conducted under the Transmission Interconnection Procedures consist of short circuit/fault duty, steady state (thermal and voltage) and stability analyses designed to identify the Network Upgrade Facilities required for the reliable interconnection of Transmission Projects to the New York State Transmission System in compliance with the NYISO Transmission Interconnection Standard.

### **22.6.4 NYISO Transmission Interconnection Standard**

The NYISO Transmission Interconnection Standard is designed to ensure that a proposed Transmission Project, as it proposes to interconnect to the New York State Transmission System, is consistent with Applicable Reliability Standards and will not degrade interface transfer capability by more than 25 MW.

## **22.7 Optional Feasibility Study**

### **22.7.1 Optional Feasibility Study Agreement**

As soon as practicable after receiving the Transmission Developer's election in the Scoping Meeting in accordance with Section 22.4.2.4 to pursue an Optional Feasibility Study for its Transmission Project, the ISO shall tender to the Transmission Developer and the Connecting Transmission Owner an Optional Feasibility Study Agreement. At the Scoping Meeting, the Transmission Developer shall specify for inclusion in the attachment to the Optional Feasibility Study Agreement the Point(s) of Interconnection and any reasonable alternative configurations, not to exceed two alternative configurations. The Transmission Developer must provide a \$60,000 study deposit to the ISO for the Optional Feasibility Study. The tendered Optional Feasibility Study Agreement will include a good faith estimate of the cost for completing the Optional Feasibility Study. The Optional Feasibility Study Agreement shall specify that the Transmission Developer is responsible for the actual costs incurred by the ISO and the Connecting Transmission Owner for the Optional Feasibility Study. The Optional Feasibility Study Agreement shall provide that if actual study costs exceed the study deposit, the Transmission Developer shall pay the ISO the amount in excess of the study deposit, and if the actual study costs are less than the study deposit, the ISO shall refund the remaining deposit amount to the Transmission Developer. The Optional Feasibility Study Agreement shall also set forth the study schedule based on the study scope. The Transmission Developer, the ISO and the Connecting Transmission Owner shall execute and deliver to the ISO the Optional Feasibility Study Agreement no later than thirty (30) Calendar Days after the ISO tenders the Optional Feasibility Study Agreement. The Transmission Developer shall, on or before the return of the executed Optional Feasibility Study Agreement to the ISO, provide the required \$60,000 deposit.

On or before the return of the executed Optional Feasibility Study Agreement to the ISO,

the Transmission Developer shall provide the technical data required by the agreement. If the Transmission Developer does not provide all required technical data when it delivers the Optional Feasibility Study Agreement, the ISO shall notify the Transmission Developer of the deficiency within five (5) Business Days of the receipt of the executed Optional Feasibility Study Agreement and the Transmission Developer shall cure the deficiency within ten (10) Business Days of receipt of the notice, *provided, however*, such deficiency does not include failure to deliver the executed Optional Feasibility Study Agreement or deposit. If the Transmission Developer fails to provide the required technical data within this timeframe, the Transmission Interconnection Application shall be withdrawn in accordance with Section 22.4.5. The Transmission Developer, the ISO and the Connecting Transmission Owner shall execute the Optional Feasibility Study Agreement within thirty (30) Calendar Days after the ISO tenders the Optional Feasibility Study Agreement.

#### **22.7.2 Optional Feasibility Study Scope and Procedures**

The Optional Feasibility Study shall preliminarily evaluate the feasibility of the proposed interconnection to the New York State Transmission System. The Optional Feasibility Study shall be conducted in accordance with Applicable Reliability Standards and will evaluate the Transmission Project using the Base Case described in Section 22.6.1. The Optional Feasibility Study may consist of any of the following technical analyses as described in the Optional Feasibility Study scope:

- a. Conceptual breaker-level one-line diagram of existing system where project proposes to interconnect;
- b. Review of feasibility/constructability of conceptual breaker-level one-line diagram of the proposed interconnection (e.g., space for additional breaker bay in existing

substation; identification of cable routing concerns inside existing substation; environmental concerns inside the substation);

- c. Preliminary review of local protection, communication, grounding issues associated with the proposed interconnection;
- d. Power flow, short circuit and/or bus flow analyses; and/or
- e. Identification of Network Upgrade Facilities.

The schedule for completing the Optional Feasibility Study will be documented in the Optional Feasibility Study Agreement. The ISO shall utilize existing studies to the extent practicable when it performs the study. Upon request, the ISO shall provide the Transmission Developer supporting documentation, workpapers and relevant power flow, short circuit and stability databases for the Optional Feasibility Study, subject to confidentiality arrangements consistent with Section 22.13.1.

### **22.7.3 Optional Feasibility Study Report Meeting**

As soon as practicable after completing the initial draft of the Optional Feasibility Study report, the ISO will provide the Optional Feasibility Study report to the Transmission Developer, the Connecting Transmission Owner, and any Affected Systems for review and comment. Upon completion of this review process, the ISO and the Connecting Transmission Owner shall meet with Transmission Developer and any Affected Systems to discuss the results of the Optional Feasibility Study.

## **22.8 System Impact Study**

### **22.8.1 System Impact Study Agreement**

As soon as practicable after receiving the Transmission Developer's election in the Scoping Meeting in accordance with Section 22.4.2.4 to proceed to a System Impact Study ("SIS") or simultaneously with the delivery of an Optional Feasibility Study to the Transmission Developer, the ISO shall tender the Transmission Developer and Connecting Transmission Owner a System Impact Study Agreement. Upon tendering the System Impact Study Agreement, the ISO shall provide to the Transmission Developer a non-binding good faith estimate of the cost and timeframe for completing the SIS.

The Transmission Developer must provide a \$120,000 study deposit to the ISO for the SIS if the ISO is responsible for performing the entire study; *provided, however*, that if the Transmission Developer is hiring a third-party consultant to perform the analytical portion of the study, pursuant to the requirements set forth in Section 22.13.4 of this Attachment P, the required deposit is \$40,000. The System Impact Study Agreement shall specify that the Transmission Developer is responsible for the actual costs incurred by the ISO and the Connecting Transmission Owner for the SIS. The System Impact Study Agreement shall provide that if actual study costs exceed the study deposit, the Transmission Developer shall pay the ISO the amount in excess of the study deposit, and if the actual study costs are less than the study deposit, the ISO shall refund the remaining deposit amount to the Transmission Developer. The System Impact Study Agreement shall also set forth the study schedule based on the study scope.

### **22.8.2 Execution of System Impact Study Agreement**

The Transmission Developer shall execute and deliver to the ISO the System Impact Study Agreement and the applicable study deposit set forth in Section 22.8.1 no later than thirty

(30) Calendar Days after its receipt. On or before the return of the executed System Impact Study Agreement to the ISO, the Transmission Developer shall provide the technical data required by the agreement. If the Transmission Developer does not provide all required technical data when it delivers the System Impact Study Agreement, the ISO shall notify the Transmission Developer of the deficiency within five (5) Business Days of the receipt of the executed System Impact Study Agreement and the Transmission Developer shall cure the deficiency within ten (10) Business Days of receipt of the notice, *provided, however*, such deficiency does not include failure to deliver the executed System Impact Study Agreement or deposit. If the Transmission Developer fails to provide the required technical data within this timeframe, the Transmission Interconnection Application shall be withdrawn in accordance with Section 22.4.5. The Transmission Developer, the ISO and the Connecting Transmission Owner shall execute the System Impact Study Agreement within thirty (30) Calendar Days after the ISO tenders the System Impact Study Agreement. The Transmission Developer shall, on or before the return of the executed System Impact Study Agreement to the ISO, provide the required study deposit.

### **22.8.3 Scope of System Impact Study**

The SIS shall evaluate the impact of the proposed interconnection on the reliability of the New York State Transmission System. The SIS shall be conducted in accordance with Applicable Reliability Standards. The ISO Operating Committee shall approve the specific study scope proposed for each SIS. If an Optional Feasibility Study is not performed for the project, the SIS will also evaluate the feasibility of the proposed interconnection.

Evaluation under the NYISO Transmission Interconnection Standard involves a transmission security analysis using thermal, voltage, stability and short circuit analyses, as well

as a transfer limit analysis to ensure that a Transmission Project does not degrade interface transfer capability. A Transmission Project will trigger a Network Upgrade Facility if upgrades are necessary to mitigate impacts to the controlling limit (*i.e.*, voltage, stability, thermal) as well as any impact to the thermal limit. A Transmission Project will also trigger a Network Upgrade Facility if it degrades by more than 25 MW the pre-project transfer limits of any NYISO transmission planning interface recognized in the ISO's transmission planning studies pursuant to ISO procedures. A Transmission Project that triggers an upgrade would have to fully restore the impacted transfer limits to the pre-project limits.

#### **22.8.4 System Impact Study Procedures**

The ISO shall coordinate the SIS with any Affected System that is affected by the Transmission Interconnection Application pursuant to Section 22.4.4 above. The ISO shall utilize existing studies to the extent practicable when it performs the study.

The SIS will state the assumptions upon which it is based; state the results of the analyses; and provide the requirements or potential impediments to the proposed interconnection, including a preliminary indication of the cost and length of time that would be necessary to correct any problems identified in those analyses and implement the interconnection. The SIS will provide a list of Network Upgrade Facilities that are required as a result of the Transmission Project and a nonbinding good faith estimate of cost responsibility and a non-binding good faith estimated time to construct.

The ISO may evaluate Transmission Projects moving forward in the same time frame that both contribute to Network Upgrade Facilities to determine their *pro rata* cost responsibility for such Network Upgrade Facilities.

Upon request, the ISO shall provide the Transmission Developer all supporting

documentation, workpapers and relevant pre-Transmission Interconnection Application and post-Transmission Interconnection Application power flow, short circuit and stability databases for the SIS, subject to confidentiality arrangements consistent with Section 22.13.1.

#### **22.8.5 Study Report Meeting**

As soon as practicable after completing the initial draft of the System Impact Study report, the ISO will provide the System Impact Study report to the Transmission Developer, the Connecting Transmission Owner, and any Affected Systems for review and comment. Upon completion of this review process, the ISO and the Connecting Transmission Owner shall meet with Transmission Developer and any Affected Systems to discuss the results of the SIS.

The ISO Operating Committee shall approve each final SIS.



## **22.9 Facilities Study**

### **22.9.1 Facilities Study Agreement**

A Transmission Developer may request that the ISO tender a Facilities Study Agreement for its Transmission Project at any time following the ISO Operating Committee's approval of the SIS for the Transmission Project pursuant to Section 22.8.5. As soon as practicable after the ISO's receipt of the Transmission Developer's request, the ISO shall tender the Transmission Developer and Connecting Transmission Owner a Facilities Study Agreement. When the ISO tenders the Facilities Study Agreement, it shall provide to the Transmission Developer a non-binding good faith estimate of the cost and timeframe for completing the Facilities Study.

The Transmission Developer must provide a \$100,000 study deposit to the ISO for the Facilities Study. The Facilities Study Agreement shall specify that the Transmission Developer is responsible for the actual costs incurred by the ISO and the Connecting Transmission Owner for the Facilities Study Agreement. NYISO shall invoice the Transmission Developer on a monthly basis for the work to be conducted on the Facilities Study. The Transmission Developer shall pay invoiced amounts within thirty (30) Calendar Days of receipt of invoice. The ISO shall continue to hold the amounts on deposit until settlement of the final invoice. The Facilities Study Agreement shall provide that if actual study costs exceed the study deposit, the Transmission Developer shall pay the ISO the amount in excess of the study deposit, and if the actual study costs are less than the study deposit, the ISO shall refund the remaining deposit amount to the Transmission Developer. The Facilities Study Agreement shall also set forth the study schedule based on the study scope.

### **22.9.2 Execution of Facilities Study Agreement**

The Transmission Developer, the ISO and the Connecting Transmission Owner shall

execute and deliver to the ISO the Facilities Study Agreement no later than thirty (30) Calendar Days after the ISO tenders the Facilities Study Agreement. The Transmission Developer shall, on or before the return of the executed Facilities Study Agreement to the ISO, provide the deposit and technical data required by the agreement. If the Transmission Developer does not provide all required technical data when it delivers the Facilities Study Agreement, the ISO shall notify the Transmission Developer of the deficiency within five (5) Business Days of the receipt of the executed Facilities Study Agreement, and the Transmission Developer shall cure the deficiency within ten (10) Business Days of receipt of the notice, *provided, however*, such deficiency does not include failure to deliver the executed Facilities Study Agreement or deposit. If the Transmission Developer fails to provide the required technical data within this timeframe, the Transmission Interconnection Application shall be withdrawn in accordance with Section 22.4.5. The Transmission Developer, the ISO and the Connecting Transmission Owner shall execute and deliver to the ISO the Facilities Study Agreement no later than thirty (30) Calendar Days after the ISO tenders the Facilities Study Agreement. The Transmission Developer shall, on or before the return of the executed Facilities Study Agreement to the ISO, provide the required \$100,000 deposit.

### **22.9.3 Scope of Facilities Study**

The Facilities Study shall update and refine the description of Network Upgrade Facilities identified in the System Impact Study, including the equipment, work and related cost and time estimates necessary to construct the required Network Upgrade Facilities. Transmission Developer will be responsible for posting Security in the amount of the cost estimates for the Network Upgrade Facilities documented in the final Facilities Study report pursuant to Section 22.11.1 of this Attachment P. The Facilities Study shall also contain a non-binding estimate as to

the feasible TCCs resulting from the construction of the new facilities, as applicable.

#### **22.9.4 Facilities Study Procedures**

The ISO shall coordinate the Facilities Study with the Connecting Transmission Owner and Affected System Operators, and with any other Affected System pursuant to Section 22.4.4. The ISO shall utilize existing studies to the extent practicable in performing the Facilities Study.

#### **22.9.5 Study Report Meeting**

As soon as practicable after completing the initial draft of the Facilities Study report, the ISO will provide the Facilities Study report to the Transmission Developer, the Connecting Transmission Owner, and any Affected Systems for review and comment. Upon completion of this review process, the ISO and the Connecting Transmission Owner shall meet with Transmission Developer and any Affected Systems to discuss the results of the Facilities Study.

## **22.10 Engineering & Procurement (“E&P”) Agreement**

Prior to executing a Transmission Project Interconnection Agreement, a Transmission Developer may, in order to advance the implementation of its interconnection, request and Connecting Transmission Owner shall offer the Transmission Developer, an E&P Agreement that authorizes the Connecting Transmission Owner to begin engineering and procurement of long lead-time items necessary for the establishment of the interconnection. However, the Connecting Transmission Owner shall not be obligated to offer an E&P Agreement if the Transmission Developer is in Dispute Resolution as a result of an allegation that the Transmission Developer has failed to meet any milestones or comply with any prerequisites specified in other parts of these Transmission Interconnection Procedures. The E&P Agreement is an optional procedure and it will not alter the Transmission Developer’s Queue Position or In-Service Date. The E&P Agreement shall provide for the Transmission Developer to pay the cost of all activities authorized by the Transmission Developer and to make advance payments or provide other satisfactory security for such costs. The Transmission Developer shall pay the cost of such authorized activities and any cancellation costs for equipment that is already ordered for its interconnection, which cannot be mitigated as hereafter described, whether or not such items or equipment later become unnecessary. If the Transmission Developer withdraws its Transmission Interconnection Application or either Party terminates the E&P Agreement, to the extent the equipment ordered can be canceled under reasonable terms, the Transmission Developer shall be obligated to pay the associated cancellation costs. To the extent that the equipment cannot be reasonably canceled, Connecting Transmission Owner may elect: (i) to take title to the equipment, in which event Connecting Transmission Owner shall refund the Transmission Developer any amounts paid by the Transmission Developer for such equipment and shall pay the cost of delivery of such equipment, or (ii) to transfer title to and deliver such

equipment to the Transmission Developer, in which event the Transmission Developer shall pay any unpaid balance and cost of delivery of such equipment.

## **22.11 Transmission Project Interconnection Agreement**

### **22.11.1 Tender**

After completion of the Facilities Study, the Transmission Developer may request the ISO tender a draft Transmission Project Interconnection Agreement together with draft appendices completed to the extent practicable; *provided, however*, that if a Transmission Developer's proposed Transmission Project is only interconnecting to its own, existing facilities, a Transmission Project Interconnection Agreement is not required. If a Transmission Project includes more than one Designated Public Policy Project as identified in accordance with Attachment Y to the ISO OATT, the ISO may treat each Designated Public Policy Project comprising the Transmission Project as a separate Transmission Project for purposes of this Section 22.11 and tender separate draft Transmission Project Interconnection Agreements together with draft appendices to each Designated Entity, as applicable. The draft Transmission Project Interconnection Agreement shall be consistent with the NYISO's Commission-approved Standard Large Generator Interconnection Agreement located in Appendix 6 to Attachment X of the OATT, modified to address a Transmission Project. The Transmission Project Interconnection Agreement shall provide the mechanism through which a Transmission Developer shall post Security for required Network Upgrade Facilities. A Transmission Developer will be required to post Security with the applicable Connecting Transmission Owner for Network Upgrade Facilities identified in the Facilities Study; however, if the Transmission Developer and Connecting Transmission Owner are the same entity, the Transmission Developer need not post Security for Network Upgrade Facilities required on its own facilities.

### **22.11.2 Negotiation**

Notwithstanding Section 22.11.1, at the request of the Transmission Developer, the ISO

and Connecting Transmission Owner shall begin negotiations with the Transmission Developer concerning the Transmission Project Interconnection Agreement and its appendices at any time after the Transmission Developer completes the Facilities Study Agreement. The ISO, Connecting Transmission Owner and Transmission Developer shall finalize the appendices and negotiate concerning any disputed provisions of the draft Transmission Project Interconnection Agreement and its appendices subject to the six (6) month time limitation specified below in this Section 22.11.2. If the Transmission Developer determines that negotiations are at an impasse, it may request termination of the negotiations at any time after tender of the draft Transmission Project Interconnection Agreement pursuant to Section 22.11.1 and request submission of the unexecuted Transmission Project Interconnection Agreement to FERC or initiate Dispute Resolution procedures pursuant to Section 22.13.5. If the Transmission Developer requests termination of the negotiations, but within sixty (60) Calendar Days thereafter fails to request either the filing of the unexecuted Transmission Project Interconnection Agreement or initiate Dispute Resolution, it shall be deemed to have withdrawn its Transmission Interconnection Application. Unless otherwise agreed by the Parties, if the Transmission Developer has not executed the Transmission Project Interconnection Agreement, requested filing of an unexecuted Transmission Project Interconnection Agreement, or initiated Dispute Resolution procedures pursuant to Section 22.13.5 within six (6) months of tender of draft Transmission Project Interconnection Agreement, it shall be deemed to have withdrawn its Transmission Interconnection Application.

### **22.11.3 Execution and Filing**

The Transmission Developer shall either: (i) execute three (3) originals of the tendered Transmission Project Interconnection Agreement and return them to the ISO and Connecting

Transmission Owner and request in writing that the ISO and Connecting Transmission Owner file with FERC for its acceptance the agreed-upon Transmission Project Interconnection Agreement; or (ii) request in writing that the ISO and Connecting Transmission Owner file with FERC a Transmission Project Interconnection Agreement in unexecuted form. As soon as practicable, but not later than ten (10) Business Days after receiving either submission by the Transmission Developer, the ISO and Connecting Transmission Owner shall file the Transmission Project Interconnection Agreement with FERC. If the Transmission Developer has requested that the ISO file the Transmission Project Interconnection Agreement in unexecuted form, the ISO will draft the portions of the Transmission Project Interconnection Agreement and appendices that are in dispute. The ISO will provide its explanation of any matters as to which the Parties disagree and support for the costs that the Connecting Transmission Owner proposes to charge to the Transmission Developer under the Transmission Project Interconnection Agreement. An unexecuted Transmission Project Interconnection Agreement should contain terms and conditions deemed appropriate by the ISO for the Transmission Interconnection Application. The Connecting Transmission Owner will provide in a separate filing any comments it has on the unexecuted agreement, including any alternative positions, it may have with respect to the disputed provisions. If the Parties agree to proceed with design, procurement, and construction of Network Upgrade Facilities under the agreed-upon terms of the unexecuted Transmission Project Interconnection Agreement, they may proceed pending Commission action.

#### **22.11.4 Commencement of Interconnection Activities**

Upon submission of an executed or unexecuted Transmission Project Interconnection Agreement in accordance with Section 22.11.3, the ISO, Connecting Transmission Owner and



the Transmission Developer shall perform their respective obligations that are not in dispute in accordance with the terms of the Transmission Project Interconnection Agreement, subject to modification by FERC.

#### **22.11.5 Termination of the Transmission Project Interconnection Agreement**

The termination of a Transmission Project Interconnection Agreement will be effective only upon acceptance by FERC of the notice of termination and proposed effective date. Upon the effective date of the termination of the Transmission Project Interconnection Agreement, access to the Point of Interconnection of the Transmission Project will be available on a non-discriminatory basis pursuant to the ISO's applicable interconnection processes and procedures.

## **22.12 Construction of Connecting Transmission Owner's Network Upgrade Facilities**

### **22.12.1 Schedule**

The Connecting Transmission Owner, Affected System Operators and the Transmission Developer shall negotiate in good faith concerning a schedule for the construction of the Network Upgrade Facilities. In general, the In-Service Dates set forth in applicable interconnection agreements will determine the sequence of construction of required upgrade facilities.

#### **22.12.2.2 Advance Construction of Network Upgrade Facilities, System Upgrade Facilities and System Deliverability Upgrades that are an Obligation of an Entity other than the Transmission Developer**

A Transmission Developer with a Transmission Project Interconnection Agreement, in order to maintain its In-Service Date, may request that the Connecting Transmission Owner advance to the extent necessary the completion of Network Upgrade Facilities, System Upgrade Facilities, and System Deliverability Upgrades that: (i) were assumed in the Transmission Interconnection Studies for such Transmission Developer, (ii) are necessary to support such In-Service Date, and (iii) would otherwise not be completed, pursuant to a contractual obligation of an entity other than the Transmission Developer that is seeking interconnection to the New York State Transmission System, in time to support such In-Service Date. Upon such request, Connecting Transmission Owner will use Reasonable Efforts to advance the construction of such Network Upgrade Facilities, System Upgrade Facilities and System Deliverability Upgrades to accommodate such request; provided that the Transmission Developer commits in writing to pay Connecting Transmission Owner any associated expediting costs.

#### **22.12.2.3 Advancing Construction of Network Upgrade Facilities, System Upgrade**

**Facilities or System Deliverability Upgrades that are Part of an  
Expansion Plan of the ISO or Connecting Transmission Owner**

A Transmission Developer with a Transmission Project Interconnection Agreement, in order to maintain its In-Service Date, may request that the Connecting Transmission Owner advance to the extent necessary the completion of Network Upgrade Facilities, System Upgrade Facilities and System Deliverability Upgrades that: (i) are necessary to support such In-Service Date and (ii) would otherwise not be completed, pursuant to an expansion plan of the ISO or Connecting Transmission Owner, in time to support such In-Service Date. Upon such request, Connecting Transmission Owner will use Reasonable Efforts to advance the construction of such Network Upgrade Facilities, System Upgrade Facilities and System Deliverability Upgrades to accommodate such request; provided that the Transmission Developer commits in writing to pay Connecting Transmission Owner any associated expediting costs.

## **22.13 Miscellaneous**

### **22.13.1 Confidentiality**

Information exchanged by Parties in accordance with these Transmission Interconnection Procedures are subject to the Confidentiality provisions set forth in Section 30.13.1 of Attachment X of this ISO OATT, which requirements are incorporated into this Attachment P by reference. The terms “Standard Large Generator Interconnection Agreement,” “Developer,” and “Large Facility Interconnection Procedures” as used in Section 30.13.1 of Attachment X shall include “Transmission Project Interconnection Agreement,” “Transmission Developer,” and “Transmission Interconnection Procedures,” respectively, as those terms are defined in this Attachment P.

### **22.13.2 Delegation of Responsibility**

The ISO may use the services of subcontractors as it deems appropriate to perform its obligations under these Transmission Interconnection Procedures. The ISO shall remain primarily liable to the Transmission Developer for the performance of such subcontractors and compliance with its obligations under these Transmission 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.

### **22.13.3 Obligation for Study Costs and Study Deposits**

The ISO shall charge and the Transmission Developer shall pay the actual costs of the Transmission Interconnection Studies incurred by the ISO and Connecting Transmission Owner. If a number of Transmission Interconnection Studies are conducted concurrently as a combined study, each Transmission Developer shall pay an equal share of the actual cost of the combined study. Any invoices for Transmission Interconnection Studies shall include a detailed and

itemized accounting of the cost of each Transmission Interconnection Study. Transmission Developers 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 the Transmission Developer has paid all undisputed amounts in compliance herewith.

#### **22.13.4 Third Parties Conducting Studies**

If at the time of the signing of a Transmission Interconnection Study agreement there is disagreement as to the estimated time to complete a Transmission Interconnection Study, then the Transmission Developer may request the ISO to utilize a consultant or other third party reasonably acceptable to the Transmission Developer and the ISO to perform such Transmission 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 Transmission Interconnection Study, either in response to a general request of the Transmission Developer, or on its own volition. In all cases, use of a third party shall be in accord with Article 26 (Subcontractors) of the Standard Large Generator Interconnection Agreement located in Attachment X of the ISO OATT and limited to situations where the ISO determines that doing so will help maintain or accelerate the study process for the Transmission Developer's pending Transmission Interconnection Application and not interfere with the ISO's progress on Transmission Interconnection Studies or Interconnection Studies for other pending Transmission Interconnection Applications or Interconnection Requests. In cases where the Transmission Developer requests to use a third party to perform such Transmission Interconnection Study, the Transmission Developer, 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 Transmission Interconnection Application as soon as practicable upon the Transmission Developer's request subject to the confidentiality provision in Section 22.13.1. In any case, such third party contract may be entered into with either the Transmission Developer or the ISO at the ISO's discretion. If a Transmission Developer enters into a third party study contract, the Transmission Developer shall provide the study to ISO and the Connecting Transmission Owner for review, and such third party study contract shall provide for reimbursement by the Transmission Developer of 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 22.13.4, the Transmission 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 Transmission Interconnection Procedures, Article 26 (Subcontractors) of the Standard Large Generator Interconnection Agreement located in Attachment X of the ISO OATT, and the relevant ISO OATT procedures and protocols as would apply if the ISO were to conduct the Transmission 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 Transmission Developer to complete and issue the Transmission Interconnection Study in the shortest reasonable time.

#### **22.13.5 Disputes**

In the event any Party has a dispute, or asserts a claim, that arises out of or in connection with a Transmission Project Interconnection Agreement, these Transmission Interconnection Procedures, or their performance (a "Dispute"), such Party shall address the Dispute in

accordance with the Dispute provisions in Section 30.13.5 of Attachment X of this ISO OATT, which requirements are incorporated into this Attachment P by reference. The terms “Standard Large Generator Interconnection Agreement” (or “LGIA”), “Standard Large Facility Interconnection Procedures” (or “LFIP”), and “Attachment Facilities, Distribution Upgrades or System Upgrades” as used in Section 30.13.5 shall include “Transmission Project Interconnection Agreement,” “Transmission Interconnection Procedures,” and “Network Upgrade Facilities” respectively, as those terms are defined in this Attachment P.

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

### **22.13.6.1 Connecting Transmission Owners and Affected System Operator(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 System Operator(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 the Transmission Interconnection Procedures and a Transmission Project Interconnection Agreement, neither the Connecting Transmission Owner nor Affected System Operator shall be required to construct Network Upgrade Facilities, pursuant to the Transmission Interconnection Procedures and a Transmission Project Interconnection Agreement, if such construction would jeopardize the tax-exempt status of any Tax-Exempt Bonds or impair the ability of Connecting Transmission Owner or Affected System Operator(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.

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

### **31.1.1 Definitions**

The following capitalized terms shall have the meanings set forth in this subsection for purposes of this Attachment Y of the ISO OATT, except as such terms are otherwise defined within this Attachment Y:

**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.

**Cost Cap:** A Developer’s commitment to contain the capital costs of its proposed Public Policy Transmission Project in accordance with the requirements in Section 31.4.5.1.8. The Cost Cap must be in the form of a hard Cost Cap or a soft Cost Cap as described in Section 31.4.5.1.8.3.

**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.

**Designated Entity:** A Developer or Transmission Owner that the ISO designates pursuant to Section 31.4.11 of this Attachment Y as the person or entity to build, own, and recover the costs of a Designated Public Policy Project. For Public Policy Transmission Projects selected by the ISO as the more efficient or cost effective solution to a Public Policy Transmission Need prior to the 2020-2021 cycle of the Public Policy Transmission Planning Process, the Designated Entity shall mean the Developer of the selected Public Policy Transmission Project.

**Designated Public Policy Project:** The Public Policy Transmission Project selected by the ISO as the more efficient or cost effective solution to a Public Policy Transmission Need, or a portion of such Public Policy Transmission Project, that the ISO designates to a Designated Entity pursuant to Section 31.4.11 of this Attachment Y. For Public Policy Transmission Projects selected by the ISO as the more efficient or cost effective solution to a Public Policy Transmission Need prior to the 2020-2021 cycle of the Public Policy Transmission Planning Process, the Designated Public Policy Project shall mean the selected Public Policy Transmission Project.

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



**Development Agreement:** The agreement: (i) between the ISO and the Developer concerning the timely development and construction of a regulated transmission solution selected and/or triggered by the ISO to address a Reliability Need that the parties are required to enter into pursuant to Section 31.2.8.1.6 of this Attachment Y and is in the form set forth in Appendix C of this Attachment Y, or (ii) between the ISO and a Designated Entity concerning the timely development and construction of a Designated Public Policy Project that the parties are required to enter into pursuant to Section 31.4.12.2 of this Attachment Y and is in the form set forth in Appendix D of this Attachment Y.

**Economic Planning Process:** Pursuant to Sections 31.3 and 31.5.4 of this Attachment Y, the process by which the ISO: (i) develops the System & Resource Outlook and identifies current and future congestion on the New York State Transmission System; (ii) evaluates in an Economic Transmission Project Evaluation any Regulated Economic Transmission Project proposals to address any constraint(s) on the BPTFs identified in the Economic Planning Process, which transmission projects are eligible for cost allocation and cost recovery under the ISO OATT if approved by a vote of the project's Load Serving Entity beneficiaries; and (iii) conducts any Requested Economic Planning Studies. In conducting the process, the ISO will analyze a base case and scenarios that are developed in consultation with stakeholders.

**Economic Transmission Project Evaluation:** The evaluation by the ISO of a Regulated Economic Transmission Project pursuant to Sections 31.3.2 and 31.5.4 of 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 Economic Planning Process, 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.

**ISO/TO Reliability Agreement:** *The Agreement Between the New York Independent System Operator, Inc., and the New York Transmission Owners on the Comprehensive Planning Process for Reliability Needs*, as filed with and accepted by the Commission in *New York Independent System Operator, Inc.*, 109 FERC ¶ 61,372 (2004) and 111 FERC ¶ 61,182 (2005) in Docket No.

ER04-1144, and as amended or supplemented from time to time, or any successor agreement thereto.

**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.

**Merchant Transmission Facility** shall mean a Developer’s proposed new transmission facility that will interconnect to the New York State Transmission System or a proposed upgrade—an improvement to, addition to, or replacement of a part of an existing transmission facility—to the New York State Transmission System, for which the costs of construction will be recovered through negotiated rates instead of cost-based rates and not subject to the competitive evaluation and selection process for purposes of cost allocation under Attachment Y to the ISO OATT. Merchant Transmission Facilities shall not include Attachment Facilities, Network Upgrade Facilities, System Upgrade Facilities or System Deliverability Upgrades.

**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 Agreement:** An agreement between the NYISO and a non-incumbent owner of transmission facilities in the New York Control Area concerning the operation of the transmission facilities in the form of the agreement set forth in Appendix H (Section 31.11) of this Attachment Y.

**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 Developer:** A Developer, other than a Transmission Owner, sponsoring or proposing to sponsor a regulated economic project, a Public Policy Transmission Project, an Other Public Policy Project, or a regulated solution to a Reliability Need.

**Other Public Policy Project:** A non-transmission project or a portfolio of transmission and non-transmission projects proposed by a Developer to satisfy an identified Public Policy Transmission Need.

**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.

**Public Policy Transmission Planning Process:** The process by which the ISO solicits needs for transmission driven by Public Policy Requirements; evaluates all Public Policy Transmission Projects and Other Public Policy Projects proposed to address a Public Policy Transmission Need on a comparable basis; selects the more efficient or cost effective Public Policy Transmission Project, if any, for eligibility for cost allocation under the ISO Tariffs; and designates a Designated Entity or Designated Entities to be responsible for developing the Designated Public Policy Project(s) that compose the selected Public Policy Transmission Project.

**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 Public Policy

Transmission Projects and Other Public Policy Projects proposed to satisfy an identified Public Policy Transmission Need pursuant to Section 31.4.6; the ISO's selection of a proposed Public Policy Transmission Project, if any, that is the more efficient or cost effective solution to the identified Public Policy Transmission Need pursuant to Section 31.4.8; and the ISO's designation of a Designated Entity or Designated Entities to be responsible for developing the Designated Public Policy Project(s) that compose the selected Public Policy Transmission Project.

**Public Policy Transmission Project:** A transmission project or a portfolio of transmission projects proposed by Developer(s) to satisfy an identified Public Policy Transmission Need and for which the Developer(s) seek to be selected by the ISO for purposes of allocating and recovering the project's costs under the ISO OATT.

**Public Policy Transmission Upgrade:** Any portion(s) of a Public Policy Transmission Project that satisfies the definition of upgrade in Section 31.6.4 of this Attachment Y.

**Regulated Economic Transmission Project ("RETP"):** A transmission project or a portfolio of transmission projects proposed by Developer(s) to address constraint(s) on the BPTFs identified in the Economic Planning Process, which transmission project(s) are evaluated in the Economic Transmission Project Evaluation and are eligible for cost allocation and cost recovery under the ISO OATT if approved by a vote of the project's Load Serving Entity beneficiaries pursuant to Section 31.5.4 of this Attachment Y.

**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.

**Reliability Planning Process:** The process set forth in this Attachment Y by which the ISO determines in the RNA whether any Reliability Need(s) on the BPTFs will arise in the Study Period and addresses any identified Reliability Need(s) in the CRP, as the process is further described in Section 31.1.2.2.

**Requested Economic Planning Study:** A study performed solely for information purposes by the ISO pursuant to Section 31.3.3 of this Attachment Y at the request of a Market Participant or other interested party at their expense, the scope and deliverables of which are agreed upon by the ISO and the requesting entity.

**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 and/or that owns a transmission facility on which a Reliability Need arises.

**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.

**Short-Term Reliability Process:** This term shall have the meaning set forth in Section 38.1 of Attachment FF of the ISO OATT.

**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:** For purposes of the Reliability Planning Process, the Study Period shall mean the seven-year time period encompassing years 4 through 10 following the year in which the RNA is conducted, which is used in the RNA and the CRP. For purposes of the Economic Planning Process, the Study Period shall be the 20 year period defined in Section 31.3.1.3.1 of this Attachment Y.

**System & Resource Outlook:** The biennial report that the ISO produces pursuant to Section 31.3.1 of this Attachment Y by which it summarizes the current assessments, evaluations, and plans in the biennial Comprehensive System Planning Process; produces a twenty-year projection of congestion on the New York State Transmission System; identifies, ranks, and groups congested elements; and assesses the potential benefits of addressing the identified congestion.

**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 Short-Term Reliability Process and Reliability Planning Process**

### **31.1.2.1 Short-Term Reliability Process**

The Short-Term Reliability Process set forth in Attachment FF of the ISO OATT establishes the process that the ISO, Transmission Owners, Market Participants, Generator Owners, Developers and other interested parties shall follow to plan to meet Generator Deactivation Reliability Needs that would result from a Generator's deactivation and other Reliability Needs identified pursuant to Attachment FF affecting the BPTFs (collectively, Short-Term Reliability Process Needs), which needs cannot be timely addressed in the Reliability Planning Process set forth in this Attachment Y.

Consistent with Section 38.2 of the OATT, Short-Term Reliability Process Needs that arise within three years of the later of (a) the conclusion of the 365 day prior notice period for that is described in Section 38.3.1.1 of the OATT for Generator Deactivation Reliability Needs, or (b) the posting of a completed Short-Term Assessment of Reliability ("STAR") for other Reliability Needs on the BPTF, will be addressed using the Short-Term Reliability Process. The terms "Generator Deactivation Reliability Need" and "STAR" are defined in Section 38.1 of the OATT.

Short-Term Reliability Process Needs that arise more than three years after the later of (x) the conclusion of the 365 day prior notice period for Generator Deactivation Reliability Needs, or (y) the posting of a completed STAR for other Reliability Needs on the BPTF, will only be addressed using the Short-Term Reliability Process if the identified Reliability Need cannot timely be addressed through the Reliability Planning Process set forth in this Attachment Y.

### **31.1.2.2 Reliability Planning Process**

The Reliability Planning Process set forth in Sections 31.2.1 through 31.2.13 of this Attachment Y establishes the process that the ISO, Transmission Owners, Market Participants, and other interested parties shall follow to plan to meet Reliability Needs of the BPTFs that are identified in the RNA. The objectives of the process are to: (1) evaluate the Reliability Needs of the BPTFs over the Study Period 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**

The ISO will prepare and publish the System & Resource Outlook. Section 31.3.1 of this Attachment Y establishes the process by which the ISO, in consultation with Market Participants and interested parties, develops the System & Resource Outlook to: (1) summarize the current assessments, evaluations, and plans in the biennial Comprehensive System Planning Process and the information and sources relied upon by the ISO; (2) project congestion on the New York State Transmission System and system conditions over a twenty-year Study Period; (3) identify, rank, and group the congested elements on the New York State Transmission System based on metrics set forth in Sections 31.3.1.3.4 and 31.3.1.3.5 of this Attachment Y; and (4) assess the potential benefits of addressing the identified congestion. For the non-BPTF portion of the New York State Transmission System, the ISO will coordinate with the Transmission Owners in the development of the System & Resource Outlook. The ISO will incorporate the Transmission Owners' Local Transmission Owner Plans into the Economic Planning Process. The Economic Planning Process provides opportunities for the development of market-based solutions and regulated transmission solutions to address identified congestion. Sections 31.3.2 and 31.5.4 of this Attachment Y establish the process by which Developers may propose, and the ISO will



evaluate in its Economic Transmission Project Evaluation, proposed Regulated Economic Transmission Projects to address constraint(s) on the BPTFs identified in the Economic Planning Process, which transmission projects are eligible for cost allocation and cost recovery under the ISO OATT if approved by a vote of the project's Load Serving Entity beneficiaries pursuant to Section 31.5.4 of this Attachment Y. The ISO will coordinate its assessments in the Economic Planning Process with neighboring Control Areas. Market Participants and other interested parties, at their own expense, may also request that the ISO perform Requested Economic Planning Studies pursuant to Section 31.3.3 of this Attachment Y solely for information purposes, which scope and deliverables will be agreed upon by the ISO and the requesting entity.

#### **31.1.5 Public Policy Transmission 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 Transmission 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 Public Policy Transmission Projects and Other Public Policy Projects are proposed to satisfy each identified Public Policy Transmission Need and are evaluated by the ISO on a comparable basis, (4) provide a process by which the ISO will select the more efficient or cost effective regulated Public Policy Transmission Project, if any, to satisfy each identified Public Policy Transmission Need for eligibility for cost allocation under the ISO Tariffs and will

designate the selected Public Policy Transmission Project or parts of the selected Public Policy Transmission Project to a Designated Entity or Designated Entities, which will be responsible for developing the Designated Public Policy Project(s); (5) provide a cost allocation methodology for the regulated Designated Public Policy Project(s) 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**

31.1.7.1 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.

31.1.7.2. An owner of transmission in New York State may become a Transmission Owner by executing the ISO/TO Agreement or an Operating Agreement as provided for in Section 31.1.7.3.

31.1.7.3 A transmission owner that is not a party to the ISO/TO Agreement or an Operating Agreement and will own transmission facilities in the New York Control Area over which Transmission Service will be provided under the ISO Tariffs must enter into an Operating Agreement prior to energizing its transmission facilities. The ISO will tender a draft Operating Agreement as soon as practicable following its selection of the transmission owner's transmission facilities under the CSPP in this Attachment Y or under the Short-Term Reliability Process in Attachment FF of this ISO OATT. If the transmission owner's transmission facilities were not selected under the CSPP, the transmission owner shall request that the ISO tender the draft Operating

Agreement as soon as practicable after receiving its Article VII certification or other applicable siting permits or authorizations under New York State law. The draft Operating Agreement will be completed by the ISO to the extent practicable for review and completion by the transmission owner. The draft shall be in the form of the ISO's Commission-approved Operating Agreement, which is located in Appendix H in Section 31.11 of this Attachment Y. The ISO and the transmission owner shall finalize and negotiate concerning any disputed provisions. Unless otherwise agreed by the ISO and the transmission owner, the transmission owner must execute the Operating Agreement within three (3) months of the ISO's tendering of the draft Operating Agreement; *provided, however*, if, during the negotiation period, the ISO or the transmission owner determines that negotiations are at an impasse, the ISO may file the Operating Agreement in unexecuted form with the Commission on its own or following the transmission owner's request in writing that the agreement be filed unexecuted.

31.1.7.4 If the Operating Agreement resulting from the negotiation between the ISO and the transmission owner does not conform with the Commission-approved standard form in Appendix H in Section 31.11 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 Operating Agreement by both parties. If the transmission owner requests that the Operating 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 transmission owner. The ISO will draft to the extent practicable the portions of the Operating 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 transmission owner 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.

31.1.7.5 Upon the ISO's and the transmission owner's execution of the Operating Agreement or the ISO's filing of an unexecuted Operating Agreement with the Commission, the ISO and the transmission owner shall perform their respective obligations in accordance with the terms of the Operating Agreement that are not in dispute, subject to modification by the Commission.

31.1.7.6 As of June 1, 2016, 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 d/b/a National Grid, (5) Orange and Rockland Utilities, Inc., (6) Rochester Gas and Electric Corporation, (7) the Power Authority of the State of New York, (8) Long Island Lighting Company d/b/a LIPA, and (9) New York Transco, LLC.

### **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, the Short-Term Reliability Process in Attachment FF of this ISO OATT, and the Interregional Planning Protocol, and shall revise those procedures as and when necessary. Such procedures will be incorporated in the ISO's manuals. 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 Economic Planning Process will commence within each two year planning cycle using the most recent base case of the Reliability Planning Process and Short-Term Reliability Process, as appropriate. 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 detailed in Attachment FF of the ISO OATT, the Short-Term Reliability Process will be

conducted on a quarterly basis and will run in parallel with the other planning processes. 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 Transmission 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.

31.1.8.6 The ISO shall make reasonable efforts to meet all deadlines provided in this Attachment Y; *provided, however*, that the ISO must meet all deadlines set forth in a development agreement entered into pursuant to this Attachment Y in accordance with the terms of that agreement. If the ISO cannot meet a deadline set forth in this Attachment Y and an extension of that deadline will not result in a reliability violation, the NYISO may extend the deadline, provided that it shall notify Market Participants and other interested parties, explain the reason for the failure to meet the deadline, and provide an estimated time by which it will complete the applicable action.

31.1.8.7 The ISO may extend, at its discretion, the deadlines indicated below that are applicable to all parties participating in a given process for a reasonable period of time if the extension: (i) is applied equally to all parties that are required to meet the deadline, and (ii) will not result in a reliability violation. The deadlines eligible for extension are:

- Sixty (60) day deadline in Section 31.2.5.1 for interested Developers to propose solutions in response to the ISO's solicitation for solutions to a Reliability Need;



- Thirty (30) day deadline in Section 31.2.6.1 for Developers of viable and sufficient transmission solutions to submit project information in response to ISO request;
- Sixty (60) day deadline in Section 31.4.2 for stakeholders and interested parties to submit proposed transmission needs in response to ISO solicitation for proposed needs;
- Sixty (60) day deadline in Section 31.4.4.3.2: (i) for Developers to propose solutions to a Public Policy Transmission Need in response to ISO solicitation for solutions, and (ii) pursuant to Section 31.4.4.4, for Developers of Public Policy Transmission Projects to execute a study agreement, provide a study deposit, and provide an application fee in response to ISO solicitation for solutions; and
- Deadline in Section 31.4.6.6 for Developers to inform the ISO following the ISO's filing of the Viability and Sufficiency Assessment at the NYPSC that their viable and sufficient Public Policy Transmission Projects will proceed to be evaluated by the ISO for purposes of selection.

## **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; (2) requests for proposed Public Policy Transmission Projects and Other Public Policy Projects to address those Public Policy Transmission Needs and the evaluation of those projects; and (3) selection of the more efficient or cost-effective Public Policy Transmission Project, if any, to satisfy each Public Policy Transmission Need to be eligible for cost allocation under the ISO OATT and designation of the selected Public Policy Transmission Project to the Designated Entity or Designated Entities that shall be responsible for developing the Designated Public Policy Project(s). 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 Identification and Posting of Proposed Transmission Needs Driven by Public Policy Requirements**

At the start of each cycle for the Public Policy Transmission Planning Process, the ISO will provide a 60-day period, which time period may be extended by the ISO pursuant to Section 31.1.8.7, to allow any stakeholders or interested parties to submit to the ISO, or for the ISO on its own initiative to identify, any proposed transmission need(s) that it believes are being driven by Public Policy Requirement(s) 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 needs solicitation 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 needs solicitation 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 maintain 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: (i) additional criteria for the evaluation of transmission solutions and non-transmission projects, (ii) the required timeframe, if any, for completion of the proposed solution, and (iii) 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 does or does not drive the need for a physical modification to transmission facilities solely within the Long Island Transmission District, and describing the consultation undertaken with the NYDPS;

- (iii) In conjunction with the issuance of its written statement, the Long Island Power Authority shall transmit to the NYPSC and request that it 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 purposes of the evaluation of solutions by the ISO and the potential eligibility of transmission solutions for selection and regional cost allocation under the ISO OATT. 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 for which solutions 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 proposed Public Policy Transmission Projects, including Interregional Transmission Projects, to satisfy each Public Policy Transmission Need identified pursuant to Sections 31.4.2.1 through 31.4.2.3. An Interregional Transmission Project shall be: (i) evaluated in accordance with the applicable requirements of the Public Policy Transmission Planning Process of this Attachment Y, and (ii) jointly evaluated by the ISO and the relevant adjacent transmission planning region(s) in accordance with Section 7.3 of the Interregional Planning Protocol. The ISO shall also accept specific proposed Other Public Policy Projects to satisfy a Public Policy Transmission Need identified pursuant to Sections 31.4.2.1 through 31.4.2.3.

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

Following posting of a determination pursuant to Sections 31.4.2.1 through 31.4.2.3, the ISO will request that Developers propose specific solutions, whether Public Policy Transmission Project(s) or Other Public Policy Project(s), to satisfy each identified Public Policy Transmission Need in accordance with the requirements set forth in Section 31.4.4.3. 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, except where the NYPSC order has been stayed pending the resolution of that appeal.

#### **31.4.3.2 NYPSC and LIPA 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 Public Policy Transmission Project. 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 Public Policy Transmission Project or Other Public Policy Project. A request for the provision of a Public Policy Transmission Project or Other Public Policy Project by either the 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 and Rate Schedule 10 of the ISO OATT. The ISO shall allocate these costs among Load Serving Entities in accordance with Section 31.5.5.4.3, except as otherwise determined by the Commission.

#### **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 Public Policy Transmission Project. 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 Public Policy Transmission Project 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 Public Policy Transmission Project and shall be eligible to use the cost allocation and cost recovery mechanism for regulated Public Policy Transmission Projects set forth in Section 31.5 of this Attachment Y and the Rate Schedule 10 of the ISO OATT for any approved project.

**31.4.4.2 Reserved.**

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

31.4.4.3.1 Following the posting of the NYPSC's determination of a Public Policy Transmission Need in accordance with Sections 31.4.2.1 through 31.4.2.3 and before issuing a solicitation for solutions in accordance with Section 31.4.3, the ISO shall hold a technical conference with Developers and interested parties to obtain their input on the ISO's application of the selection metrics set forth in Section 31.4.8.1 for purposes of soliciting solutions to the Public Policy Transmission Need. To the extent practicable, before issuing a solicitation for solutions in accordance with Section 31.4.3, the ISO will present to Developers and interested parties any contingency percentage and escalation factors that its

independent consultant will use in formulating capital cost estimates for proposed Public Policy Transmission Projects.

31.4.4.3.2 All Developers proposing Public Policy Transmission Projects or Other Public Policy Projects to satisfy a Public Policy Transmission Need shall submit to the ISO within 60 days of the ISO's request for solutions to a Public Policy Transmission Need, which time period may be extended by the ISO pursuant to Section 31.1.8.7, the project information required under Section 31.4.5. The only permitted alternatives within a proposed Public Policy Transmission Project are routing alternatives as provided in Section 31.4.5.1.3. Any other alternative must be submitted as a separate Public Policy Transmission Project.

31.4.4.3.3 If the Developer submits Confidential Information, as defined in Section 31.4.15, as part of its project information submitted pursuant to Section 31.4.4.3.2 or as part of its additional project information submitted pursuant to Section 31.4.4.3.5, the Developer shall submit redacted and un-redacted versions of this project information pursuant to Section 31.4.15.4.

31.4.4.3.4 The Developer of a Public Policy Transmission Project must also demonstrate to the ISO, simultaneous with its submission of project information, that it has submitted, as applicable, a new or revised Transmission Interconnection Application or Interconnection Request. The project information submitted by the Developer for its Public Policy Transmission Project in accordance with this Section 31.4.4.3 shall be the same as the Developer's proposed project in its Transmission Interconnection Application or Interconnection Request, as applicable, including the same electrical

characteristics, related modeling information, and contingency information necessary to perform all analyses, including thermal, voltage, stability, short circuit, and transfer limit analyses.

31.4.4.3.5 If: (i) the ISO determines that a Developer's submission of its project information is incomplete, or (ii) the ISO determines at any time in the planning process that additional project information is required, the ISO shall request that the Developer provide additional project information within the timeframe set forth in Section 31.4.4.3.8. A Developer's failure to provide the data requested by the ISO or to satisfy the other requirements in Sections 31.4.4.3 or 31.4.4.4 within the required timeframes shall result in the rejection of the Developer's proposed Public Policy Transmission Project or Other Public Policy Project from further consideration during that planning cycle.

31.4.4.3.6 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 for its proposed Public Policy Transmission Project; *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 within the timeframe set forth in Section 31.4.4.3.8.

31.4.4.3.7 Any Developer that has not been determined by the ISO to be qualified, but that wants to propose to develop a Public Policy Transmission 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 and request that the Developer provide additional Developer qualification information within the timeframe set forth in Section 31.4.4.3.8. The ISO shall notify a Developer that has submitted the requested Developer qualification information whether it is qualified to propose to develop a Public Policy Transmission Project to be considered in that planning cycle.

31.4.4.3.8 The Developer shall submit additional Developer qualification information or project information required by the ISO within 15 days of the ISO's request.

31.4.4.3.9 If a Developer fails to timely submit the additional Developer qualification information requested by the ISO, the Developer will not be eligible for its proposed Public Policy Transmission Project to be considered in that planning cycle.

31.4.4.3.10 Within five (5) business days of its receipt of proposed Public Policy Transmission Projects and Other Public Policy Projects pursuant to Section 31.4.4.3.2, the ISO shall publicly post a brief description of the project proposals in accordance with ISO Procedures, which description shall not include Critical Energy Infrastructure Information or Confidential Information, as defined in Section 31.4.15.

31.4.4.3.11 Following the ISO's determination that the project information submitted by the Developer for its proposed Public Policy Transmission Project pursuant to

Sections 31.4.4.3.2 and 31.4.4.3.5 is complete (provided that the ISO may request at any time additional information pursuant to Section 31.4.4.3.5) and at least 30 calendar days prior to the ISO's presentation of its Viability and Sufficiency Assessment pursuant to Section 31.4.6.5, the ISO shall make available upon request the redacted version of Developer's initial submission of project information required pursuant to Section 31.4.5 for its proposed Public Policy Transmission Project, subject to the requestor's compliance with the ISO's requirements concerning the disclosure of Critical Energy Infrastructure Information. Within thirty (30) days of the ISO's receipt of any additional project information submitted by the Developer for its proposed Public Policy Transmission Project pursuant to Section 31.4.4.3.5, the ISO shall make available to any requestor that requested the initial submission of project information or upon request from any other requestor the redacted version of the additional project information, subject to the requestor's compliance with the ISO's requirements concerning the disclosure of Critical Energy Infrastructure Information.

#### **31.4.4.4. Application Fee and Study Deposit for Proposed Regulated Public Policy Transmission Project**

All Developers that propose Public Policy Transmission Projects shall for each such project, at the same time that they provide project information pursuant to Section 31.4.4.3.2, (i) execute a study agreement with the ISO in the form set forth in Section 31.12 (Appendix I) of this Attachment Y for purposes of the ISO's evaluation of the proposed Public Policy Transmission Project under Sections 31.4.7, 31.4.8, 31.4.9, 31.4.10, and 31.4.11, and (ii) submit to the ISO: (A) a non-refundable application fee of \$10,000, and (B) 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 study deposit shall be held in an interest-bearing account for which the interest earned will be associated with the Developer and 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 Public Policy Transmission Project shall pay, the actual costs of the ISO's evaluation of the Developer's proposed Public Policy Transmission Project for purposes of the ISO's selection of the more efficient or cost effective Public Policy Transmission Project 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 Public Policy Transmission Project under Sections 31.4.7, 31.4.8, 31.4.9, 31.4.10, and 31.4.11 and any supplemental evaluation or re-evaluation of the proposed Public Policy Transmission Project. If the ISO or its subcontractors perform study work for multiple proposed Public Policy Transmission Projects 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 Public Policy Transmission Projects 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 Public Policy Transmission Project and may disqualify the Developer's proposed Public Policy Transmission Project from further consideration. After the conclusion of the ISO's evaluation of the Developer's proposed Public Policy Transmission Project or if the Developer: (i) withdraws its proposed Public Policy Transmission Project or (ii) fails to pay an invoiced amount and the ISO halts its evaluation of the proposed Public Policy Transmission Project, 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 and any interest actually earned on the deposited amount that together exceeds the outstanding amounts that the ISO has incurred in evaluating that Developer's proposed Public Policy Transmission Project. 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 Public Policy Transmission Project. 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 actually earned on such amounts.

### **31.4.5 Project Information Requirements**

#### **31.4.5.1 Requirements for Public Policy Transmission Projects**

31.4.5.1.1 In response to the ISO's solicitation for solutions pursuant to Section 31.4.4.3.2, a Developer proposing a Public Policy Transmission Project to satisfy a Public Policy Transmission Need 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 and Developer's identification of any Public Policy Transmission Upgrade(s) included as part of its project; (4) evidence of a commercially viable technology; (5) a detailed major milestone schedule and expected In-Service Date of the project, as well as identification of in-service dates for specific components (such as a Public Policy Transmission Upgrade) to properly sequence the project; (6) a schedule for obtaining any required permits and other certifications; (7) a transmission and substation routing study or studies and demonstration that the Developer already possesses the rights of way necessary to implement the project or has specified a detailed plan or approach and schedule for acquiring property rights; (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) a Transmission Interconnection Application or Interconnection Request, as applicable, as described in Section 31.4.4.3.4; (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) any Cost Cap that the Developer voluntarily submits in accordance with Section 31.4.5.1.8; (14) a description of permitting requirements and other specific risks facing the project at the stage of project development, including any specific proposed mitigation to permitting risks, and evidence of the reasonableness of project capital cost estimates all based on the information available at the time of the submission; and (15) any other information required by ISO Procedures or requested by the ISO.

31.4.5.1.2 A Developer shall submit the following information to indicate its capital cost estimates for the project. The Developer shall provide the ISO with credible capital cost estimates for its proposed project, 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 project, 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 (separately identifying new transmission facilities and Public Policy Transmission Upgrades) and (ii) Network Upgrade Facilities, System Upgrade Facilities, System Deliverability Upgrades, Network Upgrades, Distribution Upgrades, and/or Attachment Facilities, as applicable, that: (a) the ISO has identified as required to interconnect the proposed project to the New York State Transmission System in compliance with the applicable interconnections standard in an interconnection study or transmission expansion study that is performed under Attachments P, S, or X of the ISO OATT or (b) the Developer voluntarily identifies as potentially necessary to reliably interconnect the proposed project (subject to modification based on ISO-conducted interconnection or transmission expansion studies, as applicable).

31.4.5.1.3 A completed transmission and substation routing study provided by the Developer shall: (i) identify a specific routing plan with alternatives, (ii) include a schedule indicating the timing for obtaining siting and permitting, and (iii) provide specific attention to sensitive areas (*e.g.*, wetlands, river crossings, protected areas, and schools).

31.4.5.1.4 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 Section 31.4.15 and 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.”

31.4.5.1.5 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.

31.4.5.1.6 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.

31.4.5.1.7 Upon the completion of any interconnection study or transmission expansion study of a proposed Public Policy Transmission Project that is performed under Sections 3.7 or 4.5 of the ISO OATT or Attachments P or X of the ISO OATT, the Developer of the proposed project shall notify the ISO that the study has been completed and, at the ISO's request, shall submit to the ISO any study report and related materials prepared in connection with the study.

31.4.5.1.8 A Developer may voluntarily submit with its project information a Cost Cap for its proposed Public Policy Transmission Project that covers its Included Capital Costs, as defined in Section 31.4.5.1.8.1, but not its Excluded Capital Costs, as defined in Section 31.4.5.1.8.2. The Developer must submit any Cost Cap in the form of a hard Cost Cap or a soft Cost Cap in accordance with Section 31.4.5.1.8.3. If the Developer's proposed Public Policy Transmission Project is selected by the ISO pursuant to Sections 31.4.8.2 and 31.4.11, the Developer shall include its proposed Cost Cap in its Development Agreement for its Designated Public Policy Project in accordance with Section 31.4.12.2. In accordance with Section 6.10.6 of the ISO OATT, the Developer of the selected Public Policy Transmission Project shall file its Cost Cap for its Designated Public Policy Project at the Commission and shall not seek to recover through its transmission rates or through any other means costs for the Included Capital Costs above its agreed-upon Cost Cap, except as permitted for excusing conditions in Section 6.10.6.2 of the ISO OATT. The Developer of the selected Public Policy Transmission Project may recover for its Designated Public Policy Project through Rate Schedule 10 of the ISO OATT, subject to the cost recovery

requirements in Section 6.10.4 or 6.10.5, as applicable, of the ISO OATT, the Included Capital Costs that do not exceed the amount in its Cost Cap, Excluded Capital Costs as defined in Section 31.4.5.1.8.2, and any Included Capital Costs permitted for excusing conditions as defined in Section 6.10.6.2 of the ISO OATT.

31.4.5.1.8.1 A Developer that elects to submit a Cost Cap for its proposed Public Policy Transmission Project must propose to contain all capital costs incurred by a Developer to plan for and construct a Public Policy Transmission Project, and to make it ready for its intended use (the “Included Capital Costs”), with the exception of the capital costs defined as Excluded Capital Costs in Section 31.4.5.1.8.2. Capital costs include the cost of contract work, labor, materials and supplies, transportation, special machine services, shop services, protection, injuries and damages, privileges and permits, engineering services, reasonably expected environmental site remediation and environmental mitigation costs as described in Section 31.4.5.1.8.1.1, general administration services, legal services, real estate and land rights, rents, studies, training, asset retirement, and taxes. At its option, a Developer may choose to include as Included Capital Costs real estate costs for existing rights-of-way that are part of the proposed Public Policy Transmission Project, but are not owned by the Developer (*e.g.*, existing utility rights-of-way).

31.4.5.1.8.1.1 For purposes of Section 31.4.5.1.8.1, the phrase “reasonably expected environmental site remediation and environmental mitigation costs” means any estimated site investigation and remediation costs to the extent they would arise in



the normal course of planning and constructing a Public Policy Transmission Project, which includes, but is not limited to, the following circumstances:

- (i) For project sites for which an environmental site assessment has already been conducted or environmental remediation or mitigation activities are ongoing, the Developer shall provide an estimate of any additional environmental site investigation, remediation, or mitigation that is known or reasonably anticipated at the time of submission.
- (ii) For project sites for which the Developer has no reason to believe any environmental remediation or mitigation is required without undertaking a site investigation, such as but not limited to any greenfield or undeveloped land, the Developer shall provide an estimate of the cost to perform a Phase I Environmental Site Assessment on a per mile basis.
- (iii) For project sites for which the Developer has reason to believe environmental site investigation, remediation, or mitigation may be required, the Developer shall provide an estimate of the cost to perform such environmental site investigation, remediation, or mitigation to the extent possible based upon the information reasonably available to the Developer at the time of submission.

31.4.5.1.8.2 A Developer may not include the “Excluded Capital Costs” of a proposed Public Policy Transmission Project in a Cost Cap submitted to the ISO. Excluded Capital Costs include the following categories of costs: (i) the cost of Public Policy Transmission Upgrade(s); (ii) the cost of upgrade facilities determined by the ISO that are necessary for the reliable interconnection of the proposed Public Policy Transmission Project in one of its transmission expansion or

interconnection processes; (iii) debt costs, allowance for funds used during construction (“AFUDC”), and other representations of the cost of financing the transmission project during the construction timeframe that may be included as part of the capital cost of the project when it enters into service or as otherwise determined by the Commission; (iv) unforeseeable environmental remediation and environmental mitigation costs as described in Section 31.4.5.1.8.2.1, and (v) real estate costs for existing rights-of-way that are part of the proposed Public Policy Transmission Project, but are not owned by the Developer, that Developer chooses not to include as Included Capital Costs pursuant to Section 31.4.5.1.8.1.

31.4.5.1.8.2.1 For purposes of Section 31.4.5.1.8.2, the phrase “unforeseeable environmental remediation and environmental mitigation costs” means any costs relating to environmental remediation and environmental mitigation that are not anticipated by the Developer or are otherwise indeterminable based upon information reasonably available to the Developer at the time of submission, including any environmental remediation or mitigation costs that cannot be estimated by the Developer without performing an environmental site assessment or investigation; *provided, however*, that the cost of conducting such environmental site assessment or investigation shall be considered an Included Capital Cost pursuant to Section 31.4.5.1.8.1. Costs attributable to environmental investigation, remediation, and mitigation that exceed the amount estimated in the Developer’s bid based on, among other things, changes in the extent of known contamination will be considered “unforeseeable environmental remediation and environmental mitigation costs” and Excluded Capital Costs.

31.4.5.1.8.3 A Developer may submit a Cost Cap for its proposed Public Policy Transmission Project in the form of a hard Cost Cap or a soft Cost Cap. A hard Cost Cap for Included Capital Costs is a dollar amount for those costs above which the Developer commits in its proposed Public Policy Transmission Project not to recover from ratepayers. A soft Cost Cap for Included Capital Costs is a dollar amount for those costs above which the Included Capital Costs are shared between the Developer and ratepayers based on a defined percentage. The Developer's percentage of cost sharing under a soft Cost Cap of Included Capital Costs shall be at least twenty (20) percent.

31.4.5.1.8.4. A Developer must include contingency percentage and escalation factors, if any, applicable to the Included Capital Costs in its Cost Cap provided to the ISO as part of its proposal.

31.4.5.1.8.5 If the ISO identifies a deficiency in a Developer's Cost Cap, such as a discrepancy resulting from the ISO determining that (i) a Public Policy Transmission Upgrade is included in the Included Capital Costs or (ii) a facility identified by a Developer as a Public Policy Transmission Upgrade is not a Public Policy Transmission Upgrade, the ISO shall request additional information from the Developer pursuant to Section 31.4.4.3.8, and the Developer may provide a revised Cost Cap that addresses the deficiency identified by the ISO.

#### **31.4.5.2 Requirements for Other Public Policy Projects**

31.4.5.2.1 In response to the ISO's solicitation for solutions pursuant to Section 31.4.4.3.2, a Developer proposing an Other Public Policy Project to satisfy a Public Policy Transmission Need must provide, 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, if available; (7) a demonstration of Site Control or a schedule for obtaining Site Control, as applicable; (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, as applicable and if available; (10) the status of equipment availability and procurement, as applicable and if available; (11) evidence of financing or ability to finance the project; and (12) any other information required by ISO Procedures or requested by the ISO.

31.4.5.2.2 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 Section 31.4.15 and 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.”

31.4.5.2.3 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.

31.4.5.2.4 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.

31.4.5.2.5 Upon the completion of any interconnection study or transmission expansion study of a proposed Other Public Policy Project that is performed under Sections 3.7 or 4.5 of the ISO OATT or Attachments P or X of the ISO OATT, the Developer of the proposed project shall notify the ISO that the study has been completed and, at the ISO's request, shall submit to the ISO any study report and related materials prepared in connection with the study.

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

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

The ISO will study proposed Public Policy Transmission Projects and Other Public Policy Projects using: (i) the most recent base case from the Reliability Planning Process, (ii) updates in accordance with ISO Procedures, and (iii) 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 Public Policy Transmission Project or Other Public Policy Project 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 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 Public Policy Transmission Project or Other Public Policy Project – whether 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 consider: (i) the Developer qualification data provided pursuant to Section 31.4.4 and the project information data provided under Section 31.4.5; (ii) whether the proposed solution is technically practicable; (iii) the Developer’s possession of, or approach for acquiring, any necessary rights-of-way, property, and facilities that will make the proposal reasonably feasible in the required timeframe; and (iv) whether the proposed solution can be completed in the required timeframe, if any. 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 Public Policy Transmission Project or Other Public Policy Project – whether 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 Viability and Sufficiency Assessment**

The ISO will present its Viability and Sufficiency Assessment to stakeholders, interested parties, and the NYDPS for comment. The Viability and Sufficiency Assessment shall identify the information and sources relied upon by the ISO, describe the ISO’s assumptions, inputs, methodologies, and state the results of its analyses. The ISO shall file the final Viability and

Sufficiency Assessment at the NYPSC. 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 Public Policy Transmission Project or Other Public Policy Project is viable and is sufficient to satisfy the identified Public Policy Transmission Need.

#### **31.4.6.5.1 Identification of Public Policy Transmission Upgrades in Proposed Public Policy Transmission Projects**

31.4.6.5.1.1 At least 30 Calendar Days prior to the ISO's presentation of the initial draft of the Viability and Sufficiency Assessment, the ISO shall post a list of the facilities that make up the Public Policy Transmission Projects (but not including potential interconnection facilities) that were evaluated in the Viability and Sufficiency Assessment. The list will identify which facilities are new transmission facilities and which facilities satisfy the definition of a Public Policy Transmission Upgrade. For those facilities that satisfy the definition of a Public Policy Transmission Upgrade, the list will also specify the Transmission Owner that owns the existing transmission facility that would be modified by an identified Public Policy Transmission Upgrade, to the extent such information is available. The list of Public Policy Transmission Upgrades shall not identify any listed facility as associated with any specific Public Policy Transmission Project. Any interested party may dispute the ISO's determination to identify, or not identify, a facility as a Public Policy Transmission Upgrade by providing the ISO with written notice within 20 Calendar Days of the ISO's posting of the list pursuant to this Section 31.4.6.5.1.1, which notice shall be posted on the ISO's website. The ISO and the disputing party(ies) should attempt to resolve such dispute(s) through the ISO governance procedures in discussing the Viability and Sufficiency Assessment and as provided in Section 31.1.8.4 of this Attachment Y. The ISO shall post the final list pursuant to this Section 31.4.6.5.1.1 on or before



the ISO's filing of the Viability and Sufficiency Assessment at the NYPSC and shall note whether any of the facilities still have pending disputes at the time the list is posted.

31.4.6.5.1.2 For purposes of the ISO's ongoing solicitation as of October 12, 2021 of proposed solutions to address a Public Policy Transmission Need identified for the 2020-2021 planning cycle of the Public Policy Transmission Process, the ISO shall post a list of the facilities that make up the Public Policy Transmission Projects (but not including potential interconnection facilities) that were evaluated in the Viability and Sufficiency Assessment in accordance with the requirements in Section 31.4.6.5.1.1; *provided, however*, that, if the Commission has not accepted this Section 31.4.6.5.1 as of 30 Calendar Days prior to the ISO's presentation of the initial draft of the Viability and Sufficiency Assessment, the ISO will: (i) post the list of facilities as soon as reasonably practicable following an order from the Commission accepting this Section 31.4.6.5.1 and (ii) specify at that time the date for its posting the final list of facilities, which shall not be more than 60 Calendar Days following the posting of the initial list. Any interested party may dispute the ISO's determination to identify, or not identify, a facility as a Public Policy Transmission Upgrade by providing the ISO with written notice within 20 Calendar Days of the ISO's posting of the initial list, which notice shall be posted on the ISO's website. The ISO and the disputing party(ies) should attempt to resolve such dispute(s) through the ISO governance procedures and as provided in Section 31.1.8.4 of this Attachment Y. The ISO shall post the final list under this Section 31.4.6.5.1.2 on or before the later date of: (i) the ISO's filing of the Viability and Sufficiency Assessment at the NYPSC, or (ii) the posting date specified by the ISO with its provision of the initial facilities list. The ISO shall note whether any of the facilities still have pending disputes at the time the list is posted.

#### **31.4.6.6 Developer's Determination to Proceed**

Within 15 Calendar Days following the ISO's filing of the Viability and Sufficiency Assessment at the NYPSC, which time period may be extended by the ISO pursuant to Section 31.1.8.7, all Developers of proposed Public Policy Transmission Projects that the ISO has determined satisfy the viability and sufficiency requirements in this Section 31.4.6 shall notify the ISO whether they intend for their projects to proceed to be evaluated by the ISO for purposes of the ISO's selection of the more efficient or cost effective Public Policy Transmission Project to satisfy an identified Public Policy Transmission Need. To proceed, a Developer must include with its notification to the ISO under this Section 31.4.6.6 a demonstration that it has an executed System Impact Study Agreement or System Reliability Impact Study Agreement, as applicable. If a Developer: (i) notifies the ISO that it does not intend for its proposed Public Policy Transmission Project to proceed to be evaluated for purposes of the ISO's selection, or (ii) does not provide the required notification to the ISO under this Section 31.4.6.6, the ISO will remove the project from further consideration during that planning cycle.

#### **31.4.6.7 NYPSC's Modification or Elimination of a Public Policy Transmission Need**

31.4.6.7.1 If, at any time prior to the ISO's selection of the more efficient or cost effective transmission solution pursuant to Section 31.4.11.2, the NYPSC issues an order, subject to and in accordance with the State Administrative Procedure Act, that determines that either: (i) there is no longer a transmission need driven by a Public Policy Requirement that requires the ISO's evaluation of potential transmission solutions, or (ii) the transmission need should be modified, the ISO shall take the following action.

31.4.6.7.2 If the NYPSC determines that there is no longer a transmission need driven by a Public Policy Requirement in an order as set forth in Section 31.4.6.7.1, the ISO will not perform or complete, as applicable, an evaluation, or make a selection of, a more efficient or cost-effective transmission solution under Sections 31.4.7 through 31.4.11 for the Public Policy Transmission Need initially identified by the NYPSC for that planning cycle pursuant to Section 31.4.2.1.

31.4.6.7.3 If the NYPSC modifies the transmission need driven by a Public Policy Requirement in an order as set forth in Section 31.4.6.7.1, the ISO will re-start its Public Policy Transmission Planning Process as an out-of-cycle process to evaluate Public Policy Transmission Projects to address the modified Public Policy Transmission Need. This out-of-cycle process will begin with the ISO's solicitation for Public Policy Transmission Projects to address the modified Public Policy Transmission Need in accordance with Sections 31.4.3 and 31.4.4.3. The ISO shall then perform the remainder of the out-of-cycle Public Policy Transmission Planning Process in accordance with the process requirements in Section 31.4 that follow its solicitation for proposed solutions.

**31.4.7 Evaluation of Regional Public Policy Transmission Projects 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 Public Policy Transmission Projects 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 Public Policy Transmission Project 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 Public Policy Transmission Project 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 Public Policy Transmission Project 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 Public Policy Transmission Project would satisfy the need, the ISO will evaluate the proposed regional Public Policy Transmission Project 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 Public Policy Transmission Project 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 Public Policy Transmission Project 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 Public Policy Transmission Project to Satisfy a Public Policy Transmission Need**

A proposed regulated Public Policy Transmission Project submitted by a Developer that the ISO has determined has provided the required notification to proceed under Section 31.4.6.6 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 proposed regulated Public Policy Transmission Projects that are eligible for selection in the planning cycle of the Public Policy Transmission Planning Process 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. In its review, the ISO will give due consideration to the status of, and any available results of, any applicable interconnection or transmission expansion studies concerning the proposed Public Policy Transmission Project performed in accordance with Sections 3.7 or 4.5 of the ISO OATT or Attachments X or P of the ISO OATT. 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. In formulating the independent consultant's estimate for the total capital costs of a Public Policy Transmission Project, the ISO and its independent consultant may add appropriate contingency percentages and escalation factors. 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 Public Policy Transmission Project to Satisfy Public Policy Transmission Need**

In determining which of the eligible proposed regulated Public Policy Transmission Projects is the more efficient or cost effective solution to satisfy a 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 project based on the quality of its satisfaction of these metrics:

31.4.8.1.1 The capital cost estimates for the proposed regulated Public Policy Transmission Project, including the accuracy of the proposed estimates and any Cost Cap voluntarily submitted by the Developer of the proposed Public Policy Transmission Project pursuant to Sections 31.4.5.1.1 and 31.4.5.1.8. For this evaluation, the ISO will apply an independent capital cost estimate, contingency percentage, and escalation factors for the Public Policy Transmission Upgrade components of a proposed regulated Public Policy Transmission Project.

31.4.8.1.2 A qualitative evaluation of any Cost Cap voluntarily submitted by the Developer of the proposed Public Policy Transmission Project as determined pursuant to Section 31.4.8.2.2.

31.4.8.1.3 The cost per MW ratio of the proposed regulated Public Policy Transmission Project. For this evaluation, the ISO will first determine the present worth, in dollars, of the total capital cost of the proposed project in current year dollars as determined by Section 31.4.8.1.1. The ISO will then determine the cost per MW ratio by dividing the capital cost by the MW value of increased transfer capability.

31.4.8.1.4 The expandability of the proposed regulated Public Policy Transmission Project. The ISO will consider the impact of the proposed project on future construction. The ISO will also consider the extent to which any subsequent expansion will continue to use this proposed project within the context of system expansion.

31.4.8.1.5 The operability of the proposed regulated Public Policy Transmission Project. The ISO will consider how the proposed project 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 project 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.

31.4.8.1.6 The performance of the proposed regulated Public Policy Transmission Project. The ISO will consider how the proposed project may affect the utilization of the system (*e.g.*, interface flows, percent loading of facilities).

31.4.8.1.7 The extent to which the Developer of a proposed regulated Public Policy Transmission Project has the property rights, or ability to obtain the property rights, required to implement the project. The ISO will consider the completed transmission and substation routing studies, including identified routing alternatives, and whether the Developer: (i) already possesses the rights of way

necessary to implement the project; or (ii) has specified a plan or approach and schedule for determining routing and acquiring property rights.

31.4.8.1.8 The potential issues associated with delay in constructing the proposed regulated Public Policy Transmission Project consistent with the major milestone schedule and the schedule for obtaining any permits and other certifications as required to timely meet the need.

31.4.8.1.9 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.

31.4.8.1.10 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 Evaluation of Capital Cost and Cost Caps for Included Capital Costs**

The ISO will consider in its evaluation and selection of the more efficient or cost effective transmission solution any voluntary Cost Cap made by a Developer on a quantitative and qualitative basis as described in this Section 31.4.8.2. Any voluntarily submitted Cost Cap by the Developer under Section 31.4.5.1.8.5 will not be considered for purposes of the ISO's evaluation to the extent that the Cost Cap includes any Public Policy Transmission Upgrade as an Included Capital Cost.

31.4.8.2.1 Quantitative Evaluation of Cost Cap. The ISO will use the Developer's Cost Cap in the manner described in this Section 31.4.8.2.1 in estimating the total capital costs for the transmission facilities that are part of the Included Capital



Costs of the Developer's Public Policy Transmission Project for purposes of the ISO's evaluation of that project under the metrics set forth in Section 31.4.8.1. If the Developer elected to submit a Cost Cap, the ISO will calculate the total capital costs by estimating and adding the amount of Excluded Capital Costs for the Developer's proposed Public Policy Transmission Project, including costs of any Public Policy Transmission Upgrades, to the amount of Included Capital Costs for the Public Policy Transmission Project that is determined pursuant to Sections 31.4.8.2.1.1 or 31.4.8.2.1.2, as applicable. If the Developer elected not to submit a Cost Cap, the ISO will rely on its independent consultant to estimate the total capital cost of the Developer's Public Policy Transmission Project. For purposes of its calculation of the total capital costs of a Public Policy Transmission Project, the ISO will not estimate and will not add to the Excluded Capital Costs any costs concerning unforeseeable environmental mitigation or remediation costs set forth in Section 31.4.5.1.8.2(iii), or concerning the financing of the Public Policy Transmission Project set forth in Section 31.4.5.1.8.2(ii), including debt costs, AFUDC, and any other financing costs.

31.4.8.2.1.1 If the Developer submits a hard Cost Cap for the Included Capital Costs of its proposed Public Policy Transmission Project, the ISO will use the amount of the Developer's Cost Cap as the amount for Included Capital Costs.

31.4.8.2.1.2 If the Developer submits a soft Cost Cap for the Included Capital Costs of its proposed Public Policy Transmission Project, the ISO will calculate the Included Capital Costs amount for that project as follows. If the Developer's soft Cost Cap for the Included Capital Costs is above the amount estimated by the

ISO's independent consultant, the ISO will rely on the Developer's amount for the Included Capital Costs to calculate the total capital cost of the Developer's Public Policy Transmission Project. If the Developer's soft Cost Cap for the Included Capital Costs is below the amount estimated by the ISO's independent consultant, the ISO will calculate an adjusted value for the Included Capital Costs. The ISO will calculate the adjusted value of the Included Capital Costs by: (i) multiplying the difference between (a) the independent consultant's cost estimate for Included Capital Costs and (b) the Developer's Included Capital Costs amount, by (c) the risk percentage assumed by ratepayers, and (ii) adding that amount to the Developer's Included Capital Costs amount. The ISO will use the adjusted value for the Included Capital Costs to estimate the total capital cost of the Developer's Public Policy Transmission Project.

31.4.8.2.2 Qualitative Evaluation of Cost Cap. For purposes of the ISO's evaluation of a proposed Public Policy Transmission Project under the metric in Section 31.4.8.1.2, the ISO will evaluate on a qualitative basis a Developer's proposed Cost Cap for Included Capital Costs and assess the proposed project based upon the following criteria:

- (i) The effectiveness of the proposed Cost Cap in providing an incentive to the Developer to contain its Included Capital Costs, *i.e.*, how aligned is the Developer's incentive to maximize its profits by avoiding cost overruns compared to the level of risk exposure to consumers, and what degree of risk is the Developer assuming to pay for cost overruns;

- (ii) The effectiveness of the proposed Cost Cap in protecting ratepayers from Included Capital Cost overruns;
- (iii) The magnitude of the difference between the Cost Cap and the independent cost estimate as described below;
  - a. If the Developer's proposed Cost Cap is below the ISO's independent consultant's cost estimate for Included Capital Costs, the ISO will assess how close (*i.e.*, how far below) is the Developer's proposed Cost Cap for Included Capital Costs to the ISO's independent cost estimate, considering the Developer's financial and technical qualifications, and considering the likelihood that the project could be constructed at the Cost Cap amount;
  - b. If the Developer's proposed Cost Cap is above the ISO's independent consultant's cost estimate for Included Capital Costs, the ISO will assess (a) how close (*i.e.*, how far above) is the Developer's proposed Cost Cap for Included Capital Costs to the ISO's independent cost estimate; (b) whether the Cost Cap is so significantly above the ISO independent consultant's cost estimate that it is unlikely to bind the Developer and provide benefit to ratepayers; and (c) whether the Cost Cap exceeds the ISO's independent cost estimate by only a small amount, such that the Cost Cap could protect ratepayers from cost overruns.

In conducting the evaluation in this Section 31.4.8.2.2, the ISO may request from the Developer additional project information pursuant to Section 31.4.4.3.5 and Developer financial qualification information pursuant to Section 31.4.4.3.6.

**31.4.8.3 ISO Selection of More Efficient or Cost Effective Regulated Public Policy Transmission Project to Satisfy a Public Policy Transmission Need**

31.4.8.3.1 The ISO shall identify under this Section 31.4.8 the proposed regulated Public Policy Transmission Project, if any, that is the more efficient or cost effective transmission solution proposed in the planning cycle for the Public Policy Transmission Planning Process to satisfy a Public Policy Transmission Need. The ISO shall include the more efficient or cost effective transmission solution in the Public Policy Transmission Planning Report.

31.4.8.3.2 The ISO shall also preliminarily identify in the Public Policy Transmission Planning Report the Designated Public Policy Project(s) that compose the more efficient or cost effective Public Policy Transmission Project and shall identify the Designated Entity that will be responsible for and have the right to build, own, and recover the costs of each Designated Public Policy Project. The ISO shall finalize the list of Designated Public Policy Project(s) that compose the selected Public Policy Transmission Project and the Designated Entity responsible for each Designated Public Policy Project in accordance with Section 31.4.11 of this Attachment Y.

31.4.8.3.3 The Designated Entity responsible for a Designated Public Policy Project shall be eligible to recover costs for the project only if the underlying Public Policy Transmission Project is selected by the ISO, except as otherwise provided in Section 31.4.3.2 or as otherwise determined by the Commission. Costs will be recovered when the Designated Public Policy Project enters into service, is halted, or as otherwise determined by the Commission in accordance with the cost recovery requirements set forth in Section 31.5.6 of this Attachment Y and Rate Schedule 10 of the ISO OATT. Actual project cost recovery, including any issues related to cost recovery and project cost overruns, will be submitted to and decided by the Commission; *provided, however*, that when the Developer that submitted the Public Policy

Transmission Project is the Designated Entity for a resulting Designated Public Policy Project, it:

(i) shall include in the Development Agreement for its Designated Public Policy Project in accordance with Section 31.4.12.2 any Cost Cap proposed under Section 31.4.5.1 and (ii) shall agree in the Development Agreement that it shall not seek to recover through its transmission rates or through any other means costs for the Included Capital Costs for its Designated Public Policy Project above its agreed-upon Cost Cap in accordance with Section 6.10.6 of the ISO OATT, except as permitted for excusing conditions in Section 6.10.6.2 of the ISO OATT.

31.4.8.3.4 Any selection of a Public Policy Transmission 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 Designated Entity to apply for, and receive, all necessary authorizations or permits required by federal or state law for its Designated Public Policy Project.

#### **31.4.9 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 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.

#### **31.4.10 Evaluation of Impact of Proposed Public Policy Transmission Project 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 Public Policy Transmission

Project 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.

#### **31.4.11 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 identifies the information and sources relied upon by the ISO, describes the ISO's assumptions, inputs, methodologies, and states the results of its analyses. The draft Public Policy Transmission Planning Report will reflect any input from the NYDPS.

Except as otherwise provided in the confidentiality requirements in Section 31.4.15, the ISO will include in the draft Public Policy Transmission Planning Report: (i) the list of Developers and their proposed Public Policy Transmission Projects and Other Public Policy Projects that qualify pursuant to Sections 31.4.4 and 31.4.5; (ii) the proposed Public Policy Transmission Projects and Other Public Policy Projects that the ISO has determined under Section 31.4.6 are viable and sufficient to satisfy the identified Public Policy Transmission Need(s); (iii) the list of facilities, including new transmission facilities and Public Policy Transmission Upgrades, that the ISO posted pursuant to Section 31.4.6.5.1; (iv) the total amount of Included Capital Costs and any cost sharing percentage contained in any Cost Cap proposed by a Developer that has determined to proceed with a viable and sufficient project under Section 31.4.6.6; and (v) the regulated Public Policy Transmission Project, 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 each identified Public Policy Transmission Need. The draft Public Policy Transmission Planning Report shall include a breakdown of the new transmission facilities and Public Policy Transmission Upgrades that

compose the regulated Public Policy Transmission Project that the ISO staff recommends for selection. The draft report shall preliminarily identify the Designated Public Policy Project(s) that compose the recommended Public Policy Transmission Project and the Designated Entity responsible for each Designated Public Policy Project, which designations will be finalized in accordance with Section 31.4.11.3 of this Attachment Y. A Designated Public Policy Project will contain all of the facilities that the ISO preliminarily identifies as being designated to a particular Designated Entity. For purposes of this preliminary designation, the Developer that proposed the regulated Public Policy Transmission Project will be identified by the ISO as the Designated Entity for those facilities of its Public Policy Transmission Project that do not meet the definition of Public Policy Transmission Upgrades, which facilities shall constitute a Designated Public Policy Project. If more than one Developer jointly proposed the regulated Public Policy Transmission Project, then they will collectively be the Designated Entity and jointly and severally responsible for the completion of the Designated Public Policy Project. If any facilities of the Public Policy Transmission Project meet the definition of Public Policy Transmission Upgrade, the Transmission Owner owning the existing transmission facility(ies) to be upgraded will be identified by the ISO as the Designated Entity for the Public Policy Transmission Upgrade(s), which Public Policy Transmission Upgrade(s) shall constitute a separate Designated Public Policy Project.

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 also indicate the date by which the Public Policy Transmission Project must be in-service to address the Public Policy Transmission Need. The in-service date for the Public Policy Transmission Project shall be: (i)

the date prescribed by the NYPSC in its order identifying the Public Policy Transmission Need as described in Section 31.4.2.1 or in a subsequent order, or (ii) if the NYPSC has not prescribed a date, the date proposed by the Developer for its proposed Public Policy Transmission Project and reviewed and accepted by the ISO, which date may be either: (A) the in-service date included in the Developer's project proposal, or (B) such other date accepted by the ISO as reasonable in light of the Public Policy Transmission Need. The in-service date for the selected Public Policy Transmission Project shall apply to all Designated Public Policy Projects that compose the selected Public Policy Transmission Project regardless of the Designated Entity; *provided, however*, the draft Public Policy Transmission Planning Report may also include specific dates by which one or more of the Designated Public Policy Projects must be in service in order for the selected Public Policy Transmission Project to meet the overall in-service date.

The draft Public Policy Transmission Planning Report shall include a comparison of a proposed Public Policy Transmission Project to an Interregional Transmission Project proposed in the Public Policy Transmission Planning Process, 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 Public Policy Transmission Project under the provisions of this process.

#### **31.4.11.1 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.

#### **31.4.11.2 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 Public Policy Transmission Project to satisfy a 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 Public Policy Transmission Project under this Section 31.4.11.2, 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.

#### **31.4.11.3 Transmission Owner's Responsibility to Notify the ISO**

Within 30 Calendar Days following the posting of a Public Policy Transmission Planning Report approved by the ISO Board that selects a regulated Public Policy Transmission Project pursuant to this Section 31.4.11, a Transmission Owner that has been identified as a Designated Entity for a Designated Public Policy Project that contains Public Policy Transmission Upgrades proposed by another Developer shall provide notice to the ISO if the Transmission Owner does not intend to exercise the right under Section 31.6.4 of this Attachment Y to build, own, and recover the cost of the Public Policy Transmission Upgrades and serve as the Designated Entity for the Designated Public Policy Project identified for the Transmission Owner in the Public Policy Transmission Planning Report. If the Transmission Owner notifies the ISO of its rejection to be the Designated Entity for one or more Public Policy Transmission Upgrades identified for its Designated Public Policy Project, the Developer that proposed the Public Policy Transmission Project shall be the Designated Entity for such Public Policy Transmission Upgrades, which shall be incorporated into the Developer's Designated Public Policy Project. If the Transmission Owner does not take action within the 30 Calendar Days with regard to one or more Public Policy Transmission Upgrades identified for its Designated Public Policy Project, the Transmission Owner shall be the Designated Entity concerning such Public Policy Transmission Upgrade(s) and shall be responsible for constructing and placing the Public Policy Transmission Upgrades in service by the in-service date for the Designated Public Policy Project identified in the Public Policy Transmission Planning Report.

The ISO shall post on its website a list of the Designated Entities and associated Designated Public Policy Projects identified in the final Public Policy Transmission Planning Report at the conclusion of the notification period.

#### **31.4.12 Designated Entity's Responsibilities Following Selection of a Public Policy Transmission Project**

##### **31.4.12.1 Designated Entity's Responsibility to Obtain Necessary Approvals and Authorizations**

Upon the ISO's posting of a list of Designated Entities and Designated Public Policy Projects pursuant to Section 31.4.11.3, the ISO will inform each Designated Entity that it should submit its Designated Public Policy Project to the appropriate governmental agency(ies) and/or authority(ies) to begin the necessary approval process to site, construct, and operate the project. In response to the ISO's request, the Designated Entity shall make such a submission to the appropriate governmental agency(ies) and/or authority(ies) to the extent such authorization has not already been requested or obtained.

If the appropriate federal, state or local agency(ies) either rejects a necessary authorization, or approves and later withdraws authorization, for the Designated Public Policy Project, the Designated Entity may recover all of the necessary and reasonable costs incurred and commitments made up to the final federal, state or local regulatory decision, including reasonable and necessary expenses incurred to implement an orderly termination of the project, to the extent permitted by the Commission in accordance with its regulations on abandoned plant recovery. The ISO shall allocate these costs among Load Serving Entities in accordance with Section 31.5.5.4.3, except as otherwise determined by the Commission. The ISO shall recover such costs in accordance with Section 31.5.6 of this Attachment Y and Rate Schedule 10 of the ISO OATT.

When the Designated Entity is a Transmission Owner, the Developer that proposed the Public Policy Transmission Project is not required to provide any additional information or resources other than the information that was included in the redacted project proposal submitted in accordance with Sections 31.4.4.3.3 and 31.4.15.4.

#### **31.4.12.2 Development Agreement**

As soon as reasonably practicable following the ISO's posting of a list of Designated Entities and Designated Public Policy Projects pursuant to Section 31.4.11.3, the ISO shall tender to each Designated Entity of a Designated Public Policy Project a draft Development Agreement with draft appendices completed by the ISO to the extent practicable for review and completion by the Designated Entity. The draft Development Agreement shall be in the form of the ISO's Commission-approved Development Agreement, which is in Appendix D in Section 31.7 of this Attachment Y. Each Designated Entity will receive a separate draft Development Agreement for its Designated Public Policy Project. If the Designated Entity originally submitted the Public Policy Transmission Project and submitted a Cost Cap for its Public Policy Transmission Project selected by the ISO, its Development Agreement for that its Designated Public Policy Project shall contain the Cost Cap.

The ISO and each Designated Entity, as applicable, shall finalize a Development Agreement and appendices and negotiate concerning any disputed provisions. For purposes of finalizing the Development Agreement, the ISO and Developer shall develop the description and dates for the milestones necessary to develop and construct the Designated Public Policy Project by the required in-service date for the Designated Public Policy Project identified in the Public Policy Transmission Planning Report, including the milestones for obtaining all necessary authorizations, and in coordination with the Designated Entities for other Designated Public

Policy Projects for the selected Public Policy Transmission Project to the extent feasible. Any milestone that requires action by another Designated Entity or a Connecting Transmission Owner or Affected System Operator identified pursuant to Attachment P of the ISO OATT to complete must be included as an Advisory Milestone, as that term is defined in the Development Agreement.

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

Agreement or the ISO's filing of an unexecuted Development Agreement with the Commission, the ISO and the Designated Entity shall perform their respective obligations in accordance with the terms of the Development Agreement that are not in dispute, subject to modification by the Commission. The Connecting Transmission Owner(s) and Affected System Operator(s) that are identified in Attachment P of the ISO OATT in connection with the Designated Public Policy Transmission Project shall act in good faith in timely performing their obligations that are required for the Designated Entity to satisfy its obligations under the Development Agreement.

**31.4.12.3 Process for Addressing Inability of Designated Entity to Complete Designated Public Policy Project**

31.4.12.3.1 The ISO may take the actions described in Sections 31.4.12.3.1.1 through 31.4.12.3.1.3 as soon as practicable if one of the following events occur: (i) a Designated Entity that is required to execute the Development Agreement for its Designated Public Policy Project pursuant to Section 31.4.12.2 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 31.4.12.2, or (ii) the ISO determines that an effective Development Agreement for a Designated Public Policy Project may be terminated or terminates the Development Agreement under the terms of the agreement prior to the completion of the term of the agreement.

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

31.4.12.3.1.2 The ISO may take one or more of the following actions to address a Public Policy Transmission Need based on the particular circumstances: (i) address the Public Policy Transmission Need in the subsequent planning cycle or, if requested by the NYPSC pursuant to Section 31.4.1, in an out-of-cycle process; (ii) direct the Designated Entity to continue with the development of its Designated Public Policy Project for completion beyond the in-service date required to address the Public Policy Transmission Need; (iii) solicit bids from qualified Developers to complete the Designated Public Policy Project in accordance with Section 31.4.12.3.1.3; or (iv) offer the Developer that originally submitted the Public Policy Transmission Project the opportunity to be the Designated Entity of the Designated Public Policy Project in accordance with Section 31.4.12.3.1.4.

31.4.12.3.1.3 If the ISO determines in accordance with Section 31.4.12.3.1.2 that an alternative Developer should be designated to complete a Designated Public Policy Project and the original Developer that proposed the Public Policy Transmission Project rejects the offer to be designated to complete the Designated Public Policy Project pursuant to Section 31.4.12.3.1.4, the ISO shall solicit bids from Developers to finance and complete the development and construction of the Designated Public Policy Project to bring it into service. Any Developer that is qualified at the time of the ISO's solicitation to propose a Public Policy Transmission Project may submit a proposal to complete the Designated Public Policy Project. The ISO will specify in its solicitation for bids by Developers those categories of project information described in Section 31.4.5.1.1 that the Developer must submit and will identify the metrics in Section 31.4.8 that the ISO

will use to select among the bidding Developers. The ISO will determine the appropriate project information and metrics based on the current status of development of the Designated Public Policy Project. The ISO will make any selection of an alternative Developer using the selection metrics identified in its solicitation for bids and consistent with the selection processes set forth in Sections 31.4.8 and 31.4.11, including issuing an updated Public Policy Transmission Planning Report. The ISO shall charge, and a Developer bidding for the Designated Public Policy Project shall pay, the actual costs of the ISO's evaluation of its bid for purposes of selecting a Developer to complete the project consistent with Section 31.4.4.4. Each bidding Developer will reimburse the ISO for its actual study costs consistent with the requirements in Section 31.4.4.4. The selected alternative Designated Entity must enter into a Development Agreement for the Designated Public Policy Project with the ISO in accordance with the requirements in Section 31.4.12.2. The selected alternative Designated Entity will be eligible for cost allocation under the ISO OATT for its development and construction of the Designated Public Policy Project. The selected alternative Designated Entity and the Designated Entity that the ISO initially identified to be responsible for the Designated Public Policy Project shall work cooperatively with each other to implement the transition, including negotiating in good faith with each other to transfer the project; *provided, however*, that the transfer is subject to: (i) any required approvals by the appropriate governmental agency(ies) and/or authority(ies), (ii) any requirements or restrictions on the transfer of Developer's rights-of-way under federal or state law, regulation, or contract



(including mortgage trust indentures or debt instruments), 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 selected alternative Designated Entity and the initial Designated Entity will address any disputes regarding the transfer of the project in accordance with the dispute resolution provisions in Article 11 of the ISO Services Tariff.

31.4.12.3.1.4 If the ISO determines in accordance with Section 31.4.12.3.1.2 that an alternative Developer should be designated to complete a Designated Public Policy Project that was initially designated to the owner of the impacted transmission facility, the ISO shall first offer the Developer that originally proposed the Public Policy Transmission Project the opportunity to be the Designated Entity of that Designated Public Policy Project to finance and complete the development and construction of the project to bring it into service. The alternative Designated Entity shall have 30 Calendar Days from the ISO tendering its offer to accept the Designated Public Policy Project. Thereupon, the alternative Designated Entity must enter into a Development Agreement or amend an existing Development Agreement with the ISO related to fulfillment of the same Public Policy Transmission Need in accordance with the requirements in Section 31.4.12.3. The alternative Designated Entity will be eligible for cost allocation and cost recovery under the ISO OATT for its development and construction of the Designated Public Policy Project. The alternative Designated Entity and the original Designated Entity of the Designated Public Policy Project shall work cooperatively with each other to implement the transition, including

negotiating in good faith with each other to transfer the project; *provided*, *however*, that the transfer is subject to: (i) any required approvals by the appropriate governmental agency(ies) and/or authority(ies), (ii) any requirements or restrictions on the transfer of rights-of-way under federal or state law, regulation, or contract (including mortgage trust indentures or debt instruments), and (iii) if the original Designated Entity of the Designated Public Policy Project is a New York public authority, any requirements or restrictions on the transfer under the New York Public Authorities Law; *provided, further*, that the alternative Designated Entity and the original Designated Entity of the Designated Public Policy Project 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.

31.4.12.3.1.5 If the ISO elects to terminate the Development Agreement for a Designated Entity's Designated Public Policy Project because (i) another Designated Entity defaulted on the development of a separate Designated Public Policy Project that is a component of the same selected Public Policy Transmission Project and (ii) the ISO determined to address the underlying Public Policy Transmission Need in a future planning cycle pursuant to Section 31.4.12.3.1.2 of Attachment Y of the ISO OATT, the Designated Entity may recover all of the necessary and reasonable costs incurred and commitments made up to the notice of termination of the Development Agreement from the ISO, including reasonable and necessary expenses incurred to implement an orderly termination of the project, to the extent permitted by the Commission in

accordance with its regulations on abandoned plant recovery. The ISO shall allocate these costs among Load Serving Entities in accordance with Section 31.5.5.4.3, except as otherwise determined by the Commission. The ISO shall recover such costs in accordance with Section 31.5.6 of this Attachment Y and Rate Schedule 10 of the ISO OATT.

#### **31.4.12.4 Execution of ISO/TO Agreement or Comparable Agreement**

The Designated Entity of a Designated Public Policy Project of a selected Public Policy Transmission Project shall execute the ISO/TO Agreement or an Operating Agreement in accordance with Section 31.1.7 of this Attachment Y prior to energizing the Public Policy Transmission Project.

#### **31.4.13 ISO Monitoring of Designated Public Policy Projects**

The ISO shall monitor the Designated Public Policy Projects to confirm that they continue to develop consistent with the conditions, actions, or schedules for the projects.

#### **31.4.14 Posting of Approved Solutions**

The ISO shall post on its website a list of all entities that 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 Designated Public Policy Project in response to a need driven by a Public Policy Requirement.

#### **31.4.15 Confidentiality of Solutions**

31.4.15.1 The ISO shall treat Confidential Information, as defined in Section

31.4.15.2, that is submitted to the ISO by the Developer of a proposed Public

Policy Transmission Project or Other Public Policy Project in accordance with the

requirements for the treatment of Confidential Information in Section 12.4 of its Code of Conduct in Attachment F of the ISO OATT. The ISO shall treat Critical Energy Infrastructure Information submitted to the ISO by the Developer of a proposed Public Policy Transmission Project in accordance with ISO Procedures.

31.4.15.2 For purposes of this Section 31.4, the term “Confidential Information” shall only include the following non-public information submitted by the Developer and labeled as Confidential Information as part of its submission to satisfy its Developer qualification requirements pursuant to Section 31.4.4 or part of its submission of the project information requirements described in Section 31.4.5 for its Public Policy Transmission Project or Other Public Policy Project to satisfy its project information requirements pursuant to Sections 31.4.4.3.2 and 31.4.4.3.5: (i) all project cost information; (ii) all details of the Developer’s financing arrangements; (iii) any non-public financial qualification information submitted pursuant to Section 31.4.4.1.2; and (iv) any contracts provided under Sections 31.4.5.1.4 or 31.4.5.2.2; *provided, however*, that the total amount of Included Capital Costs and any cost sharing percentage contained in any Cost Cap proposed by a Developer that are included in the draft Public Policy Transmission Planning Report pursuant to Section 31.4.11 shall, upon the posting of the draft report, not be treated or designated as Confidential Information for purposes of this Section 31.4 and Attachment F of the ISO OATT.

31.4.15.3 All other project information submitted by a Developer of a Public Policy Transmission Project or an Other Public Policy Project shall not be treated or

designated as Confidential Information for purposes of this Section 31.4 and Attachment F of the ISO OATT.

31.4.15.4 If a Developer of a Public Policy Transmission Project intends for the ISO to maintain certain project information as Confidential Information, the Developer shall submit both an un-redacted and a redacted version of the project information required pursuant to Section 31.4.5.1 for its proposed Public Policy Transmission Project. The Developer shall label the material in the un-redacted version that it deems to be “Confidential Information” and shall not include this material in the redacted version. The ISO may review the Developer’s proposed redactions to ensure that the redacted information is consistent with the ISO’s requirements for Confidential Information in this Section 31.4.15. Based on its review, the ISO may require additional redactions or require the disclosure of redacted information.

31.4.15.5 Regardless of whether the information is requested pursuant to Section 31.4.4.3.11, the ISO may disclose any information submitted by the Developer that is not Confidential Information, as defined in this Section 31.4.15, to the extent required to administer its Public Policy Transmission Planning Process or interconnection process, including, but not limited to, using such information in its Viability and Sufficiency Assessment and its Public Policy Transmission Planning Report.

## **31.5 Cost Allocation and Cost Recovery**

### **31.5.1 The Scope of Attachment Y Cost Allocation**

#### **31.5.1.1 Regulated Responses**

The cost allocation principles and methodologies in this Attachment Y cover only regulated transmission solutions to Reliability Needs, Regulated Economic Transmission Projects, and regulated Designated Public Policy Projects whether proposed by a Responsible Transmission Owner or a Transmission Owner or Other Developer. The cost allocation principles and methodology for: (i) regulated transmission solutions to Reliability Needs identified in the Reliability Planning Process are contained in Sections 31.5.3.1 and 31.5.3.2 of this Attachment Y, (ii) Regulated Economic Transmission Projects are contained in Sections 31.5.4.1 and 31.5.4.2 of this Attachment Y, and (iii) regulated Designated Public Policy Projects are contained in Sections 31.5.5 and 31.5.6 of this Attachment Y.

#### **31.5.1.2 Market-Based Responses**

The cost allocation principles and methodologies in this Attachment Y do not apply to market-based solutions to Reliability Needs, to market-based responses to congestion identified in the Economic Planning Process, or to Other Public Policy Projects. The cost of a market-based project shall be the responsibility of the developer of that project.

#### **31.5.1.3 Interconnection Cost Allocation**

The cost allocation principles and methodologies in this Attachment Y do not apply to the interconnection costs of generation projects and Merchant Transmission Facilities. Interconnection costs are determined and allocated in accordance with Attachment P, Attachment S, Attachment X and Attachment Z of the ISO OATT. Cost related to the deliverability of a

resource will be addressed under the ISO's deliverability procedures in Attachment S of the ISO OATT.

#### **31.5.1.4 Individual Transmission Service Requests**

The cost allocation principles and methodologies in this Attachment Y do not apply to the cost of transmission expansion projects undertaken in connection with an individual request for Transmission Service. The cost of such a project is determined and allocated in accordance with Section 3.7 or Section 4.5 of the ISO OATT.

#### **31.5.1.5 LTP Facilities**

The cost allocation principles and methodologies in this Attachment Y do not apply to the cost of transmission projects included in LTPs or LTP updates. Each Transmission Owner will recover the cost of such transmission projects in accordance with its then existing rate recovery mechanisms.

#### **31.5.1.6 Regulated Non-Transmission Projects**

Costs related to regulated non-transmission projects will be recovered by Responsible Transmission Owners, Transmission Owners and Other Developers in accordance with the provisions of New York Public Service Law, New York Public Authorities Law, or other applicable state law. Nothing in this section shall affect the Commission's jurisdiction over the sale and transmission of electric energy subject to the jurisdiction of the Commission.

#### **31.5.1.7 Eligibility for Cost Allocation and Cost Recovery**

Any entity, whether a Responsible Transmission Owner, Other Developer, or Transmission Owner, shall be eligible for cost allocation and cost recovery as set forth in Section 31.5 of this Attachment Y and Rate Schedule 10 of the ISO OATT for any transmission project

proposed to satisfy an identified Reliability Need, Regulated Economic Transmission Project, or Designated Public Policy Project that is determined by the ISO to be eligible under Sections 31.2, 31.3, or 31.4, as applicable. Interregional Transmission Projects identified in accordance with the Interregional Planning Protocol, and that have been accepted in each region's planning process, shall be eligible for interregional cost allocation and cost recovery, as set forth in Section 31.5 of this Attachment Y and Rate Schedule 10 of the ISO OATT. The ISO's share of the cost of an Interregional Transmission Project selected pursuant to this Attachment Y to meet a Reliability Need, constraint(s) on the BPTFs identified in the Economic Planning Process, or a Public Policy Transmission Need shall be eligible for cost allocation consistent with the cost allocation methodology applicable to the type of regional transmission project that would be replaced through the construction of such Interregional Transmission Project.

### **31.5.2 Cost Allocation Principles Required Under Order No. 1000**

31.5.2.1 In compliance with Commission Order No. 1000, the ISO shall implement the specific cost allocation methodology in Section 31.5.3.2, 31.5.4.4, and 31.5.5.4 in accordance with the following Regional Cost Allocation Principles ("Order No. 1000 Regional Cost Allocation Principles"):

**Regional Cost Allocation Principle 1:** The ISO shall allocate the cost of transmission facilities to those within the transmission planning region that benefit from those facilities in a manner that is at least roughly commensurate with estimated benefits. In determining the beneficiaries of transmission facilities, the ISO's CSPP will consider benefits including, but not limited to, the extent to which transmission facilities, individually or in the aggregate provide for



maintaining reliability and sharing reserves, production cost savings and congestion relief, and/or meeting Public Policy Requirements.

**Regional Cost Allocation Principle 2:** The ISO shall not involuntarily allocate any of the costs of transmission facilities to those that receive no benefit from transmission facilities.

**Regional Cost Allocation Principle 3:** In the event that the ISO adopts a benefit to cost threshold in its CSPP to determine which transmission facilities have sufficient net benefits to be selected in a regional transmission plan for the purpose of cost allocation, such benefit to cost threshold will not be so high that transmission facilities with significant positive net benefits are excluded from cost allocation. If the ISO chooses to adopt such a threshold in its CSPP it will not include a ratio of benefits to costs that exceeds 1.25 unless the ISO justifies and the Commission approves a higher ratio.

**Regional Cost Allocation Principle 4:** The ISO's allocation method for the cost of a transmission facility selected pursuant to the process in the CSPP shall allocate costs solely within the ISO's transmission planning region unless another entity outside the region or another transmission planning region voluntarily agrees to assume a portion of those costs. Costs for an Interregional Transmission Project must be assigned only to regions in which the facility is physically located. Costs cannot be assigned involuntarily to another region. The ISO shall not bear the costs of required upgrades in another region.

**Regional Cost Allocation Principle 5:** The ISO's cost allocation method and data requirements for determining benefits and identifying beneficiaries for a

transmission facility shall be transparent with adequate documentation to allow a stakeholder to determine how they were applied to a proposed transmission facility, as consistent with confidentiality requirements set forth in this Attachment Y and the ISO Code of Conduct in Attachment F of the OATT.

**Regional Cost Allocation Principle 6:** The ISO's CSPP provides a different cost allocation method for different types of transmission facilities in the regional transmission plan and each cost allocation method is set out clearly and explained in detail in this Section 31.5.

31.5.2.2 In compliance with Commission Order No. 1000, the ISO shall implement the specific cost allocation methodology in Section 31.5.7 of this Attachment Y in accordance with the following Interregional Cost Allocation Principles:

**Interregional Cost Allocation Principle 1:** The ISO shall allocate the cost of new Interregional Transmission Projects to each region in which an Interregional Transmission Project is located in a manner that is at least roughly commensurate with estimated benefits of the Interregional Transmission Project in each of the regions. In determining the beneficiaries of Interregional Transmission Projects, the ISO will consider benefits including, but not limited to, those associated with maintaining reliability and sharing reserves, production cost savings and congestion relief, and meeting Public Policy Requirements.

**Interregional Cost Allocation Principle 2:** The ISO shall not involuntarily allocate any of the costs of an Interregional Transmission Project to a region that receives no benefit from an Interregional Transmission Project that is located in that region, either at present or in a likely future scenario.

**Interregional Cost Allocation Principle 3:** In the event that the ISO adopts a benefit-cost threshold ratio to determine whether an Interregional Transmission Project has sufficient net benefits to qualify for interregional cost allocation, this ratio shall not be so large as to exclude an Interregional Transmission Project with significant positive net benefits from cost allocation. If the ISO chooses to adopt such a threshold, they will not include a ratio of benefits to costs that exceeds 1.25 unless the Parties justify and the Commission approves a higher ratio.

**Interregional Cost Allocation Principle 4:** The ISO's allocation of costs for an Interregional Transmission Project shall be assigned only to regions in which the Interregional Transmission Project is located. The ISO shall not assign costs involuntarily to a region in which that Interregional Transmission Project is not located. The ISO shall, however, identify consequences for other regions, such as upgrades that may be required in a third region. The ISO's interregional cost allocation methodology includes provisions for allocating the costs of upgrades among the beneficiaries in the region in which the Interregional Transmission Project is located to the transmission providers in such region that agree to bear the costs associated with such upgrades.

**Interregional Cost Allocation Principle 5:** The ISO's cost allocation methodology and data requirements for determining benefits and identifying beneficiaries for an Interregional Transmission Project shall be transparent with adequate documentation to allow a stakeholder to determine how they were applied to a proposed Interregional Transmission Project, as consistent with the

confidentiality requirements set forth in this Attachment Y and the ISO Code of Conduct in Attachment F of the OATT.

**Interregional Cost Allocation Principle 6:** Though Order No. 1000 allows the ISO to provide a different cost allocation methodology for different types of interregional transmission facilities, such as facilities needed for reliability, congestion relief, or to achieve Public Policy Requirements, the ISO has chosen to adopt one interregional cost allocation methodology for all Interregional Transmission Planning Projects. The interregional cost allocation methodology is set out clearly and explained in detail in Section 31.5.7 of this Attachment Y. The share of the cost related to any Interregional Transmission Project assigned to the ISO shall be allocated as described in Section 31.5.7.1.

### **31.5.3 Regulated Responses to Reliability Needs**

#### **31.5.3.1 Cost Allocation Principles**

The ISO shall implement the specific cost allocation methodology in Section 31.5.3.2 of this Attachment Y in accordance with the Order No. 1000 Regional Cost Allocation Principles as set forth in Section 31.5.2.1. This methodology shall apply to cost allocation for a regulated transmission solution to a Reliability Need identified in the Reliability Planning Process, including the ISO's share of the costs of an Interregional Transmission Project proposed as a regulated transmission solution to a Reliability Need identified in the Reliability Planning Process allocated in accordance with Section 31.5.7 of this Attachment Y.

The specific cost allocation methodology in Section 31.5.3.2 incorporates the following elements:

- 31.5.3.1.1 The focus of the cost allocation methodology shall be on solutions to Reliability Needs.
- 31.5.3.1.2 Potential impacts unrelated to addressing the Reliability Needs shall not be considered for the purpose of cost allocation for regulated solutions.
- 31.5.3.1.3 Primary beneficiaries shall initially be those Load Zones or Subzones identified as contributing to the reliability violation.
- 31.5.3.1.4 The cost allocation among primary beneficiaries shall be based upon their relative contribution to the need for the regulated solution.
- 31.5.3.1.5 The ISO will examine the development of specific cost allocation rules based on the nature of the reliability violation (*e.g.*, thermal overload, voltage, stability, resource adequacy and short circuit).
- 31.5.3.1.6 Cost allocation shall recognize the terms of prior agreements among the Transmission Owners, if applicable.
- 31.5.3.1.7 Consideration should be given to the use of a materiality threshold for cost allocation purposes.
- 31.5.3.1.8 The methodology shall provide for ease of implementation and administration to minimize debate and delays to the extent possible.
- 31.5.3.1.9 Consideration should be given to the “free rider” issue as appropriate.  
The methodology shall be fair and equitable.
- 31.5.3.1.10 The methodology shall provide cost recovery certainty to investors to the extent possible.
- 31.5.3.1.11 The methodology shall apply, to the extent possible, to Gap Solutions.

31.5.3.1.12 Cost allocation is independent of the actual triggered project(s), except when allocating cost responsibilities associated with meeting a Locational Minimum Installed Capacity Requirement (“LCR”), and is based on a separate process that results in NYCA meeting its LOLE requirement.

31.5.3.1.13 Cost allocation for a solution that meets the needs of a Target Year assumes that backstop solutions of prior years have been implemented.

31.5.3.1.14 Cost allocation will consider the most recent values for LCRs. LCRs must be met for the Target Year.

### **31.5.3.2 Cost Allocation Methodology**

The cost allocation mechanism under this Section 31.5.3.2 sets forth the basis for allocating costs associated with a Responsible Transmission Owner’s regulated backstop solution or an Other Developer’s or Transmission Owner’s alternative regulated transmission solution selected by the ISO as the more efficient or cost-effective transmission solution to a Reliability Need identified in the Reliability Planning Process.

The formula is not applicable to that portion of a project beyond the size of the solution needed to provide the more efficient or cost effective solution appropriate to the Reliability Need identified in the RNA. Nor is the formula applicable to that portion of the cost of a regulated transmission reliability project that is, pursuant to Section 25.7.12 of Attachment S to the ISO OATT, paid for with funds previously committed by or collected from Developers for the installation of System Deliverability Upgrades required for the interconnection of generation projects or Class Year Transmission Projects.

This Section 31.5.3.2 establishes the allocation of the costs related to resolving Reliability Needs resulting from resource adequacy, BPTF thermal transmission security, BPTF

voltage security, dynamic stability, and short circuit issues. Costs will be allocated in accordance with the following hierarchy: (i) resource adequacy pursuant to Section 31.5.3.2.1, (ii) BPTF thermal transmission security pursuant to Section 31.5.3.2.2, (iii) BPTF voltage security pursuant to Section 31.5.3.2.3, (iv) dynamic stability pursuant to Section 31.5.3.2.4, and (v) short circuit pursuant to Section 31.5.3.2.5.

### 31.5.3.2.1 Resource Adequacy Reliability Solution Cost Allocation Formula

For purposes of solutions eligible for cost allocation under this Section 31.5.3.2, this section sets forth the cost allocation methodology applicable to that portion of the costs of the solution attributable to resolving resource adequacy. The same cost allocation formula is applied regardless of the project or sets of projects being triggered; however, the nature of the solution set may lead to some terms equaling zero, thereby dropping out of the equation. To ensure that appropriate allocation to the LCR and non-LCR zones occurs, the zonal allocation percentages are developed through a series of steps that first identify responsibility for LCR deficiencies, followed by responsibility for remaining need. The following formula shall apply to the allocation of the costs of the solution attributable to resource adequacy:

$$\text{Resource Adequacy Cost Allocation}_i = \left[ \frac{\text{LCRdef}_i}{\text{Soln Size}} + \left( \frac{\frac{\text{Coincident Peak}_i * (1 + \text{IRM} - \text{LCR}_i)}{\sum_{k=1}^n \frac{\text{Coincident Peak}_k}{(1 + \text{IRM} - \text{LCR}_k)}} * \frac{\text{Soln STWdef}}{\text{Soln Size}} + \frac{\frac{\text{Coincident Peak}_i * (1 + \text{IRM} - \text{LCR}_i)}{\sum_{l=1}^m \frac{\text{Coincident Peak}_l}{(1 + \text{IRM} - \text{LCR}_l)}} * \frac{\text{Soln Cldef}}{\text{Soln Size}} \right) \right] * 100\%$$

Where  $i$  is for each applicable zone,  $n$  represent the total zones in NYCA,  $m$  represents the zones isolated by the binding interfaces, IRM is the statewide reserve margin, and where LCR is defined as the locational capacity requirement in terms of percentage and is equal to zero

for those zones without an LCR requirement,  $LCRdef_i$  is the applicable zonal LCR deficiency,  $SolnSTWdef$  is the  $STWdef$  for each applicable project,  $SolnCIdef$  is the  $CIdef$  for each applicable project, and  $Soln\_Size$  represents the total compensatory MW addressed by each applicable project for all reliability cost allocation steps in this Section 31.5.3.2.

Three step cost allocation methodology for regulated reliability solutions:

#### 31.5.3.2.1.1 Step 1 - LCR Deficiency

31.5.3.2.1.1.1 Any deficiencies in meeting the LCRs for the Target Year will be referred to as the  $LCRdef$ . If the reliability criterion is met once the LCR deficiencies have been addressed, that is  $LOLE \leq 0.1$  for the Target Year is achieved, then the only costs allocated will be those related to the  $LCRdef$  MW. Cost responsibility for the  $LCRdef$  MW will be borne by each deficient locational zone(s), to the extent each is individually deficient.

For a single solution that addresses only an LCR deficiency in the applicable LCR zone, the equation would reduce to:

$$Allocation_i = \frac{LCRdef_i}{Soln\_Size} * 100\%$$

Where  $i$  is for each applicable LCR zone,  $LCRdef_i$  represents the applicable zonal LCR deficiency, and  $Soln\_Size$  represents the total compensatory MW addressed by the applicable project.

31.5.3.2.1.1.2 Prior to the  $LOLE$  calculation, voltage constrained interfaces will be recalculated to determine the resulting transfer limits when the  $LCRdef$  MW are added.

31.5.3.2.1.2 Step 2 - Statewide Resource Deficiency. If the reliability criterion is not met after the  $LCRdef$  has been addressed, that is an  $LOLE > 0.1$ , then a NYCA



Free Flow Test will be conducted to determine if NYCA has sufficient resources to meet an LOLE of 0.1.

31.5.3.2.1.2.1 If NYCA is found to be resource limited, the ISO, using the transfer limits and resources determined in Step 1, will determine the optimal distribution of additional resources to achieve a reduction in the NYCA LOLE to 0.1.

31.5.3.2.1.2.2 Cost allocation for compensatory MW added for cost allocation purposes to achieve an LOLE of 0.1, defined as a Statewide MW deficiency (STWdef), will be prorated to all NYCA zones, based on the NYCA coincident peak load. The allocation to locational zones will take into account their locational requirements. For a single solution that addresses only a statewide deficiency, the equation would reduce to:

$$\text{Allocation}_i = \left[ \frac{\text{Coincident Peak}_i * (1 + \text{IRM} - \text{LCR}_i)}{\sum_{k=1}^n \text{Coincident Peak}_k} * \frac{\text{Soln STWdef}}{\text{Soln Size}} \right] * 100\%$$

\* (1 + IRM - LCR<sub>k</sub>)

Where  $i$  is for each applicable zone,  $n$  is for the total zones in NYCA, IRM is the statewide reserve margin, and LCR is defined as the locational capacity requirement in terms of percentage and is equal to zero for those zones without an LCR requirement, Soln STWdef is the STWdef for the applicable project, and Soln\_Size represents the total compensatory MW addressed by the applicable project.

31.5.3.2.1.3 Step 3 - Constrained Interface Deficiency. If the NYCA is not resource limited as determined by the NYCA Free Flow Test, then the ISO will examine constrained transmission interfaces, using the Binding Interface Test.

- 31.5.3.2.1.3.1 The ISO will provide output results of the reliability simulation program utilized for the RNA that indicate the hours that each interface is at limit in each flow direction, as well as the hours that coincide with a loss of load event. These values will be used as an initial indicator to determine the binding interfaces that are impacting LOLE within the NYCA.
- 31.5.3.2.1.3.2 The ISO will review the output of the reliability simulation program utilized for the RNA along with other applicable information that may be available to make the determination of the binding interfaces.
- 31.5.3.2.1.3.3 Bounded Regions are assigned cost responsibility for the compensatory MW, defined as C<sub>ldef</sub>, needed to reach an LOLE of 0.1.
- 31.5.3.2.1.3.4 If one or more Bounded Regions are isolated as a result of binding interfaces identified through the Binding Interface Test, the ISO will determine the optimal distribution of compensatory MW to achieve a NYCA LOLE of 0.1. Compensatory MW will be added until the required NYCA LOLE is achieved.
- 31.5.3.2.1.3.5 The Bounded Regions will be identified by the ISO's Binding Interface Test, which identifies the bounded interface limits that can be relieved and have the greatest impact on NYCA LOLE. The Bounded Region that will have the greatest benefit to NYCA LOLE will be the area to be first allocated costs in this step. The ISO will determine if after the first addition of compensating MWs the Bounded Region with the greatest impact on LOLE has changed. During this iterative process, the Binding Interface Test will look across the state to identify the appropriate Bounded Region. Specifically, the Binding Interface Test will be applied starting from the interface that has the greatest benefit to LOLE (the

greatest LOLE reduction per interface compensatory MW addition), and then extended to subsequent interfaces until a NYCA LOLE of 0.1 is achieved.

31.5.3.2.1.3.6 The CIdef MW are allocated to the applicable Bounded Region isolated as a result of the constrained interface limits, based on their NYCA coincident peaks. Allocation to locational zones will take into account their locational requirements. For a single solution that addresses only a binding interface deficiency, the equation would reduce to:

$$\text{Allocation}_i = \left[ \frac{\text{Coincident Peak}_i * (1 + \text{IRM} - \text{LCR}_i)}{\sum_{l=1}^m \text{Coincident Peak}_l * (1 + \text{IRM} - \text{LCR}_l)} * \frac{\text{SolnCIdf}}{\text{Soln Size}} \right] * 100\%$$

Where  $i$  is for each applicable zone,  $m$  is for the zones isolated by the binding interfaces, IRM is the statewide reserve margin, and where LCR is defined as the locational capacity requirement in terms of percentage and is equal to zero for those zones without an LCR requirement, SolnCIdf is the CIdf for the applicable project and Soln\_Size represents the total compensatory MW addressed by the applicable project.

### **31.5.3.2.2 BPTF Thermal Transmission Security Cost Allocation Formula**

For purposes of solutions eligible for cost allocation under this Section 31.5.3.2, this section sets forth the cost allocation methodology applicable to that portion of the costs of the solution attributable to resolving BPTF thermal transmission security issues. If, after consideration of the compensatory MW identified in the resource adequacy reliability solution cost allocation in accordance with Section 31.5.3.2.1, there remains a BPTF thermal transmission security issue, the ISO will allocate the costs of the portion of the solution attributable to

resolving the BPTF thermal transmission security issue(s) to the Subzones that contribute to the BPTF thermal transmission security issue(s) in the following manner.

31.5.3.2.2.1 Calculation of Nodal Distribution Factors. The ISO will calculate the nodal distribution factor for each load bus modeled in the power flow case utilizing the output of the reliability simulation program that identified the Reliability Need, including the NYCA generation dispatch and NYCA coincident peak Load. The nodal distribution factor represents the percentage of the Load that flows across the facility subject to the Reliability Need. The sign (positive or negative) of the nodal distribution factor represents the direction of flow.

31.5.3.2.2.2 Calculation of Nodal Flow. The ISO will calculate the nodal megawatt flow, defined as Nodal Flow, for each load bus modeled in the power flow case by multiplying the amount of Load in megawatts for the bus, defined as Nodal Load, by the nodal distribution factor for the bus. Nodal Flow represents the number of megawatts that flow across the facility subject to the Reliability Need due to the Load.

31.5.3.2.2.3 Calculation of Contributing Load and Contributing Flow. The Nodal Load for a load bus with a positive nodal distribution factor is a contributing Load, defined as CLoad, and the Nodal Flow for that Load is contributing flow, defined as CFlow. To identify contributing Loads that have a material impact on the Reliability Need, the ISO will calculate a contributing materiality threshold, defined as CMT, as follows:

$$CMT = \frac{\sum_{k=1}^m \sum_{Lk=1}^n CFlow_{Lk}}{\sum_{k=1}^m \sum_{Lk=1}^n CLoad_{Lk}}$$

Where  $m$  is for the total number of Subzones and  $n$  is for the total number of load buses in a given Subzone.

31.5.3.2.2.4 Calculation of Helping Load and Helping Flow. The Nodal Load for a load bus with a negative or zero nodal distribution factor is a helping Load, defined as HLoad, and the Nodal Flow for that Load is helping flow, defined as HFlow. To identify helping Loads that have a material impact on the Reliability Need, the ISO will calculate a helping materiality threshold, defined as HMT, as follows:

$$HMT = \frac{\sum_{k=1}^m \sum_{Lk=1}^n HFlow_{Lk}}{\sum_{k=1}^m \sum_{Lk=1}^n HLoad_{Lk}}$$

Where  $m$  is for the total number of Subzones and  $n$  is for the total number of load buses in a given Subzone.

31.5.3.2.2.5 Calculation of Net Material Flow for Each Subzone. The ISO will identify material Nodal Flow for each Subzone and calculate the net material flow for each Subzone. For each load bus, the Nodal Flow will be identified as material flow, defined as MFlow, if the nodal distribution factor is (i) greater than or equal to CMT, or (ii) less than or equal to HMT. The net material flow for each Subzone, defined as SZ\_NetFlow, is calculated as follows:

$$SZ\_NetFlow_j = \sum_{Lj=1}^n MFlow_{Lj}$$

Where  $j$  is for each Subzone and  $n$  is for the total number of load buses in a given Subzone.

31.5.3.2.2.6 Identification of Allocated Flow for Each Subzone. The ISO will identify the allocated flow for each Subzone and verify that sufficient contributing flow is

being allocated costs. For each Subzone, if the SZ\_NetFlow is greater than zero, that Subzone has a net material contribution to the Reliability Need and the SZ\_NetFlow is identified as allocated flow, defined as SZ\_AllocFlow. If the SZ\_NetFlow is less than or equal to zero, that Subzone does not have a net material contribution to the Reliability Need and the SZ\_AllocFlow is zero for that Subzone. If the total SZ\_AllocFlow for all Subzones is less than 60% of the total CFlow for all Subzones, then the CMT will be reduced and SZ\_NetFlow recalculated until the total SZ\_AllocFlow for all Subzones is at least 60% of the total CFlow for all Subzones.

#### 31.5.3.2.2.7 Cost Allocation for a Single BPTF Thermal Transmission Security Issue.

For a single solution that addresses only a BPTF thermal transmission security issue, the equation for cost allocation would reduce to:

$$BPTF \text{ Thermal Cost Allocation}_j = \frac{SZ\_AllocFlow_j}{\sum_{k=1}^m SZ\_AllocFlow_k} \times \frac{SolnBTSdef}{Soln\_Size}$$

Where  $j$  is for each Subzone;  $m$  is for the total number of Subzones;

SZ\_AllocFlow is the allocated flow for each Subzone; SolnBTSdef is the number of compensatory MW for the BPTF thermal transmission security issue for the applicable project; and Soln\_Size represents the total compensatory MW addressed by the applicable project.

#### 31.5.3.2.2.8 Cost Allocation for Multiple BPTF Thermal Transmission Security Issues.

If a single solution addresses multiple BPTF thermal transmission security issues, the ISO will calculate weighting factors based on the ratio of the present value of the estimated costs for individual solutions to each BPTF thermal transmission security issue. The present values of the estimated costs for the individual

solutions shall be based on a common base date that will be the beginning of the calendar month in which the cost allocation analysis is performed (the “Base Date”). The ISO will apply the weighting factors to the cost allocation calculated for each Subzone for each individual BPTF thermal transmission security issue.

The following example illustrates the cost allocation for such a solution:

- A cost allocation analysis for the selected solution is to be performed during a given month establishing the beginning of that month as the Base Date.
- The ISO has identified two BPTF thermal transmission security issues, Overload X and Overload Y, and the ISO has selected a single solution (Project Z) to address both BPTF thermal transmission security issues.
- The cost of a solution to address only Overload X (Project X) is  $\text{Cost}(X)$ , provided in a given year’s dollars. The number of years from the Base Date to the year associated with the cost estimate of Project (X) is  $N(X)$ .
- The cost of a solution to address only Overload Y (Project Y) is  $\text{Cost}(Y)$ , provided in a given year’s dollars. The number of years from the Base Date to the year associated with the cost estimate of Project Y is  $N(Y)$ .
- The discount rate,  $D$ , to be used for the present value analysis shall be the current after-tax weighted average cost of capital for the Transmission Owners.
- Based on the foregoing assumptions, the following formulas will be used:
  - $\text{Present Value of Cost (X)} = \text{PV Cost (X)} = \text{Cost (X)} / (1+D)^{N(X)}$
  - $\text{Present Value of Cost (Y)} = \text{PV Cost (Y)} = \text{Cost (Y)} / (1+D)^{N(Y)}$
  - $\text{Overload X weighting factor} = \text{PV Cost (X)} / [\text{PV Cost (X)} + \text{PV Cost (Y)}]$
  - $\text{Overload Y weighting factor} = \text{PV Cost (Y)} / [\text{PV Cost (X)} + \text{PV Cost (Y)}]$

- Applying those formulas, if:

Cost (X) = \$100 Million and  $N(X) = 6.25$  years

Cost (Y) = \$25 Million and  $N(Y) = 4.75$  years

$D = 7.5\%$  per year

Then:

$PV \text{ Cost (X)} = 100 / (1 + 0.075)^{6.25} = 63.635 \text{ Million}$

$PV \text{ Cost (Y)} = 25 / (1 + 0.075)^{4.75} = 17.732 \text{ Million}$

Overload X weighting factor =  $63.635 / (63.635 + 17.732) = 78.21\%$

Overload Y weighting factor =  $17.732 / (63.635 + 17.732) = 21.79\%$

- Applying those weighing factors, if:

Subzone A cost allocation for Overload X is 15%

Subzone A cost allocation for Overload Y is 70%

Then:

Subzone A cost allocation % for Project Z =

$(15\% * 78.21\%) + (70\% * 21.79\%) = 26.99\%$

31.5.3.2.2.9 Exclusion of Subzone(s) Based on De Minimis Impact. If a Subzone is assigned a BPTF thermal transmission security cost allocation less than a *de minimis* dollar threshold of the total project costs, that Subzone will not be allocated costs; *provided however*, that the total *de minimis* Subzones may not exceed 10% of the total BPTF thermal transmission security cost allocation. The *de minimis* threshold is initially \$10,000. If the total allocation percentage of all *de minimis* Subzones is greater than 10%, then the *de minimis* threshold will be



reduced until the total allocation percentage of all *de minimis* Subzones is less than or equal to 10%.

#### **31.5.3.2.3 BPTF Voltage Security Cost Allocation**

If, after consideration of the compensatory MW identified in the resource adequacy cost allocation in accordance with Section 31.5.3.2.1 and BPTF thermal transmission security cost allocation in accordance with Section 31.5.3.2.2, there remains a BPTF voltage security issue, the ISO will allocate the costs of the portion of the solution attributable to resolving the BPTF voltage security issue(s) to the Subzones that contribute to the BPTF voltage security issue(s). The cost responsibility for the portion (MW or MVar) of the solution attributable to resolving the BPTF voltage security issue(s), defined as SolnBVSdef, will be allocated on a Load-ratio share to each Subzone to which each bus with a voltage issue is connected, as follows:

$$BPTF\ Voltage\ Cost\ Allocation_j = \frac{Coincident\ Peak_j}{\sum_{k=1}^m Coincident\ Peak_k} \times \frac{SolnBVSdef}{Soln\_Size}$$

Where  $j$  is for each Subzone;  $m$  is for the total number of Subzones that are subject to BPTF voltage cost allocation; Coincident Peak is for the total peak Load for each Subzone; SolnBVSdef is for the portion of the solution necessary to resolve the BPTF voltage security issue(s); and Soln\_Size represents the total compensatory MW addressed by the applicable project.

#### **31.5.3.2.4 Dynamic Stability Cost Allocation**

If, after consideration of the compensatory MW identified in the resource adequacy cost allocation in accordance with Section 31.5.3.2.1, BPTF thermal transmission security cost allocation in accordance with Section 31.5.3.2.2, and BPTF voltage security cost allocation in accordance with Section 31.5.3.2.3, there remains a dynamic stability issue, the ISO will allocate

the costs of the portion of the solution attributable to resolving the dynamic stability issue(s) to all Subzones in the NYCA on a Load-ratio share basis, as follows:

$$Dynamic\ Stability\ Cost\ Allocation_j = \frac{Coincident\ Peak_j}{\sum_{k=1}^m Coincident\ Peak_k} \times \frac{DynamicMW}{Soln\_Size}$$

Where  $j$  is for each Subzone;  $m$  is for the total number of Subzones; Coincident Peak is for the total peak Load for each Subzone; DynamicMW is for the megawatt portion of the solution necessary to resolve the dynamic stability issue(s) for the applicable project; and Soln\_Size represents the total compensatory MW addressed by the applicable project.

#### **31.5.3.2.5 Short Circuit Issues**

If, after the completion of the prior reliability cost allocation steps, there remains a short circuit issue, the short circuit issue will be deemed a local issue and related costs will not be allocated under this process.

### **31.5.4 Regulated Economic Transmission Projects**

#### **31.5.4.1 The Scope of Section 31.5.4**

As discussed in Section 31.5.1 of this Attachment Y, the cost allocation principles and methodologies of this Section 31.5.4 apply only to Regulated Economic Transmission Projects proposed in response to constraint(s) on the BPTFs identified in the Economic Planning Process and studied in Economic Transmission Project Evaluations.

This Section 31.5.4 does not apply to generation or demand side management projects, nor does it apply to any market-based projects. This Section 31.5.4 does not apply to regulated solutions triggered by the ISO pursuant to the CSPP, provided, however, the cost allocation principles and methodologies in this Section 31.5.4 will apply to regulated solutions when the implementation of the regulated solution is accelerated solely to reduce congestion in earlier

years of the Study Period. The ISO will work with the ESPWG to develop procedures to deal with the acceleration of regulated solutions for economic reasons.

Nothing in this Attachment Y mandates the implementation of any Regulated Economic Transmission Project studied in an Economic Transmission Project Evaluation.

#### **31.5.4.2 Cost Allocation Principles**

The ISO shall implement the specific cost allocation methodology in Section 31.5.4.4 of this Attachment Y in accordance with the Order No. 1000 Regional Cost Allocation Principles as set forth in Section 31.5.2.1. The specific cost allocation methodology in Section 31.5.4.4 incorporates the following elements:

31.5.4.2.1 The focus of the cost allocation methodology shall be on responses to specific conditions identified in the Economic Planning Process.

31.5.4.2.2 Potential impacts unrelated to addressing the identified congestion shall not be considered for the purpose of cost allocation for Regulated Economic Transmission Projects.

31.5.4.2.3 Projects analyzed hereunder as proposed Regulated Economic Transmission Projects may proceed on a market basis with willing buyers and sellers at any time.

31.5.4.2.4 Cost allocation shall be based upon a beneficiaries pay approach. Cost allocation under the ISO Tariffs for a Regulated Economic Transmission Project shall be applicable only when a super majority of the beneficiaries of the project, as defined in Section 31.5.4.6 of this Attachment Y, vote to support the project.

31.5.4.2.5 Beneficiaries of a Regulated Economic Transmission Project shall be those entities economically benefiting from the proposed project. The cost

allocation among beneficiaries shall be based upon their relative economic benefit.

31.5.4.2.6 Consideration shall be given to the proposed project's payback period.

31.5.4.2.7 The cost allocation methodology shall address the possibility of cost overruns.

31.5.4.2.8 Consideration shall be given to the use of a materiality threshold for cost allocation purposes.

31.5.4.2.9 The methodology shall provide for ease of implementation and administration to minimize debate and delays to the extent possible.

31.5.4.2.10 Consideration should be given to the "free rider" issue as appropriate. The methodology shall be fair and equitable.

31.5.4.2.11 The methodology shall provide cost recovery certainty to investors to the extent possible.

31.5.4.2.12 Benefits determination shall consider various perspectives, based upon the agreed-upon metrics for analyzing congestion.

31.5.4.2.13 Benefits determination shall account for future uncertainties as appropriate (e.g., load forecasts, fuel prices, environmental regulations).

31.5.4.2.14 Benefits determination shall consider non-quantifiable benefits as appropriate (e.g., system operation, environmental effects, renewable integration).

### **31.5.4.3 Project Eligibility for Cost Allocation**

The methodologies in this Section 31.5.4.3 will be used to determine the eligibility of a proposed Regulated Economic Transmission Project to have its cost allocated and recovered pursuant to the provisions of this Attachment Y.

- 31.5.4.3.1 The ISO will evaluate the benefits against the costs (as provided by the Developer) of each proposed Regulated Economic Transmission Project studied in an Economic Transmission Project Evaluation over a ten-year period commencing with the proposed commercial operation date for the project. The Developer of each Regulated Economic Transmission Project will pay the cost incurred by the ISO to conduct the ten-year benefit/cost analysis of its project in the Economic Transmission Project Evaluation.
- 31.5.4.3.2 The benefit metric for eligibility under the ISO's benefit/cost analysis will be expressed as the present value of the annual NYCA-wide production cost savings that would result from the implementation of the proposed Regulated Economic Transmission Project, measured for the first ten years from the proposed commercial operation date for the project.
- 31.5.4.3.3 The cost for the ISO's benefit/cost analysis will be supplied by the Developer of the project, and the cost metric for eligibility will be expressed as the present value of the first ten years of annual total revenue requirements for the project, reasonably allocated over the first ten years from the proposed commercial operation date for the project.
- 31.5.4.3.4 For informational purposes only, the ISO will also calculate the present value of the annual total revenue requirement for the project over a 30 year period commencing with the proposed commercial operation date of the project.
- 31.5.4.3.5 To be eligible for cost allocation and recovery under this Attachment Y, the benefit of the proposed Regulated Economic Transmission Project must exceed its cost measured over the first ten years from the proposed commercial

operation date for the project, and the requirements of section 31.5.4.2 must be met. The total capital cost of the project must exceed \$25 million. In addition, a super-majority of the beneficiaries must vote in favor of the project, as specified in Section 31.5.4.6 of this Attachment Y.

31.5.4.3.6 In addition to calculating the benefit metric as defined in Section 31.5.4.3.2, the ISO will calculate additional metrics to estimate the potential benefits of the proposed Regulated Economic Transmission Project in the Economic Transmission Project Evaluation, for information purposes only, in accordance with Section 31.3.1.3.5, for the applicable metric. These additional metrics may include those that measure reductions in LBMP load costs, changes to generator payments, ICAP costs, Ancillary Service costs, emissions costs, losses, and energy deliverability. TCC revenues will be determined in accordance with Section 31.5.4.4.2.3. The ISO will provide information on these additional metrics to the maximum extent practicable considering its overall resource commitments.

31.5.4.3.7 In addition to the benefit/cost analysis performed by the ISO under this Section 31.5.4.3, the ISO will work with the ESPWG to consider the development and implementation of scenario analyses, for information only, that shed additional light on the benefit/cost analysis of a proposed project. These additional scenario analyses may cover fuel and load forecast uncertainty, emissions data and the cost of allowances, pending environmental or other regulations, and alternate resource and energy efficiency scenarios. Consideration

of these additional scenarios will take into account the resource commitments of the ISO.

#### **31.5.4.4 Cost Allocation for Eligible Projects**

As noted in Section 31.5.4.2 of this Attachment Y, the cost of a Regulated Economic Transmission Project will be allocated to those entities that would economically benefit from implementation of the proposed project. This methodology shall apply to cost allocation for a Regulated Economic Transmission Project, including the ISO's share of the costs of an Interregional Transmission Project proposed as a Regulated Economic Transmission Project allocated in accordance with Section 31.5.7 of this Attachment Y.

31.5.4.4.1 The ISO will identify the beneficiaries of the proposed project over a ten-year time period commencing with the proposed commercial operation date for the project.

31.5.4.4.2 The ISO will identify beneficiaries of a proposed project as follows:

31.5.4.4.2.1 The ISO will measure the present value of the annual zonal LBMP load savings for all Load Zones which would have a load savings, net of reductions in TCC revenues, and net of reductions from bilateral contracts (based on available information provided by Load Serving Entities to the ISO as set forth in subsection 31.5.4.4.2.5 below) as a result of the implementation of the proposed project. For purposes of this calculation, the present value of the load savings will be equal to the sum of the present value of the Load Zone's load savings for each year over the ten-year period commencing with the project's commercial operation date. The load savings for a Load Zone will be equal to the difference between the zonal LBMP load cost without the project and the LBMP load cost

with the project, net of reductions in TCC revenues and net of reductions from bilateral contracts.

31.5.4.4.2.2 The beneficiaries will be those Load Zones that experience net benefits measured over the first ten years from the proposed commercial operation date for the project. If the sum of the zonal benefits for those Load Zones with load savings is greater than the revenue requirements for the project (both load savings and revenue requirements measured in present value over the first ten years from the commercial operation date of the project), the ISO will proceed with the development of the zonal cost allocation information to inform the beneficiary voting process.

31.5.4.4.2.3 Reductions in TCC revenues will reflect the forecasted impact of the project on TCC auction revenues and day-ahead residual congestion rents allocated to load in each zone, not including the congestion rents that accrue to any Incremental TCCs that may be made feasible as a result of this project. This impact will include forecasts of: (1) the total impact of that project on the Transmission Service Charge offset applicable to loads in each zone (which may vary for loads in a given zone that are in different Transmission Districts); (2) the total impact of that project on the NYPA Transmission Adjustment Charge offset applicable to loads in that zone; and (3) the total impact of that project on payments made to LSEs serving load in that zone that hold Grandfathered Rights or Grandfathered TCCs, to the extent that these have not been taken into account in the calculation of item (1) above. These forecasts shall be performed using the procedure described in Appendix B to this Attachment Y.



31.5.4.4.2.4 Estimated TCC revenues from any Incremental TCCs created by a proposed Regulated Economic Transmission Project over the ten-year period commencing with the project's commercial operation date will be added to the Net Load Savings used for the cost allocation and beneficiary determination.

31.5.4.4.2.5 The ISO will solicit bilateral contract information from all Load Serving Entities, which will provide the ISO with bilateral energy contract data for modeling contracts that do not receive benefits, in whole or in part, from LBMP reductions, and for which the time period covered by the contract is within the ten-year period beginning with the commercial operation date of the project. Bilateral contract payment information that is not provided to the ISO will not be included in the calculation of the present value of the annual zonal LBMP savings in section 31.5.4.4.2.1 above.

31.5.4.4.2.5.1 All bilateral contract information submitted to the ISO must identify the source of the contract information, including citations to any public documents including but not limited to annual reports or regulatory filings

31.5.4.4.2.5.2 All non-public bilateral contract information will be protected in accordance with the ISO's Code of Conduct, as set forth in Section 12.4 of Attachment F of the ISO OATT, and Section 6 of the ISO Services Tariff.

31.5.4.4.2.5.3 All bilateral contract information and information on LSE-owned generation submitted to the ISO must include the following information:

- (1) Contract quantities on an annual basis:
  - (a) For non-generator specific contracts, the Energy (in MWh) contracted to serve each Zone for each year.

- (b) For generator specific contracts or LSE-owned generation, the name of the generator(s) and the MW or percentage output contracted or self-owned for use by Load in each Zone for each year.
- (2) For all Load Serving Entities serving Load in more than one Load Zone, the quantity (in MWh or percentage) of bilateral contract Energy to be applied to each Zone, by year over the term of the contract.
- (3) Start and end dates of the contract.
- (4) Terms in sufficient detail to determine that either pricing is not indexed to LBMP, or, if pricing is indexed to LBMP, the manner in which prices are connected to LBMP.
- (5) Identify any changes in the pricing methodology on an annual basis over the term of the contract.

31.5.4.4.2.5.4 Bilateral contract and LSE-owned generation information will be used to calculate the adjusted LBMP savings for each Load Zone as follows:

$AdjLBMP_{y,z}$ , the adjusted LBMP savings for each Load Zone  $z$  in each year  $y$ , shall be calculated using the following equation:

$$AdjLBMP_{y,z} = \max \left[ 0, TL_{y,z} - \sum_{b \in B_{y,z}} \left( BCL_{b,y,z} * (1 - Ind_{b,y,z}) \right) - SG_{y,z} \right] * (LBMP1_{y,z} - LBMP2_{y,z})$$

Where:

$TL_{y,z}$  is the total annual amount of Energy forecasted to be consumed by Load in year  $y$  in Load Zone  $z$ ;

$B_{y,z}$  is the set of blocks of Energy to serve Load in Load Zone  $z$  in year  $y$  that are sold under bilateral contracts for which information has been provided to the ISO that meets the requirements set forth elsewhere in this Section 31.5.4.4.2.5

$BCL_{b,y,z}$  is the total annual amount of Energy sold into Load Zone  $z$  in year  $y$  under bilateral contract block  $b$ ;

$Ind_{b,y,z}$  is the ratio of (1) the increase in the amount paid by the purchaser of Energy, under bilateral contract block  $b$ , as a result of an increase in the LBMP in Load Zone  $z$  in year  $y$  to (2) the increase in the amount that a purchaser of that amount of Energy would pay if the purchaser paid the LBMP for that Load Zone in that year for all of that Energy (this ratio shall be zero for any bilateral contract block of Energy that is sold at a fixed price or for which the cost of Energy purchased under that contract otherwise insensitive to the LBMP in Load Zone  $z$  in year  $y$ );

$SG_{y,z}$  is the total annual amount of Energy in Load Zone  $z$  that is forecasted to be served by LSE-owned generation in that Zone in year  $y$ ;

$LBMP1_{y,z}$  is the forecasted *annual load-weighted average LBMP* for Load Zone  $z$  in year  $y$ , calculated under the assumption that the project is not in place; and

$LBMP2_{y,z}$  is the forecasted *annual load-weighted average LBMP* for Load Zone  $z$  in year  $y$ , calculated under the assumption that the project is in place.

31.5.4.4.2.6  $NZS_z$ , the Net Zonal Savings for each Load Zone  $z$  resulting from a given project, shall be calculated using the following equation:

$$NZS_z = \max \left[ 0, \sum_{y=PS}^{PS+9} \left( (AdjLBMP_{y,z} - TCCRevImpact_{y,z}) * DF_y \right) \right]$$

Where:

$PS$  is the year in which the project is expected to enter commercial operation;

$AdjLBMP_{y,z}$  is as calculated in Section 31.5.4.4.2.5;

$TCCRevImpact_{y,z}$  is the forecasted impact of TCC revenues allocated to Load Zone  $z$  in year  $y$ , calculated using the procedure described in Appendix B in Section 31.7 of this Attachment Y; and

$DF_y$  is the discount factor applied to cash flows in year  $y$  to determine the present value of that cash flow in year  $PS$ .

#### 31.5.4.4.3 Load Zones not benefiting from a proposed Regulated Economic

Transmission Project will not be allocated any of the costs of the project under this Attachment Y. There will be no “make whole” payments to non-beneficiaries.

#### 31.5.4.4.4 Costs of a project will be allocated to beneficiaries as follows:

##### 31.5.4.4.4.1 The ISO will allocate the cost of the Regulated Economic Transmission

Project based on the zonal share of total savings to the Load Zones determined pursuant to Section 31.5.4.4.2 to be beneficiaries of the proposed project. Total savings will be equal to the sum of load savings for each Load Zone that experiences net benefits pursuant to Section 31.5.4.4.2. A Load Zone’s cost allocation will be equal to the present value of the following calculation:

$$\text{Zonal Cost Allocation} = \text{Project Cost} * \left( \frac{(\text{Zonal Benefits})}{\text{Total Zonal Benefits for zone with positive net benefits}} \right)$$

##### 31.5.4.4.4.2 Zonal cost allocation calculations for a Regulated Economic Transmission

Project will be performed prior to the commencement of the ten-year period that begins with the project’s commercial operation date, and will not be adjusted during that ten-year period.

31.5.4.4.4.3 Within zones, costs will be allocated to LSEs based on MWhs calculated for each LSE for each zone using data from the most recent available 12 month period. Allocations to an LSE will be calculated in accordance with the following formula:

$$\text{LSE Intrazonal Cost Allocation} = \text{Zonal Cost Allocation} * \left( \frac{\text{LSE Zonal MWh}}{\text{Total Zonal MWh}} \right)$$

31.5.4.4.5 Project costs allocated under this Section 31.5.4.4 will be determined as follows:

31.5.4.4.5.1 The project cost allocated under this Section 31.5.4.4 will be based on the total project revenue requirement, as supplied by the Developer of the project, for the first ten years of project operation. The total project revenue requirement will be determined in accordance with the formula rate on file at the Commission. If there is no formula rate on file at the Commission, then the Developer shall provide to the ISO the project-specific parameters to be used to calculate the total project revenue requirement.

31.5.4.4.5.2 Once the benefit/cost analysis is completed the amortization period and the other parameters used to determine the costs that will be recovered for the project should not be changed, unless so ordered by the Commission or a court of applicable jurisdiction, for cost recovery purposes to maintain the continued validity of the benefit/cost analysis.

31.5.4.4.5.3 The ISO, in conjunction with the ESPWG, will develop procedures to allocate the risk of project cost increases that occur after the ISO completes its benefit/cost analysis under this Attachment Y. These procedures may include

consideration of an additional review and vote prior to the start of construction and whether the developer should bear all or part of the cost of any overruns.

31.5.4.4.6 The Commission must approve the cost of a proposed Regulated Economic Transmission Project for that cost to be recovered through Rate Schedule 10 of the ISO OATT. The developer's filing of its project revenue requirement with the Commission pursuant to Rate Schedule 10 must be consistent with the project proposal evaluated by the ISO under this Attachment Y in order to be cost allocated to beneficiaries.

#### **31.5.4.5 Collaborative Governance Process and Board Action**

31.5.4.5.1 The ISO shall submit the results of its project benefit/cost analysis and beneficiary determination to the ESPWG and TPAS, and to the identified beneficiaries of the proposed Regulated Economic Transmission Project for comment. The ISO shall make available to any interested party sufficient information to replicate the results of the benefit/cost analysis and beneficiary determination. 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 review by the ESPWG and TPAS of the project benefit/cost analysis, the ISO's analysis reflecting any revisions resulting from the TPAS and ESPWG review shall be forwarded to the Business Issues Committee and Management Committee for discussion and action.

31.5.4.5.2 Following the Management Committee vote, the ISO's project benefit/cost analysis and beneficiary determination will be forwarded, with the input of the Business Issues Committee and Management Committee, to the ISO Board for review and action. In addition, the ISO's determination of the beneficiaries' voting shares will be forwarded to the ISO Board for review and action. The Board may approve the analysis and beneficiary determinations as submitted or propose modifications on its own motion. If any changes to the benefit/cost analysis or the beneficiary determinations are proposed by the Board, the revised analysis and beneficiary determinations shall be returned to the Management Committee for comment. If the Board proposes any changes to the ISO's voting share determinations, the Board shall so inform the LSE or LSEs impacted by the proposed change and shall allow such an LSE or LSEs an opportunity to comment on the proposed change. The Board shall not make a final determination on the project benefit/cost analysis and beneficiary determination until it has reviewed the Management Committee comments. Upon final approval of the Board, project benefit/cost analysis and beneficiary determinations shall be posted by the ISO on its website and shall form the basis of the beneficiary voting described in Section 31.5.4.6 of this Attachment Y.

#### **31.5.4.6 Voting by Project Beneficiaries**

31.5.4.6.1 Only LSEs serving Load located in a beneficiary zone determined in accordance with the procedures in Section 31.5.4.4 of this Attachment Y shall be eligible to vote on a proposed project. The ISO will, in conjunction with the ESPWG, develop procedures to determine the specific list of voting entities for

each proposed project. Prior to a vote being conducted, the Developer of the Regulated Economic Transmission Project must have a completed System Impact Study or System Reliability Impact Study, as applicable.

31.5.4.6.2 The voting share of each LSE shall be weighted in accordance with its share of the total project benefits, as allocated by Section 31.5.4.4 of this Attachment Y.

31.5.4.6.3 The costs of a Regulated Economic Transmission Project shall be allocated under this Attachment Y if eighty percent (80%) or more of the actual votes cast on a weighted basis are cast in favor of implementing the project.

31.5.4.6.4 If the proposed Regulated Economic Transmission Project meets the required vote in favor of implementing the project, and the project is implemented, all beneficiaries, including those voting “no,” will pay their proportional share of the cost of the project.

31.5.4.6.5 The ISO will tally the results of the vote in accordance with procedures set forth in the ISO Procedures, and report the results to stakeholders. Beneficiaries voting against approval of a project must submit to the ISO their rationale for their vote within 30 days of the date that the vote is taken. Beneficiaries must provide a detailed explanation of the substantive reasons underlying the decision, including, where appropriate: (1) which additional benefit metrics, either identified in the tariff or otherwise, were used; (2) the actual quantification of such benefit metrics or factors; (3) a quantification and explanation of the net benefit or net cost of the project to the beneficiary; and (4) data supporting the metrics and other factors used. Such explanation may also include uncertainties,



and/or alternative scenarios and other qualitative factors considered, including state public policy goals. The ISO will report this information to the Commission in an informational filing to be made within 60 days of the vote. The informational filing will include: (1) a list of the identified beneficiaries; (2) the results of the benefit/cost analysis; and (3) where a project is not approved, whether the developer has provided any formal indication to the ISO as to the future development of the project.

### **31.5.5 Regulated Transmission Solutions to Public Policy Transmission Needs**

#### **31.5.5.1 The Scope of Section 31.5.5**

As discussed in Section 31.5.1 of this Attachment Y, the cost allocation principles and methodologies of this Section 31.5.5 apply only to a regulated Designated Public Policy Project that is a Public Policy Transmission Project, or part of a Public Policy Transmission Project, selected by the ISO as the more efficient or cost effective transmission solution to address a Public Policy Transmission Need. This Section 31.5.5 does not apply to Other Public Policy Projects, including generation or demand side management projects, or any market-based projects. This Section 31.5.5 does not apply to regulated reliability solutions implemented pursuant to the Reliability Planning Process, nor does it apply to Regulated Economic Transmission Projects.

A regulated solution shall only utilize the cost allocation methodology set forth in Section 31.5.3 where it is: (1) a Responsible Transmission Owner's regulated backstop solution, (2) an alternative regulated transmission solution selected by the ISO as the more efficient or cost effective regulated transmission solution to satisfy a Reliability Need, or (3) seeking cost recovery where it has been halted or cancelled pursuant to the provisions of Section 31.2.8.2. A

Regulated Economic Transmission Project approved pursuant to Section 31.5.4.6 shall only be eligible to utilize the cost allocation principles and methodologies set forth in Section 31.5.4.

#### **31.5.5.2 Cost Allocation Principles**

The ISO shall implement the specific cost allocation methodology in Section 31.5.5.4 of this Attachment Y in accordance with the Order No. 1000 Regional Cost Allocation Principles as set forth in Section 31.5.2.1. The specific cost allocation methodology in Section 31.5.5.4 incorporates the following elements:

- 31.5.5.2.1 The focus of the cost allocation methodology shall be on regulated Designated Public Policy Projects.
- 31.5.5.2.2 Projects analyzed hereunder as Designated Public Policy Projects may proceed on a market basis with willing buyers and sellers at any time.
- 31.5.5.2.3 Cost allocation shall be based on a beneficiaries pay approach.
- 31.5.5.2.4 Project benefits will be identified in accordance with Section 31.5.5.4.
- 31.5.5.2.5 Identification of beneficiaries for cost allocation and cost allocation among those beneficiaries shall be according to the methodology specified in Section 31.5.5.4.

#### **31.5.5.3 Project Eligibility for Cost Allocation**

The Designated Entity for a Designated Public Policy Project will be eligible for cost allocation for the Designated Public Policy Project in accordance with the process set forth in Section 31.5.5.4; *provided, however*, that if (i) the appropriate federal, state, or local agency(ies) rejects the Designated Public Policy Project's necessary authorizations, or such authorizations are withdrawn or (ii) the Development Agreement for the Designated Public Policy Project is terminated as a result of another Designated Entity defaulting on the development of a separate

Designated Public Policy Project that composes the selected Public Policy Transmission Project and the ISO determines that the Public Policy Transmission Need will be addressed in a future planning cycle pursuant to Section 31.4.12.3.1.2, the costs that the Designated Entity is eligible to recover under Sections 31.4.12.1 or 31.4.12.3.1.5 shall be allocated in accordance with Section 31.5.5.4.3, except as otherwise determined by the Commission. The Designated Entity of a Designated Public Policy Project may recover its costs in accordance with Section 31.5.6 and Rate Schedule 10 of the ISO OATT. If a Developer proposed its Public Policy Transmission Project in response to a request by the NYPSC or Long Island Power Authority pursuant to Section 31.4.3.2 and its project was not selected by the ISO, the costs that such a Developer is eligible to recover pursuant to Section 31.4.3.2 shall be allocated in accordance with Section 31.5.5.4.3, except as otherwise determined by the Commission. Such a Developer may recover these costs in accordance with Section 31.5.6 and Rate Schedule 10 of the ISO OATT.

#### **31.5.5.4 Cost Allocation for Eligible Projects**

As noted in Section 31.5.5.2 of this Attachment Y, the identification of beneficiaries for cost allocation and the cost allocation of a selected Public Policy Transmission Project will be conducted in accordance with the process described in this Section 31.5.5.4. This Section will also apply to the allocation within New York of the ISO's share of the costs of an Interregional Transmission Project proposed as a solution to a Public Policy Transmission Need allocated in accordance with Section 31.5.7 of this Attachment Y. The establishment of a cost allocation methodology and rates for a proposed solution that is undertaken by LIPA or NYPA as an Unregulated Transmitting Utility to a Public Policy Transmission Need as determined in Sections 31.4.2.1 through 31.4.2.3, as applicable, or an

Interregional Transmission Project shall occur pursuant to Section 31.5.5.4.4 through 31.5.5.4.6, as applicable. Nothing herein shall deprive a Transmission Owner or Other Developer of any rights it may have under Section 205 of the Federal Power Act to submit filings proposing any other cost allocation methodology to the Commission or create any Section 205 filing rights for any Transmission Owner, Other Developer, the ISO, or any other entity. The ISO shall apply the cost allocation methodology accepted by the Commission. The cost allocation methodology that is accepted or approved by the Commission for a particular Public Policy Transmission Project in accordance with this Section 31.5.5.4 will be set forth in Appendix E (Section 31.8) of this Attachment Y.

31.5.5.4.1 If the Public Policy Requirement that results in the identification by the NYPSC of a Public Policy Transmission Need prescribes the use of a particular cost allocation and recovery methodology, then the ISO shall file that methodology with the Commission within 60 days of the issuance by the NYPSC of its identification of a Public Policy Transmission Need. Nothing herein shall deprive a Transmission Owner or Other Developer of any rights it may have under Section 205 of the Federal Power Act to submit filings proposing any other cost allocation methodology to the Commission or create any Section 205 filing rights for any Transmission Owner, Other Developer, the ISO, or any other entity. If the Developer files a different proposed cost allocation methodology under Section 205 of the Federal Power Act, it shall have the burden of demonstrating that its proposed methodology is compliant with the Order No. 1000 Regional

Cost Allocation Principles taking into account the methodology specified in the Public Policy Requirement.

31.5.5.4.2 Subject to the provisions of Section 31.5.5.4.1, a Designated Entity may submit to the NYPSC for its consideration – no later than 60 days after the ISO’s selection of the regulated Public Policy Transmission Project – a proposed cost allocation methodology, which may include a cost allocation based on load ratio share, adjusted to reflect, as applicable, the Public Policy Requirement or Public Policy Transmission Need, the party(ies) responsible for complying with the Public Policy Requirement, and the party(ies) who benefit from the transmission facility.

31.5.5.4.2.1 The NYPSC shall have 150 days following the deadline set forth in Section 31.5.5.4.2 to submit a proposed cost allocation methodology to review the proposed cost allocation methodology(ies) submitted by a Designated Entity(ies) and to inform the Designated Entity(ies) whether it supports a proposed methodology.

31.5.5.4.2.2. If the NYPSC supports a proposed cost allocation methodology, the Designated Entity that proposed that cost allocation methodology shall file that cost allocation methodology with the Commission for its acceptance under Section 205 of the Federal Power Act within 30 days of the NYPSC informing the Developer of its support. The Designated Entity shall have the burden of demonstrating that the proposed cost allocation methodology is compliant with the Order No. 1000 Regional Cost Allocation Principles.

31.5.5.4.2.3 If the NYPSC does not support a proposed cost allocation methodology, then the Designated Entity shall take reasonable steps to respond to the NYPSC's concerns and to develop a mutually agreeable cost allocation methodology over a period of no more than 60 days after the NYPSC informing the Designated Entity(ies) that it does not support the methodology(ies).

31.5.5.4.2.4 If a mutually acceptable cost allocation methodology is developed during the timeframe set forth in Section 31.5.5.4.2.3, a Designated Entity shall file it with the Commission for acceptance under Section 205 of the Federal Power Act no later than 30 days after the conclusion of the 60 day discussion period with the NYPSC. The Designated Entity shall have the burden of demonstrating that the proposed cost allocation methodology is compliant with the Order No. 1000 Regional Cost Allocation Principles.

31.5.5.4.2.5 If no mutually agreeable cost allocation methodology is developed, the Designated Entity(ies) shall file its preferred cost allocation methodology with the Commission for acceptance under Section 205 of the Federal Power Act no later than 30 days after the conclusion of the 60 day discussion period with the NYPSC. The Designated Entity(ies) shall have the burden of demonstrating that its proposed methodology is compliant with the Order No. 1000 Regional Cost Allocation Principles in consideration of the position of the NYPSC. The filing shall include the methodology supported by NYPSC for the Commission's consideration. If the Designated Entity(ies) elects to use the load ratio share cost allocation methodology referenced below in Section 31.5.5.4.3, the Designated Entity(ies) shall notify the Commission of its intent to utilize the load ratio share

methodology and shall include in its notice the NYPSC supported methodology for the Commission's consideration.

31.5.5.4.3. Unless the Commission has accepted an alternative cost allocation methodology pursuant to this Section, the ISO shall allocate the costs of the Public Policy Transmission Project to all Load Serving Entities in the NYCA using the default cost allocation methodology, based upon a load ratio share methodology.

31.5.5.4.4 The NYISO will make any Section 205 filings related to this Section on behalf of NYPA to the extent requested to do so by NYPA. NYPA shall bear the burden of demonstrating that such a filing is compliant with the Order No. 1000 Regional Cost Allocation Principles. NYPA shall also be solely responsible for making any jurisdictional reservations or arguments related to their status as non-Commission-jurisdictional utilities that are not subject to various provisions of the Federal Power Act.

31.5.5.4.5 The cost allocation methodology and any rates for cost recovery for a proposed solution to a Public Policy Transmission Need undertaken by LIPA, as an Unregulated Transmitting Utility (for purposes of this section a "LIPA project"), shall be established and recovered as follows:

31.5.5.4.5.1 *For costs solely to LIPA customers.* The cost allocation methodology and rates to be established for a LIPA project, for which cost recovery will only occur from LIPA customers, will be established pursuant to Article 5, Title 1-A of the New York Public Authorities Law, Sections 1020-f(u) and 1020-s. Prior to the adoption of any cost allocation mechanism or rates for such a LIPA project, and

pursuant to Section 1020-f(u), the Long Island Power Authority's Board of Trustees shall request that the NYDPS provide a recommendation with respect to the cost allocation methodology and rate that LIPA has proposed and the Board of Trustees shall consider such recommendation in accordance with the requirements of Section 1020-f(u). Upon approval of the cost allocation mechanism and/or rates by the Long Island Power Authority's Board of Trustees, LIPA shall provide to the ISO, for purposes of inclusion within the ISO OATT and filing with FERC on an informational basis only, a description of the cost allocation mechanism and the rate that LIPA will charge and collect within the Long Island Transmission District.

31.5.5.4.5.2 *For Costs for a LIPA Project That May be Allocated to Other*

*Transmission Districts.* A LIPA project that meets a Public Policy Transmission Need as determined by the NYPSC pursuant to Section 31.4.2.3(iii) may be allocated to market participants outside of the Long Island Transmission District. The cost allocation methodology and rate for such a LIPA project shall be established in accordance with the following procedures. LIPA's proposed cost allocation methodology and/or rate shall be reviewed and approved by the Long Island Power Authority's Board of Trustees pursuant to Article 5, Title 1-A of the New York Public Authorities Law, Sections 1020-f(u) and 1020-s. Prior to the adoption of any cost allocation mechanism or rates for such project and pursuant to Section 1020-f(u), the Long Island Power Authority's Board of Trustees shall request that the NYDPS provide a recommendation with respect to the cost allocation methodology and rate that LIPA has proposed and the Board of



Trustees shall consider such recommendation in accordance with the requirements of Section 1020-f(u). LIPA shall inform the ISO of the cost allocation methodology and rate that has been approved by the Long Island Power Authority's Board of Trustees for filing with the Commission.

Upon approval by the Long Island Power Authority's Board of Trustees, LIPA shall submit and request that the ISO file the LIPA cost allocation methodology for approval with the Commission. Any cost allocation methodology for a LIPA project that allocates costs to market participants outside of the Long Island Transmission District shall be reviewed as to whether there is comparability in the derivation of the cost allocation for market participants such that LIPA has demonstrated that the proposed cost allocation is compliant with the Order No. 1000 cost allocation principles, there are benefits provided by the project to market participants outside of the Long Island Transmission District, and that the proposed allocation is roughly commensurate to the identified benefits.

Article 5, Title 1-A of the New York Public Authorities Law, Sections 1020-f(u) and 1020-s, requires that LIPA's rates be established at the lowest level consistent with sound fiscal and operating practices of the Long Island Power Authority and which provide for safe and adequate service. Upon approval of a LIPA rate by the Long Island Power Authority's Board of Trustees pursuant to Section 1020-f(u), LIPA shall submit, and request that the ISO file, the LIPA rate with the Commission for review under the same comparability standard as applied to the review of changes in LIPA's TSC under Attachment H of this tariff.

In the event that the cost allocation methodology or rate approved by the Long Island Power Authority's Board of Trustees did not adopt the NYDPS recommendation, the NYDPS recommendation shall be included in the filing for the Commission's consideration.

31.5.5.4.5.3 *Support for Filing.* LIPA shall intervene in support of the filing(s) made pursuant to Section 31.5.5.4.5 at the Commission and shall take the responsibility to demonstrate that: (i) the cost allocation methodology and/or rate approved by the Long Island Power Authority's Board of Trustees meets the applicable standard of comparability, and (ii) the Commission should accept such methodology or rate for filing. LIPA shall also be responsible for responding to, and seeking to resolve, concerns about the contents of the filing that might be raised in such proceeding.

31.5.5.4.5.4 *Billing of LIPA Charges Outside of the Long Island Transmission District.* For Transmission Districts other than the Long Island Transmission District, the ISO shall bill for LIPA, as a separate charge, the costs incurred by LIPA for a solution to a Public Policy Transmission Need allocated using the cost allocation methodology and rates established pursuant to Section 31.5.5.4.5.2 and accepted for filing by the Commission and shall remit the revenues collected to LIPA each Billing Period in accordance with the ISO's billing and settlement procedures.

31.5.5.4.6 The inclusion in the ISO OATT or in a filing with the Commission of the cost allocation and charges for recovery of costs incurred by NYPA or LIPA related to a solution to a transmission need driven by a Public Policy Requirement or Interregional Transmission Project as provided for in Sections 31.5.5.4.4 and

31.5.5.4.5 shall not be deemed to modify the treatment of such rates as non-jurisdictional pursuant to Section 201(f) of the FPA.

### **31.5.6 Cost Recovery for Regulated Projects**

#### **31.5.6.1 Cost Recovery for Regulated Transmission Project to Address a Reliability Need Identified in the Reliability Planning Process**

31.5.6.1.1 A Responsible Transmission Owner, a Transmission Owner, or an Other Developer may recover in accordance with Rate Schedule 10 of the ISO OATT the costs incurred with respect to the implementation of: (i) a regulated backstop transmission solution proposed by a Responsible Transmission Owner pursuant to Section 31.2.4.3.1 of this Attachment Y and the ISO/TO Reliability Agreement or an Operating Agreement; (ii) an alternative regulated transmission solution that the ISO has selected pursuant to Section 31.2.6.5.2 of this Attachment Y as the more efficient or cost-effective solution to a Reliability Need; (iii) a regulated transmission Gap Solution proposed by a Responsible Transmission Owner pursuant to Section 31.2.11.4 of this Attachment Y; or (iv) an alternative regulated transmission Gap Solution that has been determined by the appropriate state regulatory agency(ies) as the preferred solution(s) to a Reliability Need pursuant to Section 31.2.11.5 of Attachment Y of the ISO OATT.

31.5.6.1.2 If a regulated solution: (i) is eligible for cost recovery as described in Section 31.5.6.1.1 and (ii) is not triggered or is halted pursuant to Sections 31.2.8 or 31.2.10.1.2 of this Attachment Y, the Responsible Transmission Owner, Transmission Owner or Other Developer of that solution may recover the costs that it eligible to recover pursuant to Sections 31.2.8 or 31.2.10.1.2 in accordance with Rate Schedule 10 of the ISO OATT.

31.5.6.1.3 Costs related to non-transmission regulated solutions to Reliability Needs will be recovered by a Responsible Transmission Owner, Transmission Owner, or Other Developer in accordance with the provisions of New York Public Service Law, New York Public Authorities Law, or other applicable state law. A Responsible Transmission Owner, a Transmission Owner, or Other Developer may propose and undertake a regulated non-transmission solution, provided that the appropriate state agency(ies) has established cost recovery procedures comparable to those provided in this tariff for regulated transmission solutions to ensure the full and prompt recovery of all reasonably-incurred costs related to such non-transmission solutions. Nothing in this section shall affect the Commission's jurisdiction over the sale and transmission of electric energy subject to the jurisdiction of the Commission.

**31.5.6.2 Cost Recovery for Regulated Economic Transmission Project**

A Transmission Owner or an Other Developer may recover in accordance with Rate Schedule 10 of the ISO OATT the costs incurred with respect to the implementation a Regulated Economic Transmission Project that has been approved pursuant to Section 31.5.4.6 of this Attachment Y.

**31.5.6.3 Cost Recovery for Regulated Transmission Project to Address a Public Policy Transmission Need**

31.5.6.3.1 A Transmission Owner or an Other Developer may recover in accordance with Rate Schedule 10 of the ISO OATT the costs incurred with respect to the implementation of: (i) a Designated Public Policy Project that is a Public Policy Transmission Project, or part of a Public Policy Transmission Project, that the

ISO has selected as the more efficient or cost-effective solution to a Public Policy Transmission Need, or (ii) a Public Policy Transmission Project proposed by a Developer in response to a request by the NYPSC or Long Island Power Authority in accordance with Section 31.4.3.2 of Attachment Y of the ISO OATT. Such cost recovery will also include reasonable costs incurred by the Designated Entity to provide a more detailed study or cost estimate for a Designated Public Policy Project at the request of the NYPSC, and to prepare the application required to comply with New York Public Service Law Article VII, or any successor statute or any other applicable permits, and to seek other necessary authorizations.

31.5.6.3.2 If a regulated solution that: (i) is eligible for cost recovery as described in Section 31.5.6.3.1 and (ii) is halted as described in Sections 31.4.12.1 or 31.4.12.3.1.5 of this Attachment Y, the Designated Entity of that solution may recover the costs that it is eligible to recover pursuant to Sections 31.4.12.1 or 31.4.12.3.1.5 in accordance with Rate Schedule 10 of the ISO OATT.

#### **31.5.6.4 Cost Recovery for Interregional Transmission Project**

A Responsible Transmission Owner, a Transmission Owner, or an Other Developer may recover in accordance with Rate Schedule 10 of the ISO OATT the costs incurred with respect to the implementation of the portion of an Interregional Transmission Project selected by the ISO in the CSPP that is allocated to the NYISO region pursuant to Section 31.5.7 of Attachment Y of the ISO OATT.

### **31.5.7 Cost Allocation for Eligible Interregional Transmission Projects**

#### **31.5.7.1 Costs of Approved Interregional Transmission Projects**

The cost allocation methodology reflected in this Section 31.5.7.1 shall be referred to as the “Northeastern Interregional Cost Allocation Methodology” (or “NICAM”), and shall not be modified without the mutual consent of the Section 205 rights holders in each region.

The costs of Interregional Transmission Projects, as defined in the Interregional Planning Protocol, evaluated under the Interregional Planning Protocol and selected by ISO-NE, PJM and the ISO in their regional transmission plans for purposes of cost allocation under their respective tariffs shall, when applicable, be allocated to the ISO-NE region, PJM region and the ISO region in accordance with the cost allocation principles of FERC Order No. 1000, as follows:

(a) To be eligible for interregional cost allocation, an Interregional Transmission Project must be selected in the regional transmission plan for purposes of cost allocation in each of the transmission planning regions in which the transmission project is proposed to be located, pursuant to agreements and tariffs on file at FERC for each region. With respect to Interregional Transmission Projects and other transmission projects involving the ISO and PJM, the cost allocation of such projects shall be in accordance with the Joint Operating Agreement (“JOA”) among and between the ISO and PJM. With respect to Interregional Transmission Projects and other transmission projects involving the ISO and ISO-NE, the cost allocation for such projects shall be in accordance with this Section 31.5.7 of Attachment Y of the NYISO Open Access Transmission Tariff and with the respective tariffs of ISO-NE.

(b) The share of the costs of an Interregional Transmission Project allocated to a region will be determined by the ratio of the present value of the estimated costs of such region’s displaced regional transmission project to the total of the present values of the estimated costs of

the displaced regional transmission projects in all regions that have selected the Interregional Transmission Project in their regional transmission plans.

- (i) The present values of the estimated costs of each region's displaced regional transmission project shall be based on a common base date that will be the beginning of the calendar month of the cost allocation analysis for the subject Interregional Transmission Project (the "Base Date").
  - (ii) In order to perform the analysis in this Section 31.5.7.1(b), the estimated cost of the displaced regional transmission projects shall specify the year's dollars in which those estimates are provided.
  - (iii) The present value analysis for all displaced regional transmission projects shall use a common discount rate. The regions having displaced projects will mutually agree, in consultation with their respective transmission owners, and for purposes of the ISO, its other stakeholders, on the discount rate to be used for the present value analysis.
  - (iv) For the purpose of this allocation, cost estimates shall use comparable cost estimating procedures. In the Interregional Planning Stakeholder Advisory Committee review process, the regions having displaced projects will review and determine, in consultation with their respective transmission owners, and for purposes of the NYISO, its other stakeholders, that reasonably comparable estimating procedures have been used prior to applying this cost allocation.
- (c) No cost shall be allocated to a region that has not selected the Interregional Transmission Project in its regional transmission plan.

(d) When a portion of an Interregional Transmission Project evaluated under the Interregional Planning Protocol is included by a region (Region 1) in its regional transmission plan but there is no regional need or displaced regional transmission project in Region 1, and the neighboring region (Region 2) has a regional need or displaced regional project for the Interregional Transmission Project and selects the Interregional Transmission Project in its regional transmission plan, all of the costs of the Interregional Transmission Project shall be allocated to Region 2 in accordance with the NICAM and none of the costs shall be allocated to Region 1. However, Region 1 may voluntarily agree, with the mutual consent of the Section 205 rights holders in the other affected region(s) (including the Long Island Power Authority and the New York Power Authority in the NYISO region) to use an alternative cost allocation method filed with and accepted by the Commission.

(e) The portion of the costs allocated to a region pursuant to the NICAM shall be further allocated to that region's transmission customers pursuant to the applicable provisions of the region's FERC-filed documents and agreements, for the ISO in accordance with Section 31.5.1.7 of Attachment Y of the ISO OATT.

(f) The following example illustrates the cost allocation for such an Interregional Transmission Project:

- A cost allocation analysis of the costs of Interregional Transmission Project Z is to be performed during a given month establishing the beginning of that month as the Base Date.
- Region A has identified a reliability need in its region and has selected a transmission project (Project X) as the preferred solution in its regional plan. The estimated cost of



- Project X is: Cost (X), provided in a given year's dollars. The number of years from the Base Date to the year associated with the cost estimate of Project (X) is:  $N(X)$ .
- Region B has identified a reliability need in its region and has selected a transmission project (Project Y) as the preferred solution in its Regional Plan. The estimated cost of Project Y is: Cost (Y), provided in a given year's dollars. The number of years from the Base Date to the year associated with the cost estimate of Project (Y) is:  $N(Y)$ .
  - Regions A and B, through the interregional planning process have determined that an Interregional Transmission Project (Project Z) will address the reliability needs in both regions more efficiently and cost-effectively than the separate regional projects. The estimated cost of Project Z is: Cost (Z). Regions A and B have each determined that Interregional Transmission Project Z is the preferred solution to their reliability needs and have adopted that Interregional Transmission Project in their respective regional plans in lieu of Projects X and Y respectively. If Regions A and B have agreed to bear the costs of upgrades in other affected transmission planning regions, these costs will be considered part of Cost (Z).
  - The discount rate used for all displaced regional transmission projects is:  $D$
  - Based on the foregoing assumptions, the following formulas will be used:
    - Present Value of Cost (X) =  $PV \text{ Cost (X)} = \text{Cost (X)} / (1+D)^{N(X)}$
    - Present Value of Cost (Y) =  $PV \text{ Cost (Y)} = \text{Cost (Y)} / (1+D)^{N(Y)}$
    - Cost Allocation to Region A =  $\text{Cost (Z)} \times \text{PV Cost (X)} / [\text{PV Cost (X)} + \text{PV Cost (Y)}]$

- Cost Allocation to Region B =  $\text{Cost (Z)} \times \text{PV Cost (Y)} / [\text{PV Cost (X)} + \text{PV Cost (Y)}]$
- Applying those formulas, if:
  - Cost (X) = \$60 Million and  $N(X) = 8.25$  years
  - Cost (Y) = \$40 Million and  $N(Y) = 4.50$  years
  - Cost (Z) = \$80 Million
  - $D = 7.5\%$  per year
  - Then:
    - $\text{PV Cost (X)} = 60 / (1 + 0.075)^{8.25} = 33.039$  Million
    - $\text{PV Cost (Y)} = 40 / (1 + 0.075)^{4.50} = 28.888$  Million
    - Cost Allocation to Region A =  $\$80 \times 33.039 / (33.039 + 28.888) = \$42,681$  Million
    - Cost Allocation to Region B =  $\$80 \times 28.888 / (33.039 + 28.888) = \$37.319$  Million

### **31.5.7.2 Other Cost Allocation Arrangements**

(a) Except as provided in Section 31.5.7.2(b), the NICAM is the exclusive means by which any costs of an Interregional Transmission Project may be allocated between or among PJM, the ISO, and ISO-NE.

(b) Nothing in the FERC-filed documents of ISO-NE, the ISO or PJM shall preclude agreement by entities with cost allocation rights under Section 205 of the Federal Power Act for their respective regions (including the Long Island Power Authority and the New York Power Authority in the ISO region) to enter into separate agreements to allocate the cost-of Interregional Transmission Projects proposed to be located in their regions as an alternative to the NICAM, or other transmission projects identified pursuant to assessments and studies conducted pursuant to Section 6 of the Interregional Planning Protocol. Such other cost-

allocation methodologies must be approved in each region pursuant to the Commission-approved rules in each region, filed with and accepted by the Commission, and shall apply only to the region's share of the costs of an Interregional Transmission Project or other transmission projects pursuant to Section 6 of the Interregional Planning Protocol, as applicable.

#### **31.5.7.3 Filing Rights**

Nothing in this Section 31.5.7 will convey, expand, limit or otherwise alter any rights of ISO-NE, the ISO, PJM, each region's transmission owners, market participants, or other entities to submit filings under Section 205 of the Federal Power Act regarding interregional cost allocation or any other matter.

Where applicable, the regions have been authorized by entities that have cost allocation rights for their respective regions to implement the provisions of this Section 31.5.7.

#### **31.5.7.4 Merchant Transmission and Individual Transmission Owner Projects**

Nothing in this Section 31.5.7 shall preclude the development of Interregional Transmission Projects that are funded solely by merchant transmission developers or by individual transmission owners.

#### **31.5.7.5 Consequences to Other Regions from Regional or Interregional Transmission Projects**

Except as provided herein in Sections 31.5.7.1 and 31.5.7.2, or where cost responsibility is expressly assumed by ISO-NE, the ISO or PJM in other documents, agreements or tariffs on file with FERC, neither the ISO-NE region, the ISO region nor the PJM region shall be responsible for compensating another region or each other for required upgrades or for any other consequences in another planning region associated with regional or interregional transmission facilities, including but not limited to, transmission projects identified pursuant to Section 6 of

the Interregional Planning Protocol and Interregional Transmission Projects identified pursuant to Section 7 of the Interregional Planning Protocol.

## **31.6 Other Provisions**

### **31.6.1 The Commission's Role in Dispute Resolution**

Disputes directly relating to the ISO's compliance with its tariffs that are not resolved in the internal ISO collaborative governance appeals process or ISO dispute resolution process, and all disputes relating to matters that fall within the exclusive jurisdiction of the Commission, shall be reviewed at the Commission pursuant to the Federal Power Act if such review is sought by any party to the dispute. The NYPSC or any party to a dispute regarding matters over which both the NYPSC and the Commission have jurisdiction and responsibility for action may submit a request to the Commission for a joint or concurrent hearing to resolve the dispute.

### **31.6.2 Non-Jurisdictional Entities**

LIPA's and NYPA's participation in the CSPP shall in no way be considered to be a waiver of their non-jurisdictional status pursuant to Section 201(f) of the Federal Power Act, including with respect to the Commission's exercise of the Federal Power Act's general ratemaking authority.

### **31.6.3 Tax Exempt Financing Provisions**

Con Edison, NYPA and LIPA shall not be required to construct, or cause to construct, a transmission facility identified through the Reliability Planning Process if such construction would result in the loss of tax-exempt status of any tax-exempt bond issued by Con Edison, NYPA or LIPA, or impair their ability to secure future tax-exempt financing.

### **31.6.4 Rights of Transmission Owners**

Nothing in this Attachment Y affects the right of a Transmission Owner to: (1) build, own, and recover the costs for upgrades to the facilities it owns, provided that nothing in

Attachment Y affects a Transmission Owner's right to recover the costs of upgrades to its facilities except if the upgrade has been selected in the regional transmission plan for purposes of cost allocation, in which case the regional cost allocation method set forth in Attachment Y of the ISO OATT applies, unless the Transmission Owner has declined to pursue regional cost allocation; (2) retain, modify, or transfer rights-of-way subject to relevant law or regulation granting such rights-of-way; or (3) develop a local transmission solution that is not eligible for regional cost allocation to meet its reliability needs or service obligations in its Transmission District or footprint, as applicable. For purposes of Section 31.6.4, the term "upgrade" shall refer to an improvement to, addition to, or replacement of a part of, an existing transmission facility and shall not refer to an entirely new transmission facility.

#### **31.6.5 Notice of Reliability Requirements**

The Developer of a project selected pursuant to the provisions in this Attachment Y is hereby notified that it must comply with all applicable reliability criteria, policies, standards, rules, regulations, and other requirements of NERC, NPCC, NYSRC, Transmission Owners, and any other applicable reliability entities or their successors, to the extent required by, and in accordance with, their procedures.

## **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 Historic Congestion Reporting**

The ISO will report historic Day-Ahead Market congestion-related data. The following elements of historic congestion-related data will be reported: (i) LBMP load costs (energy, congestion and losses) by Load Zone; (ii) LBMP payments to generators (energy, congestion and losses) by Load Zone; (iii) congestion cost by constraint; and (iv) congestion cost of each constraint to load (commonly referred to in the Economic Planning Process as “demand dollar congestion” by constraint).

### **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 the System & Resource Outlook 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-related data from the Day-Ahead Market, and will include the information required by Section 2.0 of this Appendix A to Attachment Y of the ISO OATT. 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.

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

**Project:** The proposed Regulated Economic 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-Evaluation 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-Evaluation 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-Evaluation Centralized TCC Auction to
  - (ii) the total amount of residual auction revenue allocated in the Pre-Evaluation 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 – RELIABILITY PLANNING PROCESS 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;

***[Alternative 1 – To include if the Developer’s regulated transmission solution was selected as the more efficient or cost effective solution:***

***WHEREAS***, the Developer has proposed a 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;]

***[Alternative 2 – To include if the NYISO triggers a Developer’s regulated backstop transmission solution that has not been selected pursuant to Sections 31.2.8.1.2, 31.2.8.1.3, or 31.2.8.1.4:***

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

***WHEREAS***, the NYISO has triggered the Transmission Project to proceed pursuant to Sections 31.2.8.1.2, 31.2.8.1.3, or 31.2.8.1.4;]

***[Alternative 3 – To include if a Transmission Owner agrees to complete an alternative selected transmission solution pursuant to Section 31.2.10.1.3:***

***WHEREAS***, the Developer has agreed to step-in to complete a regulated transmission project to satisfy an identified Reliability Need (“Transmission Project”) pursuant to Section 31.2.10.1.3 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.

**Affected System Operator** shall mean any Affected System Operator(s) identified in connection with the Transmission Project pursuant to Attachment P of the ISO OATT.

**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; *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 be the Connecting Transmission Owner(s) identified in connection with the Transmission Project pursuant to Attachment P of the ISO 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.

**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 act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment, any order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities, or any other cause beyond a Party's control. A Force Majeure event does not include acts of negligence or intentional wrongdoing by the Party claiming Force Majeure.

**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), the Affected System Operator(s), or any Affiliate thereof.

**In-Service Date** shall mean the date upon which the Transmission Project is energized consistent with the provisions of the Transmission Project Interconnection 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.

**ISO/TO Reliability Agreement** shall mean the Agreement Between the New York Independent System Operator, Inc., and the New York Transmission Owners on the Comprehensive Planning Process for Reliability Needs, as filed with and accepted by the Commission in New York Independent System Operator, Inc., 109 FERC ¶ 61,372 (2004) and 111 FERC ¶ 61,182 (2005) in Docket No. ER04-1144, 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.

**Project Description** shall mean the description of the Transmission Project set forth in Appendix A to this Agreement that is consistent with the project proposed and evaluated in the NYISO's Reliability Planning Process and, if applicable, 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 evaluating the Transmission Project for purposes of selecting 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.

**Transmission Project** shall mean the Developer's regulated transmission solution that is subject to this Agreement 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.

### **3.3. Milestones**

- 3.3.1. The NYISO shall provide the Developer with the Required Project In-Service Date that is set forth in the Comprehensive Reliability Plan report or the updated Comprehensive Reliability Plan report, as applicable, in accordance with Sections 31.2.7 and 31.2.7.3 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; provided that any such milestone for the Transmission Project that requires action by a Connecting Transmission Owner or an Affected System Operator to complete must be included as an Advisory Milestone.
- 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, to the best of its knowledge, it expects to 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 in accordance with Section 15.5, (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 the 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 15.8, 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 P 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 (if applicable), 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, if applicable, 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 the Transmission Interconnection Procedures in Attachment P of the OATT applicable to a "Transmission Project" to interconnect the Transmission Project to the New York State Transmission System by the Required Project In-Service Date, including, but not limited to, submitting a Transmission Interconnection Application; participating in all necessary studies; executing, and/or requesting the NYISO to file for FERC acceptance, a Transmission Project Interconnection Agreement; and constructing, or arranging for the construction of, all required Network Upgrade Facilities; *provided, however*, if the Developer began the interconnection process in Attachment X of the OATT or the transmission expansion process in Sections 3.7 or 4.5 of the OATT prior to the effective date of the Transmission Interconnection Procedures, the Developer shall satisfy the requirements of the Transmission Interconnection Procedures in accordance with the transition rules in Section 22.3.3 of Attachment P of the OATT.

If the NYISO determines that the proposed interconnection of a "Transmission Project" under Attachment P could affect the Transmission Project under this Agreement, the Developer shall participate in the Transmission Interconnection Procedures as an Affected System Operator in accordance with the requirements set forth in Section 22.4.4 of Attachment P. If the NYISO determines that the proposed interconnection of a "Large Generating Facility," "Small Generating Facility," or "Class Year Transmission Project" 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 determined in Attachment P of the OATT, the Developer shall satisfy the requirements of the Affected System Operator 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 P 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, be certified as a Transmission Operator unless otherwise agreed by the Parties, 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. A Breach shall not occur as a result of a Force Majeure event in accordance with Article 15.5. A Breach shall also not occur as a result of a delay caused by a Connecting Transmission Owner or an Affected System Operator.

## **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, which agreement the NYISO will not unreasonably withhold, condition, or delay if it determines a longer cure period will not threaten the Developer's ability to complete the Transmission Project by the Required Project In-Service Date; *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 defaulting Party'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 not triggered pursuant to Section 31.2.8.1.1 of Attachment Y of the OATT or is halted pursuant to Sections 31.2.8.2.1 or 31.2.8.2.2, as applicable, 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: (A) including the occurrence of a Force Majeure event that will prevent the Developer from completing the Transmission Project by the Required Project In-Service Date, but (B) excluding a delay caused by a Connecting Transmission Owner or an Affected System Operator; or (v) the NYISO declares a default pursuant to Article 7.2 of this Agreement.

The NYISO will provide the written notice of termination to the Developer within fifteen (15) Business Days of its determination under Article 8.1(i), which notice will specify the date of termination. If the NYISO identifies grounds for termination under Articles 8.1(iv) or (v) or receives notice from the Developer under Articles 8.1(ii) or (iii), the NYISO may, prior to providing a written notice of termination, take action in accordance with Section 31.2.10.1.3 of Attachment Y of the OATT to address the Reliability Need and, notwithstanding the confidentiality provisions in Article 11.2, may disclose information regarding the Transmission Project to Governmental Authorities as needed to implement such action. If the NYISO decides to terminate this Agreement under Article 8.1(ii), (iii), (iv), or (v), it will provide written notice of termination to the Developer, 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), cost recovery may be permitted as determined by 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 Transmission Project was proposed as an alternative regulated transmission solution that was selected by the NYISO as the more efficient or cost-effective transmission solution to a Reliability Need and 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 and Section 31.2.10.1.3 of Attachment Y of the OATT, 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, neither Party shall be liable, whether based on contract, indemnification, warranty, equity, tort, strict liability, or otherwise, to the Other Party 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 under this Agreement, except in the event the Party is found liable for gross negligence or intentional misconduct in the performance of its obligations under this Agreement, in which case the Party'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, each Party shall at all times indemnify and save harmless, as applicable, the other Party, 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 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; *provided, further*, that the NYISO shall only have an indemnification obligation under this Article 9.2 with respect to any loss resulting from its gross negligence or intentional misconduct to the same extent as provided in Section 2.11.3(b) of the ISO OATT. 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, as such interconnection agreements may be amended, supplemented, or modified from time to time.

### **15.3. Cost Recovery**

The Developer may recover the costs of the Transmission Project in accordance with the cost recovery requirements in the ISO Tariffs and, if the Developer is the Responsible Transmission Owner, the ISO Tariffs and the ISO/TO Reliability Agreement.

### **15.4. 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.

### **15.5. Force Majeure**

A Party that is unable to carry out an obligation imposed on it by this Agreement due to Force Majeure shall notify the other Party in writing as soon as reasonably practicable after the occurrence of the Force Majeure event and no later than the timeframe set forth in Article 3.3.3(i) if the Force Majeure event will result in a potential delay for the Developer to meet a Critical Path Milestone. If the notifying Party is the Developer, it shall indicate in its notice whether the occurrence of a Force Majeure event has the potential to delay its meeting one or more Critical Path Milestones and/or completing the Transmission Project by the Required Project In-Service Date. If the Force Majeure will delay the Developer's ability to meet one or more Critical Path Milestones, the Developer shall request with its notice a change to the impacted milestones in accordance with the requirements in Section 3.3.4 and must satisfy the requirements in Section 3.3.4 to change any Critical Path Milestones. A Party shall not be responsible for any non-performance or considered in Breach or Default under this Agreement, for any failure to perform any obligation under this Agreement to the extent that such failure is due to Force Majeure and will not delay the Developer's ability to complete the Transmission Project by the Required Project In-Service Date. A Party shall be excused from whatever performance is affected only for the duration of the Force Majeure and while the Party exercises reasonable efforts to alleviate such situation. As soon as the nonperforming Party is able to resume performance of its obligations excused because of the occurrence of Force Majeure, such Party shall resume performance and give prompt notice thereof to the other Party. In the event that Developer will not be able to complete the Transmission Project by the Required Project In-Service Date because of the occurrence of Force Majeure, the NYISO may terminate this Agreement in accordance with Section 8.1 of this Agreement.

### **15.6. 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.



### **15.7. 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.

### **15.8. 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.

### **15.9. 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.

### **15.10. 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.

### **15.11. 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”.

#### **15.12. 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.

#### **15.13. 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.

#### **15.14. 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.

#### **15.15. 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.

#### **15.16. 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).

#### **15.17. 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. Optional Feasibility Study, System Impact Study, 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]*



**APPENDIX D – PUBLIC POLICY TRANSMISSION PLANNING PROCESS  
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 \_\_\_\_\_ (“Designated Entity”), 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”). Designated Entity 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 Public Policy Transmission Planning Process pursuant to which Public Policy Transmission Need(s) 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 Public Policy Transmission Planning Report;

**WHEREAS**, the NYISO has selected the a Public Policy Transmission Project as the more efficient or cost-effective transmission solution to satisfy an identified Public Policy Transmission Need (“Transmission Project”); has designated the Designated Entity as responsible for developing the Designated Public Policy Project, which constitutes the Transmission Project, or a part of the Transmission Project, as specified in Appendix A (“Designated Project”); and directed the Designated Entity to proceed with the Designated Project;

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

**WHEREAS**, the Designated Entity and the NYISO have agreed to enter into this Agreement pursuant to Section 31.4.12.2 of Attachment Y of the OATT for the purpose of ensuring that the Designated Project will be constructed and in service by the required date (“Required Designated Project In-Service Date”) to enable the Transmission Project to be constructed and in-service by the required date to satisfy the Public Policy Transmission Need (“Required Transmission Project In-Service Date”); and

**WHEREAS**, the Designated Entity has agreed to construct, and the NYISO has requested that the Designated Entity proceed with construction of, the Designated Project to provide for the Designated Project to be in-service by the Required Designated 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.

**Affected System Operator** shall mean any Affected System Operator(s) identified in connection with the Designated Project pursuant to Attachment P of the ISO OATT.

**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 Designated Project]*, and (iv) any Affected System Operator; *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 Designated Entity to a third party in one or more related transactions, or any other transaction that has the effect of transferring control of the Designated Entity to a third party.

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

**Connecting Transmission Owner** shall be the Connecting Transmission Owner(s) identified in connection with the Designated Project pursuant to Attachment P of the ISO 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 Designated Project to be constructed and operating by the Required Designated 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.

**Designated Entity** shall have the meaning set forth in the introductory paragraph.

**Designated Project** shall mean the Designated Public Policy Project that the Designated Entity has been designated to develop and place into service pursuant to Section 31.4.11 of Attachment Y, as described in the Project Description set forth in Appendix A to this Agreement.

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

**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 act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment, any order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities, or any other cause beyond a Party's control. A Force Majeure event does not include acts of negligence or intentional wrongdoing by the Party claiming Force Majeure.

**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 Designated Entity, the Connecting Transmission Owner(s), the Affected System Operator(s), or any Affiliate thereof.

**In-Service Date** shall mean the date upon which the Designated Project is energized consistent with the provisions of the Transmission Project Interconnection Agreement for the Designated Project 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.

**NYPSC** shall mean the New York State Public Service Commission or its successor.

**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 Designated Entity, or both.

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

**Project Description** shall mean the description of the Designated Project set forth in Appendix A to this Agreement: (i) that is consistent with the Designated Project component of the Transmission Project proposed and evaluated in the NYISO's Public Policy Transmission Planning Process and selected by the NYISO Board of Directors as the more efficient or cost-effective transmission solution to the identified Public Policy Transmission Need and (ii) for which the Designated Entity was designated to develop and place into service.

**Public Policy Transmission Planning Process Manual** shall mean the NYISO's manual adopted by the NYISO stakeholder Operating Committee describing the NYISO's procedures for implementing the Public Policy Transmission 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 Designated Project In-Service Date** shall mean the in-service date by which the Designated Project must be constructed and operating, which date will be identified by the NYISO as either: (A) the in-service date specified by the Developer in the project information it submitted under Attachment Y for one or more of the components of the Designated Project for

use by the NYISO in its selection of the Transmission Project as the more efficient or cost-effective transmission solution to satisfy the Public Policy Transmission Need, or (B) such other date accepted by the NYISO for one or more of the components of the Designated Project as reasonable in light of the Public Policy Transmission Need. The Required Designated Project In-Service Date may be the same date as or an earlier date than the Required Transmission Project In-Service Date. The Required Designated Project In-Service Date is set forth in the Development Schedule contained in Appendix C to this Agreement.

**Required Transmission Project In-Service Date** shall mean the in-service date by which the Transmission Project, including all Designated Public Policy Projects that constitute the Transmission Project, must be constructed and operating, which date shall be: (i) the date by which the Public Policy Transmission Need must be satisfied as prescribed by the NYPSC in its order identifying the need or in a subsequent order, or (ii) if the NYPSC has not prescribed a date, the date proposed by the Developer in the project information submittal for the Transmission Project and reviewed and accepted by the NYISO, which date may be either: (A) the in-service date specified by the Developer in the project information it submitted 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 satisfy the Public Policy Transmission Need, or (B) such other date accepted by the NYISO as reasonable in light of the Public Policy Transmission Need. The Required Transmission Project In-Service Date is set forth in the Development Schedule contained 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 Designated Entity's proposed modification to its Designated Project that: (i) could impair the Transmission Project's or Designated Project's ability to meet the identified Public Policy Transmission Need, (ii) could delay the In-Service Date of the Transmission Project or Designated Project beyond the Required Transmission Project In-Service Date or Required Designated Project In-Service Date, respectively, 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 evaluating the Transmission Project for purposes of selecting the more efficient or cost-effective transmission solution to meet the identified Public Policy Transmission Need.

**Scope of Work** shall mean the description of the work required to implement the Designated Project as set forth in Appendix B to this Agreement. The Scope of Work shall be drawn from the Developer's submission of the "Information for a Proposed Solution to a Public Policy Transmission Need" and the "Data Submission for Public Policy Transmission Projects," which are set forth in Attachments B and C of the NYISO Public Policy Transmission Planning Process Manual, as may be updated as agreed upon by the Parties. The Scope of Work 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 Designated 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 Designated Project, and the cost estimates for the work associated with the Designated 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, other Designated Entities, or developers whose transmission facilities the NYISO has determined may be impacted by the Designated Project]*, and (iii) any Affected System Operator.

**Transmission Project** shall mean a Public Policy Transmission Project selected by the NYISO as the more efficient or cost-effective transmission solution to a Public Policy Transmission Need. The Designated Project subject to this Agreement shall be the Transmission Project, or the part of the Transmission Project, designated to the Designated Entity pursuant to Section 31.4.11 of Attachment Y.

## **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 31.4.12.2 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 31.4.12.2 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 31.4.12.2 of Attachment Y of the OATT. The Designated Entity 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 Designated Entity executes an operating agreement with the NYISO, and (ii) the Designated 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. DESIGNATED PROJECT DEVELOPMENT AND CONSTRUCTION**

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

The Designated Entity shall timely seek and obtain all authorizations and approvals from Governmental Authorities required to develop, construct, and operate the Designated Project by the Required Designated Project In-Service Date. The required authorizations and approvals shall be listed in the Scope of Work in Appendix B to this Agreement. The Designated Entity 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 Designated Entity 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 Designated Project, or if such approval or authorization is withdrawn or modified.

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

The Designated Entity shall design, engineer, procure, install, construct, test and commission the Designated 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, (vi) any interconnection agreement(s) entered into by and among the NYISO, Designated Entity, and Connecting Transmission Owner(s) for the Designated Project to interconnect to the New York State Transmission System, and (v) any engineering, procurement, and construction (“EPC”) agreement(s) associated with the interconnection of the Designated Project to the New York State Transmission System.

### **3.3. Milestones**

- 3.3.1. The NYISO shall provide the Designated Entity with the Required Transmission Project In-Service Date and Required Designated Project In-Service Date that is set forth in the Public Policy Transmission Planning Report in accordance with Section 31.4.11 of Attachment Y of the OATT. Prior to executing and/or filing this Agreement with FERC, the NYISO and the Designated Entity 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 Designated Project to allow the Designated Project to go into service by the Required Designated Project In-Service Date in accordance with Section 31.4.12.2 of Attachment Y of the OATT; provided that any such milestone for the Designated Project that requires action by a Designated Entity of another Designated Public Policy Project related to the Transmission Project, a Connecting Transmission

Owner, or an Affected System Operator to complete must be included as an Advisory Milestone.

- 3.3.2. The Designated Entity shall meet the Critical Path Milestones in accordance with the Development Schedule set forth in Appendix C to this Agreement. The Designated Entity'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 Designated Entity shall notify the NYISO thirty (30) Calendar Days prior to the date of each Critical Path Milestone specified in the Development Schedule whether, to the best of its knowledge, it expects to meet the Critical Path Milestone by the specified date; *provided, however*, that notwithstanding this requirement:
- (i) the Designated Entity shall notify the NYISO as soon as reasonably practicable, and no later than fifteen (15) Calendar Days, following the Designated Entity'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 Designated Entity shall submit to the NYISO within five (5) Business Days of the request, a written response indicating whether the Designated Entity will meet, or has met, a Critical Path Milestone and providing all required supporting documentation for its response.
- 3.3.4. The Designated Entity 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 Designated Entity 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 in accordance with Section 15.5, (ii) submit to the NYISO a revised Development Schedule containing any necessary changes to Critical Path Milestones and Advisory Milestones that provide for the Designated Project to be completed and achieve its In-Service Date no later than the Required Designated Project In-Service Date, (iii) submit an officer's certificate in a form acceptable to the NYISO certifying the Designated Entity's capability to complete the Designated Project in accordance with the modified schedule taking into account the schedule for completing any other Designated Public Policy Projects related to the Transmission Project, and (iv) submit an officer's certificate in a form acceptable to the NYISO from any other Designated Entity responsible for developing Designated Public Policy Projects related to the Transmission Project certifying its capability to complete its Designated Public Policy Project in accordance with the modified schedule for the Designated Project, if applicable. If the Designated Entity: (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 Designated Entity 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 the Designated Entity's requested change. The Designated Entity 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 Designated Entity demonstrates to the NYISO's satisfaction that the delay in meeting a Critical Path Milestone: (i) will not delay the In-Service Date of the Designated Project beyond the Required Designated Project In-Service Date and (ii) will not materially affect the completion of any other Designated Public Policy Project related to the Transmission Project being developed by another Designated Entity by any required in-service date for the other Designated Public Policy Project and/or the Required Transmission Project In-Service Date, if applicable, 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 Designated Entity will satisfy the amendment requirements in Article 15.8, 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 Designated Entity's discovery of a potential delay in meeting an Advisory Milestone, the Designated Entity shall inform the NYISO of the potential delay and describe the impact of the delay on meeting the Critical Path Milestones. The Designated Entity 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.
- 3.3.6. In the event that another Designated Entity of a Designated Public Policy Project related to the same Transmission Project seeks to modify its schedule, the Designated Entity subject to this Agreement will not unreasonably withhold, condition, or delay any required input, information, or certification.

### **3.4. Modifications to Required Project In-Service Dates**

- 3.4.1. The Designated Entity shall not make a change to the Required Transmission Project In-Service Date or Required Designated Project In-Service Date without the prior written consent of the NYISO. To request a change, the Designated Entity must: (i) inform the NYISO in writing of the proposed change to the Required Transmission Project In-Service Date or Required Designated Project In-Service Date and the reason for the change, including the occurrence of a Force Majeure event, (ii) submit to the NYISO a revised Development Schedule that provides for the Designated Project and the Transmission Project to be completed and achieve its In-Service Date no later than the proposed, modified Required Designated Project In-Service Date and Required Transmission Project In-Service Date, respectively, taking into account the schedule for completing other Designated Public Policy Projects related to the Transmission Project, if applicable, (iii) demonstrate that the Designated Entity has made reasonable progress against the milestones set forth in the Development Schedule, and is capable of completing the Designated Project in accordance with the modified schedule, and (iv) submit a an officer's certificate in a form acceptable to the NYISO from other

Designated Entities responsible for developing Designated Public Policy Projects related to the Transmission Project certifying their capability to complete their projects in accordance with the Designated Entity's modified schedule and the proposed, modified Required Transmission Project In-Service Date and/or Required Designated Project In-Service Date. If the Required Transmission Project In-Service Date is the date prescribed by the NYPSC in its order identifying the Public Policy Transmission Need or in a subsequent order, the Designated Entity must also demonstrate that the NYPSC has issued an order modifying its prescribed date.

- 3.4.2. The NYISO will promptly review Designated Entity's requested change to the Required Transmission Project In-Service Date and/or Required Designated Project In-Service Date. The Designated Entity 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 Designated Entity fails to provide the NYISO with the information required to make its determination, the NYISO shall not be obligated to make this determination. The NYISO's consent to extend the Required Transmission Project In-Service Date and/or Required Designated Project In-Service Date will not be unreasonably withheld, conditioned, or delayed if the Designated Entity demonstrates to the NYISO's satisfaction that: (i) its proposed modified Required Transmission Project In-Service Date or Required Designated Project In-Service Date is reasonable in light of the Public Policy Transmission Need, (ii) it has made reasonable progress against the milestones set forth in the Development Schedule, (iii) its proposed modified date will not result in a significant adverse impact to the reliability of the New York State Transmission System, and (iv) its proposed modified date will not materially impact the development of Designated Public Policy Projects related to the Transmission Project being developed by other Designated Entities. The Parties shall amend this Agreement in accordance with Article 15.8 to incorporate a revised Required Project In-Service Date and Development Schedule.
- 3.4.3 In the event that another Designated Entity of a Designated Public Policy Project related to the same Transmission Project seeks to modify its project, its project's Required Designated Project In-Service Date, or the Required Transmission Project In-Service Date, the Designated Entity subject to this Agreement will not unreasonably withhold, condition, or delay any required input, information, or certification.

### **3.5. Modifications to Designated Project**

The Designated Entity shall not make a Significant Modification to the Designated Project without the prior written consent of the NYISO, including, but not limited to, modifications necessary for the Designated Entity to obtain required approvals or authorizations from Governmental Authorities; *provided, however*, that a proposed Significant Modification that is a proposed modification to the Required Transmission Project In-Service Date or Required Designated Project In-Service Date shall be addressed in accordance with Article 3.4. The NYISO's determination regarding a Significant Modification to the Designated Project under this Agreement shall be separate from, and shall not replace, the NYISO's review and

determination of material modifications to the Designated Project under Attachment P of the OATT. The Designated Entity may request that the NYISO review whether a modification to the Designated Project would constitute a Significant Modification. The Designated Entity 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. The NYISO's consent to the Significant Modification will not be unreasonably withheld, conditioned, or delayed if the Designated Entity demonstrates to the NYISO's satisfaction that its proposed Significant Modification: (i) does not impair the Transmission Project's ability to satisfy the identified Public Policy Transmission Need, (ii) does not delay the In-Service Date of the Transmission Project or Designated Project beyond the Required Transmission Project In-Service Date or Required Designated Project In-Service Date, respectively, (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 Public Policy Transmission Need, (iv) will not result in a significant adverse impact to the reliability of the New York State Transmission System, and (v) through submittal of an officer's certificate in a form acceptable to the NYISO from other Designated Entities responsible for developing Designated Public Policy Projects related to the Transmission Project, certifies that the proposed modification will not materially impact the development of such other Designated Public Policy Projects. The NYISO's performance of this review shall not constitute its consent to delay the completion of any Critical Path Milestone.

### **3.6. Billing and Payment**

The NYISO shall charge, and the Designated Entity shall pay, the actual costs of: (i) any study work performed by the NYISO or its subcontractor(s) under Articles 3.3, 3.4, and 3.5, or (ii) any assessment of the Designated Project by the NYISO or its subcontractor(s) under Article 3.8. The NYISO will invoice Designated Entity 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 Designated Entity 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 Designated Entity disputes an amount to be paid, the Designated Entity shall pay the disputed amount to the NYISO, pending resolution of the dispute. To the extent the dispute is resolved in the Designated Entity's favor, the NYISO will net the disputed amount, including interest calculated from Designated Entity's date of payment at rates applicable to refunds under FERC regulations, against any current amounts due from the Designated Entity and pay the balance to the Designated Entity. This Article 3.6 shall survive the termination, expiration, or cancellation of this Agreement.

### **3.7. Project Monitoring**

The Designated Entity shall provide regular status reports to the NYISO in accordance with the monitoring requirements set forth in the Development Schedule, the Public Policy Transmission Planning Process Manual and Attachment Y of the OATT. The Designated Entity shall also provide updates and information upon the NYISO's request to assist with the coordination of the Designated Project with other Designated Public Policy Projects related to the Transmission Project.

### **3.8. Right to Inspect**

Upon reasonable notice, the NYISO or its subcontractor shall have the right to inspect the Designated Project for the purpose of assessing the progress of the development and construction of the Designated 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 Designated 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 Designated Project and shall be subject to such reasonable safety and procedural requirements as the Designated Entity shall specify.

### **3.9. Exclusive Responsibility of Designated Entity**

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

### **3.10. Subcontractors**

- 3.10.1. 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.
- 3.10.2. 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.

### **3.11. 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 Designated Entity wishes to receive or supply such products or services, the Designated Entity must make application to do so under the applicable provisions of the ISO Tariffs, ISO Related Agreements, and ISO Procedures.

### **3.12. 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 Designated Project**

The Designated Entity shall satisfy all requirements set forth in the Transmission Interconnection Procedures in Attachment P of the OATT applicable to a "Transmission Project" to interconnect the Designated Project to the New York State Transmission System by the Required Designated Project In-Service Date, including, but not limited to, submitting a Transmission Interconnection Application for the Designated Project or joining with the agreement of the "Transmission Developer" a pending Transmission Interconnection Application that includes the Designated Project; participating in all necessary studies; executing, and/or requesting the NYISO to file for FERC acceptance, a Transmission Project Interconnection Agreement for the Designated Project and/or EPC agreement(s), as applicable; and constructing, or arranging for the construction of, all required Network Upgrade Facilities; *provided, however*, if a Developer began the interconnection process in Attachment X of the OATT or the transmission expansion process in Sections 3.7 or 4.5 of the OATT for the Transmission Project prior to the effective date of the Transmission Interconnection Procedures, the Designated Entity shall satisfy the requirements of the Transmission Interconnection Procedures in accordance with the transition rules in Section 22.3.3 of Attachment P of the OATT.

If the NYISO determines that the proposed interconnection of a "Transmission Project" under Attachment P could affect the Designated Project under this Agreement, the Designated Entity shall participate in the Transmission Interconnection Procedures as an Affected System Operator in accordance with the requirements set forth in Section 22.4.4 of Attachment P. If the NYISO determines that the proposed interconnection of a "Large Generating Facility," "Small Generating Facility," or "Class Year Transmission Project" under Attachments X or Z of the OATT could affect the Designated Project, the Designated Entity 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 Designated Project, the Designated Entity 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 Designated Project will affect the facilities of an Affected System as determined in Attachment P of the OATT, the Designated Entity shall satisfy the requirements of the Affected System Operator for the interconnection of the Designated Project, including entering into any applicable EPC agreement(s).

#### **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 Public Policy Transmission Need, the Designated Entity shall coordinate its development and construction of the Designated 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 DESIGNATED PROJECT**

If the Designated Entity is a Transmission Owner, the Designated Entity shall comply with the operating requirements set forth in the ISO/TO Agreement. If the Designated Entity is not a Transmission Owner, the Designated Entity shall: (i) execute, and/or obtain a FERC accepted, interconnection agreement for the Designated Project in accordance with the requirements in Attachment P 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 Designated 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, be certified as a Transmission Operator unless otherwise agreed by the Parties, and comply with all NERC Reliability Standards and Applicable Reliability Requirements applicable to Transmission Owners and Transmission Operators; and (v) prior to energizing the Designated Project, execute an operating agreement with the NYISO.

### **ARTICLE 6. INSURANCE**

The Designated Entity 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 Designated Project will be located in part outside of New York State, Designated Entity 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 Designated Entity shall name the NYISO and its respective directors, officers, agents, servants and employees ("NYISO Parties") as additional insureds. For Commercial General Liability Insurance, the Designated Entity 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 Designated Entity 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 Designated Entity 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 Designated Entity and the NYISO.
- 6.10** The requirements contained herein as to the types and limits of all insurance to be maintained by the Designated Entity are not intended to and shall not in any manner, limit or qualify the liabilities and obligations assumed by the Designated Entity under this Agreement.
- 6.11** The Designated Entity 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 Designated Entity may self-insure to meet the minimum insurance requirements of Articles 6.1 through 6.10 to the extent it maintains a self-insurance program; *provided that*, the Designated Entity'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 6.1 through 6.10. For any period of time that the Designated Entity's senior debt is unrated by Standard & Poor's or is rated at less than investment grade by Standard & Poor's, the Designated Entity shall comply with the insurance requirements applicable to it under Articles 6.1 through 6.10. In the event that the Designated Entity 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 Designated Entity 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 Designated Entity: (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 Designated Entity 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 Designated Entity notifies the NYISO in writing that it will not proceed to develop the Designated Project for reasons other than those set forth in Articles 8.1(i) through (iv); (ii) the Designated Entity 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 Designated Entity makes a Significant Modification to the Designated Project without the prior written consent of the NYISO; (iv) the Designated Entity fails to pay a monthly invoice within the timeframe set forth in Article 3.6; (v) the Designated Entity 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 Designated Entity fails to file with the Commission any Cost Cap that the Designated Entity submitted to the NYISO as a part of its Public Policy Transmission Project and agreed to in this Agreement or seeks to recover through its transmission rates for the Designated Project or through any other means costs for the Included Capital Costs (as defined in Section 31.4.5.1.8.1 of the ISO OATT) above its Cost Cap, except as permitted for excusing conditions in Section 6.10.6.2 of the ISO OATT and Article 15.3 of this Agreement; (viii) the Designated Entity fails to comply with any other material term or condition of this Agreement; (ix) a custodian, receiver, trustee or liquidator of the Designated Entity, or of all or substantially all of the assets of the Designated Entity, is appointed in any proceeding brought by the Designated Entity; or (x) any such custodian, receiver, trustee, or liquidator is appointed in any proceeding brought against the Designated Entity that is not discharged within ninety (90) Days after such appointment, or if the Designated Entity consents to or acquiesces in such appointment. A Breach shall not occur as a result of a Force Majeure event in accordance with Article 15.5. A Breach shall also not occur as a result of a delay caused by another Designated Entity, a Connecting Transmission Owner, or an Affected System Operator.

### **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 Designated Project by the Required Designated 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, which agreement the NYISO will not unreasonably withhold, condition, or delay if it determines a longer cure period will not threaten the Designated Entity's ability to complete the Designated Project by the Required Designated Project In-Service Date or other Designated Entities' ability to complete Designated Public Policy Projects related to the Transmission Project by their required designated project in-service date and the Required Transmission Project In-Service Date; *provided, however*, that if the Breach is the result of a Designated Entity's inability or failure to meet a Critical Path Milestone, the Designated Entity 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 Designated Project will achieve its In-Service Date no later than the Required Designated Project In-Service Date and other Designated Public Policy Projects related to the Transmission Project will achieve their in-service dates before their required designated project in-service dates and the Required Transmission Project In-Service Date, or (ii) the Designated Entity 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 Designated Project to be completed by the Required Designated 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 defaulting Party'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 Designated Entity in the event that: (i) the Designated Entity 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 Designated Project by the Required Designated Project In-Service Date; (ii) the Designated Entity notifies the NYISO that its required approvals or authorizations by Governmental Authorities have been withdrawn by the Governmental Authorities; (iii) the Designated Entity cannot complete the Designated Project by the Required Designated Project In-Service Date for any reason: (A) including the occurrence of

a Force Majeure event that will prevent the Designated Entity from completing the Designated Project by the Required Designated Project In-Service Date, but (B) excluding a delay caused by a Connecting Transmission Owner, an Affected System Operator, or other Designated Entity responsible for completing a Designated Public Policy Project related to the Transmission Project; (iv) the NYISO declares a default pursuant to Article 7.2 of this Agreement; or (v) another Designated Entity defaults on the development of a separate Designated Public Policy Project related to the Transmission Project and the ISO determines to address the Public Policy Transmission Need in a future planning cycle pursuant to Section 31.4.12.3.1.2 of Attachment Y of the OATT.

If the NYISO identifies grounds for termination under Articles 8.1(iii) or (iv) or receives notice from the Designated Entity under Articles 8.1(i) or (ii), the NYISO may, prior to providing a written notice of termination, take action in accordance with Sections 31.4.12.3.1.3 and 31.4.12.3.1.4 of Attachment Y of the OATT to address the Public Policy Transmission Need and, notwithstanding the confidentiality provisions in Article 11.2, may disclose information regarding the Transmission Project to Governmental Authorities as needed to implement such action. If the NYISO decides to terminate this Agreement under Article 8.1(i), (ii), (iii), (iv), or (v), it will provide written notice of termination to the Designated Entity, which notice will specify the date of termination. If the Agreement was filed and accepted by FERC pursuant to Section 31.4.12.2 of Attachment Y of the OATT, the NYISO will, following its provision of a notice of termination to the Designated Entity, 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 (v), the Designated Entity 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(iii) or (iv), cost recovery may be permitted as determined by FERC. In the event of termination for any reason under this Article 8.1, the Designated Entity 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 Designated 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. Designated Project Transfer Rights Upon Termination**

If the NYISO terminates this Agreement pursuant to Article 8.1 (except pursuant to Article 8.1(v)), the NYISO shall have the right, but shall not be required, to request an entity other than the Designated Entity to complete the Designated Project. The NYISO may exercise this right by providing the Designated Entity 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 and Sections 31.4.12.3.1.3 and 31.4.12.3.1.4 of Attachment Y of the OATT, the Designated Entity shall work cooperatively with the NYISO's designee pursuant to the requirements set forth, as applicable, in Sections 31.4.12.3.1.3 or 31.4.12.3.1.4 of Attachment Y of the OATT to implement the transition, including entering into good faith negotiations with the NYISO's designee to transfer the Designated Project to the NYISO's designee. All liabilities under this Agreement existing prior to such transfer shall remain with the Designated Entity, unless otherwise agreed upon by the Designated Entity 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, neither Party shall be liable, whether based on contract, indemnification, warranty, equity, tort, strict liability, or otherwise, to the Other Party 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 under this Agreement, except in the event the Party is found liable for gross negligence or intentional misconduct in the performance of its obligations under this Agreement, in which case the Party'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, each Party shall at all times indemnify and save harmless, as applicable, the other Party, 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 this Agreement, *provided, however*, that the Designated Entity 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; *provided, further*, that the NYISO shall only have an indemnification obligation under this Article 9.2 with respect to any loss resulting from its gross negligence or intentional misconduct to the same extent as provided in Section 2.11.3(b) of the ISO OATT. 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 Designated Entity shall be contingent upon the Designated Entity 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 Designated Project by the Required Designated Project In-Service Date consistent with the assignor's cost estimates for the Designated Project; and (B) the assignee satisfies the requirements for a qualified developer pursuant to Section 31.4.4 of Attachment Y of the OATT; and
- (iii) the Designated Entity 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 Designated 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 Designated Project meets the requirements for the assignee of a Designated Entity 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 Designated Entity 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 Designated Entity makes the following representations, warranties, and covenants, which are effective as to the Designated Entity during the full time this Agreement is effective:

### **12.2. Good Standing**

The Designated Entity 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 Designated Entity is qualified to do business in the state or states in which the Designated Project is located. The Designated Entity 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 Designated Entity 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 Designated Entity, enforceable against the Designated Entity 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 Designated Entity, or any judgment, license, permit, order, material agreement or instrument applicable to or binding upon the Designated Entity or any of its assets.

### **12.5. Consent and Approval**

The Designated Entity 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 Designated Entity 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, the cost recovery provisions in Article 15.3 and Appendix D, and the billing and

payment provisions in Article 3.6 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.]

Designated Entity:

[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 Designated Entity's and NYISO's rights and responsibilities, under any interconnection agreement(s) entered into by and among the NYISO, Designated Entity, and Connecting Transmission Owner(s) for the Designated Project to interconnect to the New York State Transmission System, as such interconnection agreements may be amended, supplemented, or modified from time to time.

### **15.3. Cost Recovery**

The Designated Entity may recover the costs of the Designated Project in accordance with the cost recovery requirements in the ISO Tariffs. If the Designated Entity submitted a Cost Cap for the Included Capital Costs (as defined in Section 31.4.5.1.8.1 of the ISO OATT) of the Designated Project pursuant to Section 31.4.5.1 of the ISO OATT, the Designated Entity's Cost Cap for the Included Capital Costs shall be detailed in Appendix D of this Agreement, which description shall include the Cost Cap in the Designated Entity's project proposal. Designated Entity agrees to file this Cost Cap for Included Capital Costs with the Commission in accordance with the requirements in Rate Schedule 10 of the ISO OATT. If the Cost Cap is a soft Cost Cap, Designated Entity agrees to implement the Cost Cap in accordance with Section 6.10.6.3 of Rate Schedule 10. The Designated Entity further agrees in accordance with Rate Schedule 10 of the OATT that it shall not seek to recover through its transmission rates for the Designated Project or through any other means costs for the Included Capital Cost above its agreed-upon Cost Cap; *provided, however*, the Designated Entity may recover costs above its

agreed-upon Cost Cap resulting from one of the following excusing conditions, but only to the extent the costs arise from the excusing condition:

- A. Designated Project changes, delays, or additional costs that are due to the actions or omissions of the ISO, Connecting Transmission Owner(s), Interconnecting Transmission Owner(s), Affected Transmission Owner(s), or other Designated Entity(ies) responsible for completing other parts of the Transmission Project;
- B. A Force Majeure event as defined in this Agreement and subject to the Force Majeure requirements in Section 15.5 of this Agreement;
- C. Changes in laws or regulations, including but not limited to applicable taxes;
- D. Material modifications to scope or routing arising from siting processes under Public Service Law Article VII or applicable local laws as determined by the New York State Public Service Commission or local governments respectively; and
- E. Actions or inactions of regulatory or governmental entities, and court orders.

The provisions of this Section 15.3 and the Designated Entity's Cost Cap for the Included Capital Costs detailed in Appendix D shall not be subject to change through application to the Federal Energy Regulatory Commission pursuant to the provisions of Section 205 of the Federal Power Act absent the agreement of all Parties to the Agreement. In any proceeding conducted pursuant to Section 206 of the Federal Power Act, the standard of review for any change to this Section 15.3 and the Designated Entity's Cost Cap for the Included Capital Costs detailed in Appendix D shall be the "public interest" application of the just and reasonable standard set forth in *United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332 (1956), and *Fed. Power Comm'n v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), as clarified in *Morgan Stanley Capital Grp., Inc. v. Pub. Util. Dist. No. 1 of Snohomish Cnty., Wash.*, 554 U.S. 527 (2008), and refined in *NRG Power Mktg. v. Maine Pub. Utils. Comm'n*, 558 U.S. 165 (2010).

#### **15.4. 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.

#### **15.5. Force Majeure**

A Party that is unable to carry out an obligation imposed on it by this Agreement due to Force Majeure shall notify the other Party in writing as soon as reasonably practicable after the occurrence of the Force Majeure event and no later than the timeframe set forth in Article 3.3.3(i) if the Force Majeure event will result in a potential delay for the Designated Entity to meet a Critical Path Milestone. If the notifying Party is the Designated Entity, it shall indicate in its notice whether the occurrence of a Force Majeure event has the potential to delay its meeting one or more Critical Path Milestones and/or completing the Designated Project in time for other Designated Public Policy Projects related to the Transmission Project to go into service by their required designated project in-service date(s) and the Required Transmission Project In-Service Date. If the Force Majeure will delay the Designated Entity's ability to meet one or more

Critical Path Milestones, the Designated Entity shall request with its notice a change to the impacted milestones in accordance with the requirements in Section 3.3.4 and must satisfy the requirements in Section 3.3.4 to change any Critical Path Milestones. A Party shall not be responsible for any non-performance or considered in Breach or Default under this Agreement, for any failure to perform any obligation under this Agreement to the extent that such failure is due to Force Majeure and will not delay the Designated Entity's ability to complete the Designated Project by the Required Designated Project In-Service Date. A Party shall be excused from whatever performance is affected only for the duration of the Force Majeure and while the Party exercises reasonable efforts to alleviate such situation. As soon as the nonperforming Party is able to resume performance of its obligations excused because of the occurrence of Force Majeure, such Party shall resume performance and give prompt notice thereof to the other Party. In the event that the Designated Entity will not be able to complete the Designated Project by the Required Designated Project In-Service Date because of the occurrence of Force Majeure, the NYISO may terminate this Agreement in accordance with Section 8.1 of this Agreement.

#### **15.6. 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.

#### **15.7. No NYISO Liability for Review or Approval of Designated Entity 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 that submitted the Transmission Project under Attachment Y of the ISO OATT or by the Designated Entity nor any inspection carried out by the NYISO or its subcontractor(s) pursuant to this Agreement shall relieve the Designated Entity 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 Designated Entity 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.

#### **15.8. 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 31.4.12.2 of Attachment Y of the OATT, the NYISO shall promptly file the amended Agreement for acceptance with FERC.

#### **15.9. 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.

#### **15.10. 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.

#### **15.11. 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".

#### **15.12. 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.

#### **15.13. 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.

#### **15.14. 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.

#### **15.15. 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.

#### **15.16. 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).

#### **15.17. 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 Designated Entity]

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



## **Appendix A – Project Description**

## **Appendix B – Scope of Work**

## **Appendix C – Development Schedule**

[To be prepared by Designated Entity consistent with the project information submission pursuant to Attachment C of the Public Policy Transmission Planning Process Manual, and subject to acceptance by the NYISO, as required by Article 3.3 of this Agreement.]

The Designated Entity 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 Designated Entity pursuant to Attachment C to the Public Policy Transmission Planning Process Manual and presented herein according to the sequence of the critical path. The NYISO anticipates that the Designated Entity'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 Designated Entity's Designated 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 Designated Entity and reported to NYISO.]

[Example Milestones:

- Interconnection studies (e.g. Optional Feasibility Study, System Impact Study, 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 Designated Project In-Service Date
- Required Transmission Project In-Service Date, if different]

## **Appendix D – Cost Cap**