

Attachment VIII

**AGREEMENT BETWEEN
NEW YORK INDEPENDENT SYSTEM OPERATOR
AND
TRANSMISSION OWNERS**

This Agreement is made as of the ____ day of _____, 1999, by and among Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation (referred to collectively as the "Investor-Owned Transmission Owners"), the Power Authority of the State of New York ("NYPA"), a corporate municipal instrumentality of the State of New York, and LIPA(a subsidiary of the Long Island Power Authority, a corporate municipal instrumentality of the State of New York)(herein referred to collectively as the "Transmission Owners") and the New York Independent System Operator ("ISO"), a not-for-profit corporation. The Transmission Owners and the ISO are herein referred to collectively as the Parties.

WITNESSETH:

WHEREAS, the Investor-Owned Transmission Owners established the New York Power Pool ("NYPP") by agreement made as of the 21st day of July, 1966, and NYPA subsequently joined NYPP on October 11, 1967, and LIPA joined the NYPP on May 28, 1998; and

WHEREAS, the Transmission Owners have created, invested in and operated the interconnected transmission facilities in New York State and each Investor-Owned Transmission Owner has fiduciary responsibilities to assure, among other things, the receipt of adequate revenues to maintain the facilities, a reasonable rate of return on its transmission facilities, and to provide for recovery of the capital invested in its transmission facilities; and

WHEREAS, the ISO's principal mission is to maintain the integrity and reliability of the interconnected transmission facilities of the Transmission Owners, which will require the ISO to exercise Operational Control of the transmission facilities of the Transmission Owners, referred to as "Transmission Facilities Under ISO Control," and will further require the ISO, among other things, to function as the successor to NYPP with respect to certain NYS Power System operational activities heretofore conducted by NYPP; and

WHEREAS, the Investor-Owned Transmission Owners have legal obligations to provide safe and reliable service to the public, including assuring suitable use of their individual transmission facilities to attain and maintain compliance with this obligation; and

WHEREAS, the Transmission Owners will continue to own, physically operate, modify, and maintain the Transmission Facilities Under ISO Operational Control, and the Investor-Owned Transmission Owners will continue to have fiduciary obligations to their investors to protect their transmission facilities and to protect their investors from liability that may result from the operation of those facilities;

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements set forth herein, the Parties do hereby agree with each other, for themselves and their successors and assigns, as follows:

ARTICLE 1.0: DEFINITIONS

1.01

The definitions contained in Article 1 of the Independent System Operator Agreement (“ISO Agreement”) as it existed on the date this Agreement is signed by the Parties are hereby incorporated by reference in their entirety into this Agreement. Modifications to such definitions under the ISO Agreement shall apply to this Agreement, only if the Parties to this Agreement agree in writing pursuant to Section 6.14 below.

ARTICLE 2.0: RESPONSIBILITIES OF THE TRANSMISSION OWNERS

2.01 Transmission Facilities

The Transmission Owners have specified transmission facilities over which the ISO will have day-to-day Operational Control. These facilities shall be collectively known as the "Transmission Facilities Under ISO Operational Control," and are listed in Appendix A-1. The Transmission Owners also will be responsible for providing notification to the ISO with respect to actions related to other specified transmission facilities. These facilities shall be collectively known as "Transmission Facilities Requiring ISO Notification," and are listed in Appendix A-2. Transmission facilities may be added to, or deleted from, the lists of facilities provided in Appendices A-1 and A-2 by mutual written agreement of the ISO and the Transmission Owner owning and controlling such facilities. A current version of such list will be posted on the ISO's OASIS.

2.02 Transmission System Operation

Each Transmission Owner shall operate and maintain its facilities that are designated as Transmission Facilities Under ISO Operational Control and Transmission Facilities Requiring ISO Notification in accordance with the terms of this Agreement and in accordance with all Reliability Rules and all other applicable operating instructions, and ISO Procedures. The Operating Committee of the ISO will promulgate procedures to provide for the assumption of authority by the Transmission Owners' control centers to respond to an Emergency. These procedures shall provide for the coordination of such response with the ISO. The procedures will provide that, in situations where immediate action is required, the Transmission Owners'

control centers will have the authority to take actions, including without limitation, the following:

1. exercising control over facilities listed in Appendix A-1 of this Agreement and generating units;
2. starting quick start generation and the adjustment of generation;
3. re-energizing transmission facilities following breaker trips;
4. implementing emergency Load Shedding and voltage reduction measures and subsequent restoration;
5. voltage/VAR control during an Emergency;
6. changing ratings of transmission facilities; and
7. taking other measures consistent with Good Utility Practice that are required to respond to the Emergency.

Until the Operating Committee promulgates such procedures, the Transmission Owners will exercise the above responsibilities during an Emergency.

2.03 Local Area Transmission System Facilities

Transmission system facilities not designated as Transmission Facilities Under ISO Operational Control or as Transmission Facilities Requiring ISO Notification shall be collectively known as "Local Area Transmission System Facilities." Each Transmission Owner shall have sole responsibility for the operation of its Local Area Transmission System Facilities, provided, however, that such operation by each Transmission Owner shall not compromise the reliable and secure operation of the NYS Transmission System. Each Transmission Owner shall promptly comply to the extent practicable with a request from the ISO to take action with respect to coordination of the operation of its Local Area Transmission System Facilities.

2.04 Safe Operations

Notwithstanding any other provision of this Agreement, a Transmission Owner may take such action with respect to the operation of its facilities as it deems necessary to maintain Safe Operations. To ensure Safe Operations, all Transmission Owner local operating rules shall govern the connection and disconnection of generation with transmission facilities. Safe Operations include the application and enforcement of rules, procedures and protocols that are intended to ensure the safety of personnel operating or performing work or tests on transmission facilities.

2.05 Local Control Center, Metering and Telemetry

Each Transmission Owner shall operate, or arrange for a suitable third party to operate, on a twenty-four (24) hour basis, a suitable control center, and shall install and maintain all other equipment and facilities reasonably required for the ISO to exercise Operational Control over Transmission Facilities Under ISO Operational Control. Operation of the NYS Power System will be a cooperative effort coordinated by the ISO control center in conjunction with each Transmission Owner's control center and will require the exchange of all reasonably necessary information. The Transmissions Owners' control centers must provide the ISO with Supervisory Control and Data Acquisition ("SCADA") information on facilities listed in Appendices A-1 and A-2 as well as on certain generation resources in their Transmission Districts.

Each Transmission Owner shall have the responsibility for providing metering data in its Transmission District to the ISO, unless other parties are authorized by the appropriate regulatory authority to provide metering data. Each Transmission Owner shall be responsible for collecting and making available to the ISO billing quality metering data and any other information for the Transmission District required by the ISO for billing purposes. The Parties

agree that the metering and data acquisition systems currently in place will be acceptable for initial ISO operation. The Transmission Owner shall cooperate with the ISO in implementing reasonable metering enhancements and new metering installations that the ISO may deem necessary, provided that mechanisms satisfactory to each Transmission Owner are in place for their recovery of all associated costs. Each Transmission Owner shall continue to receive telemetry from existing Generators in its Transmission District and provide for the receipt of such information from new Generators. Automatic Generation Control (“AGC”) will be implemented via each Transmission Owner’s control center. Each Transmission Owner shall operate its control center to comply with current AGC procedures, as well as any revised or new AGC procedures reasonably adopted by the ISO. In addition, each Transmission Owner shall provide backup control services to the ISO in the event the ISO’s computer systems malfunction. In such situations, Bid curves will be made available to the Transmission Owners’ control centers to facilitate the continued economic operation of the system. Each Transmission Owner will maintain a strict Code of Conduct to prevent such information from reaching any unauthorized person or entity.

2.06 Security Constrained Unit Commitment Adjustments

A Transmission Owner may request commitment of additional Generators (including specific output level(s)) if it determines that an additional Generator is needed to ensure local area reliability. The ISO will use Supplemental Resource Evaluation (“SRE”) to fulfill a Transmission Owner’s request for additional units.

2.07 Design, Maintenance and Rating Capabilities

Each Transmission Owner shall comply with the provisions of this Agreement and all Reliability Rules, ISO Procedures, and Good Utility Practice with respect to the design, maintenance and rating the capabilities of NYS Transmission System facilities.

2.08 Maintenance Scheduling

The Transmission Owners shall schedule maintenance of their facilities designated as Transmission Facilities Under ISO Operational Control and schedule any outages (other than forced transmission outages) of said transmission system facilities in accordance with outage schedules approved by the ISO. The Transmission Owners shall comply with maintenance schedules coordinated by the ISO, pursuant to this Agreement, for Transmission Facilities Under ISO Operational Control. Each Transmission Owner shall be responsible for providing notification of maintenance schedules to the ISO for Facilities Requiring ISO Notification.

2.09 Investigations and Restoration

Each Transmission Owner shall promptly conduct investigations of equipment malfunctions and failures and forced transmission outages in a manner consistent with applicable FERC, PSC, NRC, NERC, NPCC and NYSRC rules, principles, guidelines, standards and requirements, ISO Procedures and Good Utility Practice. Each Transmission Owner shall supply the results of such investigations to the NYSRC, the ISO and the other Transmission Owners. Each Transmission Owner shall determine the level of resources to be applied to restore facilities to service following a failure, malfunction, or forced transmission outage. Following a total or partial system interruption, restoration shall be coordinated between the ISO and the Transmission Owners' control centers. The Transmission Owners' control centers shall have the

authority, in coordination with the ISO, to restore the system and to re-establish service if doing so would minimize the period of service interruption.

2.10 Information and Support

The Transmission Owners shall obtain from the ISO and the ISO shall provide to the Transmission Owners the necessary information and support services to comply with their obligations under this Article.

ARTICLE 3.0: RESPONSIBILITIES OF THE ISO

3.01 Operation and Coordination

The ISO shall direct the operation of, and coordinate the maintenance scheduling of, certain facilities of the NYS Power System, including coordination with control centers maintained by the Transmission Owners in accordance with the Reliability Rules, as follows:

- a. Assuming responsibility for Control Area operations of the NYS Power System previously performed by NYPP;
- b. Performing balancing of Generation and Load while ensuring the safe, reliable and efficient operation of the NYS Power System;
- c. Exercising Operational Control over certain facilities of the NYS Power System under normal operating conditions and system Emergencies to maintain system reliability; and
- d. Coordinating the NYS Power System equipment outages and maintenance and maintaining the safety and short term reliability of the NYS Power System.

3.02 Tariff Administration and Performance of Responsibilities Under ISO Related Agreements

Subject to the provisions of Section 6.09, the ISO shall (a) administer the ISO OATT, the ISO Services Tariff and the ISO Agreement in accordance with their provisions as they may be amended from time to time, and (b) shall comply with the provisions of this Agreement, the NYSRC Agreement and the ISO/NYSRC Agreement.

3.03 Amendment of ISO Agreement and ISO Tariffs

Notwithstanding any other provision in this Agreement except for the provisions of Section 3.10, the ISO OATT, the ISO Services Tariff and the ISO Agreement may be modified

only as follows: any proposed amendment to the ISO OATT, the ISO Services Tariff or the ISO Agreement must be submitted to both the ISO Management Committee and the ISO Board; if both the ISO Board and the ISO Management Committee agree to the proposed amendment, the ISO shall file the proposed amendment with the Commission pursuant to Section 205 of the FPA; if the ISO Board and the ISO Management Committee do not agree on the proposed amendment, the proposed amendment may not be filed with the Commission pursuant to Section 205 of the FPA. Notwithstanding the foregoing, the ISO Board may submit to the Commission a proposed amendment to the ISO OATT, the ISO Services Tariff or the ISO Agreement under Section 205 of the FPA, without the concurrence of the Management Committee, under the following circumstances: the ISO Board certifies that (1) the proposed amendment is necessary to address exigent circumstances related to the reliability of the NYS Power System or to address exigent circumstances related to an ISO Administered Market; and (2) the urgency of the situation justifies a deviation from the normal ISO governance procedures. Any proposed amendment submitted unilaterally by the ISO shall contain an expiration date of no later than one hundred and twenty (120) days after it is filed with FERC and shall expire no later than one hundred twenty (120) days after it was filed with FERC, unless the Management Committee files with FERC a written concurrence with the proposed amendment within the one hundred and twenty (120) day period or FERC approves the proposed amendment under the just and reasonable standard under Section 206 of the Federal Power Act. The ISO Board shall have the authority to call a special meeting of the Management Committee to request its concurrence in a proposed amendment.

Nothing in this Section 3.03 shall be construed in any way as affecting the right of the ISO or any person to make a filing with the Commission pursuant to Section 206 of the Federal Power Act.

3.04 Granting of Authority

The ISO responsibilities set forth in Article 3 of this Agreement, are granted by each Transmission Owner to the ISO only so long as each of the conditions set forth below is met and continues to be met throughout the term of this Agreement:

- a. The ISO fully implements all Reliability Rules including, without limitation, using all reasonable efforts to require all Market Participants to maintain applicable levels of Installed Capacity and Operating Capacity, consistent with the ISO OATT, the ISO Services Tariff and all Reliability Rules;
- b. The ISO has a FERC-accepted transmission tariff(s) which provide(s) for full recovery of the following, to the extent allowed, accepted or approved by FERC: the Annual Transmission Revenue Requirement of each of the Investor Owned Transmission Owners, NTAC, the annual transmission revenue requirement of LIPA, and any Stranded Investment Recovery Charge;
- c. The ISO does not materially and adversely affect the right of any Transmission Owner concerning transitional arrangements set forth in the ISO Tariffs, pertaining or relating to Existing Transmission Agreements which are in effect at the commencement of ISO operations;
- d. Con Edison, LIPA and NYPA have adequate assurance in the opinion of each such entity, that participation in the ISO will not jeopardize the tax-exempt status of their respective tax-exempt bonds, the ability of such Investor-Owned

Transmission Owner to deduct interest payments, or the ability of the
Transmission Owners to secure future tax-exempt financing;

- e. The ISO does not act in violation of lawful PSC or FERC Orders;
- f. The ISO does not file a request under Section 205 of FPA to revise the provisions in the ISO Services Tariff related to indemnification and limitation of liability;
- g. The ISO does not have a financial interest in any commercial transaction involving the use of the NYS Power System or any other electrical system except to the limited extent required for the ISO to be the single counterparty to market transactions in accordance with the credit requirements for organized wholesale electric markets set forth in Commission Order Nos. 741 and 741-A as codified in 18 C.F.R. § 35.47 (2011) or successor provisions;
- h. The ISO does not seek modification of any provision of the ISO OATT or the ISO Services Tariff so as to require, directly or indirectly, wheeling to end users except as authorized by the PSC or a retail access tariff approved by the Long Island Power Authority's Board of Trustees, or a sham wholesale transaction (as defined in FPA Section 212(h));
- i. The ISO distributes revenues from the collection of transmission charges to the Transmission Owner in a timely manner; and
- j. The ISO enforces and complies with the creditworthiness and collection standards of the ISO Procedures, the ISO OATT and the ISO Services Tariff.

3.05 Collection and Billing

The ISO shall facilitate and/or perform the billing and collection of revenues related to services provided by the ISO pursuant to the terms of the ISO OATT and the ISO Services Tariff.

3.06 NYPA Annual Transmission Revenue Requirement

This Agreement is premised on NYPA recovering its full annual transmission revenue requirement. This is to be achieved through a mechanism known as the NTAC. NYPA will submit its annual revenue requirement for FERC approval. NYPA will be entitled to receive from the ISO the difference between its FERC-approved revenue requirement and the sum of revenues it collects from contracts and from TSCs associated with its current transmission system. The ISO will credit any TCC revenues associated with NYPA's facilities and allocate the remainder on a kWh basis to all transmission Load the ISO serves. NYPA's recovery pursuant to NTAC is limited as described in Attachment H to the ISO OATT. This Agreement is further premised on each Investor-Owned Transmission Owner being authorized to fully recover the NTAC charged to its transmission and retail customers and that any necessary regulatory approvals for such full recovery will be granted by the PSC and FERC.

3.07 Proposed Material Modifications to the NYS Power System

The ISO shall establish procedures to evaluate the impact of any proposed material modifications to the NYS Power System. If the ISO or a Transmission Owner determines that a proposed modification will have a negative impact on system reliability or on total Interface transfer capability over an Interface or Interfaces, the ISO or the Transmission Owner may refer the issue for resolution pursuant to procedures comparable to those set forth in Article 5 of the

ISO/NYSRC Agreement. However, the approval of the NYSRC or the ISO shall not be required to submit the issue to the PSC for resolution.

3.08 OASIS. The ISO shall maintain the OASIS for the New York Control Area

3.09 Transmission Owner Reimbursement and Assumption of Existing Obligations

As soon as practicable, or no later than a date to be mutually agreed upon by the Parties, the ISO shall reimburse the Transmission Owners for all costs associated with the start-up and establishment of the ISO, to the extent that the ISO is authorized by FERC to recover such costs. Such costs shall include, but are not limited to, the costs associated with: the transfer of the current NYPP Control Center buildings and facilities to the ISO; and start-up and development costs, including but not limited to software development and licensing costs, project development costs, and regulatory costs.

The ISO shall assume all existing contractual and other obligations of the NYPP. If the ISO decides to take action to terminate any such contract or obligation, or its assumption of existing obligations, it will bear any costs related thereto. The ISO shall utilize the current facilities and equipment of the NYPP and retain NYPP employees to the greatest extent practicable.

3.10 Transmission Owners Reserved Rights

Notwithstanding any other provision of this Agreement, or any other agreement or amendment made in connection with the restructuring of the NYPP and establishment of the New York ISO, each Transmission Owner shall retain all of the rights set forth in this Section; provided, however, that such rights shall be exercised in a manner consistent with the Transmission Owners' rights and obligations under the Federal Power Act and the Commission's

rules and regulations thereunder. This Section is not intended to reduce or limit any other rights of a Transmission Owner as a signatory to this Agreement or any of the ISO Related Agreements or under an ISO Tariff.

- a. Each Transmission Owner shall have the right at any time unilaterally to file pursuant to Section 205 of the Federal Power Act to change the ISO OATT, a Service Agreement under the ISO OATT, or the ISO Agreement to the extent necessary: (i) to recover all of its reasonably incurred costs, plus a reasonable return on investment related to services under the ISO OATT and (ii) to accommodate implementation of, and changes to, a Transmission Owner's retail access program.
- b. Nothing in this Agreement shall restrict any rights, to the extent such rights exist: (i) of each Transmission Owner that is a party to a merger, acquisition or other restructuring transaction to make filings under Section 205 of the Federal Power Act with respect to the reallocation or redistribution of revenues among such Transmission Owners or the assignment of its rights or obligations, to the extent the FPA requires such filings; or (ii) of any Transmission Owner to terminate its participation in the New York ISO pursuant to Section 3.02 of the ISO Agreement or Article 6 of this Agreement, notwithstanding any effect its withdrawal from the New York ISO may have on the distribution of transmission revenues among other Transmission Owners.
- c. Each Transmission Owner retains all rights that it otherwise has incident to its ownership of its assets, including, without limitation, its transmission facilities including, without limitation, the right to build, acquire, sell, merge, dispose of,

retire, use as security, or otherwise transfer or convey all or any part of its assets, including, without limitation, the right, individually or collectively, to amend or terminate the Transmission Owner's relationship with the ISO in connection with the creation of an alternative arrangement for the ownership and/or operation of its transmission facilities on an unbundled basis (e.g., a transmission company), subject to necessary regulatory approvals and to any approvals required under applicable provisions of this Agreement.

- d. The obligation of any Transmission Owner to expand or modify its transmission facilities in accordance with the ISO OATT shall be subject to the Transmission Owner's right to recover, pursuant to appropriate financial arrangements contained in Commission-accepted tariffs or agreements, all reasonably incurred costs, plus a reasonable return on investment, associated with constructing and owning or financing such expansions or modifications to its facilities.
- e. The responsibilities granted to the ISO under this Agreement shall not expand or diminish the responsibilities of a Transmission Owner to modify or expand its transmission system, nor confer upon the ISO the authority to direct a Transmission Owner to modify or expand its transmission system.
- f. Each Transmission Owner shall have the right to adopt and implement procedures it deems necessary to protect its electric facilities from physical damage or to prevent injury or damage to persons or property.
- g. Each Transmission Owner retains the right to take whatever actions it deems necessary to fulfill its obligations under local, state or federal law.

- h. Nothing in this Agreement shall be construed as limiting in any way the rights of a Transmission Owner to make any filing with the PSC.
- i. Notwithstanding anything to the contrary in this Agreement, no amendment to any provision of this Section may be adopted without the agreement of the Transmission Owners.

3.11 Retention of Non-Transferred Obligations

Any and all other rights and responsibilities of a Transmission Owner related to the ownership or operation of its transmission assets or to its rights to withdraw its assets from ISO control, that have not been specifically transferred to the ISO under this Agreement or otherwise addressed under this Agreement, will remain with the Transmission Owners.

3.12 LIPA Scheduling Procedures

All categories of Transmission Service into and out of the Long Island Transmission District shall require preapproval by LIPA to ensure compliance with Sections 2.5.1 and 2.5.5 of the ISO OATT. Customers seeking Transmission Service into and out of the Long Island Transmission District shall submit requests for service to the ISO pursuant to the terms of its Tariffs. LIPA shall promptly inform the ISO of those categories of Transmission Service that are pre-approved. If a Customer requests a category of Transmission Service that is not pre-approved, the ISO shall reject the schedule and advise the Customer that such Transmission Service must first be reviewed by LIPA and determined to be capable of being provided in a manner that is consistent with Sections 2.5.1 and 2.5.5 of the ISO OATT. If LIPA determines that the provision of Transmission Service requested by an Eligible Customer would jeopardize the tax-exempt status of any Local Furnishing Bond(s) or LIPA Tax-Exempt Bonds, LIPA shall promptly advise the ISO.

ARTICLE 4.0: ASSIGNMENT

4.01 Limitations of Assignment by the ISO.

This Agreement cannot be assigned by the ISO.

4.02 Transmission Owner Assignments.

This Agreement may be assigned by any Transmission Owner including, without limitation, to:

- a. any entity(ies) formed pursuant to a plan of restructuring approved by the PSC in conjunction or compliance with or in furtherance of PSC Case No. 94-E-0952 Opinion 96-12 and/or other related orders; or
- b. any entity(ies) in connection with a merger, consolidation, reorganization or change in the organizational structure of the assigning Transmission Owner, provided that the surviving entity(ies) agree, in writing, to be bound by the terms of this Agreement.

ARTICLE 5.0: LIMITATION OF LIABILITY AND INDEMNIFICATION

5.01 Limitations of Liability

Except as otherwise provided under the ISO OATT, the Transmission Owners shall not be liable (whether based on contract, indemnification, warranty, tort, strict liability or otherwise) to the ISO or any Market Participant or any third party or other party for any damages whatsoever, including without limitation, special, indirect, incidental, consequential, punitive, exemplary or direct damages resulting from any act or omission in any way associated with this Agreement, except to the extent the Transmission Owner is found liable for gross negligence or intentional misconduct, in which case the Transmission Owner shall not be liable for any special, indirect, incidental, consequential, punitive or exemplary damages. Nothing in this Section will excuse a Transmission Owner from an obligation to pay for services provided to the Transmission Owner by the ISO or to pay any deficiency payments, penalties or sanctions imposed by the ISO under the ISO OATT or the ISO Services Tariff.

5.02 Additional Limitations of Liability

Except as otherwise provided under the ISO OATT, a Transmission Owner shall not be liable for any indirect, consequential, exemplary, special, incidental or punitive damages including, without limitation, lost revenues or profits, the cost of replacement power or the cost of capital, even if such damages are foreseeable or the damaged party has been advised of the possibility of such damages and regardless of whether any such damages are deemed to result from the failure or inadequacy of any exclusive or other remedy.

5.03 Indemnification

The ISO shall indemnify, save harmless and defend the Transmission Owners, including their directors, officers, employees, trustees, and agents, or each of them, from and against all claims, demands, losses, liabilities, judgments, damages (including, without limitation, any consequential, incidental, direct, special, indirect, exemplary or punitive damages and economic costs), and related costs and expenses (including, without limitation, reasonable attorney and expert fees, and disbursements incurred by the Transmission Owners in any actions or proceedings between one or more Transmission Owners and one or more Transmission Owners and a third party, Market Participant, the ISO, or any other party) arising out of or related to the Transmission Owner's or the ISO's acts or omissions related in any way to the Transmission Owner's ownership or operation of its transmission facilities when such acts or omissions are either (1) pursuant to or consistent with ISO Procedures or direction; or (2) in any way related to the Transmission Owner's or the ISO's performance under the ISO OATT, except to the extent that the Transmission Owner(s) is found liable for negligence or intentional misconduct, and under the ISO Services Tariff, the ISO Agreement, the ISO/NYSRC Agreement, NYSRC Agreement, or this Agreement, except to the extent the Transmission Owner(s) is found liable for gross negligence or intentional misconduct.

5.04 Force Majeure

A Party shall not be considered to be in default or breach under this Agreement, and shall be excused from performance or liability for damages to any other party, if and to the extent it shall be delayed in or prevented from performing or carrying out any of the provisions of this Agreement, except the obligation to pay any amount when due, arising out of or from any act, omission, or circumstance occasioned by or in consequence of any act of God, labor disturbance,

failure of contractors or suppliers of materials, act of the public enemy, war, invasion, insurrection, riot, fire, storm, flood, ice, explosion, breakage or accident to machinery or equipment or by any other cause or causes beyond such Party's reasonable control, including any curtailment, order, regulation, or restriction imposed by governmental,

military or lawfully established civilian authorities, or by the making of repairs necessitated by an emergency circumstance not limited to those listed above upon the property or equipment of the ISO or any party to the ISO Agreement. Nothing contained in this Article shall relieve any entity of the obligations to make payments when due hereunder or pursuant to a Service Agreement. Any party claiming a force majeure event shall use reasonable diligence to remove the condition that prevents performance, except the settlement of any labor disturbance shall be in the sole judgment of the affected party.

5.05 Claims by Employees and Insurance

A Party shall be solely responsible for and shall bear all of the costs of claims by its own employees, contractors, or agents arising under and covered by, any workers' compensation law. A Party shall furnish, at its sole expense, such insurance coverage and such evidence thereof, or evidence of self-insurance, as is reasonably necessary to meet its obligations under this Agreement. Additionally, the ISO will procure insurance or other alternative risk financing arrangements sufficient to cover the risks associated with the ISO carrying out its obligations, including the obligation to indemnify the Transmission Owners. The ISO shall provide the Transmission Owners with the details of such insurance and shall have them named as additional insureds to the extent of their insurable interests.

5.06 Survival

The provisions of this Article, "Limitations of Liability and Indemnification" shall survive the termination or expiration of this Agreement or the ISO Tariffs.

ARTICLE 6.0: OTHER PROVISIONS

6.01 Term and Termination

This Agreement shall become effective upon the execution of this Agreement by the Transmission Owners and the ISO and on the latest of: (i) the date(s) FERC accepts for filing, without condition or material modification: (a) this Agreement; (b) the ISO Tariffs; (c) the ISO Agreement; (d) the NYSRC Agreement; and (e) the ISO/NYSRC Agreement ("ISO Tariffs" and "ISO Related Agreements"); (ii) the date on which FERC, the PSC and any other regulatory agency having jurisdiction grant all necessary approvals, including, without limitation, any approvals required under Section 70 of the Public Service Law and Section 203 of the FPA; (iii) September 1, 1999; or (iv) on such later date specified by FERC. Without waiving or limiting any of its other rights under this Article, if a Transmission Owner determines that any of the conditions set forth in Section 3.04 hereof is not being met or ceases to be in full force and effect that Transmission Owner may withdraw from this Agreement, the ISO Agreement and the ISO Tariffs and withdraw its assets from the ISO's control and administration on ninety (90) days prior written notice to all Parties to this Agreement and FERC. Such notice shall identify the condition or conditions set forth in Section 3.04 that have not been met or no longer are in full force and effect; provided, however, that prior to the filing of such notice, the ISO shall be advised of the specific condition or conditions that are no longer in full force and effect, and the ISO shall have the opportunity to restore the effectiveness of the condition or conditions identified within a thirty (30) day period. If the effectiveness of the condition or conditions is not restored within thirty (30) days, the Transmission Owner may file a notice of withdrawal with the ISO and FERC; provided, however, that if the ISO demonstrates that it has made a good faith effort but has been unable to restore the effectiveness of the condition or conditions within

the thirty (30) day period, the ISO shall be provided an additional thirty (30) day period to restore the effectiveness of the condition or conditions and the Transmission Owner may not file the notice of withdrawal until the expiration of the second thirty (30) day period. Withdrawal of a Transmission Owner under this Section shall be effective ninety (90) days after the filing of the notice of withdrawal unless FERC finds that such withdrawal of an Investor-Owned Transmission Owner is contrary to the public interest, as that standard has been judicially construed under the Mobile-Sierra doctrine. However, the Transmission Owner who submitted the notice of withdrawal may withdraw the notice or extend the withdrawal date. Nothing in this section shall be construed as a voluntary undertaking by any Transmission Owner to remain a Party to this Agreement after the expiration of its notice of withdrawal.

In addition to the foregoing provision, after the fifth anniversary of the effective date of this Agreement, this Agreement may be terminated by a unanimous vote of the Transmission Owners or their successors or assignees. If the Transmission Owners vote to terminate this Agreement, they will file with FERC and the PSC an explanation of their action and a proposal for an alternative plan for the safe, reliable and efficient operation of the NYS Transmission System.

6.02 Withdrawal

Any Transmission Owner may withdraw from this Agreement, the ISO Agreement and the ISO Tariffs and withdraw its assets from the ISO control and administration upon ninety (90) days written notice to the ISO Board and FERC. In the case of an Investor-Owned Transmission Owner, no further approval by FERC shall be required for such withdrawal from this Agreement, if such Investor-Owned Transmission Owner has on file with FERC its own open access transmission tariff and such withdrawal shall be effective unless FERC finds that such

withdrawal is contrary to the public interest, as that standard has been judicially construed under the Mobile-Sierra doctrine . Any modification to this Article shall provide any Party with the right to withdraw from the Agreement pursuant to the unmodified provisions of this Article, within ninety (90) days of the effective date of such modification. Notwithstanding any other provision of Article 6, in the event that the tax-exempt financing of a Party is jeopardized by its participation in the ISO, the Party may withdraw from this Agreement, the ISO Agreement and the ISO Tariffs and withdraw any assets from ISO control and administration upon thirty (30) days prior written notice to the ISO Board.

6.03 Obligations after Termination or Withdrawal

- a. Following termination or withdrawal from the Agreement, a Party shall remain liable for all obligations arising hereunder prior to the effective date of termination or withdrawal, including all obligations accrued prior to the effective date, imposed on the Party by this Agreement or the ISO Tariffs or other ISO Related Agreements.
- b. Termination or the withdrawal from this Agreement shall not relieve a Party of any continuing obligation it may have under the ISO Tariffs and ISO Related Agreements, unless the Party also withdraws from the ISO Tariffs or ISO Related Agreements.

6.04 Winding Up

Any provision of this Agreement that expressly or by implication comes into or remains in force following the termination or withdrawal from this Agreement shall survive such termination or withdrawal. The surviving provisions shall include, but shall not be limited to (i) those provisions necessary to permit the orderly conclusion, or continuation pursuant to another

agreement, of transactions entered into prior to the termination of or withdrawal from this Agreement, (ii) those provisions necessary to conduct final billing, collection, and accounting with respect to all matters arising hereunder, and (iii) the indemnification and limitation of liability provisions as applicable to periods prior to such termination or withdrawal. The ISO and the terminating or withdrawing Party or Parties shall have an obligation to make a good faith effort to agree upon a mutually satisfactory termination or withdrawal plan. Such plan shall have among its objectives an orderly termination or withdrawal. The plan shall address, to the extent necessary, the allocation of any costs directly related to the termination or withdrawal by the Party or Parties terminating or withdrawing from the Agreement.

6.05 Confidentiality

- A. Party Access.** No Transmission Owner shall have a right hereunder to receive or review any documents, data or other information of another Transmission Owner or the ISO supplied pursuant to this Agreement, including documents, data or other information provided to the ISO, to the extent such documents, data or information have been designated as confidential pursuant to the procedures specified in the ISO Tariffs or to the extent that they have been designated as confidential by such other Party; provided, however, that a Party may receive and review any composite documents, data and other information that may be developed based on such confidential documents, data or information if the composite does not disclose any individual Party's confidential data or information.
- B. Required Disclosure.** Notwithstanding anything in this Section to the contrary, if a Party is required by applicable law, or in the course of administrative or

judicial proceedings, or subpoena, to disclose information that is otherwise required to be maintained in confidence pursuant to this Section, that Party may make disclosure of such information; provided, however, that as soon as the Party learns of the disclosure requirement and prior to making such disclosure, that Party shall notify the affected Party or Parties of the requirement and the terms thereof and the affected Party or Parties may, at their sole discretion and cost, assert any challenge to or defense against the disclosure requirement and the Party shall cooperate with such affected Parties to the maximum extent practicable to minimize the disclosure of the information consistent with applicable law. Each Party shall cooperate with the affected Parties to obtain proprietary or confidential treatment of such information by the person to whom such information is disclosed prior to any such disclosure.

6.06 Governing Law; Jurisdiction

The interpretation and performance of this Agreement shall be in accordance with and shall be controlled by the laws of the State of New York as though this Agreement is made and performed entirely in New York. With respect to any claim or controversy arising from this Agreement or performance hereunder within the subject matter jurisdiction of the Federal or State courts of the State of New York, the Parties consent to the exclusive jurisdiction and venue of said courts.

6.07 Headings

The section headings herein are for convenience and reference only and in no way define or limit the scope of this Agreement or in any way affect its provisions. Whenever the terms

hereto, hereunder, herein or hereof are used in this Agreement, they shall be construed as referring to this entire Agreement, rather than to any individual section, subsection or sentence.

6.08 Mutual Agreement

Nothing in this Agreement is intended to limit the Parties' ability to mutually agree upon taking a course of action different than that provided for herein; provided that doing so will not adversely affect any other Parties' rights under this Agreement.

6.09 Contract Supremacy

In the case of a conflict between the express terms of this Agreement and the terms of the ISO Agreement, the express terms of this Agreement shall prevail. In the case of a conflict between the express terms of this Agreement and the terms of the ISO-NYSRC Agreement, the express terms of this Agreement shall prevail. In the case of a conflict between the express terms of this Agreement and the express terms of an ISO Tariff the terms of this Agreement shall prevail.

6.10 Additional Remedies

The Parties agree that remedies at law will be inadequate to protect the interests of the Transmission Owners and that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed by the ISO in accordance with their specific terms or were otherwise breached. Accordingly, it is agreed that the Transmission Owners, or any Transmission Owner, individually or in conjunction with one or more other Transmission Owners, shall be entitled to an injunction or injunctions to prevent breaches of this Agreement or an ISO Tariff by the ISO and specific performance to enforce specifically the terms and

provisions thereof in any court of the United States or any state having jurisdiction, this being in addition to any other remedy to which the Transmission Owners are entitled at law or in equity.

6.11 No Third Party Rights

Nothing in this Agreement, express or implied, is intended to confer on any person, other than the Parties hereto, any rights or remedies under or by reason of this Agreement.

6.12 Not Partners

Nothing contained in this Agreement shall be construed to make the Parties partners or joint venturers or to render any Party liable for the debts or obligations of any other Party.

6.13 Waiver

Any waiver at any time of the rights of any Party as to any default or failure to require strict adherence to any of the terms herein, on the part of any other Party or Parties to this Agreement or as to any other matters arising hereunder shall not be deemed a waiver as to any default or other matter subsequently occurring.

6.14 Modification

This Agreement is subject to change under Sections 205 of the FPA, as that section may be amended or superseded, upon the mutual written agreement of the Parties. Absent mutual agreement of the Parties, it is the intent of this Section 6.14 that, to the maximum extent permitted by law, the terms and conditions set forth in Sections 2.01, 3.03, 3.04, 3.09, 3.10, 3.11, 4.01, 4.02, 5.01, 5.02, 5.03, 5.04, 5.05, 5.06, 6.01, 6.02, 6.09 and 6.14 of this Agreement shall not be subject to change, regardless of whether such change is sought (a) by the Commission acting sua sponte on behalf of a Party or third party, (b) by a Party, (c) by a third party, or (d) in any other manner; subject only to an express finding by FERC that such change is

required under the public interest standard under the Mobile-Sierra doctrine. Any other provision of this Agreement may be changed pursuant to a filing with FERC under Section 206 of the FPA and a finding by FERC that such change is just and reasonable.

6.15 Good Faith Resolution.

If cost shifting occurs as a result of FERC's decision in Central Hudson Gas & Electric Corporation, Docket Nos. ER97-1523-011, OA97-470-010, and ER97-4234-008, the ISO and the Transmission Owners will work together in good faith to achieve a fair and equitable resolution.

6.16 Counterparts.

This Agreement may be executed in any number of counterparts, no one of which needs to be executed by all of the Parties, and this Agreement shall be binding upon all the Parties with the same force and effect as if all the Parties had signed the same document, and each such signed counterpart shall constitute an original of this Agreement.

IN WITNESS WHEREOF, each of the Parties hereto has caused this Agreement to be executed in its corporate name by its proper officers as of the date first written above.

New York Independent System Operator

By: _____

Richard J. Grossi

Title: Chairman

Date: _____

Central Hudson Gas & Electric Corporation

By: _____

Carl E. Meyer

Title: President and Chief Operating Officer

Date: _____

Consolidated Edison Company of New York, Inc.

By: _____

Stephen B. Bram

Title: Senior Vice President, Central Operations

Date: _____

LIPA

By: _____

Richard M. Kessel

Title: Chairman

Date: _____

New York State Electric & Gas Corporation

By: _____

Denis E. Wickham

Title: Senior Vice President, Energy Operating Services

Date: _____

Niagara Mohawk Power Corporation

By: _____

Clement E. Nadeau

Title: Vice President, Electric Delivery

Date: _____

Orange and Rockland Utilities, Inc.

By: _____

Kevin Burke

Title: President and Chief Executive Officer

Date: _____

Rochester Gas and Electric Corporation

By: _____

Clifton B. Olson

Title: Vice President, Energy Supply

Date: _____

New York Power Authority

By: _____

Clarence D. Rappleyea

Title: Chairman and Chief Executive Officer

Date: _____

APPENDIX A-1

LISTING OF TRANSMISSION FACILITIES

UNDER ISO OPERATIONAL CONTROL

APPENDIX A-2

LISTING OF TRANSMISSION FACILITIES

REQUIRING ISO NOTIFICATION