

**SERVICE AGREEMENT NO. 2772**

**SERVICE AGREEMENT NO. 2772**  
**TRANSMISSION FACILITY**  
**INTERCONNECTION AGREEMENT**  
**AMONG THE**  
**NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.**  
**AND**  
**CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.**  
**AND**  
**NEW YORK POWER AUTHORITY**  
**AND**  
**CHPE LLC**

**Dated as of April 21, 2023**

**(Interconnection of Astoria-Rainey Cable at Rainey Substation and  
Upgrades Concerning Champlain Hudson Power Express Project)**

## SERVICE AGREEMENT NO. 2772

### TABLE OF CONTENTS

	Page Number
ARTICLE 1. DEFINITIONS .....	2
ARTICLE 2. EFFECTIVE DATE, TERM AND TERMINATION .....	7
2.1 Effective Date .....	7
2.2 Term of Agreement .....	7
2.3 Termination .....	7
2.4 Termination Costs .....	8
2.5 Disconnection .....	9
2.6 Survival .....	9
ARTICLE 3. REGULATORY FILINGS .....	9
ARTICLE 4. SCOPE OF INTERCONNECTION SERVICE .....	9
4.1 Interconnection of Transmission Facilities .....	9
4.2 No Transmission Delivery Service .....	9
4.3 No Other Services .....	10
ARTICLE 5. EPC SERVICES .....	10
5.1 Performance of EPC Services .....	10
5.2 Equipment Procurement .....	10
5.3 Construction Commencement .....	10
5.4 Work Progress .....	11
5.5 Information Exchange .....	11
5.6 Upgrades .....	11
5.7 Access Rights .....	11
5.8 Lands of Other Property Owners .....	12
5.9 Permits .....	12
5.10 Reserved .....	12
5.11 Suspension .....	12
5.12 Taxes .....	13
5.13 Tax Status; Non-Jurisdictional Entities .....	16
5.14 Modification .....	16
ARTICLE 6. TESTING AND INSPECTION .....	17
6.1 Pre-In-Service Date Testing and Modifications .....	17
6.2 Post-In-Service Date Testing and Modifications .....	18
6.3 Right to Observe Testing .....	18
6.4 Right to Inspect .....	18
ARTICLE 7. RESERVED .....	18
ARTICLE 8. COMMUNICATIONS .....	18
8.1 NYPA Obligations .....	18
8.2 Remote Terminal Unit .....	19
8.3 No Annexation .....	19
ARTICLE 9. OPERATIONS .....	19
9.1 General .....	19
9.2 NYISO and Con Edison Obligations .....	19

9.3	NYPA Obligations .....	20
9.4	Outages and Interruptions .....	20

## SERVICE AGREEMENT NO. 2772

9.5	Switching and Tagging Rules.....	23
9.6	Disturbance Analysis Data Exchange.....	23
ARTICLE 10. MAINTENANCE.....		23
10.1	Con Edison Obligations .....	23
10.2	NYPA Obligations.....	23
10.3	Coordination .....	23
10.4	Secondary Systems .....	23
10.5	Operating and Maintenance Expenses.....	24
ARTICLE 11. PERFORMANCE OBLIGATION .....		24
11.1	Astoria-Rainey Cable.....	24
11.2	Upgrades.....	24
11.3	Reserved .....	24
11.4	Reserved .....	24
11.5	Provision of Security.....	24
11.6	Reserved .....	24
ARTICLE 12. INVOICE .....		24
12.1	General .....	24
12.2	Final Invoice .....	25
12.3	Payment .....	25
12.4	Disputes .....	25
ARTICLE 13. EMERGENCIES .....		25
13.1	Obligations.....	25
13.2	Notice .....	26
13.3	Immediate Action.....	26
13.4	NYISO, NYPA, and Con Edison Authority .....	26
13.5	Limited Liability .....	26
ARTICLE 14. REGULATORY REQUIREMENTS AND GOVERNING LAW .....		26
14.1	Regulatory Requirements.....	26
14.2	Governing Law .....	27
ARTICLE 15. NOTICES.....		27
15.1	General .....	27
15.2	Billings and Payments.....	27
15.3	Alternative Forms of Notice.....	27
15.4	Operations and Maintenance Notice.....	27
ARTICLE 16. FORCE MAJEURE.....		27
ARTICLE 17. DEFAULT.....		28
17.1	General .....	28
17.2	Right to Terminate .....	28
ARTICLE 18. INDEMNITY, CONSEQUENTIAL DAMAGES AND INSURANCE .....		28
18.1	Indemnity.....	28
18.2	No Consequential Damages .....	30
18.3	Insurance.....	30
ARTICLE 19. ASSIGNMENT .....		32
ARTICLE 20. SEVERABILITY .....		33
ARTICLE 21. COMPARABILITY .....		33

ARTICLE 22. CONFIDENTIALITY .....	33
-----------------------------------	----

## SERVICE AGREEMENT NO. 2772

22.1	Confidentiality .....	33
22.2	Term .....	34
22.3	Confidential Information.....	34
22.4	Scope .....	34
22.5	Release of Confidential Information.....	34
22.6	Rights.....	34
22.7	No Warranties .....	35
22.8	Standard of Care .....	35
22.9	Order of Disclosure .....	35
22.10	Termination of Agreement .....	35
22.11	Remedies .....	35
22.12	Disclosure to FERC, its Staff, or a State.....	36
22.13	Required Notices Upon Requests or Demands for Confidential Information .	36
ARTICLE 23. DEVELOPER, NYPA, AND CON EDISON NOTICES OF ENVIRONMENTAL RELEASES		37
ARTICLE 24. INFORMATION REQUIREMENT .....		37
24.1	Information Acquisition .....	37
24.2	Information Submission Concerning Upgrades .....	37
24.3	Updated Information Submission Concerning the Astoria-Rainey Cable .....	37
24.4	Information Supplementation.....	38
ARTICLE 25. INFORMATION ACCESS AND AUDIT RIGHTS.....		38
25.1	Information Access .....	38
25.2	Reporting of Non-Force Majeure Events.....	38
25.3	Audit Rights.....	39
25.4	Audit Rights Periods .....	39
25.5	Audit Results .....	39
ARTICLE 26. SUBCONTRACTORS .....		39
26.1	General .....	39
26.2	Responsibility of Principal .....	40
26.3	No Limitation by Insurance.....	40
ARTICLE 27. DISPUTES .....		40
27.1	Submission.....	40
27.2	External Arbitration Procedures .....	40
27.3	Arbitration Decisions .....	41
27.4	Costs .....	41
27.5	Termination .....	41
ARTICLE 28. REPRESENTATIONS, WARRANTIES AND COVENANTS .....		41
28.1	General .....	41
ARTICLE 29. MISCELLANEOUS.....		42
29.1	Binding Effect.....	42
29.2	Conflicts.....	42
29.3	Rules of Interpretation.....	42
29.4	Compliance.....	43
29.5	Joint and Several Obligations .....	43
29.6	Entire Agreement.....	43

29.7	No Third Party Beneficiaries.....	43
------	-----------------------------------	----

**SERVICE AGREEMENT NO. 2772**

29.8	Waiver .....	43
29.9	Headings .....	44
29.10	Multiple Counterparts .....	44
29.11	Amendment .....	44
29.12	Modification by the Parties .....	44
29.13	Reservation of Rights .....	44
29.14	No Partnership .....	44
29.15	Other Transmission Rights .....	45

Appendices





## **SERVICE AGREEMENT NO. 2772**

### **TRANSMISSION FACILITY INTERCONNECTION AGREEMENT**

**THIS TRANSMISSION FACILITY INTERCONNECTION AGREEMENT** (“Agreement”) is made and entered into this 21st day of April 2023, by and among: (i) Consolidated Edison Company of New York, Inc. a transportation corporation organized and existing under the laws of the State of New York (“Con Edison”), (ii) New York Power Authority, a corporate municipal instrumentality organized and existing under the laws of the State of New York (“NYPA”); (iii) CHPE LLC, a limited liability company organized and existing under the laws of the State of New York (“Developer”); and (iv) 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”). Con Edison, NYPA, NYISO, or Developer each may be referred to as a “Party” or collectively referred to as the “Parties,” unless otherwise indicated in this Agreement.

### **RECITALS**

**WHEREAS**, NYISO operates the New York State Transmission System, and Con Edison and NYPA own certain facilities included in the New York State Transmission System;

**WHEREAS**, Developer is developing a 1000 MW HVDC transmission facility (NYISO Queue No. 631) with a 250 MW expansion of the transmission facility (NYISO Queue No. 887) (collectively, the “Merchant Transmission Facility”) that will interconnect to NYPA’s 345 kV Astoria Annex gas insulated switchgear substation (“Astoria Annex Substation”) that is part of the New York State Transmission System;

**WHEREAS**, Developer will construct the Merchant Transmission Facility in accordance with the requirements in the Merchant Transmission Facility Interconnection Agreement for the Merchant Transmission Facility among the NYISO, NYPA, and Developer dated June 3, 2022 (NYISO OATT Service Agreement No. 2710), as such agreement may be amended from time to time;

**WHEREAS**, Developer has elected to reconductor the overhead 138 kV portion of Con Edison’s Feeder # 34091 as an Elective System Upgrade Facility in connection with the Merchant Transmission Facility (“Reconductoring Upgrades”);

**WHEREAS**, Developer has also elected to develop a 345 kV cable running from NYPA’s Astoria Annex Substation to Con Edison’s Rainey Substation (“Astoria-Rainey Cable”) and related System Upgrade Facilities at the Rainey Substation (“Rainey Substation Upgrades”) as Elective System Upgrade Facilities in connection with the Merchant Transmission Facility;

**WHEREAS**, Developer will construct the Astoria-Rainey Cable in accordance with the requirements in the Merchant Transmission Facility Interconnection Agreement, and NYPA will own, operate, and maintain the Astoria-Rainey Cable;

**WHEREAS**, the Merchant Transmission Facility is participating in the Interconnection Facilities Study for Class Year for 2021 (“Class Year Study”), the Class Year Study has

NYISO Agreements --> Service Agreements --> TFIA among NYISO, Con Ed, NYPA, and CHPE for Astoria Rainey  
determined that the Merchant Transmission Facility will have certain impacts on Con Edison's

## **SERVICE AGREEMENT NO. 2772**

system as an Affected System, and the Class Year Study has identified certain System Upgrade Facilities required to reliably interconnect at the Rainey Substation (“Affected System Upgrade Facilities”);

**WHEREAS**, for purposes of this Agreement, the Reconductoring Upgrades, Rainey Station Upgrades, and Affected System Upgrade Facilities will be collectively known as the “Upgrades”;

**WHEREAS**, Developer has accepted its Project Cost Allocation, and posted to Con Edison the Security, for the Upgrades identified in connection with the Merchant Transmission Facility in the Class Year Study in accordance with the requirements in Attachment S of the NYISO OATT;

**WHEREAS**, the Parties have agreed to enter into this Agreement for the purpose of NYPA interconnecting the Astoria-Rainey Cable with Con Edison’s Rainey Substation, which is part of the New York State Transmission System; and

**WHEREAS**, the Parties have also agreed to enter into this Agreement for purposes of allocating the responsibilities for the engineering, procurement, and construction of the Upgrades (“EPC Services”);

**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 1 of the ISO OATT, Section 30.1 of Attachment X of the ISO OATT, Section 25.1.2 of Attachment S of the ISO OATT, the body of the LFIP or the body of this Agreement.

**Affected System** shall mean an electric system other than the transmission system owned, controlled or operated by the Connecting Transmission Owner that may be affected by the proposed interconnection. For purposes of this Agreement, the Affected System shall mean Con Edison’s system.

**Affected System Operator** shall mean the entity that operates an Affected System. For purposes of this Agreement, the Affected System Operator shall mean Con Edison.

**Affected System Upgrade Facilities** shall have the meaning set forth in the recitals and shall be specified in Appendix A of this Agreement.

**Affiliate** shall mean, with respect to a person or entity, any individual, corporation, partnership, firm, joint venture, association, joint-stock company, trust or unincorporated organization, directly or indirectly controlling, controlled by, or under common control with, such person or entity. The term “control” shall mean the possession, directly or indirectly, of the power to



## **SERVICE AGREEMENT NO. 2772**

direct the management or policies of a person or an entity. A voting interest of ten percent or more shall create a rebuttable presumption of control.

**Applicable Laws and Regulations** shall mean 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, including but not limited to Environmental Law.

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

**Applicable Reliability Standards** shall mean the requirements and guidelines of the Applicable Reliability Councils and of Con Edison's Transmission District, 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 this Agreement.

**Astoria-Rainey Cable** shall have the meaning set forth in the Recitals.

**Breach** shall mean the failure of a Party to perform or observe any material term or condition 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.

**Completion Date** shall mean the date on which Con Edison has completed the EPC Services, as set forth in Appendix A.

**Confidential Information** shall mean any information that is defined as confidential by Article 22 of this Agreement.

**Default** shall mean the failure of a Party in Breach of this Agreement to cure such Breach in accordance with Article 17 of this Agreement.

**Developer** shall have the meaning set forth in the recitals of this Agreement.

**Effective Date** shall mean the date on which this Agreement becomes effective upon execution by the Parties, subject to acceptance by the Commission, or if filed unexecuted, upon the date specified by the Commission.

**Elective System Upgrade Facility** shall mean a System Upgrade Facility elected by the Developer pursuant to Section 25.6.1.4.1 of Attachment S to the ISO OATT that is more extensive than the minimum facilities required to reliably interconnect the Merchant Transmission Facility and is reasonably related to the interconnection of the project.



## **SERVICE AGREEMENT NO. 2772**

**Emergency State** shall mean the condition or state that the New York State Power System is in when an abnormal condition occurs that requires automatic or immediate manual action to prevent or limit loss of the New York State Transmission System or Generators that could adversely affect the reliability of the New York State Power System.

**Environmental Law** shall mean Applicable Laws and Regulations relating to pollution or protection of the environment or natural resources.

**EPC Services** shall have the meaning set forth in the recitals and shall consist of the services described in Appendix A.

**Federal Power Act** shall mean the Federal Power Act, as amended, 16 U.S.C. §§ 791a *et seq.* (“FPA”).

**FERC** shall mean the Federal Energy Regulatory Commission (“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 practices, 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, 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 Developer, NYISO, Con Edison, NYPA, or any Affiliate thereof.

**Hazardous Substances** shall mean any chemicals, materials or substances defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “hazardous constituents,” “restricted hazardous materials,” “extremely hazardous substances,” “toxic substances,” “radioactive substances,” “contaminants,” “pollutants,” “toxic pollutants” or words of similar meaning and regulatory effect under any applicable Environmental Law, or any other



NYISO Agreements --> Service Agreements --> TFIA among NYISO, Con Ed, NYPA, and CHPE for Astoria Rainey  
chemical, material or substance, exposure to which is prohibited, limited or regulated by any  
applicable Environmental Law.

## **SERVICE AGREEMENT NO. 2772**

**In-Service Date(s)** shall mean the date(s) upon which the Astoria-Rainey Cable and the Upgrades, as applicable, are energized consistent with the provisions of this Agreement and available to provide Transmission Service under the NYISO's Tariffs, which date(s) shall be set forth in the milestones table in Appendix B. Developer must provide notice of the In-Service Date of the Astoria-Rainey Cable to the other Parties in the form of Appendix E-1 to this Agreement. Con Edison must provide notice of the In-Service Date of the Upgrades to the other Parties in the form of Appendix E-2 to this Agreement.

**Interconnection Facilities Study** shall mean a study conducted by NYISO or a third party consultant for the Developer to determine a list of facilities (including Connecting Transmission Owner's Attachment Facilities, Distribution Upgrades, System Upgrade Facilities and System Deliverability Upgrades as identified in the Interconnection System Reliability Impact Study), the cost of those facilities, and the time required to interconnect the Merchant Transmission Facility with the New York State Transmission System or with the Distribution System. The scope of the study is defined in Section 30.8 of the Standard Large Facility Interconnection Procedures.

**IRS** shall mean the Internal Revenue Service.

**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.

**Material Modification** shall mean those modifications that have a material impact on the cost or timing of any Interconnection Request with a later queue priority date.

**Merchant Transmission Facility** shall have the meaning set forth in the recitals of this Agreement.

**Merchant Transmission Facility Interconnection Agreement** shall have the meaning set forth in the recitals of this Agreement.

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

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

**Notice of Dispute** shall mean a written notice of a dispute or claim that arises out of or in connection with this Agreement or its performance.

**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.



## **SERVICE AGREEMENT NO. 2772**

**Party or Parties** shall mean NYISO, Con Edison, NYPA, or Developer or any combination of the above, except as otherwise indicated in this Agreement.

**Point(s) of Change of Ownership** shall mean the point(s), as set forth in Appendix C to this Agreement, where the Astoria-Rainey Cable connects to Con Edison's system.

**Point(s) of Interconnection** shall mean the point(s), as set forth in Appendix C to this Agreement, where the Astoria-Rainey Cable connects to the New York State Transmission System.

**Rainey Substation Upgrades** shall have the meaning set forth in the recitals and shall be specified in Appendix A of this Agreement.

**Reasonable Efforts** shall mean, with respect to an action required to be attempted or taken by a Party under this Agreement, 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.

**Reconductoring Upgrades** shall have the meaning set forth in the recitals and shall be specified in Appendix A of this Agreement.

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

**Standard Large Facility Interconnection Procedures ("Large Facility Interconnection Procedures" or "LFIP")** shall mean the interconnection procedures applicable to an Interconnection Request pertaining to the Merchant Transmission Facility that are included in Attachment X of the ISO OATT.

**System Protection Facilities** shall mean the equipment, including necessary protection signal communications equipment, required to (1) protect the New York State Transmission System from faults or other electrical disturbances occurring at the Astoria-Rainey Cable and (2) protect the Astoria-Rainey Cable from faults or other electrical system disturbances occurring on the New York State Transmission System or on other delivery systems or other generating systems to which the New York State Transmission System is directly connected.

**System 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 to the existing transmission system that are required to maintain system reliability due to: (i) changes in the system, including such changes as load growth and changes in load pattern, to be addressed in the form of generic generation or transmission projects; and (ii) proposed interconnections. In the case of proposed interconnection projects, System Upgrade Facilities are the modifications or additions to the existing New York State Transmission System that are required for the proposed project to connect reliably to the system in a manner that meets the NYISO Minimum Interconnection Standard.



## **SERVICE AGREEMENT NO. 2772**

**Tariff** shall mean the NYISO Open Access Transmission Tariff (“OATT”), as filed with the Commission, and as amended or supplemented from time to time, or any successor tariff.

**Transmission Facility Interconnection Agreement** shall mean this Agreement.

**Trial Operation** shall mean the period during which Developer or Con Edison, as applicable, is engaged in on-site test operations and commissioning of the Astoria-Rainey Cable or the Upgrades prior to the In-Service Date.

**Upgrades** shall have the meaning set forth in the recitals and shall consist of the System Upgrade Facilities described in Appendix A of this Agreement.

**Upgrades Estimated Total Costs** shall be the costs for the engineering, procurement, and construction of the Upgrades identified in the Class Year Study for Class Year 2021. The Upgrades Estimated Total Costs are included in Appendix A.

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

### **2.1 Effective Date.**

This Agreement shall become effective upon execution by the Parties, subject to acceptance by FERC, or if filed unexecuted, upon the date specified by FERC. The NYISO, Con Edison, and NYPA shall promptly file this Agreement with FERC upon execution in accordance with Article 3.

### **2.2 Term of Agreement.**

Subject to the provisions of Article 2.3, this Agreement shall remain in effect for a period of thirty (30) years from the Effective Date and shall be automatically renewed for each successive one-year period thereafter.

### **2.3 Termination.**

#### **2.3.1 Completion of EPC Services**

Upon the later date of: (i) the Completion Date, and (ii) the date on which the final payment of all invoices issued under this Agreement for the EPC Services have been made pursuant to Articles 12.2 and 12.3 and any remaining Security has been released or refunded pursuant to Article 11.5, the Developer’s role in this Agreement shall be complete, and the Developer shall not have further rights or obligations under this Agreement, except as set forth in Article 2.6 of this Agreement as it relates to the EPC Services and Articles 18.3.8 and 18.3.15 concerning Developer’s insurance requirements.

#### **2.3.2 Written Notice.**

This Agreement may be terminated (i) by any Party after giving the other Parties ninety (90) Calendar Days advance written notice following the termination of the Merchant



## **SERVICE AGREEMENT NO. 2772**

Transmission Facility Interconnection Agreement prior to the completion and energization of the Merchant Transmission Facility, or (ii) by the mutual agreement in writing of all Parties.

### **2.3.3 Default.**

Any Party may terminate this Agreement in accordance with Article 17.

### **2.3.4 Compliance.**

Notwithstanding Articles 2.3.2 and 2.3.3, no termination of this Agreement shall become effective until the Parties have complied with all Applicable Laws and Regulations applicable to such termination, including the filing with FERC of a notice of termination of this Agreement, which notice has been accepted for filing by FERC.

## **2.4 Termination Costs.**

If this Agreement is terminated pursuant to Articles 2.3.2 or 2.3.3 above, Developer shall pay all costs incurred (including any cancellation costs relating to orders or contracts for Upgrades and equipment) or charges assessed by the other Parties, as of the date of the Parties' mutual agreement to terminate or the Parties' receipt of notice of termination, that are the responsibility of the Developer under this Agreement. In the event of termination, all Parties shall use commercially Reasonable Efforts to mitigate the costs, damages and charges arising as a consequence of termination. Upon termination of this Agreement, unless otherwise ordered or approved by FERC:

**2.4.1** With respect to any portion of the Upgrades that have not yet been constructed or installed, Con Edison shall to the extent possible and with Developer's authorization cancel any pending orders of, or return, any materials or equipment for, or contracts for construction of, such facilities; provided that in the event Developer elects not to authorize such cancellation, Developer shall assume all payment obligations with respect to such materials, equipment, and contracts, and Con Edison shall deliver such material and equipment, and, if necessary, assign such contracts, to Developer as soon as practicable, at Developer's expense. To the extent that Developer has already paid Con Edison for any or all such costs of materials or equipment not taken by Developer, Con Edison shall promptly refund such amounts to Developer, less any costs, including penalties incurred by the Con Edison to cancel any pending orders of or return such materials, equipment, or contracts.

**2.4.2** Con Edison may, at its option, retain any portion of such materials, equipment, or facilities that Developer chooses not to accept delivery of, in which case Con Edison shall be responsible for all costs associated with procuring such materials, equipment, or facilities.

**2.4.3** If this Agreement is terminated prior to the Upgrades entering into service, Developer shall be responsible for all costs associated with the removal, relocation or other disposition or retirement of the materials, equipment, or facilities for any portion of the





## **SERVICE AGREEMENT NO. 2772**

Upgrades, and any other facilities already installed or constructed pursuant to the terms of this Agreement.

### **2.5 Disconnection.**

Upon termination of this Agreement, NYPA and Con Edison will take all appropriate steps to disconnect the Astoria-Rainey Cable from Con Edison's transmission system and to perform such work as may be necessary to ensure that the New York State Transmission System shall be left in a safe and reliable condition in accordance with Good Utility Practice and the safety and reliability criteria of NYPA, Con Edison, and NYISO. Con Edison and NYPA shall be responsible for their own costs required to effectuate such disconnection, unless such termination resulted from the non-terminating Party's Default of this Agreement or such nonterminating Party otherwise is responsible for these costs under this Agreement.

### **2.6 Survival.**

This Agreement shall continue in effect after termination to the extent necessary to provide for final billings and payments and for costs incurred hereunder; including billings and payments pursuant to this Agreement; to permit the determination and enforcement of liability and indemnification obligations arising from acts or events that occurred while this Agreement was in effect; and to permit Developer, NYPA, and Con Edison each to have access to the lands of the other pursuant to this Agreement or other applicable agreements, to disconnect, remove or salvage its own facilities and equipment.

## **ARTICLE 3. REGULATORY FILINGS**

NYISO, Con Edison, and NYPA shall file this Agreement (and any amendment hereto) with the appropriate Governmental Authority, if required. Any information related to studies for interconnection asserted by Developer to contain Confidential Information shall be treated in accordance with Article 22 of this Agreement and Attachment F to the ISO OATT. If the Developer has executed this Agreement, or any amendment thereto, the Developer shall reasonably cooperate with NYISO, Con Edison, and NYPA with respect to such filing and to provide any information reasonably requested by NYISO, Con Edison, and NYPA needed to comply with Applicable Laws and Regulations.

## **ARTICLE 4. SCOPE OF INTERCONNECTION SERVICE**

### **4.1 Interconnection of Transmission Facilities.**

NYPA's Astoria-Rainey Cable and Con Edison's transmission system shall interconnect at the Point(s) of Interconnection set forth in Appendix C of this Agreement in accordance with the terms and conditions of this Agreement.

### **4.2 No Transmission Delivery Service.**

The execution of this Agreement does not constitute a request for, nor agreement to provide, any Transmission Service under the ISO OATT, and does not convey any right to deliver electricity to any specific customer or Point of Delivery.

## **SERVICE AGREEMENT NO. 2772**

### **4.3 No Other Services.**

The execution of this Agreement does not constitute a request for, nor agreement to provide Energy, any Ancillary Services or Installed Capacity under the NYISO Market Administration and Control Area Services Tariff ("Services Tariff").

## **ARTICLE 5. EPC SERVICES**

### **5.1 Performance of EPC Services.**

Con Edison shall perform the EPC Services, as set forth in Appendix A hereto, using Reasonable Efforts to complete the EPC Services by the Milestone dates set forth in Appendix B hereto. Con Edison shall not be required to undertake any action which is inconsistent with its standard safety practices, its material and equipment specifications, its design criteria and construction procedures, its labor agreements, and Applicable Laws and Regulations. In the event Con Edison reasonably expects that it will not be able to complete the Upgrades by the specified dates, Con Edison shall promptly provide written notice to Developer, NYPA, and NYISO, and shall undertake Reasonable Efforts to meet the earliest dates thereafter.

### **5.2 Equipment Procurement.**

Con Edison shall commence design of the Upgrades and procure necessary equipment as soon as practicable after all of the following conditions are satisfied, unless the Developer and Con Edison otherwise agree in writing:

**5.2.1** NYISO and Con Edison have completed the Interconnection Facilities Study pursuant to the Interconnection Facilities Study Agreement;

**5.2.2** The NYISO has completed the required cost allocation analyses, and Developer has accepted its share of the costs for necessary Upgrades in accordance with the provisions of Attachment S of the ISO OATT;

**5.2.3** Con Edison has received written authorization to proceed with design and procurement from the Developer by the date specified in Appendix B hereto; and

**5.2.4** Developer has provided Security to Con Edison in accordance with Article 11.5 by the dates specified in Appendix B hereto.

### **5.3 Construction Commencement.**

Con Edison shall commence construction of the Upgrades as soon as practicable after the following additional conditions are satisfied:

**5.3.1** Approval of the appropriate Governmental Authority has been obtained for any facilities requiring regulatory approval;

**5.3.2** Necessary real property rights and rights-of-way have been obtained, to the extent required for the construction of a discrete aspect of the Upgrades;

## **SERVICE AGREEMENT NO. 2772**

**5.3.3** Con Edison has received written authorization to proceed with construction from the Developer by the date specified in Appendix B hereto; and

**5.3.4** The Developer has provided Security to Con Edison in accordance with Article 11.5 by the dates specified in Appendix B hereto.

### **5.4 Work Progress.**

NYPA and Developer will keep the other Parties advised periodically as to the progress of the design, procurement and construction efforts of the Astoria-Rainey Cable under the Merchant Transmission Facilities Interconnection Agreement. Con Edison will keep the other Parties advised periodically as to the progress of its performance of the EPC Services under this Agreement. Any Party may, at any time, request a progress report from Con Edison, NYPA, or Developer.

### **5.5 Information Exchange.**

As soon as reasonably practicable after the Effective Date, the Developer, Con Edison, and NYPA shall exchange information, and provide NYISO the same information, regarding the design of the Astoria-Rainey Cable and the Upgrades and the compatibility of the Astoria-Rainey Cable and the Upgrades with the New York State Transmission System, and shall work diligently and in good faith to make any necessary design changes.

### **5.6 Upgrades**

Con Edison shall design and construct the Upgrades in accordance with Good Utility Practice. Con Edison shall deliver to the other Parties pursuant to the dates set forth in Appendix B “as-built” drawings, information and documents for the Upgrades.

Con Edison shall transfer to the NYISO operational control of the Upgrades at a voltage level of 345 kV, but shall not transfer operational control to the NYISO of the Upgrades at a voltage level of 138 kV.

### **5.7 Access Rights.**

Upon reasonable notice and supervision by the Granting Party, and subject to any required or necessary regulatory approvals, Con Edison, NYPA, or Developer (“Granting Party”) shall furnish to the other Parties (“Access Party”) at no cost any rights of use, licenses, rights of way and easements with respect to lands owned or controlled by the Granting Party, its agents (if allowed under the applicable agency agreement), or any Affiliate, that are necessary to enable the Access Party to obtain ingress and egress at the Point(s) of Interconnection to construct, operate, maintain, repair, test (or witness testing), inspect, replace or remove facilities and equipment to: (i) interconnect the Astoria-Rainey Cable with the New York State Transmission System; (ii) perform the EPC Services, and (iii) disconnect or remove the Access Party’s facilities and equipment upon termination of this Agreement. In exercising such licenses, rights of way and

NYISO Agreements --> Service Agreements --> TFIA among NYISO, Con Ed, NYPA, and CHPE for Astoria Rainey easements, the Access Party shall not unreasonably disrupt or interfere with normal operation of the Granting Party's business and shall adhere to the safety rules and procedures established in

## **SERVICE AGREEMENT NO. 2772**

advance, as may be changed from time to time, by the Granting Party and provided to the Access Party. The Access Party shall indemnify the Granting Party against all claims of injury or damage from third parties resulting from the exercise of the access rights provided for herein.

### **5.8 Lands of Other Property Owners.**

If any part of the Upgrades is to be installed on property owned by persons other than Developer or Con Edison, Con Edison shall at Developer's expense use efforts, similar in nature and extent to those that it typically undertakes for its own or affiliated generation, including use of its eminent domain authority, and to the extent consistent with state law, to procure from such persons any rights of use, licenses, rights of way and easements that are necessary to construct, operate, maintain, test, inspect, replace or remove the Upgrades upon such property.

### **5.9 Permits.**

NYISO, Con Edison, NYPA, and Developer shall cooperate with each other in good faith in obtaining all permits, licenses and authorizations that are necessary to perform the EPC Services set forth in Appendix A and to accomplish the interconnection in compliance with Applicable Laws and Regulations. With respect to this paragraph, Con Edison and NYPA shall provide permitting assistance to the Developer comparable to that provided to the Con Edison's or NYPA's own, or an Affiliate's generation, if any.

### **5.10 Reserved.**

### **5.11 Suspension.**

If the Developer suspends work on the Merchant Transmission Facility pursuant to the Merchant Transmission Facility Interconnection Agreement, Developer may suspend, with written notice to Con Edison, NYPA and NYISO, at any time all work by Con Edison associated with the construction and installation of the Upgrades under this Agreement required in connection with the Merchant Transmission Facility with the condition that the New York State Transmission System shall be left in a safe and reliable condition in accordance with Good Utility Practice and the safety and reliability criteria of Con Edison, NYPA, and NYISO. In such event, Developer shall be responsible for all reasonable and necessary costs and/or obligations in accordance with Attachment S to the ISO OATT including those which Con Edison or NYPA (i) has incurred pursuant to this Agreement prior to the suspension and (ii) incurs in suspending such work, including any costs incurred to perform such work as may be necessary to ensure the safety of persons and property and the integrity of the New York State Transmission System during such suspension and, if applicable, any costs incurred in connection with the cancellation or suspension of material, equipment and labor contracts which Con Edison or NYPA, as applicable, cannot reasonably avoid; provided, however, that prior to canceling or suspending any such material, equipment or labor contract, Con Edison or NYPA, as applicable, shall obtain Developer's authorization to do so.



Con Edison or NYPA, as applicable, shall invoice Developer for such costs pursuant to Article 12 and shall use due diligence to minimize its costs. In the event Developer suspends work by Con Edison or NYPA required under this Agreement pursuant to this Article 5.11, and

## **SERVICE AGREEMENT NO. 2772**

has not requested Con Edison or NYPA to recommence the work required under this Agreement on or before the expiration of three (3) years following commencement of such suspension, this Agreement shall be deemed terminated. The three-year period shall begin on the date the suspension is requested, or the date of the written notice to Con Edison, NYPA, and NYISO, if no effective date is specified.

### **5.12 Taxes.**

#### **5.12.1 Developer Payments.**

Reserved.

#### **5.12.2 Representations and Covenants.**

Reserved.

#### **5.12.3 Indemnification for the Cost Consequences of Current Tax Liability Imposed Upon Con Edison.**

Reserved.

#### **5.12.4 Tax Gross-Up Amount.**

Under Internal Revenue Code (IRC) section 118(b)(1), contributions in aid of construction paid by non-shareholders are taxable for U.S. federal income tax purposes. Con Edison intends to take the position for U.S. federal income tax purposes that the amount paid for the Upgrades is a taxable contribution in aid of construction by Developer. Without conceding any argument contrary to the position in the foregoing sentence, Con Edison and Developer have agreed that Developer's liability for the cost consequences of the current tax liability under this Article 5.12 shall be calculated on a fully grossed-up basis. Except as may otherwise be agreed to by the parties, this means that Developer will pay Con Edison, in addition to the amount paid for the Upgrades, an amount equal to (1) the current taxes imposed on Con Edison ("Current Taxes") on the excess of (a) the gross income realized by Con Edison as a result of payments or property transfers made by Developer to Con Edison under this Agreement (without regard to any payments under this Article 5.12) (the "Gross Income Amount") over (b) the present value of future tax deductions for depreciation that will be available as a result of such payments or property transfers (the "Present Value Depreciation Amount"), plus (2) an additional amount sufficient to permit Con Edison to receive and retain, after the payment of all Current Taxes, an amount equal to the net amount described in clause (1).

For this purpose, (i) Current Taxes shall be computed based on Con Edison's composite federal, state and local tax rates at the time the payments or property transfers are received and Con Edison will be treated as being subject to tax at the highest marginal rates in effect at that time (the "Current Tax Rate"), and (ii) the Present Value Depreciation Amount shall be computed by discounting Con Edison's anticipated tax depreciation deductions as a result of

NYISO Agreements --> Service Agreements --> TFIA among NYISO, Con Ed, NYPA, and CHPE for Astoria Rainey  
such payments or property transfers by Con Edison's current weighted average cost of capital.  
Thus, the formula for calculating Developer's liability to Con Edison pursuant to this Article

## **SERVICE AGREEMENT NO. 2772**

5.12.4 can be expressed as follows:  $(\text{Current Tax Rate} \times (\text{Gross Income Amount} - \text{Present Value Depreciation Amount})) / (1 - \text{Current Tax Rate})$ . Developer's estimated tax liability is stated in Appendix A, Upgrades.

### **5.12.5 Private Letter Ruling or Change or Clarification of Law.**

At Developer's request and expense, Con Edison shall file with the IRS a request for a private letter ruling as to whether any property transferred or sums paid, or to be paid, by Developer to Con Edison under this Agreement are subject to federal income taxation. Developer will prepare the initial draft of the request for a private letter ruling, and will certify under penalties of perjury that all facts represented in such request are true and accurate to the best of Developer's knowledge. Con Edison and Developer shall cooperate in good faith with respect to the submission of such request. Con Edison shall file the request in its name and have final authority, exercised in good faith after reasonable consultation with Developer, to determine the content of its request and its representatives.

Con Edison shall keep Developer fully informed of the status of such request for a private letter ruling and shall allow Developer to participate in all discussions with the IRS regarding such request for a private letter ruling. Con Edison shall allow Developer to attend all meetings with IRS officials about the request and shall permit Developer to prepare the initial drafts of any follow-up letters in connection with the request.

### **5.12.6 Subsequent Taxable Events.**

Reserved.

### **5.12.7 Contests.**

Upon Developer's written request and sole expense, Con Edison shall file a claim for refund with respect to any taxes paid under this Article 5.12. Con Edison reserves the right to make all decisions with regard to the prosecution of such appeal, protest, abatement or other contest, including the selection of counsel and compromise or settlement of the claim, but Con Edison shall keep Developer informed, shall consider in good faith suggestions from Developer about the conduct of the contest, and shall reasonably permit Developer or a Developer representative to attend contest proceedings.

Developer shall pay to Con Edison on a periodic basis, as invoiced by Con Edison, Con Edison's documented reasonable costs of prosecuting such appeal, protest, abatement or other contest, including any costs associated with obtaining the opinion of independent tax counsel described in this Article 5.12.7. Con Edison may abandon any contest if the Developer fails to provide payment to Con Edison within thirty (30) Calendar Days of receiving such invoice. At any time during the contest, Con Edison may agree to a settlement either with Developer's consent or after obtaining written advice from nationally-recognized tax counsel, selected by Con Edison, but reasonably acceptable to Developer, that the proposed settlement represents a

NYISO Agreements --> Service Agreements --> TFIA among NYISO, Con Ed, NYPA, and CHPE for Astoria Rainey

reasonable settlement given the hazards of litigation. Developer's obligation shall be based on the amount of the settlement agreed to by Developer, or if a higher amount, so much of the

## **SERVICE AGREEMENT NO. 2772**

settlement that is supported by the written advice from nationally-recognized tax counsel selected under the terms of the preceding sentence. The settlement amount shall be calculated on a fully grossed-up basis to cover any related cost consequences of the current tax liability. Con Edison may also settle any tax controversy without receiving the Developer's consent or any such written advice; however, any such settlement will relieve the Developer from any obligation to indemnify Con Edison for the tax at issue in the contest (unless the failure to obtain written advice is attributable to the Developer's unreasonable refusal to the appointment of independent tax counsel).

### **5.12.8 Refund.**

In the event that (a) a private letter ruling is issued to Con Edison which holds that any amount paid or the value of any property transferred by Developer to Con Edison under the terms of this Agreement is not subject to federal income taxation, (b) any legislative change or administrative announcement, notice, ruling or other determination makes it reasonably clear to Con Edison in good faith that any amount paid or the value of any property transferred by Developer to Con Edison under the terms of this Agreement is not taxable to Con Edison, (c) any abatement, appeal, protest, or other contest results in a determination that any payments or transfers made by Developer to Con Edison are not subject to federal income tax, or (d) if Con Edison receives a refund from any taxing authority for any overpayment of tax attributable to any payment or property transfer made by Developer to Con Edison pursuant to this Agreement, Con Edison shall promptly refund to Developer the following:

(i) Any payment made by Developer under this Article 5.12 for taxes that is attributable to the amount determined to be non-taxable, together with interest thereon,

(ii) Interest on any amounts paid by Developer to Con Edison for such taxes which Con Edison did not submit to the taxing authority, calculated in accordance with the methodology set forth in FERC's regulations at 18 C.F.R. §35.19a(a)(2)(iii) from the date payment was made by Developer to the date Con Edison refunds such payment to Developer, and

(iii) With respect to any such taxes paid by Con Edison, any refund or credit Con Edison receives or to which it may be entitled from any Governmental Authority, interest (or that portion thereof attributable to the payment described in clause (i), above) owed to Con Edison for such overpayment of taxes (including any reduction in interest otherwise payable by Con Edison to any Governmental Authority resulting from an offset or credit); provided, however, that Con Edison will remit such amount promptly to Developer only after and to the extent that Con Edison has received a tax refund, credit or offset from any Governmental Authority for any applicable overpayment of income tax related to Con Edison's Upgrades.

The intent of this provision is to leave both the Developer and Con Edison, to the extent practicable, in the event that no taxes are due with respect to any payment for Upgrades hereunder, in the same position they would have been in had no such tax payments been made.



## **SERVICE AGREEMENT NO. 2772**

### **5.12.9 Taxes Other Than Income Taxes.**

Upon the timely request by Developer, and at Developer's sole expense, Con Edison shall appeal, protest, seek abatement of, or otherwise contest any tax (other than federal or state income tax) asserted or assessed against Con Edison for which Developer may be required to reimburse Con Edison under the terms of this Agreement. Developer shall pay to Con Edison on a periodic basis, as invoiced by Con Edison, Con Edison's documented reasonable costs of prosecuting such appeal, protest, abatement, or other contest. Developer and Con Edison shall cooperate in good faith with respect to any such contest. Unless the payment of such taxes is a prerequisite to an appeal or abatement or cannot be deferred, no amount shall be payable by Developer to Con Edison for such taxes until they are assessed by a final, non-appealable order by any court or agency of competent jurisdiction. In the event that a tax payment is withheld and ultimately due and payable after appeal, Developer will be responsible for all taxes, interest and penalties, other than penalties attributable to any delay caused by Con Edison.

### **5.13 Tax Status; Non-Jurisdictional Entities.**

#### **5.13.1 Tax Status.**

Each Party shall cooperate with the other Parties to maintain the other Parties' tax status. Nothing in this Agreement is intended to adversely affect the tax status of any Party including the status of NYISO, or the status of any Connecting Transmission Owner with respect to the issuance of bonds including, but not limited to, Local Furnishing Bonds. Notwithstanding any other provisions of this Agreement, NYPA and Con Edison shall not be required to comply with any provisions of this Agreement that would result in the loss of tax-exempt status of any of their Tax-Exempt Bonds or impair their ability to issue future tax-exempt obligations. For purposes of this provision, Tax-Exempt Bonds shall include the obligations of NYPA and Con Edison, the interest on which is not included in gross income under the Internal Revenue Code.

#### **5.13.2 Non-Jurisdictional Entities.**

NYPA does not waive its exemptions, pursuant to Section 201(f) of the FPA, from Commission jurisdiction with respect to the Commission's exercise of the FPA's general ratemaking authority.

### **5.14 Modification.**

#### **5.14.1 General.**

NYPA or Con Edison may undertake modifications to its facilities covered by this Agreement. If NYPA or Con Edison plans to undertake a modification that reasonably may be expected to affect the other Party's facilities, the Party proposing the modification shall provide to the other Parties, and to NYISO, sufficient information regarding such modification so that the other Parties and NYISO may evaluate the potential impact of such modification prior to commencement of the work. Such information shall be deemed to be Confidential Information



NYISO Agreements --> Service Agreements --> TFIA among NYISO, Con Ed, NYPA, and CHPE for Astoria Rainey  
hereunder and shall include information concerning the timing of such modifications and  
whether such modifications are expected to interrupt the flow of electricity from the Astoria-

## **SERVICE AGREEMENT NO. 2772**

Rainey Cable. The Party desiring to perform such work shall provide the relevant drawings, plans, and specifications to the other Parties and NYISO at least ninety (90) Calendar Days in advance of the commencement of the work or such shorter period upon which the Parties may agree, which agreement shall not unreasonably be withheld, conditioned or delayed.

In the case of modifications to the Astoria-Rainey Cable that do not require Developer or NYPA to submit an Interconnection Request, the NYISO shall provide, within sixty (60) Calendar Days (or such other time as the Parties may agree), an estimate of any additional modifications to the New York State Transmission System or Upgrades necessitated by such modification and a good faith estimate of the costs thereof. The Party requesting the modification shall be responsible for the cost of any such additional modifications, including the cost of studying the impact of the modification.

### **5.14.2 Standards.**

Any additions, modifications, or replacements made to a Party's facilities shall be designed, constructed and operated in accordance with this Agreement, NYISO requirements and Good Utility Practice.

### **5.14.3 Modification Costs.**

Con Edison, NYPA, and Developer, as applicable, shall not be assigned the costs of any additions, modifications, or replacements that one of the other Parties makes to the New York State Transmission System to facilitate the interconnection of a third party to the New York State Transmission System, or to provide Transmission Service to a third party under the ISO OATT, except in accordance with the cost allocation procedures in Attachment S of the ISO OATT.

## **ARTICLE 6. TESTING AND INSPECTION**

### **6.1 Pre-In-Service Date Testing and Modifications.**

Prior to the In-Service Date of the Astoria-Rainey Cable, Developer shall test the AstoriaRainey Cable to ensure its safe and reliable operation and shall provide the test results to NYPA and Con Edison. NYPA and Con Edison shall review Developer's test results within 30 Calendar Days of receipt, or such other time period agreed upon by the Parties, and, based on such review, shall accept the results or direct Developer to make modifications as set forth below. Prior to the In-Service Date of the Upgrades, Con Edison shall test the Upgrades to ensure their safe and reliable operation. Similar testing may be required after initial operation of the Astoria-Rainey Cable and Upgrades. Developer and Con Edison shall each make modifications to its facilities that are found to be necessary as a result of such testing. Developer shall bear the costs of all such testing and modifications. Developer, NYPA, and Con Edison shall coordinate with NYISO prior to performing the testing of the Astoria-Rainey Cable and Upgrades and prior to the facilities entering into service.



## **SERVICE AGREEMENT NO. 2772**

### **6.2 Post-In-Service Date Testing and Modifications.**

Con Edison and NYPA shall each at its own expense perform routine inspection and testing of its facilities and equipment in accordance with Good Utility Practice and Applicable Reliability Standards as may be necessary to ensure the continued interconnection of the AstoriaRainey Cable with Con Edison's transmission system in a safe and reliable manner. Con Edison and NYPA shall each have the right, upon advance written notice, to require reasonable additional testing of the other Party's facilities, at the requesting Party's expense, as may be in accordance with Good Utility Practice.

### **6.3 Right to Observe Testing.**

Con Edison and NYPA shall each notify the other Parties, and the NYISO, in advance of its performance of tests set forth in Articles 6.1 and 6.2. The other Parties, and the NYISO, shall each have the right, at its own expense, to observe such testing.

### **6.4 Right to Inspect.**

Con Edison and NYPA shall each have the right, but shall have no obligation to: (i) observe the other Party's tests and/or inspection of any of its System Protection Facilities and other protective equipment; (ii) review the settings of the other Party's System Protection Facilities and other protective equipment; and (iii) review the other Party's maintenance records relative to the System Protection Facilities and other protective equipment. NYISO shall have these same rights of inspection as to the facilities and equipment of NYPA and Con Edison. A Party may exercise these rights from time to time as it deems necessary upon reasonable notice to the other Party. The exercise or non-exercise by a Party of any such rights shall not be construed as an endorsement or confirmation of any element or condition of the Attachment Facilities or the System Protection Facilities or other protective equipment or the operation thereof, or as a warranty as to the fitness, safety, desirability, or reliability of same. Any information that a Party obtains through the exercise of any of its rights under this Article 6.4 shall be treated in accordance with Article 22 of this Agreement and Attachment F to the ISO OATT.

## **ARTICLE 7. RESERVED.**

## **ARTICLE 8. COMMUNICATIONS**

### **8.1 NYPA Obligations.**

NYPA shall maintain satisfactory operating communications, including providing analog and digital real-time telemetry, with Con Edison and NYISO in accordance with the requirements in this Agreement, the ISO/TO Agreement (including Section 2.05, *Local Control Center, Metering and Telemetry*), NYISO Tariffs, and ISO Procedures, as such requirements are amended from time to time. NYPA shall provide standard voice line, dedicated voice line and facsimile communications at its control center for the Astoria-Rainey Cable through use of either the public telephone system, or a voice communications system that does not rely on the public

NYISO Agreements --> Service Agreements --> TFIA among NYISO, Con Ed, NYPA, and CHPE for Astoria Rainey telephone system. NYPA shall also provide the dedicated data circuit(s) necessary to provide NYPA's data to Con Edison and NYISO as set forth in Appendix D hereto. The data circuit(s)

## **SERVICE AGREEMENT NO. 2772**

shall extend from the Astoria-Rainey Cable to the location(s) specified by Con Edison and NYISO. Any required maintenance of such communications equipment shall be performed by NYPA. Operational communications shall be activated and maintained under, but not be limited to, the following events: system paralleling or separation, scheduled and unscheduled shutdowns, equipment clearances, and hourly and daily load data.

### **8.2 Remote Terminal Unit.**

If Con Edison determines that a suitable Remote Terminal Unit is not in place at its Rainey Substation to satisfy the requirements of this Article 8.2, Con Edison shall install, at Developer's expense, prior to the In-Service Date of the Astoria-Rainey Cable, a Remote Terminal Unit, or equivalent data collection and transfer equipment acceptable to the Parties to gather accumulated and instantaneous data to be telemetered to the location(s) designated by Con Edison and NYISO through use of a dedicated point-to-point data circuit(s) as indicated in Article 8.1. The communication protocol for the data circuit(s) shall be specified by Con Edison and NYISO. Instantaneous bi-directional analog real power and reactive power flow information must be telemetered directly to the location(s) specified by Con Edison and NYISO.

Each Party will promptly advise the appropriate other Party if it detects or otherwise learns of any metering, telemetry or communications equipment errors or malfunctions that require the attention and/or correction by that other Party. The Party owning such equipment shall correct such error or malfunction as soon as reasonably feasible.

### **8.3 No Annexation.**

Any and all equipment placed on the premises of a Party shall be and remain the property of the Party providing such equipment regardless of the mode and manner of annexation or attachment to real property, unless otherwise mutually agreed by the Party providing such equipment and the Party receiving such equipment.

## **ARTICLE 9. OPERATIONS**

### **9.1 General.**

Each Party shall comply with Applicable Laws and Regulations and Applicable Reliability Standards. Each Party shall provide to the other Parties all information that may reasonably be required by the other Parties to comply with Applicable Laws and Regulations and Applicable Reliability Standards. Con Edison or NYPA, as applicable, shall provide the NYISO with notifications of all of its power system equipment additions or modifications in accordance with ISO Procedures, including the NYISO's Reliability Analysis Data Manual (Manual 24).

### **9.2 NYISO and Con Edison Obligations.**

Con Edison and NYISO shall cause the New York State Transmission System to be operated, maintained and controlled in a safe and reliable manner in accordance with this

NYISO Agreements --> Service Agreements --> TFIA among NYISO, Con Ed, NYPA, and CHPE for Astoria Rainey

Agreement, the NYISO Tariffs, ISO Procedures, and the ISO/TO Agreement. Con Edison and NYISO may provide operating instructions to NYPA consistent with this Agreement, NYISO procedures, and Con Edison's operating protocols and procedures as they may change from time

## **SERVICE AGREEMENT NO. 2772**

to time. Con Edison and NYISO will consider changes to their respective operating protocols and procedures proposed by NYPA.

### **9.3 NYPA Obligations.**

NYPA shall at its own expense operate, maintain and control the Astoria-Rainey Cable in a safe and reliable manner and in accordance with this Agreement, the NYISO Tariffs, ISO Procedures, and the ISO/TO Agreement. NYPA shall operate the Astoria-Rainey Cable in accordance with NYISO and Con Edison requirements, as such requirements are set forth or referenced in Appendix C hereto. Appendix C will be modified to reflect changes to the requirements as they may change from time to time. Any Party may request that the appropriate other Party or Parties provide copies of the requirements set forth or referenced in Appendix C hereto.

### **9.4 Outages and Interruptions.**

#### **9.4.1 Outages.**

##### **9.4.1.1 Outage Authority and Coordination.**

NYPA and Con Edison may each, in accordance with NYISO procedures and Good Utility Practice and in coordination with the other Party, remove from service any of its respective Astoria-Rainey Cable facilities or Upgrades that may impact the other Party's facilities as necessary to perform maintenance or testing or to install or replace equipment. Absent an Emergency State, the Party scheduling a removal of such facility(ies) from service will use Reasonable Efforts to schedule such removal on a date and time mutually acceptable to both NYPA and Con Edison. In all circumstances either Party planning to remove such facility(ies) from service shall use Reasonable Efforts to minimize the effect on the other Party of such removal.

##### **9.4.1.2 Outage Schedules.**

NYPA or Con Edison, as applicable, and pursuant to ISO Procedures, shall post scheduled outages of its respective transmission facilities on the NYISO OASIS.

##### **9.4.1.3 Outage Restoration.**

If an outage of the Astoria-Rainey Cable or Upgrades adversely affects the other Party's operations or facilities, the Party that owns the facility that is out of service shall use Reasonable Efforts to promptly restore such facility(ies) to a normal operating condition consistent with the nature of the outage. The Party that owns the facility that is out of service shall provide the other Party and NYISO, to the extent such information is known, information on the nature of the Emergency State, an estimated time of restoration, and any corrective actions required. Initial verbal notice shall be followed up as soon as practicable with written notice explaining the nature of the outage.





## **SERVICE AGREEMENT NO. 2772**

**9.4.2 Interruption of Service.** If required by Good Utility Practice or Applicable Reliability Standards to do so, the NYISO, Con Edison, or NYPA may require Con Edison or NYPA to interrupt the transmission of electricity if such transmission of electricity could adversely affect the ability of NYISO and, as applicable, Con Edison or NYPA to perform such activities as are necessary to safely and reliably operate and maintain the New York State Transmission System. The following provisions shall apply to any interruption or reduction permitted under this Article 9.4.2:

**9.4.2.1** The interruption shall continue only for so long as reasonably necessary under Good Utility Practice;

**9.4.2.2** When the interruption must be made under circumstances which do not allow for advance notice, NYISO, Con Edison, or NYPA shall notify, as applicable, Con Edison or NYPA by telephone as soon as practicable of the reasons for the curtailment or interruption, and, if known, its expected duration. Telephone notification shall be followed by written notification as soon as practicable;

**9.4.2.3** Except during the existence of an Emergency State, when the interruption can be scheduled without advance notice, NYISO, Con Edison, or NYPA shall notify, as applicable, Con Edison or NYPA in advance regarding the timing of such scheduling and of the expected duration. The Parties shall coordinate with each other using Good Utility Practice to schedule the interruption during periods of least impact to Con Edison, NYPA, and the New York State Transmission System;

**9.4.2.4** The Parties shall cooperate and coordinate with each other to the extent necessary in order to restore the Astoria-Rainey Cable, Upgrades, and the New York State Transmission System to their normal operating state, consistent with system conditions and Good Utility Practice.

### **9.4.3 System Protection and Other Control Requirements.**

**9.4.3.1 System Protection Facilities.** Developer shall install, at Developer's expense, and NYPA shall operate and maintain, at NYPA's expense, System Protection Facilities at the Astoria Annex Substation as a part of the Astoria-Rainey Cable. Con Edison shall install, at Developer's expense, and operate and maintain, at Con Edison's expense, any System Protection Facilities that may be required on the New York State Transmission System as a result of the interconnection of the Astoria-Rainey Cable.

**9.4.3.2** The protection facilities of both NYPA and Con Edison shall be designed and coordinated with other systems in accordance with Good Utility Practice and Applicable Reliability Standards.

**9.4.3.3** NYPA and Con Edison shall each be responsible for protection of its respective facilities consistent with Good Utility Practice and Applicable Reliability Standards.



## **SERVICE AGREEMENT NO. 2772**

**9.4.3.4** The protective relay design of NYPA and Con Edison shall each incorporate the necessary test switches to perform the tests required in Article 6 of this Agreement. The required test switches will be placed such that they allow operation of lockout relays while preventing breaker failure schemes from operating and causing unnecessary breaker operations and/or the tripping of the Astoria-Rainey Cable.

**9.4.3.5** NYPA and Con Edison will each test, operate and maintain System Protection Facilities in accordance with Good Utility Practice, NERC and NPCC criteria.

**9.4.3.6** Prior to the In-Service Dates of the Astoria-Rainey Cable and the Upgrades, NYPA and Con Edison shall each perform, or their agents shall perform, a complete calibration test and functional trip test of the System Protection Facilities. At intervals suggested by Good Utility Practice and following any apparent malfunction of the System Protection Facilities, NYPA and Con Edison shall each perform both calibration and functional trip tests of its System Protection Facilities. These tests do not require the tripping of any in-service generation unit. These tests do, however, require that all protective relays and lockout contacts be activated.

### **9.4.4 Requirements for Protection.**

In compliance with NPCC requirements and Good Utility Practice, NYPA shall provide, install, own, and maintain relays, circuit breakers and all other devices necessary to remove any fault contribution of the Astoria-Rainey Cable to any short circuit occurring on the New York State Transmission System not otherwise isolated by Con Edison's equipment, such that the removal of the fault contribution shall be coordinated with the protective requirements of the New York State Transmission System. Such protective equipment shall include, without limitation, a disconnecting device or switch with load-interrupting capability located between the Astoria-Rainey Cable and the New York State Transmission System at a site selected upon mutual agreement (not to be unreasonably withheld, conditioned or delayed) of NYPA and Con Edison. NYPA shall be responsible for protection of the Astoria-Rainey Cable and NYPA's other equipment from such conditions as negative sequence currents, over- or under-frequency, sudden load rejection, over- or under-voltage, and generator loss-of-field. NYPA shall be solely responsible to disconnect the Astoria-Rainey Cable and NYPA's other equipment if conditions on the New York State Transmission System could adversely affect the Astoria-Rainey Cable.

### **9.4.5 Power Quality.**

Neither the facilities of NYPA nor the facilities of Con Edison shall cause excessive voltage flicker nor introduce excessive distortion to the sinusoidal voltage or current waves as defined by ANSI Standard C84.1-1989, in accordance with IEEE Standard 519, or any applicable superseding electric industry standard. In the event of a conflict between ANSI Standard C84.1-1989, or any applicable superseding electric industry standard, ANSI Standard C84.1-1989, or the applicable superseding electric industry standard, shall control.



## **SERVICE AGREEMENT NO. 2772**

### **9.5 Switching and Tagging Rules.**

NYPA and Con Edison shall each provide the other Party a copy of its switching and tagging rules that are applicable to the other Party's activities. Such switching and tagging rules shall be developed on a nondiscriminatory basis. The Parties shall comply with applicable switching and tagging rules, as amended from time to time, in obtaining clearances for work or for switching operations on equipment.

### **9.6 Disturbance Analysis Data Exchange.**

The Parties will cooperate with one another and the NYISO in the analysis of disturbances to either the Astoria-Rainey Cable or the New York State Transmission System by gathering and providing access to any information relating to any disturbance, including information from disturbance recording equipment, protective relay targets, breaker operations and sequence of events records, and any disturbance information required by Good Utility Practice.

## **ARTICLE 10. MAINTENANCE**

### **10.1 Con Edison Obligations.**

Con Edison shall maintain its transmission facilities, including the Upgrades, in a safe and reliable manner and in accordance with this Agreement.

### **10.2 NYPA Obligations.**

NYPA shall maintain the Astoria-Rainey Cable in a safe and reliable manner and in accordance with this Agreement.

### **10.3 Coordination.**

NYPA and Con Edison shall confer regularly to coordinate the planning, scheduling and performance of preventive and corrective maintenance on the Astoria-Rainey Cable and the Upgrades. NYPA and Con Edison shall keep NYISO fully informed of the preventive and corrective maintenance that is planned, and shall schedule all such maintenance in accordance with NYISO procedures.

### **10.4 Secondary Systems.**

NYPA and Con Edison shall each cooperate with the other in the inspection, maintenance, and testing of control or power circuits that operate below 600 volts, AC or DC, including, but not limited to, any hardware, control or protective devices, cables, conductors, electric raceways, secondary equipment panels, transducers, batteries, chargers, and voltage and current transformers that directly affect the operation of NYPA or Con Edison's facilities and equipment which may reasonably be expected to impact the other Party. NYPA and Con Edison shall each provide advance notice to the other Party, and to NYISO, before undertaking any

NYISO Agreements --> Service Agreements --> TFIA among NYISO, Con Ed, NYPA, and CHPE for Astoria Rainey  
work on such circuits, especially on electrical circuits involving circuit breaker trip and close  
contacts, current transformers, or potential transformers.

## **SERVICE AGREEMENT NO. 2772**

### **10.5 Operating and Maintenance Expenses.**

Subject to the provisions herein addressing the use of facilities by others, and except for operations and maintenance expenses associated with modifications made for providing interconnection or transmission service to a third party and such third party pays for such expenses, NYPA shall be responsible for all reasonable expenses including overheads, associated with owning, operating, maintaining, repairing, and replacing the Astoria-Rainey Cable. Con Edison shall be responsible for all reasonable expenses including overheads, associated with owning, operating, maintaining, repairing, and replacing the Upgrades.

## **ARTICLE 11. PERFORMANCE OBLIGATION**

### **11.1 Astoria-Rainey Cable.**

Developer shall design, procure, construct, and install the Astoria-Rainey Cable, at its sole expense, in accordance with the terms in the Merchant Transmission Facility Interconnection Agreement. NYPA shall own and control the Astoria-Rainey Cable.

### **11.2 Upgrades.**

Con Edison shall design, procure, construct, and install the Upgrades described in Appendix A hereto, at the sole expense of the Developer up to the Upgrades Estimated Total Costs. Developer's and Con Edison's respective responsibilities for the costs of Con Edison's performance of the EPC Services greater than the Upgrades Estimated Total Costs amount shall be determined in accordance with Section 25.8.6 of Attachment S to the ISO OATT. Con Edison shall have ownership and control of the Upgrades.

### **11.3 Reserved.**

### **11.4 Reserved.**

### **11.5 Provision of Security.**

Developer has provided Con Edison with Security in the amount of the Upgrade Estimated Total Costs for the Upgrades in accordance with Attachment S to the ISO OATT. The Security is subject to the Security requirements set forth in Attachment S of the ISO OATT.

### **11.6 Reserved.**

## **ARTICLE 12. INVOICE**

### **12.1 General.**

The Developer and Con Edison shall each submit to the other Party, on a monthly basis, invoices of amounts due for the preceding month or as otherwise agreed by such Parties and as set forth in Section 2 of Appendix B. Each invoice shall state the month to which the invoice



NYISO Agreements --> Service Agreements --> TFIA among NYISO, Con Ed, NYPA, and CHPE for Astoria Rainey

applies and fully describe the services and equipment provided. Parties may discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in

## **SERVICE AGREEMENT NO. 2772**

which case all amounts one Party owes to the other Party under this Agreement, including interest payments or credits, shall be netted so that only the net amount remaining due shall be paid by the Paying Party.

### **12.2 Final Invoice.**

Within six months after completion of the construction of the Upgrades, Con Edison shall provide Developer with an invoice of the final cost of the construction of the Upgrades determined in accordance with Attachment S to the ISO OATT, and shall set forth such costs in sufficient detail to enable Developer to compare the actual costs with the estimates and to ascertain deviations, if any, from the cost estimates. Con Edison shall refund to Developer any amount by which the actual payment by Developer for estimated costs exceeds the actual costs of construction within thirty (30) Calendar Days of the issuance of such final construction invoice. Following the later of (i) the completion of the construction of the Upgrades and Con Edison's acceptance of the Upgrades or (ii) Developer's payment of any final invoice issued under this Article 12.2, Con Edison shall refund to the Developer any remaining portions of its Security, except as set forth in Article 11.5. Con Edison shall provide Developer with the refunded amount within thirty (30) Calendar Days of the Parties' satisfaction of the requirements in this Article 12.2.

### **12.3 Payment.**

Invoices shall be rendered to the paying Party at the address specified in Appendix F hereto. The Party receiving the invoice shall pay the invoice within thirty (30) Calendar Days of receipt. All payments shall be made in immediately available funds payable to the other Party, or by wire transfer to a bank named and account designated by the invoicing Party. Payment of invoices will not constitute a waiver of any rights or claims the paying Party may have under this Agreement.

### **12.4 Disputes.**

In the event of a billing dispute between Con Edison and Developer, Con Edison shall continue to perform under this Agreement as long as Developer: (i) continues to make all payments not in dispute; and (ii) pays Con Edison or into an independent escrow account the portion of the invoice in dispute, pending resolution of such dispute. If Developer fails to meet these two requirements for continuation of service, then Con Edison may provide notice to Developer of a Default pursuant to Article 17. Within thirty (30) Calendar Days after the resolution of the dispute, the Party that owes money to the other Party shall pay the amount due with interest calculated in accord with the methodology set forth in FERC's Regulations at 18 C.F.R. § 35.19a(a)(2)(iii).

## **ARTICLE 13. EMERGENCIES**

### **13.1 Obligations.**

Each Party shall comply with the Emergency State procedures of NYISO, the applicable Reliability Councils, Applicable Laws and Regulations, and any emergency procedures agreed to by the NYISO Operating Committee. NYPA and Con Edison agree to coordinate with NYISO

## **SERVICE AGREEMENT NO. 2772**

to develop procedures that will address the operation of the Astoria-Rainey Cable during Emergency conditions.

### **13.2 Notice.**

Each Party shall notify the other Parties promptly when it becomes aware of an Emergency or Emergency State that affects, or may reasonably be expected to affect, the Astoria-Rainey Cable or the New York State Transmission System. To the extent information is known, the notification shall describe the Emergency or Emergency State, the extent of the damage or deficiency, the expected effect on the operation of NYPA's or Con Edison's facilities and operations, its anticipated duration and the corrective action taken and/or to be taken. The initial notice shall be followed as soon as practicable with written notice.

### **13.3 Immediate Action.**

Unless, in NYPA's reasonable judgment, immediate action is required, NYPA shall obtain the consent of Con Edison, such consent to not be unreasonably withheld, prior to performing any manual switching operations at the Astoria-Rainey Cable in response to an Emergency State either declared by NYISO, Con Edison, or otherwise regarding New York State Transmission System.

### **13.4 NYISO, NYPA, and Con Edison Authority.**

Consistent with ISO Procedures, Good Utility Practice, and this Agreement, any Party may take whatever actions with regard to the New York State Transmission System it deems necessary during an Emergency or Emergency State in order to (i) preserve public health and safety, (ii) preserve the reliability of the New York State Transmission System, (iii) limit or prevent damage, and (iv) expedite restoration of service. NYPA and Con Edison shall use Reasonable Efforts to assist the other in such actions.

### **13.5 Limited Liability.**

No Party shall be liable to another Party for any action it takes in responding to an Emergency or Emergency State so long as such action is made in good faith and is consistent with Good Utility Practice and the NYISO Tariffs.

## **ARTICLE 14. REGULATORY REQUIREMENTS AND GOVERNING LAW**

### **14.1 Regulatory Requirements.**

Each Party's obligations under this Agreement shall be subject to its receipt of any required approval or certificate from one or more Governmental Authorities in the form and substance satisfactory to the applying Party, or the Party making any required filings with, or providing notice to, such Governmental Authorities, and the expiration of any time period associated therewith. Each Party shall in good faith seek and use its Reasonable Efforts to obtain such other approvals. Nothing in this Agreement shall require Developer to take any action that could result in its inability to obtain, or its loss of, status or exemption under the Federal Power



## **SERVICE AGREEMENT NO. 2772**

Act or the Public Utility Holding Company Act of 2005 or the Public Utility Regulatory Policies Act of 1978, as amended.

### **14.2 Governing Law.**

**14.2.1** The validity, interpretation and performance of this Agreement and each of its provisions shall be governed by the laws of the state of New York, without regard to its conflicts of law principles.

**14.2.2** This Agreement is subject to all Applicable Laws and Regulations.

**14.2.3** Each Party expressly reserves the right to seek changes in, appeal, or otherwise contest any laws, orders, rules, or regulations of a Governmental Authority.

## **ARTICLE 15. NOTICES**

### **15.1 General.**

Unless otherwise provided in this Agreement, any notice, demand or request required or permitted to be given by a Party to the other Parties and any instrument required or permitted to be tendered or delivered by a Party in writing to the other Parties shall be effective when delivered and may be so given, tendered or delivered, by recognized national courier, or by depositing the same with the United States Postal Service with postage prepaid, for delivery by certified or registered mail, addressed to the Party, or personally delivered to the Party, at the address set out in Appendix F hereto.

A Party may change the notice information in this Agreement by giving five (5) Business Days written notice prior to the effective date of the change.

### **15.2 Billings and Payments.**

Billings and payments shall be sent to the addresses set out in Appendix F hereto.

### **15.3 Alternative Forms of Notice.**

Any notice or request required or permitted to be given by a Party to the other Parties and not required by this Agreement to be given in writing may be so given by telephone, facsimile or email to the telephone numbers and email addresses set out in Appendix F hereto.

### **15.4 Operations and Maintenance Notice.**

NYPA and Con Edison shall each notify the other Party, and NYISO, in writing of the identity of the person(s) that it designates as the point(s) of contact with respect to the implementation of Articles 9 and 10 of this Agreement.

## **ARTICLE 16. FORCE MAJEURE**

**16.1** Economic hardship is not considered a Force Majeure event.

## **SERVICE AGREEMENT NO. 2772**

**16.2** A Party shall not be responsible or liable, or deemed, in Default with respect to any obligation hereunder, (including obligations under Article 4 of this Agreement), other than the obligation to pay money when due, to the extent the Party is prevented from fulfilling such obligation by Force Majeure. A Party unable to fulfill any obligation hereunder (other than an obligation to pay money when due) by reason of Force Majeure shall give notice and the full particulars of such Force Majeure to the other Parties in writing or by telephone as soon as reasonably possible after the occurrence of the cause relied upon. Telephone notices given pursuant to this Article shall be confirmed in writing as soon as reasonably possible and shall specifically state full particulars of the Force Majeure, the time and date when the Force Majeure occurred and when the Force Majeure is reasonably expected to cease. The Party affected shall exercise due diligence to remove such disability with reasonable dispatch, but shall not be required to accede or agree to any provision not satisfactory to it in order to settle and terminate a strike or other labor disturbance.

## **ARTICLE 17. DEFAULT**

### **17.1 General.**

No Breach shall exist where such failure to discharge an obligation (other than the payment of money) is the result of Force Majeure as defined in this Agreement or the result of an act or omission of the other Parties. Upon a Breach, the non-Breaching Parties shall give written notice of such to the Breaching Party. The Breaching Party shall have thirty (30) Calendar Days from receipt of the Breach notice within which to cure such Breach; provided however, if such Breach is not capable of cure within thirty (30) Calendar Days, the Breaching Party shall commence such cure within thirty (30) Calendar Days after notice and continuously and diligently complete such cure within ninety (90) Calendar Days from receipt of the Breach notice; and, if cured within such time, the Breach specified in such notice shall cease to exist.

### **17.2 Right to Terminate.**

If a Breach is not cured as provided in this Article 17, or if a Breach is not capable of being cured within the period provided for herein, the non-Breaching Parties acting together shall thereafter have the right to declare a Default and terminate this Agreement by written notice at any time until cure occurs, and be relieved of any further obligation hereunder and, whether or not those Parties terminate this Agreement, to recover from the defaulting Party all amounts due hereunder, plus all other damages and remedies to which they are entitled at law or in equity. The provisions of this Article will survive termination of this Agreement.

## **ARTICLE 18. INDEMNITY, CONSEQUENTIAL DAMAGES AND INSURANCE**

### **18.1 Indemnity.**

Each Party (the "Indemnifying Party") shall at all times indemnify, defend, and save harmless, as applicable, the other Parties (each an "Indemnified Party") from, any and all damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, the alleged violation of any Environmental Law, or the release or



NYISO Agreements --> Service Agreements --> TFIA among NYISO, Con Ed, NYPA, and CHPE for Astoria Rainey  
threatened release of any Hazardous Substance, demand, suits, recoveries, costs and expenses,  
court costs, attorney fees, and all other obligations by or to third parties (any and all of these a

## **SERVICE AGREEMENT NO. 2772**

“Loss”), arising out of or resulting from (i) the Indemnified Party’s performance of its obligations under this Agreement on behalf of the Indemnifying Party, except in cases where the Indemnifying Party can demonstrate that the Loss of the Indemnified Party was caused by the gross negligence or intentional wrongdoing of the Indemnified Party or (ii) the violation by the Indemnifying Party of any Environmental Law or the release by the Indemnifying Party of any Hazardous Substance.

### **18.1.1 Indemnified Party.**

If a Party is entitled to indemnification under this Article 18 as a result of a claim by a third party, and the Indemnifying Party fails, after notice and reasonable opportunity to proceed under Article 18.1.3, to assume the defense of such claim, such Indemnified Party may at the expense of the Indemnifying Party contest, settle or consent to the entry of any judgment with respect to, or pay in full, such claim.

### **18.1.2 Indemnifying Party.**

If an Indemnifying Party is obligated to indemnify and hold any Indemnified Party harmless under this Article 18, the amount owing to the Indemnified Party shall be the amount of such Indemnified Party’s actual Loss, net of any insurance or other recovery.

### **18.1.3 Indemnity Procedures.**

Promptly after receipt by an Indemnified Party of any claim or notice of the commencement of any action or administrative or legal proceeding or investigation as to which the indemnity provided for in Article 18.1 may apply, the Indemnified Party shall notify the Indemnifying Party of such fact. Any failure of or delay in such notification shall not affect a Party’s indemnification obligation unless such failure or delay is materially prejudicial to the Indemnifying Party.

Except as stated below, the Indemnifying Party shall have the right to assume the defense thereof with counsel designated by such Indemnifying Party and reasonably satisfactory to the Indemnified Party. If the defendants in any such action include one or more Indemnified Parties and the Indemnifying Party and if the Indemnified Party reasonably concludes that there may be legal defenses available to it and/or other Indemnified Parties which are different from or additional to those available to the Indemnifying Party, the Indemnified Party shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on its own behalf. In such instances, the Indemnifying Party shall only be required to pay the fees and expenses of one additional attorney to represent an Indemnified Party or Indemnified Parties having such differing or additional legal defenses.

The Indemnified Party shall be entitled, at its expense, to participate in any such action, suit or proceeding, the defense of which has been assumed by the Indemnifying Party. Notwithstanding the foregoing, the Indemnifying Party (i) shall not be entitled to assume and

NYISO Agreements --> Service Agreements --> TFIA among NYISO, Con Ed, NYPA, and CHPE for Astoria Rainey

control the defense of any such action, suit or proceedings if and to the extent that, in the opinion of the Indemnified Party and its counsel, such action, suit or proceeding involves the potential

## **SERVICE AGREEMENT NO. 2772**

imposition of criminal liability on the Indemnified Party, or there exists a conflict or adversity of interest between the Indemnified Party and the Indemnifying Party, in such event the Indemnifying Party shall pay the reasonable expenses of the Indemnified Party, and (ii) shall not settle or consent to the entry of any judgment in any action, suit or proceeding without the consent of the Indemnified Party, which shall not be unreasonably withheld, conditioned or delayed.

### **18.2 No Consequential Damages.**

Other than the indemnity obligations set forth in Article 18.1, in no event shall any Party be liable under any provision of this Agreement for any losses, damages, costs or expenses for any special, indirect, incidental, consequential, or punitive damages, including but not limited to loss of profit or revenue, loss of the use of equipment, cost of capital, cost of temporary equipment or services, whether based in whole or in part in contract, in tort, including negligence, strict liability, or any other theory of liability; provided, however, that damages for which a Party may be liable to another Party under separate agreement will not be considered to be special, indirect, incidental, or consequential damages hereunder.

### **18.3 Insurance.**

NYPA and Con Edison shall each, at its own expense, procure and maintain in force throughout the period of this Agreement and until released by the other Parties, the following minimum insurance coverages, with insurance companies licensed to write insurance or approved eligible surplus lines carriers in the state of New York with a minimum A.M. Best rating of A or better for financial strength, and an A.M. Best financial size category of VIII or better:

**18.3.1** Employers' Liability and Workers' Compensation Insurance providing statutory benefits in accordance with the laws and regulations of New York State.

**18.3.2** Commercial General Liability ("CGL") Insurance including premises and operations, personal injury, broad form property damage, broad form blanket contractual liability coverage products and completed operations coverage, coverage for explosion, collapse and underground hazards, independent contractors coverage, coverage for pollution to the extent normally available and punitive damages to the extent normally available using Insurance Services Office, Inc. Commercial General Liability Coverage ("ISO CG") Form CG 00 01 04 13 or a form equivalent to or better than CG 00 01 04 13, with minimum limits of Two Million Dollars (\$2,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate combined single limit for personal injury, bodily injury, including death and property damage.

**18.3.3** Comprehensive Automobile Liability Insurance 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.

**18.3.4** If applicable, the Commercial General Liability and Comprehensive

NYISO Agreements --> Service Agreements --> TFIA among NYISO, Con Ed, NYPA, and CHPE for Astoria Rainey  
Automobile Liability Insurance policies should include contractual liability for work in

## **SERVICE AGREEMENT NO. 2772**

connection with construction or demolition work on or within 50 feet of a railroad, or a separate Railroad Protective Liability Policy should be provided.

**18.3.5** Excess Liability Insurance over and above the Employers' Liability, Commercial General Liability and Comprehensive Automobile Liability Insurance coverages, with a minimum combined single limit of Twenty Million Dollars (\$20,000,000) per occurrence and Twenty Million Dollars (\$20,000,000) aggregate. The Excess policies should contain the same extensions listed under the Primary policies.

**18.3.6** The Commercial General Liability Insurance, Comprehensive Automobile Insurance and Excess Liability Insurance policies of NYPA and Con Edison shall name the other Party, its parent, associated and Affiliate companies and their respective directors, officers, agents, servants and employees ("Other Party Group") as additional insureds using ISO CG Endorsements: CG 20 33 04 13, and CG 20 37 04 13 or CG 20 10 04 13 and CG 20 37 04 13 or equivalent to or better forms. All policies shall contain provisions whereby the insurers waive all rights of subrogation in accordance with the provisions of this Agreement against the Other Party Group and provide thirty (30) Calendar days advance written notice to the Other Party Group prior to anniversary date of cancellation or any material change in coverage or condition.

**18.3.7** The Commercial General Liability Insurance, Comprehensive Automobile Liability Insurance and Excess Liability Insurance policies shall contain provisions that specify that the policies are primary and non-contributory. NYPA and Con Edison shall each be responsible for its respective deductibles or retentions.

**18.3.8** The Commercial General Liability Insurance, Comprehensive Automobile Liability Insurance and Excess Liability Insurance policies, if written on a Claims First Made Basis, shall be maintained in full force and effect: (i) by NYPA and Con Edison for at least three (3) years after termination of this Agreement, and (ii) by Developer for at least three (3) years after the Completion Date, either of which coverage may be in the form of tail coverage or extended reporting period coverage if agreed by NYPA and Con Edison.

**18.3.9** If applicable, Pollution Liability Insurance in an amount no less than \$7,500,000 per occurrence and \$7,500,000 in the aggregate. The policy will provide coverage for claims resulting from pollution or other environmental impairment arising out of or in connection with work performed on the premises by the other party, its contractors and and/or subcontractors. Such insurance is to include coverage for, but not be limited to, cleanup, third party bodily injury and property damage and remediation and will be written on an occurrence basis. The policy shall name the Other Party Group as additional insureds, be primary and contain a waiver of subrogation.

**18.3.10** The requirements contained herein as to the types and limits of all insurance to be maintained by NYPA and Con Edison are not intended to and shall not in any



## **SERVICE AGREEMENT NO. 2772**

manner, limit or qualify the liabilities and obligations assumed by those Parties under this Agreement.

**18.3.11** Within ninety (90) days following execution of this Agreement, and as soon as practicable after the end of each fiscal year or at the renewal of the insurance policy and in any event within ninety (90) days thereafter, NYPA and Con Edison shall provide certificate of insurance for all insurance required in this Agreement, executed by each insurer or by an authorized representative of each insurer.

**18.3.12** Notwithstanding the foregoing, NYPA and Con Edison may each self-insure to meet the minimum insurance requirements of Articles 18.3.1 through 18.3.9 to the extent it maintains a self-insurance program; provided that, such Party'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 18.3.1 through 18.3.9. In the event that a Party is permitted to self-insure pursuant to this Article 18.3.12, it shall notify the other Party 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 Articles 18.3.1 through 18.3.9 and provide evidence of such coverages. For any period of time that a Party's senior debt is unrated by Standard & Poor's or is rated at less than investment grade by Standard & Poor's, such Party shall comply with the insurance requirements applicable to it under Articles 18.3.1 through 18.3.9.

**18.3.13** NYPA, Con Edison, and Developer 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.

**18.3.14** Subcontractors of each party must maintain the same insurance requirements stated under Articles 18.3.1 through 18.3.9 and comply with the Additional Insured requirements herein. In addition, their policies must state that they are primary and non-contributory and contain a waiver of subrogation.

**18.3.15** At least ninety (90) days prior to the interconnection of the Astoria Rainey Cable to the Rainey Substation, the Developer and its subcontractors shall procure and maintain the same insurance requirements stated under Articles 18.3.1 through 18.3.9 and comply with the additional insured requirements herein. Developer shall provide to Con Edison certificate of insurance for all insurance required in this Agreement, executed by each insurer or by an authorized representative of each insurer. Developer's obligation to maintain insurance requirements pursuant to Article 18.3.15 shall terminate on the Completion Date, except as otherwise provided in Article 18.3.8. For the avoidance of doubt, any insurance requirements under this Agreement will not be additive to any insurance requirements required in any related agreements.

## **ARTICLE 19. ASSIGNMENT**

This Agreement may be assigned by a Party only with the written consent of the other



Parties; provided that a Party may assign this Agreement without the consent of the other Parties to any Affiliate of the assigning Party with an equal or greater credit rating and with the legal

## **SERVICE AGREEMENT NO. 2772**

authority and operational ability to satisfy the obligations of the assigning Party under this Agreement; provided further that a Party may assign this Agreement without the consent of the other Parties in connection with the sale, merger, restructuring, or transfer of a substantial portion or all of its assets, including the Attachment Facilities it owns, so long as the assignee in such a transaction directly assumes in writing all rights, duties and obligations arising under this Agreement; and provided further that the Developer shall have the right to assign this Agreement, without the consent of the NYISO, Con Edison, or NYPA, for collateral security purposes to aid in providing financing for the Merchant Transmission Facility, provided that the Developer will promptly notify the NYISO, Con Edison, and NYPA of any such assignment. Any financing arrangement entered into by the Developer pursuant to this Article will provide that prior to or upon the exercise of the secured party's, trustee's or mortgagee's assignment rights pursuant to said arrangement, the secured creditor, the trustee or mortgagee will notify the NYISO, Con Edison, and NYPA of the date and particulars of any such exercise of assignment right(s) and will provide the NYISO, Con Edison, and NYPA with proof that it meets the requirements of Articles 11.5 and 18.3. Any attempted assignment that violates this Article is void and ineffective. 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 reason thereof. Where required, consent to assignment will not be unreasonably withheld, conditioned or delayed.

## **ARTICLE 20. SEVERABILITY**

If any provision in this Agreement is finally determined to be invalid, void or unenforceable by any court or other Governmental Authority having jurisdiction, such determination shall not invalidate, void or make unenforceable any other provision, agreement or covenant of this Agreement.

## **ARTICLE 21. COMPARABILITY**

The Parties will comply with all applicable comparability and code of conduct laws, rules and regulations, as amended from time to time.

## **ARTICLE 22. CONFIDENTIALITY**

### **22.1 Confidentiality.**

Certain information exchanged by the Parties during the term of this Agreement shall constitute confidential information ("Confidential Information") and shall be subject to this Article 22.

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



## **SERVICE AGREEMENT NO. 2772**

### **22.2 Term.**

During the term of this Agreement, and for a period of three (3) years after the expiration or termination of this Agreement, except as otherwise provided in this Article 22, each Party shall hold in confidence and shall not disclose to any person Confidential Information.

### **22.3 Confidential Information.**

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

### **22.4 Scope.**

Confidential Information shall not include information that the receiving Party can demonstrate: (1) is generally available to the public other than as a result of a disclosure by the receiving Party; (2) was in the lawful possession of the receiving Party on a non-confidential basis before receiving it from the disclosing Party; (3) was supplied to the receiving Party without restriction by a third party, who, to the knowledge of the receiving Party after due inquiry, was under no obligation to the disclosing Party to keep such information confidential; (4) was independently developed by the receiving Party without reference to Confidential Information of the disclosing Party; (5) is, or becomes, publicly known, through no wrongful act or omission of the receiving Party or Breach of this Agreement; or (6) is required, in accordance with Article 22.9 of this Agreement, Order of Disclosure, to be disclosed by any Governmental Authority or is otherwise required to be disclosed by law or subpoena, or is necessary in any legal proceeding establishing rights and obligations under this Agreement. Information designated as Confidential Information will no longer be deemed confidential if the Party that designated the information as confidential notifies the other Party that it no longer is confidential.

### **22.5 Release of Confidential Information.**

No Party shall release or disclose Confidential Information to any other person, except to its Affiliates (limited by FERC Standards of Conduct requirements), subcontractors, employees, consultants, or to parties who may be considering providing financing to or equity participation with Developer, or to potential purchasers or assignees of a Party, on a need-to-know basis in connection with this Agreement, unless such person has first been advised of the confidentiality provisions of this Article 22 and has agreed to comply with such provisions. Notwithstanding the foregoing, a Party providing Confidential Information to any person shall remain primarily responsible for any release of Confidential Information in contravention of this Article 22.

### **22.6 Rights.**

Each Party retains all rights, title, and interest in the Confidential Information that each Party discloses to the other Party. The disclosure by each Party to the other Parties of

## **SERVICE AGREEMENT NO. 2772**

Confidential Information shall not be deemed a waiver by any Party or any other person or entity of the right to protect the Confidential Information from public disclosure.

### **22.7 No Warranties.**

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

### **22.8 Standard of Care.**

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

### **22.9 Order of Disclosure.**

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

### **22.10 Termination of Agreement.**

Upon termination of this Agreement for any reason, each Party shall, within ten (10) Calendar Days of receipt of a written request from the other Parties, use Reasonable Efforts to destroy, erase, or delete (with such destruction, erasure, and deletion certified in writing to the other Parties) or return to the other Parties, without retaining copies thereof, any and all written or electronic Confidential Information received from the other Parties pursuant to this Agreement.

### **22.11 Remedies.**

The Parties agree that monetary damages would be inadequate to compensate a Party for another Party's Breach of its obligations under this Article 22. Each Party accordingly agrees

that the other Parties shall be entitled to equitable relief, by way of injunction or otherwise, if the first Party Breaches or threatens to Breach its obligations under this Article 22, which equitable

## **SERVICE AGREEMENT NO. 2772**

relief shall be granted without bond or proof of damages, and the receiving Party shall not plead in defense that there would be an adequate remedy at law. Such remedy shall not be deemed an exclusive remedy for the Breach of this Article 22, but shall be in addition to all other remedies available at law or in equity. The Parties further acknowledge and agree that the covenants contained herein are necessary for the protection of legitimate business interests and are reasonable in scope. No Party, however, shall be liable for indirect, incidental, or consequential or punitive damages of any nature or kind resulting from or arising in connection with this Article 22.

### **22.12 Disclosure to FERC, its Staff, or a State.**

Notwithstanding anything in this Article 22 to the contrary, and pursuant to 18 C.F.R. section 1b.20, if FERC or its staff, during the course of an investigation or otherwise, requests information from one of the Parties that is otherwise required to be maintained in confidence pursuant to this Agreement or the ISO OATT, the Party shall provide the requested information to FERC or its staff, within the time provided for in the request for information. In providing the information to FERC or its staff, the Party must, consistent with 18 C.F.R. section 388.112, request that the information be treated as confidential and non-public by FERC and its staff and that the information be withheld from public disclosure. Parties are prohibited from notifying the other Parties to this Agreement prior to the release of the Confidential Information to the Commission or its staff. The Party shall notify the other Parties to the Agreement when it is notified by FERC or its staff that a request to release Confidential Information has been received by FERC, at which time the Parties may respond before such information would be made public, pursuant to 18 C.F.R. section 388.112. Requests from a state regulatory body conducting a confidential investigation shall be treated in a similar manner if consistent with the applicable state rules and regulations. A Party shall not be liable for any losses, consequential or otherwise, resulting from that Party divulging Confidential Information pursuant to a FERC or state regulatory body request under this paragraph.

### **22.13 Required Notices Upon Requests or Demands for Confidential Information**

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





## **SERVICE AGREEMENT NO. 2772**

### **ARTICLE 23. DEVELOPER, NYPA, AND CON EDISON NOTICES OF ENVIRONMENTAL RELEASES**

Developer, NYPA, and Con Edison shall each notify the other Parties, first orally and then in writing, of the release of any Hazardous Substances, any asbestos or lead abatement activities, or any type of remediation activities related to the Astoria-Rainey Cable or the Upgrades, each of which may reasonably be expected to affect the other Parties. The notifying Party shall: (i) provide the notice as soon as practicable, provided such Party makes a good faith effort to provide the notice no later than twenty-four hours after such Party becomes aware of the occurrence; and (ii) promptly furnish to the other Party copies of any publicly available reports filed with any Governmental Authorities addressing such events.

### **ARTICLE 24. INFORMATION REQUIREMENT**

#### **24.1 Information Acquisition.**

Con Edison and NYPA shall each submit specific information regarding the electrical characteristics of their respective facilities to the other, and to NYISO, as described below and in accordance with Applicable Reliability Standards.

#### **24.2 Information Submission Concerning Upgrades.**

The initial information submission by Con Edison shall occur no later than one hundred eighty (180) Calendar Days prior to Trial Operation of the Astoria-Rainey Cable and shall include New York State Transmission System information necessary to allow the Developer to select equipment and meet any system protection and stability requirements, unless otherwise mutually agreed to by the Developer, NYPA and Con Edison. On a monthly basis Con Edison shall provide Developer, NYPA, and NYISO a status report on the construction and installation of the Upgrades: (1) progress to date; (2) a description of the activities since the last report; (3) a description of the action items for the next period; and (4) the delivery status of equipment ordered.

#### **24.3 Updated Information Submission Concerning the Astoria-Rainey Cable**

The updated information submission by NYPA, including manufacturer information, shall occur no later than one hundred eighty (180) Calendar Days prior to the Trial Operation of the Astoria-Rainey Cable. NYPA shall provide the most current Astoria-Rainey Cable design and expected performance data. Information submitted for stability models shall be compatible with NYISO standard models. If there is no compatible model, the Developer and NYPA will work with a consultant mutually agreed to by the Parties to develop and supply a standard model and associated information.

If the Developer's data is different from what was determined for the Class Year Study and this difference may be reasonably expected to affect Con Edison's facilities or the New York State Transmission System, but does not require the submission of a new Interconnection Request, then NYISO will conduct appropriate studies to determine the impact on the New York

NYISO Agreements --> Service Agreements --> TFIA among NYISO, Con Ed, NYPA, and CHPE for Astoria Rainey

State Transmission System based on the actual data submitted pursuant to this Article 24.3.

Such studies will provide an estimate of any additional modifications to the New York State

## **SERVICE AGREEMENT NO. 2772**

Transmission System or the Upgrades based on the actual data and a good faith estimate of the costs thereof. The Developer shall not begin Trial Operation until such studies are completed. The Developer shall be responsible for the cost of any modifications required by the actual data, including the cost of any required studies.

### **24.4 Information Supplementation.**

Prior to the In-Service Date of, as applicable, the Astoria-Rainey Cable or Upgrades, the Developer and Con Edison shall supplement their information submissions described above in this Article 24 with any and all “as-built” information or “as-tested” performance information concerning, as applicable, the Astoria-Rainey Cable and the Upgrades that differ from the initial submissions or, alternatively, written confirmation that no such differences exist. The Developer shall conduct tests on the Astoria-Rainey Cable as required by Good Utility Practice.

Subsequent to the In-Service Date of the Astoria-Rainey Cable, NYPA shall provide Con Edison and NYISO with any information changes concerning the Astoria-Rainey Cable due to equipment replacement, repair, or adjustment. Subsequent to the In-Service Date of the Upgrades, Con Edison shall provide NYPA and NYISO with any information changes concerning the Upgrades due to equipment replacement, repair or adjustment in Con Edison’s Rainey Substation or any adjacent Con Edison substation that may affect the Astoria-Rainey’s equipment ratings, protection or operating requirements. Con Edison and NYPA shall provide such information no later than thirty (30) Calendar Days after the date of the equipment replacement, repair or adjustment.

## **ARTICLE 25. INFORMATION ACCESS AND AUDIT RIGHTS**

### **25.1 Information Access.**

Each Party (“Disclosing Party”) shall make available to another Party (“Requesting Party”) information that is in the possession of the Disclosing Party and is necessary in order for the Requesting Party to: (i) verify the costs incurred by the Disclosing Party for which the Requesting Party is responsible under this Agreement; and (ii) carry out its obligations and responsibilities under this Agreement. The Parties shall not use such information for purposes other than those set forth in this Article 25.1 of this Agreement and to enforce their rights under this Agreement.

### **25.2 Reporting of Non-Force Majeure Events.**

Each Party (the “Notifying Party”) shall notify the other Parties when the Notifying Party becomes aware of its inability to comply with the provisions of this Agreement for a reason other than a Force Majeure event. The Parties agree to cooperate with each other and provide necessary information regarding such inability to comply, including the date, duration, reason for the inability to comply, and corrective actions taken or planned to be taken with respect to such inability to comply. Notwithstanding the foregoing, notification, cooperation or information provided under this Article shall not entitle the Party receiving such notification to allege a cause for anticipatory breach of this Agreement.



## **SERVICE AGREEMENT NO. 2772**

### **25.3 Audit Rights.**

Subject to the requirements of confidentiality under Article 22 of this Agreement, each Party shall have the right, during normal business hours, and upon prior reasonable notice to another Party, to audit at its own expense the other Party's accounts and records pertaining to the other Party's performance or satisfaction of its obligations under this Agreement. Such audit rights shall include audits of the other Party's costs, calculation of invoiced amounts, and each Party's actions in an Emergency State. Any audit authorized by this Article shall be performed at the offices where such accounts and records are maintained and shall be limited to those portions of such accounts and records that relate to the Party's performance and satisfaction of obligations under this Agreement. Each Party shall keep such accounts and records for a period equivalent to the audit rights periods described in Article 25.4 of this Agreement.

### **25.4 Audit Rights Periods.**

#### **25.4.1 Audit Rights Period for Construction-Related Accounts and Records.**

Accounts and records related to the design, engineering, procurement, and construction of the Upgrades shall be subject to audit for a period of twenty-four months following Con Edison's issuance of a final invoice in accordance with Article 12.2 of this Agreement.

#### **25.4.2 Audit Rights Period for All Other Accounts and Records.**

Accounts and records related to a Party's performance or satisfaction of its obligations under this Agreement other than those described in Article 25.4.1 of this Agreement shall be subject to audit as follows: (i) for an audit relating to cost obligations, the applicable audit rights period shall be twenty-four months after the auditing Party's receipt of an invoice giving rise to such cost obligations; and (ii) for an audit relating to all other obligations, the applicable audit rights period shall be twenty-four months after the event for which the audit is sought.

### **25.5 Audit Results.**

If an audit by a Party determines that an overpayment or an underpayment has occurred, a notice of such overpayment or underpayment shall be given to the other Party together with those records from the audit which support such determination.

## **ARTICLE 26. SUBCONTRACTORS**

### **26.1 General.**

Nothing in this Agreement shall prevent a Party from utilizing the services of any subcontractor as it deems appropriate to perform its obligations under this Agreement; provided, however, that each Party shall require its subcontractors to comply with all applicable terms and conditions of this Agreement in providing such services and each Party shall remain primarily liable to the other Parties for the performance of such subcontractor.



## **SERVICE AGREEMENT NO. 2772**

### **26.2 Responsibility of Principal.**

The creation of any subcontract 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 Parties for the acts or omissions of any subcontractor the hiring Party hires as if no subcontract had been made; provided, however, that in no event shall the NYISO, Con Edison, or NYPA be liable for the actions or inactions of the Developer or its subcontractors with respect to obligations of the Developer under Article 5 of this Agreement. Any applicable obligation imposed by this Agreement upon the hiring Party shall be equally binding upon, and shall be construed as having application to, any subcontractor of such Party.

### **26.3 No Limitation by Insurance.**

The obligations under this Article 26 will not be limited in any way by any limitation of subcontractor's insurance.

## **ARTICLE 27. DISPUTES**

### **27.1 Submission.**

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

### **27.2 External Arbitration Procedures.**

Any arbitration initiated under this Agreement shall be conducted before a single neutral arbitrator appointed by the Parties. If the Parties fail to agree upon a single arbitrator within ten (10) Calendar Days of the submission of the Dispute to arbitration, the Parties shall invoke the assistance of the FERC's Dispute Resolution Service to select an arbitrator. In each case, the arbitrator shall be knowledgeable in electric utility matters, including electric transmission and bulk power issues, and shall not have any current or past substantial business or financial relationships with any party to the arbitration (except prior arbitration). The arbitrator shall provide each of the Parties an opportunity to be heard and, except as otherwise provided herein, shall conduct the arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("Arbitration Rules") and any applicable FERC regulations or RTO rules; provided, however, in the event of a conflict between the Arbitration Rules and the terms of this Article 27, the terms of this Article 27 shall prevail.





## **SERVICE AGREEMENT NO. 2772**

### **27.3 Arbitration Decisions.**

Unless otherwise agreed by the Parties, the arbitrator shall render a decision within ninety (90) Calendar Days of appointment and shall notify the Parties in writing of such decision and the reasons therefor. The arbitrator shall be authorized only to interpret and apply the provisions of this Agreement and shall have no power to modify or change any provision of this Agreement in any manner. The decision of the arbitrator shall be final and binding upon the Parties, and judgment on the award may be entered in any court having jurisdiction. The decision of the arbitrator may be appealed solely on the grounds that the conduct of the arbitrator, or the decision itself, violated the standards set forth in the Federal Arbitration Act or the Administrative Dispute Resolution Act. The final decision of the arbitrator must also be filed with FERC if it affects jurisdictional rates, terms and conditions of service or Upgrades.

### **27.4 Costs.**

Each Party shall be responsible for its own costs incurred during the arbitration process and for its per capita share of the costs of the single arbitrator.

### **27.5 Termination.**

Notwithstanding the provisions of this Article 27, any Party may terminate this Agreement in accordance with its provisions or pursuant to an action at law or equity. The issue of whether such a termination is proper shall not be considered a Dispute hereunder.

## **ARTICLE 28. REPRESENTATIONS, WARRANTIES AND COVENANTS**

### **28.1 General.**

Each Party makes the following representations, warranties and covenants:

#### **28.1.1 Good Standing.**

Such Party 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; that it is qualified to do business in New York State; and that it 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 perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement.

#### **28.1.2 Authority.**

Such Party 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 such Party, enforceable against such Party in accordance with its terms, except as the enforceability thereof may be limited by applicable bankruptcy, insolvency,

NYISO Agreements --> Service Agreements --> TFIA among NYISO, Con Ed, NYPA, and CHPE for Astoria Rainey  
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).

## **SERVICE AGREEMENT NO. 2772**

### **28.1.3 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 such Party, or any judgment, license, permit, order, material agreement or instrument applicable to or binding upon such Party or any of its assets.

### **28.1.4 Consent and Approval.**

Such Party has sought or obtained, or, in accordance with this Agreement will seek or obtain, each 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.

## **ARTICLE 29. MISCELLANEOUS**

### **29.1 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.

### **29.2 Conflicts.**

If there is a discrepancy or conflict between or among the terms and conditions of this cover agreement and the Appendices hereto, the terms and conditions of this cover agreement shall be given precedence over the Appendices, except as otherwise expressly agreed to in writing by the Parties. As permitted by the foregoing, the Parties expressly agree that the terms and conditions of the Appendices shall take precedence over the provisions of this cover agreement in case of a discrepancy or conflict between or among the terms and conditions of same.

### **29.3 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

NYISO Agreements --> Service Agreements --> TFIA among NYISO, Con Ed, NYPA, and CHPE for Astoria Rainey  
otherwise, reference to any Article, Section or Appendix means such Article of this Agreement  
or such Appendix to this Agreement, or such Section to the Standard Large Facility

## **SERVICE AGREEMENT NO. 2772**

Interconnection Procedures or such Appendix to the Standard Large Facility Interconnection Procedures, 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”.

### **29.4 Compliance.**

Each Party shall perform its obligations under this Agreement in accordance with Applicable Laws and Regulations, Applicable Reliability Standards, the ISO OATT and Good Utility Practice. To the extent a Party is required or prevented or limited in taking any action by such regulations and standards, such Party shall not be deemed to be in Breach of this Agreement for its compliance therewith. When any Party becomes aware of such a situation, it shall notify the other Parties promptly so that the Parties can discuss the amendment to this Agreement that is appropriate under the circumstances.

### **29.5 Joint and Several Obligations.**

Except as otherwise stated herein, the obligations of NYISO, Developer, NYPA, and Con Edison are several, and are neither joint nor joint and several.

### **29.6 Entire Agreement.**

This Agreement, including all Appendices and Schedules attached hereto, constitutes the entire agreement between the Parties with reference to the subject matter hereof, and supersedes all prior and contemporaneous understandings or 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 which constitute any part of the consideration for, or any condition to, either Party’s compliance with its obligations under this Agreement.

### **29.7 No Third Party Beneficiaries.**

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 permitted their assigns.

### **29.8 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, duty of this

Agreement. Termination or Default of this Agreement for any reason by the Developer shall not constitute a waiver of the Developer's legal rights to obtain Capacity Resource Interconnection

## **SERVICE AGREEMENT NO. 2772**

Service and Energy Resource Interconnection Service in accordance with the provisions of the ISO OATT. Any waiver of this Agreement shall, if requested, be provided in writing.

### **29.9 Headings.**

The descriptive headings of the various Articles of this Agreement have been inserted for convenience of reference only and are of no significance in the interpretation or construction of this Agreement.

### **29.10 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.

### **29.11 Amendment.**

The Parties may by mutual agreement amend this Agreement, by a written instrument duly executed by all four of the Parties.

### **29.12 Modification by the Parties.**

The Parties may by mutual agreement amend the Appendices to this Agreement, by a written instrument duly executed by all four of the Parties. Such an amendment shall become effective and a part of this Agreement upon satisfaction of all Applicable Laws and Regulations.

### **29.13 Reservation of Rights.**

NYISO, Con Edison, and NYPA shall have the right to make unilateral filings with FERC to modify this Agreement with respect to any rates, terms and conditions, charges, classifications of service, rule or regulation under section 205 or any other applicable provision of the Federal Power Act and FERC's rules and regulations thereunder, and Developer shall have the right to make a unilateral filing with FERC to modify this Agreement pursuant to section 206 or any other applicable provision of the Federal Power Act and FERC's rules and regulations thereunder; provided that each Party shall have the right to protest any such filing by another Party and to participate fully in any proceeding before FERC in which such modifications may be considered. Nothing in this Agreement shall limit the rights of the Parties or of FERC under sections 205 or 206 of the Federal Power Act and FERC's rules and regulations thereunder, except to the extent that the Parties otherwise mutually agree as provided herein.

### **29.14 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 to otherwise bind, any other Party.





## **SERVICE AGREEMENT NO. 2772**

### **29.15 Other Transmission Rights.**

Notwithstanding any other provision of this Agreement, nothing herein shall be construed as relinquishing or foreclosing any rights, including but not limited to firm transmission rights, capacity rights, or transmission congestion rights that a Party shall be entitled to, now or in the future under any other agreement or tariff as a result of, or otherwise associated with, the transmission capacity, if any, created by the Upgrades.



**SERVICE AGREEMENT NO. 2772**

**IN WITNESS WHEREOF**, the Parties have executed this Agreement in duplicate originals, each of which shall constitute and be an original effective Agreement between the Parties.

**New York Independent System Operator, Inc.**

By:

Name:

Title:

Date:

**Consolidated Edison Company of New York, Inc.**

By:

Name:

Title:

Date:

**New York Power Authority**

By:

Name:

Title:

Date:

**CHPE LLC**

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

Name: \_\_\_\_\_

\_\_\_\_\_

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

\_\_\_\_\_

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

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

## **SERVICE AGREEMENT NO. 2772**

### **APPENDICES**

#### **Appendix A**

EPC Services

#### **Appendix B**

Milestones

#### **Appendix C**

Interconnection Details

#### **Appendix D**

Security Arrangements Details

#### **Appendix E-1**

In-Service Date for Astoria-Rainey Cable

#### **Appendix E-2**

In-Service Date for Upgrades

#### **Appendix F**

Addresses for Delivery of Notices and Billings

## **SERVICE AGREEMENT NO. 2772**

### **APPENDIX A**

#### **EPC SERVICES**

##### **1. Upgrades**

Con Edison shall design, procure, obtain all required permits for, construct, and install the Upgrades identified in this Appendix A. The Upgrades include the following major electrical and physical equipment.

##### **A. Upgrades at Rainey Substation**

The Astoria-Rainey Cable will interconnect to the New York State Transmission System at Con Edison's Rainey Substation. The Upgrades at the Rainey Substation include the following.

###### *i. Affected System Upgrade Facilities*

- Remove the following existing 12 disconnect switches, support structures, associated auxiliary switches, ground switches, alarm circuits, cables and conduits: 1W-8, 1W-1, 2W-1, 2W-2, 3W-2, 3W-3, 4W-3, 4W-4, 7W-6, 7W-7, 8W-7, 8W-8;
- Furnish and install new Southern States 345kV RDA-1 3000A motor operated switches, associated support structures, auxiliary and ground switches and LAPP Resistance Graded type supporting insulators for the 12 disconnect switches listed above;
  - Excavate and remove existing concrete footings supporting structures;
  - Design and install new concrete footings as required;

###### *ii. Rainey Substation Upgrades*

- Furnish and install two (2) new 345kV gas insulated switchgear ("GIS") to Solid Dielectric potheads to accept the two sets of feeder cables from the Astoria Annex Substation, including necessary structural support and termination structure;
- Furnish and install ground conductor tying existing station grounding grid to new pothead structures;
- Furnish and install two sets of current transformers ("CTs") on each feeder cable;
- Utilize AC and DC circuits from the Rainey Substation North West Auxiliary Relay House to facilitate all relay installations, and all other power circuits required by this installation;
- Furnish and install two (2) new 345kV GIS disconnect switches with ground Switches;
- Remove GIS end caps, modify and extend GIS bus as required to connect both 345kV disconnect switches to common GIS bus;
- Furnish and install a 345kV GIS potential transformer ("PT") on each phase and provide structural support as necessary;
- Install outdoor termination stands at both 345kV pothead with 120V/60Hz/15A

NYISO Agreements --> Service Agreements --> TFIA among NYISO, Con Ed, NYPA, and CHPE for Astoria Rainey  
power supply for Partial Discharge /Distributed Temperature Sensing systems;

A-1



## SERVICE AGREEMENT NO. 2772

- Relays - removal:
  - Disconnect and remove the 11B-1/11W and 11B-2/11W relays and all associated devices currently protecting bus section 11W;
- Relays - installation:
  - Provide and install new relay for protection and control;
    - ✦ First line of protection will consist of an SEL 411L relay and SEL 487B relay;
    - ✦ Second line of protection will consist of an ABB RED670 relay;
  - Transmitter Switch, Trip Cut-out and 87L Block switches are also required with the feeder relays; and
  - Appropriate support equipment will also be required, including the appropriate LAN switches, flexi-switches, terminal blocks, patch panels, heater, networked temperature monitor, and accesses for local area network ("LAN") and power via the front of the cabinet.

Con Edison shall perform all final inspections and testing of all listed Upgrades.

- Astoria Rainey Cable testing and commissioning:
  - Con Edison will support and participate as applicable in the required end to end testing and commissioning of the Astoria Rainey Cable to ensure all Upgrades and the Astoria Rainey Cable are ready for energization.

### B. Reconductoring Upgrades

The Upgrades concerning the reconductoring of feeder 34091 will include the following major electrical and physical equipment:

- Remove the existing 795 kcmil ACSR phase conductors (3) and all associated hardware from H-Frame #5 that spans over the transformer to H-Frame #1 (4 spans totaling 530'); and
- Procure and install new 1590 ACSR conductors (3), insulators and all other associated hardware from existing H-Frame #5 to H-Frame #1.

## 2. Upgrades Estimated Total Costs

The total estimated costs of the work associated with the Upgrades, associated exclusions, and assumptions required for the interconnection of the Large Generating Facility are as per the Q#631/Q887 Part 1 Study report (Final Version, dated June 28, 2022) and Part 2 Study report dated August 18, 2022 and presented in the table below.

The Upgrades Estimated Total Costs for the Upgrades are:

Description	Estimated Cost
<i>Rainey Substation Upgrades and Reconductoring Upgrades</i>	\$11,176,000.00

A-2


## SERVICE AGREEMENT NO. 2772

<i>Affected System Upgrade Facilities</i>	<b>\$21,220,000.00</b>
<b>Total</b>	<b>\$32,396,000.00</b>

### 3. Security

Developer accepted the Project Cost Allocation for the Upgrades identified in connection with its Merchant Transmission Facility project (NYISO Queue Nos. 631 and 887) in the Class Year Study for Class Year 2021 and posted Security to Con Edison, in the form of a Letter of Credit, in the amount of \$32,396,000.00, which reflects the estimated costs for the Upgrades.

<b>Description</b>	<b>Estimated Cost</b>
<i>Rainey Substation Upgrades and Reconductoring Upgrades</i>	\$11,176,000.00
<i>Affected System Upgrade Facilities</i>	<b>\$21,220,000.00</b>
<b>Required Security Deposit to be Posted</b>	<b>\$32,396,000.00</b>

A-3	


**SERVICE AGREEMENT NO. 2772**

**[CONTAINS CEII - THIS PAGE REMOVED FROM PUBLIC VERSION]**

A-4

## SERVICE AGREEMENT NO. 2772

### APPENDIX B

### MILESTONES

#### 1. Milestones

The following milestones shall apply to the performance of the EPC Services under this Agreement. The timeframes projected for the milestones are non-binding estimates; *provided, however*, that pursuant to Article 5.1 of the Agreement, the Developer and Con Edison shall each use Reasonable Efforts to complete the tasks by the dates set forth in such milestones or sooner as practicable. The actual dates for completion of the milestones are highly dependent upon system reliability, lead times for the procurement of equipment and material, release of engineering packages by the Developer and approval of the “issued for construction” packages by Con Edison, the availability of labor, approved outage scheduling, receipt of regulatory approvals, and the results of equipment testing.

#### A. Reconductoring Upgrades

Item	Milestone
1.	Issue notice to proceed
2.	Begin engineering design
3.	Begin material procurement
4.	Complete engineering design
5.	Begin construction
6.	Complete material procurement
7.	Complete construction
8.	In-Service Date
9.	Completion Date

7. Complete construction
8. In-Service Date

#### B. Rainey Station Upgrades

Item	Milestone
1.	Issue notice to proceed
2.	Begin engineering design
3.	Begin material procurement
4.	Complete engineering design
5.	Begin construction
6.	Complete material procurement

Date	Responsible Party	Date	Responsible Party
5/2023	Developer	5/2023	Developer
7/2023	Con Edison	7/2023	Con Edison
8/2023	Con Edison	8/2023	Con Edison
7/2024	Con Edison	7/2024	Con Edison
9/2025	Con Edison	9/2025	Con Edison
8/2025	Con Edison	8/2025	Con Edison
1/2026	Con Edison	1/2026	Con Edison
2/2026	Con Edison	2/2026	Con Edison
2/2026	Con Edison		

B-1			




## SERVICE AGREEMENT NO. 2772

9. Completion Date 2/2026 Con Edison

### C. Affected System Upgrade Facilities

Item	Milestone	Date	Responsible Party
1.	Issue notice to proceed	5/2023	Developer
2.	Begin engineering design	7/2023	Con Edison
3.	Begin material procurement	8/2023	Con Edison
4.	Complete engineering design	7/2024	Con Edison
5.	Complete material procurement	8/2025	Con Edison
6.	Begin construction	9/2024	Con Edison
7.	Complete construction	1/2026	Con Edison
8.	In-Service Date	2/2026	Con Edison
9.	Completion Date	2/2026	Con Edison

## 2. Prepayment for Work Performed by Con Edison

Included within the total cost estimates provided in Section 2 of Appendix A are the cost estimates for Con Edison's engineering, procurement, construction, and associated services related to the Upgrades described in Section 1 of Appendix A.

Developer shall be required to pay Con Edison a deposit in the amount of five hundred thousand dollars (\$500,000) as mutually agreed-upon by Con Edison and Developer. This amount shall be held by Con Edison in immediately available funds in an account established by Con Edison in accordance with its internal procedures (the "Disbursement Account"). The funds in the Disbursement Account shall be drawn upon by Con Edison in the manner described below to pay Con Edison for its performance of the engineering, procurement and/or construction services as identified in Appendix A.

The price for the services described in Section 1 of Appendix A shall be based on the applicable hourly rates and other charges and costs set forth in the document entitled *Consolidated Edison Company of New York, Inc. 2022 Accommodation Billing Rates* ("2022 Accommodation Billing Schedule"). Developer acknowledges and agrees that the rates, charges, and costs set forth in the 2022 Accommodation Billing Schedule are subject to periodic revision by Con Edison upon written notice to Developer and that, after the date of the notice, the revised rates, charges, and costs referenced in the notice shall be applicable to the provided services. The rates, charges, and costs set forth in the 2022 Accommodation Billing Schedule, and any successor billing schedule, do not include any charge or fee for any governmental or non-governmental permits, authorization, consents or approvals that may be required in connection

NYISO Agreements --> Service Agreements --> TFIA among NYISO, Con Ed, NYPA, and CHPE for Astoria Rainey  
with the provided services. Developer agrees to pay any such charges and fees and to reimburse  
Con Edison for any such charges and fees that Con Edison is required to pay.

--	--	--	--

B-2

## **SERVICE AGREEMENT NO. 2772**

Con Edison shall issue invoices monthly and shall describe the period covered by the invoice, the hours of services furnished during such period, and the applicable hourly rates and reimbursable charges and costs. For purposes of the provided services described in Section 1 of Appendix A, Con Edison is authorized to withdraw the amount of each such invoice from the Disbursement Account as payment for such invoice. If, at any time, the balance in the Disbursement Account falls below one hundred fifty thousand dollars (\$150,000) or is insufficient to cover the amount of any invoice, Developer shall replenish the Disbursement Account within five (5) Calendar Days of receiving notice thereof by the payment of an additional amount equal to the greater of (i) one hundred thousand dollars (\$100,000) and (ii) the amount of any such insufficiency plus an additional two hundred fifty thousand dollars (\$250,000). As the work progresses through engineering, procurement and construction, Con Edison and Developer will agree in writing, as applicable, to revise the disbursement and replenishment amounts, commensurate with the planned activities.

Following the completion of the provided services, Con Edison shall issue a final statement (the "Final Statement") pursuant to Article 12.2 of this Agreement to Developer showing the payments made by Developer concerning the provided services and the amount of the invoices applied against the aggregate amount of such payments. In the event that the balance of the Disbursement Account remaining after application of all prior invoices is not sufficient to cover the amount of any outstanding invoice, Developer shall, within thirty (30) Calendar Days of receipt of notice from Con Edison, pay Con Edison the amount of such insufficiency. To the extent that such remaining balance of the escrow fund exceeds the amount necessary to cover all invoices payable to Con Edison for purposes of the provided services performed in accordance with Section 1 of Appendix A, Con Edison shall, within thirty (30) Calendar Days of issuing the Final Statement to Developer, pay Developer the amount of such balance.

B-3

## SERVICE AGREEMENT NO. 2772

### APPENDIX C

#### INTERCONNECTION DETAILS

##### 1. Description of the Astoria-Rainey Cable and Upgrades Required for Developer's Merchant Transmission Facility

As part of Developer's Merchant Transmission Facility project (NYISO Queue Nos. 631 and 887), which facility will interconnect to NYPA's Astoria Annex Substation in accordance with the Merchant Transmission Facility Interconnection Agreement, Developer must install the Astoria-Rainey Cable. The Astoria-Rainey Cable is a 345 kV cable that will run from the 345 kV cable potheads exiting at NYPA's Astoria Annex Substation to Con Edison's Rainey Substation. Developer will construct the Astoria-Rainey Cable in accordance with the requirements in the Merchant Transmission Facility Interconnection Agreement. Con Edison is not a party to the Merchant Transmission Facility Interconnection Agreement. The Astoria-Rainey Cable will interconnect to Con Edison's system in accordance with this Agreement. In addition to the Astoria-Rainey Cable, the Merchant Transmission Facility project also requires the Upgrades set forth in Appendix A to this Agreement, including the reconductoring of Feeder 34091 at the Astoria Annex Substation in order to complete the interconnection.

##### 2. Description of the Points of Interconnection and Points of Change of Ownership

The Points of Interconnection ("POI") and Points of Change in Ownership ("PCO") are identified in the table below and are also shown in the Figure A-1. The POI and PCO are the same location since the Astoria Rainey Cable will not require any Connecting Transmission Owner's Attachment Facilities, as the transfer of ownership of the feeders occurs at the Pothead Stands. The POI/PCO locations are:

Astoria Rainey Cable	Line # Designation	Structure Number where POI/PCO Is Located	Structure Description where POI/PCO Is Located	Description of Change in Ownership
Con Edison to NYPA Transition	TBD	Disconnect switch F11-W	Pothead stands	<p>NYPA ownership will include the Astoria Rainey Cable and hardware required to attach to the pothead stands.</p> <p>Con Edison will own the pothead stand and other Upgrades at the Rainey Substation</p>

C-1

## **SERVICE AGREEMENT NO. 2772**

### **3. Operating Requirements**

- (a) The Parties shall comply with all provisions of the NYISO tariffs and procedures, as amended from time to time.
- (b) Con Edison and NYPA will address the required access and support activities associated with the Astoria-Rainey Cable in the to be issued easement (as referenced in section 7 below) and/or any necessary operating procedures, as amended from time to time, to the extent not inconsistent with the terms of this Agreement or the NYISO OATT.

### **4. Special Protection Facilities**

For purposes of Section 9.4.3 of this Agreement, Con Edison does not permit the installation of any special protection facilities on its transmission system.

### **5. Con Edison's Specifications.**

Within 20 days of FERC's acceptance of this Agreement, Con Edison shall provide Developer all relevant standards and specifications that Con Edison will comply with in its design, engineering, procurement and/or construction of the Upgrades. Con Edison shall use its standards and specifications that were included as the Applicable Reliability Requirements used in the Class Year Study process for the Merchant Transmission Facility; *provided, however*, Con Edison may use updated standards and specifications to the extent they are required to comply with Applicable Laws and Regulations and/or the requirements and guidelines of Applicable Reliability Councils to which Con Edison is subject. If the use of any updated standards and specifications results in costs for the Upgrades greater than the cost estimate for such Upgrades determined in the Class Year Study, the increase in costs will be allocated between Con Edison and Developer in accordance with the requirements in Section 25.8.6.4 of Attachment S to the OATT. Notwithstanding the above, revisions to such specifications and standards that occur after the 30% design packages have been issued by Con Edison will not be imposed on the Upgrades to avoid the need for any redesigns. In the event that a Party becomes aware that Applicable Laws and Regulations or the requirements and guidelines of Applicable Reliability Councils have been modified that could affect the safe or reliable operations of the Upgrades, the Party shall notify the other Parties promptly, so that the Parties can mutually agree upon an amendment, if needed, of this Agreement.

### **6. Con Edison Operational Metering Requirements**

NYPA shall provide operational metering information (MW, MVAR, etc.) to Con Edison control center from NYPA's operational meter at Astoria Annex 345kV substation via the Remote Terminal Unit.

### **7. Additional Agreements**

**(1)** The Developer and Con Edison have entered into a Security Agreement described in subsection (2). The Developer, Con Edison, and NYPA will also enter into agreements

C-2



## **SERVICE AGREEMENT NO. 2772**

concerning the use and occupancy of Con Edison's real property described in subsection (3) below. The Security Agreement and real property agreements will be collectively described as the "Additional Agreements". Except as otherwise described below, it is the belief and intention of the Developer, NYPA, and Con Edison that nothing in the Additional Agreements conflict in any material way with this Agreement. If Con Edison, NYPA, or Developer becomes aware of a conflict, such party shall notify the other party promptly so that, as applicable, Con Edison, NYPA, and Developer can mutually agree upon an amendment, if needed, of such Additional Agreement. The NYISO is not a party to, has no responsibility under, and shall have no liability in connection with these Additional Agreements.

**(2) Security Agreement:** The Developer and Con Edison has entered into a Security Agreement, dated December 16, 2022.

**(3) Other Agreements Concerning the Use and Occupancy of Connecting Transmission Owner's Real Property:** Prior to any access by Developer or its subcontractors onto the real property of Con Edison for the purposes provided for in this Agreement, including any construction-related activity, Developer, NYPA, and Con Edison have entered or will enter into one or more agreements acceptable to Con Edison in its sole discretion, to provide Developer and/or NYPA access for the use and occupancy of Con Edison's real property ("**U&O Agreements**"). The U&O Agreements shall exclusively govern the rights and obligations of Con Edison, NYPA, and Developer arising out of the use of occupancy of the real property described therein, including, but not limited to, NYPA and/or Developer's environmental obligations and indemnity to Con Edison for Hazardous Substances; *provided, however*, that the U&O Agreements do not and shall not be construed to limit Con Edison's, NYPA's, or Developer's responsibilities, as applicable, under this Agreement to satisfy applicable Environmental Laws, to provide notification concerning environmental releases pursuant to Article 23 of this Agreement, and to indemnify the NYISO pursuant to Article 18.1 in connection with the violation of any Environmental Law or the release of any Hazardous Substance. As of the date of this Agreement, the following U&O Agreements are in effect:

- A License Agreement, dated December 28, 2021 between CHPE LLC and Consolidated Edison Company of New York, Inc.

C-3

## **SERVICE AGREEMENT NO. 2772**

### **APPENDIX D**

#### **SECURITY ARRANGEMENTS DETAILS**

Infrastructure security of New York State Transmission System equipment and operations and control hardware and software is essential to ensure day-to-day New York State Transmission System reliability and operational security. The Commission will expect the NYISO, all Transmission Owners, all Developers and all other Market Participants to comply with the recommendations offered by the President's Critical Infrastructure Protection Board and, eventually, best practice recommendations from the electric reliability authority. All public utilities will be expected to meet basic standards for system infrastructure and operational security, including physical, operational, and cyber-security practices.

D-1

**SERVICE AGREEMENT NO. 2772**

**APPENDIX E-1**

**IN-SERVICE DATE FOR ASTORIA-RAINEY CABLE**

**[Date]**

New York Independent System Operator, Inc.  
Attn: Vice President, Operations  
10 Krey Boulevard  
Rensselaer, NY 12144

Consolidated Edison Company of New York, Inc.  
Attn: Walter Alvarado  
Vice President, System and Transmission Operations  
4 Irving Place  
New York, NY 10004  
Phone: (212-460-1210)  
Email: alvaradow@coned.com

Re: Astoria-Rainey Cable In-Service

Dear \_\_\_\_\_ :

On **[Date]** NYPA has completed Trial Operation of the Astoria-Rainey Cable. This letter confirms that the Astoria-Rainey Cable has commenced service, effective as of **[Date plus one day]**.

Thank you.

**[Signature]**

**[NYPA Representative]**

E-1-1

---

**SERVICE AGREEMENT NO. 2772**

**APPENDIX E-2**

**IN-SERVICE DATE FOR UPGRADES**

**[Date]**

New York Independent System Operator, Inc.  
Attn: Vice President, Operations  
10 Krey Boulevard  
Rensselaer, NY 12144

CHPE LLC  
C/o Transmission Developers  
Attn: General Counsel  
Pieter Schuyler Building  
600 Broadway  
Albany, NY 12207  
With electronic copy to:  
jeremiah.sheehan@transmissiondevelopers.com  
Bob.Harrison@transmissiondevelopers.com

New York Power Authority  
Sr. Vice President Power Supply  
New York Power Authority  
Blenheim-Gilboa Power Project  
397 Power Plant Access Road Gilboa, NY 12076

Re: Upgrades in Connection with Champlain Hudson Express Project

Dear \_\_\_\_\_:

On **[Date]** Con Edison has completed Trial Operation of the Upgrades. This letter confirms that the Upgrades have commenced service, effective as of **[Date plus one day]**.

Thank you.

**[Signature]**

**[Con Edison Representative]**

E-2-1



## **SERVICE AGREEMENT NO. 2772**

### **APPENDIX F**

#### **ADDRESSES FOR DELIVERY OF NOTICES AND BILLINGS**

##### **Notices:**

##### **NYISO:**

Before the In-Service Date of the Astoria-Rainey Cable:

New York Independent System Operator, Inc.  
Attn: Vice President, System and Resource Planning  
10 Krey Boulevard  
Rensselaer, NY 12144  
Phone: (518) 356-6000  
Fax: (518) 356-6118

After the In-Service Date of the Astoria-Rainey Cable:

New York Independent System Operator, Inc.  
Attn: Vice President, Operations  
10 Krey Boulevard  
Rensselaer, NY 12144  
Phone: (518) 356-6000  
Fax: (518) 356-6118

##### **Con Edison:**

Consolidated Edison Company of New York, Inc.  
Attn: Walter Alvarado  
Vice President, System and Transmission Operations  
4 Irving Place  
New York, NY 10004  
Phone: (212-460-1210)  
Email: alvaradow@coned.com

##### **NYPA:**

Sr. Vice President Power Supply  
New York Power Authority  
Blenheim-Gilboa Power Project  
397 Power Plant Access Road  
Gilboa, NY 12076  
Phone: (518) 287 6301

##### **CHPE**

NYISO Agreements --> Service Agreements --> TFIA among NYISO, Con Ed, NYPA, and CHPE for Astoria Rainey  
C/o Transmission Developers, Inc.  
Attn: General Counsel

F-1

## **SERVICE AGREEMENT NO. 2772**

Pieter Schuyler Building  
600 Broadway  
Albany, NY 12207  
Phone: (917) 886-6832  
With electronic copy to:  
jeremiah.sheehan@transmissiondevelopers.com  
Bob.Harrison@transmissiondevelopers.com

### **Billings and Payments:**

#### Con Edison

Consolidated Edison Company of New York, Inc.  
Attn: Walter Alvarado  
Vice President, System and Transmission Operations  
4 Irving Place  
New York, NY 10004  
Phone: (212-460-1210)  
Email: alvaradow@coned.com

#### CHPE:

C/o Transmission Developers, Inc.  
Attn: General Counsel  
Pieter Schuyler Building  
600 Broadway  
Albany, NY 12207  
Phone: (917) 886-6832  
With electronic copy to:  
jeremiah.sheehan@transmissiondevelopers.com  
Bob.Harrison@transmissiondevelopers.com

#### NYPA:

Sr. Vice President Power Supply  
New York Power Authority  
Blenheim-Gilboa Power Project  
397 Power Plant Access Road  
Gilboa, NY 12076  
Phone: (518) 287-6301

Or

Wire payments to:  
New York Power Authority  
Operating Fund c/o

NYISO Agreements --> Service Agreements --> TFIA among NYISO, Con Ed, NYPA, and CHPE for Astoria Rainey  
JP Morgan Chase, N.A.  
ABA No.: 21000021

F-2

## **SERVICE AGREEMENT NO. 2772**

Account No.: 573-804206

### **Alternative Forms of Delivery of Notices (telephone, facsimile or email):**

#### NYISO:

Before the In-Service Date of the Astoria-Rainey Cable:

New York Independent System Operator, Inc.  
Attn: Vice President, System and Resource Planning  
10 Krey Boulevard  
Rensselaer, NY 12144  
Phone: (518) 356-6000  
Fax: (518) 356-6118  
E-mail: interconnectionsupport@nyiso.com

After the In-Service Date of the Astoria-Rainey Cable:

New York Independent System Operator, Inc.  
Attn: Vice President, Operations  
10 Krey Boulevard  
Rensselaer, NY 12144  
Phone: (518) 356-6000  
Fax: (518) 356-6118  
E-mail: interconnectionsupport@nyiso.com

#### Con Edison:

Consolidated Edison Company of New York, Inc.  
Attn: Walter Alvarado  
Vice President, System and Transmission Operations  
4 Irving Place  
New York, NY 10004  
Phone: (212-460-1210)  
Email: alvaradow@coned.com

#### NYPA:

Brian Saez  
New York Power Authority  
Sr. Vice President Power Supply  
New York Power Authority  
Blenheim-Gilboa Power Project  
397 Power Plant Access Road  
Gilboa, NY 12076

NYISO Agreements --> Service Agreements --> TFIA among NYISO, Con Ed, NYPA, and CHPE for Astoria Rainey

Phone: (518) 287 6301

Email address: [Brian.Saez@nypa.gov](mailto:Brian.Saez@nypa.gov)

F-3

**SERVICE AGREEMENT NO. 2772**

CHPE LLC:

C/o Transmission Developers

Attn: Bob Harrison, Senior Vice President, Engineering

Pieter Schuyler Building

600 Broadway

Albany, NY 12207

Phone: (646) 937-4130

With electronic copy to:

Bob.Harrison@transmissiondevelopers.com

F-4