FERC rendition of the electronically filed tariff records in Docket No. [include if docket no. exists]

Filing Data:

CID: C000038

Filing Title: Amended & Restated LGIA No. 1396 among NYISO, NYSEG and Sheldon Energy Company Filing Identifier: 980

Type of Filing Code: 10

Associated Filing Identifier: na   
Tariff Title: NYISO Agreements   
Tariff ID: 58

Payment Confirmation: N   
Suspension Motion:

Tariff Record Data:

Record Content Description: Agreement No. 1396

Tariff Record Title: LGIA 1396 NYISO NYSEG Sheldon Energy Record Version Number: 0.0.0

Option Code: A

Tariff Record ID: 161

Tariff Record Collation Value: 5046500

Tariff Record Parent Identifier: 2

Proposed Date: 2015-02-18

Priority Order: 500

Record Change Type: New

Record Content Type: 2

Associated Filing Identifier: na

SERVICE AGREEMENT NO. 1396

SERVICE AGREEMENT NO. 1396

AMENDED AND RESTATED

INTERCONNECTION AGREEMENT   
 AMONG THE

NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.,   
 AND

NEW YORK STATE ELECTRIC & GAS CORPORATION,   
 AND

SHELDON ENERGY LLC   
Dated as of February 18, 2015

SERVICE AGREEMENT NO. 1396

TABLE OF CONTENTS

Page Number

ARTICLE 1. DEFINITIONS 1

ARTICLE 2. EFFECTIVE DATE, TERM AND TERMINATION 10

2.1 Effective Date 10

2.2 Term of Agreement 11

2.3 Termination 11

2.4 Termination Costs 11

2.5 Disconnection 12

2.6 Survival 12

ARTICLE 3. REGULATORY FILINGS 12

3.1 Filing 12

ARTICLE 4. SCOPE OF INTERCONNECTION SERVICE 13

4.1 Provision of Service 13

4.2 No Transmission Delivery Service 13

4.3 No Other Services 13

ARTICLE 5. INTERCONNECTION FACILITIES ENGINEERING, PROCUREMENT, AND

CONSTRUCTION 13

5.1 Options 13

5.2 General Conditions Applicable to Option to Build 15

5.3 Liquidated Damages 16

5.4 Power System Stabilizers 17

5.5 Equipment Procurement 18

5.6 Construction Commencement 18

5.7 Work Progress 19

5.8 Information Exchange 19

5.9 Limited Operation 19

5.10 Developer’s Attachment Facilities (“DAF”) 19

5.11 Connecting Transmission Owner’s Attachment Facilities Construction 20

5.12 Access Rights 21

5.13 Lands of Other Property Owners 21

5.14 Permits 21

5.15 Early Construction of Base Case Facilities 22

5.16 Suspension 22

5.17 Taxes 22

5.18 Tax Status; Non-Jurisdictional Entities 27

5.19 Modification 28

ARTICLE 6. TESTING AND INSPECTION 29

6.1 Pre-Commercial Operation Date Testing and Modifications 29

6.2 Post-Commercial Operation Date Testing and Modifications 29

6.3 Right to Observe Testing 29

6.4 Right to Inspect 29

ARTICLE 7. METERING 30

7.1 General 30

7.2 Check Meters 30

i

SERVICE AGREEMENT NO. 1396

7.3 Standards 30

7.4 Testing of Metering Equipment 30

7.5 Metering Data 31

ARTICLE 8. COMMUNICATIONS 31

8.1 Developer Obligations 31

8.2 Remote Terminal Unit 31

8.3 No Annexation 32

ARTICLE 9. OPERATIONS 32

9.1 General 32

9.2 NYISO and Connecting Transmission Owner Obligations 32

9.3 Developer Obligations 32

9.4 Start-Up and Synchronization 32

9.5 Real and Reactive Power Control 33

9.6 Outages and Interruptions 34

9.7 Switching and Tagging Rules 37

9.8 Use of Attachment Facilities by Third Parties 37

9.9 Disturbance Analysis Data Exchange 38

ARTICLE 10. MAINTENANCE 38

10.1 Connecting Transmission Owner Obligations 38

10.2 Developer Obligations 38

10.3 Coordination 38

10.4 Secondary Systems 39

10.5 Operating and Maintenance Expenses 39

ARTICLE 11. PERFORMANCE OBLIGATION 39

11.1 Developer Attachment Facilities 39

11.2 Connecting Transmission Owner’s Attachment Facilities 39

11.3 System Upgrade Facilities and System Deliverability Upgrades 39

11.4 Special Provisions for Affected Systems 40

11.5 Provision of Security 40

11.6 Developer Compensation for Emergency Services 40

11.7 Line Outage Costs 41

ARTICLE 12. INVOICE 41

12.1 General 41

12.2 Payment 41

12.3 Disputes 41

ARTICLE 13. EMERGENCIES 42

13.1 Obligations 42

13.2 Notice 42

13.3 Immediate Action 42

13.4 NYISO and Connecting Transmission Owner Authority 42

13.5 Developer Authority 43

13.6 Limited Liability 43

ARTICLE 14. REGULATORY REQUIREMENTS AND GOVERNING LAW 44

14.1 Regulatory Requirements 44

14.2 Governing Law 44

ARTICLE 15. NOTICES 44

ii

SERVICE AGREEMENT NO. 1396

15.1 General 44

15.2 Billings and Payments 44

15.3 Alternative Forms of Notice 45

15.4 Operations and Maintenance Notice 45

ARTICLE 16. FORCE MAJEURE 45

16.1 Force Majeure 45

ARTICLE 17. DEFAULT 45

17.1 Default 45

ARTICLE 18. INDEMNITY, CONSEQUENTIAL DAMAGES AND INSURANCE 46

18.1 Indemnity 46

18.2 No Consequential Damages 47

18.3 Insurance 47

ARTICLE 19. ASSIGNMENT 49

19.1 Assignment 49

ARTICLE 20. SEVERABILITY 50

20.1 Severability 50

ARTICLE 21. COMPARABILITY 50

21.1 Comparability 50

ARTICLE 22. CONFIDENTIALITY 50

22.1 Confidentiality 50

ARTICLE 23. ENVIRONMENTAL RELEASES 54

23.1 Developer and Connecting Transmission Owner Notice 54

ARTICLE 24. INFORMATION REQUIREMENT 54

24.1 Information Acquisition 54

24.2 Information Submission by Connecting Transmission Owner 54

24.3 Updated Information Submission by Developer 54

24.4 Information Supplementation 55

ARTICLE 25. INFORMATION ACCESS AND AUDIT RIGHTS 56

25.1 Information Access 56

25.2 Reporting of Non-Force Majeure Events 56

25.3 Audit Rights 56

25.4 Audit Rights Periods 56

25.5 Audit Results 57

ARTICLE 26. SUBCONTRACTORS 57

26.1 General 57

26.2 Responsibility of Principal 57

26.3 No Limitation by Insurance 57

ARTICLE 27. DISPUTES 57

27.1 Submission 57

27.2 External Arbitration Procedures 58

27.3 Arbitration Decisions 58

27.4 Costs 58

27.5 Termination 59

ARTICLE 28. REPRESENTATIONS, WARRANTIES AND COVENANTS 59

28.1 General 59

ARTICLE 29. MISCELLANEOUS 60

iii

SERVICE AGREEMENT NO. 1396

29.1 Binding Effect 60

29.2 Conflicts 60

29.3 Rules of Interpretation 60

29.4 Compliance 60

29.5 Joint and Several Obligations 61

29.6 Entire Agreement 61

29.7 No Third Party Beneficiaries 61

29.8 Waiver 61

29.9 Headings 61

29.10 Multiple Counterparts 61

29.11 Amendment 62

29.12 Modification by the Parties 62

29.13 Reservation of Rights 62

29.14 No Partnership 62

29.15 Other Transmission Rights 62

Appendices

iv

SERVICE AGREEMENT NO. 1396

AMENDED AND RESTATED STANDARD LARGE GENERATOR   
 INTERCONNECTION AGREEMENT

THIS AMENDED AND RESTATED STANDARD LARGE GENERATOR

INTERCONNECTION AGREEMENT (“Agreement”) is made and entered into this 18th day   
of February 2015, by and among Sheldon Energy LLC, a limited liability company organized   
and existing under the laws of the State of Delaware (“Developer” with a Large Generating   
Facility), 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”), and New York State   
Electric & Gas Corporation, a corporation organized and existing under the laws of the State of   
New York (“Connecting Transmission Owner”). Developer, the NYISO, or Connecting   
Transmission Owner each may be referred to as a “Party” or collectively referred to as the   
“Parties.”

RECITALS

WHEREAS, NYISO operates the New York State Transmission System and Connecting   
Transmission Owner owns certain facilities included in the New York State Transmission   
System; and

WHEREAS, Developer intends to own, lease and/or control and operate the Generating Facility identified as a Large Generating Facility in Appendix C to this Agreement; and,

WHEREAS, Developer, NYISO, and Connecting Transmission Owner have agreed to enter into this Agreement for the purpose of interconnecting the Large Generating Facility with the New York State Transmission System;

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 30.1.0 of   
Attachment X or Section 25.1 of Attachment S of the NYISO OATT.

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.

Affected System Operator shall mean the entity that operates an Affected System.

Affected Transmission Owner shall mean the New York public utility or authority (or its

designated agent) other than the Connecting Transmission Owner that (i) owns facilities used for   
the transmission of Energy in interstate commerce and provides Transmission Service under the   
Tariff, and (ii) owns, leases or otherwise possesses an interest in a portion of the New York State

1

SERVICE AGREEMENT NO. 1396

Transmission System where System Deliverability Upgrades or System Upgrade Facilities are installed pursuant to Attachment X and Attachment S of the Tariff.

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 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.

Ancillary Services shall mean those services that are necessary to support the transmission of Capacity and Energy from resources to Loads while maintaining reliable operation of the New York State Transmission System in accordance with Good Utility Practice.

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 the Transmission District to which the Developer’s Large Generating   
Facility is directly interconnected, as those requirements and guidelines are amended and   
modified and in effect from time to time; provided that no Party shall waive its right to challenge   
the applicability or validity of any requirement or guideline as applied to it in the context of this   
Agreement.

Attachment Facilities shall mean the Connecting Transmission Owner’s Attachment Facilities   
and the Developer’s Attachment Facilities. Collectively, Attachment Facilities include all   
facilities and equipment between the Large Generating Facility and the Point of Interconnection,   
including any modification, additions or upgrades that are necessary to physically and   
electrically interconnect the Large Generating Facility to the New York State Transmission   
System. Attachment Facilities are sole use facilities and shall not include Stand Alone System   
Upgrade Facilities, Distribution Upgrades, System Upgrade Facilities or System Deliverability   
Upgrades.

Base Case shall mean the base case power flow, short circuit, and stability data bases used for the Interconnection Studies by NYISO, Connecting Transmission Owner or Developer;   
described in Section 30.2.3 of the Large Facility Interconnection Procedures.

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.

2

SERVICE AGREEMENT NO. 1396

Byway shall mean all transmission facilities comprising the New York State Transmission

System that are neither Highways nor Other Interfaces. All transmission facilities in Zone J and Zone K are Byways.

Calendar Day shall mean any day including Saturday, Sunday or a federal holiday.

Capacity Region shall mean one of four subsets of the Installed Capacity statewide markets   
comprised of (1) Rest of State (i.e., Load Zones A through F); (2) Lower Hudson Valley (i.e.,   
Load Zones G, H and I); (3) New York City (i.e., Load Zone J); and (4) Long Island (i.e., Load   
Zone K) , except for Class Year Interconnection Facility Studies conducted prior to Class Year   
2012, for which “Capacity Region” shall be defined as set forth in Section 25.7.3 of Attachment   
S to the NYISO OATT.

Capacity Resource Interconnection Service (“CRIS”) shall mean the service provided by

NYISO to interconnect the Developer’s Large Generating Facility to the New York State

Transmission System or to the Distribution System in accordance with the NYISO Deliverability Interconnection Standard, to enable the New York State Transmission System to deliver electric capacity from the Large Generating Facility, pursuant to the terms of the NYISO OATT.

Class Year Deliverability Study shall mean an assessment, conducted by the NYISO staff in   
cooperation with Market Participants, to determine the System Deliverability Upgrades required   
for each generation and merchant transmission project included in the Class Year   
Interconnection Facilities Study to interconnect to the New York State Transmission System or   
to the Distribution System in compliance with the NYISO Deliverability Interconnection   
Standard.

Clustering shall mean the process whereby a group of Interconnection Requests is studied

together, instead of serially, for the purpose of conducting the Interconnection System Reliability Impact Study.

Commercial Operation shall mean the status of a Large Generating Facility that has   
commenced generating electricity for sale, excluding electricity generated during Trial   
Operation.

Commercial Operation Date of a unit shall mean the date on which the Large Generating

Facility commences Commercial Operation as agreed to by the Parties pursuant to Appendix E to this Agreement.

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

Connecting Transmission Owner shall mean the New York public utility or authority (or its   
designated agent) that (i) owns facilities used for the transmission of Energy in interstate   
commerce and provides Transmission Service under the Tariff, (ii) owns, leases or otherwise   
possesses an interest in the portion of the New York State Transmission System or Distribution   
System at the Point of Interconnection, and (iii) is a Party to the Standard Large Interconnection   
Agreement.

3

SERVICE AGREEMENT NO. 1396

Connecting Transmission Owner’s Attachment Facilities shall mean all facilities and

equipment owned, controlled or operated by the Connecting Transmission Owner from the Point of Change of Ownership to the Point of Interconnection as identified in Appendix A to the   
Standard Large Generator Interconnection Agreement, including any modifications, additions or upgrades to such facilities and equipment. Connecting Transmission Owner’s Attachment   
Facilities are sole use facilities and shall not include Stand Alone System Upgrade Facilities or   
System Upgrade Facilities.

Control Area shall mean an electric power system or combination of electric power systems to   
which a common automatic generation control scheme is applied in order to: (1) match, at all   
times, the power output of the Generators within the electric power system(s) and capacity and   
energy purchased from entities outside the electric power system(s), with the Load within the   
electric power system(s); (2) maintain scheduled interchange with other Control Areas, within   
the limits of Good Utility Practice; (3) maintain the frequency of the electric power system(s)   
within reasonable limits in accordance with Good Utility Practice; and (4) provide sufficient

generating capacity to maintain Operating Reserves in accordance with Good Utility Practice. A Control Area must be certified by the NPCC.

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.

Deliverability Interconnection Standard shall mean the standard that must be met by any

Large Generating Facility proposing to interconnect to the New York State Transmission System or to the Distribution System and become a qualified Installed Capacity Supplier. To meet the   
NYISO Deliverability Interconnection Standard, the Developer of the proposed Large   
Generating Facility must, in accordance with the rules in Attachment S to the NYISO OATT,   
fund or commit to fund the System Deliverability Upgrades identified for its project in the Class Year Deliverability Study.

Developer shall mean an Eligible Customer developing a Large Generating Facility, proposing to connect to the New York State Transmission System, in compliance with the NYISO   
Minimum Interconnection Standard.

Developer’s Attachment Facilities shall mean all facilities and equipment, as identified in

Appendix A of this Agreement, that are located between the Large Generating Facility and the Point of Change of Ownership, including any modification, addition, or upgrades to such   
facilities and equipment necessary to physically and electrically interconnect the Large   
Generating Facility to the New York State Transmission System. Developer’s Attachment   
Facilities are sole use facilities.

Dispute Resolution shall mean the procedure described in Article 27 of this Agreement for resolution of a dispute between the Parties.

Distribution System shall mean the Transmission Owner’s facilities and equipment used to

distribute electricity that are subject to FERC jurisdiction, and are subject to the NYISO’s LFIP or SGIP under FERC Order Nos. 2003 and/or 2006. The term Distribution System shall not include LIPA’s distribution facilities.

4

SERVICE AGREEMENT NO. 1396

Distribution Upgrades shall mean the additions, modifications, and upgrades to the Connecting   
Transmission Owner’s Distribution System at or beyond the Point of Interconnection to facilitate   
interconnection of a Large Facility or Small Generating Facility and render the transmission   
service necessary to affect the Developer’s wholesale sale of electricity in interstate commerce.   
Distribution Upgrades do not include Interconnection Facilities, System Upgrade Facilities, or   
System Deliverability Upgrades. Distribution Upgrades are sole use facilities and shall not   
include Stand Alone System Upgrade Facilities, System Upgrade Facilities, or System   
Deliverability Upgrades.

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.

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.

Energy Resource Interconnection Service (“ERIS”) shall mean the service provided by   
NYISO to interconnect the Developer’s Large Generating Facility to the New York State   
Transmission System or to the Distribution System in accordance with the NYISO Minimum   
Interconnection Standard, to enable the New York State Transmission System to receive Energy   
and Ancillary Services from the Large Generating Facility, pursuant to the terms of the NYISO   
OATT.

Engineering & Procurement (E&P) Agreement shall mean an agreement that authorizes

Connecting Transmission Owner to begin engineering and procurement of long lead-time items necessary for the establishment of the interconnection in order to advance the implementation of the Interconnection Request.

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

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.

Generating Facility shall mean Developer’s device for the production of electricity identified in the Interconnection Request, but shall not include the Developer’s Attachment Facilities or   
Distribution Upgrades.

5

SERVICE AGREEMENT NO. 1396

Generating Facility Capacity shall mean the net seasonal capacity of the Generating Facility and the aggregate net seasonal capacity of the Generating Facility where it includes multiple energy production devices.

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,   
Affected Transmission Owner, Connecting Transmission Owner, 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 chemical, material or substance, exposure to which is prohibited, limited or regulated by any applicable Environmental Law.

Highway shall mean 115 kV and higher transmission facilities that comprise the following

NYCA interfaces: Dysinger East, West Central, Volney East, Moses South, Central East/Total   
East and UPNY-ConEd, and their immediately connected, in series, Bulk Power System   
facilities in New York State. Each interface shall be evaluated to determine additional “in   
series” facilities, defined as any transmission facility higher than 115 kV that (a) is located in an   
upstream or downstream zone adjacent to the interface and (b) has a power transfer distribution   
factor (DFAX) equal to or greater than five percent when the aggregate of generation in zones or   
systems adjacent to the upstream zone or zones which define the interface is shifted to the   
aggregate of generation in zones or systems adjacent to the downstream zone or zones which   
define the interface. In determining “in series” facilities for Dysinger East and West Central   
interfaces, the 115 kV and 230 kV tie lines between NYCA and PJM located in LBMP Zones A   
and B shall not participate in the transfer. Highway transmission facilities are listed in ISO   
Procedures.

Initial Synchronization Date shall mean the date upon which the Large Generating Facility is initially synchronized and upon which Trial Operation begins.

6

SERVICE AGREEMENT NO. 1396

In-Service Date shall mean the date upon which the Developer reasonably expects it will be

ready to begin use of the Connecting Transmission Owner’s Attachment Facilities to obtain back feed power.

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 Large Generating 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.

Interconnection Facilities Study Agreement shall mean the form of agreement contained in Appendix 4 of the Standard Large Facility Interconnection Procedures for conducting the Interconnection Facilities Study.

Interconnection Feasibility Study shall mean a preliminary evaluation of the system impact and cost of interconnecting the Large Generating Facility to the New York State Transmission System or to the Distribution System, the scope of which is described in Section 30.6 of the Standard Large Facility Interconnection Procedures.

Interconnection Feasibility Study Agreement shall mean the form of agreement contained in Appendix 2 of the Standard Large Facility Interconnection Procedures for conducting the   
Interconnection Feasibility Study.

Interconnection Request shall mean a Developer’s request, in the form of Appendix 1 to the   
Standard Large Facility Interconnection Procedures, in accordance with the Tariff, to   
interconnect a new Large Generating Facility to the New York State Transmission System or to   
the Distribution System, or to materially increase the capacity of, or make a material   
modification to the operating characteristics of, an existing Large Generating Facility that is   
interconnected with the New York State Transmission System or with the Distribution System.

Interconnection Study shall mean any of the following studies: the Interconnection Feasibility Study, the Interconnection System Reliability Impact Study, and the Interconnection Facilities Study described in the Standard Large Facility Interconnection Procedures.

Interconnection System Reliability Impact Study (“SRIS”) shall mean an engineering study,   
conducted in accordance with Section 30.7 of the Large Facility Interconnection Procedures, that   
evaluates the impact of the proposed Large Generating Facility on the safety and reliability of the   
New York State Transmission System and, if applicable, an Affected System, to determine what   
Attachment Facilities, Distribution Upgrades and System Upgrade Facilities are needed for the   
proposed Large Generation Facility of the Developer to connect reliably to the New York State   
Transmission System or to the Distribution System in a manner that meets the NYISO Minimum   
Interconnection Standard.

Interconnection System Reliability Impact Study Agreement shall mean the form of

agreement contained in Appendix 3 of the Standard Large Facility Interconnection Procedures for conducting the Interconnection System Reliability Impact Study.

7

SERVICE AGREEMENT NO. 1396

IRS shall mean the Internal Revenue Service.

Large Generating Facility shall mean a Generating Facility having a Generating Facility Capacity of more than 20 MW.

Loss shall mean any and all losses relating to injury to or death of any person or damage to

property, demand, suits, recoveries, costs and expenses, court costs, attorney fees, and all other   
obligations by or to third parties, arising out of or resulting from the Indemnified Party’s   
performance or non-performance of its obligations under this Agreement on behalf of the   
Indemnifying Party, except in cases of gross negligence or intentional wrongdoing by the   
Indemnified Party.

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.

Metering Equipment shall mean all metering equipment installed or to be installed at the Large Generating Facility pursuant to this Agreement at the metering points, including but not limited to instrument transformers, MWh-meters, data acquisition equipment, transducers, remote   
terminal unit, communications equipment, phone lines, and fiber optics.

Minimum Interconnection Standard shall mean the reliability standard that must be met by

any Large Generating Facility proposing to connect to the New York State Transmission System or to the Distribution System. The Standard is designed to ensure reliable access by the   
proposed project to the New York State Transmission System. The Standard does not impose any deliverability test or deliverability requirement on the proposed interconnection.

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.

Optional Interconnection Study shall mean a sensitivity analysis based on assumptions specified by the Developer in the Optional Interconnection Study Agreement.

Optional Interconnection Study Agreement shall mean the form of agreement contained in Appendix 5 of the Standard Large Facility Interconnection Procedures for conducting the Optional Interconnection Study.

8

SERVICE AGREEMENT NO. 1396

Other Interfaces shall mean the following interfaces into Capacity Regions: Lower Hudson

Valley [i.e., Rest of State (Load Zones A-F) to Lower Hudson Valley (Load Zones G, H and I)]; New York City [i.e., Lower Hudson Valley (Load Zones G, H and I) to New York City (Load Zone J)]; and Long Island [i.e., Lower Hudson Valley (Load Zones G, H and I) to Long Island (Load Zone K)], and the following Interfaces between the NYCA and adjacent Control Areas: PJM to NYISO, ISO-NE to NYISO, Hydro-Quebec to NYISO, and Norwalk Harbor   
(Connecticut) to Northport (Long Island) Cable.

Party or Parties shall mean NYISO, Connecting Transmission Owner, or Developer or any combination of the above.

Point of Change of Ownership shall mean the point, as set forth in Appendix A to this Agreement, where the Developer’s Attachment Facilities connect to the Connecting Transmission Owner’s Attachment Facilities.

Point of Interconnection shall mean the point, as set forth in Appendix A to this Agreement, where the Attachment Facilities connect to the New York State Transmission System or to the Distribution System.

Queue Position shall mean the order of a valid Interconnection Request, relative to all other pending valid Interconnection Requests, that is established based upon the date and time of receipt of the valid Interconnection Request by NYISO.

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.

Scoping Meeting shall mean the meeting between representatives of the Developer, NYISO and   
Connecting Transmission Owner conducted for the purpose of discussing alternative   
interconnection options, to exchange information including any transmission data and earlier   
study evaluations that would be reasonably expected to impact such interconnection options, to   
analyze such information, and to determine the potential feasible Points of Interconnection.

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.

Site Control shall mean documentation reasonably demonstrating: (1) ownership of, a leasehold interest in, or a right to develop a site for the purpose of constructing the Large Generating   
Facility; (2) an option to purchase or acquire a leasehold site for such purpose; or (3) an   
exclusivity or other business relationship between Developer and the entity having the right to sell, lease or grant Developer the right to possess or occupy a site for such purpose.

Stand Alone System Upgrade Facilities shall mean System Upgrade Facilities that a Developer may construct without affecting day-to-day operations of the New York State Transmission   
System during their construction. NYISO, the Connecting Transmission Owner and the   
Developer must agree as to what constitutes Stand Alone System Upgrade Facilities and identify them in Appendix A to this Agreement.

9

SERVICE AGREEMENT NO. 1396

Standard Large Facility Interconnection Procedures (“LFIP”) shall mean the

interconnection procedures applicable to an Interconnection Request pertaining to a Large Generating Facility that are included in Attachment X of the NYISO OATT.

Standard Large Generator Interconnection Agreement (“LGIA”) shall mean this

Agreement, the form of interconnection agreement applicable to an Interconnection Request

pertaining to a Large Generating Facility, that is included in Attachment X of the NYISO OATT.

System Deliverability Upgrades shall mean the least costly configuration of commercially available components of electrical equipment that can be used, consistent with Good Utility Practice and Applicable Reliability Requirements, to make the modifications or additions to Byways and Highways and Other Interfaces on the existing New York State Transmission   
System and Distribution System that are required for the proposed project to connect reliably to the system in a manner that meets the NYISO Deliverability Interconnection Standard at the requested level of Capacity Resource Interconnection Service.

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 Large Generating Facility and (2)   
protect the Large Generating Facility 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.

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.

Trial Operation shall mean the period during which Developer is engaged in on-site test

operations and commissioning of the Large Generating Facility prior to Commercial Operation.

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 and Connecting Transmission Owner shall promptly file this Agreement with FERC upon execution in accordance with Article 3.1.

10

SERVICE AGREEMENT NO. 1396

2.2 Term of Agreement.

Subject to the provisions of Article 2.3, this Agreement shall remain in effect for a period   
of twenty (20) years from the Effective Date or such other longer period as the Developer may   
request and shall be automatically renewed for each successive one-year period thereafter.

2.3 Termination.

2.3.1 Written Notice.

This Agreement may be terminated by the Developer after giving the NYISO and

Connecting Transmission Owner ninety (90) Calendar Days advance written notice, or by the NYISO and Connecting Transmission Owner notifying FERC after the Large Generating Facility permanently ceases Commercial Operations.

2.3.2 Default.

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

2.3.3 Compliance.

Notwithstanding Articles 2.3.1 and 2.3.2, 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 a Party elects to terminate this Agreement pursuant to Article 2.3.1 above, the

terminating Party shall pay all costs incurred (including any cancellation costs relating to orders   
or contracts for Attachment Facilities and equipment) or charges assessed by the other Parties, as   
of the date of the other Parties’ receipt of such notice of termination, that are the responsibility of   
the terminating Party under this Agreement. In the event of termination by a Party, 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 Connecting Transmission Owner’s Attachment   
Facilities that have not yet been constructed or installed, the Connecting Transmission Owner   
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 the

Connecting Transmission Owner 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 Connecting Transmission Owner for any or all such costs of   
materials or equipment not taken by Developer, Connecting Transmission Owner shall promptly

11

SERVICE AGREEMENT NO. 1396

refund such amounts to Developer, less any costs, including penalties incurred by the Connecting   
Transmission Owner to cancel any pending orders of or return such materials, equipment, or   
contracts.

If Developer terminates this Agreement, it shall be responsible for all costs incurred in association with Developer’s interconnection, including any cancellation costs relating to orders or contracts for Attachment Facilities and equipment, and other expenses including any System Upgrade Facilities and System Deliverability Upgrades for which the Connecting Transmission Owner has incurred expenses and has not been reimbursed by the Developer.

2.4.2 Connecting Transmission Owner may, at its option, retain any portion of such

materials, equipment, or facilities that Developer chooses not to accept delivery of, in which case Connecting Transmission Owner shall be responsible for all costs associated with procuring such materials, equipment, or facilities.

2.4.3 With respect to any portion of the Attachment Facilities, and any other facilities already installed or constructed pursuant to the terms of this Agreement, Developer shall be   
responsible for all costs associated with the removal, relocation or other disposition or retirement of such materials, equipment, or facilities.

2.5 Disconnection.

Upon termination of this Agreement, Developer and Connecting Transmission Owner will take all appropriate steps to disconnect the Developer’s Large Generating Facility from the New York State Transmission System. All costs required to effectuate such disconnection shall be borne by the terminating Party, unless such termination resulted from the non-terminating   
Party’s Default of this Agreement or such non-terminating 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 and Connecting Transmission Owner 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

3.1 Filing.

NYISO and Connecting Transmission Owner 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 NYISO

12

SERVICE AGREEMENT NO. 1396

OATT. If the Developer has executed this Agreement, or any amendment thereto, the Developer shall reasonably cooperate with NYISO and Connecting Transmission Owner with respect to such filing and to provide any information reasonably requested by NYISO and Connecting   
Transmission Owner needed to comply with Applicable Laws and Regulations.

ARTICLE 4. SCOPE OF INTERCONNECTION SERVICE

4.1 Provision of Service.

NYISO will provide Developer with interconnection service of the following type for the term of this Agreement.

4.1.1 Product.

NYISO will provide Energy Resource Interconnection Service and Capacity Resource Interconnection Service to Developer at the Point of Interconnection, with Capacity Resource Interconnection Service subject to the provisions set forth in Appendix C - II.

4.1.2 Developer is responsible for ensuring that its actual Large Generating Facility

output matches the scheduled delivery from the Large Generating Facility to the New York State Transmission System, consistent with the scheduling requirements of the NYISO’s FERC-  
approved market structure, including ramping into and out of such scheduled delivery, as   
measured at the Point of Interconnection, consistent with the scheduling requirements of the NYISO OATT and any applicable FERC-approved market structure.

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 NYISO OATT, and does not convey any right to deliver electricity to any specific customer or Point of Delivery. If Developer wishes to obtain Transmission Service on the New York State Transmission System, then Developer must request such Transmission Service in accordance with the provisions of the NYISO OATT.

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”). If Developer wishes to

supply Energy, Installed Capacity or Ancillary Services, then Developer will make application to do so in accordance with the NYISO Services Tariff.

ARTICLE 5. INTERCONNECTION FACILITIES ENGINEERING,   
 PROCUREMENT, AND CONSTRUCTION

5.1 Options.

Unless otherwise mutually agreed to by Developer and Connecting Transmission Owner, Developer shall select the In-Service Date, Initial Synchronization Date, and Commercial

13

SERVICE AGREEMENT NO. 1396

Operation Date; and either Standard Option or Alternate Option set forth below for completion of the Connecting Transmission Owner’s Attachment Facilities and System Upgrade Facilities and System Deliverability Upgrades as set forth in Appendix A hereto, and such dates and selected option shall be set forth in Appendix B hereto.

5.1.1 Standard Option.

The Connecting Transmission Owner shall design, procure, and construct the Connecting Transmission Owner’s Attachment Facilities and System Upgrade Facilities and System   
Deliverability Upgrades, using Reasonable Efforts to complete the Connecting Transmission   
Owner’s Attachment Facilities and System Upgrade Facilities and System Deliverability   
Upgrades by the dates set forth in Appendix B hereto. The Connecting Transmission Owner   
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 the   
Connecting Transmission Owner reasonably expects that it will not be able to complete the   
Connecting Transmission Owner’s Attachment Facilities and System Upgrade Facilities and   
System Deliverability Upgrades by the specified dates, the Connecting Transmission Owner   
shall promptly provide written notice to the Developer and NYISO, and shall undertake   
Reasonable Efforts to meet the earliest dates thereafter.

5.1.2 Alternate Option.

If the dates designated by Developer are acceptable to Connecting Transmission Owner,   
the Connecting Transmission Owner shall so notify Developer and NYISO within thirty (30)   
Calendar Days, and shall assume responsibility for the design, procurement and construction of   
the Connecting Transmission Owner’s Attachment Facilities by the designated dates. If   
Connecting Transmission Owner subsequently fails to complete Connecting Transmission   
Owner’s Attachment Facilities by the In-Service Date, to the extent necessary to provide back   
feed power; or fails to complete System Upgrade Facilities or System Deliverability Upgrades by   
the Initial Synchronization Date to the extent necessary to allow for Trial Operation at full power   
output, unless other arrangements are made by the Developer and Connecting Transmission   
Owner for such Trial Operation; or fails to complete the System Upgrade Facilities and System   
Deliverability Upgrades by the Commercial Operation Date, as such dates are reflected in   
Appendix B hereto; Connecting Transmission Owner shall pay Developer liquidated damages in   
accordance with Article 5.3, Liquidated Damages, provided, however, the dates designated by   
Developer shall be extended day for day for each day that NYISO refuses to grant clearances to   
install equipment.

5.1.3 Option to Build.

If the dates designated by Developer are not acceptable to Connecting Transmission   
Owner, the Connecting Transmission Owner shall so notify the Developer and NYISO within   
thirty (30) Calendar Days, and unless the Developer and Connecting Transmission Owner agree   
otherwise, Developer shall have the option to assume responsibility for the design, procurement   
and construction of Connecting Transmission Owner’s Attachment Facilities and Stand Alone

14

SERVICE AGREEMENT NO. 1396

System Upgrade Facilities on the dates specified in Article 5.1.2; provided that if an Attachment   
Facility or Stand Alone System Upgrade Facility is needed for more than one Developer’s   
project, Developer’s option to build such Facility shall be contingent on the agreement of all   
other affected Developers. NYISO, Connecting Transmission Owner and Developer must agree   
as to what constitutes Stand Alone System Upgrade Facilities and identify such Stand Alone   
System Upgrade Facilities in Appendix A hereto. Except for Stand Alone System Upgrade   
Facilities, Developer shall have no right to construct System Upgrade Facilities under this   
option.

5.1.4 Negotiated Option.

If the Developer elects not to exercise its option under Article 5.1.3, Option to Build,   
Developer shall so notify Connecting Transmission Owner and NYISO within thirty (30)   
Calendar Days, and the Developer and Connecting Transmission Owner shall in good faith   
attempt to negotiate terms and conditions (including revision of the specified dates and   
liquidated damages, the provision of incentives or the procurement and construction of a portion   
of the Connecting Transmission Owner’s Attachment Facilities and Stand Alone System   
Upgrade Facilities by Developer) pursuant to which Connecting Transmission Owner is   
responsible for the design, procurement and construction of the Connecting Transmission   
Owner’s Attachment Facilities and System Upgrade Facilities and System Deliverability   
Upgrades. If the two Parties are unable to reach agreement on such terms and conditions,   
Connecting Transmission Owner shall assume responsibility for the design, procurement and   
construction of the Connecting Transmission Owner’s Attachment Facilities and System   
Upgrade Facilities and System Deliverability Upgrades pursuant to 5.1.1, Standard Option.

5.2 General Conditions Applicable to Option to Build.

If Developer assumes responsibility for the design, procurement and construction of the   
Connecting Transmission Owner’s Attachment Facilities and Stand Alone System Upgrade   
Facilities,

(1) Developer shall engineer, procure equipment, and construct the Connecting   
Transmission Owner’s Attachment Facilities and Stand Alone System Upgrade Facilities (or portions thereof) using Good Utility Practice and using standards and specifications provided in advance by the Connecting Transmission Owner;

(2) Developer’s engineering, procurement and construction of the Connecting

Transmission Owner’s Attachment Facilities and Stand Alone System Upgrade Facilities shall comply with all requirements of law to which Connecting Transmission Owner would be subject in the engineering, procurement or construction of the Connecting Transmission Owner’s   
Attachment Facilities and Stand Alone System Upgrade Facilities;

(3) Connecting Transmission Owner shall review and approve the engineering design, equipment acceptance tests, and the construction of the Connecting Transmission Owner’s Attachment Facilities and Stand Alone System Upgrade Facilities;

15

SERVICE AGREEMENT NO. 1396

(4) Prior to commencement of construction, Developer shall provide to Connecting   
Transmission Owner and NYISO a schedule for construction of the Connecting Transmission   
Owner’s Attachment Facilities and Stand Alone System Upgrade Facilities, and shall promptly   
respond to requests for information from Connecting Transmission Owner or NYISO;

(5) At any time during construction, Connecting Transmission Owner shall have the right to gain unrestricted access to the Connecting Transmission Owner’s Attachment Facilities and Stand Alone System Upgrade Facilities and to conduct inspections of the same;

(6) At any time during construction, should any phase of the engineering, equipment   
procurement, or construction of the Connecting Transmission Owner’s Attachment Facilities and   
Stand Alone System Upgrade Facilities not meet the standards and specifications provided by   
Connecting Transmission Owner, the Developer shall be obligated to remedy deficiencies in that   
portion of the Connecting Transmission Owner’s Attachment Facilities and Stand Alone System   
Upgrade Facilities;

(7) Developer shall indemnify Connecting Transmission Owner and NYISO for

claims arising from the Developer’s construction of Connecting Transmission Owner’s

Attachment Facilities and Stand Alone System Upgrade Facilities under procedures applicable to Article 18.1 Indemnity;

(8) Developer shall transfer control of Connecting Transmission Owner’s Attachment   
Facilities and Stand Alone System Upgrade Facilities to the Connecting Transmission Owner;

(9) Unless the Developer and Connecting Transmission Owner otherwise agree,

Developer shall transfer ownership of Connecting Transmission Owner’s Attachment Facilities and Stand Alone System Upgrade Facilities to Connecting Transmission Owner;

(10) Connecting Transmission Owner shall approve and accept for operation and maintenance the Connecting Transmission Owner’s Attachment Facilities and Stand Alone System Upgrade Facilities to the extent engineered, procured, and constructed in accordance with this Article 5.2; and

(11) Developer shall deliver to NYISO and Connecting Transmission Owner “as built” drawings, information, and any other documents that are reasonably required by NYISO or   
Connecting Transmission Owner to assure that the Attachment Facilities and Stand Alone   
System Upgrade Facilities are built to the standards and specifications required by Connecting   
Transmission Owner.

5.3 Liquidated Damages.

The actual damages to the Developer, in the event the Connecting Transmission Owner’s   
Attachment Facilities or System Upgrade Facilities or System Deliverability Upgrades are not   
completed by the dates designated by the Developer and accepted by the Connecting   
Transmission Owner pursuant to subparagraphs 5.1.2 or 5.1.4, above, may include Developer’s   
fixed operation and maintenance costs and lost opportunity costs. Such actual damages are   
uncertain and impossible to determine at this time. Because of such uncertainty, any liquidated

16

SERVICE AGREEMENT NO. 1396

damages paid by the Connecting Transmission Owner to the Developer in the event that

Connecting Transmission Owner does not complete any portion of the Connecting Transmission Owner’s Attachment Facilities, System Upgrade Facilities or System Deliverability Upgrades by the applicable dates, shall be an amount equal to 1/2 of 1 percent per day of the actual cost of the Connecting Transmission Owner’s Attachment Facilities and System Upgrade Facilities and System Deliverability Upgrades, in the aggregate, for which Connecting Transmission Owner has assumed responsibility to design, procure and construct.

However, in no event shall the total liquidated damages exceed 20 percent of the actual

cost of the Connecting Transmission Owner Attachment Facilities and System Upgrade Facilities   
and System Deliverability Upgrades for which the Connecting Transmission Owner has assumed   
responsibility to design, procure, and construct. The foregoing payments will be made by the   
Connecting Transmission Owner to the Developer as just compensation for the damages caused   
to the Developer, which actual damages are uncertain and impossible to determine at this time,   
and as reasonable liquidated damages, but not as a penalty or a method to secure performance of   
this Agreement. Liquidated damages, when the Developer and Connecting Transmission Owner   
agree to them, are the exclusive remedy for the Connecting Transmission Owner’s failure to   
meet its schedule.

Further, Connecting Transmission Owner shall not pay liquidated damages to Developer   
if: (1) Developer is not ready to commence use of the Connecting Transmission Owner’s   
Attachment Facilities or System Upgrade Facilities or System Deliverability Upgrades to take   
the delivery of power for the Developer’s Large Generating Facility’s Trial Operation or to   
export power from the Developer’s Large Generating Facility on the specified dates, unless the   
Developer would have been able to commence use of the Connecting Transmission Owner’s   
Attachment Facilities or System Upgrade Facilities or System Deliverability Upgrades to take   
the delivery of power for Developer’s Large Generating Facility’s Trial Operation or to export   
power from the Developer’s Large Generating Facility, but for Connecting Transmission   
Owner’s delay; (2) the Connecting Transmission Owner’s failure to meet the specified dates is   
the result of the action or inaction of the Developer or any other Developer who has entered into   
a Standard Large Generator Interconnection Agreement with the Connecting Transmission   
Owner and NYISO, or action or inaction by any other Party, or any other cause beyond   
Connecting Transmission Owner’s reasonable control or reasonable ability to cure; (3) the   
Developer has assumed responsibility for the design, procurement and construction of the   
Connecting Transmission Owner’s Attachment Facilities and Stand Alone System Upgrade   
Facilities; or (4) the Connecting Transmission Owner and Developer have otherwise agreed. In   
no event shall NYISO have any liability whatever to Developer for liquidated damages   
associated with the engineering, procurement or construction of Attachment Facilities or System   
Upgrade Facilities or System Deliverability Upgrades.

5.4 Power System Stabilizers.

The Developer shall procure, install, maintain and operate Power System Stabilizers in   
accordance with the requirements identified in the Interconnection Studies conducted for   
Developer’s Large Generating Facility. NYISO and Connecting Transmission Owner reserve   
the right to reasonably establish minimum acceptable settings for any installed Power System   
Stabilizers, subject to the design and operating limitations of the Large Generating Facility. If

17

SERVICE AGREEMENT NO. 1396

the Large Generating Facility’s Power System Stabilizers are removed from service or not

capable of automatic operation, the Developer shall immediately notify the Connecting

Transmission Owner and NYISO. The requirements of this paragraph shall not apply to wind generators.

5.5 Equipment Procurement.

If responsibility for construction of the Connecting Transmission Owner’s Attachment Facilities or System Upgrade Facilities or System Deliverability Upgrades is to be borne by the Connecting Transmission Owner, then the Connecting Transmission Owner shall commence design of the Connecting Transmission Owner’s Attachment Facilities or System Upgrade Facilities or System Deliverability Upgrades and procure necessary equipment as soon as   
practicable after all of the following conditions are satisfied, unless the Developer and   
Connecting Transmission Owner otherwise agree in writing:

5.5.1 NYISO and Connecting Transmission Owner have completed the Interconnection Facilities Study pursuant to the Interconnection Facilities Study Agreement;

5.5.2 The NYISO has completed the required cost allocation analyses, and Developer   
has accepted his share of the costs for necessary System Upgrade Facilities and System   
Deliverability Upgrades in accordance with the provisions of Attachment S of the NYISO   
OATT;

5.5.3 The Connecting Transmission Owner has received written authorization to

proceed with design and procurement from the Developer by the date specified in Appendix B hereto; and

5.5.4 The Developer has provided security to the Connecting Transmission Owner in accordance with Article 11.5 by the dates specified in Appendix B hereto.

5.6 Construction Commencement.

The Connecting Transmission Owner shall commence construction of the Connecting Transmission Owner’s Attachment Facilities and System Upgrade Facilities and System   
Deliverability Upgrades for which it is responsible as soon as practicable after the following additional conditions are satisfied:

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

5.6.2 Necessary real property rights and rights-of-way have been obtained, to the extent   
required for the construction of a discrete aspect of the Connecting Transmission Owner’s   
Attachment Facilities and System Upgrade Facilities and System Deliverability Upgrades;

5.6.3 The Connecting Transmission Owner has received written authorization to

proceed with construction from the Developer by the date specified in Appendix B hereto; and

18

SERVICE AGREEMENT NO. 1396

5.6.4 The Developer has provided security to the Connecting Transmission Owner in accordance with Article 11.5 by the dates specified in Appendix B hereto.

5.7 Work Progress.

The Developer and Connecting Transmission Owner will keep each other, and NYISO, advised periodically as to the progress of their respective design, procurement and construction efforts. Any Party may, at any time, request a progress report from the Developer or Connecting Transmission Owner. If, at any time, the Developer determines that the completion of the   
Connecting Transmission Owner’s Attachment Facilities will not be required until after the   
specified In-Service Date, the Developer will provide written notice to the Connecting   
Transmission Owner and NYISO of such later date upon which the completion of the   
Connecting Transmission Owner’s Attachment Facilities will be required.

5.8 Information Exchange.

As soon as reasonably practicable after the Effective Date, the Developer and Connecting Transmission Owner shall exchange information, and provide NYISO the same information, regarding the design and compatibility of their respective Attachment Facilities and   
compatibility of the Attachment Facilities with the New York State Transmission System, and shall work diligently and in good faith to make any necessary design changes.

5.9 Limited Operation.

If any of the Connecting Transmission Owner’s Attachment Facilities or System Upgrade   
Facilities or System Deliverability Upgrades are not reasonably expected to be completed prior   
to the Commercial Operation Date of the Developer’s Large Generating Facility, NYISO shall,   
upon the request and at the expense of Developer, in conjunction with the Connecting   
Transmission Owner, perform operating studies on a timely basis to determine the extent to   
which the Developer’s Large Generating Facility and the Developer’s Attachment Facilities may   
operate prior to the completion of the Connecting Transmission Owner’s Attachment Facilities   
or System Upgrade Facilities or System Deliverability Upgrades consistent with Applicable   
Laws and Regulations, Applicable Reliability Standards, Good Utility Practice, and this   
Agreement. Connecting Transmission Owner and NYISO shall permit Developer to operate the   
Developer’s Large Generating Facility and the Developer’s Attachment Facilities in accordance   
with the results of such studies.

5.10 Developer’s Attachment Facilities (“DAF”).

Developer shall, at its expense, design, procure, construct, own and install the DAF, as set forth in Appendix A hereto.

5.10.1 DAF Specifications.

Developer shall submit initial specifications for the DAF, including System Protection   
Facilities, to Connecting Transmission Owner and NYISO at least one hundred eighty (180)   
Calendar Days prior to the Initial Synchronization Date; and final specifications for review and   
comment at least ninety (90) Calendar Days prior to the Initial Synchronization Date.

19

SERVICE AGREEMENT NO. 1396

Connecting Transmission Owner and NYISO shall review such specifications to ensure that the DAF are compatible with the technical specifications, operational control, and safety   
requirements of the Connecting Transmission Owner and NYISO and comment on such   
specifications within thirty (30) Calendar Days of Developer’s submission. All specifications provided hereunder shall be deemed to be Confidential Information.

5.10.2 No Warranty.

The review of Developer’s final specifications by Connecting Transmission Owner and NYISO shall not be construed as confirming, endorsing, or providing a warranty as to the design, fitness, safety, durability or reliability of the Large Generating Facility, or the DAF. Developer shall make such changes to the DAF as may reasonably be required by Connecting Transmission Owner or NYISO, in accordance with Good Utility Practice, to ensure that the DAF are   
compatible with the technical specifications, operational control, and safety requirements of the Connecting Transmission Owner and NYISO.

5.10.3 DAF Construction.

The DAF shall be designed and constructed in accordance with Good Utility Practice.   
Within one hundred twenty (120) Calendar Days after the Commercial Operation Date, unless   
the Developer and Connecting Transmission Owner agree on another mutually acceptable   
deadline, the Developer shall deliver to the Connecting Transmission Owner and NYISO “as-  
built” drawings, information and documents for the DAF, such as: a one-line diagram, a site plan showing the Large Generating Facility and the DAF, plan and elevation drawings showing the   
layout of the DAF, a relay functional diagram, relaying AC and DC schematic wiring diagrams   
and relay settings for all facilities associated with the Developer’s step-up transformers, the   
facilities connecting the Large Generating Facility to the step-up transformers and the DAF, and the impedances (determined by factory tests) for the associated step-up transformers and the   
Large Generating Facility. The Developer shall provide to, and coordinate with, Connecting   
Transmission Owner and NYISO with respect to proposed specifications for the excitation   
system, automatic voltage regulator, Large Generating Facility control and protection settings,   
transformer tap settings, and communications, if applicable.

5.11 Connecting Transmission Owner’s Attachment Facilities Construction.

The Connecting Transmission Owner’s Attachment Facilities shall be designed and

constructed in accordance with Good Utility Practice. Upon request, within one hundred twenty   
(120) Calendar Days after the Commercial Operation Date, unless the Connecting Transmission   
Owner and Developer agree on another mutually acceptable deadline, the Connecting   
Transmission Owner shall deliver to the Developer the following “as-built” drawings, relay   
diagrams, information and documents for the Connecting Transmission Owner’s Attachment   
Facilities: those “as-built” drawings, information and documents reasonably required by the   
Developer and related to the Transmission Owner’s Attachment Facilities constructed by the   
Transmission Owner.

20

SERVICE AGREEMENT NO. 1396

The Connecting Transmission Owner shall transfer operational control of the Connecting Transmission Owner’s Attachment Facilities and Stand Alone System Upgrade Facilities to the NYISO upon completion of such facilities.

5.12 Access Rights.

Upon reasonable notice and supervision by the Granting Party, and subject to any

required or necessary regulatory approvals, either the Connecting Transmission Owner or

Developer (“Granting Party”) shall furnish to the other of those two 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 of Interconnection to construct, operate, maintain, repair, test (or witness testing), inspect,   
replace or remove facilities and equipment to: (i) interconnect the Large Generating Facility with   
the New York State Transmission System; (ii) operate and maintain the Large Generating

Facility, the Attachment Facilities and the New York State Transmission System; 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 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 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.

5.13 Lands of Other Property Owners.

If any part of the Connecting Transmission Owner’s Attachment Facilities and/or System   
Upgrade Facilities and/or System Deliverability Upgrades is to be installed on property owned   
by persons other than Developer or Connecting Transmission Owner, the Connecting   
Transmission Owner 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 Connecting Transmission Owner’s Attachment   
Facilities and/or System Upgrade Facilities and/or System Deliverability Upgrades upon such   
property.

5.14 Permits.

NYISO, Connecting Transmission Owner and the Developer shall cooperate with each   
other in good faith in obtaining all permits, licenses and authorizations that are necessary to   
accomplish the interconnection in compliance with Applicable Laws and Regulations. With   
respect to this paragraph, Connecting Transmission Owner shall provide permitting assistance to the Developer comparable to that provided to the Connecting Transmission Owner’s own, or an Affiliate’s generation, if any.

21

SERVICE AGREEMENT NO. 1396

5.15 Early Construction of Base Case Facilities.

Developer may request Connecting Transmission Owner to construct, and Connecting Transmission Owner shall construct, subject to a binding cost allocation agreement reached in accordance with Attachment S to the NYISO OATT, including Section 25.8.7 thereof, using   
Reasonable Efforts to accommodate Developer’s In-Service Date, all or any portion of any   
System Upgrade Facilities or System Deliverability Upgrades required for Developer to be   
interconnected to the New York State Transmission System which are included in the Base Case of the Class Year Interconnection Facilities Study for the Developer, and which also are required to be constructed for another Developer, but where such construction is not scheduled to be   
completed in time to achieve Developer’s In-Service Date.

5.16 Suspension.

Developer reserves the right, upon written notice to Connecting Transmission Owner and   
NYISO, to suspend at any time all work by Connecting Transmission Owner associated with the   
construction and installation of Connecting Transmission Owner’s Attachment Facilities and/or   
System Upgrade Facilities and/or System Deliverability Upgrades required for only that   
Developer under this Agreement 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 Connecting Transmission Owner 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 NYISO OATT including those which Connecting   
Transmission Owner (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 Connecting   
Transmission Owner cannot reasonably avoid; provided, however, that prior to canceling or   
suspending any such material, equipment or labor contract, Connecting Transmission Owner   
shall obtain Developer’s authorization to do so.

Connecting Transmission Owner 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 Connecting Transmission Owner required under this Agreement pursuant to this Article

5.16, and has not requested Connecting Transmission Owner 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 Connecting   
Transmission Owner and NYISO, if no effective date is specified.

5.17 Taxes.

5.17.1 Developer Payments Not Taxable.

The Developer and Connecting Transmission Owner intend that all payments or property transfers made by Developer to Connecting Transmission Owner for the installation of the

22

SERVICE AGREEMENT NO. 1396

Connecting Transmission Owner’s Attachment Facilities and the System Upgrade Facilities and the System Deliverability Upgrades shall be non-taxable, either as contributions to capital, or as an advance, in accordance with the Internal Revenue Code and any applicable state income tax laws and shall not be taxable as contributions in aid of construction or otherwise under the   
Internal Revenue Code and any applicable state income tax laws.

5.17.2 Representations and Covenants.

In accordance with IRS Notice 2001-82 and IRS Notice 88-129, Developer represents

and covenants that (i) ownership of the electricity generated at the Large Generating Facility will   
pass to another party prior to the transmission of the electricity on the New York State   
Transmission System, (ii) for income tax purposes, the amount of any payments and the cost of   
any property transferred to the Connecting Transmission Owner for the Connecting   
Transmission Owner’s Attachment Facilities will be capitalized by Developer as an intangible   
asset and recovered using the straight-line method over a useful life of twenty (20) years, and   
(iii) any portion of the Connecting Transmission Owner’s Attachment Facilities that is a “dual-  
use intertie,” within the meaning of IRS Notice 88-129, is reasonably expected to carry only a de   
minimis amount of electricity in the direction of the Large Generating Facility. For this purpose,   
“de minimis amount” means no more than 5 percent of the total power flows in both directions,   
calculated in accordance with the “5 percent test” set forth in IRS Notice 88-129. This is not   
intended to be an exclusive list of the relevant conditions that must be met to conform to IRS   
requirements for non-taxable treatment.

At Connecting Transmission Owner’s request, Developer shall provide Connecting

Transmission Owner with a report from an independent engineer confirming its representation in clause (iii), above. Connecting Transmission Owner represents and covenants that the cost of the Connecting Transmission Owner’s Attachment Facilities paid for by Developer will have no net effect on the base upon which rates are determined.

5.17.3 Indemnification for the Cost Consequences of Current Tax Liability Imposed   
 Upon the Connecting Transmission Owner.

Notwithstanding Article 5.17.1, Developer shall protect, indemnify and hold harmless

Connecting Transmission Owner from the cost consequences of any current tax liability imposed against Connecting Transmission Owner as the result of payments or property transfers made by Developer to Connecting Transmission Owner under this Agreement, as well as any interest and penalties, other than interest and penalties attributable to any delay caused by Connecting   
Transmission Owner.

Connecting Transmission Owner shall not include a gross-up for the cost consequences   
of any current tax liability in the amounts it charges Developer under this Agreement unless (i)   
Connecting Transmission Owner has determined, in good faith, that the payments or property   
transfers made by Developer to Connecting Transmission Owner should be reported as income   
subject to taxation or (ii) any Governmental Authority directs Connecting Transmission Owner   
to report payments or property as income subject to taxation; provided, however, that Connecting   
Transmission Owner may require Developer to provide security, in a form reasonably acceptable   
to Connecting Transmission Owner (such as a parental guarantee or a letter of credit), in an

23

SERVICE AGREEMENT NO. 1396

amount equal to the cost consequences of any current tax liability under this Article 5.17.

Developer shall reimburse Connecting Transmission Owner for such costs on a fully grossed-up basis, in accordance with Article 5.17.4, within thirty (30) Calendar Days of receiving written notification from Connecting Transmission Owner of the amount due, including detail about how the amount was calculated.

This indemnification obligation shall terminate at the earlier of (1) the expiration of the ten-year testing period and the applicable statute of limitation, as it may be extended by the Connecting Transmission Owner upon request of the IRS, to keep these years open for audit or adjustment, or (2) the occurrence of a subsequent taxable event and the payment of any related indemnification obligations as contemplated by this Article 5.17.

5.17.4 Tax Gross-Up Amount.

Developer’s liability for the cost consequences of any current tax liability under this

Article 5.17 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 Connecting Transmission Owner, in   
addition to the amount paid for the Attachment Facilities and System Upgrade Facilities and   
System Deliverability Upgrades, an amount equal to (1) the current taxes imposed on Connecting   
Transmission Owner (“Current Taxes”) on the excess of (a) the gross income realized by   
Connecting Transmission Owner as a result of payments or property transfers made by   
Developer to Connecting Transmission Owner under this Agreement (without regard to any   
payments under this Article 5.17) (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 the Connecting Transmission Owner 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 Connecting Transmission   
Owner’s composite federal and state tax rates at the time the payments or property transfers are   
received and Connecting Transmission Owner 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 Connecting Transmission Owner’s   
anticipated tax depreciation deductions as a result of such payments or property transfers by   
Connecting Transmission Owner’s current weighted average cost of capital. Thus, the formula   
for calculating Developer’s liability to Connecting Transmission Owner pursuant to this Article

5.17.4 can be expressed as follows: (Current Tax Rate x (Gross Income Amount - Present Value of Tax Depreciation))/(1 - Current Tax Rate). Developer’s estimated tax liability in the event taxes are imposed shall be stated in Appendix A, Attachment Facilities and System Upgrade Facilities and System Deliverability Upgrades.

5.17.5 Private Letter Ruling or Change or Clarification of Law.

At Developer’s request and expense, Connecting Transmission Owner 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 Connecting Transmission Owner under this Agreement are subject to   
federal income taxation. Developer will prepare the initial draft of the request for a private letter

24

SERVICE AGREEMENT NO. 1396

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. Connecting Transmission Owner and   
Developer shall cooperate in good faith with respect to the submission of such request.

Connecting Transmission Owner shall keep Developer fully informed of the status of   
such request for a private letter ruling and shall execute either a privacy act waiver or a limited   
power of attorney, in a form acceptable to the IRS, that authorizes Developer to participate in all   
discussions with the IRS regarding such request for a private letter ruling. Connecting   
Transmission Owner 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.

5.17.6 Subsequent Taxable Events.

If, within 10 years from the date on which the relevant Connecting Transmission Owner   
Attachment Facilities are placed in service, (i) Developer Breaches the covenants contained in   
Article 5.17.2, (ii) a “disqualification event” occurs within the meaning of IRS Notice 88-129, or   
(iii) this Agreement terminates and Connecting Transmission Owner retains ownership of the   
Attachment Facilities and System Upgrade Facilities and System Deliverability Upgrades, the   
Developer shall pay a tax gross-up for the cost consequences of any current tax liability imposed   
on Connecting Transmission Owner, calculated using the methodology described in Article

5.17.4 and in accordance with IRS Notice 90-60.

5.17.7 Contests.

In the event any Governmental Authority determines that Connecting Transmission

Owner’s receipt of payments or property constitutes income that is subject to taxation,

Connecting Transmission Owner shall notify Developer, in writing, within thirty (30) Calendar   
Days of receiving notification of such determination by a Governmental Authority. Upon the   
timely written request by Developer and at Developer’s sole expense, Connecting Transmission   
Owner may appeal, protest, seek abatement of, or otherwise oppose such determination. Upon   
Developer’s written request and sole expense, Connecting Transmission Owner may file a claim   
for refund with respect to any taxes paid under this Article 5.17, whether or not it has received   
such a determination. Connecting Transmission Owner 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 Connecting Transmission   
Owner shall keep Developer informed, shall consider in good faith suggestions from Developer   
about the conduct of the contest, and shall reasonably permit Developer or an Developer

representative to attend contest proceedings.

Developer shall pay to Connecting Transmission Owner on a periodic basis, as invoiced   
by Connecting Transmission Owner, Connecting Transmission Owner’s documented reasonable   
costs of prosecuting such appeal, protest, abatement or other contest. At any time during the   
contest, Connecting Transmission Owner may agree to a settlement either with Developer’s   
consent or after obtaining written advice from nationally-recognized tax counsel, selected by   
Connecting Transmission Owner, but reasonably acceptable to Developer, that the proposed

25

SERVICE AGREEMENT NO. 1396

settlement represents a 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 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. Any settlement without Developer’s consent or such written advice will   
relieve Developer from any obligation to indemnify Connecting Transmission Owner for the tax   
at issue in the contest.

5.17.8 Refund.

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

(i) Any payment made by Developer under this Article 5.17 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 Connecting Transmission Owner for such taxes which Connecting Transmission Owner 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 Connecting   
Transmission Owner refunds such payment to Developer, and

(iii) With respect to any such taxes paid by Connecting Transmission Owner, any   
refund or credit Connecting Transmission Owner 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 the Connecting Transmission Owner for such   
overpayment of taxes (including any reduction in interest otherwise payable by Connecting   
Transmission Owner to any Governmental Authority resulting from an offset or credit);   
provided, however, that Connecting Transmission Owner will remit such amount promptly to   
Developer only after and to the extent that Connecting Transmission Owner has received a tax   
refund, credit or offset from any Governmental Authority for any applicable overpayment of   
income tax related to the Connecting Transmission Owner’s Attachment Facilities.

26

SERVICE AGREEMENT NO. 1396

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

5.17.9 Taxes Other Than Income Taxes.

Upon the timely request by Developer, and at Developer’s sole expense, Connecting

Transmission Owner shall appeal, protest, seek abatement of, or otherwise contest any tax (other   
than federal or state income tax) asserted or assessed against Connecting Transmission Owner   
for which Developer may be required to reimburse Connecting Transmission Owner under the   
terms of this Agreement. Developer shall pay to Connecting Transmission Owner on a periodic   
basis, as invoiced by Connecting Transmission Owner, Connecting Transmission Owner’s   
documented reasonable costs of prosecuting such appeal, protest, abatement, or other contest.   
Developer and Connecting Transmission Owner 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 Connecting Transmission   
Owner 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 Connecting Transmission Owner.

5.18 Tax Status; Non-Jurisdictional Entities.

5.18.1 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, LIPA, NYPA and Consolidated Edison Company of New   
York, Inc. 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 the Long Island Power Authority, NYPA and Consolidated Edison   
Company of New York, Inc., the interest on which is not included in gross income under the   
Internal Revenue Code.

5.18.2 Non-Jurisdictional Entities.

LIPA and NYPA do not waive their 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.

27

SERVICE AGREEMENT NO. 1396

5.19 Modification.

5.19.1 General.

Either the Developer or Connecting Transmission Owner may undertake modifications to   
its facilities covered by this Agreement. If either the Developer or Connecting Transmission   
Owner plans to undertake a modification that reasonably may be expected to affect the other   
Party’s facilities, that Party shall provide to the other Party, and to NYISO, sufficient   
information regarding such modification so that the other Party 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 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 Large Generating Facility. The Party desiring to   
perform such work shall provide the relevant drawings, plans, and specifications to the other   
Party 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 Large Generating Facility modifications that do not require Developer 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, Connecting Transmission Owner’s Attachment Facilities   
or System Upgrade Facilities or System Deliverability Upgrades necessitated by such Developer   
modification and a good faith estimate of the costs thereof. The Developer shall be responsible   
for the cost of any such additional modifications, including the cost of studying the impact of the   
Developer modification.

5.19.2 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.

5.19.3 Modification Costs.

Developer shall not be assigned the costs of any additions, modifications, or replacements that Connecting Transmission Owner makes to the Connecting Transmission Owner’s   
Attachment Facilities or the New York State Transmission System to facilitate the   
interconnection of a third party to the Connecting Transmission Owner’s Attachment Facilities or the New York State Transmission System, or to provide Transmission Service to a third party under the NYISO OATT, except in accordance with the cost allocation procedures in Attachment S of the NYISO OATT. Developer shall be responsible for the costs of any additions,   
modifications, or replacements to the Developer Attachment Facilities that may be necessary to maintain or upgrade such Developer Attachment Facilities consistent with Applicable Laws and Regulations, Applicable Reliability Standards or Good Utility Practice.

28

SERVICE AGREEMENT NO. 1396

ARTICLE 6. TESTING AND INSPECTION

6.1 Pre-Commercial Operation Date Testing and Modifications.

Prior to the Commercial Operation Date, the Connecting Transmission Owner shall test   
the Connecting Transmission Owner’s Attachment Facilities and System Upgrade Facilities and   
System Deliverability Upgrades and Developer shall test the Large Generating Facility and the   
Developer Attachment Facilities to ensure their safe and reliable operation. Similar testing may   
be required after initial operation. Developer and Connecting Transmission Owner shall each   
make any modifications to its facilities that are found to be necessary as a result of such testing.   
Developer shall bear the cost of all such testing and modifications. Developer shall generate test   
energy at the Large Generating Facility only if it has arranged for the injection of such test

energy in accordance with NYISO procedures.

6.2 Post-Commercial Operation Date Testing and Modifications.

Developer and Connecting Transmission Owner 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 Large Generating Facility with the New York State Transmission System   
in a safe and reliable manner. Developer and Connecting Transmission Owner 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.

Developer and Connecting Transmission Owner shall each notify the other Party, and the NYISO, in advance of its performance of tests of its Attachment Facilities. The other Party, and the NYISO, shall each have the right, at its own expense, to observe such testing.

6.4 Right to Inspect.

Developer and Connecting Transmission Owner 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, including Power System Stabilizers; (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 Attachment   
Facilities, the System Protection Facilities and other protective equipment. NYISO shall have   
these same rights of inspection as to the facilities and equipment of Developer and Connecting   
Transmission Owner. 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 NYISO OATT.

29

SERVICE AGREEMENT NO. 1396

ARTICLE 7. METERING

7.1 General.

Developer and Connecting Transmission Owner shall each comply with applicable   
requirements of NYISO and the New York Public Service Commission when exercising its   
rights and fulfilling its responsibilities under this Article 7. Unless otherwise agreed by the   
Connecting Transmission Owner and NYISO approved meter service provider and Developer,   
the Connecting Transmission Owner shall install Metering Equipment at the Point of   
Interconnection prior to any operation of the Large Generating Facility and shall own, operate,   
test and maintain such Metering Equipment. Net power flows including MW and MVAR,   
MWHR and loss profile data to and from the Large Generating Facility shall be measured at the   
Point of Interconnection. Connecting Transmission Owner shall provide metering quantities, in   
analog and/or digital form, as required, to Developer or NYISO upon request. Where the Point   
of Interconnection for the Large Generating Facility is other than the generator terminal, the   
Developer shall also provide gross MW and MVAR quantities at the generator terminal.   
Developer shall bear all reasonable documented costs associated with the purchase, installation,   
operation, testing and maintenance of the Metering Equipment.

7.2 Check Meters.

Developer, at its option and expense, may install and operate, on its premises and on its   
side of the Point of Interconnection, one or more check meters to check Connecting   
Transmission Owner’s meters. Such check meters shall be for check purposes only and shall not   
be used for the measurement of power flows for purposes of this Agreement, except as provided   
in Article 7.4 below. The check meters shall be subject at all reasonable times to inspection and   
examination by Connecting Transmission Owner or its designee. The installation, operation and   
maintenance thereof shall be performed entirely by Developer in accordance with Good Utility   
Practice.

7.3 Standards.

Connecting Transmission Owner shall install, calibrate, and test revenue quality Metering Equipment including potential transformers and current transformers in accordance with   
applicable ANSI and PSC standards as detailed in the NYISO Control Center Communications Manual and in the NYISO Revenue Metering Requirements Manual.

7.4 Testing of Metering Equipment.

Connecting Transmission Owner shall inspect and test all of its Metering Equipment

upon installation and at least once every two (2) years thereafter. If requested to do so by

NYISO or Developer, Connecting Transmission Owner shall, at Developer’s expense, inspect or   
test Metering Equipment more frequently than every two (2) years. Connecting Transmission   
Owner shall give reasonable notice of the time when any inspection or test shall take place, and   
Developer and NYISO may have representatives present at the test or inspection. If at any time   
Metering Equipment is found to be inaccurate or defective, it shall be adjusted, repaired or   
replaced at Developer’s expense, in order to provide accurate metering, unless the inaccuracy or   
defect is due to Connecting Transmission Owner’s failure to maintain, then Connecting

30

SERVICE AGREEMENT NO. 1396

Transmission Owner shall pay. If Metering Equipment fails to register, or if the measurement   
made by Metering Equipment during a test varies by more than two percent from the   
measurement made by the standard meter used in the test, Connecting Transmission Owner shall adjust the measurements by correcting all measurements for the period during which Metering   
Equipment was in error by using Developer’s check meters, if installed. If no such check meters are installed or if the period cannot be reasonably ascertained, the adjustment shall be for the   
period immediately preceding the test of the Metering Equipment equal to one-half the time from the date of the last previous test of the Metering Equipment. The NYISO shall reserve the right   
to review all associated metering equipment installation on the Developer’s or Connecting   
Transmission Owner’s property at any time.

7.5 Metering Data.

At Developer’s expense, the metered data shall be telemetered to one or more locations designated by Connecting Transmission Owner, Developer and NYISO. Such telemetered data shall be used, under normal operating conditions, as the official measurement of the amount of energy delivered from the Large Generating Facility to the Point of Interconnection.

ARTICLE 8. COMMUNICATIONS

8.1 Developer Obligations.

In accordance with applicable NYISO requirements, Developer shall maintain

satisfactory operating communications with Connecting Transmission Owner and NYISO.

Developer shall provide standard voice line, dedicated voice line and facsimile communications   
at its Large Generating Facility control room or central dispatch facility through use of either the   
public telephone system, or a voice communications system that does not rely on the public   
telephone system. Developer shall also provide the dedicated data circuit(s) necessary to provide   
Developer data to Connecting Transmission Owner and NYISO as set forth in Appendix D   
hereto. The data circuit(s) shall extend from the Large Generating Facility to the location(s)   
specified by Connecting Transmission Owner and NYISO. Any required maintenance of such   
communications equipment shall be performed by Developer. 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.

Prior to the Initial Synchronization Date of the Large Generating Facility, a Remote   
Terminal Unit, or equivalent data collection and transfer equipment acceptable to the Parties, shall be installed by Developer, or by Connecting Transmission Owner at Developer’s expense, to gather accumulated and instantaneous data to be telemetered to the location(s) designated by Connecting Transmission Owner 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 Connecting Transmission Owner and NYISO. Instantaneous bi-directional analog real power and reactive power flow information must be telemetered directly to the location(s) specified by Connecting Transmission Owner and NYISO.

31

SERVICE AGREEMENT NO. 1396

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.

9.2 NYISO and Connecting Transmission Owner Obligations.

Connecting Transmission Owner and NYISO shall cause the New York State

Transmission System and the Connecting Transmission Owner’s Attachment Facilities to be operated, maintained and controlled in a safe and reliable manner in accordance with this   
Agreement and the NYISO Tariffs. Connecting Transmission Owner and NYISO may provide operating instructions to Developer consistent with this Agreement, NYISO procedures and Connecting Transmission Owner’s operating protocols and procedures as they may change from time to time. Connecting Transmission Owner and NYISO will consider changes to their   
respective operating protocols and procedures proposed by Developer.

9.3 Developer Obligations.

Developer shall at its own expense operate, maintain and control the Large Generating

Facility and the Developer Attachment Facilities in a safe and reliable manner and in accordance with this Agreement. Developer shall operate the Large Generating Facility and the Developer Attachment Facilities in accordance with NYISO and Connecting Transmission Owner   
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 Start-Up and Synchronization.

Consistent with the mutually acceptable procedures of the Developer and Connecting   
Transmission Owner, the Developer is responsible for the proper synchronization of the Large

32

SERVICE AGREEMENT NO. 1396

Generating Facility to the New York State Transmission System in accordance with NYISO and Connecting Transmission Owner procedures and requirements.

9.5 Real and Reactive Power Control.

9.5.1 Power Factor Design Criteria.

Developer shall design the Large Generating Facility to maintain an effective power

delivery at demonstrated maximum net capability at the Point of Interconnection at a power

factor within the range established by the Connecting Transmission Owner on a comparable

basis, until NYISO has established different requirements that apply to all generators in the New York Control Area on a comparable basis.

The Developer shall design and maintain the plant auxiliary systems to operate safely throughout the entire real and reactive power design range.

The Connecting Transmission Owner shall not unreasonably restrict or condition the reactive power production or absorption of the Large Generating Facility in accordance with Good Utility Practice.

9.5.2 Voltage Schedules.

Once the Developer has synchronized the Large Generating Facility with the New York   
State Transmission System, NYISO shall require Developer to operate the Large Generating   
Facility to produce or absorb reactive power within the design capability of the Large Generating   
Facility set forth in Article 9.5.1 (Power Factor Design Criteria). NYISO’s voltage schedules   
shall treat all sources of reactive power in the New York Control Area in an equitable and not   
unduly discriminatory manner. NYISO shall exercise Reasonable Efforts to provide Developer   
with such schedules in accordance with NYISO procedures, and may make changes to such   
schedules as necessary to maintain the reliability of the New York State Transmission System.   
Developer shall operate the Large Generating Facility to maintain the specified output voltage or   
power factor at the Point of Interconnection within the design capability of the Large Generating   
Facility set forth in Article 9.5.1 (Power Factor Design Criteria) as directed by the Connecting   
Transmission Owner’s System Operator or the NYISO. If Developer is unable to maintain the   
specified voltage or power factor, it shall promptly notify NYISO.

9.5.3 Payment for Reactive Power.

NYISO shall pay Developer for reactive power or voltage support service that Developer   
provides from the Large Generating Facility in accordance with the provisions of Rate Schedule

2 of the NYISO Services Tariff.

9.5.4 Governors and Regulators.

Whenever the Large Generating Facility is operated in parallel with the New York State   
Transmission System, the turbine speed governors and automatic voltage regulators shall be in   
automatic operation at all times. If the Large Generating Facility’s speed governors or automatic

33

SERVICE AGREEMENT NO. 1396

voltage regulators are not capable of such automatic operation, the Developer shall immediately notify NYISO, or its designated representative, and ensure that such Large Generating Facility’s real and reactive power are within the design capability of the Large Generating Facility’s   
generating unit(s) and steady state stability limits and NYISO system operating (thermal, voltage and transient stability) limits. Developer shall not cause its Large Generating Facility to   
disconnect automatically or instantaneously from the New York State Transmission System or   
trip any generating unit comprising the Large Generating Facility for an under or over frequency condition unless the abnormal frequency condition persists for a time period beyond the limits   
set forth in ANSI/IEEE Standard C37.106, or such other standard as applied to other generators in the New York Control Area on a comparable basis.

9.6 Outages and Interruptions.

9.6.1 Outages.

9.6.1.1 Outage Authority and Coordination.

Developer and Connecting Transmission Owner 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 Attachment Facilities or System Upgrade Facilities and System   
Deliverability 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 the Developer and the Connecting   
Transmission Owner. 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.

9.6.1.2 Outage Schedules.

The Connecting Transmission Owner shall post scheduled outages of its transmission   
facilities on the NYISO OASIS. Developer shall submit its planned maintenance schedules for   
the Large Generating Facility to Connecting Transmission Owner and NYISO for a minimum of   
a rolling thirty-six month period. Developer shall update its planned maintenance schedules as   
necessary. NYISO may direct, or the Connecting Transmission Owner may request, Developer   
to reschedule its maintenance as necessary to maintain the reliability of the New York State

Transmission System. Compensation to Developer for any additional direct costs that the

Developer incurs as a result of rescheduling maintenance, including any additional overtime,

breaking of maintenance contracts or other costs above and beyond the cost the Developer would   
have incurred absent the request to reschedule maintenance, shall be in accordance with the   
NYISO OATT. Developer will not be eligible to receive compensation, if during the twelve (12)   
months prior to the date of the scheduled maintenance, the Developer had modified its schedule   
of maintenance activities other than at the direction of the NYISO or request of the Connecting   
Transmission Owner.

34

SERVICE AGREEMENT NO. 1396

9.6.1.3 Outage Restoration.

If an outage on the Attachment Facilities or System Upgrade Facilities or System

Deliverability Upgrades of the Connecting Transmission Owner or Developer 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.

9.6.2 Interruption of Service. If required by Good Utility Practice or Applicable

Reliability Standards to do so, the NYISO or Connecting Transmission Owner may require

Developer to interrupt or reduce production of electricity if such production of electricity could adversely affect the ability of NYISO and Connecting Transmission Owner 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 9.6.2:

9.6.2.1 The interruption or reduction shall continue only for so long as reasonably necessary under Good Utility Practice;

9.6.2.2 Any such interruption or reduction shall be made on an equitable, nondiscriminatory basis with respect to all generating facilities directly connected to the New York State Transmission System;

9.6.2.3 When the interruption or reduction must be made under circumstances

which do not allow for advance notice, NYISO or Connecting Transmission Owner shall notify Developer by telephone as soon as practicable of the reasons for the curtailment, interruption, or reduction, and, if known, its expected duration. Telephone notification shall be followed by written notification as soon as practicable;

9.6.2.4 Except during the existence of an Emergency State, when the interruption or reduction can be scheduled without advance notice, NYISO or Connecting Transmission Owner shall notify Developer in advance regarding the timing of such scheduling and further notify Developer of the expected duration. NYISO or Connecting Transmission Owner shall coordinate with each other and the Developer using Good Utility Practice to schedule the   
interruption or reduction during periods of least impact to the Developer, the Connecting   
Transmission Owner and the New York State Transmission System;

9.6.2.5 The Parties shall cooperate and coordinate with each other to the extent necessary in order to restore the Large Generating Facility, Attachment Facilities, and the New York State Transmission System to their normal operating state, consistent with system   
conditions and Good Utility Practice.

35

SERVICE AGREEMENT NO. 1396

9.6.3 Under-Frequency and Over Frequency Conditions.

The New York State Transmission System is designed to automatically activate a load-  
shed program as required by the NPCC in the event of an under-frequency system disturbance.   
Developer shall implement under-frequency and over-frequency relay set points for the Large   
Generating Facility as required by the NPCC to ensure “ride through” capability of the New   
York State Transmission System. Large Generating Facility response to frequency deviations of   
predetermined magnitudes, both under-frequency and over-frequency deviations, shall be studied   
and coordinated with the NYISO and Connecting Transmission Owner in accordance with Good   
Utility Practice. The term “ride through” as used herein shall mean the ability of a Generating   
Facility to stay connected to and synchronized with the New York State Transmission System   
during system disturbances within a range of under-frequency and over-frequency conditions, in   
accordance with Good Utility Practice and with NPCC Regional Reliability Reference Directory   
# 12.

9.6.4 System Protection and Other Control Requirements.

9.6.4.1 System Protection Facilities. Developer shall, at its expense, install,   
operate and maintain System Protection Facilities as a part of the Large Generating Facility or   
Developer Attachment Facilities. Connecting Transmission Owner shall install at Developer’s   
expense any System Protection Facilities that may be required on the Connecting Transmission   
Owner Attachment Facilities or the New York State Transmission System as a result of the   
interconnection of the Large Generating Facility and Developer Attachment Facilities.

9.6.4.2 The protection facilities of both the Developer and Connecting

Transmission Owner shall be designed and coordinated with other systems in accordance with Good Utility Practice and Applicable Reliability Standards.

9.6.4.3 The Developer and Connecting Transmission Owner shall each be

responsible for protection of its respective facilities consistent with Good Utility Practice and Applicable Reliability Standards.

9.6.4.4 The protective relay design of the Developer and Connecting

Transmission Owner 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 Developer’s Large Generating   
Facility.

9.6.4.5 The Developer and Connecting Transmission Owner will each test,

operate and maintain System Protection Facilities in accordance with Good Utility Practice and NPCC criteria.

9.6.4.6 Prior to the In-Service Date, and again prior to the Commercial Operation   
Date, the Developer and Connecting Transmission Owner 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

36

SERVICE AGREEMENT NO. 1396

malfunction of the System Protection Facilities, the Developer and Connecting Transmission Owner 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.

9.6.5 Requirements for Protection.

In compliance with NPCC requirements and Good Utility Practice, Developer shall   
provide, install, own, and maintain relays, circuit breakers and all other devices necessary to   
remove any fault contribution of the Large Generating Facility to any short circuit occurring on   
the New York State Transmission System not otherwise isolated by Connecting Transmission   
Owner’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 Large Generating Facility and the New York State   
Transmission System at a site selected upon mutual agreement (not to be unreasonably withheld,   
conditioned or delayed) of the Developer and Connecting Transmission Owner. Developer shall   
be responsible for protection of the Large Generating Facility and Developer’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. Developer shall be solely   
responsible to disconnect the Large Generating Facility and Developer’s other equipment if   
conditions on the New York State Transmission System could adversely affect the Large   
Generating Facility.

9.6.6 Power Quality.

Neither the facilities of Developer nor the facilities of Connecting Transmission Owner   
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.

9.7 Switching and Tagging Rules.

The Developer and Connecting Transmission Owner 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.

9.8 Use of Attachment Facilities by Third Parties.

9.8.1 Purpose of Attachment Facilities.

Except as may be required by Applicable Laws and Regulations, or as otherwise agreed   
to among the Parties, the Attachment Facilities shall be constructed for the sole purpose of

37

SERVICE AGREEMENT NO. 1396

interconnecting the Large Generating Facility to the New York State Transmission System and shall be used for no other purpose.

9.8.2 Third Party Users.

If required by Applicable Laws and Regulations or if the Parties mutually agree, such   
agreement not to be unreasonably withheld, to allow one or more third parties to use the   
Connecting Transmission Owner’s Attachment Facilities, or any part thereof, Developer will be   
entitled to compensation for the capital expenses it incurred in connection with the Attachment   
Facilities based upon the pro rata use of the Attachment Facilities by Connecting Transmission   
Owner, all third party users, and Developer, in accordance with Applicable Laws and   
Regulations or upon some other mutually-agreed upon methodology. In addition, cost   
responsibility for ongoing costs, including operation and maintenance costs associated with the   
Attachment Facilities, will be allocated between Developer and any third party users based upon   
the pro rata use of the Attachment Facilities by Connecting Transmission Owner, all third party   
users, and Developer, in accordance with Applicable Laws and Regulations or upon some other   
mutually agreed upon methodology. If the issue of such compensation or allocation cannot be   
resolved through such negotiations, it shall be submitted to FERC for resolution.

9.9 Disturbance Analysis Data Exchange.

The Parties will cooperate with one another and the NYISO in the analysis of

disturbances to either the Large Generating Facility 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 Connecting Transmission Owner Obligations.

Connecting Transmission Owner shall maintain its transmission facilities and Attachment Facilities in a safe and reliable manner and in accordance with this Agreement.

10.2 Developer Obligations.

Developer shall maintain its Large Generating Facility and Attachment Facilities in a safe and reliable manner and in accordance with this Agreement.

10.3 Coordination.

The Developer and Connecting Transmission Owner shall confer regularly to coordinate   
the planning, scheduling and performance of preventive and corrective maintenance on the Large   
Generating Facility and the Attachment Facilities. The Developer and Connecting Transmission   
Owner 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.

38

SERVICE AGREEMENT NO. 1396

10.4 Secondary Systems.

The Developer and Connecting Transmission Owner 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 Developer or   
Connecting Transmission Owner’s facilities and equipment which may reasonably be expected   
to impact the other Party. The Developer and Connecting Transmission Owner shall each   
provide advance notice to the other Party, and to NYISO, before undertaking any work on such   
circuits, especially on electrical circuits involving circuit breaker trip and close contacts, current   
transformers, or potential transformers.

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, Developer shall be responsible for all reasonable expenses including overheads,   
associated with: (1) owning, operating, maintaining, repairing, and replacing Developer   
Attachment Facilities; and (2) operation, maintenance, repair and replacement of Connecting Transmission Owner’s Attachment Facilities. The Connecting Transmission Owner shall be entitled to the recovery of incremental operating and maintenance expenses that it incurs   
associated with System Upgrade Facilities and System Deliverability Upgrades if and to the   
extent provided for under Attachment S to the NYISO OATT.

ARTICLE 11. PERFORMANCE OBLIGATION

11.1 Developer Attachment Facilities.

Developer shall design, procure, construct, install, own and/or control the Developer Attachment Facilities described in Appendix A hereto, at its sole expense.

11.2 Connecting Transmission Owner’s Attachment Facilities.

Connecting Transmission Owner shall design, procure, construct, install, own and/or control the Connecting Transmission Owner’s Attachment Facilities described in Appendix A hereto, at the sole expense of the Developer.

11.3 System Upgrade Facilities and System Deliverability Upgrades.

Connecting Transmission Owner shall design, procure, construct, install, and own the

System Upgrade Facilities and System Deliverability Upgrades described in Appendix A hereto. The responsibility of the Developer for costs related to System Upgrade Facilities and System Deliverability Upgrades shall be determined in accordance with the provisions of Attachment S to the NYISO OATT.

39

SERVICE AGREEMENT NO. 1396

11.4 Special Provisions for Affected Systems.

For the re-payment of amounts advanced to Affected System Operator for System

Upgrade Facilities or System Deliverability Upgrades, the Developer and Affected System

Operator shall enter into an agreement that provides for such re-payment, but only if

responsibility for the cost of such System Upgrade Facilities or System Deliverability Upgrades is not to be allocated in accordance with Attachment S to the NYISO OATT. The agreement shall specify the terms governing payments to be made by the Developer to the Affected System Operator as well as the re-payment by the Affected System Operator.

11.5 Provision of Security.

At least thirty (30) Calendar Days prior to the commencement of the procurement,

installation, or construction of a discrete portion of a Connecting Transmission Owner’s

Attachment Facilities, Developer shall provide Connecting Transmission Owner, at Developer’s option, a guarantee, a surety bond, letter of credit or other form of security that is reasonably acceptable to Connecting Transmission Owner and is consistent with the Uniform Commercial Code of the jurisdiction identified in Article 14.2.1 of this Agreement. Such security for   
payment shall be in an amount sufficient to cover the cost for the Developer’s share of   
constructing, procuring and installing the applicable portion of Connecting Transmission   
Owner’s Attachment Facilities, and shall be reduced on a dollar-for-dollar basis for payments made to Connecting Transmission Owner for these purposes.

In addition:

11.5.1 The guarantee must be made by an entity that meets the commercially

reasonable creditworthiness requirements of Connecting Transmission Owner, and contains

terms and conditions that guarantee payment of any amount that may be due from Developer, up to an agreed-to maximum amount.

11.5.2 The letter of credit must be issued by a financial institution reasonably

acceptable to Connecting Transmission Owner and must specify a reasonable expiration date.

11.5.3 The surety bond must be issued by an insurer reasonably acceptable to Connecting Transmission Owner and must specify a reasonable expiration date.

11.5.4 Attachment S to the NYISO OATT shall govern the Security that Developer provides for System Upgrade Facilities and System Deliverability Upgrades.

11.6 Developer Compensation for Emergency Services.

If, during an Emergency State, the Developer provides services at the request or direction of the NYISO or Connecting Transmission Owner, the Developer will be compensated for such services in accordance with the NYISO Services Tariff.

40

SERVICE AGREEMENT NO. 1396

11.7 Line Outage Costs.

Notwithstanding anything in the NYISO OATT to the contrary, the Connecting

Transmission Owner may propose to recover line outage costs associated with the installation of Connecting Transmission Owner’s Attachment Facilities or System Upgrade Facilities or System Deliverability Upgrades on a case-by-case basis.

ARTICLE 12. INVOICE

12.1 General.

The Developer and Connecting Transmission Owner shall each submit to the other Party, on a monthly basis, invoices of amounts due for the preceding month. Each invoice shall state the month to which the invoice applies and fully describe the services and equipment provided. The Developer and Connecting Transmission Owner may discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in 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 owing   
Party. Notwithstanding anything in this Article 12 to the contrary, the procedure for invoicing and payment for the Transmission Owner’s Attachment Facilities and System Upgrade Facilities as described in Appendix A shall be as set forth in Appendix H.

12.2 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.

12.3 Disputes.

In the event of a billing dispute between Connecting Transmission Owner and Developer,   
Connecting Transmission Owner shall continue to perform under this Agreement as long as   
Developer: (i) continues to make all payments not in dispute; and (ii) pays to Connecting   
Transmission Owner 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 Connecting Transmission Owner 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).

41

SERVICE AGREEMENT NO. 1396

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.

13.2 Notice.

NYISO or, as applicable, Connecting Transmission Owner shall notify Developer

promptly when it becomes aware of an Emergency State that affects the Connecting

Transmission Owner’s Attachment Facilities or the New York State Transmission System that   
may reasonably be expected to affect Developer’s operation of the Large Generating Facility or the Developer’s Attachment Facilities. Developer shall notify NYISO and Connecting   
Transmission Owner promptly when it becomes aware of an Emergency State that affects the   
Large Generating Facility or the Developer Attachment Facilities that may reasonably be   
expected to affect the New York State Transmission System or the Connecting Transmission   
Owner’s Attachment Facilities. To the extent information is known, the notification shall   
describe the Emergency State, the extent of the damage or deficiency, the expected effect on the operation of Developer’s or Connecting Transmission Owner’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 Developer’s reasonable judgment, immediate action is required, Developer

shall obtain the consent of Connecting Transmission Owner, such consent to not be unreasonably   
withheld, prior to performing any manual switching operations at the Large Generating Facility   
or the Developer Attachment Facilities in response to an Emergency State either declared by   
NYISO, Connecting Transmission Owner or otherwise regarding New York State Transmission   
System.

13.4 NYISO and Connecting Transmission Owner Authority.

13.4.1 General.

NYISO or Connecting Transmission Owner may take whatever actions with regard to the   
New York State Transmission System or the Connecting Transmission Owner’s Attachment   
Facilities it deems necessary during an Emergency State in order to (i) preserve public health and   
safety, (ii) preserve the reliability of the New York State Transmission System or the Connecting   
Transmission Owner’s Attachment Facilities, (iii) limit or prevent damage, and (iv) expedite   
restoration of service.

NYISO and Connecting Transmission Owner shall use Reasonable Efforts to minimize   
the effect of such actions or inactions on the Large Generating Facility or the Developer   
Attachment Facilities. NYISO or Connecting Transmission Owner may, on the basis of   
technical considerations, require the Large Generating Facility to mitigate an Emergency State

42

SERVICE AGREEMENT NO. 1396

by taking actions necessary and limited in scope to remedy the Emergency State, including, but not limited to, directing Developer to shut-down, start-up, increase or decrease the real or   
reactive power output of the Large Generating Facility; implementing a reduction or   
disconnection pursuant to Article 13.4.2; directing the Developer to assist with blackstart (if   
available) or restoration efforts; or altering the outage schedules of the Large Generating Facility and the Developer Attachment Facilities. Developer shall comply with all of the NYISO and   
Connecting Transmission Owner’s operating instructions concerning Large Generating Facility real power and reactive power output within the manufacturer’s design limitations of the Large Generating Facility’s equipment that is in service and physically available for operation at the time, in compliance with Applicable Laws and Regulations.

13.4.2 Reduction and Disconnection.

NYISO or Connecting Transmission Owner may reduce Energy Resource

Interconnection Service and Capacity Resource Interconnection Service or disconnect the Large   
Generating Facility or the Developer Attachment Facilities, when such reduction or   
disconnection is necessary under Good Utility Practice due to an Emergency State. These rights   
are separate and distinct from any right of Curtailment of NYISO pursuant to the NYISO OATT.   
When NYISO or Connecting Transmission Owner can schedule the reduction or disconnection   
in advance, NYISO or Connecting Transmission Owner shall notify Developer of the reasons,   
timing and expected duration of the reduction or disconnection. NYISO or Connecting   
Transmission Owner shall coordinate with the Developer using Good Utility Practice to schedule   
the reduction or disconnection during periods of least impact to the Developer and the New York   
State Transmission System. Any reduction or disconnection shall continue only for so long as   
reasonably necessary under Good Utility Practice. The Parties shall cooperate with each other to   
restore the Large Generating Facility, the Attachment Facilities, and the New York State   
Transmission System to their normal operating state as soon as practicable consistent with Good   
Utility Practice.

13.5 Developer Authority.

Consistent with Good Utility Practice and this Agreement, the Developer may take

whatever actions or inactions with regard to the Large Generating Facility or the Developer

Attachment Facilities during an Emergency State in order to (i) preserve public health and safety,   
(ii) preserve the reliability of the Large Generating Facility or the Developer Attachment   
Facilities, (iii) limit or prevent damage, and (iv) expedite restoration of service. Developer shall   
use Reasonable Efforts to minimize the effect of such actions or inactions on the New York State   
Transmission System and the Connecting Transmission Owner’s Attachment Facilities. NYISO   
and Connecting Transmission Owner shall use Reasonable Efforts to assist Developer in such   
actions.

13.6 Limited Liability.

Except as otherwise provided in Article 11.6 of this Agreement, no Party shall be liable   
to another Party for any action it takes in responding to an Emergency State so long as such   
action is made in good faith and is consistent with Good Utility Practice and the NYISO Tariffs.

43

SERVICE AGREEMENT NO. 1396

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 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.

44

SERVICE AGREEMENT NO. 1396

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.

Developer and Connecting Transmission Owner 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 Force Majeure.

16.1.1 Economic hardship is not considered a Force Majeure event.

16.1.2 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 Default.

17.1.1 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.

45

SERVICE AGREEMENT NO. 1396

17.1.2 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   
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, 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

46

SERVICE AGREEMENT NO. 1396

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   
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   
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 Liquidated Damages heretofore described and 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.

Developer and Connecting Transmission Owner shall each, at its own expense, maintain   
in force throughout the period of this Agreement, and until released by the other Parties, the   
following minimum insurance coverages, with insurers authorized to do business in the state of   
New York:

18.3.1 Employers’ Liability and Workers’ Compensation Insurance providing

statutory benefits in accordance with the laws and regulations of New York State.

47

SERVICE AGREEMENT NO. 1396

18.3.2 Commercial General Liability Insurance including premises and

operations, personal injury, broad form property damage, broad form blanket contractual liability   
coverage (including coverage for the contractual indemnification) 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 and a cross liability endorsement, with minimum limits   
of One Million Dollars ($1,000,000) per occurrence/One Million Dollars ($1,000,000) 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 Excess Public Liability Insurance over and above the Employers’ Liability

Commercial General Liability and Comprehensive Automobile Liability Insurance coverage, with a minimum combined single limit of Twenty Million Dollars ($20,000,000) per   
occurrence/Twenty Million Dollars ($20,000,000) aggregate.

18.3.5 The Commercial General Liability Insurance, Comprehensive Automobile

Insurance and Excess Public Liability Insurance policies of Developer and Connecting

Transmission Owner 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 insured. 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.

18.3.6 The Commercial General Liability Insurance, Comprehensive Automobile

Liability Insurance and Excess Public Liability Insurance policies shall contain provisions that specify that the policies are primary and shall apply to such extent without consideration for   
other policies separately carried and shall state that each insured is provided coverage as though a separate policy had been issued to each, except the insurer’s liability shall not be increased   
beyond the amount for which the insurer would have been liable had only one insured been   
covered. Developer and Connecting Transmission Owner shall each be responsible for its   
respective deductibles or retentions.

18.3.7 The Commercial General Liability Insurance, Comprehensive Automobile

Liability Insurance and Excess Public Liability Insurance policies, if written on a Claims First

Made Basis, shall be maintained in full force and effect for two (2) years after termination of this Agreement, which coverage may be in the form of tail coverage or extended reporting period coverage if agreed by the Developer and Connecting Transmission Owner.

18.3.8 The requirements contained herein as to the types and limits of all

insurance to be maintained by the Developer and Connecting Transmission Owner are not

48

SERVICE AGREEMENT NO. 1396

intended to and shall not in any manner, limit or qualify the liabilities and obligations assumed by those Parties under this Agreement.

18.3.9 Within ten (10) 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, Developer and Connecting Transmission Owner shall provide certification of all insurance required in this Agreement, executed by each insurer or by an authorized representative of each insurer.

18.3.10 Notwithstanding the foregoing, Developer and Connecting Transmission

Owner may each self-insure to meet the minimum insurance requirements of Articles 18.3.2   
through 18.3.8 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 18.3.2 through 18.3.8.   
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 18.3.2 through 18.3.9. In the event that a Party is   
permitted to self-insure pursuant to this Article 18.3.10, 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 Article 18.3.9.

18.3.11 Developer and Connecting Transmission Owner 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.

ARTICLE 19. ASSIGNMENT

19.1 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   
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 or Connecting Transmission Owner, for collateral   
security purposes to aid in providing financing for the Large Generating Facility, provided that   
the Developer will promptly notify the NYISO and Connecting Transmission Owner 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 and Connecting Transmission Owner of the date and particulars of any

49

SERVICE AGREEMENT NO. 1396

such exercise of assignment right(s) and will provide the NYISO and Connecting Transmission Owner 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

20.1 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; provided that if the Developer (or any third party, but only if such   
third party is not acting at the direction of the Connecting Transmission Owner) seeks and   
obtains such a final determination with respect to any provision of the Alternate Option (Article

5.1.2), or the Negotiated Option (Article 5.1.4), then none of these provisions shall thereafter have any force or effect and the rights and obligations of Developer and Connecting   
Transmission Owner shall be governed solely by the Standard Option (Article 5.1.1).

ARTICLE 21. COMPARABILITY

21.1 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.

22.1.1 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.

50

SERVICE AGREEMENT NO. 1396

22.1.2 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 NYISO OATT.

22.1.3 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 22.1.8 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.

22.1.4 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.

22.1.5 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   
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.

51

SERVICE AGREEMENT NO. 1396

22.1.6 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.

22.1.7 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 Party under this Agreement or its regulatory requirements, including the   
NYISO OATT and NYISO Services Tariff. The NYISO shall, in all cases, treat the information   
it receives in accordance with the requirements of Attachment F to the NYISO OATT.

22.1.8 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.

22.1.9 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.

22.1.10 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   
relief shall be granted without bond or proof of damages, and the receiving Party shall not plead

52

SERVICE AGREEMENT NO. 1396

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.

22.1.11 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 NYISO OATT, the Party shall provide the requested   
information to FERC or its staff, within the time provided for in the request for information. In   
providing the information to FERC or its staff, the Party must, consistent with 18 C.F.R. section   
388.112, request that the information be treated as confidential and non-public by FERC and its   
staff and that the information be withheld from public disclosure. Parties are prohibited from   
notifying the other Parties 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.

22.1.12

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 NYISO 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.

53

SERVICE AGREEMENT NO. 1396

ARTICLE 23. ENVIRONMENTAL RELEASES

23.1 Developer and Connecting Transmission Owner Notice.

Developer and Connecting Transmission Owner shall each notify the other Party, 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 Large Generating Facility   
or the Attachment Facilities, each of which may reasonably be expected to affect the other Party.   
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.

Connecting Transmission Owner and Developer 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 by Connecting Transmission Owner.

The initial information submission by Connecting Transmission Owner shall occur no   
later than one hundred eighty (180) Calendar Days prior to Trial Operation 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 and Connecting Transmission Owner. On a monthly basis   
Connecting Transmission Owner shall provide Developer and NYISO a status report on the   
construction and installation of Connecting Transmission Owner’s Attachment Facilities and   
System Upgrade Facilities and System Deliverability Upgrades, including, but not limited to, the   
following information: (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 by Developer.

The updated information submission by the Developer, including manufacturer

information, shall occur no later than one hundred eighty (180) Calendar Days prior to the Trial   
Operation. Developer shall submit a completed copy of the Large Generating Facility data   
requirements contained in Appendix 1 to the Large Facility Interconnection Procedures. It shall   
also include any additional information provided to Connecting Transmission Owner for the   
Interconnection Feasibility Study and Interconnection Facilities Study. Information in this   
submission shall be the most current Large Generating Facility design or expected performance   
data. Information submitted for stability models shall be compatible with NYISO standard   
models. If there is no compatible model, the Developer will work with a consultant mutually   
agreed to by the Parties to develop and supply a standard model and associated information.

54

SERVICE AGREEMENT NO. 1396

If the Developer’s data is different from what was originally provided to Connecting

Transmission Owner and NYISO pursuant to an Interconnection Study Agreement among

Connecting Transmission Owner, NYISO and Developer and this difference may be reasonably   
expected to affect the other Parties’ 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 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 Transmission System, Connecting

Transmission Owner’s Attachment Facilities or System Upgrade Facilities or System

Deliverability 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 Commercial Operation Date, the Developer and Connecting Transmission   
Owner shall supplement their information submissions described above in this Article 24 with   
any and all “as-built” Large Generating Facility information or “as-tested” performance   
information that differs from the initial submissions or, alternatively, written confirmation that   
no such differences exist. The Developer shall conduct tests on the Large Generating Facility as   
required by Good Utility Practice such as an open circuit “step voltage” test on the Large   
Generating Facility to verify proper operation of the Large Generating Facility’s automatic   
voltage regulator.

Unless otherwise agreed, the test conditions shall include: (1) Large Generating Facility   
at synchronous speed; (2) automatic voltage regulator on and in voltage control mode; and (3) a   
five percent change in Large Generating Facility terminal voltage initiated by a change in the   
voltage regulators reference voltage. Developer shall provide validated test recordings showing   
the responses of Large Generating Facility terminal and field voltages. In the event that direct   
recordings of these voltages is impractical, recordings of other voltages or currents that mirror   
the response of the Large Generating Facility’s terminal or field voltage are acceptable if

information necessary to translate these alternate quantities to actual Large Generating Facility terminal or field voltages is provided. Large Generating Facility testing shall be conducted and results provided to the Connecting Transmission Owner and NYISO for each individual   
generating unit in a station.

Subsequent to the Commercial Operation Date, the Developer shall provide Connecting   
Transmission Owner and NYISO any information changes due to equipment replacement, repair,   
or adjustment. Connecting Transmission Owner shall provide the Developer and NYISO any   
information changes due to equipment replacement, repair or adjustment in the directly   
connected substation or any adjacent Connecting Transmission Owner substation that may affect   
the Developer Attachment Facilities equipment ratings, protection or operating requirements.   
The Developer and Connecting Transmission Owner shall provide such information no later than   
thirty (30) Calendar Days after the date of the equipment replacement, repair or adjustment.

55

SERVICE AGREEMENT NO. 1396

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.

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 Connecting Transmission Owner’s Attachment Facilities and System Upgrade Facilities and   
System Deliverability Upgrades shall be subject to audit for a period of twenty-four months   
following Connecting Transmission Owner’s issuance of a final invoice in accordance with   
Article Error! Reference source not found. of this Agreement.

56

SERVICE AGREEMENT NO. 1396

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.

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 or Connecting Transmission Owner 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

57

SERVICE AGREEMENT NO. 1396

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, each Party shall choose one   
arbitrator who shall sit on a three-member arbitration panel. In each case, the arbitrator(s) shall   
be knowledgeable in electric utility matters, including electric transmission and bulk power   
issues, and shall not have any current or past substantial business or financial relationships with   
any party to the arbitration (except prior arbitration). The arbitrator(s) shall provide each of the   
Parties an opportunity to be heard and, except as otherwise provided herein, shall conduct the   
arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration   
Association (“Arbitration Rules”) and any applicable FERC regulations or RTO rules; provided,   
however, in the event of a conflict between the Arbitration Rules and the terms of this Article 27,   
the terms of this Article 27 shall prevail.

27.3 Arbitration Decisions.

Unless otherwise agreed by the Parties, the arbitrator(s) shall render a decision within

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

27.4 Costs.

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

58

SERVICE AGREEMENT NO. 1396

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 the state or states in which the Large Generating Facility, Attachment Facilities and System Upgrade Facilities and System Deliverability Upgrades owned by such Party, as   
applicable, are located; 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,   
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).

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.

59

SERVICE AGREEMENT NO. 1396

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.

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   
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 Large Facility Interconnection   
Procedures or such Appendix to the 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 NYISO 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.

60

SERVICE AGREEMENT NO. 1396

29.5 Joint and Several Obligations.

Except as otherwise stated herein, the obligations of NYISO, Developer and Connecting Transmission Owner 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 and Energy Resource Interconnection Service from the NYISO and Connecting   
Transmission Owner in accordance with the provisions of the NYISO 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.

61

SERVICE AGREEMENT NO. 1396

29.11 Amendment.

The Parties may by mutual agreement amend this Agreement, by a written instrument duly executed by all three 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 three 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 and Connecting Transmission Owner 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.

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 the Developer 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 System Upgrade Facilities and System   
Deliverability Upgrades.

62

SERVICE AGREEMENT NO. 1396

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

New York Independent System Operator, Inc.

By:

Henry Chao

Title: Vice President, System and Resource Planning

Date:

New York State Electric & Gas Corporation

By:

Mark Lynch

Title: Chief Executive Officer

Date:

Sheldon Energy LLC

By:

Title:

Date:

63

SERVICE AGREEMENT NO. 1396

APPENDICES

Appendix A

Attachment Facilities and System Upgrade Facilities

Appendix B

Milestones

Appendix C

Interconnection Details

Appendix D

Security Arrangements Details

Appendix E

Commercial Operation Date

Appendix F

Addresses for Delivery of Notices and Billings

Appendix G

Interconnection Requirements for a Wind Generating Plant

Appendix H

Invoicing and Payment

SERVICE AGREEMENT NO. 1396

APPENDIX A

ATTACHMENT FACILITIES AND SYSTEM UPGRADE FACILITIES

I. ATTACHMENT FACILITIES

A. Developer’s Attachment Facilities

The Developer’s Attachment Facilities consist of (i) the electrical collection system, (ii) a

34.5 kV project substation including the 34.5/230 kilovolt (“kV”) main power transformer, (iii) a   
230 kV circuit breaker, and (iv) overhead 230 kV bus work and a 230 kV disconnect switch   
connecting the main power transformer to the Connecting Transmission Owner’s Attachment   
Facilities.

1. Electrical Collection System

Electrical power generated by the wind turbines is transformed and collected through a network of underground cables that connect the turbines to the 34.5 kV/230 kV substation   
(“Project Substation”), described below, and located in the Town of Sheldon, New York.   
Electricity from the turbines is fed through a breaker panel at the turbine base inside the turbine tower and then to a pad-mount step-up transformer which steps the voltage up to 34.5 kV. The pad-mount transformers are loop feed types located near the base of the respective turbine tower and connected on 34.5 kV terminals via an underground cable.

The underground cables are 34.5 kV shielded aluminum conductor with EPR insulation installed in a trench which is typically 3-4 feet deep. Fiber optic cables for turbine control and monitoring are routed along the power cables in the same trench.

2. Project Substation

The Project Substation will be an outdoor air insulated low profile design, single bus

configuration located adjacent to the Sheldon Substation, discussed below. It will consist of five 1250A grounding circuit breakers for the collector lines connected to the 34.5/230 kV step-up transformer. These breakers will be rated 38 kV maximum voltage 25 kA interrupting   
capability. A 34.5 kV disconnect switch will be installed on the 34.5 kV side of the main step-up transformer. The Project Substation circuit breakers, disconnect switches, PTs, CTs, and surge arresters will be connected by a combination of strain buses and rigid buses mounted on   
porcelain insulators, supported on steel structures.

The Project Substation will include circuit breaker current transformers and bus-

connected voltage transformers for metering and relaying. A 34.5 kV-120/240V station service transformer will supply power for the station service. All equipment, including fences, will be grounded to a sub-grade grounding system designed to IEEE 80 requirement.

The substation area shall be covered with a 4 inch layer of # 2 crushed stone over a 6 inch   
layer of NYSDOT item 4 and will extend for a distance equal to 5 feet beyond the fence line.

A-1

SERVICE AGREEMENT NO. 1396

(a) Grounding Breaker - Each collector line has a grounding breaker

which combines a collection vacuum circuit breaker with a high   
speed, mechanically interlocked grounding switch in the same   
enclosure. The grounding switch automatically switches the   
collection circuit to ground upon opening of the breaker and   
thereby eliminates circuit overvoltage and allows the turbine to trip   
faster.

(b) Main Step-up Transformer. The main step-up transformer will

be an outdoor mineral oil filled, forced air cooled, three winding

34.5/230 kV three phase transformer, rated at 80/106/133 MVA   
OA/FA/FAA. The transformer shall be connected grounded wye   
on the 34.5 kV side, and grounded wye on the 230 kV side with a   
delta tertiary winding and no-load tap changer. The transformer   
will be equipped with surge arresters, current transformers, ANSI   
standard accessories and a continuous on-line gas monitor.

The transformer foundation design includes an oil containment system.

(a) Transformer Foundations. The transformer will be installed on a   
cast-in-place concrete pad supported on a cast-in-place concrete mat   
foundation. The foundation shall be placed on compacted structural fill on   
sound subgrade with the bottom of foundation below frost depth. The   
transformer and transformer pad shall be enclosed in a concrete water-  
tight oil containment pit capable of holding 100% of the transformer oil.

(b) Control Building. A stand alone control building will be provided   
for the Project Substation. The control building will house the relay panel,   
control panels, SCADA, DC Battery system, monitoring devices plus all   
of the support equipment, i.e. AC/DC distribution, HVAC, etc. The relay   
panel will contain the 34.5 kV Collector Bus and Backup Feeder   
Protection. The protective device will be a directional phase and ground   
overcurrent relay providing overall 34.5 kV bus and feeder backup   
protection, including over/under-frequency and overvoltage protection.

3. 230 kV Buswork, Breaker and Disconnect Switch

The Project Substation will be connected to the Sheldon Substation, described below, by overhead 230 kV buswork and a 230 kV disconnect switch. A 230 kV gas circuit breaker is located between the 230 kV disconnect switch and transformer.

A-2

SERVICE AGREEMENT NO. 1396

B. Connecting Transmission Owner’s Attachment Facilities

The Connecting Transmission Owner’s Attachment Facilities shall be those facilities

between the Point of Change of Ownership and the first intersection of 230 kV bus work in the Sheldon Substation. Major equipment included as part of the Connecting Transmission Owner’s Attachment Facilities includes the following:

Three (3) Current Transformer / Voltage transformers (CT/VT) metering units One (1) 230 kV manual operated disconnect switch

Grounding Materials

Conduit

Control Cabling

230kV bus work

230kV structures

The Connecting Transmission Owner’s Attachment Facilities shall be designed,

procured, and constructed by the Developer. The Connecting Transmission Owner shall perform design reviews, construction supervision, and testing of the Connecting Transmission Owner’s Attachment Facilities.

The Point of Change of Ownership shall be the three terminals of the three (3) Current   
Transformer/Voltage Transformer (CT/VT) metering units that will be located physically   
between the Sheldon Substation yard and disconnect switch (B1-16) located in the Project   
Substation.

II. SYSTEM UPGRADE FACILITIES

A. Stand Alone System Upgrade Facility at the Sheldon Substation

A new 230 kV 3-breaker ring bus substation at the Point of Interconnection (POI), named   
the Sheldon Substation, will be built by Developer, and owned by the Connecting Transmission   
Owner, adjacent to Connecting Transmission Owner transmission line #67 between the Stolle   
Road and Meyer substations at a point approximately 12.5 miles east of the Stolle Road   
substation and on the west side of North Sheldon Road. The Sheldon Substation is depicted in   
Figure 1 to Appendix A. The Sheldon Substation will include the following major electrical and   
physical equipment:

Three (3) 230 kV SF6 breakers

Six (6) 230 kV motor operated disconnect switches

Two (2) 230 kV manual operated disconnect switches with ground switches One (1) 230 kV manual operated disconnect switch

Fifteen (15) 230 kV Coupling Capacitor Voltage Transformers (CCVT) Two (2) 230 kV line traps

Six (6) 230 kV arrestors

One (1) station service transformer One (1) emergency generator

A-3

SERVICE AGREEMENT NO. 1396

One (1) SF6 Gas Cart, single phase, dedicated

Control house with relaying panels for metering, control and communication Conduit and trench

Control cabling

Grounding materials

230 kV Bus work

230 kV structures

Fencing

1. 230kV Transmission Work at the Sheldon Substation

The 230 kV transmission work at the Sheldon Substation, also referred to as the “line break,” shall include the poles, insulators, conductor and related equipment necessary to route Connecting Transmission Owner circuit #67 into the Sheldon Substation. The Connecting Transmission Owner will complete this work.

2. Protection SUFs at the Sheldon Substation

The Protection SUFs at the POI include the 230kV protection elements for 230 kV transmission line No. 67. The Protection SUFs at the POI will require the following major electrical and physical equipment:

Control cabling

Redundant A & B relay systems A & B pilot schemes

Relay panels

Communication equipment for remote communication to relays

The Developer will complete this work.

B. Common System Upgrade Facilities Required for More Than One Project

The System Upgrade Facilities identified below are required for two Class Year 2007   
projects: the Wethersfield project (“Wethersfield”) and the High Sheldon project (“High   
Sheldon”). The developer of the Wethersfield project, Noble Wethersfield Windpark, LLC, is   
undertaking certain procurement and construction activities related to these common System   
Upgrade Facilities (“Common SUFs”). The scope of these activities is discussed in Section II.C,   
below.

1. Protection at Stolle Road Substation

A new control house is required to accommodate new A & B protection systems with

NPCC required separation. The Stolle Road 230 kV Substation will require the following major

electrical and physical equipment:

4 - 230 kV Coupling Capacitor Voltage Transformers (CCVT)

1 - 230 kV Line Trap

A-4

SERVICE AGREEMENT NO. 1396

1 - 230 kV Line Tuner

2 - 230 kV disconnect switch motor operators

230 kV bus work

Conduit

Control cabling

Redundant A & B relay systems

A & B pilot schemes

A & B breaker failure systems

Communication equipment for remote communication to relays

Control House with relaying panels for metering, control and communication

Grounding materials

230 kV structures

3 - CCVT structures and foundations

Control House foundation

2 - stationary batteries with rack

2 - battery chargers

Safety switches and cabling for A/B flop over

Relay panels

AC Station Service Panels

2 - DC panels (A and B)

2. Protection at Meyer Substation

Additional protection facilities required, beyond those facilities required from Class Year   
2006 projects, include the line protection upgrades required at the Meyer 230 kV Substation for   
the Class Year 2007 projects on transmission line No. 67 (i.e., High Sheldon, Wethersfield). The   
Meyer 230 kV Substation will require the following major electrical and physical equipment:

1 - 230 kV Coupling Capacitor Voltage Transformer (CCVT)

1 - 230 kV Line Trap

1 - 230 kV Line Tuner

2 - 230 kV disconnect switch motor operators

230 kV bus work

Conduit

Control cabling

Redundant A & B relay systems A & B pilot schemes

A & B breaker failure systems Relay panels

Communication equipment for remote communication to relays Grounding materials

1 - CCVT structures and foundations

A-5

SERVICE AGREEMENT NO. 1396

C. Allocation of Work between Wethersfield and Connecting Transmission   
 Owner

Wethersfield is undertaking certain procurement and construction activities related to the Common SUFs identified in Section II.B, above.

1. Wethersfield Scope

(a) Stolle Road Substation:

Engineer, procure, and construct the control house and all contents

including the relay switchboard panels. Install Connecting

Transmission Owner furnished Remote Terminal Unit (RTU) in control house. The control house will be delivered to the Stolle Road Substation and set upon a foundation to be constructed by Connecting Transmission Owner.

Engineer and procure (1) CCVT with carrier accessories and (1)

line trap; procure (3) bus CCVTs for relaying.

Engineer and procure all control cables.

Engineer, all in-ground. This includes all foundations, including

the control house, as well as conduits, trench, and grounding.

Engineer, any required substation steel structures

(b) Meyer Substation:

Engineer and procure the relay switchboard panels.

Engineer and procure (1) CCVT with carrier accessories and relay

burden rating and (1) line trap.

Engineer and procure all control cables.

Engineer, all in-ground. This includes all foundations, as well as

conduits, trench, and grounding.

Engineer, any required substation steel structures

2. Connecting Transmission Owner Scope.

(a) Stolle Road Substation:

Procure and construct, all in-ground. This includes all foundations,   
 including control house foundation, as well as conduits, trench, and   
 grounding.

Engineer, procure, and construct motor operators for 230 kV   
 breaker isolation switches.

A-6

SERVICE AGREEMENT NO. 1396

Install and terminate control cables at the substation equipment and   
 at the control house termination cabinet.

Procure and drop ship RTU to Developer control house vendor for   
 Wethersfield and Stolle Rd Substations.

(b) Meyer Substation:

Procure and construct, all in-ground. This includes all foundations,   
 as well as conduits, trench, and grounding.

Engineer, procure, and construct any required substation steel   
 structures.

Engineer, procure, and construct motor operators for 230 kV   
 breaker isolation switches.

Install and terminate control cables at the substation equipment and   
 at the control house termination cabinet.

Install relay switchboard panels at Meyer Substation.

III. COST ESTIMATES

All cost estimates are calculated without tax liabilities per Section 5.17.1.

A. Connecting Transmission Owner’s Attachment Facilities.

The estimated cost for engineering, procuring and constructing the Connecting Transmission Owner’s Attachment Facilities is $284,107.

B. Sheldon Substation.

The estimated cost for engineering, procuring and constructing the Sheldon Substation is $5,458,308.

C. 230 kV Transmission Work at the Sheldon Substation.

The estimated cost for upgrades to the 230 kV Transmission Line No. 67 is $230,000. This work includes breaking the existing 230 kV Transmission Line No. 67 at the new SUFs at Sheldon Substation and establishing two (2) new 230 kV feeds.

D. Protection SUFs at the Sheldon Substation.

The estimated cost for constructing the Sheldon Substation system protection upgrades is $810,149.

E. Protection at Stolle Road Substation

The estimated cost for constructing the Stolle Road system protection upgrades is $1,639,000. The sharing of the costs between Wethersfield and High Sheldon shall be in accordance with this Agreement, including Appendix H.

A-7

SERVICE AGREEMENT NO. 1396

F. Protection at Meyer Substation

The estimated cost for constructing the Meyer system protection upgrades is $457,000.

The sharing of the costs between Wethersfield and High Sheldon shall be in accordance with this Agreement, including Appendix H.

IV. OPERATIONS AND MAINTENANCE EXPENSES

In accordance with Article 10.5 of this LGIA, the Developer shall be responsible for all reasonable expenses (“O&M Expenses”) associated with the operation, maintenance, repair and replacement of the Connecting Transmission Owner’s Attachment Facilities. The Developer shall pay such O&M Expenses under the procedure described below:

A. Annual Actual O&M Payment

The Developer shall pay for all reasonable and verifiable O&M Expenses incurred by

Connecting Transmission Owner, which expenses shall be billed by Connecting Transmission

Owner annually as accumulated during the year for which they were incurred.

B. O&M Expenses

O&M Expenses shall include (but are not limited to):

∙ Operation & Maintenance

∙ Equipment Replacement

∙ Administrative & General

∙ Applicable Property and Other Taxes

C. O&M Payment

Developer shall pay all O&M Expenses associated with the operation, maintenance,   
repair and replacement of the Connecting Transmission Owner’s Attachment Facilities.

Any incremental property tax payment resulting from the addition of the Connecting

Transmission Owner's Attachment Facilities will be the responsibility of the Developer and paid   
annually. A property tax assessment before and after construction of the Connecting   
Transmission Owner’s Attachment Facilities will be determined and submitted to the Developer   
for review.

Developer shall pay the actual incremental property tax liability incurred by the Connecting Transmission Owner resulting from the property assessment of Connecting Transmission Owner’s Attachment Facilities dedicated to the project.

All payments due to be made by the Developer shall be made within thirty (30) days after receiving an invoice from the Connecting Transmission Owner, which invoice shall be issued after the end of each calendar year for the most recent calendar year.

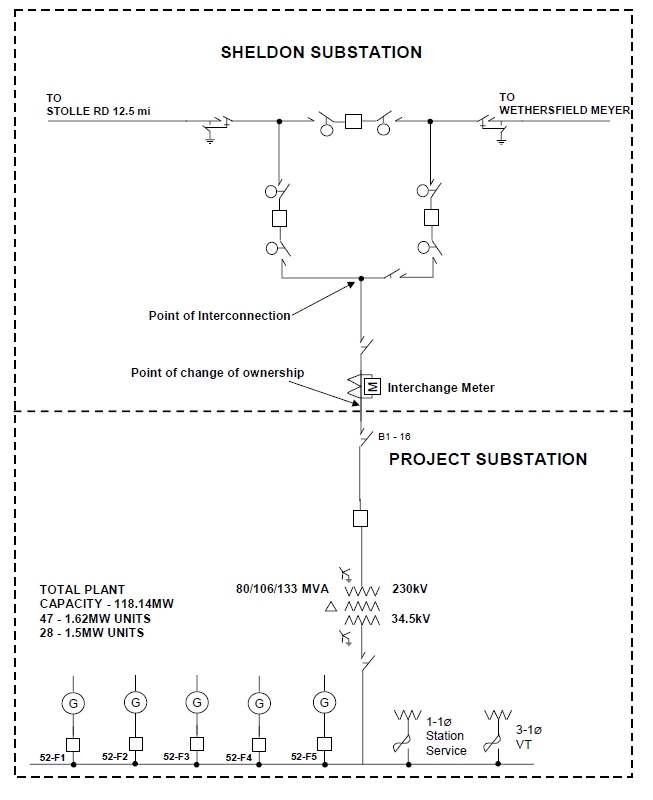
A-8

SERVICE AGREEMENT NO. 1396

FIGURE 1

One Line Electrical

A-9



SERVICE AGREEMENT NO. 1396

A-10

SERVICE AGREEMENT NO. 1396

APPENDIX B

MILESTONES

I. Selected Option Pursuant to Article 5.1:

The selected option under Article 5.1 of this Agreement is the “Option to Build” except for (a)   
the Common SUFs as set forth in Appendix A, Section II.B, and (b) Connecting Transmission   
Owner’s engineering, procurement and construction obligations which shall be performed in   
accordance with the Standard Option, as applicable. The Parties have agreed to the division of   
responsibility and scope as described in Section II of Appendix A with respect to the Common   
SUFs.

II. Milestones:

Milestone

Conceptual Package delivered to Connecting   
 Transmission Owner

Conceptual Package review completed

In-ground and above-ground packages - delivered to   
 Connecting Transmission Owner

In-ground and above-ground packages - review   
 completed

Equipment Procurement Started

Substation Protection & Control (“SP&C”) Package 1 -  
 delivered to Connecting Transmission Owner

SP&C Package 1 - review completed

SP&C Package 2 - delivered to Connecting   
 Transmission Owner

SP&C Package 2 - review completed

SP&C Package 3 Issued

Start of below-grade construction   
Start of above-ground construction

Responsibility Date

Developer Complete

Connecting

Transmission Complete

Owner

Developer Complete

Connecting

Transmission Complete

Owner

Developer Complete

Developer Complete

Connecting

Transmission Complete

Owner

Developer Complete

Connecting

Transmission Complete

Owner

Connecting

Transmission Complete

Owner

Developer Complete   
Developer Complete

B-1

SERVICE AGREEMENT NO. 1396

Milestone Responsibility Date

Connecting

Completion of line break structures Transmission Complete

Owner

Testing and Commissioning Completed Developer Complete

Connecting

Acceptance Testing and Commissioning Completed Transmission Complete

Owner

Connecting

Substation Energized Transmission Complete

Owner

In-Service Developer Complete

Initial Synchronization Developer Complete

Commercial Operation Date Developer Complete

As-built drawings submitted for review Developer Complete

Connecting

As-built review completed Transmission Complete

Owner

Closeout Package issued Developer Complete

The above Milestone Dates are subject to revision due to the need to undertake, schedule, or reschedule facility outages in accordance with Good Utility Practice, subject to any required   
NYISO review and approval, including the need to undertake, schedule, or re-schedule facility outages to address the outage of an A-1 facility reported as follows on the NYISO website: 6/11/2008 000 25402 Watercure - 345 - 230 BK 2/1/2008 12:12 5/29/2009.

Document packages referred to in the milestone table, above, consist of the following data:

1. Conceptual Package -

Site Plan- Include Sheldon Substation Layout, Project Substation Layout and   
 Transmission Line Locations and adjacent transmission line structures.   
 Plot Plan

Substation One Line   
 Substation Three Line   
 Engineering Notes

Prelim Protection & Control SPR Includes Relays, communications, Metering,   
 SCADA, and Alarms

Major Equipment Nameplate Ratings Battery Sizing Calculations   
 Station Service Sizing Calculations Project Schedule

Preliminary Drawing List

B-2

SERVICE AGREEMENT NO. 1396

2. In-Ground Package

Grading Plans

Foundation Plan and Details   
 Conduit Plan and Details   
 Grounding Plan and Details   
 Soil Resistivity Information   
 Soil Boring Information

Stormwater Pollution Prevention Plan (when required) In-Ground Bill of Materials List

3. Above Ground Package

General Arrangement Plan and Elevations

Above Ground Bill of Material Lists

Major Equipment Manufacturer's Drawings

Insulation Coordination Calculations

Overhead Lightning Protection Calculations

Structural Calculations for any Non-Standard Structures

Structure Erection Diagrams and Details for Non-Standard Structures Control House Drawings

4. SP&C Package 1

AC Three Line Diagrams   
 DC Elementary Diagrams

SP&C Bill of Material List (detailed) Final Protection & Control SPR   
 Spares and Training Plans

Prelim Relay settings/coord, Aspen model Panel Layout Diagrams

RTU Point List

Fuse Recommendation

5. SP&C Package 2

Connection Diagrams   
 Telephone Package   
 Low-Voltage Package   
 Revenue Metering

6. SP&C Package 3

Relay Settings

Commissioning Plan

Operating Instructions/Line Rating Sheets

B-3

SERVICE AGREEMENT NO. 1396

7. Closeout Package

Final Aspen Model   
 Final Drawing List

As Builts- Final Drafted Dwgs Updated Databases

Equipment Manufacturer's Instruction Books, Test Reports, Drawings and   
 Warranty

III. TRIGGER DATES FOR COMMON SUFS

The Common SUFs will be installed in accordance with the Trigger Dates for completion of the   
Common SUFs, set forth on Schedule A to this Appendix B, attached hereto, and consistent with   
the Milestone Schedule set forth in Section II of this Appendix B. Under certain circumstances   
described below, if Wethersfield is unable to meet a Trigger Date, the Connecting Transmission   
Owner and NYISO may require Wethersfield to cease all existing efforts to construct or develop   
the Common SUFs and to transfer any such rights to Connecting Transmission Owner or

Connecting Transmission Owner’s designee.

Notwithstanding the foregoing, it is understood and agreed that an occurrence of an

“Uncontrollable Timing Event” shall excuse Wethersfield’s obligation to meet the Trigger Dates   
until replacement Trigger Dates have been agreed upon pursuant to Section III(b)(i) below. An   
“Uncontrollable Timing Event” shall mean an event that causes delays in meeting the Trigger   
Date(s) as a result of (a) an event of Force Majeure and/or (b) actions by the Connecting   
Transmission Owner, NYISO, NPCC, federal governmental authorities and/or state   
governmental authorities, and where: (x) such event(s) are beyond Wethersfield’s control; (y)   
such event(s) alter(s) Wethersfield’s scope of work as set forth in Appendix A; and (z) in the   
absence of the event, there would not have been a delay that would have rendered Wethersfield   
unable to meet the Trigger Date(s). Nothing herein shall impose any increased obligation,   
liability or responsibility on Connecting Transmission Owner or the NYISO to perform its   
obligations pursuant to this Agreement.

Except to the extent discussed above, Wethersfield and Connecting Transmission Owner have   
agreed that neither the Milestone Schedule set forth in Section II of this Appendix B, nor the   
Trigger Date Schedule set forth on Schedule A to this Appendix B shall be modified in any way   
that will change or will likely change a Trigger Date without the prior written consent of High   
Sheldon.

If High Sheldon is removed from Class Year 2007 pursuant to the procedures of Attachments S and X of the OATT, then any consent required of or right afforded High Sheldon as otherwise provided herein shall be void thereafter.

(a) If Wethersfield determines it will be unable to meet one or more Trigger Date(s),   
it shall notify Connecting Transmission Owner, NYISO and High Sheldon in writing   
within five (5) Business Days of such determination. In its notice, Wethersfield shall   
specify (i) whether it is claiming that its inability to meet any such Trigger Date(s) is/are   
attributable to Uncontrollable Timing Event(s), (ii) the reasons supporting such claim

B-4

SERVICE AGREEMENT NO. 1396

and, if known, the anticipated date the Uncontrollable Timing Event(s) will end, and (iii) its revised timeframe for meeting the Trigger Date(s).

(b) Connecting Transmission Owner and NYISO shall promptly review

Wethersfield’s notice and promptly notify High Sheldon of Connecting Transmission Owner’s and NYISO’s determination.

(i) If Connecting Transmission Owner and NYISO jointly have a reasonable   
basis for determining, and in fact determine, that Wethersfield’s failure to meet   
the Trigger Date(s) is due to an Uncontrollable Timing Event(s), then (A)   
Wethersfield shall be relieved of its obligation to meet the Trigger Date(s) in   
question until the Uncontrollable Timing Event ends, and (B) Wethersfield,   
Connecting Transmission Owner, NYISO and High Sheldon shall cooperate in   
good faith to negotiate reasonable replacement Trigger Date(s).

(ii) If Connecting Transmission Owner and NYISO jointly have a reasonable basis for determining, and in fact determine, that Wethersfield’s failure to meet the Trigger Date(s) is not due to an Uncontrollable Timing Event, then   
Wethersfield shall be given a right to cure its failure to meet the Trigger Date within twenty (20) calendar days after receipt of Connecting Transmission   
Owner’s and NYISO’s determination.

(c) If, absent notification from Wethersfield pursuant to Section III(a) above, NYISO   
and/or Connecting Transmission Owner reasonably believe that Wethersfield will be   
unable to, or has failed to, meet a Trigger Date, NYISO and Connecting Transmission   
Owner shall notify Wethersfield in writing with copies to High Sheldon, requesting   
Wethersfield to provide responses to the following: (i) whether or not Wethersfield   
believes it will be unable to or has failed to meet any such Trigger Date; (ii) whether   
Wethersfield believes any inability to meet a Trigger Date is attributable to an   
Uncontrollable Timing Event(s); (iii) the reasons supporting any such claim and the   
anticipated date the Uncontrollable Timing Event will end; and (iv) its estimate for   
completing the task associated with the missed Trigger Date(s). Within five (5) Business   
Days after Wethersfield’s receipt of the NYISO and/or Connecting Transmission Owner   
notice in this Section III(c), Wethersfield shall respond in writing to NYISO, Connecting   
Transmission Owner and High Sheldon. NYISO and Connecting Transmission Owner   
shall promptly review Wethersfield’s response. The provisions of Section III(b) above   
shall apply following such review.

(d) If Wethersfield does not meet a Trigger Date for any reason other than the   
occurrence of an Uncontrollable Timing Event, and has failed to cure such failure of   
performance within the period set forth in Section III(b)(ii) above, then Connecting   
Transmission Owner and NYISO have the right (but not the obligation) to demand that   
Wethersfield cease all existing efforts to construct or develop the Common SUFs, and to   
transfer any such rights to Connecting Transmission Owner or Connecting Transmission   
Owner’s designee (which may include High Sheldon) (Connecting Transmission   
Owner’s designee shall be the “Transferee”). A decision regarding such demand will

B-5

SERVICE AGREEMENT NO. 1396

take into account High Sheldon’s scheduled in-service date (which shall be no earlier

than October 1, 2008), among other considerations. As part of any transfer to Connecting   
Transmission Owner or Transferee, Connecting Transmission Owner and NYISO may   
demand that Wethersfield transfer or convey to the Connecting Transmission Owner or   
Transferee (as applicable) title to, possession of and control of any and all equipment and   
services procured for the purpose of constructing the Common SUFs, and Wethersfield   
shall immediately transfer such equipment and services free and clear of any liens or

other encumbrances to the Connecting Transmission Owner or Transferee (as applicable)   
accordingly. The terms and conditions with respect to the transfer of such equipment and   
services shall be customary for transactions of this type in the electric power industry, as   
reasonably determined by Wethersfield and Connecting Transmission Owner jointly.

IV. COST ALLOCATION

Wethersfield will be fully responsible for any cost incurred to complete the Common

SUFs not defined below as a “Total Cost” and any Total Cost in excess of $3.2 million, except to   
the extent that any excess Total Cost is incurred as a result of an “Uncontrollable Cost Event”   
(an “Excess Cost”). An “Uncontrollable Cost Event” shall mean an event that causes cost   
increases as a result of (i) an event of Force Majeure, (ii) the implementation of any additional   
Protection or Communications Systems for the Stolle Road to Meyer circuit requested by   
Connecting Transmission Owner not reflected in this Agreement, (iii) after transfer pursuant to   
Section III(d) above, negligence or willful misconduct on the part of the Connecting   
Transmission Owner or Transferee, as applicable, and/or (iv) after transfer pursuant to Section   
III(d) above, failure of the Connecting Transmission Owner or Transferee, as applicable, to take   
steps reasonably necessary to complete the Common SUFs in a timely manner. “Total Cost”   
shall mean the sum of the following: (a) amounts invoiced by third-party suppliers, vendors and   
consultants, including the Connecting Transmission Owner, with no adjustments by Wethersfield   
for general, administration and overhead charges, for services and equipment directly required   
for the design, engineering, construction, installation, and commissioning of the Common SUFs,   
and (b) a charge by Wethersfield (“the Management Fee”) in the amount of Ten Thousand   
Dollars ($10,000.00) per month for the period beginning on September 1, 2008 and ending on   
the date that the Common SUFs are commissioned, and not including any periods during which   
transfer has occurred pursuant to Section III(d) above, and in no case shall the sum of   
Management Fees paid hereunder exceed a total of One Hundred Thousand Dollars   
($100,000.00).

In the event that an Excess Cost is incurred as a result of an Uncontrollable Cost Event as set forth in subsection (i) above, then such costs will be allocated between Wethersfield and High Sheldon pursuant to the allocation percentages determined pursuant to Attachment S of the   
NYISO OATT, and in no event shall such excess costs be the responsibility of Connecting   
Transmission Owner.

In the event that an Excess Cost is incurred as a result of an Uncontrollable Cost Event as set forth in subsection (ii), (iii) or (iv) above, then: (A) to the extent that Connecting

Transmission Owner is responsible for such costs pursuant to the procedures set forth in

Attachment S of the NYISO OATT, as such responsibility is determined in accordance with the   
next paragraph, such costs will be allocated to Connecting Transmission Owner; and (B) to the

B-6

SERVICE AGREEMENT NO. 1396

extent that Connecting Transmission Owner is not responsible for such costs pursuant to the

procedures set forth in Attachment S of the NYISO OATT, such costs will be allocated between Wethersfield and High Sheldon pursuant to the allocation percentages determined pursuant to Attachment S of the NYISO OATT.

The Parties agree that in determining the extent of Connecting Transmission Owner’s

responsibility (if any) for costs pursuant to the procedures set forth in Attachment S of the

NYISO OATT, only the Connecting Transmission Owner’s actions (or inaction) shall be

considered; Connecting Transmission Owner shall not be responsible for the actions (or inaction) of Wethersfield, High Sheldon, or any Transferee.

B-7

SERVICE AGREEMENT NO. 1396

Schedule A to Appendix B

Trigger Date Schedule

Task Descriptions Stolle Road

Wethersfield Engineering Firm Selected Issue Purchase Orders for Long Lead Items Equipment Specs

Begin Substation Construction (Connecting Transmission Owner) SP&C Package 1 to Connecting Transmission Owner

SP&C Package 2 to Connecting Transmission Owner Install Control Building

SP&C Package 3 Issued for Construction by Connecting Transmission Owner

Begin Commissioning/Testing (Connecting Transmission Owner) In-service

Status

complete   
complete   
complete   
complete   
complete   
complete   
complete

complete

complete   
complete

Trigger Date

(completed under E&P   
 Agreement)

March 18, 2008   
 April 30, 2008

June 11, 2008   
June 19, 2008

September 2, 2008   
 October 10, 2008

November 17, 2008

October 15, 2008   
December 11, 2008

Meyer

Wethersfield Engineering Firm Selected Issue Purchase Orders for Long Lead Items Equipment Specs

Begin Substation Construction (Connecting Transmission Owner) SP&C Package 1 to Connecting Transmission Owner

SP&C Package 2 to Connecting Transmission Owner SP&C Package 3 Issued for Construction by Connecting Transmission Owner

Begin Commissioning/Testing (Connecting Transmission Owner) In-service

complete   
complete   
complete   
complete   
complete   
complete

complete

complete   
complete

(completed under E&P   
 Agreement)

March 18, 2008   
 April 30, 2008

June 11, 2008   
July 18, 2008

September 7, 2008   
 October 1, 2008

October 15, 2008   
December 11, 2008

B-8

SERVICE AGREEMENT NO. 1396

APPENDIX C

INTERCONNECTION DETAILS

I. Description of Large Generating Facility including Point of Interconnection

The Large Generating Facility is a 118.14 MW wind power plant that will consist of 75,   
General Electric SLE turbines, of which 47 are rated at 1.62 MW and the remaining 28 are rated   
at 1.5 MW. Each of the 75 units has a reactive power factor range of 0.90 leading to 0.90   
lagging at each generator terminal; resulting in providing an operating range from +57.2 MVAr   
to -57.2 MVAr for the entire generating facility (sum of unit capabilities). The Large Generating   
Facility will be located in the Town of Sheldon and will connect to Connecting Transmission   
Owner’s 230 kV line #67 between the Stolle Road and Meyer substations, approximately 12.5   
miles from Stolle Road Substation. The Point of Interconnection is identified on the one-line   
diagram attached to Appendix A.

II. Developer Operating Requirements

The Developer must comply with the Connecting Transmission Owner’s operating   
instructions and requirements, as they may change from time to time. The Developer must   
comply with all applicable NYISO tariffs and procedures, as amended from time to time.

The Large Generator shall comply with the Post-transition Period LVRT Standard, as set forth in Appendix G.

For purposes of compliance with Appendix G, the Connecting Transmission Owner has determined that the Developer shall maintain the Large Generating Facility in service during a three-phase fault for 9 cycles.

With respect to Energy Resource Interconnection Service (“ERIS”), the Large Generating   
Facility has an approved ERIS of 118.1 MW; however, the Large Generating Facility’s baseline   
ERIS for purposes of determining non-material increases in capacity under Section 30.3.1 of   
Attachment X of the OATT remains 112.5 MW. 112.5 MW is the “existing ERIS” level of the   
Large Generating Facility determined pursuant to Section 30.3.1 of Attachment X of the OATT.

With respect to Capacity Resource Interconnection Service (“CRIS”), the Large Generating Facility has a CRIS value as of the Effective Date of 112.5 MW. The Large Generating Facility’s CRIS value will be limited to 112.5 MW unless it is subsequently increased pursuant to an applicable provision of the NYISO OATT.

C-1

SERVICE AGREEMENT NO. 1396

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. 1396

APPENDIX E

COMMERCIAL OPERATION DATE

[Date]

New York Independent System Operator, Inc. Attn: Vice President, Operations

10 Krey Boulevard

Rensselaer, NY 12144

New York State Electric & Gas Corporation Attn: Manager - Programs/Projects   
Electric Transmission Services

18 Link Drive

Binghamton, NY 13902-5224

Re: \_\_\_\_\_\_\_\_\_\_\_\_\_ Large Generating Facility

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

On [Date] [Developer] has completed Trial Operation of Unit No. \_\_\_. This letter confirms that [Developer] commenced Commercial Operation of Unit No. \_\_\_ at the Large Generating Facility, effective as of [Date plus one day].

Thank you.

[Signature]

[Developer Representative]

E-1

SERVICE AGREEMENT NO. 1396

APPENDIX F

ADDRESSES FOR DELIVERY OF NOTICES AND BILLINGS

Notices:

NYISO:

Before commercial operation of the Large Generating Facility:

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 commercial operation of the Large Generating Facility:

New York Independent System Operator, Inc. Attn: Vice President, Operations

10 Krey Boulevard

Rensselaer, NY 12144   
Phone: (518) 356-6000   
Fax: (518) 356-6118

Connecting Transmission Owner:

New York State Electric & Gas Corporation Attn: Manager - Programs/Projects   
Electric Transmission Services

18 Link Drive

Binghamton, NY 13902-5224 Phone: (607) 762-7606   
Fax: (607) 762-8666

Developer:

Sheldon Energy LLC c/o Invenergy Wind Attn: Sheldon Project Manager

One South Wacker Drive, Suite 1900 Chicago, IL 60606

(312) 224-1400

F-1

SERVICE AGREEMENT NO. 1396

Billings and Payments:

Connecting Transmission Owner:

New York State Electric & Gas Corporation Attn: Manager - Programs/Projects   
Electric Transmission Services

18 Link Drive

Binghamton, NY 13902-5224 Phone: (607) 762-7606   
Fax: (607) 762-8666

Developer:

Sheldon Energy LLC c/o Invenergy Wind Attn: Sheldon Project Manager

One South Wacker Drive, Suite 1900 Chicago, IL 60606

(312) 224-1400

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

NYISO:

Before commercial operation of the Large Generating Facility:

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 commercial operation of the Large Generating Facility:

New York Independent System Operator, Inc. Attn: Vice President, Operations

10 Krey Boulevard

Rensselaer, NY 12144   
Phone: (518) 356-6000   
Fax: (518) 356-6118

F-2

SERVICE AGREEMENT NO. 1396

Connecting Transmission Owner:

New York State Electric & Gas Corporation Attn: Manager - Programs/Projects   
Electric Transmission Services

18 Link Drive

Binghamton, NY 13902-5224 Phone: (607) 762-7606   
Fax: (607) 762-8666

Developer:

Sheldon Energy LLC c/o Invenergy Wind Attn: Sheldon Project Manager

One South Wacker Drive, Suite 1900 Chicago, IL 60606

(312) 224-1400

F-3

SERVICE AGREEMENT NO. 1396

APPENDIX G

INTERCONNECTION REQUIREMENTS FOR A WIND GENERATING PLANT

Appendix G sets forth requirements and provisions specific to a wind generating plant.

All other requirements of this LGIA continue to apply to wind generating plant interconnections.

A. Technical Standards Applicable to a Wind Generating Plant

i. Low Voltage Ride-Through (LVRT) Capability

A wind generating plant shall be able to remain online during voltage disturbances up to the time periods and associated voltage levels set forth in the standard below. The LVRT   
standard provides for a transition period standard and a post-transition period standard.

Transition Period LVRT Standard

The transition period standard applies to wind generating plants subject to FERC Order   
661 that have either: (i) interconnection agreements signed and filed with the Commission, filed with the Commission in unexecuted form, finally executed as conforming agreements, or filed   
with the Commission as non-conforming agreements between January 1, 2006 and December 31, 2006, with a scheduled in-service date no later than December 31, 2007, or (ii) wind   
generating turbines subject to a wind turbine procurement contract executed prior to December   
31, 2005, for delivery through 2007.

1. Wind generating plants are required to remain in-service during three-phase faults with

normal clearing (which is a time period of approximately 4 - 9 cycles) and single line to   
ground faults with delayed clearing, and subsequent post-fault voltage recovery to   
prefault voltage unless clearing the fault effectively disconnects the generator from the   
system. The clearing time requirement for a three-phase fault will be specific to the wind   
generating plant substation location, as determined by and documented by the Connecting   
Transmission Owner for the Transmission District to which the wind generating plant   
will be interconnected. The maximum clearing time the wind generating plant shall be   
required to withstand for a three-phase fault shall be 9 cycles at a voltage as low as 0.15   
p.u., as measured at the high side of the wind generating plant step-up transformer (i.e.   
the transformer that steps the voltage up to the transmission interconnection voltage or   
“GSU”), after which, if the fault remains following the location-specific normal clearing   
time for three-phase faults, the wind generating plant may disconnect from the   
transmission system.

2. This requirement does not apply to faults that would occur between the wind generator

terminals and the high side of the GSU or to faults that would result in a voltage lower than 0.15 per unit on the high side of the GSU serving the facility.

3. Wind generating plants may be tripped after the fault period if this action is intended as

part of a special protection system.

G-1

SERVICE AGREEMENT NO. 1396

4. Wind generating plants may meet the LVRT requirements of this standard by the

performance of the generators or by installing additional equipment (e.g., Static VAr Compensator, etc.) within the wind generating plant or by a combination of generator performance and additional equipment.

5. Existing individual generator units that are, or have been, interconnected to the network

at the same location at the effective date of the Appendix G LVRT Standard are exempt from meeting the Appendix G LVRT Standard for the remaining life of the existing   
generation equipment. Existing individual generator units that are replaced are required to meet the Appendix G LVRT Standard.

Post-transition Period LVRT Standard

All wind generating plants subject to FERC Order No. 661 and not covered by the transition period described above must meet the following requirements:

1. Wind generating plants are required to remain in-service during three-phase faults with

normal clearing (which is a time period of approximately 4 - 9 cycles) and single line to   
ground faults with delayed clearing, and subsequent post-fault voltage recovery to   
prefault voltage unless clearing the fault effectively disconnects the generator from the   
system. The clearing time requirement for a three-phase fault will be specific to the wind   
generating plant substation location, as determined by and documented by the Connecting   
Transmission Owner for the Transmission District to which the wind generating plant   
will be interconnected. The maximum clearing time the wind generating plant shall be   
required to withstand for a three-phase fault shall be 9 cycles after which, if the fault   
remains following the location-specific normal clearing time for three-phase faults, the   
wind generating plant may disconnect from the transmission system. A wind generating   
plant shall remain interconnected during such a fault on the transmission system for a   
voltage level as low as zero volts, as measured at the high voltage side of the wind GSU.

2. This requirement does not apply to faults that would occur between the wind generator

terminals and the high side of the GSU.

3. Wind generating plants may be tripped after the fault period if this action is intended as

part of a special protection system.

4. Wind generating plants may meet the LVRT requirements of this standard by the

performance of the generators or by installing additional equipment (e.g., Static VAr

G-2

SERVICE AGREEMENT NO. 1396

Compensator) within the wind generating plant or by a combination of generator performance and additional equipment.

5. Existing individual generator units that are, or have been, interconnected to the network

at the same location at the effective date of the Appendix G LVRT Standard are exempt from meeting the Appendix G LVRT Standard for the remaining life of the existing   
generation equipment. Existing individual generator units that are replaced are required to meet the Appendix G LVRT Standard.

ii. Power Factor Design Criteria (Reactive Power)

A wind generating plant shall maintain a power factor within the range of 0.95 leading to

0.95 lagging, measured at the Point of Interconnection as defined in this LGIA, if the ISO’s

System Reliability Impact Study shows that such a requirement is necessary to ensure safety or reliability.

The power factor range standard can be met using, for example without limitation, power electronics designed to supply this level of reactive capability (taking into account any   
limitations due to voltage level, real power output, etc.) or fixed and switched capacitors if   
agreed to by the Connecting Transmission Owner for the Transmission District to which the   
wind generating plant will be interconnected, or a combination of the two. The Developer shall not disable power factor equipment while the wind plant is in operation. Wind plants shall also be able to provide sufficient dynamic voltage support in lieu of the power system stabilizer and automatic voltage regulation at the generator excitation system if the System Reliability Impact Study shows this to be required for system safety or reliability.

iii. Supervisory Control and Data Acquisition (SCADA) Capability

The wind plant shall provide SCADA capability to transmit data and receive instructions from the ISO and/or the Connecting Transmission Owner for the Transmission District to which the wind generating plant will be interconnected, as applicable, to protect system reliability. The Connecting Transmission Owner for the Transmission District to which the wind generating   
plant will be interconnected and the wind plant Developer shall determine what SCADA   
information is essential for the proposed wind plant, taking into account the size of the plant and its characteristics, location, and importance in maintaining generation resource adequacy and   
transmission system reliability in its area.

G-3

SERVICE AGREEMENT NO. 1396

APPENDIX H

Invoicing and Payment

A. General

1. Detail Required

All invoices submitted under this Appendix H shall state the month to which the invoice   
applies and fully describe the services and equipment provided. All invoices will indicate   
if and to what extent costs being invoiced are asserted as having been incurred as a result   
of an Uncontrollable Cost Event (as such term is defined in Appendix B). All invoices   
for construction and equipment costs shall be prepared using the AIA G702-1992 form.

2. Payment

Invoices will be due and payable within the period of time specified in each subsection   
below unless otherwise mutually agreed in writing. All payments shall be made in the   
form of immediately available funds by wire transfer to the account specified in   
Appendix F of this Agreement or otherwise provided by the Parties in writing.

3. Late Payment

All amounts due and not paid within the time period specified following the date of

receipt shall be subject to interest calculated in accord with the methodology set forth in

FERC’s regulations at 18 CFR § 35.19a(a)(2)(iii).

B. Invoices/Payment for System Upgrade Facilities and Attachment Facilities

1. Wethersfield Monthly Invoice

a. By the first Calendar Day of each month, Wethersfield will provide to

Connecting Transmission Owner an invoice for all work performed by   
Wethersfield for SUF work for the previous month. Each invoice will   
separately identify and itemize all work performed in connection with the   
Common SUFs and any non-Common SUFs (collectively, the “SUFs”).   
These invoices will be used by Connecting Transmission Owner in the   
calculation of the total SUF costs for the purposes of allocating costs

between Wethersfield and High Sheldon (each, individually, referred to as a “Project” and both projects collectively referred to as the “Projects”).

b. By the first Calendar Day of each month, Wethersfield will provide a copy

of such invoice to High Sheldon.

H-1

SERVICE AGREEMENT NO. 1396

2. Connecting Transmission Owner’s Monthly Invoices

a. Within thirty (30) Calendar Days of its receipt of Wethersfield’s monthly

invoice, Connecting Transmission Owner will prepare and send invoices to

the Projects which will include:

i. Each Project’s respective share of Connecting Transmission Owner’s

work performed for SUFs.

ii. Each Project’s respective share of Wethersfield’s work performed for

SUFs.

iii. Connecting Transmission Owner’s work performed for Attachment

Facilities for each individual Project.

b. All Connecting Transmission Owner’s invoices are subject to the following

cost allocation:

i. Connecting Transmission Owner’s invoices shall allocate costs related

to any non-Common SUFs to the appropriate Project.

ii. Connecting Transmission Owner’s invoices shall allocate costs related

to the Common SUFs between the Projects using the allocation

percentage determined pursuant to Attachment S of the NYISO

OATT. The allocation percentages, as set forth in the Facilities Study for Class 2007: Part 2 - System Upgrade Facilities and resulting from the acceptance by the Projects of participation in Class Year 2007 and their posting of the requisite security, are as follows: High Sheldon 50% and Wethersfield 50%.

iii. In the event that an Excess Cost is incurred as a result of an event of

Force Majeure, then such costs will be allocated between Wethersfield   
and High Sheldon pursuant to the allocation percentages determined   
pursuant to Attachment S of the NYISO OATT, and in no event shall   
such excess costs be the responsibility of Connecting Transmission   
Owner.

iv. In the event that an Excess Cost is incurred as a result of an

Uncontrollable Cost Event (as such term is defined in Appendix B) as   
set forth in subsections (ii), (iii) or (iv) of the definition of   
Uncontrollable Cost Event, then: (A) to the extent that Connecting   
Transmission Owner is responsible for such costs pursuant to the   
procedures set forth in Attachment S of the NYISO OATT, as such   
responsibility is determined in accordance with the next paragraph,   
such costs will be allocated to Connecting Transmission Owner; and

(B) to the extent that Connecting Transmission Owner is not

responsible for such costs pursuant to the procedures set forth in   
Attachment S of the NYISO OATT, such costs will be allocated

H-2

SERVICE AGREEMENT NO. 1396

between Wethersfield and High Sheldon pursuant to the allocation percentages set forth in Section B.2(b)(ii) above.

v. The Parties agree that in determining the extent of Connecting

Transmission Owner’s responsibility (if any) for costs pursuant to the procedures set forth in Attachment S of the NYISO OATT, only   
Connecting Transmission Owner’s actions (or inaction) shall be   
considered; Connecting Transmission Owner shall not be responsible for the actions (or inaction) of Wethersfield, High Sheldon or of any Transferee (as such term is defined in Appendix B).

c. Each Project is required to pay its respective invoice(s) to Connecting

Transmission Owner within thirty (30) Calendar Days of receipt of such

invoice(s).

i. Wethersfield will pay to Connecting Transmission Owner

Wethersfield’s respective allocated shares of Connecting Transmission Owner’s work performed for SUFs and Connecting Transmission   
Owner’s Attachment Facilities.

ii. High Sheldon will pay to Connecting Transmission Owner High

Sheldon’s allocated share of Connecting Transmission Owner’s work performed for SUFs, Wethersfield’s work performed for Common SUFs, and Connecting Transmission Owner’s work performed for Connecting Transmission Owner’s Attachment Facilities.

d. Connecting Transmission Owner will pay to Wethersfield the monies

received from High Sheldon under 2(c)(ii) for Wethersfield’s Common SUF   
work within fifteen (15) Calendar Days of receiving payment from High   
Sheldon.

i. In the event that Wethersfield does not receive payment from

Connecting Transmission Owner within fifteen (15) Calendar Days of   
the date which such payment is due from High Sheldon, and   
Connecting Transmission Owner has not received such payment from   
High Sheldon, then Wethersfield may request Connecting   
Transmission Owner to pursue payment as set forth in subsection   
2(d)(ii) below.

ii. Connecting Transmission Owner agrees to use reasonable efforts to

obtain payment (less any disputed amounts) from High Sheldon,

including exercising such available rights as Connecting Transmission   
Owner may have against High Sheldon, including drawing on SUF-  
related letters of credit or other forms of security, in an amount not to   
exceed High Sheldon’s share of any undisputed invoice. Connecting   
Transmission Owner must pursue reasonable efforts to resolve any

H-3

SERVICE AGREEMENT NO. 1396

disputes with High Sheldon in the event that High Sheldon has withheld any disputed portion of any payment.

iii. In no event shall Connecting Transmission Owner be obligated to pay

Wethersfield for SUF work owed by High Sheldon unless Connecting Transmission Owner has (x) received payment for such work from High Sheldon, (y) drawn from the applicable letter(s) of credit to pay for such work or (z) failed to use reasonable efforts to obtain payment as described in 2(d)(ii) above.

3. Final Invoices

a. The procedures set forth above for monthly invoices in Sections B.1 and B.2

of this Appendix H shall apply to the final invoices.

b. Within six (6) months after Connecting Transmission Owner’s acceptance

and approval of the Common SUFs, Wethersfield shall provide to

Connecting Transmission Owner its final invoice, which shall include all costs of Wethersfield’s work performed for Common SUFs that have not been invoiced pursuant to a monthly invoice.

c. Within thirty (30) Calendar Days of receipt of such invoice from

Wethersfield, Connecting Transmission Owner will send final invoices to   
Wethersfield and High Sheldon, reflecting their respective share of the final cost of (1) Connecting Transmission Owner’s and Wethersfield’s work   
performed for SUFs and (2) Connecting Transmission Owner’s work for   
Attachment Facilities.

4. Audit Rights

Connecting Transmission Owner may exercise its rights (under Article 25.3 of this

Agreement) to audit Wethersfield’s accounts and records for the benefit of High Sheldon to (a)   
verify the actual costs of the design engineering, procurement and construction of Common   
SUFs and (b) to verify the accuracy of the calculation of invoiced amounts. Audit rights granted   
hereunder are not intended to limit or supersede audit rights Connecting Transmission Owner,   
High Sheldon and/or Wethersfield may otherwise have elsewhere in this Agreement or under   
other agreements.

H-4