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SERVICE AGREEMENT NO. 2476

SERVICE AGREEMENT NO. 2476

ENGINEERING, PROCUREMENT, CONSTRUCTION,   
OPERATION, AND MAINTENANCE AGREEMENT

AMONG THE

NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.,   
 AND

H.Q. ENERGY SERVICES (U.S.) INC.   
 AND

ALCOA POWER GENERATING, INC.

Dated as of October 4, 2019

SERVICE AGREEMENT NO. 2476

TABLE OF CONTENTS

Page Number

ARTICLE 1. DEFINITIONS 2

ARTICLE 2. EFFECTIVE DATE, TERM AND TERMINATION 6

2.1 Effective Date 6

2.2 Term of Agreement 7

2.3 Termination 7

2.4 Termination Costs 7

2.5 Survival 8

ARTICLE 3. EPC SERVICES 9

3.1 Performance of EPC Services 9

3.2 Design and Engineering 9

3.3 Procurement and Construction Commencement 9

3.4 Work Progress 9

3.5 Information Exchange 10

3.6 Ownership of Affected System Upgrade Facilities 10

3.7 Access Rights 10

3.8 Lands of Other Property Owners 10

3.9 Permits 10

3.10 Suspension 11

3.11 Taxes 11

3.12 Tax Status 14

3.13 Modification 15

ARTICLE 4. TESTING AND INSPECTION 15

4.1 Pre-In-Service Date Testing and Modifications 15

4.2 Post-In-Service Date Testing and Modifications 16

4.3 Right to Observe Testing 16

4.4 Right to Inspect 16

ARTICLE 5. OPERATIONS AND MAINTENANCE 16

5.1 General 16

5.2 NYISO and Affected System Operator Obligations 16

5.3 Operating and Maintenance Expenses 17

ARTICLE 6. PERFORMANCE OBLIGATION 17

6.1 EPC Services 17

6.2 Provision and Application of Security 17

6.3 Forfeiture of Security 17

6.4 Capped Network Upgrade Costs 18

ARTICLE 7. INVOICE 18

7.1 General 18

7.2 Refund of Remaining Security 19

7.3 Payment 19

7.4 Disputes 19

ARTICLE 8. REGULATORY REQUIREMENTS AND GOVERNING LAW 19

8.1 Regulatory Requirements 19

i

SERVICE AGREEMENT NO. 2476

8.2 Governing Law 19

ARTICLE 9. NOTICES 20

9.1 General 20

9.2 Billings and Payments 20

9.3 Alternative Forms of Notice 20

9.4 Operations and Maintenance Notice 20

ARTICLE 10. FORCE MAJEURE 20

ARTICLE 11. DEFAULT 21

11.1 General 21

11.2 Right to Terminate 21

ARTICLE 12. INDEMNITY, CONSEQUENTIAL DAMAGES AND INSURANCE 21

12.1 Indemnity 21

12.2 No Consequential Damages 23

12.3 Insurance 23

ARTICLE 13. ASSIGNMENT 25

13.1 Assignment 25

ARTICLE 14. SEVERABILITY 25

14.1 Severability 25

ARTICLE 15. COMPARABILITY 26

ARTICLE 16. CONFIDENTIALITY 26

16.1 Confidentiality 26

16.2 Term 26

16.3 Confidential Information 26

16.4 Scope 26

16.5 Release of Confidential Information 27

16.6 Rights 27

16.7 No Warranties 27

16.8 Standard of Care 27

16.9 Order of Disclosure 27

16.10 Termination of Agreement 28

16.11 Remedies 28

16.12 Disclosure to FERC, its Staff, or a State 28

16.13 Required Notices Upon Requests or Demands for Confidential Information . 29

ARTICLE 17. TRANSMISSION DEVELOPER AND AFFECTED SYSTEM OPERATOR

NOTICES OF ENVIRONMENTAL RELEASES 29

17.1 Transmission Developer and Affected System Operator 29

ARTICLE 18. INFORMATION ACCESS AND AUDIT RIGHTS 29

18.1 Information Access 29

18.2 Reporting of Non-Force Majeure Events 29

18.3 Audit Rights 30

18.4 Audit Rights Periods 30

18.5 Audit Results 30

ARTICLE 19. SUBCONTRACTORS 31

19.1 General 31

19.2 Responsibility of Principal 31

19.3 No Limitation by Insurance 31

ii

SERVICE AGREEMENT NO. 2476

ARTICLE 20. DISPUTES 31

20.1 Submission 31

20.2 External Arbitration Procedures 31

20.3 Arbitration Decisions 32

20.4 Costs 32

20.5 Termination 32

ARTICLE 21. REPRESENTATIONS, WARRANTIES AND COVENANTS 32

21.1 General 32

ARTICLE 22. MISCELLANEOUS 33

22.1 Binding Effect 33

22.2 Conflicts 33

22.3 Rules of Interpretation 33

22.4 Compliance 34

22.5 Joint and Several Obligations 34

22.6 Entire Agreement 34

22.7 No Third Party Beneficiaries 34

22.8 Waiver 35

22.9 Headings 35

22.10 Multiple Counterparts 35

22.11 Amendment 35

22.12 Modification by the Parties 35

22.13 Reservation of Rights 35

22.14 No Partnership 36

22.15 Other Transmission Rights 36

Appendices

Appendix A - EPC Services

Appendix B - Addresses for Delivery of Notices and Billings

iii

SERVICE AGREEMENT NO. 2476

ENGINEERING, PROCUREMENT, CONSTRUCTION, OPERATING, AND   
 MAINTENANCE AGREEMENT

THIS ENGINEERING, PROCUREMENT, CONSTRUCTION, OPERATING AND

MAINTENANCE AGREEMENT (“Agreement”) is made and entered into this 4th day of

October 2019, by and among H.Q. Energy Services (U.S.) Inc., a corporation organized and

existing under the laws of the State of Delaware (“Transmission Developer”), 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 Alcoa Power Generating, Inc., a corporation   
organized and existing under the laws of the State of Tennessee (“Affected System Operator”).   
Transmission Developer, the NYISO, or Affected System Operator each may be referred to as a   
“Party” or collectively referred to as the “Parties.” The terms “Party” and “Parties” as used   
herein shall not include Niagara Mohawk Power Corporation d/b/a National Grid (“Connecting   
Transmission Owner”).

RECITALS

WHEREAS, Transmission Developer has developed a Transmission Project that will result in an 80 MW increase in transmission capacity on the Cedar Rapids Transmission Intertie (as identified in FERC Docket No. ER17-505-000) between the province of Québec and the   
NYISO’s Rest of State Capacity Region and maintained the Transmission Project in the   
NYISO’s Interconnection Queue as Queue Number 430;

WHEREAS, Transmission Developer, Connecting Transmission Owner, and the NYISO have   
entered into an interconnection agreement to address the portions of the Transmission Project   
and the related Network Upgrade Facilities that impact the Connecting Transmission Owner’s   
facilities;

WHEREAS, the NYISO’s Facilities Study identified certain portions of the Transmission   
Project - namely, the transmission facilities identified in Section 1.A of Appendix A to this   
Agreement (“Transmission Project 1.A”) - and certain portions of the Network Upgrade   
Facilities - namely, the transmission facilities identified in Section 1.B of Appendix A to this   
Agreement (“Network Upgrade Facilities 1.B”) - (collectively, the “Affected System Upgrade   
Facilities”) to be constructed on the Affected System and owned and operated by Affected   
System Operator;

WHEREAS, Transmission Developer and Affected System Operator desire to have Affected   
System Operator perform, and Affected System Operator is willing to perform, in accordance   
with the terms of this Agreement: (i) the engineering, procurement, and construction services   
required to construct and place in service the Affected System Upgrade Facilities (“EPC   
Services”), and (ii) the operation and maintenance of the Affected System Upgrade Facilities;

WHEREAS, Transmission Developer will be responsible for the costs of the EPC Services for the Affected System Upgrade Facilities as set forth herein;

1

SERVICE AGREEMENT NO. 2476

WHEREAS, Transmission Developer, Affected System Operator, and the NYISO have agreed to enter into this Agreement for the purpose of allocating the responsibilities for the performance and oversight of the EPC Services required to construct and place in service the Affected System Upgrade Facilities and for the operation and maintenance of these facilities; and

WHEREAS, Connecting Transmission Owner has agreed to sign this Agreement solely for the limited purpose of acknowledging that its representatives have read and are fully apprised of the terms of this Agreement;

NOW, THEREFORE, in consideration of and subject to the mutual covenants contained herein, it is agreed:

ARTICLE 1. DEFINITIONS

Whenever used in this Agreement with initial capitalization, the following terms shall have the

meanings specified in this Article 1. Terms used in this Agreement with initial capitalization that   
are not defined in this Article 1 shall have the meanings specified in Section 1 of the ISO OATT,   
Section 22.1 of Attachment P of the ISO OATT, Section 25.1.2 of Attachment S of the ISO   
OATT, the body of the Transmission Interconnection Procedures, or the body of this Agreement.

Affected System shall mean the electric system owned and operated by the Affected System Operator that is affected by the Transmission Project and Network Upgrade Facilities.

Affected System Operator shall have the meaning set forth in the introductory paragraph.

Affected System Upgrade Facilities shall have the meaning set forth in the recitals and shall consist of the facilities described in Appendix A.

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.

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 in which the Affected System Upgrade   
Facilities will be constructed, 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

2

SERVICE AGREEMENT NO. 2476

applicability or validity of any requirement or guideline as applied to it in the context of this Agreement.

ASO Estimated Total Costs shall be the costs for the engineering, procurement, and

construction of the Affected System Upgrade Facilities identified in the Facilities Study as described in Section 3 of Appendix A.

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

Breaching Party shall mean a Party that is in Breach of this Agreement.

Business Day shall mean Monday through Friday, excluding federal holidays.

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

Cedar Expansion Interconnection Agreement shall mean the Transmission Project

Interconnection Agreement among the NYISO, Connecting Transmission Owner, and

Transmission Developer, identified as NYISO Service Agreement No. 2472, as filed in FERC docket ER19-2645, as may be amended from time to time.

Confidential Information shall mean any information that is defined as confidential by Article 16 of this Agreement.

Connecting Transmission Owner shall have the meaning set forth in the recitals.

Default shall mean the failure of a Party in Breach of this Agreement to cure such Breach in accordance with Article 11 of this Agreement.

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

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

EPC Services shall have the meaning set forth in the recitals and shall consist of the services described in Section 2 of Appendix A.

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

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

3

SERVICE AGREEMENT NO. 2476

FERC shall mean the Federal Energy Regulatory Commission (“Commission”) or its successor.

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

Good Utility Practice shall mean any of the practices, methods and acts engaged in or approved   
by a significant portion of the electric industry during the relevant time period, or any of the   
practices, methods and acts which, in the exercise of reasonable judgment in light of the facts   
known at the time the decision was made, could have been expected to accomplish the desired   
result at a reasonable cost consistent with good business practices, reliability, safety and   
expedition. Good Utility Practice is not intended to be limited to the optimum practice, method,   
or act to the exclusion of all others, but rather to delineate acceptable practices, methods, or acts   
generally accepted in the region.

Governmental Authority shall mean any federal, state, local or other governmental regulatory   
or administrative agency, court, commission, department, board, or other governmental   
subdivision, legislature, rulemaking board, tribunal, or other governmental authority having   
jurisdiction over any of the Parties, their respective facilities, or the respective services they   
provide, and exercising or entitled to exercise any administrative, executive, police, or taxing   
authority or power; provided, however, that such term does not include Transmission Developer,   
NYISO, Affected System Operator, 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.

In-Service Date shall mean the date upon which the Affected System Upgrade Facilities are energized consistent with the provisions of this Agreement and available to provide   
Transmission Service under the NYISO’s Tariffs.

IRS shall mean the Internal Revenue Service.

Milestones shall mean the milestones for the performance of the EPC Services, as set forth in Appendix A.

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

4

SERVICE AGREEMENT NO. 2476

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

Network Upgrade Facilities 1.B shall mean the portions of the Network Upgrade Facilities associated with the Transmission Project that are addressed by this Agreement, which   
transmission facilities are described in Section 1.B of Appendix A.

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.

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

NYSRC shall mean the New York State Reliability Council or its successor organization.

Operating Agreement shall mean the Operating Agreement concerning the APGI-NMPC 115 kV Interconnection between the Connecting Transmission Owner and the Affected System Operator dated April 30, 2019.

Party or Parties shall mean NYISO, Affected System Operator, or Transmission Developer or any combination of the above.

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.

Security shall mean a bond, irrevocable letter of credit, parent company guarantee or other form   
of security from an entity with an investment grade rating, executed for the benefit of the   
Affected System Operator, meeting the commercially reasonable requirements of the Affected   
System Operator with which it is required to be posted pursuant to Article 6.2, and consistent   
with the Uniform Commercial Code of the jurisdiction identified in Article 8.2.1 of this   
Agreement.

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

5

SERVICE AGREEMENT NO. 2476

System Impact Study shall mean the study conducted pursuant to Section 22.8 of the

Transmission Interconnection Procedures that evaluates the impact of the proposed Transmission Project on the safety and reliability of the New York State Transmission System and, if   
applicable, Affected System, to determine what Network Upgrade Facilities are needed for the proposed Transmission Project to connect reliably to the New York State Transmission System in a manner that meets the NYISO Transmission Interconnection Standard.

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 Transmission Project and (2) protect the Transmission Project 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.

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

Transmission Developer shall have the meaning set forth in the introductory paragraph.

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

Transmission Interconnection Procedures (“TIP”) shall mean the interconnection procedures applicable to a Transmission Interconnection Application pertaining to a Transmission Project that are included in Attachment P of the NYISO OATT.

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

Transmission Project shall be a Transmission Developer’s proposed transmission facility or facilities that collectively satisfy the definition of Transmission Project in Section 22.3.1 of Attachment P of the NYISO OATT. For purposes of this Agreement, the Transmission   
Developer’s Transmission Project shall be the Transmission Project described in Section 1 of Appendix A of the Cedar Expansion Interconnection Agreement.

Transmission Project 1.A shall mean the portions of the Transmission Project that are

addressed by this Agreement, which transmission facilities are described in Section 1.A of Appendix A.

ARTICLE 2. EFFECTIVE DATE, TERM AND TERMINATION

2.1 Effective Date.

This Agreement shall become effective upon execution by the Parties, subject to

acceptance by FERC, or if filed unexecuted, upon the date specified by FERC. The NYISO shall   
promptly file this Agreement with FERC upon its execution. Affected System Operator and

6



SERVICE AGREEMENT NO. 2476

Transmission Developer shall reasonably cooperate with the NYISO with respect to such filing and provide any information reasonably requested by the NYISO needed to comply with   
Applicable Laws and Regulations.

2.2 Term of Agreement.

Subject to the provisions of Article 2.3, this Agreement shall remain in effect until the   
later of: (i) the date on which all of the EPC Services have been completed, and (ii) the date on   
which the final payment of all invoices issued under this Agreement has been made pursuant to   
Sections 7.1 and 7.3 and any remaining Security has been released or refunded pursuant to   
Section 7.2.

2.3 Termination.

Completion of Term of Agreement

This Agreement shall terminate upon the completion of the term of this Agreement pursuant to Article 2.2.

Written Notice.

This Agreement may be terminated: (i) by the Transmission Developer after giving the NYISO and Affected System Operator ninety (90) Calendar Days advance written notice, or (ii) by the NYISO and the Affected System Operator after giving the Transmission Developer   
written notice within ten (10) Calendar Days after the Cedar Expansion Interconnection   
Agreement among the NYISO, Connecting Transmission Owner, and Transmission Developer has been terminated and such notice of termination has been accepted by FERC.

Default.

Any Party may terminate this Agreement as and to the extent permitted under Article 11 and Article 20.

Compliance.

Notwithstanding Articles 2.3.1, 2.3.2, 2.3.3, no termination of this Agreement shall

become effective until the Parties have complied with all Applicable Laws and Regulations

applicable to such termination, including the filing with FERC of a notice of termination of this Agreement, which notice has been accepted for filing by FERC.

2.4 Termination Costs.

If a Party elects to terminate this Agreement prior to the In-Service Date pursuant to   
Article 2.3.2 above, the Transmission Developer shall be responsible for all costs that are the   
responsibility of the Transmission Developer under this Agreement that are incurred by the   
Transmission Developer or the other Parties through the date of the non-terminating Party’s or   
Parties’ receipt of notice of termination under Article 2.3.2. Such costs include any cancellation

7



SERVICE AGREEMENT NO. 2476

costs relating to orders or contracts for the Affected System Upgrade Facilities, and other   
reasonable expenses related to this Agreement for which the Affected System Operator has   
incurred costs and has not been reimbursed by the Transmission Developer. In the event of   
termination by the Transmission Developer, 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:

With respect to any portion of the Network Upgrade Facilities 1.B that has not yet been constructed or installed, but that is being relied upon by other projects in the manner   
described in Article 6.3 of this Agreement, Transmission Developer shall forfeit any remaining Security in accordance with the requirements in Article 6.3.

With respect to any portion of the Affected System Upgrade Facilities that has not   
yet been constructed or installed and is not being relied upon by other projects in the manner   
described in Article 6.3 of this Agreement, the Affected System Operator shall to the extent   
possible and with Transmission 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 Transmission Developer elects not to authorize such cancellation, Transmission   
Developer shall assume all payment obligations with respect to such materials, equipment, and   
contracts, and the Affected System Operator shall deliver such material and equipment, and, if   
necessary, assign such contracts, to Transmission Developer as soon as practicable, at   
Transmission Developer’s expense. To the extent that Transmission Developer has already paid   
Affected System Operator for any or all such costs of materials or equipment not taken by   
Transmission Developer, Affected System Operator shall promptly refund such amounts to   
Transmission Developer, less any costs, including penalties incurred by the Affected System   
Operator to cancel any pending orders of or return such materials, equipment, or contracts.

Affected System Operator may, at its option, retain any portion of such materials or equipment that Transmission Developer chooses not to accept delivery of, in which case   
Affected System Operator shall be responsible for all costs associated with procuring such   
materials or equipment.

With respect to any portion of the EPC Services already performed pursuant to

the terms of this Agreement, Transmission Developer shall be responsible for all costs associated with the removal, relocation or other disposition or retirement of such related materials,   
equipment, or facilities.

2.5 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; and to permit the determination and enforcement of   
liability and indemnification obligations arising from acts or events that occurred while this   
Agreement was in effect. In addition, this Agreement shall continue in effect after termination

8



SERVICE AGREEMENT NO. 2476

with respect to each Party’s rights and obligations under Article 3.11 (Taxes), Article 4.4 (Right to Inspect), and Article 5 (Operations and Maintenance).

ARTICLE 3. EPC SERVICES

3.1 Performance of EPC Services.

The Affected System Operator shall perform the EPC Services, as set forth in Appendix   
A hereto, using Reasonable Efforts to complete the EPC Services by the Milestone dates set forth   
in Section 4 of Appendix A hereto. The Affected System Operator 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 Affected System Operator reasonably   
expects that it will not be able to complete the EPC Services by the specified dates, the Affected   
System Operator shall promptly provide written notice to the Transmission Developer and   
NYISO, and shall undertake Reasonable Efforts to meet the earliest dates thereafter. The   
NYISO has no responsibility, and shall have no liability, for the performance of any of the EPC   
Services under this Agreement.

3.2 Design and Engineering

Affected System Operator shall commence design and engineering of the Affected

System Upgrade Facilities as soon as practicable after it receives written authorization to proceed   
with design and engineering from the Transmission Developer by the date specified in Appendix   
A hereto, unless the Transmission Developer and Affected System Operator otherwise agree in   
writing.

3.3 Procurement and Construction Commencement

The Affected System Operator shall procure necessary equipment and commence

construction of the Affected System Upgrade Facilities for which it is responsible as soon as practicable after the following additional conditions are satisfied:

Approval of the appropriate Governmental Authority has been obtained, to the extent required, for the construction of the Affected System Upgrade Facilities;

Necessary real property rights and rights-of-way have been obtained, to the extent required, for the construction of the Affected System Upgrade Facilities; and

The Affected System Operator has received from the Transmission Developer written authorization to proceed with procurement and construction by the date specified in Appendix A hereto, as that date may be modified by mutual written agreement of the   
Transmission Developer and Affected System Operator.

3.4 Work Progress.

The Affected System Operator will keep the Transmission Developer and NYISO   
advised periodically as to the progress of its design, procurement and construction efforts.

9

SERVICE AGREEMENT NO. 2476

Transmission Developer or NYISO may, at any time, request a progress report from the Affected System Operator.

3.5 Information Exchange.

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

3.6 Ownership of Affected System Upgrade Facilities.

Affected System Operator shall own the Affected System Upgrade Facilities.

3.7 Access Rights.

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

required or necessary regulatory approvals, either the Affected System Operator or Transmission   
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 needed   
for the performance of the EPC Services, including ingress or egress to construct, repair, test (or   
witness testing), inspect, replace or remove the Affected System Upgrade Facilities. 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.

3.8 Lands of Other Property Owners.

If any part of the Affected System Upgrade Facilities is to be installed on property owned by persons other than Transmission Developer or Affected System Operator, the Affected   
System Operator shall at Transmission Developer’s expense use efforts, similar in nature and   
extent to those that it typically undertakes for itself, 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 perform the EPC Services upon such property, including to construct, repair, test (or witness testing), inspect, replace or remove the Affected System Upgrade Facilities.

3.9 Permits.

NYISO, Affected System Operator and the Transmission Developer shall cooperate with   
each other in good faith in obtaining all permits, licenses and authorizations that are necessary to   
accomplish the EPC Services in compliance with Applicable Laws and Regulations. With

10



SERVICE AGREEMENT NO. 2476

respect to this paragraph, Affected System Operator shall provide permitting assistance to the   
Transmission Developer comparable to that the Affected System Operator would provide to   
itself.

3.10 Suspension.

Transmission Developer reserves the right, upon written notice to Affected System

Operator and NYISO, to suspend at any time all work by Affected System Operator associated   
with the EPC Services under this Agreement that are required for only the Affected System   
Upgrade Facilities 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 Affected System Operator and NYISO. In such event, Transmission   
Developer shall be responsible for all reasonable and necessary costs and/or obligations in   
accordance with the Facilities Study report including those which Affected System Operator (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 Affected System Operator   
cannot reasonably avoid; provided, however, that prior to canceling or suspending any such   
material, equipment or labor contract, Affected System Operator shall obtain Transmission   
Developer’s authorization to do so.

Affected System Operator shall invoice Transmission Developer for such costs pursuant to Article 7 and shall use due diligence to minimize its costs. In the event Transmission   
Developer suspends work by Affected System Operator required under this Agreement pursuant to this Article 3.10, and has not requested Affected System Operator 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 Affected System Operator and NYISO, if no effective date is specified.

3.11 Taxes.

Reserved.   
Reserved.

Indemnification for the Cost Consequences of Current Tax Liability Imposed Upon the Affected System Operator.

Transmission Developer shall protect, indemnify and hold harmless Affected System Operator from the cost consequences of any current tax liability imposed against Affected   
System Operator as the result of payments or property transfers made by Transmission   
Developer to Affected System Operator with respect to the Affected System Upgrade Facilities under this Agreement, as well as any interest and penalties, other than interest and penalties attributable to any delay caused by Affected System Operator.

11



SERVICE AGREEMENT NO. 2476

Affected System Operator shall not include a gross-up for the cost consequences of any   
current tax liability in the amounts it charges Transmission Developer under this Agreement until   
and unless (i) Affected System Operator has determined, in good faith, that the payments or   
property transfers made by Transmission Developer to Affected System Operator should be   
reported as income subject to taxation or (ii) any Governmental Authority directs Affected   
System Operator to report payments or property as income subject to taxation; provided,   
however, that Affected System Operator may require Transmission Developer to provide   
security, in a form reasonably acceptable to Affected System Operator (such as a parental   
guarantee or a letter of credit), in an amount equal to the cost consequences of any current tax   
liability under this Article 3.11. Transmission Developer shall reimburse Affected System   
Operator for such costs on a fully grossed-up basis, in accordance with Article 3.11.4, within   
thirty (30) Calendar Days of receiving written notification from Affected System Operator 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 Affected System Operator 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 3.11.

Tax Gross-Up Amount.

Transmission Developer’s liability for the cost consequences of any current tax liability   
under this Article 3.11 shall be calculated on a fully grossed-up basis. Except as may otherwise   
be agreed to by the parties, this means that Transmission Developer will pay Affected System   
Operator, in addition to the amount paid for the Affected System Upgrade Facilities, an amount   
equal to (1) the current taxes imposed on Affected System Operator (“Current Taxes”) on the   
excess of (a) the gross income realized by Affected System Operator as a result of payments or   
property transfers made by Transmission Developer to Affected System Operator under this

Agreement (without regard to any payments under this Article 3.11) (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 Affected System Operator 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 Affected System

Operator’s composite federal and state tax rates at the time the payments or property transfers are   
received and Affected System Operator 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 Affected System Operator’s anticipated   
tax depreciation deductions as a result of such payments or property transfers by Affected   
System Operator’s current weighted average cost of capital. Thus, the formula for calculating   
Transmission Developer’s liability to Affected System Operator pursuant to this Article 3.11.4   
can be expressed as follows: (Current Tax Rate x (Gross Income Amount - Present Value

12



SERVICE AGREEMENT NO. 2476

Depreciation Amount))/(1 - Current Tax Rate). Transmission Developer’s estimated tax liability in the event taxes are imposed shall be stated in Section 5 of Appendix A.

Private Letter Ruling or Change or Clarification of Law.

At Transmission Developer’s request and expense, Affected System Operator 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 Transmission Developer to Affected System Operator under this   
Agreement are subject to federal income taxation. Transmission Developer will prepare the initial draft of the request for a private letter ruling, and will certify under penalties of perjury that all facts represented in such request are true and accurate to the best of Transmission   
Developer’s knowledge. Affected System Operator shall cooperate with Transmission   
Developer in good faith with respect to the submission of such request.

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

Reserved.

Reserved.   
Refund.

In the event that (a) a private letter ruling is issued to Affected System Operator which   
holds that any amount paid or the value of any property transferred by Transmission Developer   
to Affected System Operator 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 Affected System Operator in good faith that any   
amount paid or the value of any property transferred by Transmission Developer to Affected   
System Operator under the terms of this Agreement is not taxable to Affected System Operator,

(c) any abatement, appeal, protest, or other contest results in a determination that any payments   
or transfers made by Transmission Developer to Affected System Operator are not subject to   
federal income tax, or (d) if Affected System Operator receives a refund from any taxing   
authority for any overpayment of tax attributable to any payment or property transfer made by   
Transmission Developer to Affected System Operator pursuant to this Agreement, Affected   
System Operator shall promptly refund to Transmission Developer the following:

(i) Any payment made by Transmission Developer under this Article 3.11 for taxes   
that is attributable to the amount determined to be non-taxable, together with interest thereon,

13



SERVICE AGREEMENT NO. 2476

(ii) Interest on any amounts paid by Transmission Developer to Affected System

Operator for such taxes which Affected System Operator 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 Transmission Developer to the date   
Affected System Operator refunds such payment to Transmission Developer, and

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

The intent of this provision is to leave both the Transmission Developer and Affected

System Operator, to the extent practicable, in the event that no taxes are due with respect to any payment for Affected System Upgrade Facilities hereunder, in the same position they would have been in had no such tax payments been made.

Taxes Other Than Income Taxes.

Upon the timely request by Transmission Developer, and at Transmission Developer’s   
sole expense, Affected System Operator shall appeal, protest, seek abatement of, or otherwise   
contest any tax (other than federal or state income tax) asserted or assessed against Affected   
System Operator for which Transmission Developer may be required to reimburse Affected   
System Operator under the terms of this Agreement. Transmission Developer shall pay to   
Affected System Operator on a periodic basis, as invoiced by Affected System Operator,   
Affected System Operator’s documented reasonable costs of prosecuting such appeal, protest,   
abatement, or other contest. Transmission Developer and Affected System Operator 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   
Transmission Developer to Affected System Operator 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, Transmission Developer   
will be responsible for all taxes, interest and penalties, other than penalties attributable to any   
delay caused by Affected System Operator.

3.12 Tax Status

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

14



SERVICE AGREEMENT NO. 2476

the status of NYISO, or the status of the Affected System Operator with respect to the issuance of bonds including, but not limited to, Local Furnishing Bonds.

3.13 Modification.

General.

If, prior to the In-Service Date, either the Transmission Developer or Affected System

Operator proposes to modify the facilities covered by this Agreement, they must inform the other Parties of the proposed modification and must satisfy the requirements in Section 22.5.4 of   
Attachment P to the NYISO OATT that the modifications are not Material Modifications. The Transmission Developer shall be responsible for the cost of any such additional modifications, including the cost of studying the materiality and impact of the modification. Subject to Article 5, following the In-Service Date, the Affected System Operator may undertake modifications to its facilities covered by this Agreement.

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.

Modification Costs.

Transmission Developer shall not be assigned the costs of any additions, modifications, or replacements that Affected System Operator makes to the Affected System Upgrade Facilities or the New York State Transmission System to facilitate the interconnection of a third party to the Affected System Upgrade Facilities or the New York State Transmission System, or to   
provide Transmission Service to a third party under the ISO OATT, except in accordance with the cost allocation procedures in Attachment S of the ISO OATT.

ARTICLE 4. TESTING AND INSPECTION

4.1 Pre-In-Service Date Testing and Modifications.

Prior to the In-Service Date, the Affected System Operator shall perform any required   
tests for the Affected System Upgrade Facilities and Affected System Operator shall coordinate   
with the Connecting Transmission Owner concerning any testing of the Transmission Project and   
the Network Upgrade Facilities under the Cedar Expansion Interconnection Agreement to ensure   
the safe and reliable operation of the Affected System Upgrade Facilities. Affected System   
Operator shall make any modifications to its facilities that are found to be necessary as a result of   
any such testing. Transmission Developer shall bear the cost of all such testing and   
modifications. Affected System Operator shall transmit test energy over the Transmission   
Project only if it has arranged for the injection of such test energy in accordance with NYISO   
procedures.

15

SERVICE AGREEMENT NO. 2476

4.2 Post-In-Service Date Testing and Modifications.

Affected System Operator shall at its own expense perform routine inspection and testing   
of the Affected System Upgrade Facilities in accordance with Good Utility Practice and   
Applicable Reliability Standards as may be necessary to ensure their operation in a safe and   
reliable manner.

4.3 Right to Observe Testing.

Prior to the In-Service Date, Affected System Operator shall notify Transmission

Developer and the NYISO, in advance of its performance of any tests of the Affected System

Upgrade Facilities. Transmission Developer and the NYISO shall each have the right, at its own expense, to observe such testing should any such testing occur.

4.4 Right to Inspect.

Transmission Developer and Affected System Operator 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 Affected System   
Upgrade Facilities, the System Protection Facilities and other protective equipment. NYISO   
shall have these same rights of inspection as to the Affected System Upgrade Facilities, the   
System Protection Facilities, and other protective equipment of Transmission Developer and   
Affected System Operator. 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 Affected System Upgrade 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 4.4 shall be treated in accordance with Article 16 of this   
Agreement and Attachment F to the ISO OATT.

ARTICLE 5. OPERATIONS AND MAINTENANCE

5.1 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.

5.2 NYISO and Affected System Operator Obligations.

Affected System Operator and NYISO shall cause the New York State Transmission

System, including the Affected System Upgrade Facilities, to be operated, maintained and

controlled in a safe and reliable manner in accordance with this Agreement, the NYISO Tariffs,   
and the Operating Agreement; provided, however, that the NYISO is not a party to the Operating

16

SERVICE AGREEMENT NO. 2476

Agreement and shall have no responsibility for, and no liability associated with, the performance of obligations under the Operating Agreement.

5.3 Operating and Maintenance Expenses.

Affected System Operator shall be responsible for all reasonable expenses including

overheads, associated with owning, operating, maintaining, repairing, and future replacement of the Affected System Upgrade Facilities.

ARTICLE 6. PERFORMANCE OBLIGATION

6.1 EPC Services.

Affected System Operator shall perform the EPC Services described in Appendix A   
hereto and as otherwise set forth by the terms of this Agreement at Transmission Developer’s   
expense.

6.2 Provision and Application of Security.

Within thirty (30) Calendar Days of the Effective Date of this Agreement, Transmission   
Developer shall provide Affected System Operator with Security in the amount of the cost   
estimate for the Network Upgrade Facilities 1.B, in accordance with Section 22.9.3 of   
Attachment P of the ISO OATT, and the Transmission Project 1.A, both documented in the   
Facilities Study report. This amount is set forth in Appendix A of this Agreement. If the   
Transmission Developer: (i) does not pay an invoice issued by the Affected System Operator   
pursuant to Article 7.1 within the timeframe set forth in Article 7.3 or (ii) does not pay any   
disputed amount into an independent escrow account pursuant to Article 7.4 the Affected System   
Operator may draw upon Transmission Developer’s Security to recover such payment. The   
Security shall be reduced on a dollar-for-dollar basis for payments made to Affected System   
Operator for the purpose of constructing, procuring, and installing the Affected System Upgrade   
Facilities.

6.3 Forfeiture of Security.

The Security the Transmission Developer provides Affected System Operator in   
accordance with Article 6.2 of this Agreement shall be irrevocable and shall be subject to   
forfeiture in the event that the Transmission Developer subsequently terminates or abandons   
development of the Affected System Upgrade Facilities. Any Security provided by the   
Transmission Developer shall be subject to forfeiture to the extent necessary to defray the cost   
of: (1) Network Upgrade Facilities required for other Transmission Developers whose   
Transmission Project interconnection studies included the Transmission Developer’s   
Transmission Project and Network Upgrade Facilities in their base cases; and (2) System   
Upgrade Facilities and System Deliverability Upgrade Facilities required for projects for which   
the Transmission Project and Network Upgrade Facilities were included in their Annual   
Transmission Reliability Assessment and/or Class Year Deliverability Study, as applicable.

17



SERVICE AGREEMENT NO. 2476

6.4 Capped Network Upgrade Costs

The amount of Security that Transmission Developer provides Affected System Operator   
for the Network Upgrade Facilities 1.B in accordance with Article 6.2 of this Agreement, as set   
forth in Appendix A of this Agreement, caps the Transmission Developer’s maximum potential   
responsibility for the cost of Network Upgrade Facilities 1.B required for its project, except as   
discussed below.

If the actual cost of the Network Upgrade Facilities 1.B is less than the agreed-to   
and secured amount, Transmission Developer is responsible only for the actual cost figure.

If the actual cost of the Network Upgrade Facilities 1.B is greater than the agreed-  
to and secured amount because other projects have been expanded, accelerated, otherwise   
modified or terminated, Transmission Developer is responsible only for the agreed-to and   
secured amount for the Network Upgrade Facilities 1.B. The additional cost is covered by the   
developers of the modified projects, or by the drawing on the cash that has been paid and the   
Security that has been posted for terminated projects, depending on the factors that caused the   
additional cost. Such forfeitable Security from other developers will be drawn on only as needed   
for this purpose, and only to the extent that the terminated project associated with that Security   
has caused additional cost.

If the actual cost of the Network Upgrade Facilities 1.B is greater than the agreed-  
to and secured amount, Transmission Developer will pay the additional costs to the Affected   
System Operator as such costs are incurred. Disputes between Transmission Developer and   
Affected System Operator concerning costs in excess of the agreed-to and secured amount will   
be resolved by the parties in accordance with the terms and conditions of Article 20.

ARTICLE 7. INVOICE

7.1 General.

To the extent that any amounts are due to the Transmission Developer or Affected

System Operator under this Agreement, the Transmission Developer or Affected System

Operator, as applicable, shall 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 Transmission Developer and Affected   
System Operator 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. Within six months after   
completion of the EPC Services, Transmission Developer or Affected System Operator, as   
applicable, shall provide a final invoice to the other Party of any remaining amounts due   
associated with the EPC Services.

18

SERVICE AGREEMENT NO. 2476

7.2 Refund of Remaining Security

Following the later of Affected System Operator’s completion of the EPC Services and Transmission Developer’s payment of any final invoice issued under Article 7.1, the Affected System Operator shall refund to the Transmission Developer any remaining portions of its   
security, except as set forth in Article 6.3. Affected System Operator shall provide Transmission Developer with the refunded amount within thirty (30) Calendar Days of the Parties’ satisfaction of the requirements in this Article 7.2.

7.3 Payment.

Invoices shall be rendered to the paying Party at the address specified in Appendix B

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.

7.4 Disputes.

In the event of a billing dispute between Parties, the Party owed money shall continue to   
perform under this Agreement as long as the other Party: (i) continues to make all payments not   
in dispute; and (ii) pays to the Party owed money or into an independent escrow account the   
portion of the invoice in dispute, pending resolution of such dispute. If the Party that owes   
money fails to meet these two requirements for continuation of service, then the Party owed   
money may provide notice to the other Party of a Default pursuant to Article 11. Within thirty

(30) Calendar Days after the resolution of the dispute, the Party that owes money to the other

Party shall pay the amount due with interest calculated in accord with the methodology set forth in FERC’s Regulations at 18 C.F.R. § 35.19a(a)(2)(iii).

ARTICLE 8. REGULATORY REQUIREMENTS AND GOVERNING LAW

8.1 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 Transmission 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.

8.2 Governing Law.

19



SERVICE AGREEMENT NO. 2476

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.

This Agreement is subject to all Applicable Laws and Regulations.

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 9. NOTICES

9.1 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 B 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.

9.2 Billings and Payments.

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

9.3 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 B hereto.

9.4 Operations and Maintenance Notice.

Transmission Developer and Affected System Operator 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 Article 5 of this Agreement.

ARTICLE 10. FORCE MAJEURE

10.1 Economic hardship is not considered a Force Majeure event.

10.2 A Party shall not be responsible or liable, or deemed, in Default with respect to any

obligation hereunder, 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

20

SERVICE AGREEMENT NO. 2476

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 11. DEFAULT

11.1 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.

11.2 Right to Terminate.

If a Breach is not cured as provided in this Article 11, 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 12. INDEMNITY, CONSEQUENTIAL DAMAGES AND INSURANCE

12.1 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 third   
party 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 (collectively “Loss”), to   
the extent arising out of or resulting from (i) the Indemnified Party’s performance of its

obligations under this Agreement on behalf of the Indemnifying Party, as applicable, 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

21



SERVICE AGREEMENT NO. 2476

violation by the Indemnifying Party of any Environmental Law or the release by the Indemnifying Party of any Hazardous Substance.

Indemnified Party.

If a Party is entitled to indemnification under this Article 12 as a result of a claim by a third party, and the Indemnifying Party fails, after notice and reasonable opportunity to proceed under Article 12.1.3, 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.

Indemnifying Party.

If an Indemnifying Party is obligated to indemnify and hold any Indemnified Party

harmless under this Article 12, 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.

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 12.1 may apply, the Indemnified Party shall notify the   
Indemnifying Party of such fact. Any failure of or delay in such notification shall not affect a   
Party’s indemnification obligation unless such failure or delay is materially prejudicial to the   
Indemnifying Party.

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

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

22



SERVICE AGREEMENT NO. 2476

consent of the Indemnified Party, which shall not be unreasonably withheld, conditioned or delayed.

12.2 No Consequential Damages.

Other than the indemnity obligations set forth in Article 12.1, 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.

12.2.1 Nothing in this Agreement shall be construed to create or give rise to any

liability on the part of Connecting Transmission Owner, and the Parties expressly waive any claims that may arise against Connecting Transmission Owner under this Agreement.

12.2.2 The Parties acknowledge and understand: (i) that the signature of the

authorized officer of Connecting Transmission Owner on this Agreement is for the limited

purpose of acknowledging that representatives of Connecting Transmission Owner have read the   
terms of this Agreement, so that the Connecting Transmission Owner is fully apprised of the   
matters addressed herein as well as any reliability and planning issues that may arise under this   
Agreement, and (ii) that the signature of the Connecting Transmission Owner officer shall not in   
any way be deemed to imply that Connecting Transmission Owner is taking responsibility for the   
actions of any Party, that Connecting Transmission Owner has any affirmative duties under this   
Agreement, or that Connecting Transmission Owner is liable in any way under this Agreement.

12.3 Insurance.

Affected System Operator shall, at its own expense, procure and maintain in force

throughout the period of this Agreement the following minimum insurance coverages, with

insurance companies licensed to write insurance or approved eligible surplus lines carriers in the state of New York with a minimum A. M. Best rating of A or better for financial strength, and an A.M. Best financial size category of VIII or better:

Employers’ Liability and Workers’ Compensation Insurance providing

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

Commercial General Liability (“CGL”) Insurance including premises and

operations, personal injury, broad form property damage, broad form blanket contractual liability   
coverage products and completed operations coverage, coverage for explosion, collapse and   
underground hazards, independent contractors coverage, coverage for pollution to the extent   
normally available and punitive damages to the extent normally available using Insurance   
Services Office, Inc. Commercial General Liability Coverage (“ISO CG”) Form CG 00 01 04 13   
or a form equivalent to CG 00 01 04 13, with minimum limits of Two Million Dollars

23



SERVICE AGREEMENT NO. 2476

($2,000,000) per occurrence and Two Million Dollars ($2,000,000) aggregate combined single limit for personal injury, bodily injury, including death and property damage.

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.

If applicable, the Commercial General Liability and Comprehensive

Automobile Liability Insurance policies should include contractual liability for work in

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

Excess Liability Insurance over and above the Employers’ Liability

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

The Commercial General Liability Insurance, Comprehensive Automobile

Liability Insurance and Excess Liability Insurance policies, if written on a Claims First Made Basis, shall be maintained in full force and effect for at least three (3) 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 Transmission Developer and Affected System Operator.

If applicable, Pollution Liability Insurance in an amount no less than

$7,500,000 per occurrence and $7,500,000 in the aggregate. The policy will provide coverage   
for claims resulting from pollution or other environmental impairment arising out of or in   
connection with work performed on the premises by the other party, its contractors and/or   
subcontractors. Such insurance is to include coverage for, but not be limited to, cleanup, third   
party bodily injury and property damage and remediation and will be written on an occurrence   
basis.

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

insurance to be maintained by the Affected System Operator are not intended to and shall not in   
any manner, limit or qualify the liabilities and obligations assumed by those Parties under this   
Agreement.

Within ten (10) days following Transmission Developer’s written request

therefor, Affected System Operator shall provide certificate of insurance for all insurance

required in this Agreement, executed by each insurer or by an authorized representative of each   
insurer.

Notwithstanding the foregoing, Affected System Operator may self-insure

to meet the minimum insurance requirements of Articles 12.3.2 through 12.3.7 to the extent it

maintains a self-insurance program; provided that, such Party’s self-insurance program meets the

24



SERVICE AGREEMENT NO. 2476

minimum insurance requirements of Articles 12.3.1 through 12.3.7. In the event that a Party is   
permitted to self-insure pursuant to this Article 12.3.10, it shall notify the other Parties that it   
meets the minimum insurance requirements in a manner consistent with that specified in Articles

12.3.1 through 12.3.7 and provide evidence of such coverages.

Transmission Developer and Affected System Operator 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 13. ASSIGNMENT

13.1 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, 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 Transmission Developer shall have the right to assign this Agreement, without the consent of   
the NYISO or Affected System Operator, for collateral security purposes to aid in providing   
financing for the Affected System Upgrade Facilities, provided that the Transmission Developer   
will promptly notify the NYISO and Affected System Operator of any such assignment. Any   
financing arrangement entered into by the Transmission 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 Affected System Operator of the date and particulars of any such   
exercise of assignment right(s) and will provide the NYISO and Affected System Operator with   
proof that it meets the requirements of Article 6.2. 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 14. SEVERABILITY

14.1 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.

25

SERVICE AGREEMENT NO. 2476

ARTICLE 15. COMPARABILITY

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

ARTICLE 16. CONFIDENTIALITY

16.1 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 16.

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.

16.2 Term.

During the term of this Agreement, and for a period of five (5) years after the expiration or termination of this Agreement, except as otherwise provided in this Article 16, each Party shall hold in confidence and shall not disclose to any person Confidential Information.

16.3 Confidential Information.

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

16.4 Scope.

Confidential Information shall not include information that the receiving Party can

demonstrate: (1) is generally available to the public other than as a result of a disclosure by the   
receiving Party; (2) was in the lawful possession of the receiving Party on a non-confidential   
basis before receiving it from the disclosing Party; (3) was supplied to the receiving Party   
without restriction by a third party, who, to the knowledge of the receiving Party after due   
inquiry, was under no obligation to the disclosing Party to keep such information confidential;

(4) was independently developed by the receiving Party without reference to Confidential

Information of the disclosing Party; (5) is, or becomes, publicly known, through no wrongful act   
or omission of the receiving Party or Breach of this Agreement; or (6) is required, in accordance   
with Article 16.9 of this Agreement, Order of Disclosure, to be disclosed by any Governmental   
Authority or is otherwise required to be disclosed by law or subpoena, or is necessary in any   
legal proceeding establishing rights and obligations under this Agreement. Information   
designated as Confidential Information will no longer be deemed confidential if the Party that

26

SERVICE AGREEMENT NO. 2476

designated the information as confidential notifies the other Party that it no longer is confidential.

16.5 Release of Confidential Information.

No Party shall release or disclose Confidential Information to any other person, except to   
its Affiliates (limited by FERC Standards of Conduct requirements), subcontractors, employees,   
consultants, or to parties who may be considering providing financing to or equity participation   
with Transmission 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 16 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 16.

16.6 Rights.

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

16.7 No Warranties.

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

16.8 Standard of Care.

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

16.9 Order of Disclosure.

If a court or a Government Authority or entity with the right, power, and apparent

authority to do so requests or requires any Party, by subpoena, oral deposition, interrogatories,

requests for production of documents, administrative order, or otherwise, to disclose Confidential   
Information, that Party shall provide the other Parties with prompt notice of such request(s) or   
requirement(s) so that the other Parties may seek an appropriate protective order or waive   
compliance with the terms of this Agreement. Notwithstanding the absence of a protective order   
or waiver, the Party may disclose such Confidential Information which, in the opinion of its

27

SERVICE AGREEMENT NO. 2476

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.

16.10 Termination of Agreement.

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

16.11 Remedies.

The Parties agree that monetary damages would be inadequate to compensate a Party for   
another Party’s Breach of its obligations under this Article 16. 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 16, which equitable   
relief shall be granted without bond or proof of damages, and the receiving Party shall not plead   
in defense that there would be an adequate remedy at law. Such remedy shall not be deemed an   
exclusive remedy for the Breach of this Article 16, 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 16.

16.12 Disclosure to FERC, its Staff, or a State.

Notwithstanding anything in this Article 16 to the contrary, and pursuant to 18 C.F.R.   
section 1b.20, if FERC or its staff, during the course of an investigation or otherwise, requests   
information from one of the Parties that is otherwise required to be maintained in confidence   
pursuant to this Agreement or the ISO OATT, the Party shall provide the requested information   
to FERC or its staff, within the time provided for in the request for information. In providing the   
information to FERC or its staff, the Party must, consistent with 18 C.F.R. section 388.112,   
request that the information be treated as confidential and non-public by FERC and its staff and   
that the information be withheld from public disclosure. Parties are prohibited from notifying   
the other Parties to this Agreement prior to the release of the Confidential Information to the   
Commission or its staff. The Party shall notify the other Parties to the Agreement when it is   
notified by FERC or its staff that a request to release Confidential Information has been received   
by FERC, at which time the Parties may respond before such information would be made public,   
pursuant to 18 C.F.R. section 388.112. Requests from a state regulatory body conducting a   
confidential investigation shall be treated in a similar manner if consistent with the applicable   
state rules and regulations. A Party shall not be liable for any losses, consequential or otherwise,   
resulting from that Party divulging Confidential Information pursuant to a FERC or state   
regulatory body request under this paragraph.

28

SERVICE AGREEMENT NO. 2476

16.13 Required Notices Upon Requests or Demands for Confidential Information

Except as otherwise expressly provided herein, no Party shall disclose Confidential

Information to any person not employed or retained by the Party possessing the Confidential

Information, except to the extent disclosure is (i) required by law; (ii) reasonably deemed by the   
disclosing Party to be required to be disclosed in connection with a dispute between or among   
the Parties, or the defense of litigation or dispute; (iii) otherwise permitted by consent of the   
other Party, such consent not to be unreasonably withheld; or (iv) necessary to fulfill its   
obligations under this Agreement, the ISO OATT or the NYISO Services Tariff. Prior to any   
disclosures of a Party’s Confidential Information under this subparagraph, or if any third party or   
Governmental Authority makes any request or demand for any of the information described in   
this subparagraph, the disclosing Party agrees to promptly notify the other Party in writing and   
agrees to assert confidentiality and cooperate with the other Party in seeking to protect the   
Confidential Information from public disclosure by confidentiality agreement, protective order or   
other reasonable measures.

ARTICLE 17. TRANSMISSION DEVELOPER AND AFFECTED SYSTEM OPERATOR   
 NOTICES OF ENVIRONMENTAL RELEASES

17.1 Transmission Developer and Affected System Operator.

Affected System Operator shall notify Transmission Developer, 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 Affected System Upgrade Facilities, each of which may reasonably be expected to affect the Transmission Developer. The Affected System Operator 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 18. INFORMATION ACCESS AND AUDIT RIGHTS

18.1 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 18.1 of this Agreement and to enforce their rights under   
this Agreement.

18.2 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

29



SERVICE AGREEMENT NO. 2476

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.

18.3 Audit Rights.

Subject to the requirements of confidentiality under Article 16 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 and calculation of invoiced amounts. 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 18.4 of this Agreement.

18.4 Audit Rights Periods.

Audit Rights Period for Construction-Related Accounts and Records.

Accounts and records related to the design, engineering, procurement, and construction of the Affected System Upgrade Facilities shall be subject to audit for a period of twenty-four   
months following the issuance by the Affected System Operator or Transmission Developer, as applicable, of a final invoice in accordance with Article 7.1 of this Agreement.

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 18.4.1 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.

18.5 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.

30

SERVICE AGREEMENT NO. 2476

ARTICLE 19. SUBCONTRACTORS

19.1 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.

19.2 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 Affected System Operator be   
liable for the actions or inactions of the Transmission Developer or its subcontractors with   
respect to obligations of the Transmission Developer under Article 3 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.

19.3 No Limitation by Insurance.

The obligations under this Article 19 will not be limited in any way by any limitation of subcontractor’s insurance.

ARTICLE 20. DISPUTES

20.1 Submission.

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

20.2 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

31



SERVICE AGREEMENT NO. 2476

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 20, the terms of this Article 20 shall prevail.

20.3 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 or Affected   
System Upgrade Facilities.

20.4 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.

20.5 Termination.

Notwithstanding the provisions of this Article 20, 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 21. REPRESENTATIONS, WARRANTIES AND COVENANTS

21.1 General.

Each Party makes the following representations, warranties and covenants:

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 of New York; and that it has the corporate power and authority to own its

32



SERVICE AGREEMENT NO. 2476

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.

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).

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.

Consent and Approval.

Such Party has sought or obtained, or, in accordance with this Agreement will seek or obtain, each consent, approval, authorization, order, or acceptance by any Governmental   
Authority in connection with the execution, delivery and performance of this Agreement, and it will provide to any Governmental Authority notice of any actions under this Agreement that are required by Applicable Laws and Regulations.

ARTICLE 22. MISCELLANEOUS

22.1 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.

22.2 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.

22.3 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,

33

SERVICE AGREEMENT NO. 2476

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 Transmission Interconnection   
Procedures or such Appendix to the Transmission 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”.

22.4 Compliance.

Each Party shall perform its obligations under this Agreement in accordance with

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

22.5 Joint and Several Obligations.

Except as otherwise stated herein, the obligations of NYISO, Transmission Developer and Affected System Operator are several, and are neither joint nor joint and several.

22.6 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.

22.7 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

34

SERVICE AGREEMENT NO. 2476

Parties, and the obligations herein assumed are solely for the use and benefit of the Parties, their successors in interest and permitted their assigns.

22.8 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. Any waiver of this Agreement shall, if requested, be provided in writing.

22.9 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.

22.10 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.

22.11 Amendment.

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

22.12 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.

22.13 Reservation of Rights.

NYISO and Affected System Operator 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 Transmission   
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.

35

SERVICE AGREEMENT NO. 2476

22.14 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.

22.15 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 Transmission 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 Affected System Upgrade   
Facilities.

36

SERVICE AGREEMENT NO. 2476

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

New York Independent System H.Q. Energy Services (U.S.) Inc.

Operator, Inc.

By: By:

Name: Name:

Title: Title:

Date: Date:

Alcoa Power Generating, Inc.

By:

Name:

Title:

Date:

The signature below of the authorized officer of Niagara Mohawk Power Corporation d/b/a   
National Grid is for the limited purpose of acknowledging that a representative officer of   
Connecting Transmission Owner has read this Agreement as of the \_\_\_\_ day of \_\_\_\_\_\_, 2019.

Niagara Mohawk Power Corporation d/b/a National Grid

By:

Name:

Title:

Date:

37

SERVICE AGREEMENT NO. 2476

APPENDICES

Appendix A

EPC Services

Appendix B

Addresses for Delivery of Notices and Billings

SERVICE AGREEMENT NO. 2476

APPENDIX A

EPC SERVICES

Transmission Developer has developed a Transmission Project to increase transfer

capability over the Cedar Rapids Transmission Intertie, located in St. Lawrence County, New   
York. The Transmission Project includes a reconductoring of the Alcoa-Dennison Line 12   
(“Line 12”) and the installation of a capacitor bank at the Connecting Transmission Owner’s   
Dennison Substation. The Connecting Transmission Owner’s Line 12 must be reconductored to   
accommodate the expansion of the Cedar Rapids Transmission Intertie. Line 12 is   
approximately 3.1 miles long, originating at the Connecting Transmission Owner’s Alcoa-NM   
Substation and terminating at the Connecting Transmission Owner’s Dennison Substation. The   
line is supported by a combination of square base steel towers, steel flex towers and wood pole   
structures, with a portion of the structures (7 towers) owned by Affected System Operator.

The Transmission Project also requires certain Network Upgrade Facilities at the

Connecting Transmission Owner’s Dennison Substation and its Alcoa Substation and Affected   
System Operator’s Alcoa Substation. The Transmission Project and the Network Upgrade   
Facilities are described in further detail in the Cedar Expansion Interconnection Agreement.

1. Affected System Upgrade Facilities

For purposes of this Agreement, the Affected System Upgrade Facilities are those

elements of the Transmission Project and the related Network Upgrade Facilities that impact the   
Affected System Operator’s facilities. Specifically, the Affected System Upgrade Facilities   
consist of the Transmission Project 1.A and the Network Upgrade Facilities 1.B identified below.

A. Transmission Project 1.A

The Affected System Upgrade Facilities include the following elements of the Transmission Project:

• Replacement of the seven (7) towers owned by Affected System Operator, consistent   
 with design (recognizing the 7 towers are double circuit) as prescribed by Connecting   
 Transmission Owner for Connecting Transmissions Owner’s single circuit towers, to   
 support the upgraded Connecting Transmission Owner-owned 115kV Alcoa (NM) -  
 Dennison Line #12 and the existing APGI Line #10 (115kV interplant transmission line),

• Removal of the existing latticed towers,

• Removal of the existing wire and hardware, and

• Installation of new foundations, poles, hardware, conductor, shield wire, and transfer of   
 all-dielectric self-supporting (“ADSS”) conductor.

Note: The section of the line from Alcoa -NM Substation to structure 24 (twenty-five

(25) structures numbered 1 to 24, including 4.5) is a single circuit (Line 12 only) and is owned   
by the Connecting Transmission Owner. After structure 24, the structure numbering changes   
and counts down from structure 138 to structure 132. Structures 138 to 132 are double circuit

A-1

SERVICE AGREEMENT NO. 2476

structures owned by Affected System Operator along with Affected System Operator’s Line #10   
Tie Line, which is also located on these structures. The last structure before the Connecting   
Transmission Owner’s Dennison Substation is structure 131, and it is owned by the Connecting   
Transmission Owner. All of Line 12 will be reconductored with 1192.5 kcmil ACSR 45/7   
“Bunting” conductor, which will require replacement of Affected System Operator-owned   
structures.

B. Network Upgrade Facilities 1.B

The Affected System Upgrade Facilities include the following elements of the Network Upgrade Facilities:

• Replacement of 1033.5 MCM ACSR strain bus rated 208 MVA within the east yard   
 of Affected System Operator’s Alcoa Substation with either 1590 MCM AAC   
 conductor rated 267 MVA or a 1510.5 MCM AAC rated 259 MVA which will be   
 marginally sufficient or an electrically equivalent ACCR conductor, subject to a   
 NYISO determination that an alternative conductor does not constitute a material   
 modification;

• Replacement of 1192.5 MCM ACSR tie rated 227 MVA between the west yard of   
 Connecting Transmission Owner’s Alcoa Substation and the east yard of Affected   
 System Operator’s Alcoa Substation with either 1590 MCM AAC conductor rated   
 267 MVA or a 1510.5 MCM AAC rated 259 MVA which will be marginally   
 sufficient or an electrically equivalent ACCR conductor, subject to a NYISO   
 determination that an alternative conductor does not constitute a material   
 modification; and

• Detach new structural frames from the existing substation structure that will support   
 the new electrical equipment and conductors. The new frames will be constructed   
 beside each of the existing substation bays and will be built from steel HSS members   
 to minimize the surface area from wind action and ice accumulation.

2. EPC Services

Affected System Operator shall engineer, procure, and construct the Affected System   
Upgrade Facilities (by utilizing the services of a subcontractor pursuant to Article 19) in   
accordance with Affected System Operator’s approved standards and/or Connecting   
Transmission Owner’s standards and specifications in effect at the time of construction, to the   
extent not inconsistent with the terms of this Agreement or the OATT. The Affected System   
Operator shall use commercially reasonable efforts to subcontract any required Line #12 work   
utilizing the same contractor that the Connecting Transmission Owner has selected.

In performing the EPC Services, Affected System Operator shall coordinate with

Connecting Transmission Owner, including receiving from Connecting Transmission Owner   
information regarding the subcontractor elected by the Connecting Transmission Owner so that   
Affected System Operator may make commercially reasonable efforts to engage the same   
subcontractor and may coordinate outage requirements with Connecting Transmission Owner.

A-2

SERVICE AGREEMENT NO. 2476

3. ASO Estimated Total Costs

Description Costs

1) Affected System Upgrade Facilities (APGI - Substation) $1.2M

2) Affected System Upgrade Facilities (APGI - 7 Towers on $4.55M

#12 & #10 Lines)

Total $5.75M

Pursuant to Article 6.2 of this Agreement, Transmission Developer shall provide Security in the   
form of a parent guaranty reasonably acceptable to Affected System Operator with an aggregate   
limit of $7,000,000 within thirty (30) Calendar Days of the Effective Date of this Agreement. Of   
this amount, $4,550,000 is associated with the Transmission Project 1.A, and $1,200,000 is   
associated with the Network Upgrade Facilities 1.B for the purposes of Articles 6.3 and 6.4 of   
this Agreement. The remainder is for contingency applicable to the Transmission Project 1.A   
and/or Network Upgrade Facilities 1.B, as mutually agreed by Transmission Developer and   
Affected System Operator.

4. Milestones

Milestone Date Responsible Party

1. Execute EPC Agreement October 2019 Affected System

Operator/

Transmission

Developer/ NYISO

2. Provide Security pursuant to EPC October 2019 Transmission

Developer

3. Issue written authorization to October 2019 Transmission

proceed with engineering Developer

4. Start engineering October 2019 Affected System

Operator

5. Issue written authorization to February 2020 Transmission

proceed with procurement and Developer

construction

6. Start procurement March 2020 Affected System

Operator

7. Complete engineering September 2020 Affected System

Operator

8. Complete procurement January 2021 Affected System

Operator

9. Start construction March 2021 Affected System

Operator

10. Complete construction October 2021 Affected System

Operator

11. Complete testing and October 2021 Affected System

commissioning Operator

A-3

SERVICE AGREEMENT NO. 2476

12. In-Service Date October 2021 Affected System

Operator

13. Complete As Builts January 2022 Affected System

Operator

14. Complete closeout and final March 2022 Affected System

invoicing Operator

5. Income Tax Gross-Up

Pursuant to Article 3.11.4 of this Agreement, Transmission Developer shall provide

Affected System Operator with an income tax gross-up for contribution in aid of construction in   
the estimated amount of $0 within thirty (30) days of acceptance of this Agreement by FERC.

A-4

SERVICE AGREEMENT NO. 2476

APPENDIX B

ADDRESSES FOR DELIVERY OF NOTICES AND BILLINGS

Notices:

NYISO:

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

Affected System Operator:

APGI - Long Sault Division

Attn: VP Long Sault Division and Power Systems Manager c/o - Alcoa USA Corp

1814 State Highway 131   
Massena, NY 13662

Phone: (315)705-2716; (315) 705-2566 Fax: (315) 705-2708

Transmission Developer:

H.Q. Energy Services (U.S.) Inc. Attn: General Manager

75, René-Lévesque Boulevard West, 18th Floor Montréal (Québec) Canada H2Z 1A4   
Phone: (514) 289-6978

Fax: (514) 289- 6756

Email: bergevin.simon@hydro.qc.ca

Billings and Payments:

Affected System Operator:

APGI - Long Sault Division

Attn: Power Systems Manager - Matthew J. Fullerton c/o - Alcoa USA Corp

1814 State Highway 131   
Massena, NY 13662

Phone: (315)705-2716; (315) 705-2566 Fax: (315) 705-2708

Email: Matthew.Fullerton@alcoa.com

B-1

SERVICE AGREEMENT NO. 2476

Transmission Developer:

H.Q. Energy Services (U.S.) Inc. Attn: General Manager

75, René-Lévesque Boulevard West, 18th Floor Montréal (Québec) Canada H2Z 1A4   
Phone: (514) 289-6978

Fax: (514) 289- 6756

Email: bergevin.simon@hydro.qc.ca

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

NYISO:

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

Email: InterconnectionSupport@nyiso.com

Affected System Operator:

APGI - Long Sault Division

Attn: VP Long Sault Division - Mitch A. Nemier -  
and Power Systems Manager - Matthew J. Fullerton c/o - Alcoa USA Corp

1814 State Highway 131   
Massena, NY 13662

Phone: (315)705-2716; (315) 705-2566 Fax: (315) 705-2708

Email: Mitch.Nemier@alcoa.com

Matthew.Fullerton@alcoa.com

Transmission Developer:

H.Q. Energy Services (U.S.) Inc. Attn: General Manager

75, René-Lévesque Boulevard West, 18th Floor Montréal (Québec) Canada H2Z 1A4   
Phone: (514) 289-6978

Fax: (514) 289- 6756

Email: bergevin.simon@hydro.qc.ca

B-2