SERVICE AGREEMENT NO. 2535

SERVICE AGREEMENT NO. 2535   
 AMENDED AND RESTATED INTERCONNECTION AGREEMENT

AMONG THE

NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.   
 AND

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.   
 AND

NRG BERRIANS EAST DEVELOPMENT LLC   
 Dated as of January 28, 2021

(Berrians East Replacement Project)

SERVICE AGREEMENT NO. 2535

TABLE OF CONTENTS

Page Number

ARTICLE 1. DEFINITIONS 1

ARTICLE 2. EFFECTIVE DATE, TERM AND TERMINATION 10

2.1 Effective Date 10

2.2 Term of Agreement 10

2.3 Termination 10

2.4 Termination Costs 11

2.5 Disconnection 12

2.6 Survival 12

ARTICLE 3. REGULATORY FILINGS 12

ARTICLE 4. SCOPE OF INTERCONNECTION SERVICE 12

4.1 Provision of Service 12

4.2 No Transmission Delivery Service 13

4.3 No Other Services 13

ARTICLE 5. INTERCONNECTION FACILITIES ENGINEERING, PROCUREMENT,

AND CONSTRUCTION 13

5.1 Options 13

5.2 General Conditions Applicable to Option to Build 15

5.3 Liquidated Damages 16

5.4 Power System Stabilizers 17

5.5 Equipment Procurement 17

5.6 Construction Commencement 18

5.7 Work Progress 18

5.8 Information Exchange 19

5.9 Other Interconnection Options 19

5.10 Developer’s Attachment Facilities (“DAF”) 20

5.11 Connecting Transmission Owner’s Attachment Facilities Construction 21

5.12 Access Rights 21

5.13 Lands of Other Property Owners 22

5.14 Permits 22

5.15 Early Construction of Base Case Facilities 22

5.16 Suspension 22

5.17 Taxes 23

5.18 Tax Status; Non-Jurisdictional Entities 28

5.19 Modification 28

ARTICLE 6. TESTING AND INSPECTION 29

6.1 Pre-Commercial Operation Date Testing and Modifications 29

6.2 Post-Commercial Operation Date Testing and Modifications 29

6.3 Right to Observe Testing 30

6.4 Right to Inspect 30

ARTICLE 7. METERING 30

7.1 General 30

7.2 Check Meters 31

7.3 Standards 31

i

SERVICE AGREEMENT NO. 2535

7.4 Testing of Metering Equipment 31

7.5 Metering Data 31

ARTICLE 8. COMMUNICATIONS 32

8.1 Developer Obligations 32

8.2 Remote Terminal Unit 32

8.3 No Annexation 32

ARTICLE 9. OPERATIONS 32

9.1 General 32

9.2 NYISO and Connecting Transmission Owner Obligations 33

9.3 Developer Obligations 33

9.4 Start-Up and Synchronization 33

9.5 Real and Reactive Power Control and Primary Frequency Response 33

9.6 Outages and Interruptions 37

9.7 Switching and Tagging Rules 41

9.8 Use of Attachment Facilities by Third Parties 41

9.9 Disturbance Analysis Data Exchange 41

9.10 Phasor Measurement Units 41

ARTICLE 10. MAINTENANCE 42

10.1 Connecting Transmission Owner Obligations 42

10.2 Developer Obligations 42

10.3 Coordination 42

10.4 Secondary Systems 43

10.5 Operating and Maintenance Expenses 43

ARTICLE 11. PERFORMANCE OBLIGATION 43

11.1 Developer’s Attachment Facilities 43

11.2 Connecting Transmission Owner’s Attachment Facilities 43

11.3 System Upgrade Facilities and System Deliverability Upgrades 43

11.4 Special Provisions for Affected Systems 44

11.5 Provision of Security 44

11.6 Developer Compensation for Emergency Services 44

11.7 Line Outage Costs 45

ARTICLE 12. INVOICE 45

12.1 General 45

12.2 Final Invoice 45

12.3 Payment 45

12.4 Disputes 45

ARTICLE 13. EMERGENCIES 46

13.1 Obligations 46

13.2 Notice 46

13.3 Immediate Action 46

13.4 NYISO and Connecting Transmission Owner Authority 46

13.5 Developer Authority 47

13.6 Limited Liability 48

ARTICLE 14. REGULATORY REQUIREMENTS AND GOVERNING LAW 48

14.1 Regulatory Requirements 48

14.2 Governing Law 48

ii

SERVICE AGREEMENT NO. 2535

ARTICLE 15. NOTICES 48

15.1 General 48

15.2 Billings and Payments 49

15.3 Alternative Forms of Notice 49

15.4 Operations and Maintenance Notice 49

ARTICLE 16. FORCE MAJEURE 49

ARTICLE 17. DEFAULT 49

17.1 General 49

17.2 Right to Terminate 50

ARTICLE 18. INDEMNITY, CONSEQUENTIAL DAMAGES AND INSURANCE 50

18.1 Indemnity 50

18.2 No Consequential Damages 51

18.3 Insurance 51

ARTICLE 19. ASSIGNMENT 54

ARTICLE 20. SEVERABILITY 54

ARTICLE 21. COMPARABILITY 54

ARTICLE 22. CONFIDENTIALITY 55

22.1 Confidentiality 55

22.2 Term 55

22.3 Confidential Information 55

22.4 Scope 55

22.5 Release of Confidential Information 56

22.6 Rights 56

22.7 No Warranties 56

22.8 Standard of Care 56

22.9 Order of Disclosure 56

22.10 Termination of Agreement 57

22.11 Remedies 57

22.12 Disclosure to FERC, its Staff, or a State 57

22.13 Required Notices Upon Requests or Demands for Confidential Information ..58

ARTICLE 23. DEVELOPER AND CONNECTING TRANSMISSION OWNER NOTICES OF

ENVIRONMENTAL RELEASES 58

ARTICLE 24. INFORMATION REQUIREMENT 58

24.1 Information Acquisition 58

24.2 Information Submission by Connecting Transmission Owner 58

24.3 Updated Information Submission by Developer 59

24.4 Information Supplementation 59

ARTICLE 25. INFORMATION ACCESS AND AUDIT RIGHTS 60

25.1 Information Access 60

25.2 Reporting of Non-Force Majeure Events 60

25.3 Audit Rights 60

25.4 Audit Rights Periods 61

25.5 Audit Results 61

ARTICLE 26. SUBCONTRACTORS 61

26.1 General 61

26.2 Responsibility of Principal 61

iii

SERVICE AGREEMENT NO. 2535

26.3 No Limitation by Insurance 62

ARTICLE 27. DISPUTES 62

27.1 Submission 62

27.2 External Arbitration Procedures 62

27.3 Arbitration Decisions 62

27.4 Costs 63

27.5 Termination 63

ARTICLE 28. REPRESENTATIONS, WARRANTIES AND COVENANTS 63

28.1 General 63

ARTICLE 29. MISCELLANEOUS 64

29.1 Binding Effect 64

29.2 Conflicts 64

29.3 Rules of Interpretation 64

29.4 Compliance 65

29.5 Joint and Several Obligations 65

29.6 Entire Agreement 65

29.7 No Third Party Beneficiaries 65

29.8 Waiver 65

29.9 Headings 66

29.10 Multiple Counterparts 66

29.11 Amendment 66

29.12 Modification by the Parties 66

29.13 Reservation of Rights 66

29.14 No Partnership 66

29.15 Other Transmission Rights 67

Appendices

iv

SERVICE AGREEMENT NO. 2535

AMENDED AND RESTATED STANDARD LARGE GENERATOR   
 INTERCONNECTION AGREEMENT

THIS AMENDED AND RESTATED STANDARD LARGE GENERATOR

INTERCONNECTION AGREEMENT (“Agreement”) is made and entered into this 28th day of January, 2021, by and among NRG Berrians East Development LLC, a limited liability   
company organized and existing under the laws of the State of Delaware (“Developer” with a   
Large Generating Facility), the New York Independent System Operator, Inc., a not-for-profit   
corporation organized and existing under the laws of the State of New York (“NYISO”), and   
Consolidated Edison Company of New York, Inc. a transportation corporation organized and   
existing under the laws of the State of New York (“Connecting Transmission Owner”).   
Developer, the NYISO, or Connecting Transmission Owner each may be referred to as a “Party” or collectively referred to as the “Parties.”

RECITALS

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

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

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

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

ARTICLE 1. DEFINITIONS

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

meanings specified in this Article 1. Terms used in this Agreement with initial capitalization that are not defined in this Article 1 shall have the meanings specified in Section 1 of the ISO OATT, Section 30.1 of Attachment X of the ISO OATT, Section 25.1.2 of Attachment S of the ISO   
OATT, the body of the LFIP or the body of this Agreement.

Affected System shall mean an electric system other than the transmission system owned, controlled or operated by the Connecting Transmission Owner that may be affected by the proposed interconnection.

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

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

designated agent) other than the Connecting Transmission Owner that (i) owns facilities used for   
the transmission of Energy in interstate commerce and provides Transmission Service under the

1

SERVICE AGREEMENT NO. 2535

Tariff, and (ii) owns, leases or otherwise possesses an interest in a portion of the New York State Transmission System where System Deliverability Upgrades, System Upgrade Facilities, or   
Network Upgrade Facilities are or will be installed pursuant to Attachment P, Attachment X, Attachment Z, or Attachment S to the ISO OATT.

Affiliate shall mean, with respect to a person or entity, any individual, corporation, partnership, firm, joint venture, association, joint-stock company, trust or unincorporated organization,   
directly or indirectly controlling, controlled by, or under common control with, such person or entity. The term “control” shall mean the possession, directly or indirectly, of the power to direct the management or policies of a person or an entity. A voting interest of ten percent or more shall create a rebuttable presumption of control.

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

Applicable Laws and Regulations shall mean all duly promulgated applicable federal, state and local laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders, permits and other duly authorized actions of any Governmental Authority, including but not limited to Environmental Law.

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

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

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

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

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

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

2

SERVICE AGREEMENT NO. 2535

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

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

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

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

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

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

NYISO to Developers that satisfy the NYISO Deliverability Interconnection Standard or that are   
otherwise eligible to receive CRIS in accordance with Attachment S to the ISO OATT; such   
service being one of the eligibility requirements for participation as a NYISO Installed Capacity   
Supplier.

Class Year Deliverability Study shall mean an assessment, conducted by the NYISO staff in   
cooperation with Market Participants, to determine whether System Deliverability Upgrades are   
required for Class Year CRIS Projects under the NYISO Deliverability Interconnection Standard.

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

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

Facility commences Commercial Operation as agreed to by the Parties, notice of which must be provided to the NYISO in the form of Appendix E-2 to this Agreement.

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

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

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

equipment owned, controlled or operated by the Connecting Transmission Owner from the Point   
of Change of Ownership to the Point of Interconnection as identified in Appendix A to the   
Standard Large Generator Interconnection Agreement, including any modifications, additions or   
upgrades to such facilities and equipment. Connecting Transmission Owner’s Attachment

3

SERVICE AGREEMENT NO. 2535

Facilities are sole use facilities and shall not include Stand Alone System Upgrade Facilities, System Upgrade Facilities, or System Deliverability Upgrades.

Contingent Facilities shall mean those Attachment Facilities and System Upgrade Facilities and/or System Deliverability Upgrades associated with Class Year Projects upon which the Large Facility’s Class Year Project Cost Allocations are dependent, and if delayed or not built, could impact the actual costs and timing of the Large Facility’s Project Cost Allocation for System Upgrade Facilities or System Deliverability Upgrades.

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

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

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

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

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

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

Distribution System shall mean the Connecting Transmission Owner’s facilities and equipment   
used to distribute electricity that are subject to FERC jurisdiction, and are subject to the   
NYISO’s Large Facility Interconnection Procedures in Attachment X to the ISO OATT or Small   
Generator Interconnection Procedures in Attachment Z to the ISO OATT under FERC Order   
Nos. 2003 and/or 2006. The term Distribution System shall not include LIPA’s distribution   
facilities.

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

4

SERVICE AGREEMENT NO. 2535

include Stand Alone System Upgrade Facilities, System Upgrade Facilities, or System Deliverability Upgrades.

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

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

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

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

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

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

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

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

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

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

5

SERVICE AGREEMENT NO. 2535

or act to the exclusion of all others, but rather to delineate acceptable practices, methods, or acts generally accepted in the region.

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

Hazardous Substances shall mean any chemicals, materials or substances defined as or

included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “hazardous constituents,” “restricted hazardous materials,” “extremely hazardous substances,” “toxic substances,” “radioactive substances,” “contaminants,” “pollutants,” “toxic pollutants” or words of similar meaning and regulatory effect under any applicable Environmental Law, or any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any applicable Environmental Law.

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

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

Initial Synchronization Date shall mean the date upon which the Large Generating Facility is initially synchronized and upon which Trial Operation begins, notice of which must be provided to the NYISO in the form of Appendix E-1.

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

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

Interconnection Facilities Study shall mean a study conducted by NYISO or a third party

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

6

SERVICE AGREEMENT NO. 2535

Interconnection Facilities Study Agreement (“Class Year Study Agreement”) shall mean the form of agreement contained in Appendix 2 of the Standard Large Facility Interconnection   
Procedures for conducting the Interconnection Facilities Study.

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

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

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

IRS shall mean the Internal Revenue Service.

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

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

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

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

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

transmission system, which includes (i) the Transmission Facilities Under ISO Operational Control; (ii) the Transmission Facilities Requiring ISO Notification; and (iii) all remaining transmission facilities within the New York Control Area.

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

NPCC shall mean the Northeast Power Coordinating Council or its successor organization.

7

SERVICE AGREEMENT NO. 2535

NYISO Deliverability Interconnection Standard - The standard that must be met, unless

otherwise provided for by Attachment S to the ISO OATT, by (i) any generation facility larger

than 2MW in order for that facility to obtain CRIS; (ii) any Class Year Transmission Project; (iii) any entity requesting External CRIS Rights, and (iv) any entity requesting a CRIS transfer   
pursuant to Section 25.9.5 of Attachment S to the ISO OATT. To meet the NYISO   
Deliverability Interconnection Standard, the Developer must, in accordance with the rules in   
Attachment S to the ISO OATT, fund or commit to fund any System Deliverability Upgrades identified for its project in the Class Year Deliverability Study.

NYISO Minimum Interconnection Standard - The reliability standard that must be met by   
any generation facility or Class Year Transmission Project that is subject to NYISO’s Large   
Facility Interconnection Procedures in Attachment X to the ISO OATT or the NYISO’s Small   
Generator Interconnection Procedures in Attachment Z, that is proposing to connect to the New   
York State Transmission System or Distribution System, to obtain ERIS. The Minimum   
Interconnection Standard is designed to ensure reliable access by the proposed project to the   
New York State Transmission System or to the Distribution System. The Minimum   
Interconnection Standard does not impose any deliverability test or deliverability requirement on   
the proposed interconnection.

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

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

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

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

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

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

Provisional Interconnection Service shall mean interconnection service provided by the ISO associated with interconnecting the Developer’s Large Facility to the New York State   
Transmission System (or Distribution System as applicable) and enabling the transmission   
system to receive electric energy from the Large Facility at the Point of Interconnection,   
pursuant to the terms of the Provisional Large Facility Interconnection Agreement and, if   
applicable, the ISO OATT.

8

SERVICE AGREEMENT NO. 2535

Provisional Large Facility Interconnection Agreement shall mean the interconnection

agreement for Provisional Interconnection Service established between the ISO, Connecting   
Transmission Owner(s) and the Developer. This agreement shall take the form of the Large   
Generator Interconnection Agreement, modified for provisional purposes and type of facility.

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.

Retired: A Generator that has permanently ceased operating on or after May 1, 2015 either: i) pursuant to applicable notice; or ii) as a result of the expiration of its Mothball Outage or its ICAP Ineligible Forced Outage.

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.

Stand Alone System Upgrade Facilities shall mean System Upgrade Facilities that are not part   
of an Affected System that a Developer may construct without affecting day-to-day operations of   
the New York State Transmission System during their construction. NYISO, the Connecting   
Transmission Owner and the Developer must agree as to what constitutes Stand Alone System   
Upgrade Facilities and identify them in Appendix A to this Agreement. If NYISO, the   
Connecting Transmission Owner and the Developer disagree about whether a particular System   
Upgrade Facility is a Stand Alone System Upgrade Facility, NYISO and the Connecting   
Transmission Owner must provide the Developer a written technical explanation outlining why   
NYISO and the Connecting Transmission Owner does not consider the System Upgrade Facility to   
be a Stand Alone System Upgrade Facility within fifteen (15) days of its determination.

Standard Large Facility Interconnection Procedures (“Large Facility Interconnection Procedures” or “LFIP”) shall mean the interconnection procedures applicable to an   
Interconnection Request pertaining to a Large Generating Facility that are included in   
Attachment X of the ISO OATT.

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

Agreement, which is the form of interconnection agreement applicable to an Interconnection

Request pertaining to a Large Generating Facility, that is included in Appendix 4 to Attachment X of the ISO OATT.

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

System Protection Facilities shall mean the equipment, including necessary protection signal   
communications equipment, required to (1) protect the New York State Transmission System

9



SERVICE AGREEMENT NO. 2535

from faults or other electrical disturbances occurring at the Large Generating Facility and (2)   
protect the Large Generating Facility from faults or other electrical system disturbances   
occurring on the New York State Transmission System or on other delivery systems or other   
generating systems to which the New York State Transmission System is directly connected.

System Upgrade Facilities shall mean the least costly configuration of commercially available   
components of electrical equipment that can be used, consistent with Good Utility Practice and   
Applicable Reliability Requirements, to make the modifications to the existing transmission   
system that are required to maintain system reliability due to: (i) changes in the system,   
including such changes as load growth and changes in load pattern, to be addressed in the form   
of generic generation or transmission projects; and (ii) proposed interconnections. In the case of   
proposed interconnection projects, System Upgrade Facilities are the modifications or additions   
to the existing New York State Transmission System that are required for the proposed project to   
connect reliably to the system in a manner that meets the NYISO Minimum Interconnection   
Standard.

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

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

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

ARTICLE 2. EFFECTIVE DATE, TERM AND TERMINATION

2.1 Effective Date.

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

acceptance by FERC, or if filed unexecuted, upon the date specified by FERC. The NYISO and Connecting Transmission Owner shall promptly file this Agreement with FERC upon execution in accordance with Article 3.

2.2 Term of Agreement.

Subject to the provisions of Article 2.3, this Agreement shall remain in effect for a period of forty (40) years from the Effective Date and shall be automatically renewed for each   
successive one-year period thereafter.

2.3 Termination.

Written Notice.

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

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

10



SERVICE AGREEMENT NO. 2535

Default.

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

Compliance.

Notwithstanding Articles 2.3.1 and 2.3.2, no termination of this Agreement shall become effective until the Parties have complied with all Applicable Laws and Regulations applicable to such termination, including the filing with FERC of a notice of termination of this Agreement, which notice has been accepted for filing by FERC.

2.4 Termination Costs.

If a Party elects to terminate this Agreement pursuant to Article 2.3.1 above, the

terminating Party shall pay all costs incurred (including any cancellation costs relating to orders   
or contracts for Attachment Facilities and equipment) or charges assessed by the other Parties, as   
of the date of the other Parties’ receipt of such notice of termination, that are the responsibility of   
the terminating Party under this Agreement. In the event of termination by a Party, all Parties   
shall use commercially Reasonable Efforts to mitigate the costs, damages and charges arising as   
a consequence of termination. Upon termination of this Agreement, unless otherwise ordered or   
approved by FERC:

With respect to any portion of the Connecting Transmission Owner’s Attachment   
Facilities that have not yet been constructed or installed, the Connecting Transmission Owner   
shall to the extent possible and with Developer’s authorization cancel any pending orders of, or   
return, any materials or equipment for, or contracts for construction of, such facilities; provided   
that in the event Developer elects not to authorize such cancellation, Developer shall assume all   
payment obligations with respect to such materials, equipment, and contracts, and the

Connecting Transmission Owner shall deliver such material and equipment, and, if necessary,

assign such contracts, to Developer as soon as practicable, at Developer’s expense. To the extent   
that Developer has already paid Connecting Transmission Owner for any or all such costs of   
materials or equipment not taken by Developer, Connecting Transmission Owner shall promptly   
refund such amounts to Developer, less any costs, including penalties incurred by the Connecting   
Transmission Owner to cancel any pending orders of or return such materials, equipment, or   
contracts.

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

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

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

11



SERVICE AGREEMENT NO. 2535

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

2.5 Disconnection.

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

2.6 Survival.

This Agreement shall continue in effect after termination to the extent necessary to

provide for final billings and payments and for costs incurred hereunder; including billings and payments pursuant to this Agreement; to permit the determination and enforcement of liability and indemnification obligations arising from acts or events that occurred while this Agreement was in effect; and to permit Developer and Connecting Transmission Owner each to have access to the lands of the other pursuant to this Agreement or other applicable agreements, to   
disconnect, remove or salvage its own facilities and equipment.

ARTICLE 3. REGULATORY FILINGS

NYISO and Connecting Transmission Owner shall file this Agreement (and any

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

ARTICLE 4. SCOPE OF INTERCONNECTION SERVICE

4.1 Provision of Service.

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

Product.

NYISO will provide Energy Resource Interconnection Service and Capacity Resource Interconnection Service to Developer at the Point of Interconnection.

12



SERVICE AGREEMENT NO. 2535

Developer is responsible for ensuring that its actual Large Generating Facility

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

4.2 No Transmission Delivery Service.

The execution of this Agreement does not constitute a request for, nor agreement to

provide, any Transmission Service under the ISO OATT, and does not convey any right to

deliver electricity to any specific customer or Point of Delivery. If Developer wishes to obtain Transmission Service on the New York State Transmission System, then Developer must request such Transmission Service in accordance with the provisions of the ISO OATT.

4.3 No Other Services.

The execution of this Agreement does not constitute a request for, nor agreement to

provide Energy, any Ancillary Services or Installed Capacity under the NYISO Market

Administration and Control Area Services Tariff (“Services Tariff”). If Developer wishes to

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

ARTICLE 5. INTERCONNECTION FACILITIES ENGINEERING,   
 PROCUREMENT, AND CONSTRUCTION

5.1 Options.

Unless otherwise mutually agreed to by Developer and Connecting Transmission Owner,   
Developer shall select the In-Service Date, Initial Synchronization Date, and Commercial   
Operation Date; and either the Standard Option or Alternate Option set forth below, and such   
dates and selected option shall be set forth in Appendix B hereto. At the same time, Developer   
shall indicate whether it elects to exercise the Option to Build set forth in Article 5.1.3 below. If the   
dates designated by the Developer are not acceptable to the Connecting Transmission Owner, the   
Connecting Transmission Owner shall so notify the Developer within thirty (30) Calendar Days.   
Upon receipt of the notification that Developer’s designated dates are not acceptable to the   
Connecting Transmission Owner, the Developer shall notify the Connecting Transmission Owner   
within thirty (30) Calendar Days whether it elects to exercise the Option to Build if it has not already   
elected to exercise the Option to Build.

Standard Option.

The Connecting Transmission Owner shall design, procure, and construct the Connecting   
Transmission Owner’s Attachment Facilities and System Upgrade Facilities and System   
Deliverability Upgrades, using Reasonable Efforts to complete the Connecting Transmission   
Owner’s Attachment Facilities and System Upgrade Facilities and System Deliverability   
Upgrades by the dates set forth in Appendix B hereto. The Connecting Transmission Owner   
shall not be required to undertake any action which is inconsistent with its standard safety

13



SERVICE AGREEMENT NO. 2535

practices, its material and equipment specifications, its design criteria and construction   
procedures, its labor agreements, and Applicable Laws and Regulations. In the event the Connecting Transmission Owner reasonably expects that it will not be able to complete the Connecting Transmission Owner’s Attachment Facilities and System Upgrade Facilities and System Deliverability Upgrades by the specified dates, the Connecting Transmission Owner shall promptly provide written notice to the Developer and NYISO, and shall undertake Reasonable Efforts to meet the earliest dates thereafter.

Alternate Option.

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

Option to Build.

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

Negotiated Option.

If the dates designated by Developer are not acceptable to the Connecting Transmission

Owner, the Developer and Connecting Transmission Owner shall in good faith attempt to

negotiate terms and conditions (including revision of the specified dates and liquidated damages,   
the provision of incentives or the procurement and construction of all facilities other than the   
Connecting Transmission Owner’s Attachment Facilities and Stand Alone System Upgrade Facilities   
if the Developer elects to exercise the Option to Build under Article 5.1.3. If the two Parties are

14



SERVICE AGREEMENT NO. 2535

unable to reach agreement on such terms and conditions, then, pursuant to Article 5.1.1(Standard   
Option), Connecting Transmission Owner shall assume responsibility for the design,   
procurement and construction of all facilities other than the Connecting Transmission Owner’s   
Attachment Facilities and Stand Alone System Upgrade Facilities if the Developer elects to exercise   
the Option to Build.

5.2 General Conditions Applicable to Option to Build.

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

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

Developer’s engineering, procurement and construction of the Connecting

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

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

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

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

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

Developer shall indemnify Connecting Transmission Owner and NYISO for   
claims arising from the Developer’s construction of Connecting Transmission Owner’s

15



SERVICE AGREEMENT NO. 2535

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

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

Unless the Developer and Connecting Transmission Owner otherwise agree,

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

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

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

If Developer exercises the Option to Build pursuant to Article 5.1.3, the

Developer shall pay the Connecting Transmission Owner the agreed upon amount of [$

PLACEHOLDER] for the Connecting Transmission Owner to execute the responsibilities

enumerated to Connecting Transmission Owner under Article 5.2. The Connecting Transmission   
Owner shall invoice Developer for this total amount to be divided on a monthly basis pursuant to   
Article 12.

5.3 Liquidated Damages.

The actual damages to the Developer, in the event the Connecting Transmission Owner’s Attachment Facilities or System Upgrade Facilities or System Deliverability Upgrades are not   
completed by the dates designated by the Developer and accepted by the Connecting   
Transmission Owner pursuant to subparagraphs 5.1.2 or 5.1.4, above, may include Developer’s fixed operation and maintenance costs and lost opportunity costs. Such actual damages are   
uncertain and impossible to determine at this time. Because of such uncertainty, any liquidated damages paid by the Connecting Transmission Owner to the Developer in the event that   
Connecting Transmission Owner does not complete any portion of the Connecting Transmission Owner’s Attachment Facilities, System Upgrade Facilities or System Deliverability Upgrades by the applicable dates, shall be an amount equal to 1/2 of 1 percent per day of the actual cost of the Connecting Transmission Owner’s Attachment Facilities and System Upgrade Facilities and   
System Deliverability Upgrades, in the aggregate, for which Connecting Transmission Owner   
has assumed responsibility to design, procure and construct.

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

cost of the Connecting Transmission Owner Attachment Facilities and System Upgrade Facilities   
and System Deliverability Upgrades for which the Connecting Transmission Owner has assumed

16

SERVICE AGREEMENT NO. 2535

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

meet its schedule.

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

5.4 Power System Stabilizers.

The Developer shall procure, install, maintain and operate Power System Stabilizers in   
accordance with the requirements identified in the Interconnection Studies conducted for   
Developer’s Large Generating Facility. NYISO and Connecting Transmission Owner reserve   
the right to reasonably establish minimum acceptable settings for any installed Power System   
Stabilizers, subject to the design and operating limitations of the Large Generating Facility. If   
the Large Generating Facility’s Power System Stabilizers are removed from service or not   
capable of automatic operation, the Developer shall immediately notify the Connecting   
Transmission Owner and NYISO. The requirements of this paragraph shall not apply to wind   
generators.

5.5 Equipment Procurement.

If responsibility for construction of the Connecting Transmission Owner’s Attachment   
Facilities or System Upgrade Facilities or System Deliverability Upgrades is to be borne by the   
Connecting Transmission Owner, then the Connecting Transmission Owner shall commence   
design of the Connecting Transmission Owner’s Attachment Facilities or System Upgrade

17



SERVICE AGREEMENT NO. 2535

Facilities or System Deliverability Upgrades and procure necessary equipment as soon as practicable after all of the following conditions are satisfied, unless the Developer and Connecting Transmission Owner otherwise agree in writing:

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

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

The Connecting Transmission Owner has received written authorization to

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

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

5.6 Construction Commencement.

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

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

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

The Connecting Transmission Owner has received written authorization to

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

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

5.7 Work Progress.

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

18



SERVICE AGREEMENT NO. 2535

Transmission Owner and NYISO of such later date upon which the completion of the Connecting Transmission Owner’s Attachment Facilities will be required.

5.8 Information Exchange.

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

5.9 Other Interconnection Options

Limited Operation.

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

Provisional Interconnection Service.

Prior to the completion of the Large Facility Interconnection Procedures and prior to

completion of requisite Attachment Facilities, Distribution Upgrades, System Upgrade Facilities,   
System Distribution Upgrades, or System Protection Facilities, the Developer may request an   
evaluation for Provisional Interconnection Service. NYISO, in conjunction with the Connecting   
Transmission Owner, shall determine, through available studies or additional studies as   
necessary, whether stability, short circuit, thermal, and/or voltage issues would arise if the   
Developer interconnects without modifications to the Large Generating Facility or the New York   
State Transmission System (or Distribution System as applicable). NYISO, in conjunction with   
the Connecting Transmission Owner, shall determine whether any Attachment Facilities,   
Distribution Upgrades, System Upgrade Facilities, System Deliverability Upgrades, or System   
Protection Facilities, which are necessary to meet Applicable Laws and Regulations, Applicable   
Reliability Standards, and Good Utility Practice, are in place prior to the commencement of   
interconnection service from the Large Facility. Where available studies indicate that the   
Attachment Facilities, Distribution Upgrades, System Upgrade Facilities, System Deliverability   
Upgrades, or System Protection Facilities are required for the interconnection of a new, modified   
and/or expanded Large Facility but such facilities are not currently in place, NYISO, in   
conjunction with the Connecting Transmission Owner, will perform a study, at the Developer’s

19



SERVICE AGREEMENT NO. 2535

expense, to confirm the facilities that are required for Provisional Interconnection Service. The   
maximum permissible output of the Large Facility in the Provisional Large Facility   
Interconnection Agreement shall be studied, at the Developer’s expense, and updated annually.   
The NYISO shall issue the study’s findings in writing to the Developer and Connecting   
Transmission Owner(s). Following a determination by NYISO, in conjunction with the   
Connecting Transmission Owner, that the Developer may reliably provide Provisional   
Interconnection Service, NYISO shall tender to the Developer and Connecting Transmission   
Owner, a Provisional Large Facility Interconnection Agreement. NYISO, Developer, and   
Connecting Transmission Owner may execute the Provisional Large Facility Interconnection   
Agreement, or the Developer may request the filing of an unexecuted Provisional Large Facility   
Interconnection Agreement with the Commission. The Developer shall assume all risk and   
liabilities with respect to changes between the Provisional Large Facility Interconnection   
Agreement and the Large Generator Interconnection Agreement, including changes in output   
limits and the cost responsibilities for the Attachment Facilities, System Upgrade Facilities,   
System Deliverability Upgrades, and/or System Protection Facilities.

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

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

DAF Specifications.

Developer shall submit initial specifications for the DAF, including System Protection Facilities, to Connecting Transmission Owner and NYISO at least one hundred eighty (180) Calendar Days prior to the Initial Synchronization Date; and final specifications for review and comment at least ninety (90) Calendar Days prior to the Initial Synchronization Date.   
Connecting Transmission Owner and NYISO shall review such specifications to ensure that the DAF are compatible with the technical specifications, operational control, and safety   
requirements of the Connecting Transmission Owner and NYISO and comment on such   
specifications within thirty (30) Calendar Days of Developer’s submission. All specifications provided hereunder shall be deemed to be Confidential Information.

No Warranty.

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

DAF Construction.

The DAF shall be designed and constructed in accordance with Good Utility Practice.   
Within one hundred twenty (120) Calendar Days after the Commercial Operation Date, unless

20

SERVICE AGREEMENT NO. 2535

the Developer and Connecting Transmission Owner agree on another mutually acceptable

deadline, the Developer shall deliver to the Connecting Transmission Owner and NYISO “as-

built” drawings, information and documents for the DAF, such as: a one-line diagram, a site plan showing the Large Generating Facility and the DAF, plan and elevation drawings showing the layout of the DAF, a relay functional diagram, relaying AC and DC schematic wiring diagrams and relay settings for all facilities associated with the Developer’s step-up transformers, the   
facilities connecting the Large Generating Facility to the step-up transformers and the DAF, and the impedances (determined by factory tests) for the associated step-up transformers and the   
Large Generating Facility. The Developer shall provide to, and coordinate with, Connecting   
Transmission Owner and NYISO with respect to proposed specifications for the excitation   
system, automatic voltage regulator, Large Generating Facility control and protection settings, transformer tap settings, and communications, if applicable.

5.11 Connecting Transmission Owner’s Attachment Facilities Construction.

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

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

The Connecting Transmission Owner shall not transfer operational control of the

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

5.12 Access Rights.

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

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

Developer (“Granting Party”) shall furnish to the other of those two Parties (“Access Party”) at   
no cost any rights of use, licenses, rights of way and easements with respect to lands owned or   
controlled by the Granting Party, its agents (if allowed under the applicable agency agreement),   
or any Affiliate, that are necessary to enable the Access Party to obtain ingress and egress at the   
Point of Interconnection to construct, operate, maintain, repair, test (or witness testing), inspect,   
replace or remove facilities and equipment to: (i) interconnect the Large Generating Facility with   
the New York State Transmission System; (ii) operate and maintain the Large Generating

Facility, the Attachment Facilities and the New York State Transmission System; and (iii)

disconnect or remove the Access Party’s facilities and equipment upon termination of this

Agreement. In exercising such licenses, rights of way and easements, the Access Party shall not unreasonably disrupt or interfere with normal operation of the Granting Party’s business and shall adhere to the safety rules and procedures established in advance, as may be changed from time to time, by the Granting Party and provided to the Access Party. The Access Party shall indemnify the Granting Party against all claims of injury or damage from third parties resulting from the exercise of the access rights provided for herein.

21

SERVICE AGREEMENT NO. 2535

5.13 Lands of Other Property Owners.

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

5.14 Permits.

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

5.15 Early Construction of Base Case Facilities.

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

5.16 Suspension.

Developer reserves the right, upon written notice to Connecting Transmission Owner and   
NYISO, to suspend at any time all work by Connecting Transmission Owner associated with the   
construction and installation of Connecting Transmission Owner’s Attachment Facilities and/or   
System Upgrade Facilities and/or System Deliverability Upgrades required for only that   
Developer under this Agreement with the condition that the New York State Transmission   
System shall be left in a safe and reliable condition in accordance with Good Utility Practice and   
the safety and reliability criteria of Connecting Transmission Owner and NYISO. In such event,   
Developer shall be responsible for all reasonable and necessary costs and/or obligations in   
accordance with Attachment S to the ISO OATT including those which Connecting   
Transmission Owner (i) has incurred pursuant to this Agreement prior to the suspension and (ii)   
incurs in suspending such work, including any costs incurred to perform such work as may be

22



SERVICE AGREEMENT NO. 2535

necessary to ensure the safety of persons and property and the integrity of the New York State

Transmission System during such suspension and, if applicable, any costs incurred in connection with the cancellation or suspension of material, equipment and labor contracts which Connecting Transmission Owner cannot reasonably avoid; provided, however, that prior to canceling or   
suspending any such material, equipment or labor contract, Connecting Transmission Owner shall obtain Developer’s authorization to do so.

Connecting Transmission Owner shall invoice Developer for such costs pursuant to

Article 12 and shall use due diligence to minimize its costs. In the event Developer suspends

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

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

5.17 Taxes.

Developer Payments Not Taxable.

The Developer and Connecting Transmission Owner intend that all payments or property transfers made by Developer to Connecting Transmission Owner for the installation of the   
Connecting Transmission Owner’s Attachment Facilities and the System Upgrade Facilities and the System Deliverability Upgrades shall be non-taxable, either as contributions to capital, or as an advance, in accordance with the Internal Revenue Code and any applicable state income tax laws and shall not be taxable as contributions in aid of construction or otherwise under the   
Internal Revenue Code and any applicable state income tax laws.

Representations and Covenants.

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

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

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

Transmission Owner with a report from an independent engineer confirming its representation in

23



SERVICE AGREEMENT NO. 2535

clause (iii), above. Connecting Transmission Owner represents and covenants that the cost of the Connecting Transmission Owner’s Attachment Facilities paid for by Developer will have no net effect on the base upon which rates are determined.

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

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

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

Connecting Transmission Owner shall not include a gross-up for the cost consequences   
of any current tax liability in the amounts it charges Developer under this Agreement unless (i)   
Connecting Transmission Owner has determined, in good faith, that the payments or property   
transfers made by Developer to Connecting Transmission Owner should be reported as income   
subject to taxation or (ii) any Governmental Authority directs Connecting Transmission Owner   
to report payments or property as income subject to taxation; provided, however, that Connecting   
Transmission Owner may require Developer to provide security, in a form reasonably acceptable   
to Connecting Transmission Owner (such as a parental guarantee or a letter of credit), in an   
amount equal to the cost consequences of any current tax liability under this Article 5.17.   
Developer shall reimburse Connecting Transmission Owner for such costs on a fully grossed-up   
basis, in accordance with Article 5.17.4, within thirty (30) Calendar Days of receiving written   
notification from Connecting Transmission Owner of the amount due, including detail about how   
the amount was calculated.

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

Tax Gross-Up Amount.

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

Article 5.17 shall be calculated on a fully grossed-up basis. Except as may otherwise be agreed   
to by the parties, this means that Developer will pay Connecting Transmission Owner, in   
addition to the amount paid for the Attachment Facilities and System Upgrade Facilities and   
System Deliverability Upgrades, an amount equal to (1) the current taxes imposed on Connecting   
Transmission Owner (“Current Taxes”) on the excess of (a) the gross income realized by   
Connecting Transmission Owner as a result of payments or property transfers made by   
Developer to Connecting Transmission Owner under this Agreement (without regard to any   
payments under this Article 5.17) (the “Gross Income Amount”) over (b) the present value of   
future tax deductions for depreciation that will be available as a result of such payments or   
property transfers (the “Present Value Depreciation Amount”), plus (2) an additional amount

24



SERVICE AGREEMENT NO. 2535

sufficient to permit the Connecting Transmission Owner to receive and retain, after the payment of all Current Taxes, an amount equal to the net amount described in clause (1).

For this purpose, (i) Current Taxes shall be computed based on Connecting Transmission   
Owner’s composite federal and state tax rates at the time the payments or property transfers are   
received and Connecting Transmission Owner will be treated as being subject to tax at the   
highest marginal rates in effect at that time (the “Current Tax Rate”), and (ii) the Present Value   
Depreciation Amount shall be computed by discounting Connecting Transmission Owner’s   
anticipated tax depreciation deductions as a result of such payments or property transfers by   
Connecting Transmission Owner’s current weighted average cost of capital. Thus, the formula   
for calculating Developer’s liability to Connecting Transmission Owner pursuant to this Article

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

Private Letter Ruling or Change or Clarification of Law.

At Developer’s request and expense, Connecting Transmission Owner shall file with the   
IRS a request for a private letter ruling as to whether any property transferred or sums paid, or to   
be paid, by Developer to Connecting Transmission Owner under this Agreement are subject to   
federal income taxation. Developer will prepare the initial draft of the request for a private letter   
ruling, and will certify under penalties of perjury that all facts represented in such request are   
true and accurate to the best of Developer’s knowledge. Connecting Transmission Owner and   
Developer shall cooperate in good faith with respect to the submission of such request.

Connecting Transmission Owner shall keep Developer fully informed of the status of   
such request for a private letter ruling and shall execute either a privacy act waiver or a limited   
power of attorney, in a form acceptable to the IRS, that authorizes Developer to participate in all   
discussions with the IRS regarding such request for a private letter ruling. Connecting   
Transmission Owner shall allow Developer to attend all meetings with IRS officials about the   
request and shall permit Developer to prepare the initial drafts of any follow-up letters in   
connection with the request.

Subsequent Taxable Events.

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

5.17.4 and in accordance with IRS Notice 90-60.

25



SERVICE AGREEMENT NO. 2535

Contests.

In the event any Governmental Authority determines that Connecting Transmission

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

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

representative to attend contest proceedings.

Developer shall pay to Connecting Transmission Owner on a periodic basis, as invoiced   
by Connecting Transmission Owner, Connecting Transmission Owner’s documented reasonable   
costs of prosecuting such appeal, protest, abatement or other contest, including any costs   
associated with obtaining the opinion of independent tax counsel described in this Article 5.17.7.   
The Connecting Transmission Owner may abandon any contest if the Developer fails to provide   
payment to the Connecting Transmission Owner within thirty (30) Calendar Days of receiving   
such invoice. At any time during the contest, Connecting Transmission Owner may agree to a   
settlement either with Developer’s consent or after obtaining written advice from nationally-  
recognized tax counsel, selected by Connecting Transmission Owner, but reasonably acceptable   
to Developer, that the proposed settlement represents a reasonable settlement given the hazards   
of litigation. Developer’s obligation shall be based on the amount of the settlement agreed to by   
Developer, or if a higher amount, so much of the settlement that is supported by the written   
advice from nationally-recognized tax counsel selected under the terms of the preceding   
sentence. The settlement amount shall be calculated on a fully grossed-up basis to cover any   
related cost consequences of the current tax liability. The Connecting Transmission Owner may   
also settle any tax controversy without receiving the Developer’s consent or any such written   
advice; however, any such settlement will relieve the Developer from any obligation to   
indemnify Connecting Transmission Owner for the tax at issue in the contest (unless the failure   
to obtain written advice is attributable to the Developer’s unreasonable refusal to the   
appointment of independent tax counsel).

Refund.

In the event that (a) a private letter ruling is issued to Connecting Transmission Owner   
which holds that any amount paid or the value of any property transferred by Developer to   
Connecting Transmission Owner under the terms of this Agreement is not subject to federal   
income taxation, (b) any legislative change or administrative announcement, notice, ruling or   
other determination makes it reasonably clear to Connecting Transmission Owner in good faith   
that any amount paid or the value of any property transferred by Developer to Connecting

26



SERVICE AGREEMENT NO. 2535

Transmission Owner under the terms of this Agreement is not taxable to Connecting

Transmission Owner, (c) any abatement, appeal, protest, or other contest results in a

determination that any payments or transfers made by Developer to Connecting Transmission

Owner are not subject to federal income tax, or (d) if Connecting Transmission Owner receives a   
refund from any taxing authority for any overpayment of tax attributable to any payment or   
property transfer made by Developer to Connecting Transmission Owner pursuant to this   
Agreement, Connecting Transmission Owner shall promptly refund to Developer the following:

(i) Any payment made by Developer under this Article 5.17 for taxes that is   
attributable to the amount determined to be non-taxable, together with interest thereon,

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

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

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

Taxes Other Than Income Taxes.

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

Transmission Owner shall appeal, protest, seek abatement of, or otherwise contest any tax (other   
than federal or state income tax) asserted or assessed against Connecting Transmission Owner   
for which Developer may be required to reimburse Connecting Transmission Owner under the   
terms of this Agreement. Developer shall pay to Connecting Transmission Owner on a periodic   
basis, as invoiced by Connecting Transmission Owner, Connecting Transmission Owner’s   
documented reasonable costs of prosecuting such appeal, protest, abatement, or other contest.   
Developer and Connecting Transmission Owner shall cooperate in good faith with respect to any   
such contest. Unless the payment of such taxes is a prerequisite to an appeal or abatement or   
cannot be deferred, no amount shall be payable by Developer to Connecting Transmission   
Owner for such taxes until they are assessed by a final, non-appealable order by any court or

27



SERVICE AGREEMENT NO. 2535

agency of competent jurisdiction. In the event that a tax payment is withheld and ultimately due and payable after appeal, Developer will be responsible for all taxes, interest and penalties, other than penalties attributable to any delay caused by Connecting Transmission Owner.

5.18 Tax Status; Non-Jurisdictional Entities.

Tax Status.

Each Party shall cooperate with the other Parties to maintain the other Parties’ tax status.   
Nothing in this Agreement is intended to adversely affect the tax status of any Party including   
the status of NYISO, or the status of any Connecting Transmission Owner with respect to the   
issuance of bonds including, but not limited to, Local Furnishing Bonds. Notwithstanding any   
other provisions of this Agreement, LIPA, NYPA and Consolidated Edison Company of New   
York, Inc. shall not be required to comply with any provisions of this Agreement that would

result in the loss of tax-exempt status of any of their Tax-Exempt Bonds or impair their ability to issue future tax-exempt obligations. For purposes of this provision, Tax-Exempt Bonds shall   
include the obligations of the Long Island Power Authority, NYPA and Consolidated Edison   
Company of New York, Inc., the interest on which is not included in gross income under the   
Internal Revenue Code.

Non-Jurisdictional Entities.

LIPA and NYPA do not waive their exemptions, pursuant to Section 201(f) of the FPA, from Commission jurisdiction with respect to the Commission’s exercise of the FPA’s general ratemaking authority.

5.19 Modification.

General.

Either the Developer or Connecting Transmission Owner may undertake modifications to   
its facilities covered by this Agreement. If either the Developer or Connecting Transmission   
Owner plans to undertake a modification that reasonably may be expected to affect the other   
Party’s facilities, that Party shall provide to the other Party, and to NYISO, sufficient   
information regarding such modification so that the other Party and NYISO may evaluate the   
potential impact of such modification prior to commencement of the work. Such information   
shall be deemed to be Confidential Information hereunder and shall include information   
concerning the timing of such modifications and whether such modifications are expected to   
interrupt the flow of electricity from the Large Generating Facility. The Party desiring to   
perform such work shall provide the relevant drawings, plans, and specifications to the other   
Party and NYISO at least ninety (90) Calendar Days in advance of the commencement of the   
work or such shorter period upon which the Parties may agree, which agreement shall not   
unreasonably be withheld, conditioned or delayed.

In the case of Large Generating Facility modifications that do not require Developer to   
submit an Interconnection Request, the NYISO shall provide, within sixty (60) Calendar Days   
(or such other time as the Parties may agree), an estimate of any additional modifications to the

28



SERVICE AGREEMENT NO. 2535

New York State Transmission System, Connecting Transmission Owner’s Attachment Facilities or System Upgrade Facilities or System Deliverability Upgrades necessitated by such Developer modification and a good faith estimate of the costs thereof. The Developer shall be responsible for the cost of any such additional modifications, including the cost of studying the impact of the Developer modification.

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.

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

ARTICLE 6. TESTING AND INSPECTION

6.1 Pre-Commercial Operation Date Testing and Modifications.

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

6.2 Post-Commercial Operation Date Testing and Modifications.

Developer and Connecting Transmission Owner shall each at its own expense perform   
routine inspection and testing of its facilities and equipment in accordance with Good Utility   
Practice and Applicable Reliability Standards as may be necessary to ensure the continued   
interconnection of the Large Generating Facility with the New York State Transmission System   
in a safe and reliable manner. Developer and Connecting Transmission Owner shall each have

29

SERVICE AGREEMENT NO. 2535

the right, upon advance written notice, to require reasonable additional testing of the other

Party’s facilities, at the requesting Party’s expense, as may be in accordance with Good Utility Practice.

6.3 Right to Observe Testing.

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

6.4 Right to Inspect.

Developer and Connecting Transmission Owner shall each have the right, but shall have   
no obligation to: (i) observe the other Party’s tests and/or inspection of any of its System   
Protection Facilities and other protective equipment, including Power System Stabilizers; (ii)   
review the settings of the other Party’s System Protection Facilities and other protective   
equipment; and (iii) review the other Party’s maintenance records relative to the Attachment   
Facilities, the System Protection Facilities and other protective equipment. NYISO shall have   
these same rights of inspection as to the facilities and equipment of Developer and Connecting   
Transmission Owner. A Party may exercise these rights from time to time as it deems necessary   
upon reasonable notice to the other Party. The exercise or non-exercise by a Party of any such   
rights shall not be construed as an endorsement or confirmation of any element or condition of   
the Attachment Facilities or the System Protection Facilities or other protective equipment or the   
operation thereof, or as a warranty as to the fitness, safety, desirability, or reliability of same.   
Any information that a Party obtains through the exercise of any of its rights under this Article

6.4 shall be treated in accordance with Article 22 of this Agreement and Attachment F to the ISO   
OATT.

ARTICLE 7. METERING

7.1 General.

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

30

SERVICE AGREEMENT NO. 2535

7.2 Check Meters.

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

7.3 Standards.

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

7.4 Testing of Metering Equipment.

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

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

NYISO or Developer, Connecting Transmission Owner shall, at Developer’s expense, inspect or   
test Metering Equipment more frequently than every two (2) years. Connecting Transmission   
Owner shall give reasonable notice of the time when any inspection or test shall take place, and   
Developer and NYISO may have representatives present at the test or inspection. If at any time   
Metering Equipment is found to be inaccurate or defective, it shall be adjusted, repaired or   
replaced at Developer’s expense, in order to provide accurate metering, unless the inaccuracy or   
defect is due to Connecting Transmission Owner’s failure to maintain, then Connecting   
Transmission Owner shall pay. If Metering Equipment fails to register, or if the measurement   
made by Metering Equipment during a test varies by more than two percent from the   
measurement made by the standard meter used in the test, Connecting Transmission Owner shall   
adjust the measurements by correcting all measurements for the period during which Metering   
Equipment was in error by using Developer’s check meters, if installed. If no such check meters   
are installed or if the period cannot be reasonably ascertained, the adjustment shall be for the   
period immediately preceding the test of the Metering Equipment equal to one-half the time from   
the date of the last previous test of the Metering Equipment. The NYISO shall reserve the right   
to review all associated metering equipment installation on the Developer’s or Connecting   
Transmission Owner’s property at any time.

7.5 Metering Data.

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

31

SERVICE AGREEMENT NO. 2535

ARTICLE 8. COMMUNICATIONS

8.1 Developer Obligations.

In accordance with applicable NYISO requirements, Developer shall maintain

satisfactory operating communications with Connecting Transmission Owner and NYISO.

Developer shall provide standard voice line, dedicated voice line and facsimile communications   
at its Large Generating Facility control room or central dispatch facility through use of either the   
public telephone system, or a voice communications system that does not rely on the public   
telephone system. Developer shall also provide the dedicated data circuit(s) necessary to provide   
Developer data to Connecting Transmission Owner and NYISO as set forth in Appendix D   
hereto. The data circuit(s) shall extend from the Large Generating Facility to the location(s)   
specified by Connecting Transmission Owner and NYISO. Any required maintenance of such   
communications equipment shall be performed by Developer. Operational communications shall   
be activated and maintained under, but not be limited to, the following events: system paralleling   
or separation, scheduled and unscheduled shutdowns, equipment clearances, and hourly and   
daily load data.

8.2 Remote Terminal Unit.

Prior to the Initial Synchronization Date of the Large Generating Facility, a Remote   
Terminal Unit, or equivalent data collection and transfer equipment acceptable to the Parties, shall be installed by Developer, or by Connecting Transmission Owner at Developer’s expense, to gather accumulated and instantaneous data to be telemetered to the location(s) designated by Connecting Transmission Owner and NYISO through use of a dedicated point-to-point data   
circuit(s) as indicated in Article 8.1. The communication protocol for the data circuit(s) shall be specified by Connecting Transmission Owner and NYISO. Instantaneous bi-directional analog real power and reactive power flow information must be telemetered directly to the location(s) specified by Connecting Transmission Owner and NYISO.

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

8.3 No Annexation.

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

ARTICLE 9. OPERATIONS

9.1 General.

Each Party shall comply with Applicable Laws and Regulations and Applicable

Reliability Standards. Each Party shall provide to the other Parties all information that may

32



SERVICE AGREEMENT NO. 2535

reasonably be required by the other Parties to comply with Applicable Laws and Regulations and Applicable Reliability Standards.

9.2 NYISO and Connecting Transmission Owner Obligations.

Connecting Transmission Owner and NYISO shall cause the New York State

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

9.3 Developer Obligations.

Developer shall at its own expense operate, maintain and control the Large Generating Facility and the Developer’s Attachment Facilities in a safe and reliable manner and in   
accordance with this Agreement. Developer shall operate the Large Generating Facility and the Developer’s Attachment Facilities in accordance with NYISO and Connecting Transmission Owner requirements, as such requirements are set forth or referenced in Appendix C hereto. Appendix C will be modified to reflect changes to the requirements as they may change from time to time. Any Party may request that the appropriate other Party or Parties provide copies of the requirements set forth or referenced in Appendix C hereto.

9.4 Start-Up and Synchronization.

Consistent with the mutually acceptable procedures of the Developer and Connecting Transmission Owner, the Developer is responsible for the proper synchronization of the Large Generating Facility to the New York State Transmission System in accordance with NYISO and Connecting Transmission Owner procedures and requirements.

9.5 Real and Reactive Power Control and Primary Frequency Response.

Power Factor Design Criteria.

9.5.1.1 Synchronous Generation. Developer shall design the Large Generating Facility   
to maintain effective composite power delivery at continuous rated power output at the Point of   
Interconnection at a power factor within the range of 0.95 leading to 0.95 lagging unless the   
NYISO or the Transmission Owner in whose Transmission District the Large Generating Facility   
interconnects has established different requirements that apply to all generators in the New York   
Control Area or Transmission District (as applicable) on a comparable basis, in accordance with   
Good Utility Practice.

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

33



SERVICE AGREEMENT NO. 2535

9.5.1.2 Non-Synchronous Generation. Developer shall design the Large Generating   
Facility to maintain composite power delivery at continuous rated power output at the high-side of the generator substation at a power factor within the range of 0.95 leading to 0.95 lagging,   
unless the NYISO or the Transmission Owner in whose Transmission District the Large   
Generating Facility interconnects has established a different power factor range that applies to all non-synchronous generators in the Control Area or Transmission District (as applicable) on a   
comparable basis, in accordance with Good Utility Practice. This power factor range standard   
shall be dynamic and can be met using, for example, power electronics designed to supply this   
level of reactive capability (taking into account any limitations due to voltage level, real power   
output, etc.) or fixed and switched capacitors, or a combination of the two. This requirement   
shall only apply to newly interconnection non-synchronous generators that have not yet executed a Facilities Study Agreement as of September 21, 2016.

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

Voltage Schedules.

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

Payment for Reactive Power.

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

2 of the NYISO Services Tariff.

Voltage Regulators.

Whenever the Large Generating Facility is operated in parallel with the New York State   
Transmission System, the automatic voltage regulators shall be in automatic operation at all   
times. If the Large Generating Facility’s automatic voltage regulators are not capable of such   
automatic operation, the Developer shall immediately notify NYISO, or its designated   
representative, and ensure that such Large Generating Facility’s real and reactive power are   
within the design capability of the Large Generating Facility’s generating unit(s) and steady state

34

SERVICE AGREEMENT NO. 2535

stability limits and NYISO system operating (thermal, voltage and transient stability) limits.   
Developer shall not cause its Large Generating Facility to disconnect automatically or   
instantaneously from the New York State Transmission System or trip any generating unit   
comprising the Large Generating Facility for an under or over frequency condition unless the abnormal frequency condition persists for a time period beyond the limits set forth in   
ANSI/IEEE Standard C37.106, or such other standard as applied to other generators in the New York Control Area on a comparable basis.

9.5.5 Primary Frequency Response.

Developer shall ensure the primary frequency response capability of its Large Generating   
Facility by installing, maintaining, and operating a functioning governor or equivalent controls.   
The term “functioning governor or equivalent controls” as used herein shall mean the required   
hardware and/or software that provides frequency responsive real power control with the ability   
to sense changes in system frequency and autonomously adjust the Large Generating Facility’s   
real power output in accordance with the droop and deadband parameters and in the direction

needed to correct frequency deviations. Developer is required to install a governor or equivalent   
controls with the capability of operating: (1) with a maximum 5 percent droop ± 0.036 Hz   
deadband; or (2) in accordance with the relevant droop, deadband, and timely and sustained   
response settings from an approved Applicable Reliability Standard providing for equivalent or   
more stringent parameters. The droop characteristic shall be: (1) based on the nameplate   
capacity of the Large Generating Facility, and shall be linear in the range of frequencies between

59 and 61 Hz that are outside of the deadband parameter; or (2) based on an approved Applicable   
Reliability Standard providing for an equivalent or more stringent parameter. The deadband   
parameter shall be: the range of frequencies above and below nominal (60 Hz) in which the   
governor or equivalent controls is not expected to adjust the Large Generating Facility’s real   
power output in response to frequency deviations. The deadband shall be implemented: (1)   
without a step to the droop curve, that is, once the frequency deviation exceeds the deadband   
parameter, the expected change in the Large Generating Facility’s real power output in response   
to frequency deviations shall start from zero and then increase (for under-frequency deviations)   
or decrease (for over-frequency deviations) linearly in proportion to the magnitude of the   
frequency deviation; or (2) in accordance with an approved Applicable Reliability Standard   
providing for an equivalent or more stringent parameter. Developer shall notify NYISO that the   
primary frequency response capability of the Large Generating Facility has been tested and   
confirmed during commissioning. Once Developer has synchronized the Large Generating   
Facility with the New York State Transmission System, Developer shall operate the Large   
Generating Facility consistent with the provisions specified in Articles 9.5.5.1 and 9.5.5.2 of this   
Agreement. The primary frequency response requirements contained herein shall apply to both   
synchronous and non-synchronous Large Generating Facilities.

9.5.5.1 Governor or Equivalent Controls.

Whenever the Large Generating Facility is operated in parallel with the New York State   
Transmission System, Developer shall operate the Large Generating Facility with its governor or   
equivalent controls in service and responsive to frequency. Developer shall: (1) in coordination   
with NYISO, set the deadband parameter to: (1) a maximum of ±0.036 Hz and set the droop   
parameter to a maximum of 5 percent; or (2) implement the relevant droop and deadband settings

35

SERVICE AGREEMENT NO. 2535

from an approved Applicable Reliability Standard that provides for equivalent or more stringent   
parameters. Developer shall be required to provide the status and settings of the governor and   
equivalent controls to NYISO and/or the Connecting Transmission Owner upon request. If   
Developer needs to operate the Large Generating Facility with its governor or equivalent   
controls not in service, Developer shall immediately notify NYISO and the Connecting   
Transmission Owner, and provide both with the following information: (1) the operating status   
of the governor or equivalent controls (i.e., whether it is currently out of service or when it will   
be taken out of service); (2) the reasons for removing the governor or equivalent controls from   
service; and (3) a reasonable estimate of when the governor or equivalent controls will be   
returned to service. Developer shall make Reasonable Efforts to return its governor or   
equivalent controls into service as soon as practicable. Developer shall make Reasonable Efforts   
to keep outages of the Large Generating Facility’s governor or equivalent controls to a minimum   
whenever the Large Generating Facility is operated in parallel with the New York State   
Transmission System.

9.5.5.2 Timely and Sustained Response.

Developer shall ensure that the Large Generating Facility’s real power response to

sustained frequency deviations outside of the deadband setting is automatically provided and   
shall begin immediately after frequency deviates outside of the deadband, and to the extent the   
Large Generating Facility has operating capability in the direction needed to correct the   
frequency deviation. Developer shall not block or otherwise inhibit the ability of the governor or   
equivalent controls to respond and shall ensure that the response is not inhibited, except under   
certain operational constraints including, but not limited to, ambient temperature limitations,   
physical energy limitations, outages of mechanical equipment, or regulatory requirements. The   
Large Generating Facility shall sustain the real power response at least until system frequency   
returns to a value within the deadband setting of the governor or equivalent controls. An   
Applicable Reliability Standard with equivalent or more stringent requirements shall supersede   
the above requirements.

9.5.5.3 Exemptions.

Large Generating Facilities that are regulated by the United States Nuclear Regulatory Commission shall be exempt from Articles 9.5.5, 9.5.5.1, and 9.5.5.2 of this Agreement. Large Generating Facilities that are behind the meter generation that is sized-to-load (i.e., the thermal load and the generation are near-balanced in real-time operation and the generation is primarily controlled to maintain the unique thermal, chemical, or mechanical output necessary for the   
operating requirements of its host facility) shall be required to install primary frequency response capability requirements in accordance with the droop and deadband capability requirements   
specified in Article 9.5.5, but shall be otherwise exempt from the operating requirements in   
Articles 9.5.5, 9.5.5.1, 9.5.5.2, and 9.5.5.4 of this Agreement.

9.5.5.4 Electric Storage Resources.

Developer interconnecting an electric storage resource shall establish an operating range   
in Appendix C of its LGIA that specifies a minimum state of charge and a maximum state of   
charge between which the electric storage resource will be required to provide primary frequency

36



SERVICE AGREEMENT NO. 2535

response consistent with the conditions set forth in Articles 9.5.5, 9.5.5.1, 9.5.5.2, and 9.5.5.3 of   
this Agreement. Appendix C shall specify whether the operating range is static or dynamic, and   
shall consider (1) the expected magnitude of frequency deviations in the interconnection; (2) the   
expected duration that system frequency will remain outside of the deadband parameter in the   
interconnection; (3) the expected incidence of frequency deviations outside of the deadband   
parameter in the interconnection; (4) the physical capabilities of the electric storage resource; (5)   
operational limitations of the electric storage resources due to manufacturer specification; and (6)   
any other relevant factors agreed to by the NYISO, Connecting Transmission Owner, and   
Developer. If the operating range is dynamic, then Appendix C must establish how frequently   
the operating range will be reevaluated and the factors that may be considered during its   
reevaluation.

Developer’s electric storage resource is required to provide timely and sustained primary   
frequency response consistent with Article 9.5.5.2 of this Agreement when it is online and   
dispatched to inject electricity to the New York State Transmission System and/or receive   
electricity from the New York State Transmission System. This excludes circumstances when   
the electric storage resource is not dispatched to inject electricity to the New York State   
Transmission System and/or dispatched to receive electricity from the New York State   
Transmission System. If Developer’s electric storage resource is charging at the time of a   
frequency deviation outside of its deadband parameter, it is to increase (for over-frequency   
deviations) or decrease (for under-frequency deviations) the rate at which it is charging in   
accordance with its droop parameter. Developer’s electric storage resource is not required to   
change from charging to discharging, or vice versa, unless the response necessitated by the droop   
and deadband settings requires it to do so and it is technically capable of making such a   
transition.

9.6 Outages and Interruptions.

Outages.

9.6.1.1 Outage Authority and Coordination.

Developer and Connecting Transmission Owner may each, in accordance with NYISO   
procedures and Good Utility Practice and in coordination with the other Party, remove from   
service any of its respective Attachment Facilities or System Upgrade Facilities and System   
Deliverability Upgrades that may impact the other Party’s facilities as necessary to perform   
maintenance or testing or to install or replace equipment. Absent an Emergency State, the Party   
scheduling a removal of such facility(ies) from service will use Reasonable Efforts to schedule   
such removal on a date and time mutually acceptable to both the Developer and the Connecting   
Transmission Owner. In all circumstances either Party planning to remove such facility(ies)   
from service shall use Reasonable Efforts to minimize the effect on the other Party of such   
removal.

9.6.1.2 Outage Schedules.

The Connecting Transmission Owner shall post scheduled outages of its transmission   
facilities on the NYISO OASIS. Developer shall submit its planned maintenance schedules for

37



SERVICE AGREEMENT NO. 2535

the Large Generating Facility to Connecting Transmission Owner and NYISO for a minimum of   
a rolling thirty-six month period. Developer shall update its planned maintenance schedules as   
necessary. NYISO may direct, or the Connecting Transmission Owner may request, Developer   
to reschedule its maintenance as necessary to maintain the reliability of the New York State   
Transmission System. Compensation to Developer for any additional direct costs that the   
Developer incurs as a result of rescheduling maintenance, including any additional overtime,   
breaking of maintenance contracts or other costs above and beyond the cost the Developer would   
have incurred absent the request to reschedule maintenance, shall be in accordance with the ISO   
OATT. Developer will not be eligible to receive compensation, if during the twelve (12) months   
prior to the date of the scheduled maintenance, the Developer had modified its schedule of   
maintenance activities other than at the direction of the NYISO or request of the Connecting   
Transmission Owner.

9.6.1.3 Outage Restoration.

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

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

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

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

Developer to interrupt or reduce production of electricity if such production of electricity could adversely affect the ability of NYISO and Connecting Transmission Owner to perform such activities as are necessary to safely and reliably operate and maintain the New York State   
Transmission System. The following provisions shall apply to any interruption or reduction permitted under this Article 9.6.2:

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

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

9.6.2.3 When the interruption or reduction must be made under circumstances

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

38



SERVICE AGREEMENT NO. 2535

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

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

Under-Frequency and Over Frequency Conditions.

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

System Protection and Other Control Requirements.

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

9.6.4.2 The protection facilities of both the Developer and Connecting

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

9.6.4.3 The Developer and Connecting Transmission Owner shall each be

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

39



SERVICE AGREEMENT NO. 2535

9.6.4.4 The protective relay design of the Developer and Connecting

Transmission Owner shall each incorporate the necessary test switches to perform the tests

required in Article 6 of this Agreement. The required test switches will be placed such that they   
allow operation of lockout relays while preventing breaker failure schemes from operating and   
causing unnecessary breaker operations and/or the tripping of the Developer’s Large Generating   
Facility.

9.6.4.5 The Developer and Connecting Transmission Owner will each test, operate and maintain System Protection Facilities in accordance with Good Utility Practice, NERC and NPCC criteria.

9.6.4.6 Prior to the In-Service Date, and again prior to the Commercial Operation   
Date, the Developer and Connecting Transmission Owner shall each perform, or their agents   
shall perform, a complete calibration test and functional trip test of the System Protection   
Facilities. At intervals suggested by Good Utility Practice and following any apparent   
malfunction of the System Protection Facilities, the Developer and Connecting Transmission   
Owner shall each perform both calibration and functional trip tests of its System Protection   
Facilities. These tests do not require the tripping of any in-service generation unit. These tests   
do, however, require that all protective relays and lockout contacts be activated.

Requirements for Protection.

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

Power Quality.

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

40



SERVICE AGREEMENT NO. 2535

9.7 Switching and Tagging Rules.

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

9.8 Use of Attachment Facilities by Third Parties.

Purpose of Attachment Facilities.

Except as may be required by Applicable Laws and Regulations, or as otherwise agreed to among the Parties, the Attachment Facilities shall be constructed for the sole purpose of interconnecting the Large Generating Facility to the New York State Transmission System and shall be used for no other purpose.

Third Party Users.

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

9.9 Disturbance Analysis Data Exchange.

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

disturbances to either the Large Generating Facility or the New York State Transmission System   
by gathering and providing access to any information relating to any disturbance, including   
information from disturbance recording equipment, protective relay targets, breaker operations   
and sequence of events records, and any disturbance information required by Good Utility   
Practice.

9.10 Phasor Measurement Units

A Developer shall install and maintain, at its expense, phasor measurement units

(“PMUs”) if it meets the following criteria: (1) completed a Class Year after Class Year 2017;   
and (2) proposes a new Large Facility that either (a) has a maximum net output equal to or

41

SERVICE AGREEMENT NO. 2535

greater than 100 MW or (b) requires, as Attachment Facilities or System Upgrade Facilities, a new substation of 230kV or above.

PMUs shall be installed on the Large Facility on the low side of the generator step-up

transformer, unless it is a non-synchronous generation facility, in which case the PMUs shall be installed on the Developer side of the Point of Interconnection. The PMUs must be capable of   
performing phasor measurements at a minimum of 60 samples per second which are   
synchronized via a high-accuracy satellite clock. To the extent Developer installs similar quality equipment, such as relays or digital fault recorders, that can collect data at least at the same rate as PMUs and which data is synchronized via a high-accuracy satellite clock, such equipment   
would satisfy this requirement.

Developer shall be required to install and maintain, at its expense, PMU equipment which   
includes the communication circuit capable of carrying the PMU data to a local data   
concentrator, and then transporting the information continuously to the Connecting Transmission   
Owner and the NYISO; as well as store the PMU data locally for thirty days. Developer shall   
provide to Connecting Transmission Owner and the NYISO all necessary and requested   
information through the Connecting Transmission Owner’s and the NYISO’s synchrophasor   
system, including the following: (a) gross MW and MVAR measured at the Developer side of   
the generator step-up transformer (or, for a non-synchronous generation facility, to be measured   
at the Developer side of the Point of Interconnection); (b) generator terminal voltage and current   
magnitudes and angles; (c) generator terminal frequency and frequency rate of change; and

(d) generator field voltage and current, where available; and (e) breaker status, if available. The   
Connecting Transmission Owner will provide for the ongoing support and maintenance of the   
network communications linking the data concentrator to the Connecting Transmission Owner   
and the NYISO, consistent with ISO Procedures detailing the obligations related to SCADA   
data.

ARTICLE 10. MAINTENANCE

10.1 Connecting Transmission Owner Obligations.

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

10.2 Developer Obligations.

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

10.3 Coordination.

The Developer and Connecting Transmission Owner shall confer regularly to coordinate   
the planning, scheduling and performance of preventive and corrective maintenance on the Large   
Generating Facility and the Attachment Facilities. The Developer and Connecting Transmission   
Owner shall keep NYISO fully informed of the preventive and corrective maintenance that is   
planned, and shall schedule all such maintenance in accordance with NYISO procedures.

42

SERVICE AGREEMENT NO. 2535

10.4 Secondary Systems.

The Developer and Connecting Transmission Owner shall each cooperate with the other   
in the inspection, maintenance, and testing of control or power circuits that operate below 600   
volts, AC or DC, including, but not limited to, any hardware, control or protective devices,   
cables, conductors, electric raceways, secondary equipment panels, transducers, batteries,   
chargers, and voltage and current transformers that directly affect the operation of Developer or   
Connecting Transmission Owner’s facilities and equipment which may reasonably be expected   
to impact the other Party. The Developer and Connecting Transmission Owner shall each   
provide advance notice to the other Party, and to NYISO, before undertaking any work on such   
circuits, especially on electrical circuits involving circuit breaker trip and close contacts, current   
transformers, or potential transformers.

10.5 Operating and Maintenance Expenses.

Subject to the provisions herein addressing the use of facilities by others, and except for operations and maintenance expenses associated with modifications made for providing   
interconnection or transmission service to a third party and such third party pays for such   
expenses, Developer shall be responsible for all reasonable expenses including overheads,   
associated with: (1) owning, operating, maintaining, repairing, and replacing Developer’s   
Attachment Facilities; and (2) operation, maintenance, repair and replacement of Connecting Transmission Owner’s Attachment Facilities. The Connecting Transmission Owner shall be entitled to the recovery of incremental operating and maintenance expenses that it incurs   
associated with System Upgrade Facilities and System Deliverability Upgrades if and to the   
extent provided for under Attachment S to the ISO OATT.

ARTICLE 11. PERFORMANCE OBLIGATION

11.1 Developer’s Attachment Facilities.

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

11.2 Connecting Transmission Owner’s Attachment Facilities.

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

11.3 System Upgrade Facilities and System Deliverability Upgrades.

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

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

43

SERVICE AGREEMENT NO. 2535

11.4 Special Provisions for Affected Systems.

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

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

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

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

11.5 Provision of Security.

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

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

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

In addition:

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

reasonable creditworthiness requirements of Connecting Transmission Owner, and contains

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

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

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

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

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

11.6 Developer Compensation for Emergency Services.

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

44

SERVICE AGREEMENT NO. 2535

11.7 Line Outage Costs.

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

ARTICLE 12. INVOICE

12.1 General.

The Developer and Connecting Transmission Owner shall each submit to the other Party,   
on a monthly basis, invoices of amounts due for the preceding month. Each invoice shall state   
the month to which the invoice applies and fully describe the services and equipment provided.   
The Developer and Connecting Transmission Owner may discharge mutual debts and payment   
obligations due and owing to each other on the same date through netting, in which case all   
amounts one Party owes to the other Party under this Agreement, including interest payments or   
credits, shall be netted so that only the net amount remaining due shall be paid by the owing   
Party.

12.2 Final Invoice.

Within six months after completion of the construction of the Connecting Transmission   
Owner’s Attachment Facilities and the System Upgrade Facilities and System Deliverability   
Upgrades, Connecting Transmission Owner shall provide an invoice of the final cost of the   
construction of the Connecting Transmission Owner’s Attachment Facilities and the System   
Upgrade Facilities and System Deliverability Upgrades, determined in accordance with   
Attachment S to the ISO OATT, and shall set forth such costs in sufficient detail to enable   
Developer to compare the actual costs with the estimates and to ascertain deviations, if any, from   
the cost estimates. Connecting Transmission Owner shall refund to Developer any amount by   
which the actual payment by Developer for estimated costs exceeds the actual costs of   
construction within thirty (30) Calendar Days of the issuance of such final construction invoice.

12.3 Payment.

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

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

12.4 Disputes.

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

45



SERVICE AGREEMENT NO. 2535

pending resolution of such dispute. If Developer fails to meet these two requirements for

continuation of service, then Connecting Transmission Owner may provide notice to Developer   
of a Default pursuant to Article 17. Within thirty (30) Calendar Days after the resolution of the   
dispute, the Party that owes money to the other Party shall pay the amount due with interest   
calculated in accord with the methodology set forth in FERC’s Regulations at 18 C.F.R. §

35.19a(a)(2)(iii).

ARTICLE 13. EMERGENCIES

13.1 Obligations.

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

13.2 Notice.

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

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

Transmission Owner’s Attachment Facilities or the New York State Transmission System that   
may reasonably be expected to affect Developer’s operation of the Large Generating Facility or the Developer’s Attachment Facilities. Developer shall notify NYISO and Connecting   
Transmission Owner promptly when it becomes aware of an Emergency State that affects the   
Large Generating Facility or the Developer’s Attachment Facilities that may reasonably be   
expected to affect the New York State Transmission System or the Connecting Transmission   
Owner’s Attachment Facilities. To the extent information is known, the notification shall   
describe the Emergency State, the extent of the damage or deficiency, the expected effect on the operation of Developer’s or Connecting Transmission Owner’s facilities and operations, its   
anticipated duration and the corrective action taken and/or to be taken. The initial notice shall be followed as soon as practicable with written notice.

13.3 Immediate Action.

Unless, in Developer’s reasonable judgment, immediate action is required, Developer

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

13.4 NYISO and Connecting Transmission Owner Authority.

General.

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

46



SERVICE AGREEMENT NO. 2535

Transmission Owner’s Attachment Facilities, (iii) limit or prevent damage, and (iv) expedite restoration of service.

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

Reduction and Disconnection.

NYISO or Connecting Transmission Owner may reduce Energy Resource

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

13.5 Developer Authority.

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

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

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

47



SERVICE AGREEMENT NO. 2535

13.6 Limited Liability.

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

ARTICLE 14. REGULATORY REQUIREMENTS AND GOVERNING LAW

14.1 Regulatory Requirements.

Each Party’s obligations under this Agreement shall be subject to its receipt of any

required approval or certificate from one or more Governmental Authorities in the form and

substance satisfactory to the applying Party, or the Party making any required filings with, or

providing notice to, such Governmental Authorities, and the expiration of any time period

associated therewith. Each Party shall in good faith seek and use its Reasonable Efforts to obtain such other approvals. Nothing in this Agreement shall require Developer to take any action that could result in its inability to obtain, or its loss of, status or exemption under the Federal Power Act or the Public Utility Holding Company Act of 2005 or the Public Utility Regulatory Policies Act of 1978, as amended.

14.2 Governing Law.

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 15. NOTICES

15.1 General.

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

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

48

SERVICE AGREEMENT NO. 2535

15.2 Billings and Payments.

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

15.3 Alternative Forms of Notice.

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

15.4 Operations and Maintenance Notice.

Developer and Connecting Transmission Owner shall each notify the other Party, and

NYISO, in writing of the identity of the person(s) that it designates as the point(s) of contact with respect to the implementation of Articles 9 and 10 of this Agreement.

ARTICLE 16. FORCE MAJEURE

16.1 Economic hardship is not considered a Force Majeure event.

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

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

ARTICLE 17. DEFAULT

17.1 General.

No Breach shall exist where such failure to discharge an obligation (other than the

payment of money) is the result of Force Majeure as defined in this Agreement or the result of an   
act or omission of the other Parties. Upon a Breach, the non-Breaching Parties shall give written   
notice of such to the Breaching Party. The Breaching Party shall have thirty (30) Calendar Days   
from receipt of the Breach notice within which to cure such Breach; provided however, if such   
Breach is not capable of cure within thirty (30) Calendar Days, the Breaching Party shall   
commence such cure within thirty (30) Calendar Days after notice and continuously and   
diligently complete such cure within ninety (90) Calendar Days from receipt of the Breach   
notice; and, if cured within such time, the Breach specified in such notice shall cease to exist.

49



SERVICE AGREEMENT NO. 2535

17.2 Right to Terminate.

If a Breach is not cured as provided in this Article 17, or if a Breach is not capable of

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

ARTICLE 18. INDEMNITY, CONSEQUENTIAL DAMAGES AND INSURANCE

18.1 Indemnity.

Each Party (the “Indemnifying Party”) shall at all times indemnify, defend, and save

harmless, as applicable, the other Parties (each an “Indemnified Party”) from, any and all

damages, losses, claims, including claims and actions relating to injury to or death of any person   
or damage to property, the alleged violation of any Environmental Law, or the release or   
threatened release of any Hazardous Substance, demand, suits, recoveries, costs and expenses,   
court costs, attorney fees, and all other obligations by or to third parties (any and all of these a   
“Loss”), arising out of or resulting from (i) the Indemnified Party’s performance of its   
obligations under this Agreement on behalf of the Indemnifying Party, except in cases where the   
Indemnifying Party can demonstrate that the Loss of the Indemnified Party was caused by the   
gross negligence or intentional wrongdoing of the Indemnified Party or (ii) the violation by the   
Indemnifying Party of any Environmental Law or the release by the Indemnifying Party of any   
Hazardous Substance.

Indemnified Party.

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

Indemnifying Party.

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

harmless under this Article 18, the amount owing to the Indemnified Party shall be the amount of such Indemnified Party’s actual Loss, net of any insurance or other recovery.

Indemnity Procedures.

Promptly after receipt by an Indemnified Party of any claim or notice of the

commencement of any action or administrative or legal proceeding or investigation as to which   
the indemnity provided for in Article 18.1 may apply, the Indemnified Party shall notify the   
Indemnifying Party of such fact. Any failure of or delay in such notification shall not affect a

50

SERVICE AGREEMENT NO. 2535

Party’s indemnification obligation unless such failure or delay is materially prejudicial to the Indemnifying Party.

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

The Indemnified Party shall be entitled, at its expense, to participate in any such action,   
suit or proceeding, the defense of which has been assumed by the Indemnifying Party.   
Notwithstanding the foregoing, the Indemnifying Party (i) shall not be entitled to assume and   
control the defense of any such action, suit or proceedings if and to the extent that, in the opinion   
of the Indemnified Party and its counsel, such action, suit or proceeding involves the potential   
imposition of criminal liability on the Indemnified Party, or there exists a conflict or adversity of   
interest between the Indemnified Party and the Indemnifying Party, in such event the   
Indemnifying Party shall pay the reasonable expenses of the Indemnified Party, and (ii) shall not   
settle or consent to the entry of any judgment in any action, suit or proceeding without the   
consent of the Indemnified Party, which shall not be unreasonably withheld, conditioned or   
delayed.

18.2 No Consequential Damages.

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

18.3 Insurance.

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

51



SERVICE AGREEMENT NO. 2535

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 or better than CG 00 01 04 13, with minimum limits of Two Million   
Dollars ($2,000,000) per occurrence and Two Million Dollars ($2,000,000) aggregate combined   
single limit for personal injury, bodily injury, including death and property damage.

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

Insurance and Excess Liability Insurance policies of Developer and Connecting Transmission

Owner shall name the other Party, its parent, associated and Affiliate companies and their

respective directors, officers, agents, servants and employees (“Other Party Group”) as additional   
insureds using ISO CG Endorsements: CG 20 33 04 13, and CG 20 37 04 13 or CG 20 10 04 13   
and CG 20 37 04 13 or equivalent to or better forms. All policies shall contain provisions   
whereby the insurers waive all rights of subrogation in accordance with the provisions of this   
Agreement against the Other Party Group and provide thirty (30) Calendar days advance written   
notice to the Other Party Group prior to anniversary date of cancellation or any material change   
in coverage or condition.

The Commercial General Liability Insurance, Comprehensive Automobile

Liability Insurance and Excess Liability Insurance policies shall contain provisions that specify that the policies are primary and non-contributory. Developer and Connecting Transmission Owner shall each be responsible for its respective deductibles or retentions.

52



SERVICE AGREEMENT NO. 2535

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 Developer and Connecting Transmission Owner.

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

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

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

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

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 execution of this Agreement, and as soon

as practicable after the end of each fiscal year or at the renewal of the insurance policy and in any event within ninety (90) days thereafter, Developer and Connecting Transmission Owner shall provide 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, Developer and Connecting Transmission

Owner may each self-insure to meet the minimum insurance requirements of Articles 18.3.1   
through 18.3.9 to the extent it maintains a self-insurance program; provided that, such Party’s   
senior debt is rated at investment grade, or better, by Standard & Poor’s and that its self-  
insurance program meets the minimum insurance requirements of Articles 18.3.1 through 18.3.9.   
In the event that a Party is permitted to self-insure pursuant to this Article 18.3.12, it shall notify   
the other Party that it meets the requirements to self-insure and that its self-insurance program   
meets the minimum insurance requirements in a manner consistent with that specified in Articles

18.3.1 through 18.3.9 and provide evidence of such coverages. For any period of time that a Party’s senior debt is unrated by Standard & Poor’s or is rated at less than investment grade by Standard & Poor’s, such Party shall comply with the insurance requirements applicable to it under Articles 18.3.1 through 18.3.9.

Developer and Connecting Transmission Owner agree to report to each

other in writing as soon as practical all accidents or occurrences resulting in injuries to any person, including death, and any property damage arising out of this Agreement.

Subcontractors of each party must maintain the same insurance

requirements stated under Articles 18.3.1 through 18.3.9 and comply with the Additional Insured

53

SERVICE AGREEMENT NO. 2535

requirements herein. In addition, their policies must state that they are primary and noncontributory and contain a waiver of subrogation.

ARTICLE 19. ASSIGNMENT

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

Parties; provided that a Party may assign this Agreement without the consent of the other Parties   
to any Affiliate of the assigning Party with an equal or greater credit rating and with the legal   
authority and operational ability to satisfy the obligations of the assigning Party under this   
Agreement; provided further that a Party may assign this Agreement without the consent of the   
other Parties in connection with the sale, merger, restructuring, or transfer of a substantial   
portion or all of its assets, including the Attachment Facilities it owns, so long as the assignee in   
such a transaction directly assumes in writing all rights, duties and obligations arising under this   
Agreement; and provided further that the Developer shall have the right to assign this   
Agreement, without the consent of the NYISO or Connecting Transmission Owner, for collateral   
security purposes to aid in providing financing for the Large Generating Facility, provided that   
the Developer will promptly notify the NYISO and Connecting Transmission Owner of any such   
assignment. Any financing arrangement entered into by the Developer pursuant to this Article   
will provide that prior to or upon the exercise of the secured party’s, trustee’s or mortgagee’s   
assignment rights pursuant to said arrangement, the secured creditor, the trustee or mortgagee   
will notify the NYISO and Connecting Transmission Owner of the date and particulars of any   
such exercise of assignment right(s) and will provide the NYISO and Connecting Transmission   
Owner with proof that it meets the requirements of Articles 11.5 and 18.3. Any attempted   
assignment that violates this Article is void and ineffective. Any assignment under this   
Agreement shall not relieve a Party of its obligations, nor shall a Party’s obligations be enlarged,   
in whole or in part, by reason thereof. Where required, consent to assignment will not be   
unreasonably withheld, conditioned or delayed.

ARTICLE 20. SEVERABILITY

If any provision in this Agreement is finally determined to be invalid, void or

unenforceable by any court or other Governmental Authority having jurisdiction, such

determination shall not invalidate, void or make unenforceable any other provision, agreement or   
covenant of this Agreement; provided that if the Developer (or any third party, but only if such   
third party is not acting at the direction of the Connecting Transmission Owner) seeks and   
obtains such a final determination with respect to any provision of the Alternate Option (Article

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

ARTICLE 21. COMPARABILITY

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

54

SERVICE AGREEMENT NO. 2535

ARTICLE 22. CONFIDENTIALITY

22.1 Confidentiality.

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

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

22.2 Term.

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

22.3 Confidential Information.

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

22.4 Scope.

Confidential Information shall not include information that the receiving Party can

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

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

Information of the disclosing Party; (5) is, or becomes, publicly known, through no wrongful act   
or omission of the receiving Party or Breach of this Agreement; or (6) is required, in accordance   
with Article 22.9 of this Agreement, Order of Disclosure, to be disclosed by any Governmental   
Authority or is otherwise required to be disclosed by law or subpoena, or is necessary in any   
legal proceeding establishing rights and obligations under this Agreement. Information   
designated as Confidential Information will no longer be deemed confidential if the Party that   
designated the information as confidential notifies the other Party that it no longer is   
confidential.

55

SERVICE AGREEMENT NO. 2535

22.5 Release of Confidential Information.

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

22.6 Rights.

Each Party retains all rights, title, and interest in the Confidential Information that each Party discloses to the other Party. The disclosure by each Party to the other Parties of   
Confidential Information shall not be deemed a waiver by any Party or any other person or entity of the right to protect the Confidential Information from public disclosure.

22.7 No Warranties.

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

22.8 Standard of Care.

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

22.9 Order of Disclosure.

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

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

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

56

SERVICE AGREEMENT NO. 2535

22.10 Termination of Agreement.

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

22.11 Remedies.

The Parties agree that monetary damages would be inadequate to compensate a Party for   
another Party’s Breach of its obligations under this Article 22. Each Party accordingly agrees   
that the other Parties shall be entitled to equitable relief, by way of injunction or otherwise, if the   
first Party Breaches or threatens to Breach its obligations under this Article 22, which equitable   
relief shall be granted without bond or proof of damages, and the receiving Party shall not plead   
in defense that there would be an adequate remedy at law. Such remedy shall not be deemed an   
exclusive remedy for the Breach of this Article 22, but shall be in addition to all other remedies   
available at law or in equity. The Parties further acknowledge and agree that the covenants

contained herein are necessary for the protection of legitimate business interests and are

reasonable in scope. No Party, however, shall be liable for indirect, incidental, or consequential   
or punitive damages of any nature or kind resulting from or arising in connection with this   
Article 22.

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

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

57

SERVICE AGREEMENT NO. 2535

22.13 Required Notices Upon Requests or Demands for Confidential Information

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

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

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

ARTICLE 23. DEVELOPER AND CONNECTING TRANSMISSION OWNER   
 NOTICES OF ENVIRONMENTAL RELEASES

Developer and Connecting Transmission Owner shall each notify the other Party, first

orally and then in writing, of the release of any Hazardous Substances, any asbestos or lead

abatement activities, or any type of remediation activities related to the Large Generating Facility   
or the Attachment Facilities, each of which may reasonably be expected to affect the other Party.   
The notifying Party shall: (i) provide the notice as soon as practicable, provided such Party   
makes a good faith effort to provide the notice no later than twenty-four hours after such Party   
becomes aware of the occurrence; and (ii) promptly furnish to the other Party copies of any   
publicly available reports filed with any Governmental Authorities addressing such events.

ARTICLE 24. INFORMATION REQUIREMENT

24.1 Information Acquisition.

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

24.2 Information Submission by Connecting Transmission Owner.

The initial information submission by Connecting Transmission Owner shall occur no   
later than one hundred eighty (180) Calendar Days prior to Trial Operation and shall include   
New York State Transmission System information necessary to allow the Developer to select   
equipment and meet any system protection and stability requirements, unless otherwise mutually   
agreed to by the Developer and Connecting Transmission Owner. On a monthly basis   
Connecting Transmission Owner shall provide Developer and NYISO a status report on the   
construction and installation of Connecting Transmission Owner’s Attachment Facilities and   
System Upgrade Facilities and System Deliverability Upgrades, including, but not limited to, the   
following information: (1) progress to date; (2) a description of the activities since the last

58

SERVICE AGREEMENT NO. 2535

report; (3) a description of the action items for the next period; and (4) the delivery status of equipment ordered.

24.3 Updated Information Submission by Developer.

The updated information submission by the Developer, including manufacturer

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

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

Transmission Owner and NYISO pursuant to an Interconnection Study Agreement among

Connecting Transmission Owner, NYISO and Developer and this difference may be reasonably   
expected to affect the other Parties’ facilities or the New York State Transmission System, but   
does not require the submission of a new Interconnection Request, then NYISO will conduct   
appropriate studies to determine the impact on the New York State Transmission System based   
on the actual data submitted pursuant to this Article 24.3. Such studies will provide an estimate   
of any additional modifications to the New York State Transmission System, Connecting

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

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

24.4 Information Supplementation.

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

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

59

SERVICE AGREEMENT NO. 2535

the response of the Large Generating Facility’s terminal or field voltage are acceptable if

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

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

ARTICLE 25. INFORMATION ACCESS AND AUDIT RIGHTS

25.1 Information Access.

Each Party (“Disclosing Party”) shall make available to another Party (“Requesting

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

25.2 Reporting of Non-Force Majeure Events.

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

25.3 Audit Rights.

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

60



SERVICE AGREEMENT NO. 2535

portions of such accounts and records that relate to the Party’s performance and satisfaction of obligations under this Agreement. Each Party shall keep such accounts and records for a period equivalent to the audit rights periods described in Article 25.4 of this Agreement.

25.4 Audit Rights Periods.

Audit Rights Period for Construction-Related Accounts and Records.

Accounts and records related to the design, engineering, procurement, and construction of Connecting Transmission Owner’s Attachment Facilities and System Upgrade Facilities and   
System Deliverability Upgrades shall be subject to audit for a period of twenty-four months   
following Connecting Transmission Owner’s issuance of a final invoice in accordance with   
Article 12.2 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 25.4.1 of this Agreement shall be   
subject to audit as follows: (i) for an audit relating to cost obligations, the applicable audit rights   
period shall be twenty-four months after the auditing Party’s receipt of an invoice giving rise to   
such cost obligations; and (ii) for an audit relating to all other obligations, the applicable audit   
rights period shall be twenty-four months after the event for which the audit is sought.

25.5 Audit Results.

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

ARTICLE 26. SUBCONTRACTORS

26.1 General.

Nothing in this Agreement shall prevent a Party from utilizing the services of any

subcontractor as it deems appropriate to perform its obligations under this Agreement; provided, however, that each Party shall require its subcontractors to comply with all applicable terms and conditions of this Agreement in providing such services and each Party shall remain primarily liable to the other Parties for the performance of such subcontractor.

26.2 Responsibility of Principal.

The creation of any subcontract relationship shall not relieve the hiring Party of any of its   
obligations under this Agreement. The hiring Party shall be fully responsible to the other Parties   
for the acts or omissions of any subcontractor the hiring Party hires as if no subcontract had been   
made; provided, however, that in no event shall the NYISO or Connecting Transmission Owner   
be liable for the actions or inactions of the Developer or its subcontractors with respect to   
obligations of the Developer under Article 5 of this Agreement. Any applicable obligation

61

SERVICE AGREEMENT NO. 2535

imposed by this Agreement upon the hiring Party shall be equally binding upon, and shall be construed as having application to, any subcontractor of such Party.

26.3 No Limitation by Insurance.

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

ARTICLE 27. DISPUTES

27.1 Submission.

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

27.2 External Arbitration Procedures.

Any arbitration initiated under this Agreement shall be conducted before a single neutral   
arbitrator appointed by the Parties. If the Parties fail to agree upon a single arbitrator within ten

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

27.3 Arbitration Decisions.

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

ninety (90) Calendar Days of appointment and shall notify the Parties in writing of such decision   
and the reasons therefor. The arbitrator(s) shall be authorized only to interpret and apply the   
provisions of this Agreement and shall have no power to modify or change any provision of this   
Agreement in any manner. The decision of the arbitrator(s) shall be final and binding upon the   
Parties, and judgment on the award may be entered in any court having jurisdiction. The   
decision of the arbitrator(s) may be appealed solely on the grounds that the conduct of the

62



SERVICE AGREEMENT NO. 2535

arbitrator(s), or the decision itself, violated the standards set forth in the Federal Arbitration Act or the Administrative Dispute Resolution Act. The final decision of the arbitrator must also be filed with FERC if it affects jurisdictional rates, terms and conditions of service, Attachment Facilities, System Upgrade Facilities, or System Deliverability Upgrades.

27.4 Costs.

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

27.5 Termination.

Notwithstanding the provisions of this Article 27, any Party may terminate this

Agreement in accordance with its provisions or pursuant to an action at law or equity. The issue of whether such a termination is proper shall not be considered a Dispute hereunder.

ARTICLE 28. REPRESENTATIONS, WARRANTIES AND COVENANTS

28.1 General.

Each Party makes the following representations, warranties and covenants:

Good Standing.

Such Party is duly organized, validly existing and in good standing under the laws of the state in which it is organized, formed, or incorporated, as applicable; that it is qualified to do business in the state or states in which the Large Generating Facility, Attachment Facilities and System Upgrade Facilities and System Deliverability Upgrades owned by such Party, as   
applicable, are located; and that it has the corporate power and authority to own its properties, to carry on its business as now being conducted and to enter into this Agreement and carry out the transactions contemplated hereby and perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement.

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).

63



SERVICE AGREEMENT NO. 2535

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 29. MISCELLANEOUS

29.1 Binding Effect.

This Agreement and the rights and obligations hereof, shall be binding upon and shall inure to the benefit of the successors and permitted assigns of the Parties hereto.

29.2 Conflicts.

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

29.3 Rules of Interpretation.

This Agreement, unless a clear contrary intention appears, shall be construed and

interpreted as follows: (1) the singular number includes the plural number and vice versa; (2)

reference to any person includes such person’s successors and assigns but, in the case of a Party,   
only if such successors and assigns are permitted by this Agreement, and reference to a person in   
a particular capacity excludes such person in any other capacity or individually; (3) reference to   
any agreement (including this Agreement), document, instrument or tariff means such   
agreement, document, instrument, or tariff as amended or modified and in effect from time to   
time in accordance with the terms thereof and, if applicable, the terms hereof; (4) reference to   
any Applicable Laws and Regulations means such Applicable Laws and Regulations as   
amended, modified, codified, or reenacted, in whole or in part, and in effect from time to time,   
including, if applicable, rules and regulations promulgated thereunder; (5) unless expressly stated   
otherwise, reference to any Article, Section or Appendix means such Article of this Agreement   
or such Appendix to this Agreement, or such Section to the Standard Large Facility

64

SERVICE AGREEMENT NO. 2535

Interconnection Procedures or such Appendix to the Standard Large Facility Interconnection

Procedures, as the case may be; (6) “hereunder”, “hereof’, “herein”, “hereto” and words of

similar import shall be deemed references to this Agreement as a whole and not to any particular   
Article or other provision hereof or thereof; (7) “including” (and with correlative meaning   
“include”) means including without limiting the generality of any description preceding such   
term; and (8) relative to the determination of any period of time, “from” means “from and   
including”, “to” means “to but excluding” and “through” means “through and including”.

29.4 Compliance.

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

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

29.5 Joint and Several Obligations.

Except as otherwise stated herein, the obligations of NYISO, Developer and Connecting Transmission Owner are several, and are neither joint nor joint and several.

29.6 Entire Agreement.

Except as described in Section 2(m) of Appendix C, 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. Except as described in Section 2(m) of Appendix C, there are no other   
agreements, representations, warranties, or covenants which constitute any part of the   
consideration for, or any condition to, either Party’s compliance with its obligations under this   
Agreement.

29.7 No Third Party Beneficiaries.

This Agreement is not intended to and does not create rights, remedies, or benefits of any character whatsoever in favor of any persons, corporations, associations, or entities other than the Parties, and the obligations herein assumed are solely for the use and benefit of the Parties, their successors in interest and permitted their assigns.

29.8 Waiver.

The failure of a Party to this Agreement to insist, on any occasion, upon strict

performance of any provision of this Agreement will not be considered a waiver of any

obligation, right, or duty of, or imposed upon, such Party. Any waiver at any time by either   
Party of its rights with respect to this Agreement shall not be deemed a continuing waiver or a   
waiver with respect to any other failure to comply with any other obligation, right, duty of this

65

SERVICE AGREEMENT NO. 2535

Agreement. Termination or Default of this Agreement for any reason by the Developer shall not constitute a waiver of the Developer’s legal rights to obtain Capacity Resource Interconnection Service and Energy Resource Interconnection Service from the NYISO and Connecting   
Transmission Owner in accordance with the provisions of the ISO OATT. Any waiver of this Agreement shall, if requested, be provided in writing.

29.9 Headings.

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

29.10 Multiple Counterparts.

This Agreement may be executed in two or more counterparts, each of which is deemed an original but all constitute one and the same instrument.

29.11 Amendment.

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

29.12 Modification by the Parties.

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

29.13 Reservation of Rights.

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

29.14 No Partnership.

This Agreement shall not be interpreted or construed to create an association, joint   
venture, agency relationship, or partnership among the Parties or to impose any partnership   
obligation or partnership liability upon any Party. No Party shall have any right, power or

66

SERVICE AGREEMENT NO. 2535

authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, any other Party.

29.15 Other Transmission Rights.

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

67

SERVICE AGREEMENT NO. 2535

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

New York Independent System Operator, Inc.

By:

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

Title:

Date:

Consolidated Edison Company of New York, Inc.

By:

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

Title:

Date:

NRG Berrians East Development LLC

By:

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

Title:

Date:

68

SERVICE AGREEMENT NO. 2535

APPENDICES

Appendix A

Attachment Facilities and System Upgrade Facilities

Appendix B

Milestones

Appendix C

Interconnection Details

Appendix D

Security Arrangements Details

Appendix E-1

Initial Synchronization Date

Appendix E-2

Commercial Operation Date

Appendix F

Addresses for Delivery of Notices and Billings

SERVICE AGREEMENT NO. 2535

APPENDIX A

ATTACHMENT FACILITIES AND SYSTEM UPGRADE FACILITIES

1. Attachment Facilities:

(a) Developer’s Attachment Facilities:

The Developer’s Attachment Facilities (“DAFs”) include all of the facilities between the Developer’s side of the Point of Change of Ownership (“PCO”) and the Large Generating   
Facility. As depicted in Figure A-1 to this Appendix A, the DAFs consist of the following major electrical and physical equipment:

i. Existing Developer’s Attachment Facilities:

To be Retired

• Electro-mechanical relays;

• Twelve (12) generator breakers 13.8 kV, 1,000 MVA, 3,000A;

• Three (3) generator step-up (“GSU”) transformers, 138/13.8 kV, 1 @ 180 MVA,

2 @ 151.2 MVA;

• Twelve (12) unit auxiliary transformers, 3x150kVA, 3x500kVA, and   
 6x112.5kVA;

To be Replaced

• Metering and protection system current transformers (“CTs”) designated M30,   
 M31 and M32;

• Three existing disconnect switches 138kV designated F6E1, F-5AW and F3W1;

To be Retained

• Three (3) 138 kV feeders - underground (“UG”) designated 34126 (2760 ft),   
 34127 (2060 ft), and 34129 (2350 ft).

ii. New Developer’s Attachment Facilities:

• Microprocessor relays;

• One (1) generator breaker 24kV, 15,000 A, 100 kAIC;

• Three (3) GSU transformers 138/24kV, 109/146/182 MVA with asymmetrical   
 under-load tap changer (“ULTC”) on H winding having the following taps:   
 +12.5%/-7.5% (10 up / 6 down at 1.25% steps);

• One (1) unit auxiliary transformer 24/4.16kV, 19/25.3 MVA with ULTC having   
 the following taps;+/- 5% (2 up / 2 down at 2.5% steps);

• Three (3) GSU breakers 138kV;

• Three (3) GSU breaker disconnect switches 138kV;

• Three (3) GSU disconnect switches 24kV;

• Three (3) disconnect switches 138 kV in Astoria East yard (replacements for   
 F6E1, F-5AW and F3W1);

A-1

SERVICE AGREEMENT NO. 2535

• Extension to existing three (3) 138 kV feeders - underground (“UG”) from GSU   
 disconnect switches to existing UG feeder potheads (675 ft, 517 ft and 352 ft);

• Metering and protection system potential transformers (“PTs”)/ current   
 transformers (“CTs”);

• Leased digital T1 communication path from approved supplier for relay   
 protection; and

• Direct fiber optic communication path from Astoria East Substation to

Developer’s facility used as an independent and redundant communication circuit for relay protection.

Connecting Transmission Owner will have operational jurisdiction and control over the

following new Developer’s Attachment Facilities: three (3) disconnect switches 138 kV in   
Astoria East yard (replacements for F6E1, F-5AW and F3W1) shown in Figure A-1. The   
designation of these new disconnect switches will remain the same, i.e., F6E1, F-5AW, and   
F3W1.

(b) Connecting Transmission Owner’s Attachment Facilities:

The PCO and the Point of Interconnection (“POI”) are designated on Figure A-1 to this Appendix A and as described in Appendix C. The Connecting Transmission Owner’s   
Attachment Facilities (“CTOAFs”) are depicted on Figure A-1 and consist of the following major electrical and physical equipment located as indicated on Figure A-1:

i. Existing Connecting Transmission Owner’s Attachment Facilities:

• Bus work 138kV;

• Potential transformers located at Astoria East Substation on bus sections 6E, 3W,   
 and 4AW and connected to Developer’s revenue meters M30, M32, and M31,   
 respectively; and

• Necessary accessories and appurtenances to interconnect the feeder to the Astoria   
 East Substation bus sections as shown in Appendix A-1.

ii. New Connecting Transmission Owner’s Attachment Facilities:

• CTO will determine if any new or replacement poles are required to facilitate   
 Attachment Facilities during the detailed design phase.

The Developer will be responsible for all costs associated with Developer’s Attachment Facilities and Connecting Transmission Owner’s Attachment Facilities.

2. System Upgrade Facilities (“SUFs”)

a. Stand Alone System Upgrade Facilities

None.

A-2

SERVICE AGREEMENT NO. 2535

b. Other System Upgrade Facilities

The Large Generating Facility will interconnect to Connecting Transmission Owner’s   
transmission system at the Connecting Transmission Owner’s 138 kV Astoria East Substation.   
To accommodate this interconnection, relays at Connecting Transmission Owner’s Astoria East   
Substation will be modified and upgraded to Connecting Transmission Owner’s current design   
standards.

The relay modification will consist of two independent microprocessor based protection schemes utilizing diverse and redundant communication channels. To communicate and   
interface with the modified protection scheme, appropriate matching and interoperable relays will need to be installed at the Developer’s facility (see DAFs in Section 1(a) above) as per the Developer’s design standards. These System Upgrade Facilities shall include the following major electrical and physical equipment:

• Four (4) SEL-411 and four (4) GE Alstom MiCOM 546 microprocessor relays, matching   
 the Connecting Transmission Owner’s standards and approved part number; alternative   
 relay part or manufacturer may only be used with CTO written approval;

• One (1) RFL IMUX 2000 or an equivalent multiplexing device as approved in writing by   
 the Connecting Transmission Owner;

• Three (3) fiber service units (“FSU”);

• Twelve (12) electroswitch self-resetting lock out relays of Connecting Transmission   
 Owner’s approved part number;

• Approved SEL GPS clocks;

• Any necessary excavation, poles, or raceway modifications on Connecting Transmission   
 Owner’s property necessary to facilitate modifications and construction; and

• Connecting Transmission Owner approved terminal blocks, flexi-test switches, boxes,   
 cables, conduits, trenches, fiber optic devices, hardware, and other accessories necessary   
 for the construction installation, testing, or maintenance of SUFs.

The change of ownership for communication circuits will be defined for the leased

circuit with the approved supplier. For the direct fiber optic communication path, the

demarcation point will be the first termination point or patch panel within the property fence-line of Astoria East Substation. The communication path from demarcation points to relay   
connection point within Astoria East Substation, will be performed by the Connecting   
Transmission Owner. Any replacement poles or upgrades to Connecting Transmission Owner owned equipment necessary to facilitate the direct fiber optic communication path (see DAFs in Section 1(a) above) will be performed by Connecting Transmission Owner.

The Connecting Transmission Owner will design, procure, construct, install, and own the   
Other System Upgrade Facilities. The Developer is responsible for all costs associated with

A-3

SERVICE AGREEMENT NO. 2535

Other System Upgrade Facilities. Prior to the Connecting Transmission Owner performing

engineering work, issuing purchase orders for equipment, or performing construction activities   
associated with the Attachment Facilities and Other System Upgrade Facilities, the Developer   
will issue to the Connecting Transmission Owner the applicable Notice to Proceed to pursue the   
specific activity, and Developer will provide the Connecting Transmission Owner with the   
necessary funds to cover the related costs in advance of any expense to the Connecting   
Transmission Owner.

Based on the project configuration, it will be necessary to design and implement a

protection and control scheme to mitigate unintentional flows during specific contingencies and   
during certain operating conditions. The additional scope and any necessary changes as a result   
of the aforementioned protection and control schemes due to the Developer’s configuration are   
not included in the Class Year’s System Upgrade Facilities cost estimate, and any estimated   
costs shall be funded in advance by the Developer. Any changes or testing on protection and   
control schemes to facilitate transition or modifications to the new facility are not included in the   
Class Year’s System Upgrade Facilities cost estimate, and any estimated costs shall be funded in   
advance by the Developer.

3. System Deliverability Upgrades:

None.

4. Estimated Costs

Description Cost

System Upgrade Facilities $4,982,000

Total 4,982,000

A-4

SERVICE AGREEMENT NO. 2535

Figure A-1

[CONTAINS CEII - THIS PAGE REMOVED FROM PUBLIC VERSION]

B-1

SERVICE AGREEMENT NO. 2535

APPENDIX B

MILESTONES

1. Selected Option Pursuant to Article 5.1

The Standard Option is selected, and additionally the Connecting Transmission Owner will design, procure, construct, install, and own the Other System Upgrade Facilities.

2. Milestones

The following milestones shall apply to the construction and interconnection of the Large Generating Facility.

With the exception of the In-Service Dates and Commercial Operation Date, the timeframes

projected for the milestones are non-binding estimates. The In-Service Dates and Commercial   
Operations Date can only be extended in accordance with the requirements set forth in   
Attachment X of the NYISO OATT. The actual dates for completion of the milestones are   
highly dependent upon lead times for the procurement of equipment and material, the availability   
of labor, outage scheduling, receipt of regulatory approvals, and the results of equipment testing.

Task Milestone Date Responsible Party

1. Begin power island & EPC Completed Developer

selection process

2. Begin engineering/design of New Completed Developer

Facility (as defined in Appendix C)

3. Issue Notice to Proceed\* for Completed for Feeder Developer

CTOAFs and Other SUF’s 1

engineering and procurement

4. Begin CTOAFs and Other SUF’s Completed Connecting

engineering/design Transmission Owner

5. Begin CTOAFs and Other SUF’s Completed Connecting

procurement Transmission Owner

6. Complete CTOAFs and Other April 2021 Connecting

SUF’s engineering - Transmission Owner

Feeder 1

7. Begin construction of New Facility July 2021 Developer

8. Complete CTOAFs and Other August 2021 Connecting

SUF’s engineering - Transmission Owner

Feeder 2

9. Complete one or more September 2021 Developer

communication paths

10. Complete CTOAFs and Other September 2021 Connecting

SUF’s procurement - Feeder 1 Transmission Owner

B-2

SERVICE AGREEMENT NO. 2535

Task Milestone

11. Issue Notice to Proceed for

CTOAFs and Other SUF’s construction

12. Begin CTOAFs and Other SUF’s

construction - Feeder 1

13. Complete CTOAFs and Other

SUF’s engineering - Feeder 3

14. Complete CTOAFs and Other

SUF’s construction - Feeder 1

15. In Service Date - Feeder 1

16. Complete CTOAFs and Other

SUF’s procurement - Feeder 2

17. Begin CTOAFs and Other SUF’s

construction - Feeder 2

18. Complete CTOAFs and Other

SUF’s construction - Feeder 2

19. In Service Date - Feeder 2

20. Complete CTOAFs and Other

SUF’s procurement - Feeder 3

21. Begin CTOAFs and Other SUF’s

construction - Feeder 3

22. Complete CTOAFs and Other

SUF’s construction- Feeder 3

23. In Service Date - Feeder 3

24. Complete All CTOAFs and Other

SUF’s construction

25. Initial Synchronization Date

26. Begin Trial Operations

27. Commercial Operation Date

Date Responsible Party

September 2021 Developer

October 2021 Connecting

Transmission Owner

December 2021 Connecting

Transmission Owner

January 2022 Connecting

Transmission Owner

January 2022 Developer

January 2022 Connecting

Transmission Owner

February 2022 Connecting

Transmission Owner

May 2022 Connecting

Transmission Owner

May 2022 Developer

September 2022 Connecting

Transmission Owner

October 2022 Connecting

Transmission Owner

January 2023 Connecting

Transmission Owner

January 2023 Developer

January 2023 Connecting

Transmission Owner

January 2023 Developer

February 2023 Developer   
June 2023 Developer

\* Notice to Proceed is a letter on the Developer’s letterhead, including signature from a person   
having adequate authority, to authorize the Connecting Transmission Owner to proceed with the associated step and indicating intent to make immediate advanced payment to cover the costs of the authorized step or an amount mutually agreed to by the Developer and Connecting   
Transmission Owner.

B-3

SERVICE AGREEMENT NO. 2535

APPENDIX C

INTERCONNECTION DETAILS

1. Description of Large Generating Facility, including Point of Interconnection

The Developer owns an existing Large Generating Facility, located in the city of Astoria,   
in Queens County, New York (“Existing Facility”). The Developer proposes to replace twelve

(12) gas turbine generators of the Existing Facility (gas turbines (“GTs”) 2, 3, and 4 (PTIDs

24094 through 24105)) which currently interconnect at the 138kV Astoria East Substation with a new Large Generating Facility (“New Facility”) consisting of one (1) simple cycle unit with a summer capability of 431 MW and winter capability of 439 MW. The New Facility will also require the demolition of the Westinghouse peaking units (PTIDs 24106-24108, 24110, 24225-  
24227), which interconnect at the 138kV Astoria West substation.

The Developer intends to sequence construction of the Developer’s Attachment

Facilities, Connecting Transmission Owner’s Attachment Facilities, and Other System Upgrade   
Facilities on a feeder by feeder basis. The project Commercial Operation Date will be achieved   
following the In Service Date of all three feeders and completion of Trial Operation. The   
Developer and CTO will work together to coordinate the construction and interconnection of the   
New Facility.

The major equipment within this New Facility will include:

• One (1) dual-fuel GE 7HA.03 simple cycle turbine with Selective Catalytic Reduction   
 and a summer capability of 431 MW and winter capability of 439 MW.

The New Facility will utilize existing feeders 34126, 34127, and 34129 at the current   
Point of Interconnection for Existing Facility GT’s 2 (Astoria GT 2-1, Astoria GT 2-2, Astoria GT 2-3, Astoria GT 2-4 generators), 3 (Astoria GT 3-1, Astoria GT 3-2, Astoria GT 3-3, Astoria GT 3-4 generators), and 4 (Astoria GT 4-1, Astoria GT 4-2, Astoria GT 4-3, Astoria GT 4-4   
generators). The New Facility is temperature sensitive and has a maximum summer capability and a maximum winter capability, as specified below, and as depicted in the temperature output curve set forth below in Figure C-1.

P summer max gross   
P aux load (summer)   
P summer max net   
P winter max gross   
P aux load (winter)   
P winter max net

443.69 MW @ 87.7ºF

12.52 MW @ 87.7ºF   
431.17 MW @ 87.7ºF   
449.97 MW @ 19 ºF

11.08 MW @ 19 ºF   
438.89 MW @ 19 ºF

C-1

SERVICE AGREEMENT NO. 2535

Figure C-1

Net Unit Capacity Curves

450

400

350

300 Gas WC

Gas Base   
Gas MECL

250 ULSD WC

ULSD Base

200 ULSD MECL

150

100

0 10 20 30 40 50 60 70 80 90 100

Ambient Temperature (°F)

Curve Fit Formulas:

Gas Fuel (Base Load + Wet Compression) = 431.009501483763/(1+(T/49.9252427891926)^-33.870383195543) [T≥59°F]

Gas Fuel (Base Load) = 436.035333346285 + 0.257246098145679\*T - 0.00502006935983822\*T^2 - 0.000021141337561165\*T^3

Gas Fuel (Minimum Emissions Compliant Load) = 171.986059746174 - 3.78086834830501\*T + 0.101223432338473\*T^2 - 0.0011496159627196\*T^3 + 4.98717156656356E-06\*T^4 ULSD (Base Load + Wet Compression) = 420.352000000004/(1+(T/98.4936782604826)^63.0803112301608) [T≥59°F]

ULSD (Base Load) = 420.672156460766 + 0.263542487249661\*T - 0.00222647500138748\*T^2 - 0.0000399698050786593\*T^3

ULSD (Minimum Emissions Compliant Load) = 209.340031674099 + 0.0350817595157144\*T + 0.00466184729763454\*T^2 - 0.0000909278794492895\*T^3

The interconnection to the Connecting Transmission Owner’s transmission system will be at the Connecting Transmission Owner’s 138 kV Astoria East Substation. The three Points of   
Interconnection (“POI”) of the New Facility are as follows:

o from existing feeder 34126 at bus section 6E (between circuit breakers 5E and 6E);

o from existing feeder 34127 at bus section 4AW (between circuit breakers 4W and 5W);   
 and

o from existing feeder 34129 at bus section 3W (between circuit breakers 2W and 3W).

These three Points of Interconnection are identified on the one-line diagram in Figure A-1 in Appendix A.

The three Points of Change of Ownership (“PCO”) of the New Facility are as follows:

o at bus side terminals of 138 kV disconnect switch F6E1 of existing feeder 34126;

o at bus side terminals of 138 kV disconnect switch F-5AW of existing feeder 34127; and

o at bus side terminals of 138 kV disconnect switch F3W1 of existing feeder 34129.

These three Points of Change of Ownership are identified in Figure A-1 in Appendix A.

C-2

Net Output (MW)

SERVICE AGREEMENT NO. 2535

2. Developer Operating Requirements

a. Developer must comply with all applicable NYISO tariffs and procedures, as

amended from time to time.

b. Developer must comply with the Connecting Transmission Owner’s operating

instructions and requirements, including the following requirements, to the extent not inconsistent with the terms of this Agreement, the NYISO OATT, or applicable   
NYISO procedures.

c. The dedicated data circuits shall be maintained by Developer in accordance with

Article 8.1 of this Agreement.

d. If the Large Generating Facility’s automatic voltage regulators are not capable of

such automatic operation, as required in Article 9.5.4 of this Agreement, the

Developer shall immediately notify the Connecting Transmission Owner in addition to the mandatory NYISO notification.

e. Power Factor Design and Operation Criteria

Developer shall design and operate the Large Generating Facility to maintain an

effective power delivery at maximum capability at each Point of Interconnection at a   
power factor within the range of 0.85 lagging (vars to the Connecting Transmission   
Owner) to 0.95 leading (vars from Connecting Transmission Owner) at each   
respective Point of Interconnection. This capability will be available to the   
Connecting Transmission Owner’s system as requested by the Connecting   
Transmission Owner or the NYISO under normal system conditions (i.e., when all   
design facilities are in service), as well as in steady-state conditions occurring after   
design criteria contingencies described in the NYSRC Reliability Rules &   
Compliance Manual for Planning and Operating the New York State Power System.   
Developer shall have Under-Load Tap Changing (“ULTC”) capability on its   
Generator main power Step-up Transformers and ULTC capability on the associated   
Light & Power Transformer. Developer and the Connecting Transmission Owner will   
review DAF transformer tap settings as may be needed to optimize operation for such   
changes in transmission system conditions and implement such changes to optimize   
the tap settings with the Connecting Transmission Owner’s approval.

f. Voltage Schedules

Once the Developer has achieved Commercial Operation, NYISO shall require

Developer to operate the Large Generating Facility to transmit the reactive power

within the design capability set forth in Article 9.5.1 (Power Factor Design Criteria),   
provided that the voltage at the Point of Interconnection is within the range of 131 kV   
to 145 kV in accordance with CTO’s Transmission Planning Design Criteria TP-  
7100-18. When the voltages are outside of the range specified in TP-7100-18 due to   
conditions outside the control of CTO and the NYISO, the Developer shall also   
provide assistance consistent with Good Utility Practice within the full capability of

C-3

SERVICE AGREEMENT NO. 2535

the Large Generating Facility in restoring the voltage at the Point of Interconnection to the normal range as may be directed by the CTO or NYISO operators. If the Large Generating Facility is unable to provide the requested assistance, or maintain the   
specified power factor, it shall promptly notify both the CTO and NYISO operators through the normal verbal communications processes.

g. Operation of 138 kV GSU Circuit Breaker on Feeder 34126

• Developer shall design, procure, install, operate and maintain a relay protection   
 scheme that automatically trips 138 kV GSU circuit breaker on feeder 34126   
 when 24 kV generator circuit breaker (“GCB”) opens automatically or manually.

• 138 kV GSU circuit breaker on feeder 34126 shall be open if the Large

Generating Facility is off-line or goes off-line automatically or manually, unless both feeders 34127 and 34129 are unavailable and, as a result, station power must be delivered via feeder 34126, as described in item i. below.

h. Post Contingency Operation

• When any one of feeders 34126, 34127 or 34129 is out of service, the Large   
 Generating Facility will reduce its output to no more than 390 MW within ten

(10) minutes from the loss of the feeder. Within this ten (10) minutes interval, the reactive power output of the Large Generating Facility will be adjusted in such a manner that the apparent power flow in each one of the in-service Large   
Generating Facility feeders will not exceed 229.5 MVA.

• When any two of feeders 34126, 324127 or 34129 are out of service, the Large   
 Generating Facility will reduce its output to no more than 195 MW within ten

(10) minutes from the loss of the second one of the feeders. Within this ten (10) minutes interval, the reactive power output of the Large Generating Facility will be adjusted in such a manner that the apparent power flow in the in-service Large Generating Facility feeder will not exceed 229.5 MVA.

i. Station Power

When the Large Generating Facility (BE1) is off line, station power will be

delivered via backfeed from the Astoria East Substation through feeder 34127 or 34129 (with the 138 kV GSU breaker associated with feeder 34126 open) and the GSUs and Unit Auxiliary Transformer (“UAT”) associated with unit BE1 to the plant’s 4.16 kV bus.

When the Large Generating Facility is off line, station power delivery via

backfeed from Astoria East Substation through feeder 34126 (with 138 kV GSU breakers associated with feeders 34127 and 34129 open) may be considered only if neither of two feeders 34127 and 34129 is available.

When unit BE1 is on line, station power will be supplied from generator BE1 through the associated UAT to the plant’s 4.16 kV bus.

C-4

SERVICE AGREEMENT NO. 2535

j. Startup

When the Large Generating Facility is off-line, in a standby or in ready to start mode, station power will be supplied via backfeed through selected feeder 34127 or 34129 (or feeder 34126, if both feeders 34127 and 34129 are not available) as indicated in the previous item i. Station Power.

Upon receipt of a dispatch instruction, electrical loads of the Large Generating   
Facility will continue to be supplied via backfeed until the unit achieves Full   
Speed No Load (“FSNL”), synchronizes the generator to the system across the   
generator circuit breaker (“GCB”), closes the GCB and picks up an initial load   
increment.

Following closure of the GCB, the open 138 kV GSU breakers associated with feeder 34127 or 34129 will be closed while the 138 kV GSU breaker associated with feeder 34126 is still open. After the 138 kV GSU breakers associated with feeders 34127 and 34129 are closed and the GCB is closed, the open 138 kV GSU breaker associated with feeder 34126 will be closed as well. Then the unit will be loaded to the selected output. If any one of feeders 34126, 34127 or 34129 is   
unavailable, the selected output will not exceed 390 MW.

If neither of two feeders 34127 and 34129 is available and the station power is   
delivered via backfeed from Astoria East Substation through feeder 34126 (with   
138 kV GSU breakers associated with feeders 34127 and 34129 open), the unit   
achieves FSNL, synchronizes the generator to the system across the GCB, closes   
the GCB and picks up an initial load increment. Then the unit will be loaded to   
the selected output that will not exceed 195 MW. If one or both of feeders 34127   
and 34129 become available later, their respective 138 kV GSU breakers will be   
closed and Large Generating Facility output may be increased to a maximum of   
390 MW for any two feeders in service, or to the maximum MW output of the   
Large Generating Facility for all three feeders in service.

k. Shutdown

The unit will undertake a normal fired shutdown, where load is ramped down to a   
minimum. Then the 138kV GSU breaker associated with feeder 34126 will be   
opened first. After the 138kV GSU breaker associated with feeder 34126 is open,   
either one of the 138kV GSU breaker associated with feeder 34127 and 34129   
will be open followed by opening of the generator circuit breaker (“GCB”).

If neither of two feeders 34127 and 34129 is available and the Large Generating   
Facility delivers power to Astoria East Substation though single feeder 34126, the   
load will be ramped down to a minimum and then the GCB will be opened.

C-5

SERVICE AGREEMENT NO. 2535

l. Trial Operation

In addition to other applicable requirements, including those stated in Article 5.2,

Developer shall satisfy the following conditions before commencing Trial Operation of the Large Generating Facility:

• Sixty (60) days prior to the Initial Synchronization Date for the generating unit,   
 Developer and CTO will develop and agree on a pre-energization checklist and   
 start-up procedures, specifying the tasks that must be completed prior to the   
 Initial Synchronization Date for the generating unit.

• Developer shall complete all of the non-unit-specific checklist tasks prior to   
 initially energizing the Large Generating Facility, and unit-specific tasks prior   
 to initial synchronization of the generating unit.

• Trial Operation shall continue to the extent consistent with NYISO Procedures,   
 OATT and Services Tariff requirements, but in no event shall any synchronized   
 operation of the Large Generator Facility continue beyond July 31, 2023 if all   
 DAFs and SUFs are not completed, unless otherwise agreed by the Parties.

m. Additional Agreements

The Developer is a subsidiary of NRG Energy, Inc. Among the assets transferred subject to that certain Generating Plant and Gas Turbine Asset Purchase and Sale Agreement, as   
amended (“P/S Agreement”), between Consolidated Edison Company of New York, Inc. and   
NRG Energy, Inc., dated as of January 27, 1999, were twelve generators located at the Existing Facility that are currently in operation but will be replaced by the Large Generating Facility:   
Astoria GT 2-1, Astoria GT 2-2, Astoria GT 2-3, Astoria GT 2-4, Astoria GT 3-1, Astoria GT 3-  
2, Astoria GT 3-3, Astoria GT 3-4, Astoria GT 4-1, Astoria GT 4-2, Astoria GT 4-3, and Astoria GT 4-4 (“Existing GTs”). These listed Existing GTs will cease operation on or prior to the   
Commercial Operation Date for the Large Generating Facility and as of such Commercial   
Operation Date their interconnection rights under that certain Astoria Gas Turbine Continuing   
Site Agreement (“CSA”), between Consolidated Edison Company of New York, Inc. and NRG Energy, Inc., dated as of January 27, 1999, shall be terminated.

Also, among the assets transferred pursuant to the P/S Agreement are the following   
feeders:

• Feeder Number 34126, that is currently being used by Astoria GT 2-1, Astoria GT 2-2,   
 Astoria GT 2-3, Astoria GT 2-4 generators,

• Feeder Number 34127 that is currently be used by Astoria GT 3-1, Astoria GT 3-2,   
 Astoria GT 3-3, Astoria GT 3-4 generators, and

• Feeder Number 34129 that is currently be used by Astoria GT 4-1, Astoria GT 4-2,   
 Astoria GT 4-3, Astoria GT 4-4 generators.

Developer is proposing to continue to use Feeder Numbers 34126, 34127, and 34129 for   
the interconnection of the Large Generating Facility. Feeder Numbers 34126, 34127, and 34129

C-6

SERVICE AGREEMENT NO. 2535

have therefore been identified as an existing Developer’s Attachment Facility in Appendix A of this Agreement.

Since Feeder Numbers 34126, 34127, and 34129 were assets transferred pursuant to the P/S Agreement, the environmental provisions of the P/S Agreement will continue to apply to   
these feeders. As a result, Feeder Numbers 34126, 34127, and 34129 are subject to and will   
continue to be subject to the following environmental provisions of the P/S Agreement and CSA, which are additive or incremental to and do not conflict with the environmental provisions   
provided in the body of this Agreement:

P/S Agreement

Section 1.01 Definitions of “Environmental Law” and “Environmental Liability”;

Section 2.02(a) definition of “Auctioned Assets” and Schedule of Auctioned Assets. Section 2.03 “Assumed Obligations and Retained Liabilities”.

CSA

Section 3.12 “Environmental Matters”.

In addition, with respect to subject matters beyond the scope of this Agreement that are covered by the P/S Agreement and the CSA (including, but not limited to, obligations related to gas telemetry, obligations related to environmental matters, obligations related to gas pipe   
testing) and all obligations related to facilities other than the Existing GTs and the above-listed feeders, the provisions of the P/S Agreement and the CSA will continue to apply to these   
facilities that are located at the Existing Facility.

Except as specifically set forth herein with respect to Existing GTs that will be replaced   
by the Large Generating Facility, nothing contained herein shall be deemed to modify, amend,   
waive or terminate any provisions of the P/S Agreement or the CSA or affect any other facilities   
referenced therein. If a Party becomes aware of a conflict between this Agreement and the P/S   
Agreement and the CSA, the Party shall notify the other Parties promptly so that the Parties can   
discuss what, if any, amendment of this Agreement would be appropriate under the

circumstances.

If this Agreement terminates pursuant to Section 2.3.1 because the Large Generating

Facility is not built or does not commence operation, then the entire P/S Agreement and the CSA will govern the Existing GTs.

C-7

SERVICE AGREEMENT NO. 2535

APPENDIX D

SECURITY ARRANGEMENTS DETAILS

Infrastructure security of New York State Transmission System equipment and

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

D-1

SERVICE AGREEMENT NO. 2535

APPENDIX E-1

INITIAL SYCHRONIZATION DATE

[Date]

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

10 Krey Boulevard

Rensselaer, NY 12144

Consolidated Edison Company of New York, Inc.

4 Irving Place, Room 13 NW

New York, NY 10003

Attn: Vice President, System and Transmission Operations

Re: Large Generating Facility

Dear :

On [Date] [Developer] initially synchronized the Large Generating Facility [specify units, if   
applicable]. This letter confirms [Developer]’s Initial Synchronization Date was [specify].

Thank you.

[Signature]

[Developer Representative]

E-1

SERVICE AGREEMENT NO. 2535

APPENDIX E-2

COMMERCIAL OPERATION DATE

[Date]

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

10 Krey Boulevard

Rensselaer, NY 12144

Consolidated Edison Company of New York, Inc.

4 Irving Place, Room 13 NW

New York, NY 10003

Attn: Vice President, System and Transmission Operations

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

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

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

Thank you.

[Signature]

[Developer Representative]

E-2

SERVICE AGREEMENT NO. 2535

APPENDIX F

ADDRESSES FOR DELIVERY OF NOTICES AND BILLINGS

Notices:

NYISO:

Before commercial operation of the Large Generating Facility:

New York Independent System Operator, Inc.

Attn: Vice President, System and Resource Planning

10 Krey Boulevard

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

After commercial operation of the Large Generating Facility:

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

10 Krey Boulevard

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

Connecting Transmission Owner:

Consolidated Edison Company of New York, Inc.

4 Irving Place, Room 13 NW

New York, NY 10003

Attn: Vice President, System and Transmission Operations Phone: (212) 460-1210

Fax: (212) 353-8831

Developer:

NRG Berrians East Development LLC 804 Carnegie Center

Princeton, New Jersey 08540

Attn: Vice President, Asset Management

Billings and Payments:

Connecting Transmission Owner:

Consolidated Edison Company of New York, Inc.

F-1

SERVICE AGREEMENT NO. 2535

4 Irving Place, Room 13 NW New York, NY 10003

Attn: Vice President, System and Transmission Operations Phone: (212) 460-1210

Fax: (212) 353-8831

Developer:

NRG Berrians East Development LLC 804 Carnegie Center

Princeton, New Jersey 08540

Attn: Vice President, Asset Management

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

NYISO:

Before commercial operation of the Large Generating Facility:

New York Independent System Operator, Inc.

Attn: Vice President, System and Resource Planning

10 Krey Boulevard

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

After commercial operation of the Large Generating Facility:

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

10 Krey Boulevard

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

Connecting Transmission Owner:

Consolidated Edison Company of New York, Inc.

4 Irving Place, Room 13 NW

New York, NY 10003

Attn: Vice President, System and Transmission Operations Phone: (212) 460-1210

Fax: (212) 353-8831

F-2

SERVICE AGREEMENT NO. 2535

Developer:

NRG Berrians East Development LLC 804 Carnegie Center

Princeton, New Jersey 08540

Attn: Vice President, Asset Management

F-3