

40.25.6 APPENDIX 6 to ATTACHMENT HH

TWO-PARTY AFFECTED SYSTEM STUDY AGREEMENT

THIS AGREEMENT (“Agreement”) is made and entered into this ____ day of _____, 20 __, by and between _____, a _____ organized and existing under the laws of the State of _____ (“Affected System Interconnection Customer”) and 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”). Affected System Interconnection Customer and NYISO each may be referred to as a “Party,” or collectively as the “Parties.”

RECITALS

WHEREAS, Affected System Interconnection Customer is proposing to develop a *[description of generating or transmission facility or generating or transmission capacity addition to an existing generating or transmission facility]* consistent with the interconnection request submitted by Affected System Interconnection Customer to *[name of host region]*, dated _____, for which *[name of host region]* found impacts on the New York State Transmission System;

WHEREAS, Affected System Interconnection Customer desires to interconnect the *[generating or transmission facility]* with *[name of host region]*’s transmission system;

WHEREAS, the NYISO received notice that Affected System Interconnection Customer’s proposed interconnection to *[name of host region]*’s transmission system may impact the New York State Transmission System, indicated its affirmative intent to conduct an Affected System Study, and provided this Agreement to the Affected System Interconnection Customer for its execution; and

WHEREAS, the Affected System Interconnection Customer has executed and delivered the Agreement, provided all required technical data, and submitted the \$100,000 study deposit in accordance with the requirements in Sections 40.8.3.4 and 40.8.3.5 of Attachment HH to the ISO OATT.

NOW, THEREFORE, in consideration of and subject to the mutual covenants contained herein, the Parties agree as follows:

- 1.0 When used in this Agreement, with initial capitalization, the terms specified, but not otherwise defined herein, shall have the meanings indicated in Section 40.1 of Attachment HH to the ISO OATT, or if not defined therein, in the ISO OATT.
- 2.0 Affected System Interconnection Customer requests, and the NYISO shall perform or cause to be performed an Affected System Study, and any required re-study, in accordance with the requirements in Section 40.8.3 of Attachment HH to the ISO OATT. The terms of Section 40.8.3 of Attachment HH to the ISO OATT are hereby incorporated herein by reference, as such OATT requirements may be amended from time to time.

3.0 The scope of the Affected System Study shall be subject to the assumptions set forth in Attachment A to this Agreement. The NYISO shall have no obligation to study impacts of Affected System Interconnection Customers of which it is not notified.

4.0 The Affected System Study will be based upon the technical information provided by Affected System Interconnection Customer and *[name of host region]*. The NYISO reserves the right to request additional technical information from Affected System Interconnection Customer as may reasonably become necessary consistent with Good Utility Practice during the course of the Affected System Study, and Affected System Interconnection Customer shall provide such information in accordance with the requirements in Section 40.8.3 of Attachment HH.

5.0 The Affected System Study shall in accordance with the requirements in Section 40.8.3.6: (i) identify whether any Affected System Network Upgrades are required to address the impact of the Affected System Interconnection Customer's proposed interconnection to another region on the reliability of the New York State Transmission System and (ii) determine any required Affected System Network Upgrades, including the estimated cost and a preliminary schedule for the Affected System Network Upgrades.

6.0 Study Deposit and Study Costs

6.1 Affected System Interconnection Customer shall provide a study deposit in the amount of \$100,000 with the executed Agreement in accordance with Section 40.8.3.5 of Attachment HH to the ISO OATT.

6.2 Affected System Interconnection Customer shall be responsible for the actual costs incurred by the NYISO and any subcontractor, including Affected Transmission Owner or Affected System Operator, hired to perform study work, as computed on a time and materials basis in accordance with the rates attached as Appendix B hereto, including any re-study work. The ISO shall invoice the Affected System Interconnection Customer, and Affected System Interconnection Customer shall pay the invoiced amount, in accordance with the requirements in Section 40.24.3 of Attachment HH to the ISO OATT. NYISO shall continue to hold the amounts on deposit until settlement of the final invoice in accordance with the requirements in Section 40.24.3.

7.0 Upon completion of the Affected System Study, the NYISO will deliver the Affected System Study Report to the Affected System Interconnection Customer and *[name of host region]* and will meet with the Affected System Interconnection Customer to discuss the study results in accordance with the requirements in Section 40.8.3.8 to Attachment HH. Following completion of this meeting, the ISO will commence an iterative decision process in accordance with the requirements in Section 40.8.3.10 by which an Interconnection Customer may accept its allocated costs for any Affected System Network Upgrades and pay cost or post Security to the Affected Transmission Owner or Affected System Operator for these facilities.

8.0 Miscellaneous.

- 8.1 Accuracy of Information. Except as Affected System Interconnection Customer may otherwise specify in writing when it provides information to the NYISO under this Agreement, Affected System Interconnection Customer represents and warrants that to the best of its knowledge and belief the information it has provided or subsequently provides to the NYISO is and shall be accurate and complete as of the date the information is provided. Affected System Interconnection Customer shall promptly provide the NYISO with any additional information needed to update information previously provided to the extent permitted by Attachment HH to the ISO OATT.
- 8.2 Disclaimer of Warranty. In performing the Affected System Study or re-study, the NYISO and any subcontractor consultants engaged by the NYISO will have to rely on information provided by Affected System Interconnection Customer, and possibly by third parties, and may not have control over the accuracy of such information. Accordingly, neither the NYISO nor any subcontractor consultant engaged by the NYISO makes any warranties, express or implied, whether arising by operation of law, course of performance or dealing, custom, usage in the trade or profession, or otherwise, including without limitation implied warranties of merchantability and fitness for a particular purpose, with regard to the accuracy, content, or conclusions of the Affected System Study or re-study. Affected System Interconnection Customer acknowledges that it has not relied on any representations or warranties by the NYISO or its subcontractor consultants not specifically set forth herein and that no such representations or warranties have formed the basis of its bargain hereunder.
- 8.3 Limitation of Liability. The NYISO or any subcontractor consultants engaged by the NYISO shall not be liable for direct damages, including money damages or other compensation, for actions or omissions by the NYISO or a subcontractor consultant in performing its obligations under this Agreement, except to the extent such act or omission by the NYISO or a subcontractor consultant is found to result from its gross negligence or willful misconduct. In no event shall either Party or its subcontractor consultants be liable for indirect, special, incidental, punitive, or consequential damages of any kind including loss of profits, arising under or in connection with this Agreement or the Affected System Study or re-study or any reliance on the Affected System Study or re-study by either Party or third parties, even if one or more of the Parties or its subcontractor consultants have been advised of the possibility of such damages. Nor shall either Party or its subcontractor consultants be liable for any delay in delivery or for the non-performance or delay in performance of its obligations under this Agreement, except as otherwise indicated in Attachment HH to the ISO OATT.
- 8.4 Third-Party Beneficiaries. Without limitation of Sections 8.2 and 8.3 of this Agreement, Affected System Interconnection Customer further agrees that subcontractor consultants hired by NYISO to conduct or review, or to assist in the conducting or reviewing, the Affected System Study or re-study of the Interconnection Request shall be deemed third party beneficiaries of these Sections 8.2 and 8.3.

- 8.5 **Term and Termination.** This Agreement shall be effective from the date hereof and, unless earlier terminated in accordance with this Section 8.5, shall continue in effect until the later of: (i) the Affected System Study and re-study and the final iterative decision period is completed and (ii) the Affected System Interconnection Customer makes its final payment under this Agreement and is refunded any remaining portion of its study deposit. The Affected System Interconnection Customer or NYISO may terminate this Agreement upon the withdrawal of the Affected System Interconnection Customer's Queue Position from the NYISO Queue or upon the ISO's receipt of notice that the Affected System Interconnection Customer's project has been withdrawn from the region in which it proposes to interconnect.
- 8.6 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to any choice of laws provisions.
- 8.7 **Severability.** In the event that any part of this Agreement is deemed as a matter of law to be unenforceable or null and void, such unenforceable or void part shall be deemed severable from this Agreement and the Agreement shall continue in full force and effect as if each part was not contained herein.
- 8.8 **Counterparts.** This Agreement may be executed in counterparts, and each counterpart shall have the same force and effect as the original instrument.
- 8.9 **Amendment.** No amendment, modification or waiver of any term hereof shall be effective unless set forth in writing signed by the Parties hereto.
- 8.10 **Survival.** All warranties, limitations of liability and confidentiality provisions provided herein shall survive the expiration or termination hereof.
- 8.11 **Independent Contractor.** NYISO shall at all times be deemed to be an independent contractor and none of its employees or the employees of its subcontractors shall be considered to be employees of the Affected System Interconnection Customer as a result of this Agreement.
- 8.12 **No Implied Waivers.** The failure of a Party to insist upon or enforce strict performance of any of the provisions of this Agreement shall not be construed as a waiver or relinquishment to any extent of such Party's right to insist or rely on any such provision, rights and remedies in that or any other instances; rather, the same shall be and remain in full force and effect.
- 8.13 **Successors and Assigns.** This Agreement, and each and every term and condition hereof, shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

IN WITNESS THEREOF, the Parties have caused this Agreement to be duly executed by their duly authorized officers or agents on the day and year first above written.

New York Independent System Operator, Inc.

By: _____

Title: _____

Date: _____

[Insert name of Affected System Interconnection Customer]

By: _____

Title: _____

Date: _____

Queue Position No. ____

**Attachment A to Appendix 6
Two-Party Affected System Study Agreement**

ASSUMPTIONS USED IN CONDUCTING THE AFFECTED SYSTEM STUDY

The Affected System Study will be based upon the following assumptions:

[Assumptions to be completed by Affected System Interconnection Customer and NYISO]

**Attachment B to Appendix 6
Two-Party Affected System Study Agreement**

RATES USED FOR CONDUCTING THE AFFECTED SYSTEM STUDY

[Rates to be inserted by ISO.]