

2.1 Term and Effectiveness

2.1.1 Effectiveness:

This Tariff shall become effective on the latest of the following: (i) September 1, 1999; (ii) Commission approval of (a) this Tariff; (b) the ISO Services Tariff; (c) the ISO Agreement; (d) NYSRC Agreement; (e) the ISO/NYSRC Agreement; and (f) the ISO/TO Agreement; (iii) the date on which both the Commission and the PSC grant all necessary approvals to the Member Systems to transfer Operational Control of any facilities to the ISO or otherwise dispose of any of their property, including, without limitation, those approvals required under Section 70 of the New York Public Service Law (“PSL”) and Section 203 of the Federal Power Act (“FPA”); (iv) the last date that any other approval or authorization is received, to the extent such additional approval or authorization is necessary; (v) execution of the ISO Related Agreements with the exception of any Operating Agreement; or (vi) such later date specified by the Commission.

2.1.2 Term and Termination:

This Tariff shall remain in effect until: (i) canceled by the ISO upon sixty (60) days prior written notice in accordance with applicable Commission regulations; or (ii) the effective date of, any law, order, rule, regulation, or determination of a body of competent jurisdiction requiring termination or a material modification of this Tariff and/or Service Agreements related to this Tariff that would be inconsistent with any term or provision of the ISO/TO Agreement. Any Transmission Customer may withdraw from this Tariff on thirty (30) days prior written notice to the ISO.

2.11 Force Majeure and Indemnification and Liability Limitation

2.11.1 Force Majeure:

An event of Force Majeure means 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 Curtailment, 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 an act of negligence or intentional wrongdoing. The ISO, each Transmission Owner and each Transmission Customer will not be considered in default as to any obligation under this Tariff if prevented from fulfilling the obligation due to an event of Force Majeure. However, a party whose performance under this Tariff is hindered by an event of Force Majeure shall make all reasonable efforts to perform its obligations under this Tariff.

2.11.2 Indemnification:

The Transmission Customer shall at all times indemnify, defend, and save the ISO and each Transmission Owner harmless from, any and all damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, demands, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the ISO's or the Transmission Owner's performance of its obligations under this Tariff on behalf of the Transmission Customer, except in cases of gross negligence or intentional wrongdoing by the ISO and except in the case of gross negligence or negligence consistent with the limitation of liability standards in Section 2.11.3(a), or intentional wrongdoing by the Transmission Owner. The ISO will procure insurance or other alternative risk financing arrangements sufficient to cover the risks associated with the carrying out of its responsibilities under this Tariff. The proceeds from such insurance shall be used prior to the

invocation by the ISO of its right to indemnification under this Section, through the Rate Schedule 1 charge. Except to the extent that indemnification of the ISO is required from a particular Transmission Customer because of the acts or omissions of the Transmission Customer, indemnification of or by the ISO shall be effected through the Rate Schedule 1 charge.

Nothing in this section shall preclude the ISO from seeking indemnification of penalty costs against Customers and Market Participants, including Transmission Owners, as provided in Schedule 11 of this Tariff, except that the ISO shall not be indemnified in instances of its gross negligence or intentional misconduct.

2.11.3 Limitation of Liability

- (a) The Transmission Owner shall not be liable, whether based on contract, indemnification, warranty, equity, tort, strict liability or otherwise, to any Transmission Customer, Market Participant, User, Interconnection Customer, Interconnecting Transmission Owner or any third party or other person for any damages whatsoever, including, without limitation, direct, incidental, consequential (including, without limitation, attorneys' fees and litigation costs), punitive, special, multiple, exemplary or indirect damages arising or resulting from any act or omission in any way associated with service provided under this Tariff, including, but not limited to, any act or omission that results in an interruption, deficiency or imperfection of service, except to the extent that the Transmission Owner is found liable for gross negligence or intentional misconduct, in which case the Transmission Owner will only be liable for direct damages. Nothing in this section, however, is intended to affect obligations

otherwise provided in agreements between the ISO and Transmission Owner.

Except with respect to an interruption of service or when a Transmission Owner is acting in good faith to implement or comply with the directives of the ISO, the forgoing provisions shall not limit the liability of the Transmission Owner for damages resulting from its own negligence in connection with property owned, installed or maintained by a retail or wholesale customer of the Transmission Owner or leased by the customer from a third party, or for any damages to a retail or wholesale customer resulting from the negligence of the Transmission Owner in connection with the Transmission Owner's operation of the transmission system or from the presence or operation of the Transmission Owner's structures, equipment, wires, pipes, appliances or devices on the customer's premises.

- (b) The ISO shall not be liable, whether based on contract, indemnification, warranty, equity, tort, strict liability or otherwise, to any Transmission Customer, Market Participant, User, Interconnection Customer, Interconnecting Transmission Owner or any third party or other person for any damages whatsoever, including, without limitation, direct, incidental, consequential (including, without limitation, attorneys' fees and litigation costs), punitive, special, multiple, exemplary or indirect damages arising or resulting from any act or omission in any way associated with service provided under this Tariff, including, but not limited to, any act or omission that results in an interruption, deficiency or imperfection of service, except to the extent that the ISO is found liable for gross negligence or intentional misconduct, in which case the ISO will only be liable for direct damages. Nothing in this section, however, is intended to affect obligations

otherwise provided in agreements between the ISO and Transmission Owner.

- (c) Neither the Transmission Owner nor the ISO shall be liable for damages arising out of services provided under this Tariff, including, but not limited to, any act or omission that results in an interruption, deficiency or imperfection of service, occurring as a result of conditions or circumstances beyond the control of the Transmission Owner or ISO, as applicable, or resulting from electric system design common to the domestic electric utility industry or electric system operation practices or conditions common to the domestic electric utility industry. The Transmission Owner shall not be liable for acts or omissions done in compliance or good faith attempts to comply with directives of the ISO.

2.11.4 Applicability to Generators:

The provisions on limitation of liability and damages, and on indemnification, set forth in Sections 2.11.2 and 2.11.3 shall be applicable to Generators acting in good faith to implement or comply with the directives of the Transmission Owner or the ISO.

2.11.5 ISO Cost Recovery:

To the extent that the ISO is required to pay any money damages or compensation or pay amounts due to its indemnification of any other party, the ISO shall be allowed to recover any such amounts under Schedule 1 of this ISO OATT as part of the Administrative Charges.

2.11.6 Reliability Compliance and Penalty Cost Recovery

- (a) Customer Compliance with Reliability Standards: In accordance with applicable requirements in this Tariff and the ISO Procedures, all Customers shall conform to all applicable reliability criteria, policies, standards, rules, regulations and other

requirements of NERC, NPCC, NYSRC, or any applicable regional council, or their successors, the ISO's specific reliability requirements and ISO Procedures, and operating guidelines and all applicable requirements of federal and state regulatory authorities. Failure to conform to these requirements may subject a Customer to direct assignment of penalties assessed against the ISO by FERC, NERC, NPCC or any other federal or state regulatory authority as a result of such Customer's failure to conform.

- (b) Direct Assignment of Penalty Costs: The ISO's compliance with applicable reliability criteria, policies, standards, rules, regulations and other requirements is sometimes dependent on timely, accurate and adequate information and/or action on the part of a Customer. If the ISO is found to be non-compliant with respect to any applicable reliability criteria, policies, standards, rules, regulations and other requirements as a result of a Customer's actions or failure to act in violation of an obligation imposed by the ISO Tariffs, ISO Procedures, or ISO Related Agreements, the ISO may seek to directly assign to the Customer the cost of a penalty imposed on the ISO as a consequence of the Customer's non-compliance. If the Customer is found to be non-compliant with respect to any applicable reliability criteria, policies, standards, rules, regulations and other requirements as a result of the ISO's actions or failure to act in violation of an obligation imposed by the ISO Tariffs, ISO Procedures, or ISO Related Agreements, the Customer may seek to directly assign to the ISO the cost of a penalty imposed on the Customer as a consequence of the ISO's non-compliance. Any direct assignment of penalty costs must first be approved by FERC, as provided in Schedule 11 of

this Tariff.

- (c) ISO's Recovery of Penalty Costs Through Schedule 11: If direct assignment to a particular Customer is not possible or if the ISO is directly responsible for a violation because of its own action or inaction, the ISO may seek to recover such penalty costs in Schedule 11 Section 6.11.3 of this Tariff. Any inclusion of penalty costs in Schedule 11 must first be approved by FERC on a case-by-case basis, as provided in Schedule 11. Prior to seeking FERC authorization for recovery of a penalty in Schedule 11 Section 6.11.3 of this Tariff, the ISO shall consult with the Management Committee and any appropriate subcommittee or working groups designated by the Management Committee, regarding the recovery and allocation of such penalty before filing at FERC. Any recommendation by the Management Committee regarding a proposed penalty recovery shall be reported by the ISO to FERC in any ISO filing seeking penalty recovery.
- (d) As used in this section, the term "Customer" shall include Transmission Owners.