

**AGREEMENT BETWEEN THE NEW YORK
INDEPENDENT SYSTEM OPERATOR AND THE
NEW YORK STATE RELIABILITY COUNCIL**

Table of Contents

ARTICLE 1: DEFINITIONS	3
ARTICLE 2: RELATIONSHIP OF THE ISO AND THE NYSRC	3
ARTICLE 3: DUTIES OF THE ISO	4
ARTICLE 4: DUTIES OF THE NYSRC	5
ARTICLE 5: DISPUTE RESOLUTION	6
ARTICLE 6: EFFECTIVE DATE AND TERMINATION	10
ARTICLE 7: REGULATORY JURISDICTION	10
ARTICLE 8: ASSIGNMENT	10
ARTICLE 9: LIMITATION OF LIABILITY	11
ARTICLE 10: FORCE MAJEURE	11
ARTICLE 11: INDEMNIFICATION	12
ARTICLE 12: OTHER PROVISIONS	12

**AGREEMENT BETWEEN THE NEW YORK INDEPENDENT SYSTEM OPERATOR
AND THE NEW YORK STATE RELIABILITY COUNCIL**

This AGREEMENT made as of the first day of December, 1999, by and between the NEW YORK INDEPENDENT SYSTEM OPERATOR ("ISO"), a not-for-profit corporation formed by certain participants in the competitive Wholesale Market in New York State and the NEW YORK STATE RELIABILITY COUNCIL ("NYSRC"), a voluntary organization comprised of certain participants in the Wholesale Market in New York State (collectively, the ISO and the NYSRC are referred to as the "Parties").

W I T N E S S E T H:

WHEREAS, Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., LIPA¹, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc. and Rochester Gas and Electric Corporation established the New York Power Pool ("NYPP") by Agreement made as of the 21st day of July, 1966, and Power Authority of the State of New York ("NYPA") joined the NYPP on October 11, 1967 (the "Member Systems"); and

WHEREAS, the Member Systems have created, invested in, and operate the interconnected NYS Power System and have the responsibility to maintain the reliable operation of the NYS Power System; and

WHEREAS, the Member Systems have agreed to create the ISO and agree that a competitive Wholesale Market can be operated in a reliable and efficient fashion most effectively by the creation

¹ A subsidiary of the Long Island Power Authority, a corporate municipal instrumentality of the State of New York, which joined the New York Power Pool on May 28, 1998.

of the ISO, the NYSRC, as proposed by the Member Systems; and

WHEREAS, the Member Systems believe and expect that through their initiatives, as well as those of federal and state regulatory agencies, a competitive Wholesale Market will be created in New York State; and

WHEREAS, the ISO shall exercise Operational Control over certain facilities in the NYS Power System and maintain the safety, efficiency, and short-term reliability of the NYS Power System; and

WHEREAS, the NYSRC's principal mission is to establish Reliability Rules for use by the ISO to maintain the integrity and reliability of the NYS Power System such that it is not compromised as a result of the operation of the competitive Wholesale Market in New York State; and

WHEREAS, the reliable and efficient operation of the NYS Power System is fundamental to achieving and maintaining reliability of power supply, requiring extensive coordination of system design and operations; and

WHEREAS, the NYSRC is the appropriate entity to establish and assess conformance with appropriate design and operating criteria by all entities whose electric operations may have a significant impact on system reliability; and

WHEREAS, in order to facilitate the coordination of the responsibilities of the ISO and the reliability functions performed by the NYSRC in such a way as to minimize any adverse commercial impacts, a relationship between those two entities, whereby certain information is exchanged between them, is necessary; and

WHEREAS, nothing in this Agreement is intended to inhibit or prevent the future development of a voluntary competitive retail electric market.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and

agreements herein set forth, the Parties hereto do hereby agree with each other, for themselves and for their successors and assigns as follows:

ARTICLE 1: DEFINITIONS

The definitions contained in Article 1 of the Independent System Operator Agreement (the "ISO Agreement") as they existed on the date this Agreement is signed by the Parties are hereby incorporated by reference in their entirety into this Agreement. Modification to such definitions under the ISO Agreement shall apply to this Agreement only if the Parties to this Agreement agree in writing pursuant to Section 12.6 below.

ARTICLE 2: RELATIONSHIP OF THE ISO AND THE NYSRC

- 2.1** Pursuant to the NYSRC Agreement, the NYSRC shall develop Reliability Rules which shall be complied with by the ISO and all entities engaged in transactions on the NYS Power System.
- 2.2** The ISO shall exercise Operational Control over Transmission Facilities Under ISO Operational Control and maintain the safety and short-term reliability of the NYS Power System in accordance with the ISO/TO Agreement, ISO Agreement, this Agreement, and the Reliability Rules.
- 2.3** The NYSRC shall have the authority to audit the ISO's implementation of the Reliability Rules and to assess the ISO's compliance with the Reliability Rules and this Agreement.
- 2.4** NYSRC and the ISO will function as two separate and distinct entities. However, the NYSRC and the ISO shall work cooperatively in accordance with the terms of this Agreement.

ARTICLE 3: DUTIES OF THE ISO

- 3.1 The ISO shall comply with all Reliability Rules, including the Local Reliability Rules.
- 3.2 The ISO shall maintain the safety and short-term reliability of the NYS Power System and administer the ISO OATT and the ISO Services Tariff in accordance with the Reliability Rules, this Agreement, the ISO Agreement and the ISO/TO Agreement.
- 3.3 The ISO shall not have a financial interest in any commercial transaction.
- 3.4 The ISO shall require LSEs within the NYCA to maintain appropriate levels of Installed Capacity consistent with the Reliability Rules, this Agreement, the ISO/TO Agreement, and the ISO Agreement.
- 3.5 The ISO shall ensure that sufficient Operating Capacity is committed on a Day-Ahead basis and remains available to assure the reliable operation of the NYS Power System during the next day.
- 3.6 The ISO shall provide the NYSRC with such information, data, reports, and assistance as the NYSRC requires in carrying out its responsibilities.
- 3.7 The ISO shall prepare reports to the NYSRC at least annually describing the performance of the NYS Power System and the ISO's compliance with the Reliability Rules.
- 3.8 The ISO shall assign a member of its staff to serve as liaison to the NYSRC. The ISO representative may attend and participate in meetings of the NYSRC, on a non-voting basis.
- 3.9 The ISO shall perform studies that may be requested by the NYSRC.

ARTICLE 4: DUTIES OF THE NYSRC

- 4.1** The NYSRC shall be responsible for developing Reliability Rules pursuant to which the ISO shall maintain the safety and short-term reliability of the NYS Power System. The NYSRC shall develop Reliability Rules in accordance with NERC, NPCC, FERC, PSC, and NRC standards, criteria, rules, regulations, the Local Reliability Rules that have been adopted as Reliability Rules and other criteria, as provided for in Article 3 of the NYSRC Agreement.
- 4.2** The NYSRC, using the information, data, reports and assistance provided by the ISO, shall monitor and assess the ISO's compliance with the Reliability Rules. If the NYSRC determines that the operation of the NYS Power System by the ISO has not been in compliance with the Reliability Rules or the ISO has improperly implemented the Reliability Rules, the NYSRC shall discuss such non-compliance or improper implementation with the ISO. If a satisfactory resolution of the matter cannot be reached within thirty (30) days, the issue may be referred by either Party to dispute resolution in accordance with the provisions of this Agreement.
- 4.3** The NYSRC shall represent New York State at NPCC and NERC. NPCC triennial reviews and similar reliability reports required by NPCC and NERC shall be prepared by the ISO for review and approval by the NYSRC prior to submittal to NPCC and NERC. The ISO also shall actively participate in NPCC and NERC activities as the New York Control Area operator.
- 4.4** The NYSRC shall develop Reliability Rules for implementation by the ISO to ensure that sufficient Operating Capacity is committed on a Day-Ahead basis to ensure the reliable operation of the NYS Power System during the next day.

- 4.5 The NYSRC shall determine the state-wide annual Installed Capacity requirement. Such requirement will be subject to periodic review and revision by the NYSRC. For periods beyond one (1) year the NYSRC may perform or direct the ISO or another entity to perform studies required to identify future operating conditions.

ARTICLE 5: DISPUTE RESOLUTION

- 5.1 The Parties hereby establish a dispute resolution process for the resolution of disputes under this Agreement wherein the PSC conducts the arbitration of the dispute. The dispute resolution process shall apply to all Reliability Rules including Local Reliability Rules. If the NYSRC determines that the ISO has not complied with or effectively implemented a Reliability Rule, or if the ISO determines that a Reliability Rule is unnecessary or should be modified, representatives of the NYSRC and the ISO shall upon request of either Party, meet within thirty (30) days to discuss and attempt to resolve the matter.
- 5.2 If the Parties are unable to resolve a dispute described in Section 5.1 herein within thirty (30) days by mutual agreement (unless extended by mutual consent of the Parties), such dispute may be submitted to the PSC by either Party in a written statement describing the nature of the dispute and the issues to be resolved. If the enactment of a new Reliability Rule or a modification of an existing Reliability Rule leads to a dispute, the ISO Board of Directors may request that the effectiveness of the new Reliability Rule or the modification of an existing Reliability Rule be suspended pending the outcome of the dispute resolution process. Upon such a request by the ISO Board, the NYSRC shall suspend implementation of the new Reliability Rule or the enactment of the modification pending resolution of the dispute

by the PSC. Notwithstanding the foregoing, the PSC may direct that the new Reliability Rule or modification of an existing Reliability Rule go into effect immediately upon a finding that suspension of the Reliability Rule could put the reliability of the NYS Power System at risk.

5.3 Any dispute between the ISO and the NYSRC concerning a Reliability Rule that affects not only reliability but also matters subject to the Commission's jurisdiction under the Federal Power Act (such as a transmission line loading relief rule that affects the curtailment provisions of an ISO Tariff) must be resolved directly by the Commission, and not submitted first to the PSC. Other matters may be resolved in the first instance by the PSC, as provided for in this Article.

5.4 The PSC shall, on an expedited basis, (as permitted by PSC regulations) evaluate and determine whether the dispute should be: (1) dismissed; or (2) accepted for arbitration. The PSC may dismiss a dispute if:

- a. the complaining Party failed to negotiate in good-faith;
- b. the dispute does not reasonably relate to the Reliability Rules or their application; or
- c. the claim is de minimis.

5.5 If the PSC accepts the dispute for arbitration, the following procedure shall be followed:

- a. The PSC shall have the authority to make a determination with respect to any contention by the ISO that a Reliability Rule is unnecessary or should be modified, or by the NYSRC that a Reliability Rule has not been effectively implemented by the ISO. The PSC shall have no power to modify or change

any Agreement or a provision of any ISO Tariff, or otherwise create any additional rights or obligations for any Party. The scope of the PSC's decision under this Agreement shall be limited to the issues presented for arbitration.

- b. The PSC staff shall have the ability to review Reliability Rules and their implementation by the ISO. If the PSC staff determines that a Reliability Rule is unwarranted or should be modified or that a Reliability Rule is not being effectively implemented by the ISO, PSC staff may raise that issue with the NYSRC and the ISO. If the issue is not resolved among the PSC staff, the NYSRC and ISO, the PSC staff may initiate an arbitration proceeding before the PSC with respect to the issue. The PSC shall conduct a proceeding brought by the PSC staff under the same procedures applicable to a proceeding initiated by the NYSRC or the ISO under this Agreement.
- c. The PSC shall determine discovery procedures, intervention rights, evidentiary rules, procedures for submission of written materials, and other such procedural matters, taking into account the complexity of the issues involved, the extent to which factual matters are disputed and the extent to which the credibility of witnesses is relevant to a resolution. Each Party to the dispute shall produce all evidence determined by the PSC to be relevant to the issues presented. To the extent such evidence involves proprietary or Confidential Information, the PSC may issue an appropriate protective order which shall be complied with by all disputing Parties. The PSC may elect to resolve the arbitration matter solely on the basis of written evidence and arguments.
- d. The PSC shall consider all issues underlying the dispute and the PSC shall

take evidence submitted by the disputing Parties in accordance with procedures established by the PSC and may request additional information including the opinion of recognized technical bodies or experts. Disputing Parties shall be afforded a reasonable opportunity to rebut any such additional information.

- e. The PSC may permit intervention by an interested third party provided that a request to intervene is timely and the PSC finds that such intervention will enhance the arbitration process and will not cause undue delay. All intervenors shall be required to comply with all applicable procedural rules established by the PSC pursuant to Section 5.4 (c) herein.
- f. After conclusion of the discovery process and after providing the Parties with an opportunity to be heard, the PSC shall render a written decision, including findings of fact and the basis for the decision. The PSC shall make a specific finding that its decision will adequately protect the reliability of the NYS Power System and state the reasons for such finding.

5.6 The order of the PSC may be entered on the award by any court in New York State having jurisdiction. Within one (1) year of the arbitration decision, a Party may request that the Commission vacate, modify, or take such other action as may be appropriate with respect to any arbitration decision that is:

- a. based upon an error of law;
- b. contrary to the statutes, rules, or regulations of any appropriate regulatory entity having jurisdiction;
- c. violative of the Federal Arbitration Act or Administrative Dispute

Resolution Act; or

d. involves a dispute in excess of \$500,000.

5.7 Nothing in this Article shall restrict the rights of any Party to file a complaint or a rate or tariff change with the Commission under the relevant provisions of the Federal Power Act.

ARTICLE 6: EFFECTIVE DATE AND TERMINATION

This Agreement, once executed by the Parties, shall become effective on the date the Commission, the PSC, and any other regulatory agencies having jurisdiction, to the extent applicable, grant all necessary approvals and the NYSRC is formed. This Agreement shall continue in full force and effect unless terminated by the written consent of all of the Parties hereto.

ARTICLE 7: REGULATORY JURISDICTION

Subject to Section 12.6, nothing in this Agreement shall restrict the right of the Parties to file a complaint with or submit any action to FERC or any other appropriate regulatory authority under relevant provisions of the Federal Power Act, nor shall anything in this Agreement affect the jurisdiction over matters arising under this Agreement.

ARTICLE 8: ASSIGNMENT

This Agreement shall inure to the benefit of, and shall be binding upon, the successors and assigns of the Parties. This Agreement cannot be assigned without the consent of the other Parties which consent shall not be unreasonably withheld.

ARTICLE 9: LIMITATION OF LIABILITY

The NYSRC shall not be liable (whether based on contract, indemnification, warranty, tort, strict liability or otherwise) to the ISO or any Market Participant or any third party or other party for any damages whatsoever, including without limitation, special, indirect, incidental, consequential, punitive, exemplary or direct damages resulting from any act or omission in any way associated with this Agreement, except to the extent the NYSRC is found liable for gross negligence or intentional misconduct, in which case the NYSRC shall not be liable for any special, indirect, incidental, consequential, punitive or exemplary damages.

ARTICLE 10: FORCE MAJEURE

A Party shall not be considered to be in default or breach under this Agreement, and shall be excused from performance or liability for damages to any other Party, if and to the extent it shall be delayed in or prevented from performing or carrying out any of the provisions of this Agreement, except the obligation to pay any amount when due, arising out of or from any act, omission, or circumstance occasioned by or in consequence of any act of God, labor disturbance, failure of contractors or suppliers of materials, act of the public enemy, war, invasion, insurrection, riot, fire, storm, flood, ice, explosion, breakage or accident to machinery or equipment or by any other cause or causes beyond such Party's reasonable control, including any curtailment, order, regulation, or restriction imposed by governmental, military or lawfully established civilian authorities, or by the making of repairs necessitated by an emergency circumstance not limited to those listed above upon the property or equipment of the ISO or any Party to the ISO Agreement. Nothing contained in this Article shall relieve any entity of the obligations to make payments when due hereunder or pursuant to a Service Agreement. Any Party claiming a force majeure event shall use reasonable diligence to remove the condition that prevents performance, except the settlement of any labor disturbance shall

be in the sole judgment of the affected Party.

ARTICLE 11: INDEMNIFICATION

- 11.1** The ISO shall indemnify, save harmless and defend the NYSRC, including its directors, officers, members, managers, employees, trustees, and agents, or each of them from and against all claims, demands, losses, liabilities, judgments, damages (including, without limitation, any consequential, incidental, direct, special, indirect, exemplary or punitive damages and economic costs), and related costs and expenses (including, without limitation, reasonable attorney and expert fees, and disbursements incurred by the NYSRC in any actions or proceedings between the NYSRC and a third party, Market Participant, the ISO, or any other party) arising out of or related to the NYSRC or the ISO's acts or omissions related in any way to performance under an ISO Tariff, the ISO Agreement, the ISO/TO Agreement, NYSRC Agreement, or this Agreement, except to the extent the NYSRC is found liable for gross negligence or intentional misconduct.
- 11.2** Survival. The provisions of this Article 11, "Indemnification," shall survive the termination or expiration of this Agreement.

ARTICLE 12: OTHER PROVISIONS

- 12.1** Governing Law; Jurisdiction. The interpretation and performance of this Agreement shall be in accordance with and shall be controlled by the laws of the State of New York as though this Agreement is made and performed entirely in New York State. With respect to any claim or controversy arising from this Agreement or performance hereunder within the subject matter jurisdiction of the Federal or State courts of the State of New York, the Parties consent to the exclusive jurisdiction and venue of said

courts.

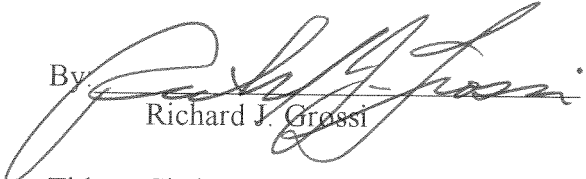
- 12.2** Headings. The section headings herein are for convenience and reference only and in no way define or limit the scope of this Agreement or in any way affect its provisions. Whenever the terms hereto, hereunder, herein or hereof are used in this Agreement, they shall be construed as referring to this entire Agreement, rather than to any individual section, subsection or sentence.
- 12.3** No Third Party Rights. Nothing in this Agreement, express or implied, is intended to confer on any person, other than the Parties hereto, any rights or remedies under or by reason of this Agreement.
- 12.4** Not Partners. Nothing contained in this Agreement shall be construed to make the Parties partners or joint ventures or to render any Party liable for the debts or obligations of any other Party.
- 12.5** Waiver. Any waiver at any time of the rights of any Party as to any default or failure to require strict adherence to any of the terms herein, on the part of any other Party or Parties to this Agreement or as to any other matter arising hereunder shall not be deemed a waiver as to any default or other matter subsequently occurring.
- 12.6** No Modification. This Agreement is not subject to change under Sections 205 and 206 of the FPA, as either section may be amended or superseded, absent the mutual written agreement of the Parties. It is the intent of this Section 12.6 that, to the maximum extent permitted by law, the terms and conditions of this Agreement shall not be subject to change, regardless of whether such change is sought (a) by the Commission acting sua sponte on behalf of a Party or third party, (b) by a Party, (c) by a third party, or (d) in any other manner.

12.7 Contract Supremacy. In the case of a conflict between the terms of this Agreement and the terms of the ISO/TO Agreement, the terms of the ISO/TO Agreement shall prevail. In the case of a conflict between the terms of this Agreement and the terms of the ISO Agreement, the terms of this Agreement shall prevail. In the case of a conflict between the terms of this Agreement and the terms of the NYSRC Agreement, the terms of the NYSRC Agreement shall prevail.

IN WITNESS WHEREOF, each of the Parties hereto has caused this Agreement to be executed in its corporate name by its proper officers as of the date first written above.

New York Independent System Operator

By:


Richard J. Grossi

Title: Chairman

Date: 12/1/99

New York State Reliability Council

By:


Richard J. Bolbrock

Title: Chairman

Date: 11/23/99