

Revision 6

NEW YORK STATE RELIABILITY COUNCIL, LLC
OPERATING AGREEMENT

As Amended & Approved by the NYSRC Executive Committee
April 15, 2005

NEW YORK STATE RELIABILITY COUNCIL, LLC OPERATING AGREEMENT

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NEW YORK STATE RELIABILITY COUNCIL , LLC OPERATING AGREEMENT

THIS OPERATING AGREEMENT is (a) adopted by the Executive Committee (as hereinafter defined) and (b) executed and agreed to by the Members (as hereinafter defined) as of the ___ day of November, 1999.

ARTICLE 1: DEFINITIONS

1.01 The definitions set forth in the ISO Agreement, as filed with the Federal Energy Regulatory Commission on July 2, 1999, are applicable to this Operating Agreement, unless the term is specifically defined in this Agreement or a definition set forth in the ISO Agreement is inconsistent with the express terms of this Agreement.

1.02 The following terms used in this Operating Agreement shall have the following respective meanings:

“**Act**” shall mean the Delaware Limited Liability Company Act, 6 Del. C., § 18-101 through § 18-1107, as amended from time to time.

“**Code**” shall mean the Internal Revenue Code of 1986, as amended. Any reference to any specific provision of the Code or any regulations thereunder shall be deemed to refer also to any successor provisions thereto.

“**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.

“Cooperative” shall mean a cooperatively owned electric system that owns or controls distribution facilities and provides electric service in accordance with the Rural Electric Corporation Law, and is located within the NYCA.

“Executive Committee” shall mean the Board of Managers of the NYSRC consisting of thirteen Managers, selected as provided for in Article 4 hereof.

“Executive Committee Manager “ or “Manager” shall mean a Person who is named a Manager of the NYSRC as provided in Article 4 hereof. Managers need not be Members of the NYSRC.

“FERC” shall mean the Federal Energy Regulatory Commission, or any successor agency.

“Indemnified Person” shall have the meaning assigned to it in Section 7.01 hereof.

“Independent System Operator” (“ISO”) shall mean the New York Independent System Operator, Inc., a not-for-profit corporation established pursuant to the ISO Agreement.

“Independent System Operator/New York State Reliability Council Agreement” (“ISO/NYSRC Agreement”) shall mean the agreement between the ISO and the NYSRC governing the relationship between the organizations.

“ISO Board” shall mean the Board of Directors of the ISO.

“Large Consumer” shall mean an Industrial Consumer or a Commercial Consumer whose peak Load in any month within the previous twelve months was two megawatts or more.

“Local Reliability Rule” shall mean a Reliability Rule established by a Transmission Owner, and adopted by the NYSRC, to meet specific reliability concerns in limited areas of the

NYCA, including without limitation, special conditions and requirements applicable to nuclear plants and special requirements applicable to the New York City metropolitan area.

“Market Participant” shall mean an entity, excluding the ISO, that is a Transmission Customer under the ISO OATT, Customer under the ISO Services Tariff, Power Exchange, Transmission Owner, Primary Holder, LSE, or Supplier, and their designated agents. Market Participants also include entities buying or selling Transmission Congestion Contracts.

“Member” shall mean a Person who has been admitted to the NYSRC as a member as provided in Article 3 hereof and section 18-301 of the Act.

“Municipal Electric System” shall mean a municipally owned electric system that owns or controls distribution facilities and provides electric service in accordance with the New York State General Municipal Law or Village Law, and is located within the New York Control Area. For the purposes of NYSRC governance, the Green Island Power Authority shall be considered a Municipal Electric System.

“NERC” shall mean the North American Electric Reliability Council, or any successor entity.

“New York Control Area “(“NYCA”) shall mean the Control Area that is under the control of the ISO which includes transmission facilities listed in the ISO/TO Agreement Appendices A-1 and A-2, as amended from time-to time, and Generation located outside the NYS Power System that is subject to protocols (e.g., telemetry signal biasing) which allow the ISO and other Control Area operator(s) to treat some or all of that Generation as though it were part of the NYS Power System.

“New York State Reliability Council” (“NYSRC”) shall mean a Delaware limited liability company established pursuant to the NYSRC Agreement.

“New York State Reliability Council Agreement” (“NYSRC Agreement”) shall mean the agreement among the Member Systems of the New York Power Pool to establish the New York State Reliability Council.

“NRC” shall mean the Nuclear Regulatory Commission, or any successor agency.

“NYS Power System” shall mean all facilities of the NYS Transmission System, and all those Generators located within the NYCA or outside the NYCA, some of which may be from time-to-time subject to operational control by the ISO.

“Person” shall mean any natural person, trust, corporation, partnership, limited partnership, limited liability company, unincorporated association or other entity.

“Proceeding” shall have the meaning assigned to it in Section 7.01 hereof.

“PSC” shall mean the Public Service Commission of the State of New York or any successor agency.

“Reimbursement Agreement” shall mean an agreement signed by a Represented Entity which obligates the Represented Entity to pay a proportionate share of the dues allocated to the Members by the Executive Committee.

“Reliability Rules” shall mean those rules, standards, procedures and protocols developed and promulgated by the NYSRC, including Local Reliability Rules, in accordance with NERC, NPCC, PSC and NRC standards, rules and regulations and other criteria, and pursuant to the NYSRC Agreement.

“Representative Manager” shall mean a Manager who represents the interests of either (1) Wholesaler Sellers (2) Large Consumers, or (3) Municipal Electric Systems and Cooperatives, as provided for in Section 4.02 hereof.

“Represented Entity” shall mean a Person who is authorized to select a Representative Manager or is authorized to participate in the selection of a Representative Manager, and who signs the Reimbursement Agreement.

“Transmission Owner” shall mean an entity that owns, controls and operates facilities in New York State used for the transmission of Energy in interstate commerce. A Transmission Owner must own, individually or jointly, at least 100 circuit miles of 115 kV or above in New York State and be a signatory to the Independent System Operator/Transmission Owner Agreement.

“Transmission Owner Manager” shall mean a Manager selected to represent a Transmission Owner, as provided for in Section 4.02 hereof.

“Unaffiliated Manager” shall mean an Executive Committee Manager not affiliated with any Market Participant, as provided for in Section 4.02 hereof.

“Wholesale Seller” shall mean a Person engaged in the NYCA principally in the business of selling electricity in the wholesale market.

ARTICLE 2: ORGANIZATION

2.01 The NYSRC has been organized as a Delaware limited liability company under and pursuant to the Act and the issuance of a Certificate of Formation for the NYSRC by the Secretary of State of Delaware. The rights and obligations of the Members shall be as set forth in the Act except as this Operating Agreement expressly provides otherwise.

2.02 The name of the NYSRC is “New York State Reliability Council, LLC”.

2.03 The registered office of the NYSRC required by the Act to be maintained in the State of Delaware shall be the office of the initial registered agent named in the Certificate of Formation or such other office as the Executive Committee may designate from time to time in the manner

provided by law. The registered agent of the NYSRC in the State of Delaware shall be the initial registered agent named in the Certificate of Formation or such Person as the Executive Committee may designate from time to time. The principal office of the NYSRC shall be located initially in Albany, New York at the address set forth in the Application For Authority of New York State Reliability Council, LLC to do business in the State of New York or at such other place as the Executive Committee shall designate from time to time.

2.04 The purpose of the NYSRC is to promote and preserve the reliability of the NYS Power System by developing, maintaining and, from time-to-time, updating the Reliability Rules which shall be complied with by the ISO and all entities engaging in electric power transactions on the NYS Power System. The NYSRC shall carry out its purpose to the benefit of the entire electric service industry, including consumers, with no intent to advantage or disadvantage any Member or any Market Participant's commercial interests. The NYSRC is intended to be a not-for-profit entity.

2.05 The NYSRC's purpose also shall include monitoring compliance with the Reliability Rules by the ISO and Market Participants by working in consultation with the ISO to assure compliance, including when necessary, seeking compliance through the dispute resolution procedure contained in the ISO/NYSRC Agreement, and taking such other actions which may be necessary to carry out the purpose of the NYSRC Agreement. The NYSRC shall adopt Reliability Rules in accordance with Article 3 of the NYSRC Agreement.

ARTICLE 3: MEMBERS

3.01 Each Transmission Owner that is a signatory to the ISO/TO Agreement shall be a Member of the NYSRC. In addition, each of the three groups listed in Section 4.01 of the NYSRC Agreement (i.e., (1) Wholesale Sellers, (2) Large Consumers, and (3) Municipal

Electric Systems and Cooperatives) shall have the right to appoint one Member. To exercise the right to appoint a Member, a Representative Manager shall inform the Executive Committee that the group he or she represents has decided to appoint a Member, and shall identify the Person who will serve as a Member. Each Member shall sign this Operating Agreement.

3.02 Membership in the NYSRC shall terminate when a Member ceases to be a Transmission Owner or, if the Member was selected by one of the three groups listed in Section 3.01 of this Agreement, when the group that selected the Member appoints a different Person to serve as a Member. Membership in the NYSRC shall not be transferable. Each Member shall meet the criteria established by the Executive Committee to provide reasonable assurance that the Member has the financial ability to meet all of its financial obligations as a Member.

3.03 The NYSRC shall be a not-for-profit entity. No Member or Manager shall be entitled to transfer or sell any membership interest, receive any distributions or share in any revenues or profits of the NYSRC at any time. The NYSRC does not intend to earn any profits; however, to the extent that any profits are earned, such profits shall be used by the NYSRC in furtherance of its purposes.

3.04 The Members will be responsible for the financial obligations of the NYSRC. Until such time as an alternate funding mechanism is approved by FERC, the operating costs and all other financial obligations of the NYSRC will be recovered from dues assessed by the Executive Committee pursuant to Section 5.05 of this Agreement. Such dues shall be paid by the Members on a per capita basis; provided, however, that if any of the groups authorized to appoint an additional Member under Section 3.01 of this Agreement has not appointed a Member, a Represented Entity from that group shall sign the Reimbursement Agreement under which the Represented Entity shall agree to reimburse the Members for a proportionate share of the dues

allocated by the Executive Committee. The proportionate share of the dues payable by a Represented Entity under the Reimbursement Agreement shall be equal to the total amount of dues allocated by the Executive Committee divided by the total number of Executive Committee Managers, excluding the Unaffiliated Managers. In the event that a Represented Entity fails to pay its proportionate share of the dues which it is obligated to pay under the terms of this Agreement or the Reimbursement Agreement, the Members of the NYSRC hereby agree to be responsible for such deficit. Any such deficit shall be paid by the Members on a pro rata basis. The Members shall be entitled to reimbursement from the Represented Entity that failed to pay the dues for which it was responsible, for the full amount of any deficit.

3.05 Any Member may withdraw as a Member of the NYSRC and from this Operating Agreement upon ninety (90) days written notice to all other Members and the Executive Committee; provided, however, that any Member submitting notice of intent to withdraw shall continue to be obligated to pay its proportionate share of the dues previously allocated by the Executive Committee and its proportionate share of all budgets and revised budgets approved by the Executive Committee prior to the date of its notice of withdrawal, unless a new Member expressly assumes the obligation of the withdrawing Member to pay such costs and obligations.

3.06 Responsibility for conducting the business and affairs of the NYSRC shall be, and hereby is, delegated by the Members to the Executive Committee and the business and affairs of the NYSRC shall be conducted exclusively by the Executive Committee as provided for in Article 4 hereof.

ARTICLE 4: EXECUTIVE COMMITTEE, MANAGEMENT AND VOTING

4.01 As permitted by Section 18-402 of the Act, the NYSRC shall be managed by a Board of Managers which shall be called the “Executive Committee”. The Executive Committee shall

have the exclusive right to manage the NYSRC. Accordingly, the Executive Committee shall (i) manage the business and affairs of the NYSRC; (ii) exercise the authority and powers granted to the NYSRC; and (iii) otherwise act in all matters on behalf of the NYSRC. No contract, obligation or liability of any kind or type can be entered into on behalf of the NYSRC by any Member. The Executive Committee shall take all actions which shall be necessary or appropriate to accomplish the NYSRC's purposes in accordance with the terms of this Operating Agreement. The Executive Committee shall be comprised of thirteen (13) Managers (collectively the "Managers"). The initial Executive Committee Managers of the NYSRC shall be the persons set forth on Exhibit A annexed hereto. Executive Committee Managers shall serve two (2) year terms, with no limitation on the number of terms that an Executive Committee Manager can serve. The initial terms of the Executive Committee Managers will commence on August 1, 1999 and expire on July 31, 2001. Subsequent two (2) year terms of the Executive Committee Managers will commence on August 1 of the year of appointment and shall expire on July 31 of the second year following appointment. An Executive Committee Manager shall be eligible for reappointment and shall holdover after the expiration of his or her term until a successor is appointed. A Manager may resign at any time by giving written notice of resignation to the Secretary.

4.02 Upon the expiration of the term of any Executive Committee Manager or upon the occurrence of any vacancy on the Executive Committee, an Executive Committee Manager shall be selected to fill such renewal term or vacancy, as the case may be, pursuant to the terms of the NYSRC Agreement. Vacancies prior to the expiration of a Manager's term shall be filled for the remainder of the unexpired term. The Executive Committee shall approve the selection of an Executive Committee Manager, provided that the selection was made in accordance with the

terms of the NYSRC Agreement. The initial composition of the Executive Committee shall be as follows:

- Seven Transmission Owner Managers representing the Transmission Owners
- One Representative Manager representing Wholesale Sellers
- One Representative Manager representing Large Consumers
- One Representative Manager representing Municipal Electric Systems and Cooperatives
- Three Unaffiliated Managers individuals not affiliated with any Market Participant. For the purpose of this Article, the term “affiliated” shall have the same meaning as set forth in Article 5 of the ISO Agreement.

Each Transmission Owner shall select one Transmission Owner Manager. The three Representative Managers representing Wholesale Sellers, Municipal Electric Systems and Cooperatives, and Large Consumers, shall be selected in accordance with procedures established by the ISO Board. The initial two Unaffiliated Managers shall be selected by the ISO Board. A third Unaffiliated Manager shall be selected by the Executive Committee to fill the vacancy created by the merger of Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc. Vacancies on the Executive Committee shall be filled in the same manner as the initial selection of Executive Committee Managers, except that vacancies in the seats held by Unaffiliated Managers shall be filled by the Executive Committee.

A merger or consolidation among the existing Transmission Owners will reduce the number of Transmission Owner Manager seats on the Executive Committee. A vacancy on the Executive Committee created as a result of such merger or consolidation among the Transmission Owners shall be filled by the appointment of an Unaffiliated Manager by the

Executive Committee. Should the number of Transmission Owners subsequently increase, the new Transmission Owner will be entitled to appoint a Transmission Owner Manager to fill the first vacancy created by the expiration of the term of an Unaffiliated Manager holding a seat originally created as a result of a merger or consolidation among Transmission Owners; provided, however, that the number of Transmission Owner Managers may never exceed eight. Should the number of Transmission Owners exceed eight, the Transmission Owners will select eight Transmission Owner Managers by a per capita voting methodology.

4.03 The Managers hereby agree that the ISO Board may designate a member of its staff to participate in meetings of the Executive Committee on a non-voting basis. The Executive Committee will make provisions for the participation in committee meetings by representatives of FERC and the PSC on a non-voting basis.

4.04 Each Executive Committee Manager shall have substantial knowledge and/or experience in the reliable operation of bulk power electric systems. Each Executive Committee Manager shall file a notice with FERC stating that he or she has been selected as an Executive Committee Manager. Each Unaffiliated Manager shall be paid an annual fee set by the Executive Committee, plus reasonable and necessary expenses. The initial annual fee for Unaffiliated Managers shall be twenty thousand (20,000) dollars.

4.05 Attendance or participation by proxy of nine (9) Executive Committee Managers shall constitute a quorum. The affirmative vote of nine (9) Managers is needed to pass a measure. All Managers shall have the right to vote on all measures brought before the Executive Committee. Managers not physically present may attend and vote by proxy, telephone, or signed facsimile. Notwithstanding the foregoing, the unanimous consent of all Executive Committee Managers shall be required (i) to sell, transfer, exchange, dispose of, or abandon, in any single transaction

or series of transactions, all or substantially all of the assets or properties of the NYSRC, (ii) to merge the NYSRC with or into, or consolidate the NYSRC with, any other limited liability company, or any corporation, partnership, or other entity; (iii) to terminate, dissolve, or liquidate the NYSRC; or (iv) to possess NYSRC property or assign rights in NYSRC property for other than a NYSRC purpose.

4.06 On any matter that is to be voted upon by the Executive Committee, the Managers may take such action without a meeting, without prior notice and without a vote if a consent or consents in writing, setting forth the action so taken, is approved and signed by each of the Managers then holding a seat on the Executive Committee.

4.07 As permitted by Section 18-407 of the Act, each Manager may designate one or more agents or representatives with full authority to act on his or her behalf in carrying out the work of the Executive Committee. Such delegation by a Manager shall not cause the Manager to cease to be a Manager of the NYSRC.

4.08 The Executive Committee shall elect a Chairperson, a Vice Chairperson and a Secretary, each with a one (1) year term of office; provided, however, that the Executive Committee may appoint an Executive Secretary to assist in the performance of the duties assigned to the Secretary and to perform other duties assigned by the Executive Committee. The Executive Secretary will serve at the pleasure of the Executive Committee and not be an officer of the Executive Committee. An officer will holdover until his or her successor is elected and takes office. In the event of a vacancy created by retirement, resignation, removal of an officer, or any other reason, the Executive Committee shall elect a successor to fill the vacancy for the remainder of the term of office. The Chairperson shall have the power to call meetings of the Executive Committee and preside when present at all meetings of the Executive Committee. The

Chairperson shall exercise such other powers as set forth in this Operating Agreement or as delegated by the Executive Committee, and shall be authorized to take such action and to execute any and all documents, contracts, instruments, certificates and leases on behalf of the NYSRC, as may be necessary, desirable or appropriate to implement actions approved by the Executive Committee or to facilitate the efficient administration of the NYSRC. The Chairman may delegate any or all of such powers or duties to other officers, other members of the Executive Committee, or to NYSRC personnel, if and to the extent deemed by the Chairman to be necessary, desirable or appropriate. The Vice Chairperson shall exercise any powers delegated by the Chairperson or the Executive Committee, and shall exercise the powers of the Chairperson if the Chairperson is absent or unavailable. The Secretary shall keep the minutes of the meetings of the Executive Committee and shall exercise such other powers delegated by the Chairperson or the Executive Committee. The Executive Committee may elect or appoint such other officers, agents, managers and employees as they shall from time to time determine. All officers, agents, managers and employees shall be elected by the affirmative vote of nine (9) Managers after being nominated and seconded by a Manager at a meeting of the Executive Committee; provided, however, if none of the candidates shall receive the affirmative vote of nine (9) Managers, then there shall be a run-off election among the candidates receiving the highest and second highest number of votes from the Managers on the first ballot. The first candidate to receive a majority of the votes cast by the Managers in the run-off election shall be elected; provided, however, that the individual receiving a majority of the votes cast shall not take office unless the election is ratified by an affirmative vote of at least nine (9) Managers.

4.09 The costs associated with membership and participation in meetings and committee work by Executive Committee Managers, except Unaffiliated Managers, shall be borne by the

Managers or the Person or Persons whose interest is represented by such Manager. These costs include, but are not limited to, travel to and from meetings and the costs of providing the NYSRC with personnel on a temporary basis to carry out the administrative and technical functions of the NYSRC.

4.10 Executive Committee Managers, other than Unaffiliated Managers, shall provide the NYSRC with appropriate personnel, on a temporary basis, to enable the NYSRC to carry out its functions. The costs associated with membership and participation in meetings and committee activities by the Unaffiliated Managers shall be borne by the NYSRC.

4.11 Any costs associated with a study or activity undertaken by the NYSRC that can be assigned or attributed directly to a Person shall be borne by such Person.

ARTICLE 5: EXECUTIVE COMMITTEE ACTION

5.01 The NYSRC shall act through the Executive Committee. Subject to the terms of the NYSRC Agreement, the Executive Committee shall approve all Reliability Rules and changes to Reliability Rules issued by the NYSRC. Any Manager on the Executive Committee may propose modifications to the Reliability Rules, including specific exceptions, additions or deletions.

5.02 The Executive Committee, or the Chairperson acting pursuant to the direction of the Executive Committee, shall direct the activities of the NYSRC, create subcommittees as necessary, and make assignments to the subcommittees.

5.03 The Secretary of the Executive Committee shall be responsible for ensuring that all Reliability Rules are published, updated, and maintained in a Reliability Rules manual. Copies of the Reliability Rules manual, along with any updates, shall be made available to: the Managers, FERC, the PSC, the ISO, and any Market Participant that requests a copy. In order to

ensure the availability of the Reliability Rules manual, the manual shall be published on the web site maintained by the NYSRC and shall be filed with FERC and the PSC.

5.04 The Executive Committee shall have the authority to employ such staff, temporary workers, independent consultants, auditors, and counsel as necessary to carry out its responsibilities and functions.

5.05 The Executive Committee shall determine the NYSRC's fiscal year and shall approve an annual budget. Until such time as an alternate funding mechanism is approved by FERC, annual dues shall be assessed by the Executive Committee. The annual dues shall represent the operating costs of the NYSRC for the upcoming year plus any unpaid NYSRC obligations for previous years. The Members shall be responsible for the payment of dues; provided, however, that if a group authorized to appoint an additional Member under Section 3.01 of this Agreement has not appointed a Member, a Represented Entity from that group shall sign the Reimbursement Agreement and agree to pay a proportionate share of the dues allocated by the Executive Committee as provided for in Section 3.04 of this Agreement. The failure of a Represented Entity which signed the Reimbursement Agreement to pay a proportionate share of the dues allocated by the Executive Committee will result in a suspension of the participation on the Executive Committee of the Representative Manager who was appointed by the group to which the Represented Entity belongs. The suspension shall remain in effect until the dues are paid in full. The Members and Managers will have the right to enforce the payment of unpaid dues under the terms of this Operating Agreement and the Reimbursement Agreement.

5.06 Minutes of meetings of the Executive Committee will be made available to the Managers and any Person requesting a copy. A reasonable charge may be made for copies of the minutes

or any other NYSRC document furnished to any Person other than Managers, Members and regulatory agencies.

5.07 Regular meetings of the Executive Committee shall be held at such times and places within the State of New York as shall be designated from time to time by resolution of the Executive Committee.

5.08 Special meetings of the Executive Committee may be called by the Chairperson or at the request of any Manager. The person or persons authorized to call the special meeting of the Executive Committee may fix any place within the State of New York as the place for holding the special meeting of the Executive Committee.

5.09 Notice of the time and place of each regular or special meeting of the Executive Committee, together with a written agenda stating all matters upon which action is proposed to be taken and to the extent possible, copies of all documents on which action is proposed to be taken, shall be mailed to each Manager, postage prepaid, addressed to him or her at his or her usual place of business (or at such other address as he or she may have designated in a written request filed with the Secretary), at least seven (7) days before the day on which the meeting is to be held; provided, however, that notice of special meetings to discuss matters requiring prompt action may be sent to him or her at such address by telegram, cablegram, electronic mail or facsimile, or given personally or by telephone, no less than forty-eight (48) hours before the time at which such meeting is to be held, unless the meeting must be held within forty-eight (48) hours, in which case the Managers shall receive notice as soon as practicable. Notice of a meeting need not be given to any Manager who submits a signed waiver of notice whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to him or her. Notice shall be given of any adjourned meeting

in person to those Managers who are in attendance at the meeting prior to adjournment and to all other Managers by telegram, cablegram, electronic mail or facsimile, or given personally or by telephone, no less than forty-eight (48) hours before the time at which such adjourned meeting shall reconvene, unless such adjourned meeting shall reconvene within forty-eight (48) hours, in which case such Managers shall receive notice as soon as practicable. Notice of meetings also shall be provided to any individual who has been designated by the ISO Board, FERC or the PSC to attend Executive Committee meetings.

5.10 An emergency meeting may be called by an officer at the request of any Manager or the representative of the ISO, FERC or the PSC. Notice of an emergency meeting shall be provided to the Managers as soon as practicable. Notice may be provided by telegram, cablegram, electronic mail or facsimile, or given personally or by telephone.

5.11 The Executive Committee may create subcommittees as it deems appropriate to assist it in the exercise of the responsibilities of the NYSRC. Each member of the Executive Committee shall be authorized to serve as a member of a subcommittee or to designate a representative to serve on a subcommittee. A member of the Executive Committee who designates a representative to serve on a subcommittee shall be responsible for selecting a person well qualified to participate in and contribute to the work of the subcommittee. The Executive Committee also may assign any other well qualified person as a member of a subcommittee if it concludes that participation by that person would facilitate the work of the subcommittee. The Chairman of the Executive Committee shall appoint the chairman of each subcommittee and a subcommittee chairman shall serve at the pleasure of the Chairman of the Executive Committee. Subcommittees shall carry out the responsibilities assigned to them by the Executive Committee, including providing information, advice, analysis and recommendations. Final decision-making

authority on all matters within the NYSRC's responsibilities, however, is reserved to the Executive Committee.

ARTICLE 6: CONFLICT OF INTERESTS

6.01 Except as otherwise provided by the Executive Committee, the Managers need not devote full time to the NYSRC's business, but shall devote such time as they, in their discretion, deem necessary to manage the NYSRC's affairs in an efficient manner. Subject to the other express provisions of this Operating Agreement and the code of conduct adopted pursuant to Article 10 of this Agreement, each Manager, Member and agent of the NYSRC at any time and from time to time may engage in and possess interests in other business ventures of any and every type and description, independently or with others, with no obligation to offer to the NYSRC or any other Member, Manager or agent the right to participate therein.

ARTICLE 7: INDEMNIFICATION

7.01 Subject to the limitations and conditions provided in this Agreement and in the Act, each Person ("Indemnified Person") who was or is made a party or is threatened to be made a party to or is involved in any threatened, pending or completed action, suit or proceedings, whether civil, criminal, administrative, arbitrative or investigative ("Proceeding"), or any appeal in such a Proceeding or any inquiry or investigation that could lead to such a Proceeding, by reason of the fact that he, she, or it, or a Person of whom he, she, or it is the legal representative, is or was a Member, Manager, officer, agent or authorized representative of the NYSRC or is or was serving as a manager, director, officer, partner, venturer, proprietor, trustee, employee, agent or similar functionary of another foreign or domestic limited liability company, corporation, partnership, formal or ad hoc association or joint venture, sole proprietorship, trust, employee benefit plan or other enterprise that is or was a Member or Manager or representative of a

Member or Manager, shall be indemnified by the NYSRC against judgments, penalties (including excise and similar taxes and punitive damages), fines, settlements and reasonable costs and expenses (including, without limitation, attorneys' fees) actually incurred by such Indemnified Person in connection with such Proceeding if such Indemnified Person acted in good faith and in a manner he, she or it reasonably believed to be in, or not opposed to, the best interest of the NYSRC and, with respect to any criminal action or proceeding, had no reasonable cause to believe his, her or its conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the Indemnified Person did not act in good faith and in a manner which he, she, or it reasonably believed to be in or not opposed to the best interests of the NYSRC or, with respect to any criminal action or proceeding, that the Indemnified Person had reasonable cause to believe that his, her or its conduct was unlawful.

7.02 Subject to the limitations and conditions provided for in this Agreement and in the Act, the NYSRC shall and does hereby indemnify any Person who was or is a party, or is threatened to be made a party, to any threatened, pending or completed action or suit by or in the right of the NYSRC to procure a judgment in its favor by reason of the fact that such Person is or was a Member, Manager, officer, agent or authorized representative of the NYSRC, or is or was serving as manager, director, officer, employee or agent of another foreign or domestic limited liability company, corporation, partnership, formal or ad hoc association or joint venture, sole proprietorship, trust, employee benefit plan or other enterprise that is or was a Member or Manager or an authorized representative of a Member or Manager, against expenses (including attorneys' fees) actually and reasonably incurred by such Person in connection with the defense or settlement of such action or suit, if such Person acted in good faith and in a manner he, she or

it reasonably believed to be in, or not opposed to, the best interests of the NYSRC, provided that no indemnification shall be made in respect of any claim, issue or matter as to which such Person shall have been adjudged to be liable for gross negligence or misconduct in the performance of his, her or its duty to the NYSRC unless, and only to the extent that, the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability, but in view of all the circumstances of the case, such Person is fairly and reasonably entitled to indemnity for such expenses as the court shall deem proper.

7.03 Indemnification under this Article shall continue as to a Person who has ceased to serve in the capacity which initially entitled such Person to indemnity hereunder. The rights granted pursuant to this Article shall be deemed contract rights, and no amendment, modification or repeal of this Article shall have the effect of limiting or denying any such rights with respect to actions taken or Proceedings arising prior to any such amendment, modifications or repeal.

7.04 The right to indemnification conferred by this Article shall include the right to be paid or reimbursed by the NYSRC for the reasonable expenses incurred in advance of the final disposition of the Proceeding and without any determination as to the Person's ultimate entitlement to indemnification; provided, however, that the payment of such expenses incurred in advance of the final disposition of a Proceeding shall be made only upon delivery to the NYSRC of a written affirmation by such Person of his, her or its good faith belief that he, she or it has met the standard of conduct necessary for indemnification under this Article and a written undertaking, by or on behalf of such Person, to repay all amounts so advanced if it shall ultimately be determined that such Person is not entitled to be indemnified under this Article or otherwise.

7.05 The NYSRC, by adoption of a resolution of the Executive Committee, may indemnify and advance expenses to an employee or agent of the NYSRC to the same extent and subject to the same conditions under which it may indemnify and advance expenses of Members and Managers under this Article; and the NYSRC may indemnify and advance expenses to Persons who are not or were not Members or Managers, employees or agents of the NYSRC but who are or were serving at the request of the NYSRC as manager, director, officer, partner, venturer, proprietor, trustee, employee, agent or similar functionary of another foreign or domestic limited liability company, corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise against any liability asserted against such Person and incurred by such Person in such a capacity or arising out of his, her or its status as such a Person to the same extent that it may indemnify and advance expenses to Members and Managers under this Article.

7.06 Notwithstanding any other provision of this Article, the NYSRC may pay or reimburse expenses incurred by a Member or Manager in connection with an appearance as witness or other participation in a Proceeding at a time when he or she is not a named defendant or respondent in the Proceeding.

7.07 The right to indemnification and the advancement and payment of expenses conferred by this Article shall not be exclusive of any other right which a Member, Manager or other Person may have or hereafter acquire under any (common or statutory), provision of the Certificate of Formation or Operating Agreement, agreements, vote of Managers or Unaffiliated Managers or otherwise.

7.08 The NYSRC shall purchase and maintain insurance, at its expense, to protect itself and any Indemnified Person against any expense, liability or loss, whether or not the NYSRC would

have the power to indemnify such Person against such expense, liability or loss under this Article.

7.09 Any indemnification of or advance of expenses to a Member, Manager or Other Person in accordance with this Article shall be reported in writing to the Members and Managers within the two (2) month period immediately following the date of the indemnification or advance.

7.10 If any Section in this Article or any portion thereof shall be invalidated on any ground by any court of competent jurisdiction, then the NYSRC shall nevertheless indemnify and hold harmless each Member, Manager or any other Indemnified Person as to costs, charges and expenses (including attorneys' fees), judgments, fines and amounts paid in settlement with respect to any action, suit or proceeding, whether civil, criminal, administrative or investigative to the full extent permitted by any applicable portion of this Article that shall not have been invalidated and to the fullest extent permitted by applicable law.

ARTICLE 8: EFFECTIVE DATE AND TERMINATION

8.01 The NYSRC will be effective upon the execution of the NYSRC Agreement and the issuance of a Certificate of Formation, whichever occurs later, and shall continue in existence until dissolved pursuant to a unanimous written consent of the Executive Committee. Notwithstanding the foregoing, the NYSRC shall not commence operations until the date on which FERC and any other regulatory authority of competent jurisdiction, to the extent applicable, grant all the necessary approvals and this Operating Agreement is executed by the initial Members and approved by the Executive Committee.

8.02 Upon dissolution of the NYSRC, the assets of the NYSRC shall be distributed in the manner determined by the Executive Committee and in accordance with any applicable provisions of the Code.

ARTICLE 9: DISPUTE RESOLUTION

9.01 If there is a dispute between the ISO and the NYSRC regarding the necessity, terms or the implementation and/or application of a Reliability Rule by the ISO or in the enactment of a specific Reliability Rule by the NYSRC, the dispute shall be resolved in accordance with the dispute resolution process contained in the ISO/NYSRC Agreement.

ARTICLE 10: CODE OF CONDUCT

10.01 The NYSRC shall prepare and apply a code of conduct with respect to the treatment by Members, Managers, or their representatives of any information of a commercial value provided by a Market Participant or the ISO to the NYSRC. The code of conduct will establish protocols to ensure that Members, Managers and their representatives shall not favor their own commercial interests, or the commercial interests of any Market Participant, in carrying out their NYSRC responsibilities; provided, however, that the code of conduct will be subject to the requirements of Section 74 of the New York State Public Officers Law with respect to any Manager to whom the provisions of Section 74 are applicable.

The Code of Conduct shall be provided to members and alternates on the Executive Committee, members and alternates of all NYSRC subcommittees, working groups, and task forces, officers, employees, consultants, auditors, accountants, counsel and any other representative of the NYSRC. Upon assuming any of the foregoing responsibilities related to the NYSRC, each such person shall acknowledge, in writing, that he or she has read the Code of Conduct and agrees to abide by and comply with all of its terms. In addition, at the commencement of the new terms of the members of the Executive Committee in August of every other year, each such person shall reaffirm, in writing, that he or she has read the Code of Conduct and agrees to abide by and comply with all of its terms. The chairman of each NYSRC

subcommittee, working group and task force shall be responsible for having each member and alternate sign a written acknowledgement in a form approved by the Executive Committee, which shall be forwarded to the Secretary of the Executive Committee. All other persons shall submit a written acknowledgement, when required to do so by this provision, to the Secretary of the Executive Committee.

10.02 An individual serving as a Manager or alternate on the Executive Committee of the NYSRC is precluded from serving on the ISO Board or on any ISO committee.

10.03 The NYSRC shall adopt appropriate procedures to maintain the confidentiality of Confidential Information in the possession of the NYSRC.

ARTICLE 11: LIMITATION OF LIABILITY

11.01 The NYSRC, the Members, the Managers, the officers, agents or authorized representatives of the NYSRC, and any person who is or was serving as a manager, director, officer, partner, venturer, proprietor, trustee, employee, agent or similar functionality of another foreign or domestic limited liability company, corporation, partnership, formal or ad hoc association or joint venture, sole proprietorship, trust, employee benefit plan or other enterprise that is or was a Member or Manager or an authorized representative of a Member or Manager shall not be liable (whether based on contract, indemnification, warranty, tort, strict liability or otherwise) to any Member, Manager, Market Participant or third party for any damages whatsoever, including without limitation direct, special, indirect, punitive, incidental, or consequential damages resulting from any act or omission in any way associated with this Operating Agreement except to the extent that the NYSRC, a Member or Manager is found liable for gross negligence or willful misconduct, in which case the NYSRC, the Member or

Manager will not be liable for any incidental, consequential, punitive, special or indirect damages.

ARTICLE 12: REGULATORY JURISDICTION

12.01 Nothing in this Operating Agreement shall restrict the rights of the Members, Managers or any other Person to file a complaint with or submit any action to FERC or any appropriate regulatory authority under relevant provisions of the Federal Power Act or other relevant statutory provisions, nor shall anything in this Operating Agreement affect the jurisdiction of FERC or any other regulatory authority over matters arising under this Operating Agreement.

ARTICLE 13: HEADINGS

13.01 The section headings herein are for convenience and reference only, and in no way define or limit the scope of this Operating Agreement or in any way affect its provisions. Whenever the terms hereto, hereunder, herein or hereof are used in this Operating Agreement, they shall be construed as referring to this entire Operating Agreement, rather than to any individual section, subsection or sentence.

ARTICLE 14: NOT PARTNERS

14.01 Nothing contained in this Operating Agreement shall be construed to make the Members or Managers partners or joint venturers or to render any Member or Manager liable for the debts or obligations of any other Member or Manager.

ARTICLE 15: WAIVER

15.01 Any waiver at any time of the rights of any Member or Manager as to any default on the part of any other Member or Manager under this Operating Agreement or as to any other matter arising hereunder shall not be deemed a waiver as to any default or other matter subsequently occurring.

ARTICLE 16: CLAIMS BY EMPLOYEES AND INSURANCE

16.01 Notwithstanding anything to the contrary set forth in this Operating Agreement, each Member or Manager shall be solely responsible for and shall bear all of the costs of claims by its own employees, contractors, or agents arising under, and covered by, any workers' compensation law. Each of the Members and Managers, except Unaffiliated Managers, shall furnish, at its sole expense, such insurance coverage and such evidence thereof, or evidence of self-insurance, as is reasonably necessary to meet its obligations under this Operating Agreement.

ARTICLE 17: EXECUTION IN COUNTERPARTS

17.01 This Operating Agreement may be executed in one or more counterparts with the effect as if the Members executing the several counterparts had all executed one counterpart, but in such event each such counterpart shall constitute an original and all of such counterparts shall constitute one and the same agreement.

ARTICLE 18: SUCCESSORS IN INTEREST

18.01 Each and all of the covenants, agreements, terms, and provisions of this Operating Agreement shall be binding upon and inure to the benefit of each of the Members and, to the extent permitted by this Operating Agreement, their respective successors and assigns.

ARTICLE 19: SEVERABILITY

19.01 Any provision of this Operating Agreement which is invalid, illegal, or unenforceable in any respect in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality, or unenforceability without in any way affecting the validity, legality, or enforceability of the remaining provisions hereof, and any such invalidity, illegality, or

unenforceability in any jurisdiction shall not invalidate or in any way affect the validity, legality, or enforceability of such provisions in any other jurisdiction.

ARTICLE 20: WAIVER OF RIGHT TO PARTITION

20.01 Each of the Members irrevocably waives during the term of the NYSRC any right that such Member may have to maintain any action for partition with respect to the property and assets of the NYSRC.

ARTICLE 21: PRONOUNS

21.01 Any pronoun and any variation thereof used herein shall be deemed to refer to the masculine, feminine, neuter, singular or plural, as the context may require.

ARTICLE 22: PROVISIONS RELATING TO TAX EXEMPT STATUS

22.01 The NYSRC is not organized for profit, rather it is organized to conduct activities permitted for business leagues described in section 501(c)(6) of the Internal Revenue Code.

22.02 No part of the net earnings of the NYSRC may inure to the benefit of any member or private individual within the meaning of the regulations and authorities under section 501(c)(3) and (c)(6) of the Internal Revenue Code.

22.03 The NYSRC may not make distributions to its members except as (i) pro rata refunds of excess dues and contributions paid by members during the current and prior year, and as (ii) distributions of goods, services, or use of facilities of a kind and in a manner recognized as permissible for business leagues described in section 501(c)(6) of the Internal Revenue Code.

22.04 The NYSRC may not make refunds or rebates to members on a basis more favorable than made to nonmembers where both are charged for a particular good, service, or use of facility; however, members may be charged less than nonmembers, to the extent that the member dues are used to subsidize the provision of the particular good, service, or use of facility.

22.05 No substantial part of the activities of the NYSRC shall consist of carrying on propaganda, or otherwise attempting to influence legislation, and the NYSRC shall not participate or intervene in any political campaign (including the publishing or distribution of statements) on behalf of or in opposition to any candidate for public office.

22.06 In the event of dissolution of the NYSRC, all of the assets and property of the NYSRC remaining after the proper payment of expenses and the satisfaction of all liabilities shall be distributed to further its tax exempt purposes or to the federal government or a state or local government.

22.07 The NYSRC, its Members and Managers agree that the terms of Article 22.01 through 22.06 shall be set forth in Article 4 of the Certificate of Formation of the NYSRC (with such stylistic adjustments as may be necessary) and that the NYSRC, its Members and Managers shall be bound by such terms as set forth in such Article 4.

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

CENTRAL HUDSON GAS & ELECTRIC CORPORATION

By: _____
Ronald P. Brand

Title: Senior Vice President of Engineering, Environmental
Affairs and Special Projects

Date: _____

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.

By: _____
Louis L. Rana

Title: Vice President, System and Transmission Operations

Date: _____

LIPA

By: _____
Richard J. Bolbrock

Title: Vice President, Power Markets

Date: _____

POWER AUTHORITY OF THE STATE OF NEW YORK

By: _____
H. Kenneth Haase

Title: Senior Vice President, Transmission

Date: _____

NEW YORK STATE ELECTRIC & GAS CORPORATION

By: _____
Dennis R. Urgento

Title: Vice President, Customer Engineering and Delivery

Date: _____

NIAGARA MOHAWK POWER CORPORATION

By: _____
Clement E. Nadeau

Title: Vice President, Electric Delivery

Date: _____

By: _____
Michael B. Whitcraft

Title: Vice President, Energy Delivery

Date: _____

**EXHIBIT A
LIST OF INITIAL NYSRC EXECUTIVE COMMITTEE MANAGERS**

**Richard J. Bolbrock
Long Island Power Authority
333 Earle Ovington Blvd., #403
Uniondale, NY 11553**

**John A. Casazza
American Educational Institute
8208 Donset Drive
Springfield, VA 22152**

**William H. Clagett
AlMat, Inc.
7023 South Kendall Court
Littleton, CO 80128**

**Roger E. Clayton, P.E.
PG&E Generating
111 Washington Avenue #703
Albany, NY 12210**

**Mark J. Cordeiro
35 Main Street
Hopkinton, MA 01748**

**Joseph C. Fleury
New York State Electric & Gas Corp.
4500 Vestal Parkway East
P.O. Box 3607
Binghamton, NY 13902-3607**

**H. Kenneth Haase
New York Power Authority
1633 Broadway
New York, NY 10019**

**John Hauber
Rochester Gas & Electric
700 Jefferson Road
Rochester, NY 14616**

**George C. Loehr
eLucem
4101 Killington Road, N.W.
Albuquerque, NM 87114**

**Kenneth A. Mennerich
Central Hudson Gas & Electric
284 South Avenue
Poughkeepsie, NY 12601**

**P. Donald Raymond, Jr.
Niagara Mohawk Power Corporation
300 Erie Blvd. West
Syracuse, NY 13202**

**Mayer Sasson
Consolidated Edison Company
of New York, Inc.
System Operations Department
128 West End Avenue
New York, NY 10023**

**Algrid F. White, Jr.
Couch, White Brenner Howard and
Feigenbaum, LLP
540 Broadway
Albany, NY 12201**