

**Reliability Support Services Agreement**

**between**

**New York State Electric & Gas Corporation**

**and**

**Cayuga Operating Company, LLC**

**December 27, 2012**

Pursuant to the rates, terms and conditions of this Reliability Support Services Agreement (“Agreement”), Cayuga Operating Company, LLC (“Cayuga”) will provide Reliability Support Services (“RSS”) to New York State Electric & Gas Corporation (“NYSEG” and together with Cayuga the “Parties”) from Cayuga Unit Nos. 1 and 2 located at the Cayuga Generating Facility and connected to NYSEG.

## **RECITALS**

*Whereas*, Cayuga owns and operates the Cayuga Generating Facility, a coal-fired generating station in Lansing, New York, which consists of appurtenant facilities and two generating units, Unit 1, which has a 154 MW net capacity (winter), and Unit 2, which has a 158.7 MW net capacity(winter) (together, the “RSS Units”). Since being placed into service, the RSS Units have supplied energy, capacity and ancillary services in New York; and

*Whereas*, NYSEG is the transmission owner to which the Cayuga Generating Facility is interconnected; and

*Whereas*, on July 20, 2012, Cayuga submitted a notification to the New York State Public Service Commission (“NYPSC”) in accordance with the NYPSC’s notice requirements of its intent to mothball the RSS Units by January 16, 2013; and

*Whereas*, in a July 25, 2012 letter, Thomas Dvorsky, DPS Director of the Office of Electric, Gas and Water, requested that NYSEG and the New York State Independent System Operator (“NYISO”) work together as necessary to perform an analysis to determine the effects of the retirement of the RSS Units and the Cayuga Generating Facility on electric system reliability and local reliability issues, and to propose solutions in the event the retirement adversely affects reliability; and

*Whereas*, NYSEG and the NYISO conducted such a study which determined that, at present, both RSS Units need to be available and capable of being committed to maintain system reliability; and

*Whereas*, both Parties are interested in ensuring the RSS Units remain available to support system reliability in New York until certain transmission upgrades are completed or other reliability remedies are identified and implemented.

NOW THEREFORE, in consideration of the mutual agreements and covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound by this Agreement as of the Effective Date, the Parties covenant and agree as follows:

## ARTICLE I DEFINITIONS

1. **Definitions.** Unless otherwise stated in this Agreement, the following terms shall have the following meanings:
- (a) **“Additional Expenditure”** shall mean cumulative incremental costs during the Initial Term for Forced Outage repairs in excess of \$450,000. The costs for any Forced Outage repair budgeted for less than \$50,000 shall not be deemed Additional Expenditures.
  - (b) **“Applicable Laws”** shall mean all applicable provisions of all constitutions, treaties, statutes, laws (including the common law), rules, regulations, ordinances, and codes and any order, writ, injunction, decree, judgment, award, decision or determination of any court or any federal, state, municipal or other governmental department, commission, board, bureau, agency, authority or instrumentality.
  - (c) **“Applicable Revenues”** shall mean Net Energy Revenue and pursuant to Section 3.3 capacity revenue and any NYISO true-ups.
  - (d) **“Change in Law”** shall mean a change in federal or state environmental or other law, policy, regulation, or rule, or a change in the interpretation of the same, that has a material adverse effect on Cayuga or NYSEG, as determined solely by each Party in a commercially reasonable manner.
  - (e) **“Commission”** shall mean the Federal Energy Regulatory Commission.
  - (f) **“DPS”** shall mean the New York State Department of Public Service.
  - (g) **“EBITDA”** shall mean Earnings Before Interest, Taxes, Depreciation and Amortization.
  - (h) **“Environmental Laws”** shall mean any and all federal, state, or local, statutes, laws, judicial decisions, regulations, ordinances, rules, judgments, orders, decrees, plans, injunctions, permits, concessions, grants, franchises, licenses, agreements and other governmental restrictions relating to (i) the protection of the environment, (ii) the effect of the environment on human health, (iii) emissions, discharges or releases of hazardous materials or wastes into surface water, ground water or land, or (iv) the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of hazardous materials or wastes or the cleanup or other remediation thereof.

- (i) **“Forced Outage”** shall mean an unplanned failure that requires a unit to be removed from service, or the load on the unit to be reduced before the end of the nearest following Weekend.
- (j) **“FPA”** shall mean the Federal Power Act.
- (k) **“Good Utility Practice”** shall mean any of the practices, methods or acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods or acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to delineate acceptable practices, methods, or acts generally accepted in the region, including those practices required by Federal Power Act Section 215(a)(4).
- (l) **“Governmental Authority”** shall mean the government of any nation, state or other political subdivision thereof, including any entity lawfully exercising executive, military, legislative, judicial, regulatory, or administrative functions of or pertaining to a government.
- (m) **“Initial Term”** shall mean the period of time from the start of the hour ending 0100 Eastern Prevailing Time (“EPT”) on January 16, 2013, through the hour ending at 2400 EPT on January 15, 2014.
- (n) **“Monthly Fixed Price”** shall have the meaning set forth in Section 4.1.
- (o) **“Necessary Extension” and “Necessary Extension Agreement”** shall have the meanings set forth in Section 2.2.
- (p) **“NERC”** shall mean the North American Electric Reliability Corporation.
- (q) **“NPCC”** shall mean the Northeast Power Coordinating Council, Inc.
- (r) **“NYISO”** shall mean the New York Independent System Operator, Inc., or successor organization charged with operating the transmission system and markets in the State of New York.
- (s) **“NYISO Day-Ahead Energy Market”** shall mean the NYISO-administered day-ahead energy market.
- (t) **“NYISO UCAP”** shall mean Rest of State Unforced Capacity, as defined in the NYISO Market Administration and Control Area Services Tariff, as such tariff may be amended by the NYISO.

- (u) **“NYISO OATT”** shall mean the NYISO Open Access Transmission Tariff, as it may be amended by the NYISO.
- (v) **“NYISO Tariff”** shall refer to any published tariff of the NYISO, as such tariff may be amended by the NYISO.
- (w) **“NYPSC”** shall mean the New York State Public Service Commission.
- (x) **“NYSRC”** shall mean New York State Reliability Council, L.L.C.
- (y) **“Party”** shall mean either Cayuga or NYSEG. **“Parties”** means both Cayuga and NYSEG.
- (z) **“Planned Outage”** shall mean a planned interruption, in whole or in part, in the electrical output of a generating unit to permit Cayuga to perform maintenance and repair of the unit, pursuant to the process for Installed Capacity providers set forth in the NYISO Tariff and Outage Scheduling Manual.
- (aa) **“Point of Delivery”** shall mean the high side of the generation step-up transformer(s) located at the point of interconnection between the Cayuga Generation Facility and NYSEG’s transmission system.
- (bb) **“Reliability Support Services”** shall mean the services required to be provided by Cayuga to NYSEG pursuant to this Agreement and shall include but not be limited to Cayuga keeping the Cayuga Generating Facility and the RSS Units available, capable of being committed, and operating for reliability purposes as requested by NYSEG or the NYISO.
- (cc) **“Refund Period”** shall have the meaning set forth in Section 4.3.
- (dd) **“RSS”** shall mean Reliability Support Services.
- (ee) **“RSS Units”** shall mean Cayuga Unit Nos. 1 and 2.
- (ff) **“Staff”** shall mean New York State Department of Public Service Staff.

## ARTICLE II TERM

### 2.1. Effective Date and Term

- (a) This Agreement shall become effective at the start of the hour ending 0100 EPT on January 16, 2013 (the “Effective Date”) and remain in effect through the hour ending 2400 EPT on January 15, 2014 (the “Initial Term”).

- (b) No provision of this Agreement shall terminate earlier than midnight on January 15, 2014, except as otherwise provided in this Section 2.1 or pursuant to the provisions relating to Additional Expenditures (Section 5.3), Force Majeure Events (Section 7.1), Termination for Default (Section 9.1), and Final Order (Section 10.13).
- (c) Upon sixty (60) calendar days written notice, either Party may terminate this Agreement prior to January 15, 2014 if any of the following events or circumstances materially and adversely affect either Party during the Initial Term: (1) a Change in Law; (2) a change to the NYISO Tariff or other NYISO policy or rule; or (3) an order of any Governmental Authority, other than as a result of an action or proceeding commenced by such Party.

## **2.2. Necessary Extension**

- (a) NYSEG agrees to provide written notice to Cayuga indicating the need for either or both of the RSS Units after the expiration of the Initial Term (“Necessary Extension”). Such notice of a Necessary Extension will be provided no later than September 1st of the Initial Term.
- (b) Upon receiving notice of a Necessary Extension, the Parties will engage in good faith negotiations to establish in a new written agreement the terms and conditions of such Necessary Extension (“Necessary Extension Agreement”), including, without limitation, all aspects of RSS.
- (c) If the Parties are unable to agree on the terms and conditions of any Necessary Extension Agreement, they agree to seek the assistance of Staff to help facilitate the resolution of differences between the Parties. The Parties shall at all times negotiate in good faith; provided, however, that each Party at any time shall be free to pursue any legal remedies available to it by law.

## **2.3. Survival of Obligations**

Notwithstanding the termination of this Agreement, the Parties shall continue to be bound by the provisions of this Agreement that by their nature are intended to, and shall, survive such termination.

# **ARTICLE III OBLIGATIONS AND OPERATIONS**

## **3.1. Scheduling and Bidding**

- (a) During the Initial Term, Cayuga shall operate and maintain the RSS Units and the Cayuga Generating Facility within standards of Good Utility Practice, and in accordance with the NYISO Tariffs.

- (b) Cayuga will interface and comply with NYISO scheduling deadlines and requirements for maintaining the Cayuga Generating Facility and the RSS Units as eligible energy and capacity providers, as well as comply with NYSEG's or NYISO's dispatch instructions.
- (c) The Parties acknowledge that during the Term of this Agreement and as a consequence of the provision of services under this Agreement, Cayuga will need to run the RSS Units for testing and diagnostic purposes for reasons including, but not limited to, the performance of Dependable Maximum Net Capability ("DMNC") and Relative Accuracy Test Audit ("RATA") testing, or as otherwise required by plant management for health, safety, environmental or operational reasons. If warranted by system conditions, the Parties will coordinate the scheduling of the RSS Units for these purposes so that NYSEG will either designate the related RSS Unit as the Day-Ahead Reliability Unit ("DARU") or commit that Unit pursuant to the NYISO's Supplemental Resource Evaluation ("SRE"). Such designation will be coordinated between the Parties so that the most appropriate designation is selected. Cayuga shall strive to use its best efforts to perform these tests during periods already scheduled by NYSEG or the NYISO.

**3.2. Operating Parameters**

- (a) Cayuga agrees to the following operating parameters during the Initial Term for the RSS Units:

<b>Unit 1</b>	
Minimum Run Time	24 hours
Minimum Down Time	24 hours
Maximum Stops per Day	1
Start-up Notification Time	16 hours

<b>Unit 2</b>	
Minimum Run Time	24 hours
Minimum Down Time	24 hours
Maximum Stops per Day	1
Start-up Notification Time	19 hours

- (b) Failure by Cayuga to meet these operating parameters resulting in the RSS Units being unavailable shall subject Cayuga to performance penalties, as set forth in Section 5.4 below.
- (c) If NYSEG needs both RSS Units and both RSS Units are offline, Cayuga shall bring the second RSS Unit online as soon as practicable, but no longer than 48 hours after the first RSS Unit is online.

### **3.3. Energy and Ancillary Services**

- (a) Cayuga shall at all times bid the RSS Units in compliance with NYISO market rules.
- (b) Cayuga shall retain all net energy and ancillary service revenues (“Net Energy Revenues”), calculated substantially in the form of Exhibit 2 to \$7,000,000 annually. Net Energy Revenues in excess of \$7,000,000 annually shall be shared 50/50 between NYSEG and Cayuga. The Parties agree to reimburse each other for any under or overpayments of Net Energy Revenues if energy and ancillary service revenues for any month are modified in the NYISO’s close-out invoice. This provision shall survive termination of the Agreement until the NYISO has

issued a close-out invoice for every month of the Initial Term.

- (c) Cayuga shall offer the RSS Units’ capacity value into the NYISO UCAP auction at a *de-minimus* price, in compliance with NYISO market rules. Any capacity

revenues shall be credited to NYSEG by Cayuga, whereby, beginning the month of February 2013, and for each successive month through the end of the Initial Term, the capacity revenues earned by Cayuga in the prior month will be credited against NYSEG’s monthly payment to Cayuga. Cayuga will remit to NYSEG payment for December 2013 capacity revenue in January 2014. The Parties agree to reimburse each other for any under or overpayments of capacity revenues if

capacity revenues for any month are modified in the NYISO’s close-out invoice.

This provision shall survive termination of the Agreement until the NYISO has



issued a close-out invoice for every month of the Initial Term. Cayuga shall offer

the RSS Units, when available, into the NYISO administered Day-Ahead Energy market. Cayuga shall comply with any dispatch instruction issued by NYSEG or NYISO under established NYISO protocols, consistent with the operating parameters of the RSS Units and in accordance with the NYISO Tariffs.

- (d) NYSEG shall not be responsible for any penalties or fines that relate to the bidding, scheduling and operation of the RSS Units during the Initial Term.
- (e) Each Party shall bear its own bad debt losses under the NYISO OATT.

### **3.4. Operating Characteristics and Environmental Compliance**

Cayuga shall have no obligation to cause the RSS Units to be operated in a manner inconsistent with the Cayuga unit characteristics set forth in Section 3.2(a) of this Agreement or in a manner that would be inconsistent with or in violation of the NYISO Tariff, NERC, NPCC, or NYSRC rules or would cause Cayuga to violate the terms of any environmental regulations, restrictions, orders or decrees or any operating permit, which determination shall be made by Cayuga in its reasonable discretion.

### **3.5. Reactive Power**

Except when the RSS Units are unavailable, the RSS Units will provide reactive power consistent with the capability of the RSS Units and the procedures specified under the NYISO's Voltage Support Service.

### **3.6. Unit Selection**

On any day where NYSEG requires only a single RSS Unit to operate, unless only one of the RSS Units is available, Cayuga shall have the right to select between Unit 1 and Unit 2. Additionally, unless only one of the RSS Units is available, Cayuga has the right in its sole discretion, after consulting with NYSEG, to provide RSS under this Agreement from either Unit 1 or Unit 2. NYSEG shall not object to such election by Cayuga.

## **ARTICLE IV PRICING**

### **4.1. Monthly Fixed-Price**

Cayuga will invoice NYSEG on January 4, 2013 and thereafter on the first day of each month and each such invoice shall include the Monthly Fixed-Price. NYSEG will pay Cayuga

\$2,431,388/month for the first month on January 16, 2013 and thereafter on the 16<sup>th</sup> calendar or the next applicable business day as the “Monthly Fixed Price” net of Applicable Revenues for the Initial Term. Cayuga shall also provide NYSEG with quarterly data in support of each line item expenditure included in the Monthly Fixed Price as shown on Exhibit 1.

#### **4.2. Recovery of Capital Expenditures**

Cayuga shall provide by the first day of each month a schedule for NYSEG’s review that identifies that month’s expenditures associated with the capital projects listed in Exhibit 1 (“Capital Expenditures”). NYSEG will pay for Capital Expenditures within fifteen (15) calendar days of written notice from Cayuga that Cayuga has incurred Capital Expenditures. Notwithstanding the foregoing, NYSEG’s total obligation for Capital Expenditures shall not exceed \$4,325,000 in total for the Initial Term.

#### **4.3. Refund of Capital Expenditures**

At the expiration of the Initial Term, should Cayuga continue to operate the Cayuga Generation Facility or the RSS Units, Cayuga shall reimburse NYSEG for one half of the capital expenditures at the rate of 20% per year (the “Annual Refund Amount”) for each of five years of operation beyond the Initial Term (“Refund Period”). If Cayuga’s EBITDA in any year is less than the Annual Refund Amount, Cayuga shall have no obligation to pay NYSEG more than its EBITDA for that year. For the avoidance of doubt, this provision shall survive termination of the Initial Term of the Agreement until the conclusion of the Refund Period.

#### **4.4. Other Pricing Terms**

NYSEG agrees to pay Cayuga for one half of Cayuga’s cost for a cost of service study and incurred attorneys’ and consultants’ fees. NYSEG’s share of such costs shall not exceed \$150,000.

#### **4.5. Books and Records**

NYSEG shall have the right to review all of Cayuga’s books and records associated with the operation of the RSS Units and the Cayuga Generating Facility.

### **ARTICLE V OUTAGES AND MAINTENANCE**

#### **5.1. Planned Outages**

Cayuga shall be permitted to take one or both RSS Units out of operation, or reduce the capability of one or both RSS Units, during Planned Outages as permitted by the NYISO Tariff or policies. NYSEG agrees, as the related Transmission Owner, that it will not unreasonably withhold Cayuga’s Planned Outage requests.

## **5.2. Forced Outages**

In the event Cayuga needs to take either or both RSS Units out of operation or reduce the capability of either or both RSS Units upon the occurrence of a Forced Outage, Cayuga shall notify NYSEG, pursuant to established practice under the NYISO Outage Scheduling Manual, of the nature and expected duration of a Forced Outage as soon as practicable.

## **5.3. Additional Expenditures**

- (a) Cayuga shall not be required or otherwise obligated to incur any Additional Expenditures, except as permitted by this Section 5.3. If there is a need for Additional Expenditures, Cayuga will provide written notice to NYSEG as soon as possible, but in no event greater than ten (10) calendar days from the start of the relevant Forced Outage, whether expenses not recovered in the Monthly

Fixed-Price are required to return the RSS Unit or Units to service. This notice

will indicate the amount of Additional Expenditures expected to be required and the length of time required to return the RSS Unit or Units to service (the "Repair Time").

- (b) If within sixty (60) calendar days of receipt of such notice, NYSEG provides Cayuga with written notification that it will pay the full amount, or a lesser amount mutually agreed to by the Parties, of the Additional Expenditures, Cayuga will incur such Additional Expenditures and restore the RSS Unit or Units to service as soon as practicable but in no event longer than the Repair Time identified per subsection (a) above.
- (c) NYSEG shall pay Cayuga for Additional Expenditures, to the extent NYSEG has provided Cayuga with written notification that it will pay the Additional Expenditures, within ten (10) calendar days of NYSEG's receipt of Cayuga's notice it has incurred such Additional Expenditures.
- (d) NYSEG shall have the right to dispute the amount of Additional Expenditures identified as necessary by Cayuga, in which case the Parties will engage in good faith negotiations to attempt to reach a resolution of the appropriate level of Additional Expenditures required. If the Parties are unable to agree on the level of Additional Expenditures, they agree to seek the assistance of Staff to help facilitate the resolution of their differences and the Parties shall at all times negotiate in good faith.
- (e) Cayuga is obligated to use reasonable efforts to minimize Additional Expenditures and agrees that any Additional Expenditures shall be offset by any

proceeds from any third-party sources, including insurance proceeds, paid to

Cayuga to return the RSS Unit or Units to service from the Forced Outage. Cayuga shall refund to NYSEG any payments for Additional Expenditures paid to Cayuga that exceed the amount actually expended by Cayuga, after offsets.

- (f) In the event that NYSEG does not provide written notification of its commitment to fund the Additional Expenditures and Cayuga does not make the voluntary election described in Section 5.3(g) below, Cayuga shall no longer have any obligation to provide RSS from such RSS Unit or Units. If Additional Expenditures are necessary to restore both of the RSS Units from Forced Outage, then this Agreement will be considered terminated as of the expiration of NYSEG's notice period. However, if Additional Expenditures are only necessary to restore one of the RSS Units from a Forced Outage, this Agreement shall remain in full force and effect with respect to the remaining RSS Unit. If NYSEG and Cayuga are unable to agree on the appropriate compensation for one RSS Unit, they agree to seek the assistance of Staff to facilitate the resolution of their differences and the Parties shall at all times negotiate in good faith; provided, however, that each Party at any time shall be free to pursue any legal remedies available to it by law.
- (g) Nothing in this Section 5.3 shall prevent Cayuga from voluntarily electing to make any repair necessary to allow the affected RSS Unit or Units to return to service, without additional compensation or the payment of Additional Expenditures, after being informed by NYSEG that it does not intend to fund the Additional Expenditures.
- (h) For the avoidance of doubt, the Repair Time and any period of time in which NYSEG is considering whether to authorize Additional Expenditures shall not count towards the Performance Penalty for purposes of determining the Monthly

Fixed-Price reduction.

#### **5.4. Performance Penalty**

- (a) Cayuga's failure to return the RSS Unit or Units to service within the Repair Time will result in the application of the Performance Penalty as set forth in Section 5.4(b) below. For purposes of the application of the Performance Penalty, the Repair Time shall commence on the day that Cayuga receives NYSEG's written notification to Cayuga that NYSEG will pay the full amount, or a lesser amount

mutually agreed to by the Parties, of the Additional Expenditures. Cayuga's failure to return an RSS Unit to service after receipt of the Additional Expenditures from NYSEG shall be a material breach of this Agreement solely if Cayuga fails to exercise Good Utility Practices and act in accordance with the NYISO Tariff in returning an RSS Unit to service.

- (b) Except as provided for in Section 5.3(h), for each hour in a month that an RSS Unit is not on a Planned Outage and is asked to run in compliance with the Operating Parameters in Section 3.2 above and does not, \$787.67 will be credited against the Monthly Fixed-Price.

## **ARTICLE VI REPRESENTATIONS AND WARRANTIES**

### **6.1. Representations of Cayuga**

Cayuga hereby represents and warrants to NYSEG that the following is true, correct and complete as of the Effective Date:

- (a) Cayuga is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware. Cayuga has full corporate power and authority to own and lease all of the properties and assets it now owns and leases and to carry on its business as now being conducted. To the knowledge of Cayuga, Cayuga is in substantial compliance with Applicable Laws.
- (b) Cayuga has full power and authority (corporate and otherwise) to execute, deliver and perform this Agreement (including execution, delivery and performance of the operative documents to which Cayuga is a party) and to consummate the transactions contemplated herein, subject to the conditions set forth in this Agreement. The execution and delivery by Cayuga of this Agreement and the operative documents, and the consummation of the transactions will not violate Cayuga's organizational documents or other obligations, and no other proceedings on the part of Cayuga are necessary with respect thereto and no additional consents or approvals other than those provided for herein are required. This Agreement has been duly and validly executed and delivered by Cayuga and constitutes the legal, valid and binding obligation of Cayuga enforceable against Cayuga in accordance with its terms except as the same may be limited by bankruptcy, insolvency, reorganization, arrangement, fraudulent conveyance, moratorium or other similar laws relating to or affecting the rights of creditors generally, or by general equitable principles (regardless of whether enforcement is considered in a proceeding at law or in equity). Cayuga will take, and cause to be taken, all action that is necessary for Cayuga to complete the actions to be completed by Cayuga pursuant to this Agreement.
- (c) There are no known issues, defects, problems or other issues involving or related to the ownership and/or operation of the RSS Units and the Cayuga Generating

Facility as a whole that would preclude or prevent Cayuga from performing its duties and obligations in accordance with this Agreement.

- (d) No citations, fines, or penalties have been asserted against Cayuga under any Environmental Law or by the regulatory authority or jurisdiction in which Cayuga operates. Cayuga has not received notice (verbal or written) of nor is it aware of any person making allegations that all or any part of the RSS Units or the Cayuga Generating Facility as a whole, or the use, operation or ownership thereof, are in violation of any applicable Environmental Law.
- (e) Cayuga will keep in force all existing policies of insurance, or comparable replacement policies of insurance at existing levels of coverage related to the RSS Units and the Cayuga Generating Facility, including the ownership and operation thereof, throughout the duration of the Initial Term and any Necessary Extension.
- (f) Cayuga is in compliance with or has performed all agreements, representations and warranties, and conditions in this Agreement that are required to be performed and complied with by Cayuga before or coincident with the Effective Date.
- (g) Each of the representations and warranties of Cayuga in this Agreement and all other information delivered under this Agreement shall be true in all material respects at and as of the Effective Date as though each representation, warranty, and disclosure were made and delivered at and as of the Effective Date.

## **6.2. Representations of NYSEG**

NYSEG hereby represents and warrants to Cayuga that the following is true, correct and complete as of the Effective Date:

- (a) NYSEG is a corporation duly organized, validly existing and in good standing under the laws of the State of New York, with full corporate power and authority to own property and carry on its business as now being conducted.
- (b) NYSEG has full power and authority (corporate and otherwise) to execute, deliver and perform this Agreement (including execution, delivery and performance of the operative documents to which NYSEG is a party) and to consummate the transactions contemplated herein, subject to the conditions set forth in this Agreement. The execution and delivery by NYSEG of this Agreement and the operative documents, and the consummation of the transactions will not violate NYSEG's organizational documents or other obligations, and no other corporate proceedings on the part of NYSEG are necessary with respect thereto and no additional consents or approvals other than those provided for herein are required. This Agreement has been duly and validly executed and delivered by NSYEG and constitutes the legal, valid and binding obligation of NYSEG enforceable against NYSEG in accordance with its terms except as the same may be limited by

bankruptcy, insolvency, reorganization, arrangement, fraudulent conveyance, moratorium or other similar laws relating to or affecting the rights of creditors generally, or by general equitable principles (regardless of whether enforcement is considered in a proceeding at law or in equity). NYSEG will take, and cause to be taken, all corporate action that is necessary for NYSEG to complete the actions to be completed by NYSEG pursuant to this Agreement.

- (c) NYSEG is in compliance with or has performed all agreements, representations and warranties, and conditions in this Agreement that are required to be performed and complied with by NYSEG before or coincident with the Effective Date.
- (d) Each of the representations and warranties of NYSEG in this Agreement and all other information delivered under this Agreement shall be true in all material respects at and as of the Effective Date as though each representation, warranty, and disclosure were made and delivered at and as of the Effective Date.

## **ARTICLE VII FORCE MAJEURE EVENTS**

### **7.1. Force Majeure Event**

- (a) Any delay or failure in the performance by a Party, other than payment of undisputed amounts, shall be excused if and to the extent caused by the occurrence of a Force Majeure Event. A Force Majeure Event means acts of God, fires, floods, explosion, riots, wars, unusually inclement weather, sabotage, vandalism, terrorism, terroristic acts, restraint of government, governmental acts, changes in laws, regulations or order or injunctions, labor strikes, breakage or accident of machinery or equipment not directly caused by a lack of proper care or maintenance, and other like events or circumstances that are beyond the reasonable control of the Party affected thereby, despite such Party's reasonable efforts to prevent, avoid, delay, or mitigate the effect of such acts, events or occurrences, and which events or the effects thereof are not attributable to a Party's negligence or failure to perform its obligations under this Agreement.
- (b) If the availability of any of the RSS Units is reduced by reason of a Force Majeure Event, such Force Majeure Event shall be deemed to create a Forced Outage, and shall be resolved pursuant to the provisions herein relating to Forced Outage and Additional Expenditures. The Party unable to perform by reason of a Force Majeure Event shall use reasonable efforts to remedy its inability to perform and to mitigate the consequences of the Force Majeure Event as soon as reasonably practicable; provided that (i) no Party shall be required to settle any strike, walkout, lockout, or other labor dispute on terms which, in the Party's sole discretion, are contrary to its interests and (ii) subject to the Additional Expenditure provision, the Party unable to perform shall, as soon as practicable, advise the other Party of the reason for its inability to perform, the nature of any

corrective action needed to resolve performance, and its efforts to remedy its inability to perform and to mitigate the consequences of its inability to perform and shall advise the other Party of when it estimates it will be able to resume performance of its obligations under this Agreement.

## **ARTICLE VIII LIMITATIONS OF LIABILITY**

### **8.1. Indemnification, Limitation of Liability and Insurance**

- (a) Cayuga agrees to release, indemnify and hold harmless NYSEG, its directors, officers, agents, and representatives against and from any and all loss, claims, actions or suits, including costs and attorneys' fees, both at trial and on appeal, resulting from, or arising out of or in any way connected with, the energy delivered by Cayuga hereunder to and at the Point of Delivery, and facilities on Cayuga's side of the Point of Delivery, or Cayuga's operation and/or maintenance of the RSS Units and the Cayuga Generation Facility, or arising from this Agreement, including without limitation any loss, claim, action or suit, for or on account of injury, bodily or otherwise, to, or death of, persons, or for damage to, or destruction or economic loss of property belonging to NYSEG, Cayuga or others, excepting only such loss, claim, action or suit as may be caused solely by the fault or gross negligence of NYSEG, its directors, officers, employees, agents and representatives.
- (b) NYSEG agrees to release, indemnify and hold harmless Cayuga, its directors, officers, agents, and representatives against and from any and all loss, claims, actions or suits, including costs and attorney's fees, both at trial and on appeal, resulting from, or arising out of or in any way connected with the energy delivered by Cayuga hereunder after the Point of Delivery, including without limitation any loss, claim, action or suit, for or on account of injury, bodily or otherwise, to, or death of, persons, or for damage to, or destruction or economic loss of property, excepting only such loss, claim, action or suit as may be caused solely by the fault or gross negligence of Cayuga, its directors, officers, employees, agents or representatives, including without limitation within such exception losses, claims, actions and suits related to, arising under or resulting from this Agreement.
- (c) Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any person not a party to this Agreement. No undertaking by one Party to the other under any provision of this Agreement shall constitute the dedication of that Party's system or any portion thereof to the other Party or to the public.
- (d) **Neither Party shall be liable to the other for incidental, consequential, special, indirect, multiple or punitive damages, loss of revenue, profits, fees or costs arising out of, or connected in any way to the performance or non-**



**performance of a Party under this Agreement, whether arising from contract, tort (including negligence), strict liability or otherwise, unless such damages are the result of a Party's gross negligence or willful misconduct.**

## **ARTICLE IX REMEDIES**

### **9.1. Termination for Default**

If any Party shall fail to perform any material obligation related to the operation of any of the RSS Units imposed on it by this Agreement, and that obligation has not been suspended pursuant to this Agreement, the other Party, at its option, may terminate this Agreement by giving the Party in default written notice setting out specifically the circumstances constituting the default and declaring its intention to terminate this Agreement. If the Party receiving the notice does not within ten (10) days after receiving the notice, remedy the default, the Party not in default shall be entitled by a further written notice to terminate this Agreement; provided that, if the default is reasonably expected to take more than ten (10) days to remedy, the defaulting Party shall notify the non-defaulting Party of its plan for remedying the default and must take actions to begin remedying the default within ten (10) days. The Party not in default shall have a duty to mitigate damages. Termination of this Agreement pursuant to this Section 9.1 shall be without prejudice to the right of any Party to collect any amounts due to it prior to the time of termination.

### **9.2. Waiver**

The failure to exercise any remedy or to enforce any right provided in this Agreement or Applicable Law shall not constitute a waiver of such remedy or right or of any other remedy or right. A Party shall be considered to have waived any remedies or rights only if the waiver is in writing and signed by the Party against whom such waiver is to be enforced.

### **9.3. Beneficiaries**

Except as is specifically set forth in this Agreement, nothing in this Agreement, whether express or implied, confers any rights or remedies under, or by reason of, this Agreement on any persons other than the Parties and their respective successors and assigns, nor is anything in this Agreement intended to relieve or discharge the obligations or liability of any third-party, nor give any third-person any rights of subrogation or action against any Party.

## **ARTICLE X MISCELLANEOUS PROVISIONS**

### **10.1. Assignment**

Neither Party shall assign its rights or delegate its duties under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned, or delayed. Any such assignment or delegation made without such written consent

shall be null and void. Upon any assignment made in compliance with this section, this Agreement shall inure to and be binding upon the successors and assigns for the assigning Parties.

## **10.2. Notices and Correspondence**

Except as otherwise expressly provided in this Agreement, permitted by NYISO rules or required by law, all invoices, notices, consents, requests, demands, approvals, authorizations and other communications provided for in this Agreement shall be in writing and shall be sent by email, followed by personal delivery, certified mail, return receipt requested, facsimile transmission, or by recognized overnight courier service, to the intended Party at such Party's address set forth below. All such notices shall be deemed to have been duly given and to have become effective: (a) upon receipt if delivered in person, facsimile, or email; (b) two (2) days after having been delivered to a courier for overnight delivery; or (c) seven days after having been deposited in the United States mail as certified or registered mail, return receipt requested, all fees pre-paid, addressed to the applicable addresses set forth below. Each Party's address for notices shall be as follows (subject to change by notice in accordance with the provisions of this section):

TO CAYUGA:

Cayuga Operating Company, LLC.  
228 Cayuga Drive  
Lansing, NY 14882  
Attention: Jim Mulligan – President  
Telephone No.: 607-533-7913, ext 2262 (Plant)  
607-343-0556 (Mobile)  
Facsimile No.: 607-533-8744

TO NYSEG:

New York State Electric & Gas Corporation  
18 Link Drive, James A Carrigg Center  
Binghamton, NY 13904  
Attention: Vice President – Energy Services  
Telephone No.: 607-762-8701  
Facsimile No.: 607-762-8885

with copies to:

Rochester Gas and Electric Corporation  
89 East Avenue  
Rochester, NY 14649  
Attention: Jeffrey Rosenbloom, Legal Department  
Telephone No.: 585-724-8132  
Facsimile No.: 585-724-8668

Billing and Payment Information as shown in Exhibit 3

### **10.3. Parties' Representatives**

Each Party to this Agreement shall ensure that throughout the Initial Term duly appointed representatives are available for communications between the Parties. The representatives shall have full authority to deal with all day-to-day matters arising under this Agreement. Cayuga and NYSEG shall be entitled to assume that the duly appointed representatives of the other Party are at all times acting within the limits of the authority given by the representatives' Party.

### **10.4. Taxes**

- (a) Cooperation. Each Party shall use reasonable efforts to implement the provisions of and to administer this Agreement insofar as it applies to the RSS in accordance with the intent of the parties to minimize all taxes, so long as neither party is materially adversely affected by such efforts.
- (b) Taxes. Cayuga shall pay or cause to be paid all taxes imposed by any government authority on or with respect to the RSS arising prior to the Point of Delivery. NYSEG shall pay or cause to be paid all taxes on or with respect to the RSS arising from the Point of Delivery (other than ad valorem, franchise or income taxes which are related to the sale of the RSS and are, therefore, the responsibility of Cayuga). In the event Cayuga is required by law or regulation to remit or pay taxes which are NYSEG's responsibility hereunder, NYSEG shall promptly reimburse Cayuga for such taxes. If NYSEG is required by law or regulation to remit or pay taxes which are Cayuga's responsibility hereunder, NYSEG may deduct the amount of any such taxes from the sums due to Cayuga under this Agreement. Nothing shall obligate or cause a party to pay or be liable to pay any taxes for which it is exempt under the law.

### **10.5. Independent Parties**

Nothing contained herein shall constitute the Parties as joint venturers, partners, employees or agents of one another, and neither Party shall have the right or power to bind or obligate the other. Nothing herein will be construed as making either Party responsible or liable for the obligations and undertakings of the other Party. Except for provisions herein expressly authorizing a Party to act for another, nothing in this Agreement shall constitute a Party as a legal representative or agent of the other Party, nor shall a Party have the right or authority to assume, create or incur any liability or any obligation of any kind, express or implied, against or in the name or on behalf of the other Party unless otherwise expressly permitted by such other Party. Except as otherwise expressly provided in this Agreement, no Party undertakes to perform any obligation of the other Party.

### **10.6. Choice of Law**

This Agreement shall be interpreted and enforced in accordance with the laws of the state of New York, excluding any choice of law provisions or rules which may direct the application of the laws of another jurisdiction.

#### **10.7. Effect of Invalidation, Modification, or Condition**

Each covenant, condition, restriction, and other term of this Agreement is intended to be, and shall be construed as, independent and severable from each other covenant, condition, restriction, and other term. If any covenant, condition, restriction, or other term of this Agreement is held to be invalid or otherwise modified or conditioned by any Governmental Authority, the invalidity, modification, or condition of such covenant, condition, restriction, or other term shall not affect the validity of the remaining covenants, conditions, restrictions, or other terms hereof. If an invalidity, modification, or condition has a material impact on the rights and obligations of the Parties, the Parties shall make a good faith effort to renegotiate and restore the benefits and burdens of this Agreement as they existed prior to the determination of the invalidity, modification, or condition. If the Parties fail to reach agreement, then the Party whose rights and obligations have been adversely affected may, in its sole discretion, terminate this Agreement.

#### **10.8. Amendments**

Any amendments or modifications of this Agreement shall be made only in writing and duly executed by all Parties to this Agreement. Such amendments or modifications shall become effective only after the Parties have received any authorizations required from the NYPSA for the amendment or modification. The Parties agree to negotiate in good faith any amendments to this Agreement that are needed to reflect the intent of the Parties as expressed herein and to reflect any changes to the design of the New York markets that are approved by the Commission or the NYPSA from time to time.

#### **10.9. Dispute Resolution**

Except where otherwise provided for in this Agreement, disputes under this Agreement shall be submitted to representatives of each Party for resolution. If the dispute remains unresolved, after forty-five (45) days, either Party may pursue any legal remedies available to it by law.

#### **10.10. Entire Agreement**

This Agreement consists of the terms and conditions set forth herein, as well as the Exhibits hereto, which are incorporated by reference herein and made a part hereof. This Agreement contains the entire agreement between the Parties with respect to the matters set forth herein and supersedes all prior negotiations, undertakings, agreements and business term sheets.

### **10.11. Confidentiality**

Information provided by any Party to the other pursuant to this Agreement may, at the Party's discretion, be provided subject to the terms of the Confidentiality Agreement between the Parties dated September 12, 2012 ("Confidentiality Agreement"). All information provided to either Party in connection with the negotiations regarding this Agreement shall remain subject to the provisions of such Confidentiality Agreement.

### **10.12. Binding Nature**

It is the Parties' expectation that this Agreement will be executed and filed with the NYPSC in compliance with the December 17, 2012 order issued by the NYPSC in Case 12-E-0400 approving the Term Sheet filed by the Parties with the NYPSC (the "December 17 Order"). If this Agreement is rejected by the NYPSC or materially modified by the NYPSC, this Agreement shall be deemed terminated as of the date of such rejection or modification.

### **10.13. Final Order**

- (a) Cayuga will withdraw its filing made with the Commission in Docket No. ER13-405-000 once the December 17 Order becomes final and nonappealable and if no third-party has commenced an administrative or judicial challenge concerning the Term Sheet or this Agreement prior to the expiration of the appeals period(s) authorizing a challenge to the December 17 Order under State law. For purposes of this Section 10.13, the December 17 Order becomes final and non-appealable once the appeals period(s) authorizing a challenge to the December 17 Order under State law has expired and no stay has been entered or petition for administrative or judicial review or rehearing has been filed by either Party or any third-party. The Parties agree not to file any rehearing request of the December 17 Order, nor recommend to the NYPSC that a rehearing be granted. The Parties shall also not file any judicial appeal and further agree to oppose any request for judicial review filed by any third-party of any NYPSC decision approving this Agreement without material modification. Cayuga agrees to use its best efforts to hold Docket No. ER13-405-000 in abeyance until it is required to withdraw its filing pursuant to this Section 10.13, including but not limited to, making a filing with the Commission on or before January 2, 2013 reiterating its request to hold the proceeding in abeyance and seeking a thirty (30) day extension of the January 7, 2013 comment deadline.
- (b) If the December 17 Order is (i) stayed, (ii) enjoined, or (iii) appealed and overturned, and Cayuga files a proposed Reliability Must Run Agreement ("RMR") at the Commission, NYSEG agrees to not oppose Cayuga's request for a January 16, 2013 effective date for any RMR Agreement established by the Commission. NYSEG expressly reserves its right to challenge all other aspects of the RMR.

### **10.14. Standard of Review**

- (a) The standard of review for changes in the rates, terms or conditions of this Agreement whether proposed by a Party or a non-party must meet the “public interest” application of the statutory “just and reasonable” standard of review as set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956); as clarified by NRG Power Marketing, LLC v. Maine Public Utilities Commission, 130 S. Ct. 693, Case No. 08-674 (2010); Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish, 554 U.S. 527 (2008).

#### **10.15. Counterparts**

This Agreement may be executed in several counterparts, each of which is an original and all of which constitute one and the same instrument. Facsimile or PDF signature shall be an acceptable form of execution.

SIGNATURE PAGES TO FOLLOW

IN WITNESS WHEREOF, the parties have executed this Agreement on the respective dates specified below with effect from the date specified on the first page of this Agreement.

**NEW YORK STATE ELECTRIC & GAS CORPORATION**

By: Joseph J. Syta

Name: Joseph J. Syta

Title: Vice President, Controller and Treasurer

Date: 12/27/12

By: \_\_\_\_\_

Name: Mark S. Lynch

Title: President

Date: \_\_\_\_\_

IN WITNESS WHEREOF, the parties have executed this Agreement on the respective dates specified below with effect from the date specified on the first page of this Agreement.

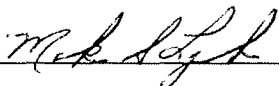
**NEW YORK STATE ELECTRIC & GAS CORPORATION**

By: \_\_\_\_\_

Name: Joseph J. Syta

Title: Vice President, Controller and Treasurer

Date: \_\_\_\_\_

By:  \_\_\_\_\_

Name: Mark S. Lynch

Title: President

Date: 12/27/12



IN WITNESS WHEREOF, the parties have executed this Agreement on the respective dates specified below with effect from the date specified on the first page of this Agreement.

**NEW YORK STATE ELECTRIC & GAS CORPORATION**

By: \_\_\_\_\_

Name: Joseph J. Syta

Title: Vice President, Controller and Treasurer

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name: Mark S. Lynch

Title: President

Date: \_\_\_\_\_

**CAYUGA OPERATING COMPANY, LLC**

By: Gerald S. Goodenough

Name: Gerald S. Goodenough

Title: Vice President, Cayuga Operating Company, LLC

Date: 12/28/12

**Exhibit 1**  
**to**  
**Reliability Support Services Agreement**  
**Between New York State Electric & Gas Corporation And Cayuga Operating Company,**  
**LLC**

Monthly Fixed Price Components

**Costs**

Salaries Wages and Benefits  
Contract Services Consulting Cost  
Taxes (non-income)  
Insurance  
Other Fixed Operating Costs  
Maintenance Costs  
Total Fixed Costs

Overhead

Depreciation  
Working Capital\*

Capital Expenditures - Maintenance

Ultra filter upgrade  
Unit 1 Turbine Outage  
Unit 1 Generator Voltage Regulator  
Unit 1 Primary tube replacement (turbine outage dependent)  
Unit 1 Generator Stator Wedge Support System (turbine outage dependent)  
Unit 1 Turbine-Generator protective/control device wiring upgrade (turbine outage dependent)  
Unit 1 PA Fan Foundation work  
#1 Belt Tower Foundation Upgrade  
Unit 2 Frequency Protection

Capital Expenditures - Environmental Improvements

Unit 1 Landfill covering and monitoring  
Unit 1 Mercury Analyzers  
Unit 1 Alloy Beams #1 ABS (turbine outage dependent)  
Unit 1 Inlet zone tile replacement (turbine outage dependent)  
Unit 1 Mist Eliminators #1 ABS (turbine outage dependent)  
Unit 1 Absorber Expansion Joints, FGD Inlet and transition piece outlet (turbine outage dependent)  
Unit 1 Wet ESPs  
Unit 1 FGD Enhancements  
Unit 1 Particulate Analyzers  
Unit 1 Landfill covering and monitoring  
Unit 2 Lift station pump upgrade - #2  
Unit 2 SCR/Heat Pipe

Station Service

**Revenues**

Energy and Ancillary Service Revenue

Capacity

\*Working capital based upon...

Cash  
Landfill Fin Assurance  
Inventory  
Storeroom  
Total Working Capital

**Exhibit 2**  
**to**  
**Reliability Support Services Agreement**  
**Between New York State Electric & Gas Corporation And Cayuga Operating Company,**  
**LLC**

Net Energy Revenues sharing would be defined as follows:

Cayuga keeps all "Net Energy Revenues" up to \$7,000,000. Any Net Energy Revenues in excess of \$7,000,000 are split 50/50 with NYSEG.

Net Energy Revenue would be based on the following calculation:

Spot Electricity Sales  
Ancillary Service Sales

Total Revenues

Coal Cost  
Coal Transportation Cost  
Limestone Cost  
Limestone Transportation Cost  
Formic Acid Cost  
Lime Cost  
Ammonia Cost  
Flyash Cost (revenue or cost)  
Bottom Ash Cost (revenue or cost)  
Gypsum Cost (revenue or cost)  
FGD/CPR Sludge Cost  
NOx Allowance Cost  
SOx Allowance Cost  
CO2 Allowance Cost  
Air Fee Cost  
Schedule 1 Charge  
Start up Cost

Total Variable Production Costs

Net Energy Revenues = Total Revenues - Total Variable Production Costs

**Exhibit 3**  
**to**  
**Reliability Support Services Agreement**  
**Between New York State Electric & Gas Corporation And Cayuga Operating Company,**  
**LLC**

**Billing and Payment**

Billing Period. As designated in Section 4.1.

Timeliness of Payment. Unless otherwise agreed by the Parties in a Transaction, all invoices under this Agreement shall be due and payable in accordance with each Party's invoice instructions on or before the later of the sixteenth (16th) day of each month, or tenth (10th) day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

Interest Rate. Shall mean, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under "Money Rates" on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) and (b) the maximum rate permitted by applicable law.

Disputes and Adjustments of Invoices. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this section within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the month during which performance of a Transaction occurred, the right to payment for such performance is waived.

Netting of Payments. The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date pursuant to all Transactions applicable to this contract through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Products during the monthly billing period under this Agreement, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

Payment Obligation Absent Netting. If no mutual debts or payment obligations exist and only one Party owes a debt or obligation to the other during the monthly billing period, including, but not limited to, any related damage amounts calculated as stated in Seller Failure or Buyer Failure to Deliver/Receive, interest, and payments or credits, that Party shall pay such sum in full when due.

US Federal Tax Forms. Each party to this agreement will upon signing provide the other party a completed W-9.

Dollars. Unless otherwise stated all dollars in this agreement refer to U.S. Currency.