




## Appendix G

### *Interconnection Agreement Between Niagara Mohawk and BEPCO*



  
  
New York Independent System Operator, Inc.  
FERC Electric Tariff, Original Volume No. 1

  
Original Service Agreement No. 333  
Original Sheet No. 1

**AN**

**INTERCONNECTION AGREEMENT**

**BETWEEN**

**NIAGARA MOHAWK POWER CORPORATION**

**AND**

**BESICORP – EMPIRE POWER COMPANY, LLC**

Issued by: Herbert Schrayshuen  
V.P. Transmission Commercial Services  
National Grid USA for Niagara Mohawk Power Corporation  
Issued on: January 15, 2004

Effective: January 16, 2004



This INTERCONNECTION AGREEMENT (the "Agreement") is made as of January 15, 2004, between Niagara Mohawk Power Corporation, a National Grid company ("Niagara Mohawk"), a New York Corporation, and Besicorp -- Empire Power Company, LLC, a New York limited liability company (the "Producer"). (Collectively, Producer and Niagara Mohawk may be referred to as the "Parties", or individually, as a "Party.")

WHEREAS, the Producer is developing a power production facility to be located in the City of Rensselaer, County of Rensselaer, New York (the "Production Facility");

WHEREAS, the Producer and Niagara Mohawk desire to provide for the interconnection of the Production Facility to Niagara Mohawk's Transmission System under the terms and conditions set forth herein; and,

WHEREAS, certain Upgrades to Niagara Mohawk's system will be needed solely for Producer's benefit and will not support any other transmission user,

NOW THEREFORE, in consideration of the mutual representations, covenants and agreements set forth herein, the Parties to this Agreement agree as follows:

## **ARTICLE I DEFINITIONS**

The following terms, when used herein with initial capitalization, shall have the meanings specified in this section.

- 1.1 "Agreement" shall mean this Interconnection Agreement between Niagara Mohawk and the Producer, including all exhibits hereto, as the same may be amended, supplemented, revised, altered, changed, or restated in accordance with its terms.
- 1.2 "Bulletin No. 756" or "ESB 756" shall mean that certain internal Niagara Mohawk document dated 2001, 2<sup>nd</sup> printing June, entitled "Supplement to Specifications for Electrical Installations; Parallel Generation Requirements" and designated Electric System Bulletin No. 756 and its Appendix C, as amended or superseded, as available on Niagara Mohawk's website.
- 1.3 "Commercial Operation Date" shall follow the Initial Synchronization Date and shall mean the date after all pre-operational testing of the Interconnection Facility has been completed to Niagara Mohawk's satisfaction, the Interconnection Facility has been energized, and the Producer has commenced selling energy or capacity into the wholesale power market administered by the NYISO pursuant to the NYISO OATT. Producer shall provide Niagara Mohawk written notice at least sixty (60) days in advance of the Commercial Operation Date and will reaffirm this date, or provide notice of a revised date, no less than twenty (20) days prior to the previously notified date.
- 1.4 "Commercially Reasonable Efforts" shall mean efforts which are designed to enable a Party, directly or indirectly, to satisfy expeditiously a condition to, or otherwise assist in

the consummation of, the actions contemplated by this Agreement and which do not require the performing Party to expend any funds or assume liabilities other than expenditures and liabilities which are customary and reasonable in nature and amount in the context of the actions contemplated by this Agreement.

- 1.5 "Confidential Information" shall mean any plan, specification, pattern, procedure, design, device, list, concept, policy or compilation relating to the present or planned business of a Party which has not been released publicly by its authorized representatives and which has been designated as "Confidential" by the Party asserting a claim of confidentiality, whether such Confidential Information is conveyed orally, electronically, in writing, through inspection, or otherwise. Confidential Information as used herein also includes Confidential Information supplied by any Party to another Party prior to the execution of this Agreement, and such Confidential Information shall be considered in the same manner and be subject to the same treatment as the Confidential Information made available after the execution of this Agreement. Confidential Information shall also include Confidential Information observed by any Party while visiting the premises of another Party.
- 1.6 "Delivery Point" shall mean the point at which the Interconnection Facility is connected to the Transmission System as indicated on Exhibit A. This point shall be at the jaw side of the disconnect switch (SW #599) connecting the Interconnection Facility, new breaker and switches to the existing bus work at the Niagara Mohawk Reynolds Road Substation
- 1.7 "Electricity" shall mean electric capacity as measured in MW or kW, energy as measured in MWh or kWh, and/or ancillary services.
- 1.8 "Emergency Condition" shall mean a condition or situation which is deemed imminently likely to (i) endanger life, property, or public health; or (ii) adversely affect or impair the Transmission System, the Production Facility, or the electrical or transmission systems of others to which Niagara Mohawk's electrical systems are directly or indirectly connected.
- 1.9 "Facilities Study" shall mean the necessary studies performed by Producer, or its third party designee, approved by Niagara Mohawk as set forth in Article IV, Section 4.1. The Facilities Study is attached hereto as Exhibit B.
- 1.10 "FERC" shall mean the United States of America's Federal Energy Regulatory Commission or any successor organization.
- 1.11 "Good Utility Practice" shall mean any of the practices, methods and 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 and 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 be acceptable practices, methods, or acts generally accepted in the

region in which the Production Facility is located. Good Utility Practice shall include, but not be limited to, NERC (defined below) criteria, rules, guidelines and standards, NPCC (defined below) criteria, rules, guidelines and standards, New York State Reliability Council (defined below) criteria, rules, guidelines and standards, and NYISO (defined below) criteria, rules, guidelines and standards, where applicable, as they may be amended from time to time including the rules, guidelines and criteria of any successor organization to the foregoing entities. When applied to the Producer, the term Good Utility Practice shall also include standards applicable to a utility generator connecting to the distribution or transmission facilities or system of another utility.

- 1.12 "Greenbush #16 Line" shall mean the existing 115 kV circuit consisting of poles, wires, insulators, conductors and other miscellaneous hardware between Rensselaer Cogen Facility and the existing Niagara Mohawk Greenbush Substation.
- 1.13 "Hazardous Substance(s)" shall mean those substances, materials, products or wastes which are classified as hazardous or toxic under any applicable federal, state or local law, or any regulations promulgated thereunder, effective as of the date of execution of this Agreement, and the presence of which requires remediation, removal or cleanup under this Agreement.
- 1.14 "Initial Energization Date" shall mean the date upon which construction of the Interconnection Facility and Upgrades have been completed and have been determined by Niagara Mohawk to be completed in accordance with Power Control Order 6-1 ("PCO 6-1") and the circuit breakers have been closed, thereby, permitting electricity to flow from Niagara Mohawk's transmission system to the Production Facility.
- 1.15 "Initial Synchronization Date" shall mean a date that follows the Initial Energization Date, and which date shall occur during the pre-operational testing of the Production Facility and is the first date that Electricity flows from the Production Facility through the Interconnection Facility to the Delivery Point without the need for any further major repairs or testing as determined by Niagara Mohawk and in accordance with PCO 6-1
- 1.16 "Interconnection Facility" shall include all those facilities located between the Interconnection Point and the Delivery Point necessary to effect the transfer of Electricity produced at the Production Facility to the Transmission System, as such facilities are described in more particularity in Article II and in Exhibit A to this Agreement, and shall include any Modifications, replacements or upgrades made to the Interconnection Facility, and any communications and/or protection equipment installed for the operation of the Interconnection Facility.
- 1.17 "Interconnection Point" shall mean the point at which the Production Facility is connected to the Interconnection Facility, as indicated on Exhibit A. This point will be at the jaw side of the disconnect switch used to connect the Production Facility to the Interconnection Facility.

- 1.18 "Metering Point" shall mean that point at which the Electricity produced by the Production Facility will be metered by Niagara Mohawk for purposes of billing and metering for NYISO transactions, as depicted in Exhibit A.
- 1.19 "Modification" shall mean any new construction, new facilities, additions, reinforcements, alterations, improvements, appurtenances, replacements or upgrades made to the Interconnection Facility, Upgrades, Transmission System, or the Production Facility as required by the NYISO or revised reliability standards, after the Commercial Operation Date. "Modification" as it applies to the Interconnection Facility, Upgrades or Transmission System shall also include Modifications which are required to support the operations of the Producer including those required by: (i) changes in the operations of the Production Facility after the Effective Date as hereinafter defined, or (ii) changes in the technology employed at the Production Facility after the Effective Date.
- 1.20 "NERC" shall mean the North American Electric Reliability Council or any successor organization.
- 1.21 "New York Control Area" shall have the same meaning as in the Independent System Operator Agreement establishing the New York ISO (as defined below).
- 1.22 "New York ISO" or "NYISO" shall mean the New York Independent System Operator, Inc. or any successor thereto.
- 1.23 "Niagara Mohawk" shall mean Niagara Mohawk Power Corporation and its successors and permitted assigns.
- 1.24 "Niagara Mohawk Properties" shall mean those parcels of and/or interest in real property that Niagara Mohawk uses for its transmission facilities upon which portions of the Interconnection Facility will be constructed.
- 1.25 "NPCC" shall mean the Northeast Power Coordinating Council (a reliability council under Section 202 of the Federal Power Act) or any successor organization.
- 1.26 "NYISO OATT" shall mean the FERC-approved Open Access Transmission Tariff for the NYISO and/or the FERC-approved Service Tariff for the NYISO, as applicable, and as it may be amended from time to time.
- 1.27 "NYPSC" shall mean the New York Public Service Commission or any successor thereto.
- 1.28 "NYSRC" shall mean the New York State Reliability Council or any successor organization.
- 1.29 "Original Greenbush #16 Line" shall mean that portion of the Greenbush #16 Line to be removed between the Rensselaer Cogen Facility generating facility and the existing Niagara Mohawk structure number 29.

- 1.30 "Permanent Greenbush #16 Line" shall mean that new portion of the Greenbush # 16 Line to be constructed and attached to the same structures supporting the Interconnection Facility between the Rensselaer Cogen Facility generating facility and the existing Niagara Mohawk structure number 29.
- 1.31 "Producer" shall mean Besicorp -- Empire Power Company, LLC, and its successors and permitted assigns.
- 1.32 "Production Facility" shall mean Producer's Electricity Production facility with a maximum net Winter rating of 672 MW and with a maximum net Summer rating of 603 MW located in the City of Rensselaer, County of Rensselaer New York, to be owned, operated and maintained by Producer.
- 1.33 "Property" and "Properties" shall mean that aggregate real property interest necessary for construction, operation and maintenance of the Interconnection Facility, which real property interest may be acquired in fee ownership, via easement or option, or other means of acquisition of property rights acceptable to Niagara Mohawk, or such real property interest held by Niagara Mohawk to which Producer will be allowed access for the removal of the Original Greenbush #16 Line, construction and removal of the Temporary Greenbush #16 Line, construction of the Permanent Greenbush #16 Line, and for other necessary modifications to the Greenbush #16 Line..
- 1.34 "Rensselaer Cogen Facility" shall mean the 79 MW Rensselaer Cogeneration Facility, located at 39 Riverside Avenue, Rensselaer, New York 12144, currently owned and operated by El Paso Merchant Energy, North America, or its successors or assigns.
- 1.35 "Retail Tariff" shall means Niagara Mohawk's Retail Tariff, New York Public Service Commission ("NYPSC") No. 207 - Electricity as approved by the NYPSC and all subsequent revisions, as it may be amended from time to time.
- 1.36 "System Reliability Impact Study" or "SRIS" shall mean that study entitled "Interconnection Study for the Empire State Newsprint Project," authored by the Washington Group and approved by the NYISO Operating Committee on November 14, 2001.
- 1.37 "Temporary Greenbush #16 Line" shall mean that new temporary portion of the Greenbush #16 Line to be constructed between the Rensselaer Cogen Facility generating facility and the existing Niagara Mohawk structure number 29.
- 1.38 "Transmission System" shall mean the properties, structures, facilities, equipment, devices, and apparatus wholly or partly owned or leased by, or under contract to, or under the control of Niagara Mohawk or its Affiliates, other than the Interconnection Facility, which are necessary to interconnect the Production Facility to the New York Control Area, or are necessary for purposes of providing transmission and Retail Tariff services, including services under the NYISO Tariff.

- 1.39 "Upgrades" shall mean the modifications, reinforcements and additions to Niagara Mohawk's Transmission System and distribution facilities required or recommended to be constructed and installed prior to the Commercial Operation Date in order for Niagara Mohawk to interconnect the Production Facility to the Transmission System in accordance with NYISO Tariff rules and regulations, as identified in the Facilities Study (Exhibit B to this Agreement), and pursuant to this Agreement, and that will be needed solely for Producer's benefit and will not support any other transmission user.

**Interpretation.** The following rules shall govern the interpretation of this Agreement, including its definitions. The terms "includes" or "including" shall not be limiting, whether or not followed by the words "without limitation." References to an article or section shall mean an article or section of this Agreement unless the context requires otherwise. References to a given agreement or instrument shall be a reference to that agreement or instrument as modified, amended, supplemented and restated.

## ARTICLE II AGREEMENT TO INTERCONNECT DESCRIPTION OF INTERCONNECTION FACILITY

- 2.1 The Parties agree to interconnect the Production Facility to the Transmission System in accordance with the terms of this Agreement.
- 2.2 Term: This Agreement shall become effective as of the date first above written (the "EFFECTIVE DATE"), subject to its approval or acceptance for filing by the FERC, and shall continue in effect for twenty (20) years thereafter.
- 2.3 The Interconnection Facility shall consist generally of those facilities, including but not limited to a new 345 kV high voltage transmission line and all associated equipment and upon which said facilities are located, necessary to effect the transfer of electricity produced at the Production Facility into the Transmission System. The Interconnection Facility shall connect with the Production Facility at the Interconnection Point and the Interconnection Facility shall connect with the Transmission System at the Delivery Point, as indicated on the one-line diagram in Exhibit A.
- 2.4 The Production Facility shall include all facilities and equipment up to and including the Production Facility's high side generator breaker, line-side disconnect switch jaws, as indicated on Exhibit A. Producer agrees that the installation of the electrical equipment and the operation of the Production Facility must meet or exceed the standards of Good Utility Practice, all requirements of Bulletin No. 756 and the NYISO; provided, however, that in the event of a conflict between the requirements, rules and regulations of the NYISO and the requirements of Bulletin No. 756, the requirements, rules and regulations of the NYISO shall govern.
- 2.5 Producer recognizes that nothing in this Agreement or in the Producer's financial support of the Interconnection Facility confers upon the Producer any right to transmit electricity

over the Transmission System. However, the interconnection of the Production Facility to the Transmission System contemplated herein will allow Producer to access the New York Control Area for purposes of Producer's stated intent to participate in the wholesale market administered by the NYISO pursuant to the NYISO OATT.

- 2.6 Niagara Mohawk shall use Good Utility Practice to own, operate and maintain the Interconnection Facility, Upgrades and Transmission System. Niagara Mohawk does not, however, guarantee or warrant uninterrupted availability of the Interconnection Facility, Upgrades or the Transmission System. Any curtailment of deliveries over the Interconnection Facility, Upgrades or the Transmission System shall be governed by Good Utility Practice, the terms and conditions of the NYISO OATT, ESB 756 and any other tariffs, approved by a regulatory body having jurisdiction.
- 2.7 Niagara Mohawk, in accordance with the rates, terms and conditions of the Retail Tariff, shall provide Producer with station service power, if so requested or authorized. Producer agrees to complete all necessary applications and forms as required by the Retail Tariff.
- 2.8 Without limiting its rights hereunder, Niagara Mohawk reserves the right to operate the primary means of disconnect on the Producer's side of the Interconnection Point. Niagara Mohawk shall exercise such right of disconnect (a) in accordance with Bulletin No. 756, (b) in the event of an Emergency Condition, (c) after giving Producer reasonable notice under the circumstances, (d) in a non-discriminatory manner, and (e) in accordance with Good Utility Practice.
- 2.9 If the Producer relies on Niagara Mohawk's system protection equipment and practices for protection of the Production Facility or if the Producer relies on any other of Niagara Mohawk's equipment for support of its operations, the Producer agrees to release, indemnify, defend, and save harmless Niagara Mohawk, its agents and employees, officers, directors, parent(s) and affiliates, against any and all claims, judgments, cost, liability, damage, injury, penalties, fines (civil or criminal), or other costs arising from any damage or loss to the Production Facility, as a result of such reliance, whether the loss, damage or injury result to or be sustained by Producer or any other persons, firms or corporations. To the extent the Producer relies on any other of Niagara Mohawk's equipment for support of Producer's operations, Producer shall agree to indemnify Niagara Mohawk in accordance with this Section 2.9 except in the event of Niagara Mohawk's gross negligence or willful misconduct.

### **ARTICLE III REPRESENTATIONS AND WARRANTIES OF PARTIES**

- 3.1 Producer is a Corporation duly organized and validly existing under the laws of the State of New York. Producer is qualified to do business under the laws of the State of New York, is in good standing under the laws of the State of New York, has the power and authority to own its properties, to carry on its business as now being conducted, and to

enter into this Agreement and the transactions contemplated herein and perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement, and is duly authorized to execute and deliver this Agreement and consummate the transactions contemplated herein.

- 3.2 Niagara Mohawk is a corporation duly organized, validly existing and qualified to do business under the laws of the State of New York, is in good standing under its certificate of incorporation and the laws of the State of New York, has the corporate authority to own its properties, to carry on its business as now being conducted, and to enter into this Agreement and the transactions contemplated herein and perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement, and is duly authorized to execute and deliver this Agreement and consummate the transactions contemplated herein.
- 3.3 The Producer and Niagara Mohawk each represents that: (a) upon receipt of all governmental permits, licenses and approvals required to construct and operate the Production Facility, Producer is not prohibited from entering into this Agreement and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement; (b) upon the acceptance of the terms of this Agreement by FERC, the execution and delivery of this Agreement, the consummation of the transactions contemplated herein including the fulfillment of and compliance with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any of the terms, conditions or provisions of any law, rule or regulation, any order, judgment, writ, injunction, decree, determination, award or other instrument or legal requirement of any court or other agency of government, or any contractual limitation, corporate restriction or outstanding trust indenture, deed of trust, mortgage, loan agreement, lease, other evidence of indebtedness or any other agreement or instrument to which it is a party or by which it or any of its property is bound and will not result in a breach of or a default under any of the foregoing; and (c) unless this Agreement is materially modified by any court or appropriate regulatory authority having jurisdiction and subsequently terminated, this Agreement shall be a legal, valid and binding obligation enforceable in accordance with its terms, except as limited by any subsequent order of any court or appropriate regulatory authority having jurisdiction, or by any applicable reorganization, insolvency, liquidation, readjustment of debt, moratorium, or other similar laws affecting the enforcement of rights of creditors generally as such laws may be applied in the event of a reorganization, insolvency, liquidation, readjustment of debt or other similar proceeding of or moratorium applicable to the Party and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law.)

#### ARTICLE IV FACILITIES STUDY

- 4.1 A Facilities Study attached hereto as Exhibit B shall be performed by Producer, or a third party selected by the Producer subject to Niagara Mohawk's approval. The Facilities Study shall estimate the cost of the equipment, engineering, procurement and construction and a preliminary schedule for the work needed to implement the recommendations of the System Reliability Impact Study and, in accordance with Good Utility Practice, to physically and electrically connect the Production Facility to the Transmission System. The Facilities Study shall include those studies that, in the judgment of Niagara Mohawk, are necessary to determine (a) an appropriate Interconnection Point and Delivery Point, (b) equipment and the facilities necessary and desirable for the construction and operation of any new or additional or modified transmission and distribution facilities, including but not limited to the Interconnection Facility and Upgrades, the electrical switching configuration of the connection equipment, the transformer(s), switchgear, meters, and other station equipment, (c) the interconnection voltage and operational constraints, (d) the estimated costs of facilities and/or the costs for Niagara Mohawk's and Producer's design, review, assistance and inspection of facilities to be designed and constructed by Producer and/or Niagara Mohawk, (e) the estimated costs of any Upgrades, (f) the removal of the Original Greenbush #16 Line and Temporary Greenbush #16 Line, and the design, engineering, and construction of the Temporary Greenbush #16 Line, Permanent Greenbush #16 Line, and other necessary modifications to the Greenbush #16 Line (g) the estimated time required to complete construction, removal, and installation of such facilities, and (h) a mutually agreed upon schedule and estimated budget for the activities contemplated under this Agreement, including but not limited to, the design, engineering, procurement activities and construction of the Interconnection Facility, Temporary Greenbush #16 Line, Permanent Greenbush #16 Line, other necessary modifications to the Greenbush #16 Line and Upgrades, and the removal of the Original Greenbush #16 Line and Temporary Greenbush #16 Line.
- 4.2 Niagara Mohawk shall review the Facilities Study as contracted and paid for by the Producer. Niagara Mohawk retains the right to require modifications of any aspect of the proposal for the Interconnection Point, Interconnection Facility, Delivery Point, and any new or additional or modified transmission and distribution facilities, including, but not limited to the Greenbush #16 Line, Original Greenbush #16 Line, Temporary Greenbush #16 Line and Permanent Greenbush #16 Line, and Upgrades as presented in the Facilities Study, prior to Niagara Mohawk's approval of the Facilities Study. Construction of the Interconnection Facility, Temporary Greenbush #16 Line, Permanent Greenbush #16 Line, other necessary modifications to the Greenbush #16 Line, and Upgrades, and removal of the Original Greenbush #16 Line and Temporary Greenbush #16 Line, shall proceed only following: (a) Niagara Mohawk's approval of the Facilities Study, (b) Producer's satisfaction, as determined by Niagara Mohawk, of the pre-conditions set forth in Article VII, (c) execution of this Agreement, (d) the receipt by Niagara Mohawk of a written notice from Producer to proceed with such activities and, (e) receipt by Niagara Mohawk of a money deposit per Article XV of this Agreement.

- 4.3 The Parties recognize that as of the Effective Date of this Agreement the Interconnection Facility has not been authorized by the NYPSC, and, therefore, is subject to a certificate to be issued by the NYPSC pursuant to Article VII of the New York Public Service Law.

## ARTICLE V REAL PROPERTY

### 5.1 OBTAINING REAL PROPERTY INTERESTS, AND NECESSARY LICENSES, PERMITS, AND APPROVALS

- 5.1.1 Producer will acquire all interests in real property that are necessary, in the opinion of Niagara Mohawk, for the Producer and/or Niagara Mohawk, as applicable, to construct, reconstruct, relocate, operate, repair, maintain, and remove the Interconnection Facility, Greenbush #16 Line, Temporary Greenbush #16 Line, and Permanent Greenbush #16 Line in accordance with the terms and provisions of this Agreement. Such real property interests may be acquired by Producer in the form of an option acceptable to both parties. Such options which shall name Niagara Mohawk as the optionee and grantee of the real property interests and shall be exercised by the Producer in favor of Niagara Mohawk to provide permanent easements or fee title necessary for the construction, reconstruction, relocation, operation, repair, maintenance and removal of the Interconnection Facility, Greenbush #16 Line, Temporary Greenbush #16 Line, and Permanent Greenbush #16 Line.
- 5.1.2 Niagara Mohawk shall authorize Producer to place applicable portions of the Interconnection Facility on existing Niagara Mohawk real property interests. The acreage and width of Niagara Mohawk's fee-owned real property necessary for the Interconnection Facility shall be subject to Niagara Mohawk's approval.
- 5.1.3 Producer shall be responsible for preparing applications for and obtaining all government permits, authorizations, licenses, certificates and approvals necessary to construct, relocate, operate, repair, maintain, and remove the Interconnection Facility, Temporary Greenbush #16 Line, Permanent Greenbush #16 Line, other necessary modifications to the Greenbush #16 Line, and Upgrades on terms and conditions acceptable to Niagara Mohawk. Said applications shall be prepared by Producer for submittal by Niagara Mohawk and/or Producer, where appropriate. Niagara Mohawk, at Producer's expense, shall be responsible for maintaining in full force and effect all permits, authorizations, licenses, certificates, and approvals necessary to operate and maintain the Interconnection Facility and Upgrades. Producer, at Producer's expense, shall be responsible for maintaining in full force and effect all permits, authorizations, licenses, certificates, and approvals necessary to operate and maintain the Production Facility. Producer and Niagara Mohawk agree to comply in all material respects with all federal, state and local environmental and other laws, ordinances, rules, regulations, permits, licenses, approvals, certificates and requirements thereunder as may apply to each

Party in connection with the activities each performs pursuant to this Agreement.

- 5.1.4 Producer agrees that, prior to the transfer by Producer of any real property interest to Niagara Mohawk under the terms of this Agreement, Producer shall conduct, or cause to be conducted, and be responsible for all costs of sampling, soil testing, and any other methods of investigation which would disclose the presence of any Hazardous Substance which has been released on the Property or which is present upon the Property by migration from an external source, and which existed on the Property prior to the transfer, and shall notify Niagara Mohawk in writing as soon as reasonably practicable after learning of the presence of Hazardous Substance upon said Property interest. Producer agrees to indemnify, defend, and save Niagara Mohawk, its agents and employees, officers, directors, parents and affiliates, harmless from and against any loss, damage, liability (civil or criminal), cost, suit, charge (including reasonable attorneys' fees), expense, or cause of action, for the removal or management of any Hazardous Substance and relating to any damages to any person or property resulting from presence of such Hazardous Substance.
- 5.1.5 Prior to transfer of control of the Interconnection Facility from Producer to Niagara Mohawk, Niagara Mohawk shall be given the opportunity to inspect, perform final testing and approve the Interconnection Facility and review all appropriate approvals, certificates, permits, and authorizations. Prior to transfer of control of the Interconnection Facility from Producer to Niagara Mohawk, Producer shall be responsible for correcting within thirty (30) days of discovery any situations that are contrary, in Niagara Mohawk's sole judgment, to Good Utility Practice, Bulletin No. 756, Niagara Mohawk's standards, procedures, practices and functional specification requirements, standard Niagara Mohawk environmental, construction, forestry, and right-of-way management practices and procedures, Niagara Mohawk's Standard Environmental Management and Construction Plan Protection Measures and Niagara Mohawk's Transmission Right-of-Way Management Plans or any applicable NYISO, NYPSC, NYSRC, NPCC, NERC, or FERC standards and criteria requirements, which such requirements shall govern in the event of a conflict between NYISO, NYPSC, NYSRC, NPCC, NERC or FERC and the requirements of Bulletin No. 756, which, in Niagara Mohawk's sole judgment, materially and adversely affect the operability of the Interconnection Facility or are contrary to applicable laws or permits, and for correcting any material deficiencies which could impede the

transfer of control of the Interconnection Facility to Niagara Mohawk pursuant to this Agreement. Producer shall be responsible for the costs associated with making such corrections.

5.2 ACCESS RIGHTS

- 5.2.1 Niagara Mohawk hereby grants to Producer access and licenses, as necessary for Producer to construct the Interconnection Facility, Temporary Greenbush #16 Line, Permanent Greenbush #16 Line, other necessary modifications to the Greenbush #16 Line, and to remove both the Temporary Greenbush #16 Line and the Original Greenbush #16 Line.
- 5.2.2 Producer hereby grants to Niagara Mohawk all necessary access, and licenses, including adequate and continuing rights of access to Producer's property, as necessary for Niagara Mohawk to construct, operate, maintain, replace, or remove the Interconnection Facility and to read meters in accordance with the terms of this Agreement and to exercise any other of its obligations under this Agreement. Producer hereby agrees to execute such grants, deeds, licenses, instruments or other documents as Niagara Mohawk may require to enable it to record such rights of way, easements, and licenses.

5.3 RIGHT OF WAY ACQUISITION AND EXPENSE

- 5.3.1 Producer shall pay and be solely liable for all expenditures and paying for all activities incurred or engaged in by Producer and Niagara Mohawk in acquiring necessary real property interests and associated permits and authorizations required for Producer and Niagara Mohawk, as appropriate, to construct, reconstruct, relocate, operate, repair, maintain, as applicable, the Interconnection Facility, Temporary Greenbush #16 Line, Permanent Greenbush #16 Lines, other necessary modifications to the Greenbush #16 Line, and Upgrades, and to remove the Original Greenbush #16 Line, and Temporary Greenbush #16 Line, as required pursuant or related to this Agreement. Producer shall pay fair market value for the real property interests acquired as determined by an appraiser retained by Producer at Producer's expense (a copy of the appraisal shall be provided to Niagara Mohawk free of charge) or such other value as the Parties may agree upon in writing. Producer shall pay and be solely liable for all costs associated with the transfer of real property rights to Niagara Mohawk, including, but not limited to, closing costs, subdivision costs, transfer taxes and recording fees. Producer shall reimburse Niagara Mohawk for all costs Niagara Mohawk incurs in connection with transfers of property and any associated permits and authorizations and in carrying out Niagara Mohawk's responsibilities as provided in this Agreement, including but not limited to Article IX, except as to costs related to encroachments on existing Niagara Mohawk property, if any, that impede the siting or construction of facilities necessary to implement the interconnection under this Agreement.

5.3.2 Producer shall be responsible for defending and shall indemnify and hold harmless Niagara Mohawk, its directors, officers, employees, agents and affiliates, from and against all liabilities, expense (including litigation costs and attorney's fees) damages, losses, penalties, claims, demands, actions and proceedings of any nature whatsoever for construction delays, construction or operations cessations, claims of trespass, or other events of any nature whatsoever that arise from or are related to an issue as to the sufficiency of the real property interests acquired or utilized by the Producer (including, but not limited to, those real property interests from Niagara Mohawk) for the construction, reconstruction, relocation, operation, repair, and maintenance of the Interconnection Facility, Temporary Greenbush #16 Line, Permanent Greenbush #16 Line, other necessary modifications to the Greenbush #16 Line, and the removal of the Original Greenbush #16 Line and Temporary Greenbush #16 Line. In no event, shall Niagara Mohawk be held liable to Producer or third parties for consequential, incidental or punitive damages arising from or any way relating to an issue as to the sufficiency of the real property interests acquired or utilized by the Producer (including, but not limited to, those real property interests from Niagara Mohawk) for the construction, reconstruction, relocation, operation, repair, and maintenance of the Interconnection Facility, Temporary Greenbush #16 Lines, Permanent Greenbush #16 Line, other necessary modifications to the Greenbush #16 Line, and removal of the Original Greenbush #16 Line and Temporary Greenbush #16 Line.

5.4 CONVEYANCE OF PROPERTY RIGHTS AND FACILITIES CONSTRUCTED

5.4.1 The real property interests necessary for the construction, reconstruction, relocation, operation, repair, and maintenance of the Interconnection Facility, Permanent Greenbush #16 Line, Temporary Greenbush #16 Lines, other necessary modifications to the Greenbush #16 Line, and Upgrades, and removal of the Original Greenbush #16 Line and Temporary Greenbush #16 Line, that are not already owned or controlled by Niagara Mohawk, shall be conveyed to Niagara Mohawk in fee simple or by an easement approved by Niagara Mohawk, with good and marketable title free and clear of all liens, encumbrances, and exceptions to title for a sum of \$1.00 at least thirty (30) days prior to the date scheduled for the commencement of construction or removal, as applicable, of any of the facilities described in Article VIII, Section 8.1 of this Agreement. With respect to any approved conveyance of easements, Producer shall subordinate pertinent mortgages to easement rights. Producer shall indemnify, defend, and hold harmless Niagara Mohawk, its agents and employees, officers, directors, parent(s) and affiliates, and successors in interest, from all liens and encumbrances against the property conveyed. Producer further agrees to provide to Niagara Mohawk a complete field survey with iron pin markers showing the centerline of the entire Interconnection Facility right-of-way, and a 40-year abstract of title, and a 10-year tax search for real property interests acquired by the Producer from third parties. Prior to the execution of an option, Producer shall be required to provide Niagara Mohawk a title insurance commitment with a

complete title report issued by a reputable and independent title insurance company for any property rights, in fee or easement in the segment of the Interconnection Facility from the Production Facility to Niagara Mohawk's existing fee-owned right-of-way, that are to be transferred to Niagara Mohawk. At the time of the execution of an option by Producer, Producer shall provide a title insurance policy naming Niagara Mohawk as the insured covering the real property interest to be acquired for any property rights, in fee or easement in the segment of the Interconnection Facility from the Production Facility to Niagara Mohawk's existing fee-owned right-of-way, that are to be transferred to Niagara Mohawk.

- 5.4.2 Producer shall provide to Niagara Mohawk conformed copies of all necessary real property interests, environmental, engineering, and other permits, authorizations, licenses, certificates, permits, approvals and as-built drawings not otherwise prepared by or directly for, or issued to Niagara Mohawk.
- 5.4.3 Upon completion of removal of the Original Greenbush #16 Line and Temporary Greenbush #16 Line and the construction and testing of the Interconnection Facility, Permanent Greenbush #16 Line, other necessary modifications to the Greenbush #16 Line, and 60 days prior to Initial Synchronization Date of the Interconnection Facility, in accordance with the Schedule provided in the Facilities Study, Producer shall convey and transfer the Interconnection Facility, Permanent Greenbush #16 Line, and, as required, other necessary modifications to the Greenbush #16 Line, to Niagara Mohawk for a sum of \$1.00.

## ARTICLE VI PILOT PROGRAM

- 6.1 Subject to the terms and conditions of this Agreement, Niagara Mohawk shall be the owner and sole operator of the Interconnection Facility contemplated in this Agreement. The Production Facility may be subject to a Payment in Lieu of Taxes ("PILOT") program with the Rensselaer County Industrial Development Agency ("RCIDA"). Any proposed RCIDA PILOT program by and between the RCIDA and the Parties shall provide that Niagara Mohawk be the owner and sole operator of the Interconnection Facility under this Agreement. Furthermore, such RCIDA PILOT program must be acceptable to Niagara Mohawk and Producer must obtain Niagara Mohawk's prior written consent for a proposed RCIDA PILOT with respect to the Interconnection Facility.
- 6.2 PILOT Expenses: All costs and expenses (including attorneys' fees) incurred by Producer and Niagara Mohawk in connection with obtaining the RCIDA PILOT shall be paid by Producer. In the event that the PILOT is not acceptable to Niagara Mohawk, or in the event that the PILOT is in effect and acceptable to Niagara Mohawk but the PILOT

terminates, Producer shall pay all applicable taxes under Section 15.2.3 of this Agreement.

**ARTICLE VII  
PRE-CONDITIONS OF DESIGN, ENGINEERING, PROCUREMENT AND  
CONSTRUCTION ACTIVITIES**

**7.1 PRE-CONDITIONS OF DESIGN, ENGINEERING, PROCUREMENT AND  
CONSTRUCTION ACTIVITIES**

Producer agrees to complete to Niagara Mohawk's satisfaction and prior to Niagara Mohawk's or Producer's, as the case may be, respective commencement of any design, engineering, procurement, or construction activities, including preparation for construction, contemplated under this Agreement (a) all activities required in Articles IV (Facilities Study), V (Real Property), VI (PILOT Program), VIII (Section 8.1, Construction Financing; Section 8.2.1.1, Agreement with owner of Rennselaer Cogen Facility); (b) Niagara Mohawk and Producer have executed this Agreement; (c) Niagara Mohawk and Producer have established the Schedule, as required in Section 8.2.3; (d) Niagara Mohawk has received a written notice from Producer to proceed with the activities described in Article VIII, Section 8.2; and (e) Niagara Mohawk has received a money deposit per Article XV of this Agreement.

**7.2 EFFECT OF FAILURE TO COMPLETE ALL PRE-CONDITIONS**

In the event that Producer fails to timely and satisfactorily complete each of the pre-conditions in this Article VII, Niagara Mohawk may terminate this agreement upon thirty (30) days prior written notice to Producer subject to applicable NYISO and FERC requirements and Article XVII.

**ARTICLE VIII  
CONSTRUCTION**

**8.1 CONSTRUCTION FINANCING**

Producer shall be responsible for arranging and securing all necessary construction financing to support the construction activities contemplated under this Agreement. Niagara Mohawk shall commence performance under this Agreement no earlier than the date of Producer's closing on its construction loan financing in connection with activities related to or to be performed under this Agreement.

**8.2 DESIGN, ENGINEERING AND CONSTRUCTION ACTIVITIES**

8.2.1 At Producer's expense, Producer shall design, engineer, and construct the apparatuses, equipment and facilities located between the Production Facility and the final 345 kV structure outside of the Reynolds Road Substation, as Depicted

in Exhibit A, and the Temporary Greenbush #16 Line, Permanent Greenbush #16 Line, other necessary modifications to the Greenbush #16 Line, and removal of the Original Greenbush #16 Line and Temporary Greenbush #16 Line, and procure all equipment, construction materials and other materials necessary for the activities described above, all in accordance with, as applicable, (a) the Facilities Study, (b) Good Utility Practice, (c) Niagara Mohawk's standards, and (d) agreement reached between Producer and the owner of the Rensselaer Cogen Facility.

8.2.1.1 Producer, at Producer's expense, shall negotiate and enter into an agreement to secure the consent of the owner of the Rensselaer Cogen Facility for Producer to remove the Original Greenbush #16 Line and Temporary Greenbush #16 Line, construct the Temporary Greenbush #16 Line, Permanent Greenbush #16 Line, other necessary modifications to the Greenbush #16 Line, which lines all are necessary for Niagara Mohawk to maintain the interconnection between the Rensselaer Cogen Facility and the Transmission System and for the payment by Producer to owner of the Rensselaer Cogen Facility for any outage related costs for which Niagara Mohawk would otherwise be responsible, if applicable. Such new lines shall be satisfactory to the owner of the Rensselaer Cogen Facility and shall, at a minimum, provide the Rensselaer Cogen Facility with at least as much output capacity as with the current interconnection facility. Producer shall provide Niagara Mohawk a conformed, written executed copy of the agreement Producer reaches with the owner of the Rensselaer Cogen Facility no less than thirty (30) days prior to the commencement of any removal or construction activities involving the Greenbush #16 Line, Original Greenbush #16 Line, Temporary Greenbush #16 Line or Permanent Greenbush #16 Line.

8.2.2 At Producer's expense, Niagara Mohawk shall design, engineer, and construct the apparatuses, equipment and facilities located between the final 345 kV structure located outside of the Reynolds Road substation and the Delivery Point, as depicted in Exhibit A, and all Upgrades necessary to facilitate the interconnection of Producer's Production Facility, and procure all equipment, construction materials and other materials necessary for the activities described above, all in accordance with (a) the Facilities Study, (b) Good Utility Practice and (c) Niagara Mohawk's standards.

8.2.3 Within forty-five (45) days of the Parties' execution of this Agreement, the Parties shall use Commercially Reasonable Efforts to determine a mutual Schedule (hereinafter the "Schedule") for their respective design, engineering and construction responsibilities as set forth in the Facilities Study attached hereto as Exhibit B. However, the Parties shall adjust the Schedule, as necessary, to comply with the certificate issued by the NYPSC pursuant to Article VII of the New York Public Service Law. Said Schedule may only be revised by mutual written consent of both Parties. Completion of construction by either Party shall

be subject to the Force Majeure events as provided in Article XVII, Section 18.1.

All design, engineering, procurement, and construction activities for which Producer or a third party selected by Producer, upon approval of Niagara Mohawk, is responsible shall be performed in accordance with the Schedule mutually agreed to by the Parties in advance of the commencement of such activities as set forth in the Facilities Study attached hereto as Exhibit B. Producer shall inform Niagara Mohawk, at the Producer's expense, on the first business day of each month of the status of all such design, engineering, procurement, and construction activities, including, but not limited to, the following information: progress to date; a description of upcoming scheduled activities and events; the delivery status of all ordered equipment; and the identification of any event which Producer reasonably expects may delay construction of the Interconnection Facility Permanent Greenbush #16 Line, Temporary Greenbush #16 Line, other necessary modifications to the Greenbush #16 Line, and Upgrades, or removal of the Original Greenbush #16 Line, or the Temporary Greenbush #16 Line.

- 8.2.4 Niagara Mohawk shall inform Producer on the first business day of each month of the status of all such design, engineering, procurement, and construction activities, including, but not limited to, the following information: progress to date; a description of upcoming scheduled activities and events; the delivery status of all ordered equipment; and the identification of any event which Niagara Mohawk reasonably expects may delay Producer's construction of the Interconnection Facility, Permanent Greenbush #16 Line, Temporary Greenbush #16 Line, other necessary modifications to the Greenbush #16 Line, or removal of the Original Greenbush #16 Line, or the Temporary Greenbush #16 Line.
- 8.2.5 If, for an excused reason, Niagara Mohawk completes its design, engineering and construction responsibilities after the completion dates shown in the Schedule, as may be amended upon mutual written consent of the Parties, the Commercial Operation Date shall be automatically extended by the same length of time by which the scheduled completion dates of Niagara Mohawk's responsibilities are delayed with no penalty or additional cost owing the Producer from Niagara Mohawk, and no penalty, additional cost owing Niagara Mohawk from Producer.
- 8.2.6 If Producer completes its design, engineering and construction responsibilities after the completion dates shown in the Schedule, as may be amended upon mutual written consent of the Parties, or if Niagara Mohawk's completion dates cannot be met due to any revised or adjusted Schedule of the Producer's design, engineering and construction responsibilities, Producer acknowledges and agrees to reimburse, in accordance with Article XV of this Agreement, Niagara Mohawk for all costs incurred by Niagara Mohawk, that cannot be avoided, due to Producer's delaying said work.

8.2.7 Producer shall, at Producer's expense, (a) with Niagara Mohawk representatives present, test the Interconnection Facility, Temporary Greenbush #16 Line, Permanent Greenbush #16 Line, and other necessary modifications to the Greenbush #16 Line, to ensure their safe and reliable operation in accordance with Good Utility Practice and (b) correct, within thirty (30) days of testing, any situations contrary to Good Utility Practice.

8.2.8 Niagara Mohawk shall, at Producer's expense, test the apparatuses, equipment and facilities located between the final 345 kV structure located outside of the Reynolds Road Substation and the Delivery Point as depicted in Exhibit A and the Upgrades to ensure their safe and reliable operation in accordance with Good Utility Practice and (b) correct, within thirty (30) days of testing, any situations contrary to Good Utility Practice.

8.3 RISK OF LOSS

Producer shall bear all risk of loss with respect to the Interconnection Facility removal of the Original Greenbush #16 Line and the Temporary Greenbush #16 Line, the Temporary Greenbush #16 Line, Permanent Greenbush #16 Line, other necessary modifications to the Greenbush #16 Line until completion of construction of the Interconnection Facility and the Permanent Greenbush #16 Line, and other necessary modifications to the Greenbush #16 Line and all title and interest in the Interconnection Facility, Permanent Greenbush #16 Line, and other necessary modifications to the Greenbush #16 Line have been transferred to Niagara Mohawk in accordance with the terms and conditions of this Agreement and, until such transfer, Producer waives all rights of recovery against Niagara Mohawk regarding such risk.

**ARTICLE IX  
OPERATION AND MAINTENANCE**

9.1 OPERATION AND MAINTENANCE OF INTERCONNECTION AND OTHER FACILITIES

9.1.1 At Producer's expense, Niagara Mohawk shall own, operate, maintain (maintain includes right-of-way vegetation management activities apportioned to the Interconnection Facility) and repair (repair includes, but is not limited to, replacement of existing equipment when required due to failure) the Interconnection Facility in accordance with Good Utility Practice.

9.1.2 At Niagara Mohawk's expense, Niagara Mohawk shall own, operate, maintain and repair the Upgrades in accordance with Good Utility Practice.

9.1.3 The Producer, at its own expense, shall own, and be responsible for operating, maintaining and repairing (repairing includes, but is not limited to, replacement of existing equipment when required due to failure) the Production Facility and other apparatuses, equipment and facilities located between the Production

Facility and the Interconnection Point as Depicted in Exhibit A in accordance with Good Utility Practice. The Producer will notify in writing no later than December 1 of each year Niagara Mohawk of the schedule for scheduled outages of the Production Facility for the next calendar year in accordance with Bulletin No. 756, Good Utility Practice, the Retail Tariff, NYISO practices and Niagara Mohawk standard practices and, upon making any changes to such schedules thereafter, shall promptly notify Niagara Mohawk of any such changes.

- 9.1.4 In furtherance of the Parties' mutual objective to preserve and maintain the reliability of the Transmission System, the Producer agrees, at the expense of the Producer, to coordinate with Niagara Mohawk, the planning and scheduling of any outages and any changes thereto in a manner that will preserve and maintain the reliability of, and minimize the effect on, the Transmission System, consistent with Good Utility Practice, Bulletin No. 756, the Retail Tariff, NYISO practices and Niagara Mohawk standard practices.
- 9.1.5 In furtherance of the Parties' mutual objective to preserve and maintain the reliability of the Transmission System, the Parties agree, at the expense of the Producer, to coordinate the planning and scheduling of preventative and corrective maintenance in a manner that will preserve and maintain the reliability of the Transmission System. The Parties shall conduct, at the expense of the Producer, preventative maintenance and corrective maintenance activities for the Interconnection Facility and the Production Facility, as scheduled and planned, or as they become necessary, consistent with Good Utility Practice. Niagara Mohawk shall conduct, at Niagara Mohawk's expense, preventative maintenance and corrective maintenance activities for the Upgrades as scheduled and planned, or as they become necessary, consistent with Good Utility Practice.
- 9.1.6 If the Producer requests that Niagara Mohawk perform maintenance during a time period other than as scheduled by Niagara Mohawk, Niagara Mohawk will use Commercially Reasonable Efforts to meet the Producer's request as long as meeting the request would not reasonably be expected, as determined by Niagara Mohawk, to have an adverse impact upon Niagara Mohawk's operations or the operations of Niagara Mohawk's customers. Notwithstanding the foregoing, should the Producer request Niagara Mohawk to perform maintenance that Niagara Mohawk in good faith determines may have an adverse impact on Niagara Mohawk's operations or the operations of Niagara Mohawk's customers, and if such maintenance may be delayed until after such period, Niagara Mohawk may reject the Producer's scheduling request. The Producer shall reimburse Niagara Mohawk for all costs incurred by Niagara Mohawk in satisfying the Producer's request.

## **ARTICLE X MODIFICATION OR RETIREMENT**

10.1 MODIFICATION OF THE INTERCONNECTION FACILITY, UPGRADES OR TRANSMISSION SYSTEM

10.1.1 Niagara Mohawk shall retain the discretion to determine whether, when, and in what manner Modifications are required by Good Utility Practice and, as soon as reasonably practicable, shall advise Producer when it makes such a determination and whether performing the Modification, or the Modification itself, is expected to interrupt the flow of power over the Interconnection Facility. Niagara Mohawk shall provide Producer a written explanation of the need for Modifications, together with a cost estimate.

10.1.2 If Modification is required to support the operations of the Producer, Niagara Mohawk shall construct, operate, maintain and repair, at the Producer's expense, any such Modification, and the Producer shall reimburse Niagara Mohawk for all actual costs and expenses of constructing operating and maintaining the Modification.

10.1.3 Except in case of an Emergency Condition, the Producer shall give Niagara Mohawk three months advance written notice of any planned Modifications to the Production Facility that could reasonably be expected to affect the operations of the Transmission System or Interconnection Facility.

10.1.3.1 Such notice shall include plans, specifications, information and operating instructions relating to the impact of planned Modifications on the Transmission System, Interconnection Facility, and Upgrades or on Niagara Mohawk's electric operations.

10.1.3.2 If Niagara Mohawk determines that such Modification would have a material adverse effect upon Niagara Mohawk's operations or the operations of Niagara Mohawk's customers, then Niagara Mohawk shall so notify the Producer. In the event that the Producer elects to continue with such Modification, Niagara Mohawk shall be entitled to designate the earliest date upon which the Producer may begin operation of the Modification, provided however, that Niagara Mohawk shall not designate a beginning date that is later than eighteen (18) months after receipt of the notice mandated by subsection 10.1.3. The Producer shall be responsible for all costs associated with such Modification, including any costs incurred by Niagara Mohawk associated with ensuring that the Transmission System, Upgrades and Interconnection Facility would be compatible with such Modification.

10.1.3.3 Notwithstanding the foregoing, should the Producer propose a schedule for performing a Modification that Niagara Mohawk in good faith determines may adversely affect Niagara Mohawk's

operations or the operations of Niagara Mohawk's customers, Niagara Mohawk may reject such schedule; however, Niagara Mohawk is amenable to working with Producer on developing a workable schedule.

10.1.4 All Modifications to the Production Facility, Interconnection Facility, Upgrades, and Transmission System and any resulting effects on the Transmission System shall meet the rules and requirements of NERC, NPCC, NYSRC, and the NYISO or their respective successors, the standards of Good Utility Practice, the Retail Tariff and the requirements of Bulletin No. 756; provided, however, that in the event of a conflict between the rules and requirements of the NYISO and the requirements of Bulletin No. 756, the rules and requirements of the NYISO shall govern.

10.2 RELOCATION, REARRANGEMENT, ABANDONMENT OR RETIREMENT.

10.2.1 If, during the term of this Agreement, Niagara Mohawk determines that it is required by Good Utility Practice to relocate, rearrange, abandon, or retire the Transmission System and such relocation, rearrangement, abandonment, or retirement requires a change to the Interconnection Facility, Niagara Mohawk shall use good faith efforts to give the Producer no less than one (1) year advance written notice and shall, to the extent consistent with Good Utility Practice, defer such action, to the extent reasonably practicable, so that the Producer's operation of the Production Facility may continue with minimal interruption.

10.2.2 If Niagara Mohawk is required or ordered by governmental authority or the NYISO to relocate, rearrange, abandon, or retire the Transmission System and such relocation, rearrangement, abandonment, or retirement requires a change to the Interconnection Facility, Niagara Mohawk shall promptly give the Producer written notice of such requirement or order.

10.2.3 If relocation, rearrangement, abandonment, or retirement is required pursuant to Paragraph 10.2.1 or 10.2.2 Niagara Mohawk shall perform or have performed, at the Producer's expense, the studies necessary to identify any Modifications to the Interconnection Facility, or Upgrades necessary for the continued operation of the Production Facility and shall inform the Producer of the estimated costs. The Producer shall at its option either: (a) reimburse Niagara Mohawk for all actual costs and expenses of such Modification, studies and estimates in accordance with Section 10.1.2 of this Agreement; (b) construct, at its own expense, a new Interconnection Facility subject to the terms of this Agreement; provided, however, that design, engineering, and construction activities relating to the existing Transmission System, Interconnection Facility, and Upgrades shall be performed by Niagara Mohawk, or by a third party selected by Niagara Mohawk, at the Producer's expense; or (c) terminate this Agreement, upon no less than sixty (60) days advance written notice to Niagara Mohawk.

**ARTICLE XI  
POWER DELIVERIES**

**11.1 METERING**

- 11.1.1 Niagara Mohawk shall, at Producer's expense, provide, own, and maintain compatible revenue quality metering equipment at the Reynolds Road substation. Such metering equipment shall record the delivery of energy, including reactive power, in such a manner so as to measure total facility power output and consumption. Niagara Mohawk shall provide suitable space within its facilities for installation of such metering equipment.
- 11.1.2 Niagara Mohawk shall provide, at Producer's expense, all necessary communication equipment and transmission mediums such as telephone lines and any necessary protection for such communication equipment and related equipment. Producer shall be responsible for, at Producer's expense, all communications required by Niagara Mohawk, the NYPSC or the NYISO. At Producer's own expense, Producer shall purchase, own and maintain all telemetering equipment located at the Producer's facilities required by Producer, Niagara Mohawk, the NYPSC or the NYISO. Producer shall provide, install and own Niagara Mohawk approved or specified test switches in the transducer circuits that have been approved or specified by Niagara Mohawk. Producer shall be responsible for any and all costs involved in the relocation of communication circuits and transmission mediums that may be required from time to time by Niagara Mohawk, the NYPSC, or the NYISO.
- 11.1.3 All metering equipment installed pursuant to this Agreement and associated with the Production Facility may be routinely tested by Niagara Mohawk in accordance with Good Utility Practice and applicable Niagara Mohawk, NYPSC and NYISO criteria, rules and standards. Each Party shall have the right at all reasonable times, upon giving not less than ten (10) days written notice to the other Party for the purpose of permitting the other Party to be present at the inspection, to inspect and test said meters and, if said meters or equipment are found to be defective, Niagara Mohawk shall adjust, repair or replace the same at the expense of the Producer, or if within one year of installation, at the expense of Niagara Mohawk. Any test or inspection requested by a Party shall be at the expense of that Party.
- 11.1.4 Electricity delivered to the Delivery Point by Producer hereunder shall be measured by electric watt hour meters of a type approved by Niagara Mohawk and the NYPSC. These metering facilities will be installed, owned, and maintained by Niagara Mohawk and shall be sealed by Niagara Mohawk, with the seal broken only upon occasions when the meters are to be inspected, tested or adjusted and representatives of both Niagara Mohawk and Producer are present. Producer shall pay all metering, testing and installation costs. The meters shall be

maintained in accordance with the rules set forth in 16 NYCRR Part 92, as amended from time to time, and with Good Utility Practice.

- 11.1.5 Niagara Mohawk will guarantee the installation of any meter and its accuracy for a period of one (1) year from the date that meter is installed; provided, however, that this guarantee does not cover any incidental or consequential damages that the Producer may suffer as a result of the failure of a meter to which this guarantee applies. Any repair or replacement, except for any repair or replacement occasioned by the negligence or willful misconduct of Producer, required during the initial year will be at the expense of Niagara Mohawk. In the event that any meter is found to be inaccurate after the initial year, Niagara Mohawk will repair or replace the same within a commercially reasonable time period at the expense of Producer.
- 11.1.6 Producer may elect to install at Producer's expense its own metering equipment in addition to Niagara Mohawk metering equipment. Such metering equipment shall meet the requirements of 16 NYCRR Part 92, as may be amended from time to time. Should any metering equipment installed by Niagara Mohawk fail to register during the term of this Agreement, the Parties shall use Producer's metering equipment, if installed. On any day or days on which neither Party's metering equipment is in service, the quantity of energy delivered shall be determined in such manner as the Parties agree. Niagara Mohawk's meter(s) shall be read on a schedule compatible with Niagara Mohawk's normal meter reading schedule consistent with NYISO requirements.
- 11.1.7 In the event the Producer desires access to Niagara Mohawk meter information related to the Production Facility and Interconnection Facility, the Producer, at its own expense, shall be responsible for purchasing and installing software, hardware and/or other technology that may be required to access such meter information. The software, hardware and/or other technology installed for this purpose shall be in compliance with any applicable NYPSC and Niagara Mohawk rules, requirements, or standards.
- 11.1.8 The Producer grants to the employees and agents of Niagara Mohawk the right of access to Producer's premises during regular business hours for purposes of the reading of Producer's meters.

## 11.2 LOSSES

No loss calculations shall be necessary if the Metering Point is located in close proximity to the Delivery Point, as depicted in Exhibit A. However, if the Metering Point(s) are changed and the metering equipment and the Delivery Point are not at the same location, the metering equipment shall record delivery of Electricity in a manner that accounts for losses occurring between the Metering Point(s) and the Delivery Point(s), which shall be calculated by Niagara Mohawk in accordance with mutually acceptable loss calculations. In addition, Producer will be responsible for all costs associated with the change in Metering Point(s).

## 11.3 REACTIVE POWER SUPPORT

The Producer agrees to provide, at no cost to Niagara Mohawk, reactive capability to regulate and maintain system voltage at the Delivery Points in conformance with Bulletin No. 756 or any applicable NYISO tariff or agreement as they may be amended from time to time.

## 11.4 ISLANDING

Niagara Mohawk reserves the right to require, allow or prevent, with reference to Bulletin No. 756, the islanding of the Production Facility during an Emergency. This Agreement is not intended to impair or supersede any rights of the NYISO to allow or prevent the islanding of the Production Facility.

## 11.5 NYISO OR REGULATORY PENALTIES AND CHARGES

The Producer shall be solely responsible and liable for any penalties or charges imposed by the NYISO or by other regulatory bodies and payment thereof, for any products derived or failures to provide such products from the Production Facility to the NYISO, or for any failures by the Producer to comply with the regulations, rules, or procedures of the NYISO or other regulatory bodies.

# ARTICLE XII INSURANCE PROVISIONS

- 12.1 By the date on which construction of the Interconnection Facility begins, each Party agrees to maintain at its own expense insurance policies issued by reputable insurance companies reasonably acceptable to the other Party which provide insurance coverage which meets or exceeds the following requirements:

12.1.1 Workers Compensation and Employers Liability Insurance. Each Party shall provide workers compensation and employers liability insurance coverages as required by the State of New York. If required, such insurance coverage shall include but not be limited to the levels of coverage required by the U.S. Longshoremen's Act, the Harbor Workers Compensation Act and the Jones Act.

12.1.2 Comprehensive Public Liability (Including Contractual Liability). Each Party shall provide comprehensive public liability insurance, including contractual liability insurance, covering all activities and operations to be performed by it under this Agreement, with following minimum limits:

- (A) Bodily Injury - \$1,000,000/\$1,000,000  
Property Damage - \$1,000,000/\$1,000,000  
OR
- (B) Combined Single Limit - \$1,000,000  
OR
- (C) Bodily Injury and Property Damage per Occurrence - \$1,000,000  
General Aggregate & Product Aggregate - \$2,000,000 each

12.1.3 Umbrella or Excess Liability. Each Party shall provide umbrella or excess liability insurance coverage with a minimum limit of \$ 4,000,000.

- 12.2 Each Party may elect to self-insure any and/or all of the above insurance requirements. In addition, each Party shall name the other Party as an additional insured for all coverages except Workers Compensation and Employers Liability Insurance in order to provide the other Party protection from liability arising out of activities of the insured Party relating to the Interconnection Facility, the Party's side of the Interconnection Point, and/or the Upgrades, as the case may be.
- 12.3 In the event that a Party uses subcontractors in connection with this Agreement, that Party shall require all subcontractors to provide the same insurance coverages set forth in paragraphs 12.1.1, 12.1.2 and 12.1.3.
- 12.4 Upon request by either Party, the other Party shall promptly provide the requesting Party with either evidence of insurance or certificates of insurance evidencing the insurance coverage required under sections 12.1.1, 12.1.2, 12.1.3 and 12.2. If so requested, Producer shall provide such certificates or evidence of insurance to Niagara Mohawk at the following address:

To: Niagara Mohawk Power Corporation  
Attention: Risk Management, Bldg. A-1  
300 Erie Boulevard West  
Syracuse, NY 13202

If so requested, Niagara Mohawk shall provide such certificates or evidence of insurance to Producer at the following address:

To: Besicorp -- Empire Power Company, LLC  
Attention: President  
1151 Flatbush Road  
Kingston, NY 12401

Such certificates, and any renewals or extensions thereof, shall provide that at least thirty (30) days prior written notice shall be given to the other Party in the event of any cancellation or diminution of coverage and shall outline the amount of deductibles or self-insured retentions which shall be for the account of the insured Party.

- 12.5 If Producer fails to secure or maintain any insurance coverage, or any insurance coverage is cancelled before the completion of all services provided under this Agreement, and Producer fails immediately to procure such insurance as specified herein (the "uninsured Party"), then Niagara Mohawk has the right to procure such insurance and, at its option, either bill the cost thereof to the Producer or deduct the cost thereof from any sum due the Producer under this Agreement.
- 12.6 To the extent reasonably requested, Producer shall furnish to Niagara Mohawk copies of any accidents report(s) sent to the Producer's insurance carriers covering accidents or incidents occurring in connection with or as a result of the performance of the work under this Agreement.
- 12.7 Each Party shall comply with any governmental and/or site specific insurance requirements even if not stated herein.
- 12.8 By the date that such coverage is required, Producer represents that it will have full policy limits available and shall notify Niagara Mohawk in writing when coverages required herein have been reduced as a result of claim payments, expenses, or both.
- 12.9 Nothing contained in these insurance requirements is to be construed as (a) limiting the extent, if any, to which either Party is responsible for payment of damages, or (b) limiting, diminishing, or waiving the obligation of either Party to indemnify, defend and save harmless the other Party in accordance with this Agreement.

### ARTICLE XIII COMPLIANCE WITH LAWS AND REGULATIONS

- 13.1 Niagara Mohawk and Producer each agree to comply in all material respects with all applicable federal, state and local laws, ordinances, rules, regulations, permits, licenses, approvals, certificates, and requirements thereunder in connection with all its activities performed pursuant to this Agreement, including, but not limited to all design, environmental, regulatory, engineering, construction, and property acquisition activities.
- 13.2 If either Party observes that any requirement specified in this Agreement is at variance with any governing laws, ordinances, rules, regulations, permits, licenses, approvals,

certificates and requirements thereunder, such Party shall promptly notify the other in writing before incurring any further liability, expense or obligation. Niagara Mohawk and Producer shall in good faith attempt to reform this Agreement to comply with the aforementioned laws, ordinances, rules, regulations, permits, approvals, or certificates. If Niagara Mohawk and Producer are unable to do so, either Party may terminate this agreement, subject to NYISO and FERC requirements.

- 13.3 Environmental Releases by Producer. The Producer shall notify Niagara Mohawk first orally and then in writing, of the Release of Hazardous Substances by Producer or its agents, that could reasonably be expected to enter upon Niagara Mohawk property, as soon as possible but not later than twenty-four (24) hours after the incident, and shall promptly furnish to Niagara Mohawk copies of any reports filed with any governmental agencies addressing such events. If Hazardous Substances are released or reasonably believed to have been released onto Niagara Mohawk property, the Producer, at its own expense, shall conduct, or cause to be conducted, sampling, soil testing, and any other methods of investigation which would disclose the presence and extent of contamination by any Hazardous Substance which has been released onto Niagara Mohawk property and shall notify Niagara Mohawk in writing as soon as reasonably practicable after learning of the presence of any Hazardous Substance upon Niagara Mohawk property. The Producer shall notify Niagara Mohawk immediately of any type of remediation activities it plans to undertake. The Producer shall provide Niagara Mohawk thirty (30) days written notice prior to conducting any asbestos or lead abatement activities on Niagara Mohawk property, and shall promptly furnish to Niagara Mohawk (i) copies of any reports filed with any governmental or regulatory agencies pertaining to such abatement activities, (ii) copies of applications for permits to conduct abatement activities, and (iii) copies of all permits authorizing abatement activities. Except for Hazardous Substances released by Niagara Mohawk or its agents, the Producer agrees to indemnify, defend, and save harmless Niagara Mohawk, its agents and employees, from and against any loss, damage, liability (civil or criminal), cost, suit, charge (including reasonable attorneys' fees), expense, or cause of action, for the removal or management of any Hazardous Substance and/or relating to any damages to any person or property resulting from presence of such Hazardous Substance.
- 13.4 The Producer shall promptly provide to Niagara Mohawk, all relevant information, documents, or data regarding the Production Facility which may reasonably be expected to pertain to the safety, security or reliability of the Transmission System. As may be necessary, the Parties agree to enter into a confidentiality agreement governing the provision and use of such information, documents or data.
- 13.5 Niagara Mohawk shall file this Agreement with the appropriate regulatory authorities. If any such regulatory body materially modifies the terms and conditions of this Agreement and such modification(s) materially affect the benefits flowing to one or both of the Parties, the Parties agree to attempt in good faith to negotiate an amendment or amendments to this Agreement or take other appropriate action(s) so as to put each Party in effectively the same position in which the Parties would have been had such modification not been made. In the event that, within sixty (60) days or some other time period mutually agreed upon by the Parties after such modification has been made, the

Parties are unable to reach agreement as to what, if any, amendments are necessary and fail to take other appropriate action to put each Party in effectively the same position in which the Parties would have been had such modification not been made, then either Party shall have the right to unilaterally terminate this Agreement, subject to applicable NYISO and FERC requirements.

- 13.6 In the event that it is determined that this Agreement is to be filed with the Federal Energy Regulatory Commission or its successor, the Parties agree to support such filing and that, absent the agreement of all parties to any proposed change to this Agreement, the standard of review for changes to this Agreement proposed by a Party, a non-party or the Federal Energy Regulatory Commission acting *sua sponte* shall be the "public interest" standard of review 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) (the "Mobile-Sierra" doctrine).

#### ARTICLE XIV CREDITWORTHINESS

- 14.1 Producer shall supply to Niagara Mohawk evidence of Producer's compliance with the "Creditworthiness Requirements for Customers" established by the NYISO in Attachment K of NYISO's FERC Electric Tariff, Original Volume No. 2, and with the "Creditworthiness Requirements for Transmission Customers" established by the NYISO in Attachment W of NYISO's FERC Electric Tariff, Original Volume No. 1, as such requirements may be amended from time to time. The currently effective NYISO tariffs, including the aforementioned Attachment K and Attachment W, are available on the NYISO Internet website.
- 14.2 Provision of Security. At least thirty (30) calendar days prior to the commencement of the design, engineering, procurement, and construction of any of the facilities under this Agreement, including but not limited to the Interconnection Facility, Upgrades, Temporary Greenbush #16 Line, Permanent Greenbush #16 Line, other necessary modifications to the Greenbush #16 Line and for the removal of the Original Greenbush #16 Line and Temporary Greenbush #16 Line, Producer shall provide Niagara Mohawk, satisfactory assurances of creditworthiness. Such assurances include, but are not limited to, a minimum investment grade rating for senior securities issued by Producer of BBB- by Standard & Poor's Ratings Group or of Baa3 by Moody's Investors Service, a prepayment, a letter of credit in a form satisfactory to Niagara Mohawk, or a parent guarantee from an entity deemed creditworthy by Niagara Mohawk, or any alternate form of credit assurance, in an amount and form satisfactory to Niagara Mohawk. Furthermore, if at any time during the period of construction up to the Commercial Operation Date and for any Modifications made at the Producer's expense after the Commercial Operation Date, in addition to satisfactory assurances required hereunder, if the Producer (i) makes an assignment or any general arrangement for the benefit of creditors; (ii) default in the payment or performance of any obligation to the other party under this Agreement; (iii) files a petition or otherwise commence, authorize, or acquiesce in the commencement of a proceeding or cause under any bankruptcy or

similar law for the protection of creditors or have such petition filed or proceeding commenced against it; (iv) otherwise become bankrupt or insolvent (however evidenced); (v) is unable to pay its debts as they fall due or (vi) fail to give adequate security for or assurance of its ability to perform its further obligations under this Agreement within seventy-two (72) hours of a reasonable request by Niagara Mohawk, Niagara Mohawk shall, upon written notice to Producer, have the right to either (i) withhold or suspend performance under this Agreement upon three (3) days from the date of such notice, or the beginning of the next month, whichever is earlier, or (ii) terminate this Agreement, subject to NYISO and FERC requirements and the rights provided under Section 22.1.1 of this Agreement in addition to any and all other remedies available hereunder or pursuant to law or equity. Should the creditworthiness, financial responsibility or ability to perform of Producer become unsatisfactory to Niagara Mohawk at any time during the period of construction up to the Commercial Operation Date and for any Modifications made at the Producer's expense after the Commercial Operation Date, satisfactory assurances in the form of security or additional security may be required as a condition to further performance under the Agreement.

#### **ARTICLE XV COST PAYMENTS**

- 15.1 Niagara Mohawk shall invoice Producer at the start of each calendar month in an amount equal to Niagara Mohawk's actual costs and expenses for which Niagara Mohawk is to be reimbursed under this Agreement. However, if and as requested by Niagara Mohawk, the Producer shall reimburse Niagara Mohawk for costs and expenses in advance of Niagara Mohawk incurring the aforementioned costs or expenses. In such case, Niagara Mohawk shall send Producer a Statement of Project Costs ("Statement") specifying the required deposit for such estimated costs and expenses.
- 15.2 The Producer shall pay Niagara Mohawk within thirty (30) calendar days of Niagara Mohawk invoicing or sending a Statement for all costs incurred or for costs estimated in advance by Niagara Mohawk under this Agreement, including, but not limited to, the cost of constructing Upgrades and Modifications; and the costs of relocations, rearrangements, abandonments, retirements or removals; operation, maintenance, repair and spare parts; metering, telemetering and communication media; and miscellaneous studies, testing, documentation and items relating to the Interconnection Facility, Upgrades and Modifications performed by Niagara Mohawk at the request of Producer.
- 15.2.1 The Producer shall be responsible for all actual costs of Niagara Mohawk, including, but not limited to, capital costs, labor (direct and distributable); labor fringe benefits and payroll taxes; invoices for material, contractors, consultants, etc.; employee expenses; storeroom material and handling; any and all costs and expenses resulting from damage to Niagara Mohawk property not otherwise covered by insurance; sales and/or use taxes on invoices and material; transportation; Accumulated Funds Used During Construction ("AFUDC"); Capital Associated Distributable Charges ("CAD"); administrative and general

expense ("A&G") at Niagara Mohawk's current rate at the time of invoicing applied to the total of all costs; and, unless Producer is exempt from such taxes and provides Niagara Mohawk with documentation supporting such exemption, state, county, local sales and use taxes applied to the total of all costs and expenses associated with, but not limited to, the acquisition, ownership, operation, maintenance, repair, spare parts, A&G, inspection, design review, engineering, surveying, project management and coordination, testing of electrical equipment and installation of energy management system remote terminal units and revenue meters, construction, construction monitoring, financing, maintenance, environmental and regulatory permitting and licensing of, taxes and transfer of title of the Interconnection Facility, Upgrades and Modifications, and any other cost or expense arising out of the Project.

15.2.2 The Producer shall be responsible for any and all costs or expenses that are incurred by Niagara Mohawk pursuant to this Agreement for the operation, and the maintenance and repair of the Interconnection Facility.

15.2.2.1 The Producer shall reimburse Niagara Mohawk on a monthly basis for operation, maintenance, and repair costs and expenses. However, if and as requested by Niagara Mohawk, the Producer shall reimburse Niagara Mohawk for operation, maintenance, and repair costs and expenses in advance of Niagara Mohawk incurring the aforementioned costs or expenses.

15.2.2.2 Operation, maintenance and repair costs and expenses shall include, but not be limited to, all actual costs and expenses associated with operation, maintenance (maintenance includes right-of-way vegetation management activities apportioned to the Interconnection Facility), repair, spare parts, inspection, engineering and legal services, contract administration, right-of-way acquisition, A&G, working capital (including material adders, overhead charges, and transportation charges), and allowed earnings and/or rates of return approved by a regulatory body having jurisdiction, as related to the Interconnection Facility.

15.2.3 Except to the extent Producer is exempt from any one or more of the following and provides Niagara Mohawk with documentation supporting such exemption, the Producer shall be responsible for any and all federal, state, local, and foreign taxes levied or assessed upon Niagara Mohawk for payments made to Niagara Mohawk by Producer for services provided under this Agreement including, but not limited to, the following: transfer tax, property tax, federal income tax, and New York State taxes, including New York income or gross receipts, sales and use taxes; provided, however, that Niagara Mohawk shall pay any applicable interest or penalty incurred as a result of Niagara Mohawk's delay in paying such taxes or seeking reimbursement from the Producer. If any form of tax, other than income or excess profits tax, under any present or future federal, state or other

law different from or in addition to the taxes for which participation in or payment by Producer is provided herein or elsewhere in this Agreement, is required to be paid, levied or assessed against or incurred by Niagara Mohawk with respect to any property, property right, commodity, or service involved in, resulting from or accruing from Niagara Mohawk's performance under this Agreement, which such different or additional tax would not be required to be paid by Niagara Mohawk in the absence of this Agreement and, with respect to such different or additional tax, no obligation of Producer to participate or pay would have attached under the provisions of this Agreement elsewhere than in this subsection, then in such event Producer shall fully reimburse Niagara Mohawk for the full amount of such different or additional tax paid by Niagara Mohawk.

15.2.3.1 If Niagara Mohawk receives a refund from the taxing authorities of any amounts paid by Producer, Niagara Mohawk shall refund to Producer such amount refunded Niagara Mohawk (net of expenses related to obtaining the refund) within thirty (30) days of receiving such refund.

15.2.3.2 Notwithstanding the foregoing, Producer, at its own expense, shall have the right to require Niagara Mohawk to seek a Private Letter Ruling from the Internal Revenue Service on whether any of the sums paid to Niagara Mohawk by Producer under the terms of this Agreement for the construction of the facilities contemplated herein are subject to U.S. federal taxation. To the extent that the Private Letter Ruling concludes that any such sums are taxable to Niagara Mohawk, Producer shall reimburse Niagara Mohawk for all such taxes consequently imposed upon Niagara Mohawk in accordance with the terms of this Agreement. Producer shall reimburse Niagara Mohawk for all costs, including but not limited to legal fees, associated with seeking the Private Letter Ruling.

15.2.4 Increased income tax to Niagara Mohawk arising from Producer's payment or reimbursement of tax under the preceding provisions will be addressed in the following manner. Any net actual U.S. federal income tax or New York State tax (collectively, for this subsection 15.2.4, "Tax"), if any, arising out of any payment or reimbursement of any tax by Producer under this Article shall be reimbursed to Niagara Mohawk. The amount reimbursed to Niagara Mohawk under this subsection shall consist of (1) the Tax arising under this subsection (the "First Amount"); plus (2) the net actual Tax imposed on the First Amount (the "Second Amount"); plus (3) the net actual Tax imposed on the Second Amount (the "Third Amount"); and plus (4) the net actual Tax imposed on the Third Amount and on each succeeding amount until the final amount is less than one dollar.

15.3 Niagara Mohawk agrees to cooperate with the Producer in attempting to minimize Niagara Mohawk's costs under this Article, provided the Producer reimburses Niagara Mohawk for all costs incurred by Niagara Mohawk in connection with such cooperation,

including reasonable attorneys' fees and expenses, and provided further that the Producer shall indemnify, defend, and save harmless Niagara Mohawk, its agents and employees, officers, directors, parent(s) and affiliates, against any and all penalties, judgments, fines (civil or criminal), or other costs that may be imposed by any governmental authority as a result hereof, but only to the extent that such penalties, judgments, fines, or other costs are not attributable to Niagara Mohawk's gross negligence or intentional misconduct.

- 15.4 Niagara Mohawk shall include with each invoice documentation supporting the costs, expenses, and/or taxes incurred by Niagara Mohawk in the previous quarter, or to be incurred in the next quarter, as provided for in Section 15.2.2.1. Niagara Mohawk will provide such documentation from its standard accounting methods. Within thirty (30) days from date of the invoice, Producer shall pay the invoice and/or notify Niagara Mohawk that Producer disputes, in whole or in part, any of the costs, expenses, and/or taxes reflected in the invoice and shall specify with particularity the reasons for such dispute. If Producer disputes any invoice or portion thereof, the Producer shall immediately place into an independent escrow account an amount equal to the portion of the invoice it disputes. Such amount shall remain in escrow until the dispute between the Parties is resolved in accordance with Article XXVI of this Agreement. If any portion of any invoice the Producer has not disputed remains unpaid thirty (30) days from the invoice date, Niagara Mohawk shall apply to the unpaid balance, and Producer shall pay, a finance charge at the rate of one and one-half percent (1.5%) per month, but in no event more than the maximum allowed by law.
- 15.5 Producer acknowledges and agrees that Producer and/or Niagara Mohawk has undertaken to construct the Interconnection Facility in a particular configuration solely at the request of the Producer and in reliance on the Producer's commitment to pay all of the costs of constructing and of maintaining the Interconnection Facility. Accordingly, Producer and Niagara Mohawk agree that the Interconnection Facility and all of its components shall at all times be classified as generator leads that may be directly charged to Producer and not as improvements to Niagara Mohawk's Transmission System, except to the extent that Niagara Mohawk hereafter voluntarily elects to reclassify those facilities as improvements to its Transmission System. Producer hereby waives its right to challenge any of the provisions of this Section 15.5 under Section 206 of the Federal Power Act ("FPA"), and Producer and Niagara Mohawk hereby stipulate and agree that the provisions of this Section 15.5 may only be modified by the FERC under the public interest standard of Section 206 of the FPA. Nothing contained in this Section 15.5 shall be construed as limiting Producer's rights under Section 206 of the FPA with respect to the appropriate treatment of costs attributable to any portion of the Interconnection Facility that Niagara Mohawk may hereafter voluntarily reclassify as improvements to its Transmission System rather than as generator leads.

#### ARTICLE XVI NOTICES

- 16.1 All notices required or permitted under this Agreement shall be in writing and shall be personally delivered or sent by certified or registered first class mail (return receipt

requested, postage prepaid), facsimile transmission, or overnight express mail or courier service addressed as follows:

**To Producer:**

BESICORP -- EMPIRE  
POWER COMPANY LLC  
Attn: President  
1151 Flatbush Road  
Kingston, NY 12401  
Tel: (845) 336-7700  
Fax: 845-336-7172

**To Niagara Mohawk:**

NIAGARA MOHAWK POWER  
CORPORATION  
Attn: Vice President, Transmission  
Commercial Services  
300 Erie Boulevard West  
Syracuse, NY 13202  
Tel: (315) 428-3159  
Fax: (315) 428-5114

16.1.1 All notices required for billing purposes under this Agreement shall be in writing and shall be delivered to the following address:

**To Producer:**

BESICORP -- EMPIRE  
POWER COMPANY LLC  
Attn: President  
1151 Flatbush Road  
Kingston, NY 12401  
Tel: (845) 336-7700  
Fax: 845-336-7172

**To Niagara Mohawk:**

NIAGARA MOHAWK POWER  
CORPORATION  
Attn: Vice President, Transmission  
Commercial Services  
300 Erie Boulevard West  
Syracuse, NY 13202  
Tel: (315) 428-3159  
Fax: (315) 428-5114

16.1.2 If given by electronic transmission (including telex, facsimile or telecopy), notice shall be deemed given on the date received and shall be confirmed by a written copy sent by first class mail. If sent in writing by certified mail, notice shall be deemed given on the second business day following deposit in the United States mails, properly addressed, with postage prepaid. If sent by same-day or overnight delivery service, notice shall be deemed given on the day of delivery.

- 16.2 Either Party may change its address for notices by notice to the other in the manner provided above.
- 16.3 Notwithstanding paragraph 16.1, any notice hereunder, with respect to an Emergency Condition or other occurrence requiring prompt attention, shall be communicated in an expedited manner and may be made by telephone provided that such notice is confirmed in writing promptly thereafter.
- 16.4 The representatives noted in paragraph 16.1, or their designees, shall be authorized to act on behalf of the Parties, and their instructions, requests, and decisions will be binding

upon the Parties as to all matters pertaining to this Agreement and the performance of the Parties hereunder. Only these representatives shall have the authority to commit funds or make binding obligations on behalf of the Parties. The Parties shall be permitted to change their respective representatives by providing notice to the other Party of the change of representative.

## **ARTICLE XVII DEFAULT AND TERMINATION**

- 17.1 In the event either Party (the "Defaulting Party") abandons its work or facilities under this Agreement; becomes insolvent; or assigns or sublets this Agreement in a manner inconsistent with this Agreement, or is violating any of the material conditions, terms, obligations, or covenants of this Agreement, or is not performing this Agreement in good faith, the Non-Defaulting Party may terminate this Agreement by providing written notice. Before instituting proceedings before FERC to terminate the Agreement, Niagara Mohawk must give Producer written notice of the reasons for termination. If, within a period of ten (10) days of receiving such notice, Defaulting Party cures the default or breach cited by the Non-Defaulting Party in such written notice, to the reasonable satisfaction of the Non-Defaulting Party that provided such notice, and shall have complied with the provisions of this Agreement, such notice shall become null and void and of no effect. Otherwise, such notice shall remain in effect and, except to the extent expressly provided for herein, the obligations of the Parties under this Agreement shall terminate ten (10) days after such notice was provided, or in accordance with regulations or rulings of FERC, whichever is later.
- 17.2 In the event of a billing dispute between Niagara Mohawk and the Producer, Niagara Mohawk will not apply to remove the Interconnection Facility or any part of the Transmission System from service or to terminate transmission service thereon as long as the Producer: (i) continues to make all undisputed payment amounts and (ii) adheres to the dispute resolution procedures set forth in Article XXVI of this Agreement and pays into an independent escrow account the portion of any invoice in dispute, pending resolution of such dispute. If the Producer fails to meet these two requirements, then a default shall be deemed to exist, to which the procedures set forth in this Article XVII for the removal of the Interconnection Facility from service shall apply.
- 17.3 Termination of this Agreement shall not relieve Producer or Niagara Mohawk of any of its liabilities and obligations arising hereunder prior to the date termination becomes effective, and Producer or Niagara Mohawk may take whatever judicial or administrative actions as appear necessary or desirable to enforce its rights hereunder. The rights specified herein are not exclusive and shall be in addition to all other remedies available to either Party, either at law or in equity, for default or breach of any provision of this Agreement; provided, however, that in no event shall Niagara Mohawk or Producer be liable for any incidental, special, indirect, exemplary or consequential costs, expenses, or damages sustained by the other, as provided for in Article XXVII hereto.

- 17.4 If a Non-Defaulting Party provides to the Defaulting Party written notice of termination pursuant to paragraph 17.1 and, in accordance therewith, such notice remains in effect ten (10) days after such notice was provided, the Defaulting Party shall be liable to the Non-Defaulting Party for all costs, expenses, liabilities and obligations, including reasonable attorneys' fees, incurred by the other Non-Defaulting Party resulting from or relating to the termination of this Agreement.
- 17.5 In the event of termination of this Agreement, Niagara Mohawk, at its sole option and at the Producer's expense, will physically disconnect the Production Facility from the Transmission System, return the Transmission System to its original state prior to this Agreement, and remove any or all of Niagara Mohawk's Interconnection Facility equipment.

#### **ARTICLE XVIII FORCE MAJEURE**

- 18.1 Neither Party shall be considered to be in default or breach hereunder, and shall be excused from performance hereunder, if and to the extent that it shall be delayed in or prevented from performing or carrying out any provisions of this Agreement by reason of flood, lightning strikes, earthquake, fire, epidemic, war, invasion, riot, civil disturbance, sabotage, explosion, insurrection, military or usurped power, strikes, stoppage of labor, labor dispute, failure of contractors or supplies of material, action of any court or governmental authority, or any civil or military authority de facto or de jure, change in law, act of God or the public enemy, or any other event or cause beyond such Party's control, including, without limitation, disconnection or limited operation of Niagara Mohawk's electric system, unscheduled repairs or maintenance, fuel or energy shortages, or equipment breakdown resulting, in spite of Good Utility Practices, which are beyond such Party's reasonable control; provided, however, that neither Party may claim force majeure for any delay or failure to perform or carry out any provision of this Agreement to the extent that such Party has been negligent or engaged in intentional misconduct and such negligence or intentional misconduct contributed to that Party's delay or failure to perform or carry out its duties and obligations under this Agreement.
- 18.2 The Party claiming force majeure shall give notice to the other Party of the occurrence of force majeure no later than ten (10) business days after such occurrence and shall use due diligence to resume performance or the provision of service hereunder as soon as practicable.

#### **ARTICLE XIX INDEMNIFICATION**

- 19.1 To the fullest extent allowed by law and to the extent not otherwise articulated in this Agreement, each Party shall indemnify, defend, and save harmless the other Party, its

agents and employees, officers, directors, parent(s) and affiliates, from and against any loss, damage, liability, cost, suit, charge, expense, or cause of action, whether unconditionally certain or otherwise, as they exist on the effective date of this Agreement or arise at anytime thereafter, (including but not limited to fees and disbursements of counsel incurred by the indemnified Party in any action or proceeding between indemnitor and the indemnified Party or between the indemnified Party and any third party or otherwise) arising out of any damage or injury to its property or property of third parties (including real property, personal property and environmental damages), persons, (including injuries resulting in death), caused by or arising out of or in any way connected with this Agreement, or the work performed hereunder, or any equipment, property or facilities used by the other Party, its agents, employees, contractors, and suppliers; provided however, each Party shall be liable for all claims of the Party's own employees arising out of any provision of the Workers' Compensation Law.

- 19.2 Niagara Mohawk and Producer each agree to indemnify, defend, and save each other and their agents and employees, officers, directors, parent(s) and affiliates, harmless from and against any loss, damage, liability (civil or criminal), cost, suit, charge, expense (including reasonable attorneys' fees) or cause of action arising from violations by the other Party of said laws, ordinances, rules, regulations, permits, licenses, approvals, certificates and requirements thereunder. Niagara Mohawk and Producer each agree to bear fully all civil and criminal penalties that may arise from its own activities or from its own violations or from its own failure to comply with the aforementioned laws and requirements, whether such penalties are assessed against Producer or Niagara Mohawk. The provisions of this paragraph shall survive termination of this Agreement.
- 19.3 In the event that the claims, damages, losses, judgments, or settlements are the result of the negligence of both Parties, each Party shall be liable to the extent or degree of their respective negligence, as determined by mutual agreement of both Parties, or in the absence thereof, as determined by the adjudication of comparative negligence.
- 19.4 The indemnifying Party shall initiate promptly action to defend and indemnify the other Party against claims, actual or threatened, but in no event later than by the date the indemnifying Party receives notice by the indemnified Party of the service on the indemnified Party of notice, summons, complaint, petition to other service of process *against* the indemnified Party alleging damage, injury, liability, or expense attributed in any way to the Agreement, the work or acts, fault, negligence, equipment, materials, properties, facilities, personnel, or property of the indemnifying Party, its agents, employees, contractors or suppliers. The indemnifying Party shall defend any such claim or threatened claim, including as applicable, engagement of legal counsel, to respond to, defend, settle, or compromise any claim or threatened claim.
- 19.5 The indemnifying Party understands and agrees it is responsible for any and all costs and expenses incurred by the indemnified Party to enforce this indemnification provision.
- 19.6 The obligations set forth in this Article shall survive the later of the completion of the work, termination or expiration of the Agreement.

**ARTICLE XX  
RELATIONSHIP OF THE PARTIES**

- 20.1 Nothing contained in this Agreement shall be construed or deemed to cause, create, constitute, give effect to, or otherwise recognize Producer and Niagara Mohawk to be partners, joint venturers, employer and employee, principal and agent, or any other business association, with respect to any matter.
- 20.2 Unless otherwise agreed to in writing signed by both Parties, neither Party shall have any authority to create or assume in the other Party's name or on its behalf any obligation, express or implied, or to act or purport to act as the other Party's agent or legal empowered representative for any purpose whatsoever.
- 20.3 Neither Party shall be liable to any third party in any way for any engagement, obligation, commitment, contract, representation or for any negligent act or omission of the other Party, except as expressly provided for herein.
- 20.4 The rights and obligations of the Parties shall be limited to those expressly set forth herein.

**ARTICLE XXI  
THIRD PARTY BENEFICIARY**

- 21.1 No person or party shall have any rights or interests, direct or indirect, in this Agreement or the services or facilities to be provided hereunder, or both, except the Parties, their successors, and authorized assigns.
- 21.2 The Parties specifically disclaim any intent to create any rights in any person or party as a third-party beneficiary to this Agreement.

**ARTICLE XXII  
ASSIGNMENT**

- 22.1 Except as provided for in paragraphs 22.1.1, 22.1.2 and 22.1.3, neither Party may assign this Agreement or any of its rights, interests, or obligations hereunder without the prior written consent of the other Party, which such consent shall not be unreasonably withheld.
- 22.1.1 Producer may, upon prior written notice to Niagara Mohawk, assign, transfer, pledge, or otherwise dispose of its rights and interests under this Agreement to any lender or financial institution in connection with the financing or refinancing of the Interconnection Facility, Production Facility or property acquisition therefore. Niagara Mohawk hereby grants any such lender or financial institution assignee the following under this Agreement:

- (i) the right to cure occurrence of any event of default for the account of Producer;
- (ii) the same time period to cure any events of default granted to Producer;
- (iii) the option to assume Producer's rights and obligations under the and the right to maintain the Agreement by providing full monetary compensation for any breach of Producer, which such assignee cannot cure other than paying monetary damages;
- (iv) the option to transfer the Interconnection Agreement to a new owner of the Production Facility in a foreclosure proceeding, or pursuant to a deed in lieu of foreclosure, which new owner shall be recognized as a Part to the Interconnection Agreement in replacement for Producer for all purposes under the Interconnection Agreement provided that such owner and owner's creditworthiness is acceptable to Niagara Mohawk and new owner assumes all obligations under the Interconnection Agreement.

22.1.2 Niagara Mohawk may, upon prior written notice to the Producer, assign, transfer, pledge, or otherwise dispose of Niagara Mohawk's rights and interests under this Agreement to any lender or financial institution in connection with the financing or refinancing of the Transmission System or property acquisition therefore.

22.1.3 Any company or entity which succeeds by purchase, merger or consolidation of the properties and assets, substantially or entirely, of Niagara Mohawk shall be entitled to the rights and shall be subject to the obligations of Niagara Mohawk under this Agreement.

22.2 Each Party agrees to reimburse the other Party for any costs and expenses (including reasonable attorneys' fees) incurred in connection with the other Party's review, execution and delivery of instruments, agreements or documents necessary in connection with the assigning Party's assignment, transfer, sale or other disposition of this Agreement or any interest in the Interconnection Facility or the Transmission System.

22.3 Any attempt to assign or assignment in violation of this Article XXII shall be considered null and void from its inception and Niagara Mohawk reserves the right to terminate this Agreement. Assignment contrary to the provisions of this Agreement shall make the assigning Party the indemnitor of the other Party and its successors against any liabilities and costs, including attorneys' fees as to which the assigning Party's transferee fails to indemnify, defend, and hold harmless the other Party, its agents, employees and its successors, from and against any loss, damage, liability, cost, suit, charge, expense (including reasonable attorneys' fees) or cause of action, incurred by the other Party as a result of said assignment or as a result of any dispute between the assigning Party and its transferees, or between any subsequent transferees, that arises from or relates to any

assignment by the assigning Party. The provisions of this paragraph shall survive termination of this Agreement.

- 22.4 Any authorized assignment shall not relieve the assigning Party of the responsibility of full compliance with the requirements of this Agreement, unless the other Party consents and the assignee agrees in writing to be bound by all of the obligations and duties of the assigning Party provided for in this Agreement and has provided written assurances to the other Party of continued performance and protection against liability upon assignment.
- 22.5 This Agreement shall bind and inure to the benefit of the Parties to this Agreement, their successors and permitted assigns.

#### **ARTICLE XXIII WAIVER**

- 23.1 No provision of this Agreement may be waived except by mutual agreement of the Parties as expressed in writing and signed by both Parties.
- 23.2 Any waiver that is not in writing and signed by both Parties shall be null and void from its inception.
- 23.3 No express waiver in any specific instance as provided in a required writing shall be construed as a waiver of future instances unless specifically so provided in the required writing.
- 23.4 No express waiver of any specific default shall be deemed a waiver of any other default whether or not similar to the default waived, or a continuing waiver of any other right or default by a Party.
- 23.5 The failure of either Party to insist in any one or more instances upon the strict performance of any of the provisions of this Agreement, or to exercise any right herein, shall not be construed as a waiver or relinquishment for the future of such strict performance of such provision or the exercise of such right.

#### **ARTICLE XXIV AMENDMENT AND MODIFICATION**

- 24.1 This Agreement may be amended or modified only if the amendment or modification is in writing and executed by both Parties. Any amendment or modification that is not in writing and signed by both Parties shall be null and void from its inception.
- 24.2 No express amendment or modification in any specific instance as provided herein shall be construed as an amendment or modification of future instances, unless specifically so provided in the required writing.

- 24.3 Except as provided for in paragraph 9.5, nothing in this Agreement shall be construed as affecting in any way the right of Niagara Mohawk to unilaterally make application to FERC (or any successor agency) for a change in rates, terms and conditions, charges, classifications of service, rule or regulation under Section 205, of the Federal Power Act ("FPA") and pursuant to FERC's rules and regulations promulgated thereunder, provided that Niagara Mohawk provides Producer with copies at the time they are submitted to FERC of such applications that if approved would affect Producer's rights under this Agreement, and provided that Producer may intervene to oppose the proposed changes.

#### **ARTICLE XXV GOVERNING LAW**

- 25.1 This Agreement and the rights and obligations of the Parties to this Agreement shall be governed by and construed in accordance with the laws of the State of New York, without giving effect to the conflict of laws principles thereof.
- 25.2 Producer and Niagara Mohawk agree to submit to the jurisdiction of the courts in the State of New York for the purposes of interpretation and enforcement of this Agreement.
- 25.3 Producer and Niagara Mohawk waive personal service by manual delivery and agree that service of process on Producer or Niagara Mohawk in any action concerning or arising out of this Agreement may be made by registered or certified mail, return receipt requested, delivered to Producer or Niagara Mohawk at the addresses set forth in Article XIV of this Agreement.

#### **ARTICLE XXVI DISPUTE RESOLUTION**

- 26.1 Should a claim or dispute among the Parties arise under this Agreement, the Parties shall continue, in good faith, to perform their respective obligations hereunder. Notice of any claim or dispute that any Party may have against another Party, arising out of the Agreement shall be submitted in writing to the other Parties in a manner that clearly identifies the nature of the claim or dispute and requests that the Parties engage in negotiations to resolve the claim or dispute.
- 26.2 Upon receipt of the notice of claim or dispute under section 24.1, the Parties shall use Commercially Reasonable Efforts to resolve any such dispute without resorting to judicial resolution, through good faith negotiations between representatives with authority to resolve or settle the claim or dispute. The Parties agree to keep confidential any documents or materials exchanged and/or confidential information revealed in furtherance of resolving or settling the claim or dispute under this Article XXVI of this Agreement and that such documents, materials, or information shall be considered confidential settlement information and that, pursuant to Rule 408 of the Federal Rules of Evidence and parallel doctrines of state law, shall not be admissible as evidence in any subsequent judicial or regulatory proceeding.

- 26.3 If the dispute remains unresolved for more than sixty (60) days after receipt of the notice of claim or dispute under paragraph 26.1, any Party may seek resolution of its rights and remedies under this Agreement through any available forum in law or equity.

#### **ARTICLE XXVII LIMITATION OF LIABILITY**

- 27.1 Notwithstanding any other provision of this Agreement, neither Party shall be responsible to the other for incidental, indirect, exemplary, special or consequential damages (including punitive damages or loss of profits) in connection with this Agreement, except in cases of intentional misconduct, unless otherwise stated in this Agreement.
- 27.2 Third-Party Claims. Notwithstanding the provisions of Article XII as they may apply with respect to an indemnifying Party's responsibility for claims asserted against an indemnified Party by a third-party, under no circumstances shall Niagara Mohawk, or its directors, officers, employees, agents and Affiliates, be liable to the Producer, its directors, officers, employees, agents or Affiliates, for third-party claims, actions or causes of action for direct, indirect, incidental, punitive, special, exemplary, indirect, treble, multiple or consequential damages of any kind (including attorneys' fees, litigation costs, losses or damages caused by reason of the unavailability of the Production Facility, plant shutdowns or service interruptions, losses of use, profits or revenue, inventory or use charges, costs of purchased or replacement power, interest charges or costs of capital) resulting from or related to curtailments or interruptions of deliveries of Electricity over the Transmission System, including any such damages which are based upon causes of action for breach of contract, tort (including negligence and misrepresentation), breach of warranty or strict liability, that are alleged, filed or otherwise brought against Producer.
- 27.3 Survival. The provisions of this Article shall apply regardless of fault and shall survive termination, cancellation, suspension, completion or expiration of this Agreement.

#### **ARTICLE XXVIII SEVERABILITY**

- 28.1 If any term of this Agreement, or the interpretation or application of any term or provision to any prior circumstance, is held to be unenforceable, illegal, or invalid by any governmental agency or court of competent jurisdiction, the remainder of this Agreement, or the interpretation or application of all other terms or provisions to persons or circumstances other than those that are unenforceable, illegal, or invalid, shall not be affected thereby and each term and provision shall be valid and be enforced to the fullest extent permitted by law.

**ARTICLE XXIX  
HEADINGS**

- 29.1 The headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose, or limit or be used as an aid in construing the provisions of this Agreement.

**ARTICLE XXX  
INTEGRATION/MERGER/SURVIVABILITY**

- 30.1 This Agreement sets forth the entire understanding and agreement of the Parties as to the subject matter of this Agreement. This Agreement merges and supersedes all prior agreements, commitments, representations, writings and discussions between the Parties with respect to the Interconnection Facility except for those agreements, commitments, representations, writings, or discussions which by their terms survive termination.
- 30.2 This Agreement shall not merge with or be terminated or superseded by any future agreement between the Parties that does not specifically and in writing so provide.

**ARTICLE XXXI  
COMPLIANCE WITH GOOD UTILITY PRACTICE**

- 31.1 The Parties shall comply with Good Utility Practice.

**ARTICLE XXXII  
COUNTERPARTS**

- 32.1 This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

JAN-15-04 THU 05:22 PM NMPC LAW DEPT.

FAX NO. 13154288407

P. 02/02

JAN 15 '04 17:04 FR

TO 4285114-163 P. 02/02

Original Sheet No. 45

IN WITNESS WHEREOF, the Parties hereto have caused this instrument to be executed as of the day and year first above written.

Besicorp - Empire Power Company, LLC

Niagara Mohawk Power Corporation

By: William Reil

By: Herbert Schrayshuen

Herbert Schrayshuen

Title: President

Title: VP Transmission Commercial Services

Vice President,

Transmission Commercial Services

Date: 1-15-04

Date: 1-15-04

/REIL

JAN 15 '04 17:32

\*\* TOTAL PAGE. 02 \*\*  
PAGE. 02

Original Sheet No. 46

Exhibit A  
[One-Line Diagram]



Original Sheet No. 47

**Exhibit B**  
**[Facilities Study]**

CASE 03-T-0644  
NIAGARA MOHAWK TRANSMISSION FACILITY  
(Rensselaer, East and North Greenbush)  
ACTIVE PARTIES LIST  
(As of January 7, 2003)

**PRESIDING OFFICER:**

HON. WILLIAM BOUTEILLER  
NYS DEPARTMENT OF PUBLIC  
SERVICE

Three Empire State Plaza  
Albany, NY 12223-1350  
Tel: (518) 474-6436  
Fax: (518) 473-3263

Email: [william\\_bouteiller@dps.state.ny.us](mailto:william_bouteiller@dps.state.ny.us)

**APPLICANT and STATE  
AGENCIES (Statutory):**  
(PSL §§124(1)(a)-(f) and  
(1)(2))

PAIGE GRAENING, ESQ.  
NATIONAL GRID USA  
25 Research Drive  
Westborough, MA 01582  
Tel: (508) 389-3074  
Fax: (508) 389-2463  
Email:  
[paige.graening@us.ngrid.com](mailto:paige.graening@us.ngrid.com)

RICHARD ALLEN, P.E.  
NIAGARA MOHAWK POWER CORP.  
1125 Broadway  
Albany, NY 12204  
Tel: (518) 433-5021  
Fax: (518) 433-3774  
Email: [Richard.Allen@us.ngrid.com](mailto:Richard.Allen@us.ngrid.com)

PAUL AGRESTA, ESQ.  
ASSISTANT COUNSEL  
NYS DEPARTMENT OF PUBLIC  
SERVICE  
Three Empire State Plaza  
Albany, NY 12223-1350  
Tel: (518) 486-2653  
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ANDREW DAVIS  
PROJECT MANAGER  
NYS DEPARTMENT OF PUBLIC  
SERVICE  
Three Empire State Plaza  
Albany, NY 12223-1350  
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Fax: (518) 474-5026  
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MARK SANZA, ESQ.  
NYS DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION  
OFFICE OF GENERAL COUNSEL  
DIVISION OF LEGAL AFFAIRS  
625 Broadway  
Albany, NY 12233-1500  
Tel: (518) 402-9222  
Fax: (518) 402-9018  
Email: [mdsanza@gw.dec.state.ny.us](mailto:mdsanza@gw.dec.state.ny.us)

CHRIS HOGAN  
PROJECT MANAGER  
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ENVIRONMENTAL CONSERVATION  
625 Broadway  
Albany, NY 12233-1500  
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Fax: (518) 402-9168  
Email: [cmhogan@gw.dec.state.ny.us](mailto:cmhogan@gw.dec.state.ny.us)



January 7, 2003

**PETRA KRESHIK, ESQ.  
NYS OFFICE OF PARKS,  
RECREATION & HISTORIC  
PRESERVATION**

Agency Building 1  
Empire State Plaza  
Albany, NY 12238  
Tel: (518) 486-2926  
Fax: (518) 474-8918  
Email: [petra.kreshik@oprhp.state.ny.us](mailto:petra.kreshik@oprhp.state.ny.us)

**MATTHEW J. BROWER  
AGRICULTURAL RESOURCE  
SPECIALIST  
NYS DEPT. OF AGRICULTURE  
AND MARKETS**

1 Winners Circle  
Albany, NY 12235  
Tel: (518) 457-7076  
FAX: (518) 457-2716  
Email: [matthew.brower@agmkt.state.ny.us](mailto:matthew.brower@agmkt.state.ny.us)

**MICHAEL J. SANTARCANGELO  
DIRECTOR OF ENERGY POLICY  
NYS DEPARTMENT OF ECONOMIC  
DEVELOPMENT**

30 South Pearl Street  
Albany, NY 12245  
Tel: (518) 292-5275  
Fax: (518) 292-5804  
Email: [msantarcangelo@empire.state.ny.us](mailto:msantarcangelo@empire.state.ny.us)

**GEORGE M. KAZANJIAN  
ASSOCIATE COUNSEL  
NYS DEPARTMENT OF ECONOMIC  
DEVELOPMENT**

30 South Pearl Street  
Albany, NY 12245  
Tel: (518) 292-5120  
Fax: (518) 292-5807  
Email: [gkazanjan@empire.state.ny.us](mailto:gkazanjan@empire.state.ny.us)

**ROBERT R. TYSON, ESQ.  
KEVIN M. BERNSTEIN, ESQ.  
BOND, SCHOENECK & KING, PLLC**  
One Lincoln Center  
Syracuse, NY 13202  
Tel: (315) 218-8000  
Fax: (315) 218-8100  
Email: [tysonr@bsk.com](mailto:tysonr@bsk.com)  
[bernstk@bsk.com](mailto:bernstk@bsk.com)  
(For Besicorp-Empire  
Development Company, LLC)

**LOCAL MUNICIPALITIES &  
LOCAL MUNICIPAL RESIDENTS:  
(PSL §§124(1)(i) and (j))**

**MICHAEL WACHOLDER  
RENSSELAER TECHNOLOGY PARK**  
100 Jordon Road  
Troy, NY 12180  
Tel: (518) 283-7102  
Fax: (518) 283-0695  
Email: [wachom@rpi.edu](mailto:wachom@rpi.edu)

**MICHAEL J. MOORE  
YOUNG, SOMMER...LLC**  
Executive Woods  
Five Palisades Drive  
Albany, NY 12205  
Tel: (518) 438-9907  
Fax: (518) 438-9914  
Email: [mmoore@youngsommer.com](mailto:mmoore@youngsommer.com)  
(for City of Rensselaer)

**MARK PRATT, MAYOR  
CITY OF RENSSELAER**  
City Hall  
505 Broadway  
Rensselaer, NY 12144  
Tel: (518) 462-9511  
Fax: (518) 462-9895  
Email: [mayor@rensselaeronline.com](mailto:mayor@rensselaeronline.com)

**NICHOLAS J. CRISCIONE, ESQ.  
CRISCIONE LAW FIRM LLC**  
120 Broadway  
Albany, NY 12204  
Tel: (518) 462-6677  
Fax: ((518) 462-6603  
Email: No Email  
(for Norwest Corporation)



January 7, 2003

JASON KIPPEN  
RENSSELAER COUNTY ENVIRON-  
MENTAL MANAGEMENT COUNCIL  
1600 Seventh Avenue  
Troy, NY 12180  
Tel: (518) 270-2888  
Fax: (518) 270-2983  
Email: [JKippen@rensco.com](mailto:JKippen@rensco.com)

NON-PROFIT CORPORATIONS AND  
ASSOCIATIONS:  
(PSL §124 (1) (k))

OTHER PERSONS AND ENTITIES:  
(PSL §124 (1) (1))



## **STATUTORY SERVICE LIST**

### **Municipalities:**

#### **FOR CITY OF RENSSELAER:**

**HON. DAN DWYER, MAYOR**

CITY HALL  
505 BROADWAY  
RENSSELAER, NY 12144

**MICHAEL J. MOORE, ESQ.**

YOUNG, SOMMER ... LLC  
EXECUTIVE WOODS  
5 PALISADES DRIVE  
ALBANY, NY 12205

#### **FOR TOWN OF EAST GREENBUSH:**

**HON. RICK McCABE**

SUPERVISOR  
TOWN OF EAST GREENBUSH  
225 COLUMBIA TURNPIKE  
RENSSELAER, NY 12144

#### **FOR TOWN OF NORTH GREENBUSH:**

**HON. MARK A. EVERS**

SUPERVISOR  
TOWN OF NORTH GREENBUSH  
2 DOUGLAS STREET  
WYANTSKILL, NY 12198

#### **FOR RENSSELAER COUNTY:**

**HON. KATHLEEN M. JIMINO**

RENSSELAER COUNTY EXECUTIVE  
1600 SEVENTH AVENUE  
TROY, NY 12180



**JASON KIPPEN, DIRECTOR**  
RENSSELAER COUNTY  
ENVIRONMENTAL MANAGEMENT COUNCIL  
RENSSELAER COUNTY OFFICE BUILDING  
1600 SEVENTH AVENUE  
TROY, NY 12180

**Statutory New York State Agencies:**  
**(NY Public Service Law § 122)**

**FOR DEC:**

**DENISE M. SHEEHAN**  
COMMISSIONER  
NYS DEPARTMENT OF ENVIRONMENTAL  
CONSERVATION  
625 BROADWAY  
ALBANY, NY 12233-1500

**GENE KELLY**  
REGIONAL DIRECTOR, REGION 4  
NYS DEPARTMENT OF ENVIRONMENTAL  
CONSERVATION  
1150 NORTH WESTCOTT ROAD  
SCHENECTADY, NY 12306-2014

**TERRANCE PRATT, ESQ.**  
DIVISION OF LEGAL AFFAIRS  
NYS DEPARTMENT OF ENVIRONMENTAL  
CONSERVATION  
14TH FLOOR  
625 BROADWAY  
ALBANY, NY 12233-1500

**NYS DEPT OF ECONOMIC DEV.:**

**DANIEL C. GUNDERSEN**  
CHAIRMAN - UPSTATE  
EMPIRE STATE DEVELOPMENT  
30 SOUTH PEARL STREET  
ALBANY, NY 12245



**FOR SECRETARY OF STATE:**

LORRAINE CORTES-VAZQUEZ  
SECRETARY OF STATE  
NYS DEPARTMENT OF STATE  
41 STATE STREET  
ALBANY, NY 12231-0001

**GEORGE STAFFORD**  
DIRECTOR  
NYS DEPARTMENT OF STATE  
DIVISION OF COASTAL RESOURCES  
41 STATE STREET  
ALBANY, NY 12231

**FOR DEPT. OF AGRICULTURE & MARKETS:**

**PATRICK M. HOOKER**  
COMMISSIONER  
NYS DEPARTMENT OF AGRICULTURE & MARKETS  
10B AIRLINE DRIVE  
ALBANY, NY 12235

**MATTHEW J. BROWER**  
AGRICULTURAL RESOURCE SPECIALIST  
NYS DEPARTMENT OF AGRICULTURE & MARKETS  
10B AIRLINE DRIVE  
ALBANY, NY 12235

**FOR NYS OFFICE OF PARKS, RECREATION & HISTORIC PRESERVATION:**

**CAROL ASH**  
COMMISSIONER  
NYS OFFICE OF PARKS, RECREATION &  
HISTORIC PRESERVATION  
EMPIRE STATE PLAZA  
AGENCY BUILDING I  
17TH FLOOR  
ALBANY, NY 12238-0001



**DOMINIC JACKANGELO**  
DEPUTY COMMISSIONER  
NYS OFFICE OF PARKS, RECREATION &  
HISTORIC PRESERVATION  
AGENCY BUILDING 1  
EMPIRE STATE PLAZA  
ALBANY, NY 12238

**FOR PUBLIC SERVICE COMMISSION:**

**PAUL AGRESTA, ESQ.**  
OFFICE OF GENERAL COUNSEL  
NYS DEPARTMENT OF PUBLIC SERVICE  
AGENCY BUILDING 3  
EMPIRE STATE PLAZA  
17TH FLOOR  
ALBANY, NY 12223-1350

**MR. ANDREW DAVIS**  
PRINCIPAL TRANSMISSION FACILITIES ANALYST  
NYS DEPARTMENT OF PUBLIC SERVICE  
ENVIRONMENTAL CERTIFICATION & OPERATIONS  
AGENCY BUILDING 3  
EMPIRE STATE PLAZA  
ALBANY, NY 12223

**Other NY Agencies:**  
**(16 NYCRR § 85-2.10)**

**FOR COMMISSIONER OF TRANSPORTATION:**

**ASTRID C. GLYNN**  
COMMISSIONER  
NYS DEPARTMENT OF TRANSPORTATION  
50 WOLF ROAD  
ALBANY, NY 12232

**RICHARD FREDERICK**  
ACTING REGIONAL DIRECTOR  
NYS DEPARTMENT OF TRANSPORTATION  
REGION 1  
328 STATE STREET  
SCHENECTADY, NY 12305



**NEW YORK STATE LEGISLATURE:**

**HON. RON CANESTRARI**

106<sup>TH</sup> ASSEMBLY DISTRICT  
548 LEGISLATIVE OFFICE BUILDING  
ALBANY, NY 12248

**HON. JOSEPH L. BRUNO**

43<sup>RD</sup> SENATORIAL DISTRICT  
909 LEGISLATIVE OFFICE BUILDING  
ALBANY, NY 12248



STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

CASE 03-T-0644 – Application of Niagara Mohawk Power Corporation for a Certificate of Environmental Compatibility and Public Need for the Construction of a 345 kV Electric Transmission Line, Approximately 8.1 Miles Long, in the City of Rensselaer and the Town of North Greenbush, Rensselaer County
---

**NOTICE OF FILING OF A REVISED ENVIRONMENTAL  
MANAGEMENT AND CONSTRUCTION  
PLAN FOR SEGMENT 1**

On or about the 7<sup>th</sup> of December, 2007, Niagara Mohawk Power Corporation d/b/a National Grid filed a Revised Environmental Management and Construction Plan (EM&CP) for Segment 1 of the 345 kV electric transmission line to interconnect the Besicorp-Empire Power Company, LLC power plant, formerly known as Besicorp-Empire Development Company,<sup>1,2</sup> with the bulk power system.

The New York Public Service Commission (Commission) approved the 345 kV electric transmission line in its *Order Adopting the Terms of a Joint Proposal and Granting Certificate of Environmental Compatibility and Public Need* issued and effective March 16, 2005. The new Transmission Facility, as defined in Appendix D to the Order, consists of four segments. The entire Transmission Facility will include the construction of the 345 kV transmission line from the Besicorp-Empire Power Company, LLC power plant in the City of Rensselaer, Rensselaer County, to the existing Reynolds Road Substation in the Town of North Greenbush, Rensselaer County. The Revised EM&CP being filed is for only Segment 1.

Segment 1 will begin at the switch yard of the Empire Generating Project in the City of Rensselaer. The Facility will travel south along an existing, 100-foot wide Niagara Mohawk right-of-way into the Town of East Greenbush, a distance of about 1.9 miles. On this segment, the facility will be placed on steel monopole structures approximately 150 feet in height, in a double-circuit configuration with a relocated existing 115 kV circuit (Circuit #16).

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<sup>1</sup> Case 00-F-2057, Besicorp-Empire Development Company, LLC, Opinion and Order Granting Certificate of Environmental Compatibility and Public Need (issued September 24, 2004).

<sup>2</sup> Case 07-F-0008, Siting Board Order Approving Transfer of Certificate from Besicorp-Empire Development Company, LLC to Besicorp-Empire Power Company, LLC (issued June 21, 2007)



Segment 2 will travel easterly along an existing 250-foot wide Niagara Mohawk right-of-way in the Town of East Greenbush, a distance of approximately 2.1 miles. The Segment 2 facility will be placed on single-circuit, steel H-frame structures, on average about 100 feet tall.

Segment 2A activity will include the relocation of two existing 115 kV circuits (Circuits #16 and 17) a distance of about 0.67 miles to terminate them at the Greenbush Substation. The relocated circuitry on this segment will be placed on double-circuit, steel monopole structures between 80 and 90 feet in height.

Segment 3 will begin in the Town of East Greenbush and travel north along an existing 355-foot wide right-of-way into the Town of North Greenbush to the Reynolds Road Substation, a distance of about 4.1 miles. On this segment, the electric transmission line will be placed on steel H-frame structures on average 100 feet in height. They will replace existing wood pole H-frame structures.

The Transmission Facility will interconnect the Besicorp-Empire Power Company, LLC's 505 MW power plant to the bulk power system. The interconnection of the power plant to the electric transmission network will increase the supply of electricity for local customers and the total amount of electric capacity in the state. By increasing opportunities in the wholesale market for buyer and seller transactions, the Transmission Facility will enhance electric industry competition in New York.

The Joint Proposal adopted by the Commission explains why the certificated Transmission Facility is preferable to various alternatives. In general, it uses existing rights-of-way, and avoids or minimizes the land use impacts and disturbances to the natural habitat that other routes and configurations would have. A 345 kV transmission line is preferable to a 230 kV line, or multiple 115 kV lines, given the limited availability of rights-of-way and the efficiency reductions that would occur from using lower voltage lines. A "no build" alternative was also considered and rejected because the transmission line is needed to connect a new generation facility to the bulk power grid. Underground cable configurations were also considered and rejected due to their substantial cost. Given the overhead Transmission Facility's limited incremental impacts, the Commission agreed with the parties that a costly underground line cable is not warranted.

The Joint Proposal also selected a route to the Reynolds Road Substation in North Greenbush instead of an alternate route to the New Scotland Substation in Albany County. The route to North Greenbush avoids a Hudson River crossing; it also runs a shorter distance and is less costly.

The parties also considered alternatives that would locate the Transmission Facility farther away from the residences on Stock Lane in East Greenbush. They also considered an underground cable at this location. However, underground construction was considered too costly and the existing view from Stock Lane already contains several prominent overhead transmission lines. As to the residents' concerns about the level of the electromagnetic fields near their homes, the Transmission Facility will be placed close to the center of the right-of-way to increase the



distance between the Facility and the homes to reduce the magnetic field at the closest residences.

This filing reflects changes to the September 20, 2005 originally filed EM&CP, addressing specific comments received from the NYSDPS dated October 20, 2005.

The revised EM&CP will be available for public inspection at the Rensselaer City Library, East Greenbush and North Greenbush Public Libraries, which are located at the following:

Rensselaer Public Library  
810 Broadway  
Rensselaer, NY 12144

East Greenbush Community Library  
10 Community Way  
East Greenbush, NY 12144

North Greenbush Public Library  
141 Main Avenue  
Wyantskill, NY 12198

Included in the filing is information relating to the specific location of the Transmission Facility on Segment 1 and the proposed construction procedures and environmental protection measures to be implemented for the entire project. Should any person require additional information regarding construction of the Transmission Facility on Segment 1, they may obtain information by contacting:

Richard W. Allen P.E.  
Project Manager  
National Grid  
1125 Broadway  
Albany, NY 12204  
Telephone: (518) 433-3003

Any request for additional information should be specific as to the subject of the information desired.

In addition, any person may be heard by the Commission on any matter or objection regarding the EM&CP by filing written comments on the EM&CP with the Commission by submitting such comments in writing to:

Hon. Jaclyn A. Brillling, Secretary  
New York State Department of Public Service  
Three Empire State Plaza  
20th Floor  
Albany, NY 12223-1350

Please reference Case #03-T-0644. **All written comments must be submitted to the Commission and Niagara Mohawk within 30 days of the EM&CP filing date or newspaper notice, whichever is later.**



**STATE OF NEW YORK**  
**PUBLIC SERVICE COMMISSION**

CASE 03-T-0644 – Application of Niagara Mohawk Power Corporation for a Certificate of Environmental Compatibility and Public Need for the Construction of a 345 kV Electric Transmission Line, Approximately 8.1 Miles Long, in the City of Rensselaer and the Town of North Greenbush, Rensselaer County
---

**CERTIFICATE OF SERVICE**

On behalf of Niagara Mohawk Power Corporation d/b/a National Grid, Paige Graening, Esq. of the National Grid Legal Department, served a Revised Environmental Management and Construction Plan (EM&CP) and a written Public Notice of the filing of the EM&CP pursuant to Public Service Commission Orders (Appendix D, Ordering Clauses 24, 25 and 26) in the *Order Adopting Joint Proposal and Granting Certificate of Environmental Compatibility and Public Need* issued by the Public Service Commission and effective March 16, 2005.

Pursuant to Ordering Clause 24, on the 7th day of December, 2007, the EM&CP and a copy of the written Notice of Filing attached hereto were served on each of the persons listed on the Active Parties List found in Appendix H of the enclosed volume and on each of the persons listed below by placing true copies of the same in properly addressed, postage prepaid, first-class wrappers in a depository under the exclusive care and custody of the United States Postal Service on East Main Street in Westborough, Massachusetts.

Hon. Jaclyn A. Brilling  
Secretary  
NYS Department of Public Service  
Three Empire State Plaza  
20th Floor  
Albany, NY 12223-1350  
(4 copies)

Richard Frederick  
Acting Regional Director  
NYS Department of Transportation  
Region 1  
328 State Street  
Schenectady, NY 12305  
(1 copy)

Christopher M. Hogan  
Project Manager  
NYS Department of Environmental  
Conservation  
625 Broadway  
Albany, NY 12233  
(2 copies)

Carol Ash  
Commissioner  
NYS Office of Parks, Recreation and Historic  
Preservation  
Empire State Plaza  
Agency Building I  
17th Floor  
Albany, NY 12238-0001  
(1 copy)



Gene Kelly  
Regional Director, Region 4  
NYS Department of Environmental Conservation  
1150 North Westcott Road  
Schenectady, NY 12306-2014  
(1 copy)

Matthew J. Brower  
Agricultural Resource Specialist  
NYS Department of Agriculture & Markets  
10B Airline Drive  
Albany, NY 12235  
(1 copy)

Copies of the EM&CP and the written Public Notice were also served in the same manner on the public libraries of Rensselaer, East Greenbush and North Greenbush, New York, pursuant to Ordering Clause 24.

Furthermore, pursuant to Ordering Clause 25, the Notice of Filing of the EM&CP attached hereto was also served on the 7<sup>th</sup> day of December, 2007 by placing true copies of the same in properly addressed, postage prepaid, first-class wrappers in a depository under the exclusive care and custody of the United States Postal Service located on East Main Street in Westborough, Massachusetts upon each person listed on the Statutory Service List, also found in Appendix H of the enclosed volume, and also the following persons or entities:

NPEC, Inc. (formerly 360 North Pastoria Environmental Corp)  
c/o Joseph G. Gabriel  
343 State Street  
Rochester, NY 14650  
Alpha Venture One  
c/o William Ritz  
19 Sun Oil Road  
P.O. Box 370  
Rensselaer, NY 12144-0370  
BASF Wyandotte Corp.  
3000 Continental Drive NO  
Mount Olive, NJ 07828  
Gorman Terminals LLC  
Port of Albany  
200 Church Street  
Albany, NY 12202

Petroleum Fuel & Terminal  
c/o David Ruecher  
8182 Maryland Ave.  
St. Louis, MO 63105

Powertest Realty Company, LP (Getty Petroleum Corp.)  
125 Jericho Turnpike  
Jericho, NY 11753-1016

Sprague Energy Corp.  
One Parade Mall  
Portsmouth, NH 03801-3749

Tellers Crossing Inc.  
369 Bostwick Road  
Phelps, NY 14532

Antoinette Tisko  
Route 9J  
P.O. Box 21  
Rensselaer, NY 12144

Alpha Venture LLC  
c/o William Ritz  
19 Sun Oil Road  
P.O. Box 370  
Rensselaer, NY 12144-0371  
Bray Terminals Inc.  
P.O. Box 956  
Glens Falls, NY 12801  
Island Park LLC  
c/o Joseph Buono  
52 East Elmwood Road  
Menands, NY 12204

Polsinello Fuels, Inc.  
c/o Lou Polsinello, Jr.  
141 Aiken Ave.  
Rensselaer, NY 12144

Rosenblum Hyman  
P.O. Box 444  
East Greenbush, NY 12061

Sun Refining & Marketing  
1801 Market Street  
Philadelphia, PA 19103-1699

Trans Montaigne Terminal, Inc.  
P.O. Box 1530  
Fayetteville, AR 72701



By:

Pige Guzman

Sworn to before me this 5 day of December, 2007

Sam A. Costa  
Notary Public



SAM A. COSTA  
Notary Public  
Commonwealth of Massachusetts  
My Commission Expires  
March 21, 2008

