

**A Report to the
NYSRC Executive Committee:**

**FUNCTIONAL RESPONSIBILITIES
OF THE NEW YORK STATE
RELIABILITY COUNCIL**

**Prepared by
NYSRC Implementation Working Group**

January 18, 1999

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1.0 Introduction

The purpose of this report is to identify the NYSRC functional responsibilities that the NYSRC Implementation Working Group recommends be immediately addressed by the NYSRC Executive Committee (EC) after it convenes for the first time. The report discusses recommended actions for certain of these responsibilities and options for others. They include:

- ! NYSRC Reliability Rules and Compliance Program
- ! NYSRC Formation
- ! Compensation for Unaffiliated EC Members
- ! NYSRC Subcommittees
- ! Personnel Requirements for Carrying out NYSRC's Responsibilities
- ! Funding Mechanism
- ! NYSRC Expenses for 1999

In addition to the above topics, the report suggests several other responsibilities that should either be addressed immediately or on an on-going basis.

Finally, the report suggests topics for an orientation program for presentation to the EC.

2.0 Overview of NYSRC Functional Relationships

The mission of the NYSRC is to promote and preserve the reliability of electric service on the Bulk Power System in New York State. To carry out this mission, in accordance with the NYSRC Agreement, the NYSRC will be responsible for: (1) establishing and maintaining Reliability Rules for use by the NYISO and all entities engaging in electric power transactions on the Bulk Power System, and (2) along with NPCC and the ISO, monitoring compliance with the Reliability Rules.

Appendix A provides an overview of the relationship between NERC, NPCC, NYSRC, NYISO and NYISO market participants. NERC establishes reliability requirements that are incorporated into

NPCC reliability standards that must be followed by all industry participants within the NPCC. The NYSRC will adopt reliability rules based on the NPCC standards, along with additional, more restrictive, New York State reliability requirements. The ISO and its market participants will be required to follow the NYSRC reliability rules.

The NYISO will be responsible for monitoring market participant compliance with all applicable NYSRC rules. The NYISO will also prepare compliance assessment reports for compliance review by NYSRC and NPCC as depicted in Appendix A. Any disputes between the NYISO and NYSRC about NYSRC rules will be resolved through the dispute resolution process outlined in the ISO/NYSRC Agreement. NPCC will follow its own procedures for resolving NPCC and NERC rule disputes.

More detail about organizational relationships is contained in Sections 9.0 and 10.0, NYSRC Rules and Compliance Monitoring Program, respectively.

3.0 NYSRC Formation

The Working Group recommends that the NYSRC be formed by early February 1999. The NYSRC should formally adopt the Reliability Rules and its compliance monitoring program prior to ISO start-up presently scheduled for April 1999.

4.0 Compensation for Unaffiliated EC Members

The two unaffiliated EC members will receive compensation. It was previously agreed that each unaffiliated member receive an annual retainer of \$20,000 and a per meeting fee of \$1,000, in addition to reasonable and necessary business expenses. The EC should examine insurance requirements for unaffiliated EC members as well as for staff personnel, if so required.

5.0 NYSRC Subcommittees

It is recommended that the EC immediately appoint a temporary ad hoc task force which will support the EC during the transition period prior to NYSRC startup, including providing recommendations concerning implementation and organization of the NYSRC. The ad hoc task force could include certain of the current NYPP staff and member system representatives on the Working Group, in addition to representatives from the affiliated NYSRC members, other NYPP members and PSC staff. One of the first assignments of this task force should be to plan and organize an orientation program for presentation to the EC. Appendix B suggests major topics for this presentation.

The NYSRC should consider the formation of one or more standing subcommittees to establish or modify NYSRC Reliability Rules in accordance with the NYSRC and ISO/NYSRC Agreements (Appendix C), and establish monitoring procedures to review compliance of the ISO and market participants with the Reliability Rules.

6.0 Personnel Requirements for Carrying Out NYSRC's Responsibilities

The NYSRC Agreement states that the EC "members shall be required to provide the NYSRC with appropriate personnel, on a temporary basis, to enable the NYSRC to carry out its functions." The Agreement further states that the "EC shall have the authority to employ staff members" ... as necessary to carry out NYSRC functions.

It is recommended that NYSRC's responsibilities be implemented by one of the following options:

Option A: Begin NYSRC operations without permanent staff, utilizing EC member staffs to supplement NYSRC subcommittee(s) for carrying out NYSRC responsibilities.

Option B: Begin NYSRC operations without permanent staff, retaining a technical consultant to temporarily supplement NYSRC subcommittee(s) for carrying out NYSRC responsibilities.

Option C: Retain a small permanent staff to support NYSRC subcommittees for meeting NYSRC responsibilities. This staff could consist of one or more full-time technical persons and an administrative assistant. The staff will require a small office that is separate but near the ISO.

The expected NYSRC functional responsibilities in Section 11.0 could help guide selection of the appropriate option.

The NYSRC may require legal services to handle dispute resolution proceedings, as may be required, prepare documents, and participate in regulatory proceedings. In addition, an accounting system needs to be developed prior to NYSRC start-up. This system could be developed by the staffs of the EC members or by an outside consultant.

7.0 Funding Mechanism

The NYSRC Agreement provides that the members of the NYSRC (excluding the two unaffiliated members) shall pay for the costs associated with the administration of the NYSRC. The Agreement, however, does not identify a cost recovery mechanism. Accordingly, the EC should decide specifically how NYSRC costs are to be allocated among its members and develop a cost recovery mechanism. (Refer to NYSRC Agreement Section 4.14).

8.0 NYSRC Expenses for 1999

The preliminary NYSRC expense estimates shown in Table 1 below reflect implementation of Personnel Options A, B, or C covered in Section 6.0 above.

Table 1			
Estimated 1999 NYSRC Expenses			
	Option A	Option B	Option C
1. Fees and expenses for unaffiliated members, plus insurance	\$75,000	\$75,000	\$75,000
2. Staff salaries	\$0	\$0	\$260,000
3. Legal and consulting services	\$70,000	\$120,000	\$70,000
4. Office, furniture and equipment leases	\$10,000	\$10,000	\$90,000
5. Supplies	\$10,000	\$10,000	\$10,000
6. Meeting expenses	\$10,000	\$10,000	\$10,000
7. NPCC Assessment	\$25,000	\$25,000	\$25,000
8. Contingency	\$35,000	\$35,000	\$35,000
TOTAL	\$235,000	\$285,000	\$575,000

The above estimates exclude labor costs, travel expenses, and other out of pocket costs borne by the affiliated EC members.

9.0 NYSRC Rules

Draft NYSRC Reliability Rules were transmitted to FERC on May 2, 1997 as part of a supplemental filing to define the role of NYSRC. The Rules are in the process of being updated by a NYPP subgroup to reflect adoption of the Local Reliability Rules and changes in the NPCC Standards.

The NYSRC EC will adopt Reliability Rules, as required in NYSRC Agreement, which include the following elements:

- ! NYPP Standards
- ! NPCC Standards
- ! Local Reliability Rules
- ! Exceptions
- ! Other more restrictive or stringent criteria than NPCC Standards, recognizing special NYS system characteristics or reliability needs, including criteria established by the PSC or developed pursuant to an order of the PSC.
- ! As required, modifications, deletions and new reliability rules will be considered.

The NYSRC will notify the NYISO and Market Participants engaging in electric power transactions in the NYS Control Area of the NYSRC Reliability Rules, including expectations of what is required to demonstrate compliance. These expectations will include level of detail, format, and schedule for transmitting assessment reports consistent with NPCC reporting requirements and procedures. The NYSRC's Reliability Rules shall be posted on its web site.

The ISO/NYSRC Agreement contains a dispute resolution process to be used for the resolution of disputes between the ISO and the NYSRC involving the implementation or application of the Reliability Rules. This process may be initiated by the ISO or the NYSRC. Third parties may petition the PSC to intervene in a dispute resolution proceeding.

Appendix D, Figure A, depicts the proposed process for Rules development and dissemination.

A NYSRC subcommittee proposed in Section 5.0 could oversee establishment and development of the Rules. This process may be initiated by the ISO or the NYSRC. Further, third parties may petition

In addition to developing Reliability Rules, the NYSRC will annually establish the statewide installed capacity requirements. The level of statewide capacity requirements will be in accordance with NPCC Standards.

10.0 Compliance Monitoring Program

A NYSRC Compliance Monitoring Program should be designed to ensure compliance with the NYSRC Rules. The Program should include a process to address the monitoring of specific system quantities or activities, the reporting of data and assessments, and the evaluations and investigations of required actions or system performance necessary to ensure compliance with the NYSRC Rules.

Table 2 below provides a summary of the Working Group's recommended compliance review process.

Table 2 Summary NYSRC and ISO Compliance Review Process				
Entity Responsible for Complying with NYSRC Rules	Applicable Section of NYSRC Rules*	Primary Monitoring Entity (1)	Compliance Review Oversight (2)	See Appendix D, Figure:
ISO	NYSRC (N) Rules	NPCC	NYSRC	B
ISO	NYSRC (S) Rules	NYSRC	-	C
Market Participants	NYSRC (N) Rules	ISO	NPCC, NYSRC	D
Market Participants	NYSRC (S) Rules	ISO	NYSRC	E
(1) This responsibility is to directly monitor compliance with applicable Rules and to notify non-compliant entities of specific deficiencies and expectations for achieving compliance.				
(2) This oversight role assures that compliance review procedures are met, non-compliant entities have been notified, and follow-up actions to correct deficiencies have been taken.				

* This report refers to two general sections of the NYSRC Rules:

NYSRC(N) Rules: NPCC Standards that have been adopted and are included in the NYSRC Rules.

NYSRC (S) Rules: Those NYSRC Rules that are “special” to New York Control Area, which include local rules and other Rules that are more restrictive and stringent than NPCC Standards.

Table 2 illustrates that the direct compliance monitoring role of the NYSRC will be limited only to reviewing compliance with those NYSRC(s) Rules* applicable to the ISO. However, the NYSRC will also have an oversight role which will consist of follow-up actions to ensure reliability when the ISO and market participants have been found by NPCC and the ISO, respectively, to be non-compliant with NPCC and NYSRC Rules.

The NYSRC compliance monitoring program should be consistent with the NPCC and NERC compliance review processes as well as the NYSRC and ISO/NYSRC Agreements.

11.0 Functional Responsibilities of the NYSRC

The Working Group has identified a number of expected functional responsibilities or tasks of the NYSRC in addition to those previously discussed. These responsibilities are consistent with that shown in the NYSRC Agreement, ISO/NYSRC Agreement, and June 30, 1998 FERC Ruling.

Table 3 identifies which responsibilities should be *immediately* addressed by the EC in order to implement the NYSRC Rules and Compliance Program. Table 4 identifies *on-going* tasks that either are scheduled or implemented on an “as required” basis. Some on-going tasks in Table 4 are also included in Table 3. Included in Table 4 are estimated time periods of when these tasks should be implemented and those tasks that may require a significant manpower commitment.

Table 3
NYSRC Functions Requiring Immediate Action

	Agreement/Section
EC elect chair, vice chair, secretary	NYSRC 4.07
EC determine annual retainer and meeting fee for unaffiliated members <i>(see recommendation in Section 4.0)</i>	NYSRC 4.12
EC arrange for insurance coverage <i>(see Section 4.0)</i>	-
Conduct orientation program for EC <i>(see Section 5.0)</i>	-
EC create subcommittees as necessary <i>(see recommendation in Section 5.0)</i>	NYSRC 4.09
Arrange for meeting space, as needed	-
EC employ staff, consultants, counsel as necessary <i>(see recommended options in Section 6.0)</i>	NYSRC 4.10
EC determine annual budget <i>(see recommendation in Section 8.0)</i>	NYSRC 4.14
EC determine cost recovery mechanism <i>(see Section 7.0)</i>	NYSRC 4.14
EC develop accounting system <i>(see Section 6.0)</i>	-
Membership on NPCC and NERC groups	ISO/NYSRC 4.3
Adopt NYSRC Rules <i>(see Section 9.0)</i>	NYSRC 2.02, 3.01, 3.02 ISO/RC 4.1
Develop a communications process for notifying the ISO and market participants of the NYSRC Rules, procedures, and expectations of what are required to demonstrate compliance	-
Develop program and process to ensure compliance with NYSRC Rules <i>(see Section 10.0)</i>	NYSRC 2.03, 3.04, ISO/RC 4.2
Develop and maintain list of NYSRC/NPCC/NERC assessments, time lines, and entities responsible for preparing required data, documents, and analyses to be submitted to the ISO, NYSRC, on NPCC for compliance review	-
Prepare reporting procedures manuals, including assessment reporting requirements	-
Document expectations (compliance templates) of what is required to demonstrate compliance with NYSRC Rules that are applicable to the ISO	-
Send letter to FERC advising it of the members of the NYSRC EC.	-

**Table 4
On-Going NYSRC Functions**

	Immediate Task	Month 1-6	Month 7-12	Beyond 12 months	Agreement/Section
Administrative Functions					
EC elect chair, vice chair, secretary	Yes	-	-	S	NYSRC 4.07
EC create subcommittees as necessary <i>(see recommendation in Section 5.0)</i>	Yes	A/R	A/R	A/R	NYSRC 4.09
Arrange for meeting space, as needed.	Yes	A/R	A/R	A/R	-
EC employ staff, consultants, counsel as necessary <i>(see recommended options in Section 6.0)</i>	Yes	A/R	-	A/R	NYSRC 4.10
EC determine annual budget <i>(see recommendation in Section 8.0)</i>	Yes	-	S	S	NYSRC 4.14
Arrange for audit	No	-	S	S	NYSRC 4.10
Membership on NPCC and NERC groups	Yes	A/R	A/R	A/R	ISO/NYSRC 4.3
Maintain web site	No	A/R	A/R	A/R	-
NYSRC Rules					
Maintain and update Rules <i>(see Section 9.1)</i>	No	S *	S *	S	NYSRC 2.02, 3.01 ISO/RC 4.1
Conduct self-assessment to ensure NYSRC Rules complies with NERC and NPCC Standards	No	-	S	S	-
Recommend changes to NPCC and NERC Standards through their open processes	No	A/R	A/R	A/R	-
Develop a communications process for notifying the ISO and market participants of the NYSRC Rules, procedures, and expectations of what are required to demonstrate compliance	Yes	S	-	A/R (Update)	-
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**Table 4
On-Going NYSRC Functions**

	Immediate Task	Month 1-6	Month 7-12	Beyond 12 months	Agreement/Section
NYSRC Compliance Program					
Develop program and process to ensure compliance with NYSRC Rules (<i>see Section 10.0</i>)	Yes	S *	-	A/R (Update)	NYSRC 2.03, 3.04, ISO/RC 4.2
Develop and maintain list of NYSRC/NPCC/NERC assessments, time lines, and entities responsible for preparing required data, documents, and analyses to be submitted to the ISO, NYSRC, or NPCC for compliance review	Yes	S *	-	S (Update)	-
Prepare procedures manuals, including assessment reporting requirements	Yes	S *	-	S (Update)	-
Document expectations (compliance templates) of what is required to demonstrate compliance with NYSRC Rules that are applicable to the ISO.	Yes	S *	-	S (Update)	-
Monitor ISO compliance with NYSRC (S)** Rules and designate compliance or non-compliance, as appropriate. (<i>see Section 10.0</i>)	No	S *	S *	S *	NYSRC 2.03, 3.04, ISO/RC 4.2
Notify ISO of non-compliance with NYSRC(S) ** Rules and follow-up actions to achieve compliance.	No	A/R	A/R	A/R	-
Review NPCC and ISO compliance monitoring findings concerning ISO and market participant compliance, respectively, and ensure follow-up actions, if needed, to ensure compliance is implemented.	No	A/R	A/R	A/R	-
- Continued on Next Page -					

**Table 4
On-Going NYSRC Functions**

	Immediate Task	Month 1-6	Month 7-12	Beyond 12 months	Agreement/Section
Coordinate with the ISO, New York's participation in the NERC/NPCC Pilot Compliance Program	No	S	-	S	-
Arrange for independent compliance audits	No	A/R	A/R	A/R	-
Establish and update State-Wide installed capacity requirements	No	-	S	S	NYSC 4.5, ISO/RC 3.03
Implement dispute resolution process	No	A/R	A/R	A/R	ISO/RC 5.2

- * **This task will likely require a significant manpower commitment.**
- ** **See Footnote in Section 10.0 for definition of the term "NYSRC(s) Rules."**
- S Scheduled Task**
- A/R As Required Task**

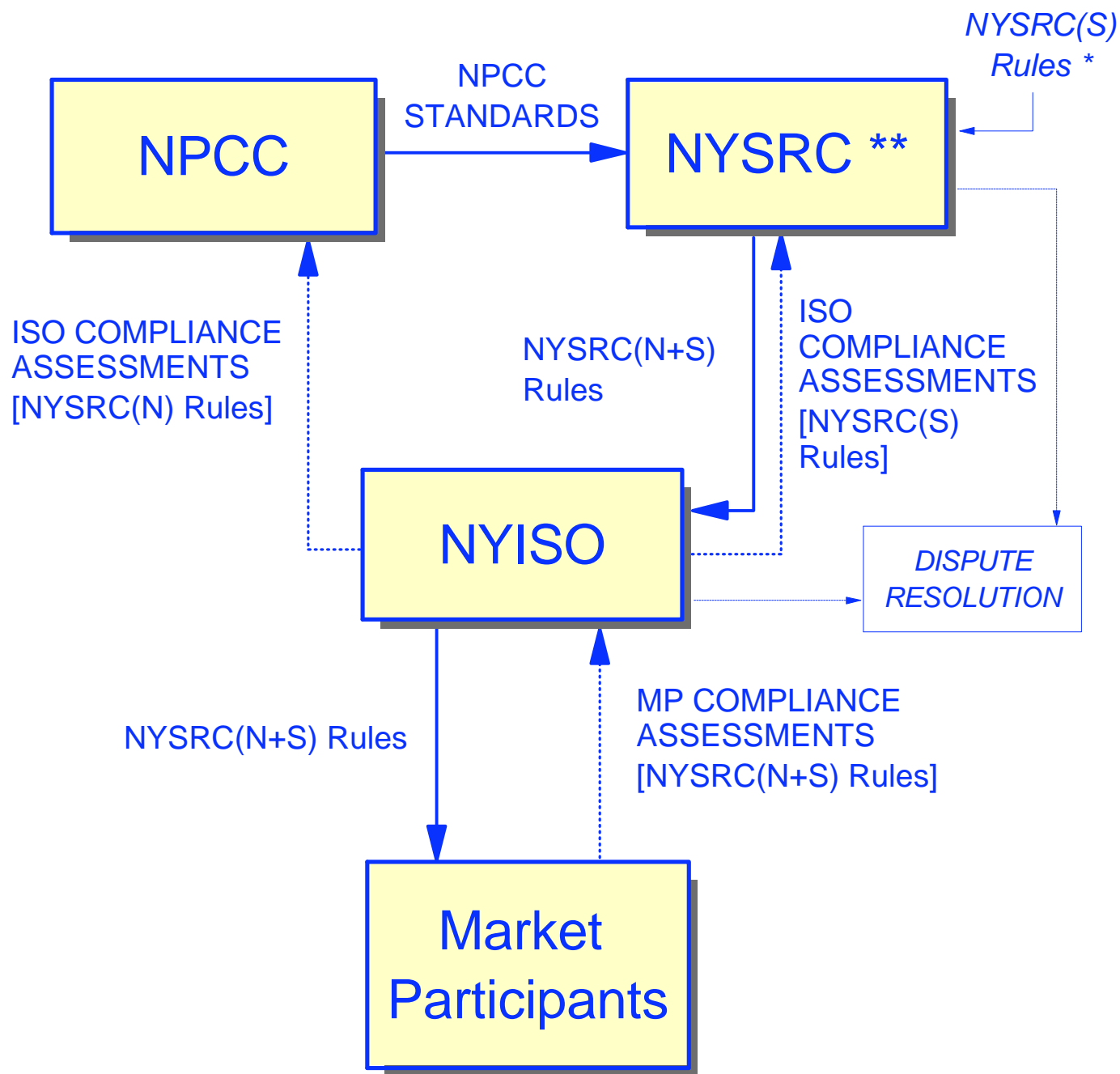
12.0 Summary and Conclusions

The mission of the NYSRC is to promote and preserve the reliability of electric service on the Bulk Power System in New York State. This report proposes (1) processes to implement NYSRC Reliability Rules and compliance monitoring, and (2) several functional responsibilities that need to be implemented in order to effectively meet this mission. Action on many of these responsibilities need to be immediately addressed by the NYSRC Executive Committee to allow the Reliability Rules and compliance program to be available at the beginning of NYISO operation.

Appendix A

Overview of the NYSRC Processes for Developing Reliability Rules & Monitoring Compliance

Overview of the NYSRC Processes for NYSRC Rules Notification & Compliance Monitoring



—————> Process for Rules Notification
> Process for Compliance Monitoring

* See Section 10.0. NYSRC Rules include criteria established by NERC, NPCC, FERC, PSC, and NRC.

** NYSRC has oversight regarding ISO and MP compliance with NPCC and NYSRC Rules, respectively

Appendix B

Proposed NYSRC Executive Committee Orientation Program Outline

Proposed NYSRC Executive Committee Orientation Program Outline

Major Topics

- 1 Overview of NYSRC mission and responsibility
- 2 NYSRC Voting and Governance
- 3 Overview of NYISO
 - ! Governance Structure and Voting
 - ! Responsibility
 - Market
 - Reliability
- 4 Overview of NYPP
- 5 Review of FERC Filing (NYSRC Agreement, NYSRC/ISO Agreement) and FERC's 6/20/98 Order (and any subsequent orders)
- 6 NYSRC Reliability Rules
- 7 Local Reliability Rules
- 8 Relationship with ISO
 - ! Dispute Resolution
 - ! Interface
- 9 Monitoring Compliance
- 10 Immediate Issues before NYSRC

Appendix C

NYSRC and ISO/NYSRC Agreements

NEW YORK STATE RELIABILITY COUNCIL

AGREEMENT

NEW YORK STATE RELIABILITY COUNCIL AGREEMENT

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NEW YORK STATE RELIABILITY COUNCIL AGREEMENT

AGREEMENT made as of the ____ day of _____, 1997, by and among Central Hudson Gas & Electric Corporation (“Central Hudson”), Consolidated Edison Company of New York, Inc. (“Con Edison”), Long Island Lighting Company (“LILCO”), New York State Electric & Gas Corporation (“NYSEG”), Niagara Mohawk Power Corporation (“NMPC”), Orange and Rockland Utilities, Inc. (“O&R”), and Rochester Gas and Electric Corporation (“RG&E”), all corporations organized under the laws of the State of New York, and Power Authority of the State of New York (“NYPA”), a corporate municipal instrumentality of the State of New York (collectively the “Parties”);

WITNESSETH:

WHEREAS, the Parties have invested tens of billions of dollars in facilities to provide reliable electric service in the State of New York; and

WHEREAS, reliable electric service is critical to the economic and social welfare of the millions of residents and businesses in the State of New York; and

WHEREAS, the Parties currently are members of the New York Power Pool (“NYPP”) and through NYPP have coordinated their electric operations to enhance reliability; and

WHEREAS, the reliable and efficient operation of the NYS Power System is fundamental to achieving and maintaining reliability of supply; and

WHEREAS, the reliable and efficient operation of the NYS Power System requires extensive coordination of system design and Reliability Rules; and

WHEREAS, in order to maintain the reliability of the NYS Power System, it is necessary to have standards of performance and Reliability Rules that must be used in planning and operating the NYS Power System; and

WHEREAS, in the future, the Independent System Operator (“ISO”) will be responsible for exercising Operational Control over the Transmission Facilities Under ISO Operational Control; and

WHEREAS, network interactions and transmission congestion on the NYS Transmission System create special conditions that require the development and promulgation of Reliability Rules that must effectively be implemented in order to maintain the reliable operation of the NYS Transmission System; and

WHEREAS, the unique circumstances and complexities related to the maintenance of reliable transmission service to the New York City metropolitan area and the dire consequences that would result from a failure to provide uninterrupted service to that region of the state, as has been demonstrated in the past, further require the development of Reliability Rules in New York State; and

WHEREAS, the Parties own the transmission facilities that comprise the NYS Transmission System, and will continue to be responsible for the safe and reliable operation of those facilities and for protecting their respective interests in the safe and reliable operation of those facilities; and

WHEREAS, the development and promulgation of Reliability Rules for the NYS Power System will allow the ISO to determine the most appropriate and efficient means of implementing those Reliability Rules; and

WHEREAS, it is essential that the restructuring of the electric industry in New York State and the deregulation of certain aspects of that industry not create a risk of any degradation of the current level of reliability of the NYS Power System; and

WHEREAS, upon implementation of the New York State Reliability Council (“NYSRC”) and the ISO, the Parties intend to dissolve the NYPP; and

WHEREAS, it is essential to maintain the reliable operation of the Transmission Providers’ electric systems consistent with Good Utility Practice and the Transmission Providers’ legal and fiduciary responsibilities; and

WHEREAS, the Parties have concluded that it is appropriate and necessary to establish the NYSRC with the appropriate authority to establish Reliability Rules that will be implemented by the ISO and enforce compliance with the Reliability Rules, including Local Reliability Rules; and

WHEREAS, the primary mission of the NYSRC is to promote and preserve the reliability of electric service on the NYS Power System within New York State;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements set forth herein, the Parties hereby agree as follows:

ARTICLE 1: DEFINITIONS

The ISO Filing Definitions Document, as it exists on the date filed with FERC, is hereby incorporated by reference in its entirety into this NYSRC Agreement.

ARTICLE 2: SCOPE AND MISSION

2.01 The Parties hereby agree to create the NYSRC, an organization comprising the Transmission Providers and certain participants in New York State's Wholesale Market. The Parties will seek any necessary authorizations, regulatory approvals and rulings to give effect to this Agreement.

2.02 The mission of the NYSRC is to promote and preserve the reliability of electric service on the NYS Power System by developing, maintaining, and, from time-to-time, updating the Reliability Rules which shall be complied with by the ISO and all entities engaging in electric power transactions on the NYS Power System. The NYSRC shall carry out its mission with no intent to advantage or disadvantage any Market Participant's commercial interests.

2.03 The NYSRC's mission also includes monitoring compliance with the Reliability Rules by working in consultation with the ISO to assure compliance, including when necessary, seeking compliance through the dispute resolution procedure contained in the ISO/NYSRC Agreement, and taking such other actions which may be necessary to carry out the purpose of the NYSRC Agreement.

2.04 The NYSRC will be governed by an Executive Committee as set forth in Article 4.

ARTICLE 3: DUTIES OF THE NYSRC

3.01 General Reliability Rules

Using the reliability standards, regulations, criteria, procedures, and rules established or imposed by NERC, NPCC, FERC, PSC, NRC, and any other government agency with jurisdiction over the reliability of the NYS Power System, other reliability criteria, and Local Reliability Rules, the NYSRC shall develop, establish, maintain, assure compliance with, and, from time-to-time, update the Reliability Rules which shall be complied with by the ISO and all entities engaging in electric power transactions on the NYS Power System. The NYSRC shall initially adopt those existing rules, policies, and procedures of the NYPP that relate to or affect the reliability of the NYS Power System. The NYSRC shall adopt or create from time-to-time such additional Reliability Rules that it deems necessary to meet the unique reliability needs of New York State.

The ISO or a member of the NYSRC may petition the NYSRC Executive Committee to seek specific and limited exceptions to NERC and NPCC criteria, provided the intent of the criteria is not compromised. Subject to Article 8, the Executive Committee shall be responsible for granting such exceptions. The NYSRC shall adopt all new mandatory compliance rules of NERC and NPCC unless existing Reliability Rules are more stringent.

3.02 Local Reliability Rules

The NYSRC shall adopt as a Reliability Rule each Local Reliability Rule in existence at the time this Agreement becomes effective. Such existing Local Reliability Rules cannot be modified or eliminated by the NYSRC without the consent of the Transmission Provider who implemented such Local Reliability Rule. A Transmission Provider may promulgate a new Local Reliability Rule if that

Transmission Provider determines that a new Local Reliability Rule is necessary to protect the reliable delivery of electricity over its transmission and/or distribution facilities. Any such new Local Reliability Rule shall be adopted by the NYSRC as a Reliability Rule and such rules will be recognized by the ISO in the operation of the NYS Power System. Such new Local Reliability Rules may not be modified or eliminated by the NYSRC without the consent of the Transmission Provider who implemented the rule. The Transmission Provider must indicate whether it consents to the modification within 60 days.

The Board of Directors of the ISO or the NYSRC may request that the PSC review a Local Reliability Rule. In the event the ISO Board or the NYSRC seeks to modify or eliminate any Local Reliability Rule, and the Transmission Provider promulgating that rule does not agree to modify or eliminate that rule, that Local Reliability Rule can be modified or eliminated only pursuant to an order by the PSC or FERC. All parties reserve their rights under the Federal Power Act to appeal to FERC to review a specific Local Reliability Rule.

3.03 Installed and Operating Capacity Requirements

The NYSRC shall establish the state-wide Installed Capacity requirements for New York State consistent with NERC and NPCC standards. The NYSRC will initially adopt the Installed Capacity requirement as set forth in the current NYPP Agreement and currently filed with FERC. Any changes to this requirement will require an appropriate filing and FERC approval. In establishing the state-wide Installed Capacity requirements, consideration will be given to the configuration of the system, generation outage rates, assistance from neighboring systems and Local Reliability Rules.

The NYSRC shall develop Reliability Rules, to be implemented by the ISO to ensure that sufficient Operating Capacity is committed on a Day-Ahead basis and remains available to ensure the reliable operation of the NYS Power System during the next day.

3.04 Relationship with ISO

The NYSRC shall enter into an agreement with the ISO (the ISO/NYSRC Agreement) which shall define the terms and conditions of their relationship. The ISO/NYSRC Agreement shall provide that the ISO will implement and comply with all Reliability Rules established by the NYSRC. The NYSRC shall monitor and audit the ISO's compliance with the Reliability Rules and with the provisions of the ISO/NYSRC Agreement.

The NYSRC shall have the authority to require the ISO to provide it with information and data demonstrating the ISO's compliance with the Reliability Rules. If the NYSRC determines, in its sole discretion, that the ISO has failed to comply with or has improperly implemented the Reliability Rules, representatives of the NYSRC shall discuss this issue with representatives of the ISO. If a satisfactory resolution of the differences cannot be reached within thirty (30) days, then the issue may be referred to dispute resolution in accordance with the provisions of the ISO/NYSRC Agreement.

The NYSRC shall represent New York State at NPCC and NERC. The NYSRC shall review and comment on all statewide documents prepared by the ISO that are filed with the NPCC and NERC.

ARTICLE 4: MEMBERSHIP ON THE NYSRC EXECUTIVE COMMITTEE AND VOTING

4.01 The NYSRC Executive Committee shall be comprised of thirteen (13) Members (collectively the “Members” or “Executive Committee Members”). The Members will be selected as follows:

Each Transmission Provider (or their successors or assigns) shall select one Member (for a total of eight (8) Transmission Provider Members). The ISO Board of Directors will establish procedures for the selection of Members to represent the following groups:

- Parties who are engaged in the NYCA principally in the business of selling electricity in the wholesale market (1 Member).
- Parties who are large commercial or industrial consumers of electricity in the NYCA (1 Member).
- Parties who are municipally owned or cooperatively owned utilities in the NYCA (1 Member).
- Parties who are not affiliated with any Market Participant (2 Members). For the purpose of this Article, the term “affiliated” shall have the same meaning as set forth in Article 5 of the ISO Agreement.

4.02 The ISO Board of Directors may designate a member of its staff to participate in meetings of the Executive Committee on a non-voting basis. The Executive Committee will make provisions for the attendance at committee meetings for non-voting representatives of FERC and the PSC.

4.03 Each Member of the Executive Committee shall have substantial knowledge and/or experience in the reliable operation of bulk power electric systems. Each Member of the Executive Committee

shall file a notice with FERC stating that he/she has been selected as a Member of the Executive Committee.

4.04 Executive Committee Members shall serve two (2) year terms, with no limitation on the number of terms that an Executive Committee Member can serve. The Executive Committee Members will serve from August 1 of each year to July 31 of the following year, and shall be eligible for reappointment. A vacancy in a seat held by a Member representing a Transmission Provider shall be filled by that Transmission Provider. Vacancies in seats held by other Members of the Executive committee shall be filled pursuant to procedures adopted by the ISO Board.

4.05 Attendance or participation by proxy of nine (9) Members of the Executive Committee shall constitute a quorum. A vote of nine (9) Members is needed to pass a measure. All Executive Committee Members shall have the right to vote on all measures brought before the Executive Committee. Executive Committee Members not physically present may vote by proxy, telephone, signed facsimile, or a duly authorized alternate.

4.06 Each Executive Committee Member may designate one or more representatives with full authority to act on its behalf in carrying out the work of the Executive Committee.

4.07 The Executive Committee shall elect a chairperson and vice chairperson, and a secretary with a one (1) year term of office. The chairperson shall have the power to call meetings of the Executive Committee and such other powers as set forth in this Agreement. The vice chairperson shall exercise any powers delegated by the chairperson.

4.08 The NYSRC shall act through the Executive Committee. Subject to Section 3.02, the Executive Committee shall approve all Reliability Rules and changes to Reliability Rules issued by

the NYSRC. Any Member of the Executive Committee may propose modifications to the Reliability Rules, including specific exceptions, additions, or deletions. The Executive Committee shall seek input and recommendations from the ISO, as appropriate, on proposed modifications to the Reliability Rules. Subject to Section 3.02 and Article 8, modifications to the Reliability Rules shall be within the exclusive authority and discretion of the Executive Committee of the NYSRC.

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

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

4.11 Minutes of meetings of the Executive Committee will be made available to any entity requesting a copy. A reasonable charge may be made for copies furnished to any entity other than Members and regulatory agencies.

4.12 The unaffiliated Members of the Executive Committee shall receive a fee for meetings and have their expenses reimbursed by the NYSRC.

4.13 If costs associated with a study or any other activity undertaken by the NYSRC can be directly assigned to a specific person or entity the costs associated with such study or activity shall be borne by that person or entity. Costs not so assigned shall be paid out of the NYSRC budget.

4.14 The Executive Committee shall determine the NYSRC's annual budget and assess annual dues. Such dues shall not be allocated to the Unaffiliated Members.

4.15 Members shall be required to provide the NYSRC with appropriate personnel, on a temporary basis, to enable the NYSRC to carry out its functions.

4.16 The costs associated with membership and participation in meetings and committee work shall be borne by the individual Members. These costs include, but are not limited to, travel to and from meetings and the costs of providing the NYSRC with personnel on a temporary basis to carry out the administrative and technical functions of the NYSRC.

4.17 The NYSRC may request the ISO to perform certain studies on behalf of the NYSRC.

4.18 The Executive Committee shall meet at least quarterly and at any other such time as agreed to by nine (9) of the Executive Committee Members.

ARTICLE 5: PUBLICATION OF RELIABILITY RULES

5.01 The secretary of the Executive Committee shall be responsible for ensuring that all Reliability Rules, including Local Reliability Rules, are published, updated, and maintained in a Reliability Rules Manual. Copies of the Reliability Rules Manual, along with any updates, are to be made available to: the Members, the FERC, the PSC, the ISO, all ISO Direct Customers and any Market Participant that requests a copy. A reasonable charge may be made for copies furnished to entities other than Members and regulatory agencies.

5.02 Costs associated with the publication and dissemination of the Reliability Rules Manual are to be apportioned as determined by the Executive Committee.

ARTICLE 6: RESPONSIBILITIES OF THE PARTIES

6.01 Each Party shall maintain and operate its portion of the NYS Power System in accordance with the Reliability Rules established by the NYSRC.

6.02 Each Party shall use its best efforts to assure that, whenever it enters into electric Energy, Capacity, Ancillary Services, or Transmission Service Agreements with non-parties, such arrangements will be in accord with the Reliability Rules and criterion established by NERC or the regional reliability council established in the areas in which the facilities used for such arrangements are located.

ARTICLE 7: EFFECTIVE DATE AND TERMINATION

7.01 This NYSRC Agreement, once executed by the Parties, shall become effective on the date on which FERC, the PSC and other regulatory authorities of competent jurisdiction, to the extent applicable, grant all the necessary approvals and the NYSRC Agreement is executed by the Parties.

7.02 Any Party may withdraw from this NYSRC Agreement upon ninety (90) days written notice to all other Parties; provided, however, that any Party submitting notice of intent to withdraw shall continue to be obligated to pay its allocated share of the administrative expenses of the NYSRC for one (1) full year commencing with the date such termination shall become effective.

ARTICLE 8: DISPUTE RESOLUTION

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

ARTICLE 9: CODE OF CONDUCT

9.01 The NYSRC shall prepare and apply a code of conduct with respect to the treatment by Members or their representatives of any information of a commercial value provided by a Customer or Market Participant to the NYSRC. The code of conduct will establish protocols to ensure that Members and their representatives shall not favor their own commercial interests in carrying out their NYSRC responsibilities.

9.02 An individual serving as a Member 's designated representative or alternative on the Executive Committee of the NYSRC is precluded from serving on the ISO Board or on any ISO committee.

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

ARTICLE 10: ASSIGNMENT

10.01 This Agreement shall inure to the benefit of, and shall be binding upon, the successors and assigns of the respective Parties.

ARTICLE 11: FORCE MAJEURE

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

ARTICLE 12: LIMITATION OF LIABILITY

12.01 The NYSRC and the Parties shall not be liable (whether based on contract, indemnification, warranty, tort, strict liability or otherwise) to any Party, Market Participant or third party for any damages whatsoever, including without limitation direct, special, indirect, punitive, incidental, or

consequential damages resulting from any act or omission in any way associated with this NYSRC Agreement except to the extent that the NYSRC or a Party is found liable for gross negligence or willful misconduct, in which case the NYSRC or the Party will not be liable for any incidental, consequential, punitive, special or indirect damages.

ARTICLE 13: REGULATORY JURISDICTION

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

ARTICLE 14: GOVERNING LAW AND JURISDICTION

14.01 The interpretation and performance of this NYSRC Agreement shall be in accordance with, and shall be controlled by, the laws of the State of New York. With respect to any claim or controversy arising from this Agreement or performance hereunder within the subject matter jurisdiction of the Federal or the State Courts of the State of New York, the Parties consent to the exclusive jurisdiction and venue of said courts.

ARTICLE 15: HEADINGS

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

ARTICLE 16: NO THIRD PARTY RIGHTS

16.01 Nothing in this NYSRC Agreement, express or implied, is intended to confer on any person, other than the Parties hereto, any rights or remedies under or by reason of this NYSRC Agreement.

ARTICLE 17: NOT PARTNERS

17.01 Nothing contained in this NYSRC Agreement shall be construed to make the Parties partners or joint venturers or to render any Party liable for the debts or obligations of any other Party.

ARTICLE 18: WAIVER

18.01 Any waiver at any time of the rights of any Party as to any default on the part of any other Party or Parties to this NYSRC Agreement or as to any other matter arising hereunder shall not be deemed a waiver as to any default or other matter subsequently occurring.

ARTICLE 19: AMENDMENTS

19.01 This NYSRC Agreement is not subject to change absent the prior written agreement of the Parties.

ARTICLE 20: CLAIMS BY EMPLOYEES AND INSURANCE

Each Party shall be solely responsible for and shall bear all of the costs of claims by its own employees, contractors, or agents arising under, and covered by, any workers' compensation law. Each of the Parties shall furnish, at its sole expense, such insurance coverage and such evidence thereof, or evidence of self-insurance, as is reasonably necessary to meet its obligations under this Agreement.

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

CENTRAL HUDSON GAS & ELECTRIC CORPORATION

By: _____
Title: _____
Date: _____

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.

By: _____
Title: _____
Date: _____

LONG ISLAND LIGHTING COMPANY

By: _____
Title: _____
Date: _____

NEW YORK STATE ELECTRIC & GAS CORPORATION

By: _____
Title: _____
Date: _____

NIAGARA MOHAWK POWER CORPORATION

By: _____
Title: _____
Date: _____

ORANGE AND ROCKLAND UTILITIES, INC.

By: _____
Title: _____
Date: _____

ROCHESTER GAS AND ELECTRIC CORPORATION

By: _____
Title: _____
Date: _____

POWER AUTHORITY OF THE STATE OF NEW YORK

By: _____
Title: _____
Date: _____

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

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

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

W I T N E S S E T H:

WHEREAS, Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc. and Rochester Gas and Electric Corporation (hereinafter referred to as the “Utility Parties”) established the New York Power Pool ("Power Pool") by Agreement made as of the 21st day of July, 1966, and Power Authority of the State of New York (“NYPA”) subsequently joined the Power Pool on October 11, 1967; and

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

WHEREAS, the Utility Parties and NYPA have agreed to create the ISO and the Utility Parties and NYPA agree that a competitive Wholesale Market can be operated in a reliable and efficient fashion most effectively by the creation of the ISO, the Power Exchanges and the NYSRC, as proposed by the Utility Parties and NYPA; and

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

WHEREAS, the ISO's principal mission is to exercise Operational Control over certain facilities in the NYS Power System and to maintain the safety, efficiency, and short-term reliability of the NYS Power System; and

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

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

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

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

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

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements herein set forth, the Parties hereto do hereby agree with each other, for themselves and for their successors and assigns as follows:

ARTICLE 1: DEFINITIONS

The ISO Filing Definitions Document, as it exists on the date filed with FERC, is hereby incorporated by reference in its entirety into this ISO/NYSRC Agreement.

ARTICLE 2: RELATIONSHIP OF THE ISO AND THE NYSRC

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

ARTICLE 3: DUTIES OF THE ISO

- 3.1** The ISO shall comply with all Reliability Rules, including the Local Reliability Rules.

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

ARTICLE 4: DUTIES OF THE NYSRC

- 4.1 The NYSRC shall be responsible for developing Reliability Rules pursuant to which the ISO shall maintain the safety and short-term reliability of the NYS Power System.

The NYSRC shall develop Reliability Rules in accordance with NERC, NPCC, FERC, PSC, and NRC standards, criteria, rules, regulations, the Local Reliability Rules and other criteria, as provided for in Article 3 of the NYSRC Agreement.

- 4.2** The NYSRC, using the information, data, reports and assistance provided by the ISO, shall monitor and assess the ISO's compliance with the Reliability Rules. If the NYSRC determines that the operation of the NYS Power System by the ISO has not been in compliance with the Reliability Rules or the ISO has improperly implemented the Reliability Rules, the NYSRC shall discuss such non-compliance or improper implementation with the ISO. If a satisfactory resolution of the matter cannot be reached within thirty (30) days, the issue may be referred by either Party to dispute resolution in accordance with the provisions of this Agreement.
- 4.3** The NYSRC shall represent New York State at NPCC and NERC. NPCC triennial reviews and similar reliability reports required by NPCC and NERC shall be prepared by the ISO for review and approval by the NYSRC prior to submittal to NPCC and NERC.
- 4.4** The NYSRC shall develop Reliability Rules for implementation by the ISO to ensure that sufficient Operating Capacity is committed on a Day-Ahead basis to ensure the reliable operation of the NYS Power System during the next day.
- 4.5** The NYSRC shall determine the statewide Installed Capacity requirement on an annual basis. For periods beyond one (1) year the NYSRC may perform or direct the ISO or another entity to perform studies required to identify future operating conditions.

ARTICLE 5: DISPUTE RESOLUTION

- 5.1** This Article does not apply to Local Reliability Rules.

- 5.2** The Parties hereby establish a dispute resolution process for the resolution of disputes under this Agreement wherein the PSC conducts the arbitration of the dispute. If the NYSRC determines that the ISO has not complied with or effectively implemented a Reliability Rule, or if the ISO determines that a Reliability Rule is unnecessary or should be modified, representatives of the NYSRC and the ISO shall upon request of either Party, meet within thirty (30) days to discuss and attempt to resolve the matter.
- 5.3** If the Parties are unable to resolve a dispute described in Section 5.2 herein within thirty (30) days by mutual agreement (unless extended by mutual consent of the Parties), such dispute may be submitted to the PSC by either Party in a written statement describing the nature of the dispute and the issues to be resolved. If the enactment of a new Reliability Rule or a modification of an existing Rule leads to a dispute, the ISO Board of Directors may request that the effectiveness of the new Reliability Rule or the modification be suspended pending the outcome of the dispute resolution process. Upon such a request by the ISO Board, the NYSRC shall suspend implementation of the new Reliability Rule or the enactment of the modification pending resolution of the dispute by the PSC. Notwithstanding the foregoing, the PSC may direct that the new Reliability Rule or modification go into effect immediately upon a finding that suspension of the rule could put the reliability of the NYS Power System at risk.
- 5.4** The PSC shall, on an expedited basis, (as permitted by PSC regulations) then evaluate and determine whether the dispute should be: (1) dismissed; or (2) accepted for arbitration. The PSC may dismiss a dispute if:
- a. the complaining Party failed to negotiate in good-faith;

- b. the dispute does not reasonably relate to the Reliability Rules or their application;
- or
- c. the claim is de minimis.

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

- a. The PSC shall have the authority to make a determination with respect to any contention by the ISO that a Reliability Rule is unnecessary or should be modified, or by the NYSRC that a Reliability Rule has not been effectively implemented by the ISO. The PSC shall have no power to modify or change any Agreement or the ISO Tariff, or otherwise create any additional rights or obligations for any Party. The scope of the PSC's decision under this Agreement shall be limited to the issues presented for arbitration.
- b. The PSC Staff will have the ability to review Reliability Rules and their implementation by the ISO. If the PSC staff determines that a Reliability Rule is unwarranted or should be modified or that a Reliability Rule is not being effectively implemented by the ISO, PSC staff may raise that issue with the NYSRC and the ISO. If the issue is not resolved among the PSC staff, the NYSRC and ISO, the PSC staff may initiate an arbitration proceeding before the PSC with respect to the issue. The PSC shall conduct a proceeding brought by the staff under the same procedures applicable to a proceeding initiated by the NYSRC or the ISO under this Agreement.
- c. The PSC shall determine discovery procedures, intervention rights, evidentiary rules, procedures for submission of written materials, and other such

procedural matters, taking into account the complexity of the issues involved, the extent to which factual matters are disputed and the extent to which the credibility of witnesses is relevant to a resolution. Each Party to the dispute shall produce all evidence determined by the PSC to be relevant to the issues presented. To the extent such evidence involves proprietary or Confidential Information, the PSC may issue an appropriate protective order which shall be complied with by all disputing Parties. The PSC may elect to resolve the arbitration matter solely on the basis of written evidence and arguments.

- d.** The PSC shall consider all issues underlying the dispute and the PSC shall take evidence submitted by the disputing Parties in accordance with procedures established by the PSC and may request additional information including the opinion of recognized technical bodies or experts. Disputing Parties shall be afforded a reasonable opportunity to rebut any such additional information.
- e.** The PSC may permit intervention by an interested third party provided that a request to intervene is timely and the PSC finds that such intervention will enhance the arbitration process and will not cause undue delay. All intervenors shall be required to comply with all applicable procedural rules established by the PSC pursuant to Section 5.5 (c) herein.
- f.** After conclusion of the discovery process and after providing the Parties with an opportunity to be heard, the PSC shall render a written decision, including findings of fact and the basis for the decision. The PSC shall make a specific finding that its decision will adequately protect the reliability of the NYS Power System and state the reasons for such finding.

- 5.6** Any arbitration decision that affects matters subject to the jurisdiction of FERC under the Federal Power Act shall be subject to review by FERC.
- 5.7** The order of the PSC may be entered on the Award by any court in New York having jurisdiction. Within one (1) year of the arbitral decision, a Party may request that the FERC vacate, modify, or take such other action as may be appropriate with respect to any arbitration decision that is:
- a. based upon an error of law;
 - b. contrary to the statutes, rules, or regulations of any appropriate regulatory entity having jurisdiction;
 - c. violative of the Federal Arbitration Act or Administrative Dispute Resolution Act; or
 - d. involves a dispute in excess of \$500,000.
- 5.8** Nothing in this Article shall restrict the rights of any Party to file a complaint or a rate or tariff change with FERC under the relevant provisions of the Federal Power Act.

ARTICLE 6: REVIEW OF LOCAL RELIABILITY RULES

Local Reliability Rules cannot be modified or eliminated without the consent of the Transmission Provider promulgating such Local Reliability Rule unless so ordered by the PSC or FERC. The ISO Board or the NYSRC may protest a new Local Reliability with the PSC or request that the PSC review an existing Local Reliability Rule. The ISO Board or the NYSRC may also request that FERC review a Local Reliability Rule. Upon such review, the PSC or FERC may determine that a specific Local Reliability Rule should be modified or eliminated. Upon the issuance of an order by the PSC or FERC such Local Reliability Rule will then be modified or eliminated.

Local Reliability Rules cannot be suspended pending PSC or FERC review of such rule unless so ordered by FERC or the PSC.

ARTICLE 7: EFFECTIVE DATE AND TERMINATION

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

ARTICLE 8: REGULATORY JURISDICTION

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

ARTICLE 9: ASSIGNMENT

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

ARTICLE 10: LIMITATION OF LIABILITY

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

ARTICLE 11: FORCE MAJEURE

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

ARTICLE 12: INDEMNIFICATION

- 12.1** For the purpose of this Article 12, the term Market Participant shall not include a Transmission Provider either in its role as a Transmission Provider or in its role as a Market Participant.
- 12.2** The ISO shall indemnify, save harmless and defend the NYSRC, including its directors, officers, employees, trustees, and agents, or each of them from and against all claims, demands, losses, liabilities, judgments, damages (including, without

limitation, any consequential, incidental, direct, special, indirect, punitive damages and economic costs), and related costs and expenses (including, without limitation, reasonable attorney and expert fees, and disbursements incurred by the NYSRC in any actions or proceedings between the NYSRC and a third party, Market Participant, the ISO, or any other party) arising out of or related to the NYSRC or the ISO's acts or omissions related in any way to performance under the ISO Tariff, the ISO Agreement, the ISO/TP Agreement, NYSRC Agreement, or this Agreement, except to the extent the NYSRC is found liable for gross negligence or intentional misconduct.

- 12.3** Survival. The provisions of this Article 12, "Indemnification," shall survive the termination or expiration of this Agreement.

ARTICLE 13: OTHER PROVISIONS

- 13.1** Governing Law; Jurisdiction. The interpretation and performance of this Agreement shall be in accordance with and shall be controlled by the laws of the State of New York as though this Agreement is made and performed entirely in New York. With respect to any claim or controversy arising from this Agreement or performance hereunder within the subject matter jurisdiction of the Federal or State courts of the State of New York, the Parties consent to the exclusive jurisdiction and venue of said courts.
- 13.2** Headings. The section headings herein are for convenience and reference only and in no way define or limit the scope of this Agreement or in any way affect its provisions. Whenever the terms hereto, hereunder, herein or hereof are used in this

Agreement, they shall be construed as referring to this entire Agreement, rather than to any individual section, subsection or sentence.

- 13.3** No Third Party Rights. Nothing in this Agreement, express or implied, is intended to confer on any person, other than the Parties hereto, any rights or remedies under or by reason of this Agreement.
- 13.4** Not Partners. Nothing contained in this Agreement shall be construed to make the Parties partners or joint venturers or to render any Party liable for the debts or obligations of any other Party.
- 13.5** Waiver. Any Waiver at any time of the rights of any Party as to any default or failure to require strict adherence to any of the terms herein, on the part of any other Party or Parties to this Agreement or as to any other matter arising hereunder shall not be deemed a waiver as to any default or other matter subsequently occurring.
- 13.6** No Modification. This Agreement may not be modified, altered or amended, unless such modification, alteration or amendment is in writing and signed by the Parties hereto.
- 13.7** Contract Supremacy. In the case of a conflict between the terms of this Agreement and the terms of the ISO/TP Agreement, the terms of the ISO/TP Agreement shall prevail. In the case of a conflict between the terms of this Agreement and the terms of the ISO Agreement, the terms of this Agreement shall prevail. In the case of a conflict between the terms of this Agreement and the terms of the NYSRC Agreement, the terms of the NYSRC Agreement shall prevail.

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

New York Independent System Operator

By:

Title:

New York State Reliability Council

By:

Title:

Appendix D

NYSRC Processes for Developing Reliability Rules & Monitoring Compliance

Figure A

Process for NYSRC Rules Development and Dissemination

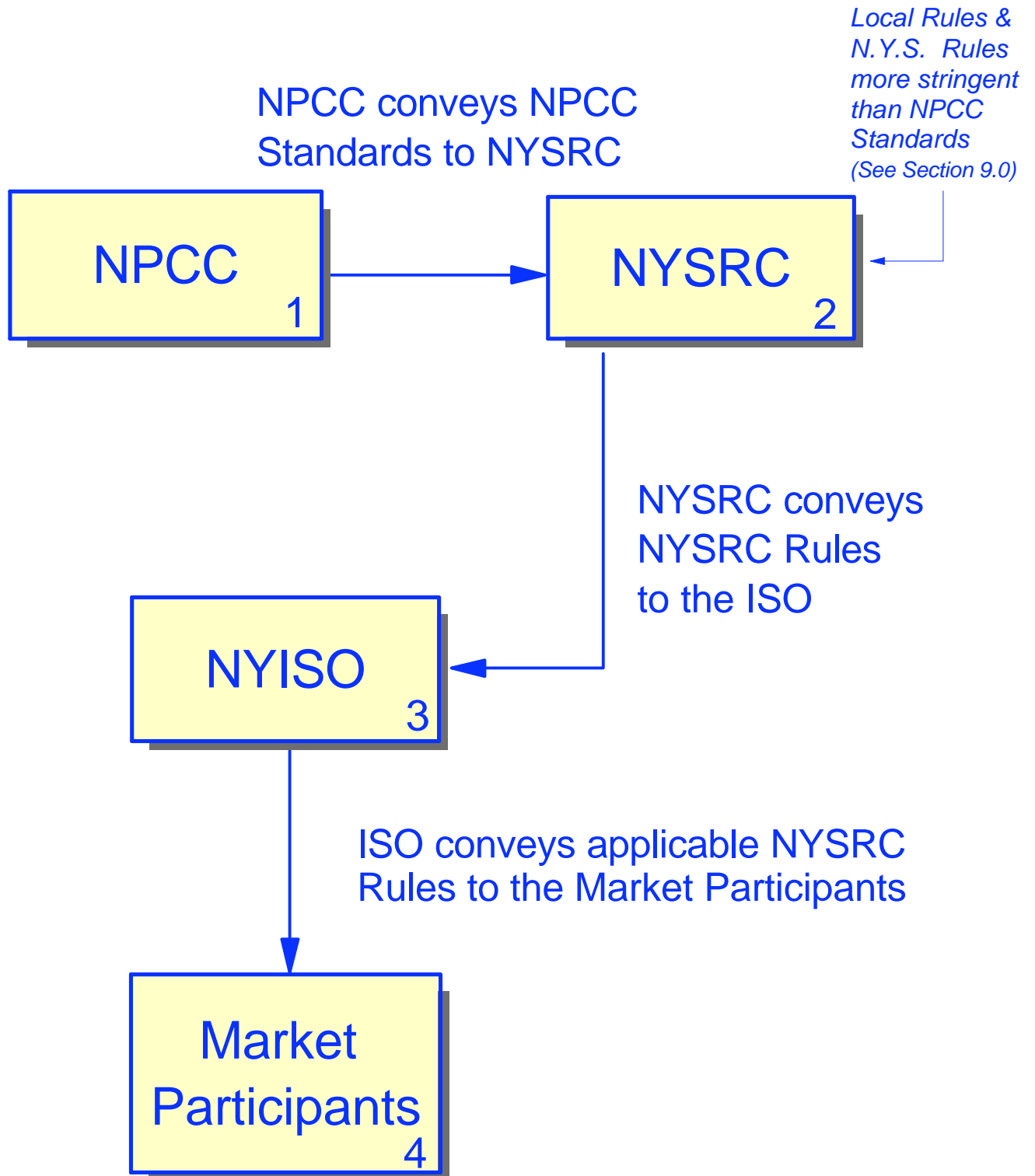


Figure B

Process for Monitoring ISO Compliance with NYSRC(N) Rules *

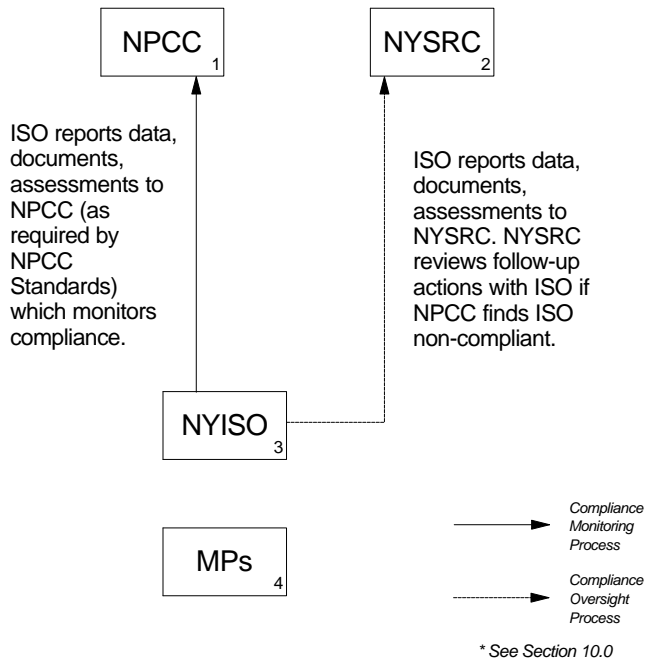


Figure C

Process for Monitoring ISO Compliance with NYSRC(S) Rules *

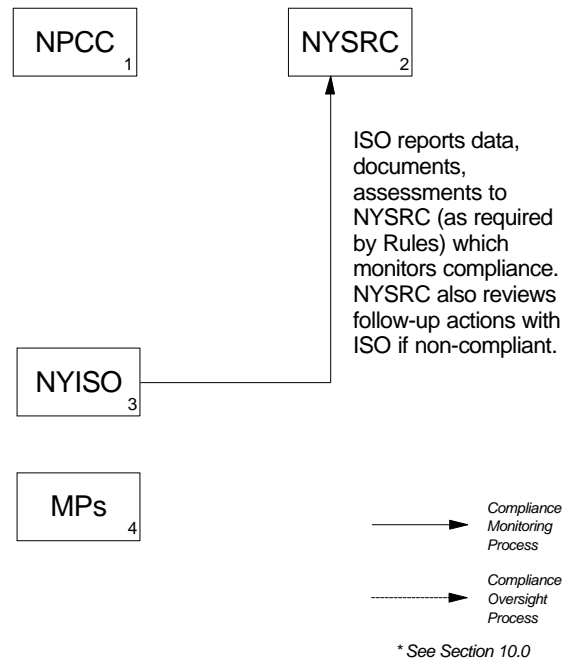


Figure D

Process for Monitoring Market Participant Compliance with NYSRC(N) Rules *

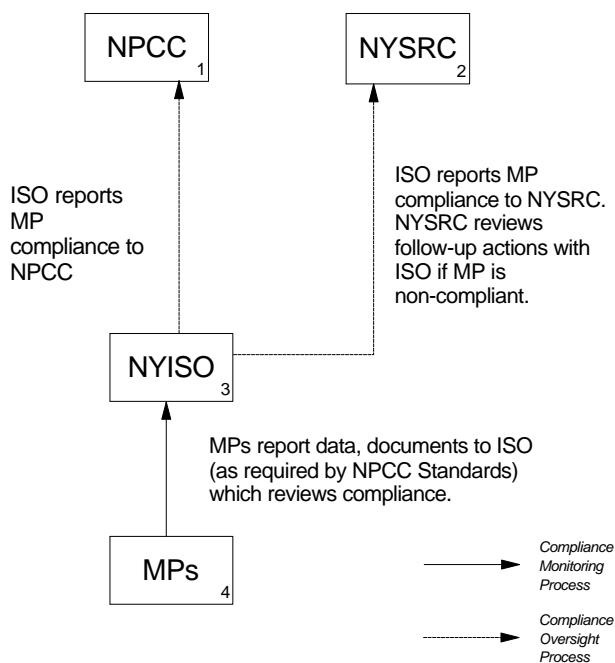


Figure E

Process for Monitoring Market Participant Compliance with NYSRC(S) Rules *

