



**Orange & Rockland**

**ORANGE AND ROCKLAND UTILITIES, INC.**

**RETAIL ACCESS  
IMPLEMENTATION PLAN  
AND  
OPERATING PROCEDURE**

**Effective: February 18, 2004  
Supersedes all prior Plans**

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**ORANGE AND ROCKLAND UTILITIES, INC.  
RETAIL ACCESS IMPLEMENTATION PLAN  
AND  
OPERATING PROCEDURE**

**1. INTRODUCTION**

By Orders dated November 26 and December 31, 1997, the New York Public Service Commission ("NYPSC" or "Commission") approved an Electric Rate and Restructuring Plan ("Agreement") in Case 96-E-0900 under which Orange and Rockland Utilities, Inc. ("Orange and Rockland", "O&R", or "the Company") would establish a retail access program ("Retail Access Program" or "Program") for all its customers. Under the Retail Access Program, customers would have the ability to purchase energy and capacity from competing suppliers. As provided in and subject to the terms of the Agreement, O&R commenced its Retail Access Program on May 1, 1999.

This Retail Access Implementation Plan and Operating Procedure (also referred to as the "Plan" or "Operating Procedure") is based upon the terms of the Agreement, the Uniform Business Practices for retail access approved by the NYPSC (the "UBP"), and Article 2 of the Public Service Law (the "Home Energy Fair Practices Act" or "HEFPA"), and is intended to govern the Retail Access Program during the term of the Agreement. Specific processes and procedures are established in the UBP and by HEFPA, and reference should be made to the Addendum UBP in O&R's Schedule for Electric Service P.S.C. No. 2 - Electricity ("Tariff") and the Public Service Law and related regulations for the details of those processes and procedures.

The Plan may be adjusted with appropriate Commission oversight, to the extent that experience in implementing retail access may suggest improvements or necessary modifications or if there are any changes in the conditions and premises underlying the Agreement, including provisions governing cost recovery. This Plan outlines retail access procedures in O&R's service area and is to be read in conjunction with O&R's Tariff. Although the Plan prescribes certain non-Tariff rules applicable to retail access service, it is not meant to replace the applicable rate schedules in the Tariff that will govern retail access transactions. In the event of any inconsistency between the Tariff and this Plan, the Tariff will govern.

The Operating Procedure provides customers and Energy Service Companies ("ESCOs") with additional details regarding the Company's implementation of its

Tariff services and with additional guidance regarding the steps ESCOs and customers need to take to obtain and use the Company's Tariff services. The Company will provide no less than 30 days' prior written notice of any proposed changes to the Operating Procedure to the Commission Staff, to all ESCOs currently serving customers under the Retail Access Program, and to Direct Retail Customers, as defined in Section 2.1.2 below. Proposed major changes to the Operating Procedure will be filed with the Commission; any changes that would modify the Agreement will be filed with the Commission for comment and approval. Changes to this Operating Procedure will be effective on the first day of the second calendar month following their submission to the Staff of the Commission unless subject to approval by the NYPSC under such schedule as the NYPSC may establish. The Company will follow applicable public notice and filing procedures for amending its Tariff with respect to any matter currently addressed in the Tariff or which otherwise requires Commission approval prior to becoming effective. For matters not requiring Commission approval, the Operating Procedure provides an effective and efficient vehicle for adapting the Company's Retail Access Program to changing business practices and market conditions.

The Operating Procedure and Tariff are available on O&R's internet site.

To facilitate an understanding of the terms used in this document, a Glossary is provided in Appendix 1.

### **1.1. Purpose of Retail Access Implementation Plan**

This Plan describes:

- the program parameters and the relationships between market participants;
- the procedures for participation and obligations of ESCOs participating in the Program;
- the procedures for enrollment and other aspects of Program participation; and
- the service options available to ESCOs and retail access participants.

## 2. KEY PROVISIONS OF RETAIL ACCESS PLAN

### 2.1. For Participating Customers

Under the Retail Access Program, as more fully described in this Operating Procedure and subject to the Tariff, a customer may:

- 2.1.1. Choose a provider of energy, capacity and related services from among eligible ESCOs and authorize the ESCO to act as its agent in connection with the transmission and balancing of energy on the customer's behalf. A customer may designate only one ESCO to serve an individual electric account, except that a customer who takes service under the "Power for Jobs" ("PFJ") program, Rider J of the O&R Tariff, may choose an additional provider for the customer's requirements in excess of that served under Rider J of the O&R Tariff.
- 2.1.2. Take service without an ESCO provided it meets the requirements prescribed herein. A customer taking service without an ESCO (a "Direct Retail Customer") shall have all the rights and the obligations of an ESCO except for obligations imposed by the Commission with respect to regulatory requirements.<sup>1</sup> A Direct Retail Customer may purchase energy and capacity from O&R under the Tariff.
- 2.1.3. Authorize O&R to provide and ESCOs to receive information on their usage history and payment status from O&R and, if enrolled in the Retail Access Program, current billing information.
- 2.1.4. Purchase energy from an ESCO and delivery services from O&R.
- 2.1.5. Switch ESCOs, or take POLR service from O&R.
- 2.1.6. Have billing questions and other inquiries resolved through their ESCO or O&R, depending on the nature of the question. For example, questions about energy supply billing would be directed to the ESCO.

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<sup>1</sup> The rights and obligations of ESCOs are generally set forth in Sections 5, 6, and 7 of this Operating Procedure. In each section, the term ESCO shall be understood to include Direct Retail Customers except with respect to any regulatory requirement inapplicable to a Direct Retail Customer.

## 2.2. For ESCOs

Under the Retail Access Program, within the limitations specified herein and as more fully described in this Operating Procedure and subject to the Tariff, ESCOs shall:

- 2.2.1. Obtain a determination of eligibility from the Department of Public Service and register, if appropriate, with the Federal Energy Regulatory Commission ("FERC"), New York Power Pool ("NYPP") or the Independent System Operator ("NYISO"), when operational, and comply with applicable regulatory and other legal requirements, including the requirements set forth in the UBP, which is an Addendum to the Tariff, and any subsequently adopted regulatory requirements.
- 2.2.2. Enter into an Operating Agreement with O&R.
- 2.2.3. Contract with retail access customers to meet their energy and capacity supply needs and obtain and retain customers' authorization to act as their agent for delivery of that energy to O&R's distribution system.
- 2.2.4. Contract for and deliver a supply of energy and capacity sufficient to meet the electric power supply needs of customers purchasing their electric power supply requirements from it.
- 2.2.5. Provide O&R with information necessary for customer enrollment and de-enrollment in the Retail Access Program.
- 2.2.6. Comply with the terms of the Operating Agreement and NYPSC's rules to prevent unauthorized customer transfers (i.e., slamming).
- 2.2.7. Comply with NYISO's requirements in acting as the agent of the retail access customer to schedule deliveries of energy to O&R's distribution system.
- 2.2.8. Settle any discrepancies in deliveries with customers' actual energy consumption in accordance with NYISO procedures.
- 2.2.9. Aggregate a minimum of 1 megawatt (MW) of customer load by the commencement of service hereunder.
- 2.2.10. Satisfy installed capacity and other requirements applicable to the Retail Access Program in accordance with the requirements

imposed by the NYISO; the National Electric Reliability Council ("NERC"); the Northeast Power Coordinating Council ("NPCC").

- 2.2.11 Be responsible for billing and collecting from its customers charges for services it rendered unless otherwise arranged with Orange and Rockland.
- 2.2.12 For an ESCO having a consolidated billing arrangement with O&R fulfill the requirements of the Consolidated Billing and Assignment Agreement.

### 2.3. For O&R

Under the Retail Access Program, as more fully described in this procedure and subject to the Tariff, O&R shall:

- 2.3.1. Assist customers to make the transition to retail access by providing educational materials on the Retail Access Program and facilitate customer access to the names of ESCOs registered with the Commission and approved to do business in O&R's service area.
- 2.3.2 Assist ESCOs in their role in the market by providing information on the Retail Access Program and, as required by the UBP, on historic customer usage, billing, and credit.
- 2.3.3 Provide information to ESCOs to bill and schedule for customers including consumption and load shapes for customers without hourly metering.
- 2.3.4. Provide retail access services pursuant to this procedure and the Tariff.
- 2.3.5. Bill and collect from ESCOs charges for services rendered under the Operating Agreement. Bill and collect from Direct Retail Customers for services rendered under the Operating Agreement.
- 2.3.6. Bill and collect from retail access participants charges for services rendered under O&R's Commission approved Rate Schedules.
- 2.3.7. Respond to inquiries from customers and ESCOs regarding service provided by O&R to them.

- 2.3.8 Monitor the Retail Access Program and, subject to appropriate regulatory oversight, make necessary adjustments.
- 2.3.9 Upon request and pursuant to a Consolidated Billing and Assignment Agreement ("CBAA"), provide consolidated billing for ESCOs under the rate ready model, by which O&R calculates the ESCO's charges and includes them on a consolidated bill.

### **3. CUSTOMER PROCEDURES**

#### **3.1. Customer Eligibility**

All O&R retail customers shall be eligible to contract with an ESCO for energy and capacity supply and related services effective May 1, 1999. A customer with monthly demand of 1MW or greater may directly procure energy, capacity and related services for its own consumption and not for resale without an ESCO. A customer may designate only one ESCO to serve each electric account. Customers who have a designated portion of their energy supply requirements provided by the New York Power Authority ("NYPA") at the Economic Development Power or Power for Jobs rate, with the remaining portion of their load provided at the Tariff rates, shall be permitted to select alternative providers for the portion of their electrical requirements currently served at the Tariff rates.

#### **3.2. Customer Enrollment**

##### **3.2.1. Establishing Customer in Retail Access Program**

The procedures for obtaining a customer's authorization and enrollment/de-enrollment procedures are set out in Section 5 of the UBP: Changes in Service Providers.

##### **Verification Letter Process**

In accordance with UBP Section 5.E, O&R will send a verification letter to each valid customer within three calendar days of receipt of the electronic enrollment notice.

##### **3.2.2 Customer Establishes New O&R Account**

A customer initiating delivery and commodity service and intending to participate in a retail access program may initiate O&R delivery service and subsequently enter into a customer agreement with an ESCO for commodity service, or arrange for both services at the same time. A customer may authorize an ESCO to act as the customer's agent in establishing distribution utility service and enroll the customer in O&R's retail access program. An ESCO acting as a customer's agent shall establish a new delivery account on behalf of the customer and enroll the customer with O&R so that ESCO commodity service commences when distribution utility delivery service begins. The ESCO shall retain, and produce upon request, documentation that the customer authorized the ESCO to act as the customer's agent.

An ESCO that is a customer's agent is authorized to submit the customer's application for new delivery service, in compliance with requirements for such applications stated in the Tariff. An ESCO shall provide the customer's name, service address and, if different, mailing address, telephone number, customer's requested service date for initiation of delivery service, and information about any special need customers, including any need for life support equipment.

Upon O&R's acceptance of a request for new delivery service and the customer's enrollment with the ESCO for commodity service, O&R shall provide an ESCO with the effective date for initiation of delivery and commodity service and any other customer information provided to an ESCO in an acceptance of an enrollment request. O&R shall notify the customer of the acceptance.

All applications involving new construction for delivery service made by ESCOs on behalf of their customers shall be directed to:

Orange and Rockland Utilities, Inc. - New Business Department  
390 W. Route 59  
Spring Valley, NY 10977  
Telephone No. (914) 352-6000

Applications not requiring new construction for delivery service made by ESCOs on behalf of their customers shall be directed to:

Orange and Rockland Utilities, Inc. - Customer Service Department  
390 W. Route 59  
Spring Valley, NY 10977  
Telephone No. (914) 352-6000

ESCOs shall submit the following information to O&R for customers applying for delivery service:

1. The name, service address, mailing address, and telephone number of new customers applying for delivery service from O&R.
2. The ESCO acting as the customer's agent in establishing delivery service shall provide the information about the customer that O&R needs to establish service, as specified in the O&R tariffs.
3. ESCOs shall also provide information about the customer's special needs, if any, including life support equipment.

Service shall commence after all connections are complete in accordance with O&R's tariff. All fees, deposit requirements, or other charges identified in the O&R delivery service tariff will apply to initiation of service to new delivery service customers.

### **3.2.3. Customer Closes O&R Account**

If a customer utilizing an ESCO for providing his energy supply closes its O&R account, O&R will send the customer a final bill according to current Company procedures. The Company will notify the customer's ESCO when the customer notifies the Company that the customer is moving or otherwise closing its account.

### **3.2.4. O&R Discontinues Service for Non-Payment**

O&R will issue Notices of Termination to customers and terminate service according to the provisions of the Home Energy Fair Practices Act ("HEFPA"), and other applicable NYPSC rules and regulations and Company procedures. At the time of the final bill following service termination, O&R will notify the ESCO that the customer is no longer receiving service. Only O&R may physically disconnect a customer's service.

## **3.3. Changes of Energy Supplier**

### **3.3.1. Change of ESCO**

If a customer chooses to change its ESCO, the parties involved must adhere to the procedures for changes in service providers identified in Section 5 of the UBP.

### **3.3.2 Customer Return to O&R POLR Service**

When a Retail Access customer notifies the Company at least 15 days prior to the next cycle billing date that it requests POLR service, O&R will close out the customer's retail access account with the ESCO as of the next cycle billing date. A Customer may request POLR service based on a special meter reading, performed by O&R or the customers' Meter Data Service Provider (MDSP) provided that the scheduled date is no less than 5 days after the request. A notice confirming the transfer to POLR service will be sent to the customer when the account record is changed.

The Company will notify the customer's ESCO electronically that the customer has transferred to POLR service as of the effective date when the

account record is changed. A customer's return to POLR service is subject to the Schedule for Electricity Service's terms and conditions for service and the Commission's rules for residential and non-residential service, as applicable.

O&R reserves the right to establish a minimum term of service for customers under the Schedule for Electricity Service in connection with transfers from retail access service to POLR service. O&R will file tariff revisions instituting a minimum term requirement if, based on the Company's experience, the Company determines that the system is being manipulated by switching between retail access service and POLR service, e.g., to take advantage of short-term or seasonal rate differentials.

#### **3.4. Slamming Prevention Process**

"Slamming", which is defined as a switch of a customer from one energy supplier to another without the customer's knowledge or approval, is prohibited. All instances of unauthorized change of energy providers reported by customers to O&R under the notification procedures required by Section 5.K of the UBP will be reported to the Department of Public Service.

#### **3.5. Historic Customer Information.**

Orange and Rockland will provide a customer or an ESCO, as authorized by the customer, energy usage (kWh), demand (kW) and billing history for at least 24 months, but no longer than the life of the account, at no charge within five business days of the request. Upon ESCO request, historic hourly energy usage will be provided for those customers who have hourly meters. The usage and billing information provided shall conform to the requirements of Section 4 of the UBP.

If the customer or his designee requests information for periods beyond 24 months and/or information other than that identified above, the Company will provide it to the extent that the information is available for a fee of \$15 per twelve month period requested.

Credit information if authorized by the customer in writing shall also be available free of charge for the most recent 24 month period. Credit information to be provided shall include late payment charges assessed and/or disconnections required.

The Company's customer account number for each customer will be accepted as verification of a customer's consent to release historic billing and usage

information to an ESCO. Release of credit information must be authorized by the customer to the Company in writing.

O&R will not disclose a customer's billing, credit and/or energy usage history if the customer has notified O&R in writing that such information should not be disclosed. Thereafter, the information will be released only upon receipt by the Company of the customer's written authorization.

All historic customer information including O&R account numbers, telephone numbers, service address, energy usage and billing history obtained by an ESCO must be kept confidential and not disclosed to others unless authorized by the customer in writing.

### **3.6. Provider of Last Resort**

In order to ensure continued access to electric supply services pursuant to consumer protection rules for residential and non-residential service to those customers for whom competition is not a viable option, who choose not to choose an alternate supplier, or who terminate their agreements with an ESCO and fail to designate a substitute ESCO, Orange and Rockland will provide electric supply services as POLR.

As the POLR, O&R will:

- Accept customers for POLR service subject to Commission consumer protection rules and regulations;
- Obtain and deliver electric power supply for such customers consistent with the then-current Orange and Rockland Tariffs and applicable Commission directives; and
- Provide programs to assist low-income customers as approved by the Commission.

POLR customers receiving their electric power supply from Orange and Rockland will be charged a Market Supply Charge ("MSC") for the cost of the capacity, energy and ancillary services purchased by Orange and Rockland on behalf of such customers. A retail customer choosing an ESCO to provide electric power supply will not be charged a MSC.

#### 4. CUSTOMER BILLING

A customer participating in the Company's Retail Access Program may choose one of the following billing methods by purchasing electric power supply from an ESCO that offers one or more of these options:

**Utility Single Bill:** a consolidated bill rendered by the Company for electric power supply and/or gas supply provided by an ESCO and delivery and other services provided by the Company ("Company Services");

**ESCO Single Bill:** a consolidated bill rendered by an ESCO for Company Services and the electric power supply and/or gas supply provided by the ESCO;

**Two Separate Bills:** separate bills rendered by an ESCO and by the Company.

Customers receiving both electric and gas services from the Company ("dual-service customers") may elect different ESCOs to provide their electric and gas supply requirements. A customer may elect to receive a single bill from the Company or one of the ESCOs designated as the billing party by the customer, if the ESCOs mutually agree to the billing option chosen. If the ESCOs do not agree on the billing option, or if the customer chooses to receive separate bills for each service, upon the ESCO's request and payment of the Account Separation Fee of \$32.50 per existing account, the dual-service account will be separated into separate accounts in accordance with Special Provision F of Service Classification No. 24.

An ESCO wishing to offer billing services or have O&R issue a single consolidated bill must execute a Consolidated Billing and Assignment Agreement ("CBAA") with the Company, be in compliance with the Commission's Electronic Data Interchange ("EDI") standards, and must comply with the Billing and Payment Processing practices set forth in section 9 of UBP.

##### 4.1. Delivery Rate

All customers who choose an ESCO for their electricity supply will be billed for delivery service by O&R in accordance with the Tariff, as the same may be revised, modified, amended, clarified, supplemented or superseded by the authority of the Commission.

In the event that any portion of the service provided hereunder is subject to FERC jurisdiction, such portion shall be performed in accordance with the rates set forth in O&R's OATT, as the same may be modified or superseded from time to time. Such rates are subject to change in accordance with O&R's OATT and the FERC orders, rules and regulations governing the same.

#### **4.2. Meter Reads**

The O&R bill will be issued in accordance with the established meter reading cycles for the applicable account. For each customer account receiving electric power from an ESCO, O&R or the customers' MDSP will perform cycled meter readings in accordance with current practices. If the meter read date for a particular customer changes, O&R will notify the ESCO.

If a customer or an ESCO requests O&R to provide a meter reading on a day other than the scheduled Meter Read Date, the requesting party will be charged a fee of \$20 per meter, or the then current charge approved by the Commission, each time the customer or ESCO requests a meter reading on other than the regularly scheduled reading date. It is the ESCO's responsibility to communicate to the customer that O&R needs access to such customer's meter for the special meter read. Requests for special meter readings must be made not less than ten calendar days in advance of the requested read date. If O&R cannot obtain a special meter read, O&R will contact the requesting party to discuss alternative solutions.

#### **4.3. Exchange of Current Customer Meter Information**

O&R or the customers' MDSP as applicable will provide ESCOs separately billing customers with all data recorded by the meters. This information will be provided to the ESCO electronically for no charge on the date the meter readings are available for billing purposes. If estimated meter readings are used, the estimates will be identified and provided in the same manner as actual readings within 48 hours of the date of the estimate.

All subsequent changes or corrections and adjustments to previously supplied data will be made available to the ESCOs when the data is acceptable for customer billing.

#### **4.4. Cancel and Re-bill**

In some instances, O&R will need to cancel a bill, obtain new or correct information, and then re-issue or "re-bill" with the corrected billing determinants. When a bill is rebilled, O&R will notify the ESCO.

#### **4.5. Dual Service Accounts**

An ESCO through a negotiated agreement with O&R who renders a single bill for both commodity and delivery service to a dual service customer taking retail access for only one service (electric or gas) or taking retail access for both electric and gas service but designating the ESCO as billing agent for only one of the services may request that O&R separate the customer's account by service so that the ESCO may render a bill for one service only and not the customer's entire account. O&R will charge the ESCO an Account Separation Fee of \$25 per existing account for the separation of the customer's account. The separation of the customer's account will be completed within five business days of the separation request and the ESCO and customer will be notified of the new account numbers assigned.

If the customer with a dual service electric and gas account elects to take retail access for each service from a different ESCO and authorizes each ESCO to render a bill for the service provided by that ESCO, the Company will separate the customer account by service and charge each ESCO one-half of the applicable fee.

### **5. ESCO ELIGIBILITY AND COMPLIANCE**

ESCOs participating in O&R's Retail Access program must file an application (eligibility filing) with the Commission's Consumer Services Division and receive approval of such application in accordance with UBP Section 2. The NYPSC may be contacted at their web site, <http://www.dps.state.ny.us>.

Upon the NYPSC's affirmative determination of eligibility, participating ESCOs will enter into an Operating Agreement with Orange and Rockland in the form provided in Appendix 4. A Direct Retail Customer will enter into an Operating Agreement with Orange and Rockland in the same form as an ESCO.

#### **5.1. ESCO Operating Agreement**

Upon meeting the eligibility and creditworthiness criteria in this Plan, each NYPSC-eligible ESCO participating in the Retail Access Program will execute an ESCO Operating Agreement with the Company. The ESCO Operating Agreement identifies the specific Retail Supplier, and outlines both parties' obligations. The ESCO Operating Agreement memorializes the ESCO's consent to abide by the

contract provisions contained therein, the guidelines and procedures contained in this Plan, and the pertinent FERC and NYPSC opinions, orders and approved Tariff provisions, as well as subsequent modifications, amendments or revisions of these documents. After execution of the ESCO Operating Agreement, the ESCO may proceed with customer enrollment.

## **5.2. Creditworthiness**

ESCO must satisfy creditworthiness requirements are set forth in section 3 of the UBP.

## **5.3. ESCO Invoices**

In accordance with Section 7 of the UBP, invoices shall be issued to ESCOs/Direct Customers monthly for extraordinary customer data provided on request (over and above the information provided without charge), special meter reading charges, adjustments to prior invoices, and other retail Tariff services provided at the request of the ESCOs/Direct Customers. Services requested directly by customers will be billed directly to the customers unless the ESCO requests that those charges be billed to them instead.

### **5.3.1 ESCO Inquiries**

All questions concerning invoices, arrears, payments, or financial security should be directed to:

Orange and Rockland Utilities, Inc.- Retail Access  
Department  
390 W. Route 59  
Spring Valley, NY 10977  
Attention: Manager – Retail Access  
Telephone No. 845-577-3169

## 6. RECONCILIATION AND BALANCING

### 6.1. Overview

- 6.1.1. O&R will be responsible for determining customer total hourly usage for each ESCO within its service territory. O&R will aggregate hourly usage for each ESCO by NYISO load subzone. O&R will adjust the sum of all ESCO (referred to as Load Serving Entity ("LSE") in NYISO procedural documents) hourly usage so that the sum of the hourly usage equals the NYISO supplied zonal loads. O&R will supply this hourly usage information to the NYISO, which will use this information to calculate and bill energy imbalances.
- 6.1.2. Hourly energy usage by customers whose usage is not measured by hourly meters will be derived from monthly energy usage and the use of load shapes.
- 6.1.3. O&R will be responsible for determining and reporting to the NYISO the customer capacity peak load for ESCO within its service territory.
- 6.1.4. Where O&R provides metering services, it will make available to ESCOs information (i.e., load shapes, historic customer usage, and current meter readings) to assist them in developing the hourly energy requirements of their customers.

### 6.2 Metering / Consumption / Capacity Data

- 6.2.1. Determining Hourly Usage for Customers with Interval Meters where O&R Supplies Metering Services
  - O&R will record consumption and demand data using its existing meter reading routes and schedules, which may be modified from time to time to make efficient use of resources.
  - O&R will extract hourly consumption data, during normal monthly reading schedules, from interval meters.
  - Customers (and ESCOs) requesting meter reading data on other than the cycle reading date will be accommodated to the extent practicable and at a charge.

6.2.2. Determining Hourly Customer Usage Without Interval Meters

- Load shapes will be used to impute hourly consumption from monthly consumption data.
- Using load shapes as described in Appendix 2, O&R will calculate hourly consumption from the monthly meter reading data or estimates of consumption when actual readings have not been obtained. The load shapes used will be specific to that customer's service classification, and sub-class where applicable. O&R will treat these calculated hourly values as actual usage.
- O&R may periodically review the appropriateness of the load shapes and adjust them as deemed necessary. Any major change to the load shapes will be submitted for information to ESCOs and Staff at least 30 days prior to implementation.

6.2.3. Determination of Capacity Peak Load

The calculation of capacity peak load contribution is a two-step process: 1) compute each customer's hourly load at the time of O&R's highest peak demand; and 2) scale each customer's load so the sum of all customer's loads equals the forecasted NYISO load for the upcoming summer. Load shapes will be used to impute hourly consumption from monthly consumption data.

1. Customer's capacity peak load contribution is based on the customer's hourly load at the time of O&R's highest daily peak demand during the previous summer peak period.
2. For customers with Interval Meters, each customer's actual metered load at the time of O&R's highest daily demand is used in the calculation.
3. For customers without Interval Meters, each customer's actual calendar month usage, during the month of O&R's peak hour, is multiplied by a load factor ratio determined from load research profiles. The load factor ratio varies by hour and is dependent on the customer's load profile strata.
4. Each customer's load is adjusted for demand losses based on the customer's service classification. (See Appendix 3)

5. Each customer's load, determined as described above, is then scaled up or down so that the total of all customer loads will equal the forecasted NYISO load for the upcoming summer.

This calculation, aggregated by ESCO, will be transmitted to the NYISO. NYISO applies a reserve adjustment factor to each Supplier's capacity peak load received from the LDC to determine the Supplier's capacity obligation within the Company's NYISO zone.

#### 6.2.4 Mixed Meter Account Where O&R Supplies Metering Services

A mixed meter account is a multi-metered account where one or more meters are not connected to the interval meter used for billing. O&R will calculate hourly consumption using load shapes. An ESCO may, with the customer's consent:

- Request that O&R separate the account into two electric service accounts. O&R will follow the procedure in section 6.2.1. for determining the hourly usage of the account with the interval meter, and the procedure in 6.2.2. for the other account.
- Request that O&R split the account into two separate electric accounts and upgrade the dis-associated meter(s), at customers' cost, to interval meters. The customer would be responsible for provision and maintenance of a telecommunications link. O&R will follow the procedure in section 6.2.1. for determining the hourly usage of the accounts using the interval meters.

### 6.3. Service Interruptions

In the event of unplanned service interruptions, O&R shall restore electrical service to Customers in accordance with O&R's service restoration procedures. Service to all Customers will be restored as quickly as possible without regard to supplier.

Any service interruption which O&R is required to make for planned maintenance of the distribution, transmission or generation facilities will be made according to normal operating procedures.

## 7. LIMITATION OF LIABILITY

O&R will endeavor at all times to provide regular and uninterrupted service to the customers, but in case the service shall be interrupted or irregular or defective or shall fail, from causes beyond the control of O&R (including, without limiting the generality of the foregoing, executive or administrative rules or orders issued from time to time by State or Federal officers, commissions, boards, or bodies having jurisdiction) or because of the ordinary negligence of O&R or its employees, servants or agents, O&R shall not be liable to ESCOs or to any retail customer thereof or to any Direct Customer. In addition, O&R may reserve the right to curtail or interrupt service as provided in the approved load shed plan.

To the extent applicable, compliance with directives of the Senior Dispatcher of the NYISO shall, without limitation by reason of specification, constitute a circumstance beyond the control of O&R for which the Company shall not be liable: provided, however, that O&R shall not be absolved from any liability to which it may otherwise be subject for gross negligence or intentional wrongdoing in the manner in which it carries out the Senior Dispatcher's instructions.

Without limiting the generality of the foregoing, O&R may, without liability therefore, interrupt, reduce or impair service to any customer in the event of an emergency threatening the integrity of its system, or any other systems with which it is directly or indirectly interconnected, if in its sole judgment or, to the extent applicable, that of the Senior Dispatcher of the NYISO, such action will prevent, alleviate or reduce the emergency condition, for such period of time as O&R or said Senior Dispatcher deems necessary.

ESCOs serving retail customers and Direct Customers who require service that is uninterrupted, unreduced or unimpaired on a continuous basis should ensure that the retail customers and Direct Customers provide their own emergency or back-up capability.

ESCOs shall include, in their agreements for service with any retail customers, and in any other documents or disclosures setting forth the terms and conditions of the ESCO's service to the retail customer, a provision that notifies the retail customer of the limitations on liability set forth herein.

Neither by inspection nor non-rejection, nor in any other way, does O&R give any warranty, express or implied, as to the adequacy, safety or other characteristics of any structures, equipment, wires, pipes, appliances or devices owned, leased, installed or maintained by the retail customer or the ESCO.

O&R is not liable for any injury, casualty or damage resulting in any way from the supply or use of electricity or from the presence or operation of O&R's structures, equipment, wires, pipes, appliances or devices on the retail customer's premises, except injuries or damages resulting from the negligence of O&R.

Each Party's liability to the other Party, to the extent that any liability exists, for any loss, cost, claim, injury, liability, or expense, including reasonable attorneys' fees, relating to or arising from any act or omission in its performance of this Plan, shall be limited to the amount of direct damage actually incurred. In no event shall either Party be liable to the other Party for any indirect, special, consequential, or punitive damages of any kind whatsoever, whether in contract, tort or strict liability.

## 8. FORCE MAJEURE

- 8.1. Each Party shall use due diligence in performing their obligations under the Plan. Neither Party shall be liable to the other in damages for any Force Majeure Event.
- 8.2. Force Majeure Event means any occurrence beyond the reasonable control of a Party which causes such Party to be delayed in or prevented from performing or carrying out any of its obligations under this Agreement and which by the exercise of due diligence, that Party is unable to prevent, avoid, mitigate, or overcome, including the following: any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, ice, explosion, breakage or accident to machinery or equipment, order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities, provided that a Force Majeure Event shall not include lack of finances, or change in market conditions.
- 8.3. If either Party because of a Force Majeure Event is rendered wholly or partly unable to perform its obligations under this Agreement, that Party shall be excused from whatever performance is affected by the Force Majeure Event to the extent so affected, and shall not be liable for damages caused by such non-performance provided that:
  - (a) The non-performing Party, within seven days after it becomes aware or should have become aware that it would be unable to perform, gives the other Party written notice of the occurrence of the Force Majeure Event, including an estimation of its expected duration and

- probable impact on the performance of its obligations hereunder and submitting satisfactory evidence of the existence of the Force Majeure Event;
- (b) The suspension of performance is of not greater scope and of no longer duration than is required by the Force Majeure Event;
  - (c) No obligations of either Party which arose before the occurrence causing the suspension of performance are excused as a result of the occurrence; and
  - (d) The non-performing Party uses its best reasonable efforts to remedy expeditiously its inability to perform. This subparagraph shall not require the settlement of any strike, walkout, lockout or other labor dispute on terms which, in sole judgment of the Party involved in the dispute, are contrary to its interest. It is understood and agreed that the settlement of strikes, walkouts, lockouts, or other labor disputes shall be entirely within the discretion of the Party involved in the strike, walkout, lockout or other labor dispute.
  - (e) When the non-performing Party is able to resume performance of its obligations under this Agreement, that Party shall give the other Party written notice to that effect.
  - (f) The Force Majeure Event was not caused by any negligent acts, or omissions, or failure to comply with any Law or for any breach of default of this Agreement.

Appendix 1

**GLOSSARY OF TERMS**

The following terms shall have the meanings set forth below. Any term used in this Plan that is not defined herein shall have the meaning customarily attributed to such term by the electric utility industry in New York.

**COMPETITIVE OPPORTUNITIES PROCEEDING**

The NYPSC proceeding Case 94-E-0952, to develop guidelines for the transition to a competitive electric industry, and Case 96-E-0900, the O&R rate and restructuring proceeding.

**CYCLE BILLING DATE**

The scheduled reading date, as determined by O&R, for a customer's meter each billing period.

**DEFERRED PAYMENT AGREEMENT**

An agreement between the Company and the customer for the payment of outstanding charges over time pursuant to NYPSC regulations.

**DIRECT RETAIL CUSTOMER**

A Retail Access Customer with an aggregate load of one MW or more that acts without an ESCO to obtain energy supply and capacity from one or more Generator(s) for its own consumption and not for resale. The term "ESCO" includes a Direct Retail Customer, which has the same rights and obligations as an ESCO but is not subject to Commission oversight with respect to eligibility, but must comply with operating requirements established by the New York Independent System Operator ("NYISO") when operational. A Direct Retail Customer may aggregate and schedule load for itself and other Direct Retail Customers, each of which would continue to be responsible individually for meeting the requirements of Direct Retail Customers.

**ELECTRIC POWER SUPPLY**

The electricity required to meet the participating customer's needs, including energy, operating capacity, losses, ancillary services and installed capacity, including reserves required by the NYISO.

**ENERGY SERVICE COMPANY ("ESCO")**

An entity determined to be eligible by the Department of Public Service to provide energy supply to end use customers. For purposes of this plan, a Direct Retail Customer has the same rights and obligations as an ESCO except as otherwise provided herein.

**ESTIMATED USAGE**

Customer usage based on history will be estimated and used in balancing and settlement for those customers whose meters have not been read for the month. O&R will estimate usage and apply the usage to a predetermined load profile for the purpose of determining the monthly settlement with the customer's ESCO. When actual meter reads are obtained, a reconciliation will be performed in the following month.

#### **HOME ENERGY FAIR PRACTICES ACT ("HEFPA")**

Home Energy Fair Practices Act is the title of Article 2 of the Public Service Law (sections 30 et seq.). HEFPA authorizes the Public Service Commission to adopt implementing regulations; these regulations are in 16 NYCRR Part 11 and are referred to as HEFPA regulations. The law and regulations cover initiation and termination of service, credit and collection policies, security deposits and related rules for transactions between utilities and their customers. HEFPA includes amendments adopted by Chapter 686 of the Laws of 2002.

#### **FORCE MAJEURE**

The term "Force Majeure" shall have the meaning set forth in Section 7 of this Plan.

#### **FEDERAL ENERGY REGULATORY COMMISSION ("FERC")**

The federal agency which regulates the price, terms, and conditions of power sold in interstate commerce and regulates the price, terms and conditions of all interstate transmission services. FERC is the federal counterpart to state regulatory commissions.

#### **HOME ENERGY FAIR PRACTICES ACT ("HEFPA")**

Home Energy Fair Practices Act ("HEFPA") is the title of part of the New York Public Service Law (Sections 30 et seq.). HEFPA authorizes the Commission to adopt implementing regulations; these regulations are set forth in 16 NYCRR Part 11 and are referred to as HEFPA regulations. The law and regulations cover initiation and termination of service, credit and collection policies, security deposits and related rules for transactions between utilities and their customers.

#### **INTERVAL METERS OR HOURLY METERS**

Term used to describe a meter that measures usage in time increments (e.g., 15 minutes or 1 hour) during a billing period.

#### **LOCKBOX**

A collection mechanism agreed upon by a utility and an ESCO which employs a third party to receive and disburse customer payments.

#### **LOSSES**

Losses are associated with all transmission and distribution service systems. Losses are the difference between the generation amount of energy produced and the metered amount of customer usage within a specific service area. ESCOs are responsible for providing energy to compensate for energy losses on the O&R transmission and distribution systems. Losses can be

determined by multiplying the energy measured at the customer's meter times the loss factor identified in Appendix 3.

#### **LOAD SHAPES**

Statistically developed usage patterns by service class and subclasses to calculate hour-by-hour estimates of energy usage in the absence of hourly metering.

#### **MEGAWATT (MW)**

A measure of electrical demand (capacity). 1,000 watts = 1 kilowatt (kW); 1,000kW = 1 MW. ESCOs must schedule load requirements with NYISO in increments of one megawatt-hour for each hour of the day, both on-peak and off-peak .

#### **METER DATA SERVICE PROVIDER (MDSP)**

An entity having responsibility for the collection and processing of meter usage data. MDSP functions include, but are not limited to reading, translation, validation, estimation and provision of metered usage data.

#### **METERING SERVICES**

A combination of Meter and Meter Data Services provided by one or more competitive entities

#### **METER SERVICE PROVIDER (MSP)**

Entity that provides the physical metering services, such as, installation, removal and maintenance

#### **METER READ DATE**

The date on which O&R is scheduled to read a customer's meter each billing period.

#### **NEW YORK INDEPENDENT SYSTEM OPERATOR (NYISO)**

When established and operational, the NYISO will coordinate the physical supply of electricity throughout New York State and maintain reliability of the bulk power system. The NYISO is to be functionally, financially, and physically separated from the merchant functions in the power generation and transmission markets. The NYISO will coordinate access to the transmission system for market participants who are eligible for access.

#### **OPEN ACCESS TRANSMISSION TARIFF ("OATT")**

The current FERC-approved Open Access Transmission Tariff for the integrated transmission system operated by Orange and Rockland and its subsidiaries RECO and Pike County Light & Power Company.

#### **PROVIDER OF LAST RESORT ("POLR")**

O&R will act as the POLR or default electric power provider providing electric power supply to customers not choosing an ESCO as an alternate provider or who has terminated their agreement with an ESCO and failed to designate a substitute supplier. As POLR, O&R will, subject to consumer protection rules, accept customers and obtain and provide their electricity supply, and be responsible to provide programs to assist low-income customers as directed by the Commission.

#### **RETAIL ACCESS**

A process whereby customers may purchase capacity and energy from ESCOs or generators other than O&R and have it delivered using O&R's transmission and distribution system.

#### **SLAMMING**

The unauthorized transfer of a customer from one energy supplier to another or from POLR service without the customer's knowledge or consent.

#### **TARIFF**

O&R's Schedule for Electric Service P.S.C. No. 2 – Electricity

#### **TRANSMISSION**

The process of transporting electricity on high voltage lines from the generator to the distribution system. Transmission can be over long distances and power can be transmitted over power lines owned by more than one entity.

## Appendix 2

### Load Profiling Methodology

Orange and Rockland has developed average hourly load profiles of customers who are not currently hourly metered using commonly accepted profiling and sampling techniques. (Large C&I customers in service class 9 and 22 are all hourly metered and are considered to have 100% statistical representation). The load profile is a series of 24 time ordered values representing the average hourly demand of a group of customers in a rate class. Using load data collected from a statistically derived sample of consumers with interval meters, customers are assigned prototypical load profiles. Customers with similar characteristics are segmented into strata based on typical usage breakpoints.

Each profile specifies customer energy usage for every pool interval (hourly), while adjustment factors such as temperature and day type (i.e. weekday or weekend) are considered when developing each profile. Once all criteria are obtained for a particular group of customers, a daily load profile is developed. Monthly load shapes are then constructed by combining daily load shapes for that month. The estimated usage of each supplier's customers for each pool interval is then aggregated. Each supplier's aggregated customer usage estimates are then used in the settlement process. The goal is that each customer in the O&R territory, with the exception of the largest C&I customers, will be assigned a load profile by strata and their rate class.

The number of profiles are as follows:

Residential will have 475 class average load profiles for 5 strata

5 strata \* 5 weekdays \* 12 months = 300  
5 strata \* 1 Saturday \* 12 months = 60  
5 strata \* 1 Sunday \* 12 months = 60  
5 strata \* 10 Holidays = 50  
5 strata \* 1 PreHoliday weekday = 5

For rate class 102 we will have 475 class average load profiles for 5 strata.

5 strata \* 5 weekdays \* 12 months = 300  
5 strata \* 1 Saturday \* 12 months = 60  
5 strata \* 1 Sunday \* 12 months = 60  
5 strata \* 10 Holidays = 50  
5 strata \* 1 PreHoliday weekday = 5

Except for Time of Use customers (there will be approximately 665 for 7 strata over the remaining rate classes. See Guidelines, below)

7 strata \* 5 weekdays \* 12 months = 420  
7 strata \* 1 Saturday \* 12 months = 84  
7 strata \* 1 Sunday \* 12 months = 84  
7 strata \* 10 Holidays = 70  
7 strata \* 1 PreHoliday weekday = 7

### ***Statistical Sample Design Methodology***

The accuracy of our current load sample is measured by a standard level of statistical confidence and precision. A validation procedure is used which yields a coefficient of variation from which the confidence level and precision levels are calculated.

The load samples were developed using LodeStar statistical sampling software. The sample methodology used selects the optimum number of sample points per strata using the PURPA required statistical confidence level of 90% and precision range of 10%. Samples were designed using stratified sampling techniques to ensure accuracy for those rate classes in which profiles exist. The new load study sample is being designed at a confidence level of 90% and 10% precision for both the residential and C&I customers. It should also be recognized that customer size and type are important factors in determining whether load profiles are used.

The dimension or design variable used is the peak month kWh. In order to define the strata boundaries or breakpoints the Dalenius-Hodges statistical technique is used. The Neyman allocation procedure is used to determine the optimum sample size for each stratum. The Neyman allocation method for determining the sample size for each stratum is a function of population size and the standard deviation. Customer-to-customer variation is the basic determinant of sample size within a stratum ( the more variation the larger the sample size). In a stratified sample this variation should be less than taking a random sample of the entire population, thus fewer sample points are required to get the same accuracy level. A simple random sample is then performed on each stratum.

Statistical samples can also be segmented by customer demand, by customer type, or by any number of criteria. Our current load sample consists of 463 sample points, plus approximately 89 load recorders on all of our SC9 customers.

If a new sample design is implemented, the existing load sample may change both with respect to the number of strata required in each rate class and may include coverage of rate codes that are currently not sampled. The new design would be in accordance with PURPA 90% confidence level and 10% precision requirements to achieve statistical accuracy of utility load research samples.

**CUSTOMER STRATUM GUIDELINES FOR RETAIL ACCESS**

The ESCO will be provided with the 24 month billing history from the customer as well as the strata to which the customer belongs. Based upon this information, the ESCO will aggregate its load, by strata, and schedule deliveries consistent with the appropriate load shapes.

Service Class	Input Variable	Strata	Lower Limit	Upper Limit
SC1 Rate Code 101/301 Residential	Peak Month kWh	RC301 Strata 1	0	*600
	Peak Month kWh	RC301 Strata 2	601	1,200
	Peak Month kWh	RC301 Strata 3	1,201	2,000
	Peak Month kWh	RC301 Strata 4	2,001	3,800
	Peak Month kWh	RC301 Strata 5	3,801	999999
SC 1 Rate Code 401 Residential W/ Water Heating		RC401		
SC 1 Rate Code 501 Residential W/ Space and Water Heating		RC501		
SC 1 Rate Code 601 Residential W/ Heat Pump		RC601		
SC 2 Rate Code 102 Small C & I	Peak Month kW	RC102 Strata 1	0	6
	Peak Month kW	RC102 Strata 2	7	16
	Peak Month kW	RC102 Strata 3	17	35
	Peak Month kW	RC102 Strata 4	36	80
	Peak Month kW	RC102 Strata 5	81	199
SC 2 Rate Code 402 C & I	Peak Month kWh	RC402 Strata 1	0	4,000
	Peak Month kWh	RC402 Strata 2	4,001	20,000
	Peak Month kWh	RC402 Strata 3	20,001	100,000
	Peak Month kWh	RC402 Strata 4	100,001	300,000
SC 2 Rate Code 902 Small C & I General Service - Secondary	Peak Month kWh	RC902 Strata 1	0	150
	Peak Month kWh	RC902 Strata 2	151	500
	Peak Month kWh	RC902 Strata 3	501	3,000
SC 3 Rate Code 203 Small C & I General Service - Primary		RC203	>100kW	
SC 3 Rate Code 503 Large Commercial - Primary 503		RC503	>200 kW	
SC 3 Rate Code 703 Large Industrial - Primary		RC703	>200 kW	
SC 9 Large C & I >1000 kW	Individual 8760		>1000 kW	
SC 22 Large Industrial > 1000 kW	Individual 8760		>1000 kW	
SC4 & SC16 Public/Private Lighting RC104&RC112 through RC512	Monthly Burn Hrs	RC104		
SC 2 Rate Code 802 Small C&I - Secondary	24 Hr Straight Line	RC802		
SC 5 Rate Code 105 Traffic Lights	24 Hr Straight Line	RC105		

Appendix 3

**LOSS FACTORS BY SERVICE CLASSIFICATION**

ESCOs are responsible for delivering to O&R sufficient energy to meet their customers' load including appropriate electrical losses that occur as part of the delivery process. Therefore, to determine the amount of installed capacity or energy that must be delivered to O&R's border, the electricity requirement at the customer's meter will be multiplied by the appropriate loss factor as determined by the customer's Service Classification.

The Energy Loss Factor is to be used in determining the amount of energy to be delivered to the system. The Demand Loss Factor is to be used in determining the installed capacity requirement.

Orange and Rockland Utilities, Inc.  
 Loss Factors by Service Classification

Service Classification #	Loss Factors	
	Energy	Demand
1	1.07987	1.08980
2 Secondary	1.07987	1.08980
2 Primary	1.05641	1.07273
2 Unmetered	1.07611	1.08428
3	1.05641	1.07273
4	1.07611	1.08428
5	1.07611	1.08428
9 Primary	1.05641	1.07273
9 Substation	1.02765	1.03027
9 Transmission	1.02546	1.02711
16	1.07611	1.08428
19	1.07987	1.08980
20	1.07987	1.08980
21	1.05641	1.07273
22 Primary	1.05641	1.07273
22 Substation	1.02765	1.03027
22 Transmission	1.02546	1.02711
Other Public Authorities	1.05641	1.07273

**ORANGE AND ROCKLAND UTILITIES, INC.**

**ESCO OPERATING AGREEMENT**

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## ESCO OPERATING AGREEMENT

This **AGREEMENT** ("Agreement"), is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between Orange and Rockland Utilities, Inc., a New York corporation having a its principal office at One Blue Hill Plaza, Pearl River, New York 10965 ("O&R"), and \_\_\_\_\_, a \_\_\_\_\_ corporation, having an office at \_\_\_\_\_ ("Energy Service Company" or "ESCO"), both O&R and the ESCO hereinafter sometimes referred to collectively as the "Parties", or individually as a "Party".

### WITNESSES

**WHEREAS**, O&R has established a retail access program (the "Retail Access Program"), as described in its Retail Access Implementation Plan and Operating Procedure (the "Operating Procedure") and its Schedule for Electricity Service, P.S.C. No. 2 - Electricity ("Tariff"), both of which are on file with the New York State Public Service Commission ("NYPSC");

**WHEREAS**, the Retail Access Program is subject to the Uniform Business Practices ("UBP") adopted by the NYPSC and incorporated as Addendum UBP in the Tariff;

**WHEREAS**, ESCO is an eligible supplier under the Retail Access Program and desires to supply electric energy and capacity to its retail access customers ("Customers");

**WHEREAS**, O&R agrees to deliver such Customers' energy and capacity supplied by the ESCO ("Electric Power Supply") through O&R's transmission and distribution system, subject to the terms and conditions of this Agreement; and those of O&R's open access transmission tariff ("OATT"), which has been approved by the Federal Energy Regulatory Commission ("FERC"); and

**NOW THEREFORE**, in consideration of the premises and mutual promises set forth below, O&R and ESCO, intending to be legally bound, hereby covenant, promise and agree as follows:

### ARTICLE I

#### 2.1 Incorporation By Reference

The rights and obligations of the Parties under this Agreement shall be governed by the provisions of O&R's Tariff and Operating Procedure, as the same may be amended, modified, or superseded from time to time. In the event of any conflict, the terms of this Agreement shall govern with respect to the services provided hereunder.

#### 1.2 Term

This Agreement shall commence on the date set forth above ("Effective Date"), and will remain in effect until terminated in accordance with its terms, the Operating Procedure, or an order of the FERC or the NYPSC.

## ARTICLE II

### 2.1 ESCO Obligations

A. ESCO will be responsible for the supply of the hourly energy requirements, including losses external and internal to the O&R service area, of its customers and scheduling energy and transmission service for such energy with the NYISO.

B. ESCO will satisfy all other obligations detailed in Section 2.2 of the Operating Procedure and the UBP.

### 2.2 Representations and Warranties

ESCO makes the following representations and warranties to O&R:

A. ESCO is in compliance with all obligations detailed in Section 2.2 of the Operating Procedure and the UBP.

B. The information in Appendix No. 1 (ESCO Information Form) is correct as of the Effective Date, and ESCO will promptly inform O&R of any changes in such information.

C. ESCO is in compliance with all of the requirements set forth in UBP and will continue to be in compliance with such requirements and all subsequently adopted regulatory requirements throughout the term of this Agreement.

D. No material changes in the data contained in ESCO's initial eligibility application filing with the NYPSC have occurred or will occur, except such changes as have been or will be reported to the NYPSC.

E. Throughout the term of this Agreement, ESCO will continually adhere to its own policies and procedures as set forth in its disclosure statement filed with the NYPSC, as updated from time to time.

F. ESCO will not, either directly or indirectly, engage in, participate in or encourage or assist others to engage or participate in the practice of transferring customers without authorization, commonly referred to as "slamming."

G. ESCO must provide O&R with information necessary for the ESCO's Customer to engage in Retail Access in Electronic Data Interchange ("EDI") standards adopted in accordance with the NYPSC determination in Case 98-M-0667.

H. ESCO will have in place, and must bear the costs of putting in place and successfully testing prior to the start of Customer enrollment, all required information technology systems that will enable it to send and receive data to and from O&R to satisfy its obligations under this Agreement and all other relevant agreements.

### 2.3 O&R Service

A. Under the Operating Procedure and Tariff, Customers served by an ESCO designate ESCO as their agent for scheduling Electric Power Supply on O&R's system.

B. O&R will provide usage information for ESCO to the New York Independent System Operator ("NYISO") to enable the NYISO to reconcile energy and installed generating capacity.

C. O&R will provide the following services to ESCO upon request, at the rates set forth in the Tariff, or the Operating Procedure:

- Special Meter Readings;
- Additional Customer History; and
- Account Separation.

D. Upon request and pursuant to a separate Consolidated Billing and Assignment Agreement ("CBAA"), O&R will provide consolidated billing for ESCOs.

## **2.4 Financial Security**

Prior to the commencement of service to the Retail Access Customer, ESCO will provide financial security in an amount determined in accordance with Section 5.2 of the Operating Procedure and the UBP.

## **2.5 Resolution of Disputes**

If a dispute arises between Parties, including those issues requiring NYPSC action, the dispute resolution process described in Section 8 of the UBP will be followed.

## **2.6 Discontinuance**

O&R may discontinue service to ESCO under this Agreement for ESCO's failure to meet the requirements of this Agreement, the Operating Procedure, Tariff, or for any reason given in the UBP. Discontinuance will be in accordance with the UBP.

## **2.7 Retail Access Customer Record**

ESCO will obtain and retain authorization from each Customer to be served and the authorization available for audit by a third party for a least a six-year period commencing with the creation or receipt of such record or one year after termination of service, whichever is longer.

## **2.8 Billing and Payment**

A. O&R will bill ESCO and ESCO will pay fees and charges as provided herein. ESCO also shall pay all charges billed in accordance with the Operating Procedure and Tariff including charges for miscellaneous services.

B. ESCO will pay the full amount stated in any invoice from O&R to ESCO, without deduction, set-off or counterclaim, within 20 days from the date of electronic transmittal or postmark of such invoice. Claims that any invoice is not correct will be made no more than 90 days after electronic transmittal or postmark.

C. Upon failure of ESCO to make any payment when due under this Agreement, O&R will assess a late payment charge at the rate stated in the Tariff on all overdue billed amounts, including arrears and unpaid late payment charges.

**2.9 Notices**

Except with respect to information exchanged by Electronic Data Interchange ("EDI"), any notice to be provided pursuant to the terms of this Agreement will be deemed given, and any other document to be delivered hereunder will be deemed delivered, if in writing and (i) delivered by hand, (ii) deposited for next-business day delivery (fee prepaid) with a reputable overnight delivery service such as Federal Express, or (iii) mailed by certified mail (return receipt requested) postage prepaid, addressed to the recipient at the address set forth below for that party (or at such other address as that party may from time to time designate by giving notice thereof).

Notice to: Orange and Rockland Utilities, Inc.  
Manager – Retail Access  
390 W. Route 59  
Spring Valley, NY 10977  
Telephone #: \_\_\_\_\_  
Fax # \_\_\_\_\_ E-

Mail: \_\_\_\_\_  
and to:

ESCO  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Telephone #: \_\_\_\_\_  
Fax # \_\_\_\_\_ E-

Mail: \_\_\_\_\_

**2.10 Customer Accounts**

O&R will provide ESCO with the applicable billing determinants of ESCO's Customers and such other information as detailed in the Operating Procedure. Such information will be provided in accordance with the procedures set forth in the Operating Procedure and may not be used by ESCO for unrelated purposes.

**2.11 Taxes**

Each party hereto will be liable to the appropriate tax authorities for sales, use, gross receipts or other similar or different taxes imposed upon the revenues derived or services rendered by such party.

**ARTICLE III  
MISCELLANEOUS**

**3.1 Liability**

O&R will endeavor at all times to provide regular and uninterrupted transmission and distribution services, but in case such services shall be interrupted or irregular or defective or fail from causes beyond its control or through ordinary negligence of its employees, servants, or agents, O&R shall not be liable therefore. In accordance with operating policies established by O&R or the New York Independent System Operator, conditions on the electric transmission or distribution system could require remedial actions, including voltage reduction or load shedding, in the interests of preserving system safety and reliability. Such actions shall constitute a circumstance beyond the control of the Company for which the Company shall not be liable.

### **3.2 Amendments**

Notwithstanding any provision of this Agreement, O&R may at any time propose and file with the FERC and/or NYPSC changes to the rates, terms, and conditions of its OATT, Tariff, and/or the Operating Procedure. Such amendment or modification will become effective with respect to service pursuant to this Agreement on the date specified by the FERC or NYPSC.

### **3.3 Assignment**

Neither Party shall assign any of its rights or obligations under this Agreement without obtaining the prior written consent of the non-assigning Party, which consent shall not be unreasonably withheld. No assignment of this Agreement shall relieve the assigning Party of any of its obligations under this Agreement until such obligations have been assumed by the assignee. Any assignment in violation of this Section shall be void. However, either Party may assign its rights and obligations under this Agreement, without the non-assigning Party's consent, to any entity succeeding to all or substantially all of the assets of the assigning Party, if such assignee agrees to be bound by all of the terms and conditions hereof.

### **3.4 Prior Agreements Superseded**

This Agreement constitutes the entire understanding between the Parties with respect to the subject matter hereof, supersedes any and all previous understandings between the parties with respect to the subject matter hereof, and binds and inures to the benefit of the Parties, their successors and permitted assigns.

### **3.5 Waiver and Modification**

No modification or waiver of all or any part of this Agreement will be valid unless in writing and signed by the Parties or their agents. Any waiver will be effective only for the particular event for which it is issued and will not be deemed a waiver with respect to any subsequent performance, default or matter.

### **3.6 Applicable Law and Forum**

Interpretation and performance of this Agreement will be in accordance with, and will be controlled by, the laws of the State of New York except its conflict of laws provisions to the extent they would require the application of the laws of any other jurisdiction. ESCO irrevocably consents that any legal action or proceeding arising under or relating to this Agreement will be brought in a court of the State of New York or a federal court of the United States of America located in the State of New York, County of New York. ESCO irrevocably waives any objection that it may now or in the future have to the State of New York, County of New York as the proper and exclusive forum for any legal action or proceeding arising under or relating to this Agreement.

### **3.7 Severability**

If one or more provisions herein are held to be invalid, illegal or unenforceable in any respect it will be given effect to the extent permitted by applicable law, and such invalidity, illegality or unenforceability will not affect the validity of the other provisions of this Agreement.

### **3.8 Agency**

This Agreement is not intended, and will not be construed, to create any association, joint venture, agency relationship or partnership between O&R and the ESCO or any other parties or to impose any such obligation or liability upon O&R.

**3.9 Not for the Benefit of Third Parties**

This Agreement is for the benefit of the Parties hereto and not for the benefit of any third parties.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be signed by their respective agents thereunto duly authorized, as of the date first above written.

ORANGE AND ROCKLAND UTILITIES, INC.

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

(ESCO)

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

**ESCO INFORMATION**

**Company Information:**

<b>Name:</b>		
<b>DBA Name:</b>		
<b>Street Address:</b>		
<b>City:</b>	<b>State:</b>	<b>Zip:</b>

**Mailing Address & Telephone Contacts:**

<b>DBA Name:</b>		
<b>Street Address:</b>		
<b>City:</b>	<b>State:</b>	<b>Zip:</b>
<b>Telephone:</b>		
<b>Facsimile:</b>		

**ESCO Contact Information:**

<b>Contact Name:</b>
<b>Telephone:</b>
<b>E-Mail Address:</b>

**Agent Address:**

<b>Agent Name:</b>		
<b>Address:</b>		
<b>City:</b>	<b>State:</b>	<b>Zip Code:</b>

**Officers & Partners:**

<b>Officer/Partner Name</b>	<b>Title</b>	<b>Mailing Address</b>	<b>Telephone</b>
1.			
2.			
3.			
4.			

**Tax Status:**

<b>Tax ID:</b>	<b>DUNS#:</b>	<b>NYISO PTID#:</b>	
<b>Taxable Status (Circle One)</b>	<b>Taxable</b>	<b>*Non-Taxable</b>	<b>*Partially tax exempt</b>
<b>*Must attach a copy of the appropriate exemption certificate.</b>			

**Bank References: (two required)**

<b>Bank Name</b>	<b>Address</b>	<b>City</b>	<b>State</b>	<b>Zip Code</b>
<b>1.</b>				
<b>2.</b>				

**Do you have an established ongoing business relationship with O&R, either as a seller, purchaser, or both? If yes, please describe:**

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**Attach the following documents to your application:**

         **Determination of eligibility issued by the New York State Department of Public Service.**