

23.2 Conduct Warranting Mitigation

23.2.1 Definitions

The following definitions are applicable to this Attachment H:

For purposes of Section 23.4.5 of this Attachment H, “Affiliated Entity” shall mean, with respect to a person or Entity:

- i) all persons or Entities that directly or indirectly control such person or Entity;
- ii) all persons or Entities that are directly or indirectly controlled by or under common control with such person or Entity, and (1) are authorized under ISO Procedures to participate in a market for Capacity administered by the ISO, or (2) possess, directly or indirectly, an ownership, voting or equivalent interest of ten percent or more in an In-City Installed Capacity Supplier;
- iii) all persons or Entities that provide services to such person or Entity, or for which such person or Entity provides services, if such services relate to the determination or submission of offers for Unforced Capacity in a market administered by the ISO; or
- iv) all persons or Entities with which such person or Entity has any form of agreement under which such person or Entity has retained or has conferred rights of Control of Unforced Capacity.

In the foregoing definition, “control” means the possession, directly or indirectly, of the power to direct the management or policies of a person or Entity, and shall be rebuttably presumed from an ownership, voting or equivalent interest of ten percent or more.

For purposes of Section 23.4.5 of this Attachment H, “Attributable ICAP” shall mean ICAP from an In-City Installed Capacity Supplier that an entity has rights to use in fulfillment of its Installed Capacity obligation, or to which the entity has rights of ownership or Control, or as to which it has any other form of significant financial obligation.

“Constrained Area” shall mean: (a) the In-City area, including any areas subject to transmission constraints within the In-City area that give rise to significant locational market power; and (b) any other area in the New York Control Area that has been identified by the ISO as subject to transmission constraints that give rise to significant locational market power, and that has been approved by the Commission for designation as a Constrained Area.

For purposes of Section 23.4.5 of this Attachment H, “Control” with respect to Unforced Capacity shall mean either (a) the ability to determine the quantity or price of offers to supply Unforced Capacity from an In-City Installed Capacity Supplier submitted into an ICAP Spot Market Auction, or (b) a right to revenue or other financial benefits from such Unforced Capacity.

“Developer” shall have the meaning specified in the ISO’s Open Access Transmission Tariff.

“Electric Facility” shall mean a Generator or an electric transmission facility.

For purposes of Section 23.4.5 of this Attachment H, “Entity” shall mean a corporation, partnership, limited liability corporation or partnership, firm, joint venture, association, joint-stock company, trust, unincorporated organization or other form of legal or juridical organization or entity.

For purposes of Section 23.4.5 of this Attachment H, “Going-Forward Costs” shall mean: either (a) the costs, including but not limited to mandatory capital expenditures necessary to comply with federal or state environmental, safety or reliability requirements that must be met in order to supply Installed Capacity, net of anticipated energy and ancillary services revenues, as determined by the ISO as specified in Section 23.4.5.3, for each of the following instances, as applicable, of supplying Installed Capacity that could be avoided if an Installed Capacity Supplier otherwise capable of supplying Installed Capacity were either (1) to cease supplying Installed Capacity and Energy for a period of one year or more while retaining the ability to re-enter such markets, or (2) to retire permanently from supplying Installed Capacity and Energy; or (b) the opportunity costs of foregone sales outside of the New York City Locality, net of costs that would have been incurred as a result of the foregone sale if it had taken place.

“Initial Decision Period” shall have the meaning specified in Attachment S of the ISO’s Open Access Transmission Tariff.

“Interconnection Customer” shall have the meaning specified in Attachment Z of the ISO’s Open Access Transmission Tariff.

“Interconnection Facilities Study Agreement” shall have the meaning specified in Attachment X of the ISO’s Open Access Transmission Tariff.

“Market Monitoring Unit” shall have the same meaning in these Mitigation Measures as it has in Attachment O.

“Market Party” shall mean any person or entity that is a buyer or a seller in, or that makes bids or offers to buy or sell in, or that schedules or seeks to schedule Transactions with the ISO in or affecting any of the ISO Administered Markets, or any combination of the foregoing.

For purposes of Section 23.4.5 of this Attachment H, “Mitigated UCAP” shall mean one or more megawatts of Unforced Capacity that are subject to Control by a Market Party that has been identified by the ISO as a Pivotal Supplier.

“New Capacity” shall mean a new Generator, a substantial addition to the capacity of an existing Generator, or the reactivation of all or a portion of a Generator that has been out of service for five years or more that commences commercial service after the effective date of this definition.

~~For purposes of Section 23.4.5 of this Attachment H, “Net Buyer” shall mean an entity that, together with its Affiliates, has a total LSE Unforced Capacity Obligation relating to In-City Load that is greater than the total amount of Attributable ICAP of the entity and its Affiliates.~~

For purposes of Section 23.4.5 of this Attachment H, “Net CONE” shall mean the localized levelized embedded costs of a peaking unit in the New York City Locality, net of the likely projected annual Energy and Ancillary Services revenues of such unit, as determined in connection with establishing the Demand Curve for the New York City Locality pursuant to Section 5.14.1.2 of the Services Tariff, or as escalated as specified in Section 23.4.5.7 of Attachment H.

For purposes of Section 23.4.5 of this Attachment H, “Offer Floor” for an In-City Installed Capacity Supplier that is not a Special Case Resource shall mean the lesser of a numerical value equal to 75% of the Net CONE translated into a seasonally adjusted monthly UCAP value, or a numerical value determined as specified in Section 23.4.5.7.3, translated into a seasonally adjusted monthly UCAP value using an appropriate class outage rate, or for an In-City Installed Capacity Supplier that is a Special Case Resource shall mean a numerical value determined as specified in Section 23.4.5.7.5.

For purposes of Section 23.4.5 of this Attachment H, “Pivotal Supplier” shall mean a Market Party that, together with any of its Affiliateds Entities, (a) Controls 500 MW or more of Unforced Capacity, and (b) Controls Unforced Capacity some portion of which is necessary to meet the New York City Locational Minimum Installed Capacity Requirement in an ICAP Spot Market Auction.

“Project Cost Allocation” shall have the meaning specified in Attachment S of the ISO’s Open Access Transmission Tariff.

For purposes of Section 23.4.5 of this Attachment H, “Responsible Market Party” shall mean the Market Party that is authorized, in accordance with ISO Procedures, to submit offers in an ICAP Spot Market Auction to sell Unforced Capacity from a specified Installed Capacity Supplier.

“Revised Project Cost Allocation” shall have the meaning specified in Attachment S of the ISO’s Open Access Transmission Tariff.

“Subsequent Decision Period” shall have the meaning specified in Attachment S of the ISO’s Open Access Transmission Tariff.

For purposes of Section 23.4.5 of this Attachment H, **“Surplus Capacity”** shall mean the amount of Installed Capacity, in MW, available in the New York City Locality in excess of the Locational Minimum Installed Capacity Requirement for the New York City Locality.

For purposes of Section 23.4.5 of this Attachment H, **“UCAP Offer Reference Level”** shall mean a dollar value equal to the projected clearing price for each ICAP Spot Market Auction determined by the ISO on the basis of the applicable ICAP Demand Curve and the total quantity of Unforced Capacity from all Installed Capacity Suppliers in the New York City Locality for the period covered by the applicable ICAP Spot Market Auction.

For purposes of Section 23.4.5 of this Attachment H, **“Unit Net CONE”** shall mean localized levelized embedded costs of a specified Installed Capacity Supplier, including interconnection costs, and for an Installed Capacity Supplier located outside the New York City Locality including embedded costs of transmission service, in either case net of likely projected annual Energy and Ancillary Services revenues, as determined by the ISO, translated into a seasonally adjusted monthly UCAP value using an appropriate class outage rate.

23.2.2 Conduct Subject to Mitigation

Mitigation Measures may be applied: (i) to the bidding, scheduling or operation of an “Electric Facility”; or (ii) as specified in Section 23.2.4.2.

23.2.3 Conditions for the Imposition of Mitigation Measures

23.2.3.1 To achieve the foregoing purpose and objectives, Mitigation Measures should only be imposed to remedy conduct that would substantially distort or impair the competitiveness of any of the ISO Administered Markets. Accordingly, the ISO shall seek to impose Mitigation Measures only to remedy conduct that:

23.2.3.1.1 is significantly inconsistent with competitive conduct; and

23.2.3.1.2 would result in a material change in one or more prices in an ISO Administered Market or production cost guarantee payments (“guarantee payments”) to a Market Party.

23.2.3.2 In general, the ISO shall consider a Market Party's or its Affiliates' conduct to be inconsistent with competitive conduct if the conduct would not be in the economic interest of the Market Party or its Affiliates in the absence of market power. The categories of conduct that are inconsistent with competitive conduct include, but may not be limited to, the three categories of conduct specified in Section 23.2.4 below.

23.2.4 Categories of Conduct that May Warrant Mitigation

23.2.4.1 The following categories of conduct, whether by a single firm or by multiple firms acting in concert, may cause a material effect on prices or guarantee payments in an ISO Administered Market if exercised from a position of market power. Accordingly, the ISO shall monitor the ISO Administered Markets for the following categories of conduct, and shall impose appropriate Mitigation Measures if such conduct is detected and the other applicable conditions for the imposition of Mitigation Measures are met:

23.2.4.1.1 Physical withholding of an Electric Facility, that is, not offering to sell or schedule the output of or services provided by an Electric Facility capable of serving an ISO Administered Market. Such withholding may include, but not be limited to, (i) falsely declaring that an Electric Facility has been forced out of service or otherwise become unavailable, (ii) refusing to offer bids or schedules for an Electric Facility when such conduct would not be in the economic interest of the Market Party or its Affiliates in the absence of market power; (iii); making an unjustifiable change to one or more operating parameters of a Generator that reduces its ability to provide Energy or

Ancillary Services or (iv) operating a Generator in real-time at a lower output level than the Generator would have been expected to produce had the Generator followed the ISO's dispatch instructions, in a manner that is not attributable to the Generator's verifiable physical operating capabilities and that would not be in the economic interest of the Market Party or its Affiliates in the absence of market power.

For purposes of this Section and Section 23.4.3.2, the term "unjustifiable change" shall mean a change in an Electric Facility's operating parameters that is: (a) not attributable to the Electric Facility's verifiable physical operating capabilities, and (b) is not a rational competitive response to economic factors other than market power.

23.2.4.1.2 Economic withholding of an Electric Facility, that is, submitting bids for an Electric Facility that are unjustifiably high so that (i) the Electric Facility is not or will not be dispatched or scheduled, or (ii) the bids will set a market clearing price.

23.2.4.1.3 Uneconomic production from an Electric Facility, that is, increasing the output of an Electric Facility to levels that would otherwise be uneconomic in order to cause, and obtain benefits from, a transmission constraint.

23.2.4.2 Mitigation Measures may also be imposed to mitigate the market effects of a rule, standard, procedure or design feature of an ISO Administered Market that allows a Market Party or its Affiliate to manipulate market prices or otherwise impair the efficient operation of that market, pending the revision of such rule, standard, procedure or design feature to preclude such manipulation of prices or impairment of efficiency.

23.2.4.3 Taking advantage of opportunities to sell at a higher price or buy at a lower price in a market other than an ISO Administered Market shall not be deemed a form of withholding or otherwise inconsistent with competitive conduct.

23.2.4.4 The ISO and the Market Monitoring Unit shall monitor the ISO Administered Markets for other categories of conduct, whether by a single firm or by multiple firms acting in concert, that have material effects on prices or guarantee payments in an ISO Administered Market. The ISO shall: (i) seek to amend the foregoing list as may be appropriate, in accordance with the procedures and requirements for amending the Plan, to include any such conduct that would substantially distort or impair the competitiveness of any of the ISO Administered Markets; and (ii) seek such other authorization to mitigate the effects of such conduct from the FERC as may be appropriate. The responsibilities of the Market Monitoring Unit that are addressed in this section of the Mitigation Measures are also addressed in Section 30.4.6.2.2 of Attachment O.

Filed March 20, 2008 to comply with order of the Federal Energy Regulatory Commission, Docket No. EL07-39-000, issued March 7, 2008, 122 FERC ¶ 61,211 (2008). Proposed effective date: March 27, 2008.

Filed May 6, 2008 to comply with order of the Federal Energy Regulatory Commission, Docket No. EL07-39-000, issued March 7, 2008, 122 FERC ¶ 61,211 (2008). Proposed effective date: November 1, 2008.

Filed October 30, 2008 to comply with order of the Federal Energy Regulatory Commission, Docket Nos. EL07-39-002, ER08-695-000, and -001, issued September 30, 2008, 124 FERC ¶ 61,301 (2008). Proposed effective date: November 1, 2008.