

## **23.4.5 Installed Capacity Market Mitigation Measures**

23.4.5.1            If and to the extent that sufficient installed capacity is not under a contractual obligation to be available to serve load in New York and if physical or economic withholding of installed capacity would be likely to result in a material change in the price for installed capacity in all or some portion of New York, the ISO, in consideration of the comments of the Market Parties and other interested parties, shall amend this Attachment H, in accordance with the procedures and requirements for amending the Plan, to implement appropriate mitigation measures for installed capacity markets.

23.4.5.2 Offers to sell Mitigated UCAP in an ICAP Spot Market Auction shall not be higher than the higher of (a) the UCAP Offer Reference Level for the applicable ICAP Spot Market Auction, or (b) the Going-Forward Costs of the Installed Capacity Supplier supplying the Mitigated UCAP. Where an Installed Capacity Supplier is a Pivotal Supplier in some, but not all, Mitigated Capacity Zones in which it has Resources, such Installed Capacity Supplier's offer to sell Mitigated UCAP in any ICAP Spot Market Auction for any Resource for which it is a Pivotal Supplier shall not be higher than the higher of (a) the lowest of the UCAP Offer Reference Levels for each Mitigated Capacity Zone in which such Installed Capacity Supplier has Resources; or (b) if an Offer for a Resource has an applicable Going-Forward Cost, such Going-Forward Cost.

23.4.5.3 An Installed Capacity Supplier's Going-Forward Costs for an ICAP Spot Market Auction shall be determined upon the request of the Responsible Market Party for that Installed Capacity Supplier. The Going-Forward Costs shall be determined by the ISO after consultation with the Responsible Market Party, provided such consultation is requested by the Responsible Market Party not later than 50 business days prior to the deadline for offers to sell Unforced Capacity in such auction, and provided such request is supported by a submission showing the Installed Capacity Supplier's relevant costs in accordance with specifications provided by the ISO. Such submission shall show (1) the nature, amount and determination of any claimed Going-Forward Cost, and (2) that the cost would be avoided if the Installed Capacity Supplier is taken out of service or retired, as applicable. If the foregoing requirements are met, the ISO shall determine the level of the Installed Capacity Supplier's Going-Forward Costs and shall seasonally adjust such costs not later than 7 days prior to the deadline for submitting offers to sell Unforced Capacity in such auction. A Responsible Market Party shall request an updated determination of an Installed Capacity Supplier's Going-Forward Costs not less often than annually, in the absence of which request the Installed Capacity Supplier's offer cap shall revert to the UCAP Offer Reference Level. An updated determination of Going-Forward Costs may be undertaken by the ISO at any time on its own initiative after consulting with the Responsible Market Party. Any redetermination of an Installed Capacity Supplier's Going-Forward Costs shall conform to the consultation and determination schedule specified in this paragraph. The costs that an Installed

Capacity Supplier would avoid as a result of retiring should only be included in its  
Going-Forward Costs if the owner or operator of that Installed Capacity Supplier  
actually plans to mothball or retire it if the Installed Capacity revenues it receives  
are not sufficient to cover those costs.

23.4.5.4 Mitigated UCAP shall be offered in each ICAP Spot Market Auction in accordance with Section 5.14.1.1 of the ISO Services Tariff and applicable ISO procedures, unless (a) it has been exported to an External Control Area or sold to meet Installed Capacity requirements outside the Mitigated Capacity Zone in which the ICAP Supplier is a Pivotal Supplier is located in a transaction that does not constitute physical withholding under the standards specified below, or (b) it is Net Unforced Capacity of a Behind-the-Meter Net Generation Resource that is sold to its Host Load in a transaction that does not constitute physical withholding under the standards specified in Section 23.4.5.4.1(b).

23.4.5.4.1 (a) An export to an External Control Area or sale to meet an Installed Capacity requirement outside the Mitigated Capacity Zone in which the ICAP Supplier or Generator with CRIS MW is electrically located (either of the foregoing being referred to as “External Sale of Capacity”) may be subject to audit and review by the ISO to assess whether such action constituted physical withholding of UCAP from a Mitigated Capacity Zone. “External Sale UCAP” shall mean the UCAP equivalent of the External Sale of Capacity if known, or otherwise the reasonably projected UCAP equivalent as determined by the ISO. External Sale UCAP shall be deemed to have been physically withheld on the basis of a comparison between the net revenues from UCAP sales that would have been earned by the sale of the External Sale UCAP in a Mitigated Capacity Zone and the net revenues earned from the External Sale of Capacity. The comparison shall be made for the period for which capacity is committed (the “Comparison Period”) in each of the shortest term organized capacity markets (the “External Reconfiguration Markets”) for the area and during the period in which the

External Sale of Capacity occurred. External Sale UCAP shall be deemed to have been withheld from a Mitigated Capacity Zone if: (1) the Responsible Market Party for the External Sale UCAP could have made all or a portion of the External Sale UCAP available to be offered in the Mitigated Capacity Zone by buying out of its external capacity obligation through participation in an External Reconfiguration Market and timely meeting the requirements to be qualified as an Installed Capacity Supplier; (2) the net revenues over the Comparison Period from sale in the Mitigated Capacity Zone of the External Sale UCAP that could have been made available for sale in that Locality would have been greater by 15% or more, provided that the net revenues were at least \$2.00/kilowatt-month more than the net UCAP revenues from that portion of the External Sale UCAP over the Comparison Period; and (3) the Responsible Market Party for the External Sale UCAP is a Pivotal Supplier, or would otherwise have been deemed a Pivotal Supplier if the External Sale UCAP had been available to be offered in the Mitigated Capacity Zone for the Comparison Period.

(b) Any Mitigated UCAP that is Net Unforced Capacity of a Behind-the-Meter Net Generation Resource that is not offered into the ICAP Spot Market Auction in accordance with Section 23.4.5.2 may be subject to audit and review by the ISO, and shall be deemed to have been physically withheld unless (i) the Responsible Market Party has obtained a determination from the ISO pursuant to Section 23.4.5.4.3(b) that the sale to its Host Load would not constitute physical withholding, and (ii) the Mitigated UCAP that was the subject of the determination pursuant to Section 23.4.5.4.3(b) is actually sold to its Host Load.

23.4.5.4.2 If Mitigated UCAP or External Sale UCAP is not offered or sold as specified above, the Responsible Market Party for such Installed Capacity Supplier or Generator electrically located in a MCZ Import Constrained Locality shall pay the ISO an amount equal to the product of (A) 1.5 times the difference between the Market-Clearing Price for the Mitigated Capacity Zone in the ICAP Spot Market Auction with and without the inclusion of the Mitigated UCAP or External Sale UCAP and (B) the total of (1) the amount of Mitigated UCAP or External Sale UCAP not offered or sold as specified above, and (2) all other megawatts of Unforced Capacity in the Mitigated Capacity Zone under common Control with such Mitigated UCAP or External Sale UCAP. If the failure to offer was associated with the same period as an External Sale of Capacity, and the failure caused or contributed to an increase in UCAP prices in the Mitigated Capacity Zone of 15 percent or more, provided such increase is at least \$2.00/kilowatt-month, the Responsible Market Party for such Generator or UDR project electrically located in a MCZ Import Constrained Locality shall be required to pay to the ISO an amount equal to 1.5 times the difference between the average Market-Clearing Price for the Mitigated Capacity Zone in the ICAP Spot Market Auctions for the relevant Comparison Period with and without the External Sale of Capacity in those auctions, times the total of (1) the amount of External Sale UCAP not offered or sold as specified above, and (2) all other megawatts of Unforced Capacity in the Mitigated Capacity Zone under common Control with such External Sale UCAP. The ISO will distribute any amounts



recovered in accordance with the foregoing provisions among the LSEs serving  
Loads in regions affected by the withholding in accordance with ISO Procedures.

23.4.5.4.3 (a) Reasonably in advance of the deadline for submitting offers in an  
External Reconfiguration Market the Responsible Market Party for External Sale  
UCAP may request the ISO to provide a projection of ICAP Spot Auction  
clearing prices for the Mitigated Capacity Zone over the Comparison Period for  
the External Reconfiguration Market. Such requests, and the ISO's response,  
shall be made in accordance with the deadlines specified in ISO Procedures. Prior  
to completing its projection of ICAP Spot Auction clearing prices for the  
Mitigated Capacity Zone over the Comparison Period for the External  
Reconfiguration Market, the ISO shall consult with the Market Monitoring Unit  
regarding such price projection. The Responsible Market Party shall be exempt  
from a physical withholding penalty as specified in Section 23.4.5.4.2, below, if at  
the time of the deadline for submitting offers in an External Reconfiguration  
Market its offers, if accepted, would reasonably be expected to produce net  
revenues from the External Sale of Capacity that exceed the net revenues that  
would have been realized from sale of the External Sale UCAP in the Mitigated  
Capacity Zone at the ICAP Spot Auction prices projected by the ISO. The  
responsibilities of the Market Monitoring Unit that are addressed in this section of  
the Mitigation Measures are also addressed in Section 30.4.6.2.8(a) of Attachment  
O to this Services Tariff.

(b) At least fifteen business days in advance of the opening of the ICAP  
Spot Market Auction, a Behind-the-Meter Net Generation Resource can request

that the ISO make a determination that the sale of Net Unforced Capacity in a Mitigated Capacity Zone to its Host Load does not constitute physical withholding. The Responsible Market Party shall be exempt from a physical withholding penalty as specified in Section 23.4.5.4.2 if the ISO determines that the Behind-the-Meter Net Generation Resource has demonstrated that the Host Load's actual consumption is planned to exceed its Adjusted Host Load, and it has a documented transaction to provide Net Unforced Capacity to its Host Load. Prior to reaching its decision on a request by a Behind-the-Meter Net Generation Resource that its sale of Net Unforced Capacity to its Host Load would not constitute physical withholding, the ISO shall provide its preliminary determination to the Market Monitoring Unit for review and comment. The responsibilities of the Market Monitoring Unit that are addressed in this section of the Mitigation Measures are also addressed in Section 30.4.6.2.8(b) of Attachment O to this Services Tariff.

23.4.5.5 Control of Unforced Capacity shall be rebuttably presumed from (i) ownership of an Installed Capacity Supplier, or (ii) status as the Responsible Market Party for an Installed Capacity Supplier, but may also be determined on the basis of other evidence. For purposes of determining if a Responsible Market Party is a Pivotal Supplier in a Mitigated Capacity Zone, the presumption of Control of Unforced Capacity can be rebutted by demonstrating to the reasonable satisfaction of the ISO that the ability to determine the price and quantity of offers to supply Unforced Capacity has been conveyed to a person or entity that is not an Affiliated Entity without limitation or condition, but cannot be rebutted by the sale of Unforced Capacity in a Capability Period or Monthly Auction. For any Mitigated Capacity Zone, if the presumption has not been rebutted, and if two or more Market Parties each have rights or obligations with respect to Unforced Capacity from an Installed Capacity Supplier that could reasonably be anticipated to affect the quantity or price of Unforced Capacity transactions in an ICAP Spot Market Auction, the ISO may attribute Control of the affected MW of Unforced Capacity from the Installed Capacity Supplier to each such Market Party. Prior to reaching its decision regarding whether the presumption of control of Unforced Capacity has been rebutted, the ISO shall provide its preliminary determination to the Market Monitoring Unit for review and comment. The responsibilities of the Market Monitoring Unit that are addressed in this section of the Mitigation Measures are also addressed in Section 30.4.6.2.9 of Attachment O to this Services Tariff.

### **23.4.5.6 Audit, Review, and Penalties for Physical Withholding to Increase Market-Clearing Prices; Alignment with Short-Term Reliability Process**

#### **23.4.5.6.1 Audit and Review of Proposals or Decisions to Remove or Derate Installed Capacity from a Mitigated Capacity Zone**

Any proposal or decision by a Market Participant to retire or otherwise remove an Installed Capacity Supplier from a Mitigated Capacity Zone Unforced Capacity market, or to de-rate the amount of Installed Capacity available from such supplier, may be subject to audit and review by the ISO if the ISO determines that such action could reasonably be expected to affect Market-Clearing Prices in one or more ICAP Spot Market Auctions for a Mitigated Capacity Zone in which the Resource(s) that is the subject of the proposal or decision is located, subsequent to such action; provided, however, no audit and review shall be necessary if the Installed Capacity Supplier is a Generator that is being retired or removed from a Mitigated Capacity Zone as the result of a Forced Outage that began on or after May 1, 2015 that was determined by the ISO to be a Catastrophic Failure.

The ISO's audit or review of any proposal or decision by a Market Participant to retire or otherwise remove an Installed Capacity Supplier from a Mitigated Capacity Zone Unforced Capacity market, or to de-rate the amount of Installed Capacity available from such supplier, (including a review the ISO conducts at the request of a Market Participant before it submits a proposal or makes a decision or a review the NYISO conducts in conjunction with the Short-Term Reliability Process) will consider the rationale offered by the Market Participant to support its proposal or decision. Such an audit or review shall assess whether the Market Participant's proposal or decision has a legitimate economic justification, which may include the economics of complying with regulatory requirements, or is based on an effort to withhold Installed Capacity physically in order to affect prices. The ISO's audit or review is conducted based on the

expectation that a Market Participant's decision to retire or otherwise remove an Installed Capacity Supplier from a Mitigated Capacity Zone, or to de-rate the amount of Installed Capacity available from such supplier, accounts for the information available to that Market Participant at (or before) the time its decision is made on the "decision date" (*see, e.g.*, Sections 23.4.5.6.4.2.1 and 23.4.5.6.4.2.2.1 below) specified by the Market Participant. A Market Participant may offer publicly available information and other information available to the Market Participant to support its proposal or decision.

The ISO shall provide the preliminary results of its audit or review to the Market Monitoring Unit for its review and comment. The responsibilities of the Market Monitoring Unit that are addressed in this section of the Mitigation Measures are also addressed in Section 30.4.6.2.10 of Attachment O to this Services Tariff.

#### **23.4.5.6.2 Audit and Review of the Reclassification of a Generator in a Mitigated Capacity Zone From a Forced Outage to an ICAP Ineligible Forced Outage**

This Section 23.4.5.6.2 shall apply to a Market Participant whose Installed Capacity Supplier is a Generator that began a Forced Outage on or after May 1, 2015.

23.4.5.6.2.1 Any reclassification of an Installed Capacity Supplier that is a Generator in a Mitigated Capacity Zone from a Forced Outage to an ICAP Ineligible Forced Outage by a Market Participant or otherwise, pursuant to the terms of Section 5.18.2.1 of this Services Tariff, may be subject to audit and review by the ISO if the ISO determines that such reclassification could reasonably be expected to affect the Market-Clearing Price in one or more ICAP Spot Market Auctions for a Mitigated Capacity Zone in which the Generator(s) that is the subject of the reclassification is located, subsequent to such action; provided, however, if the Market Participant's Generator experienced the Forced Outage as a result of a

Catastrophic Failure, the reclassification of a Generator in a Mitigated Capacity Zone from a Forced Outage to an ICAP Ineligible Forced Outage shall not be subject to audit and review pursuant to this Section 23.4.5.6.2.

The audit and review pursuant to the above paragraph shall assess whether the reclassification of the Generator in a Mitigated Capacity Zone from a Forced Outage to an ICAP Ineligible Forced Outage had a legitimate economic justification or is based on an effort to withhold Installed Capacity physically in order to affect prices. A Market Participant may offer publicly available information and other information available to the Market Participant to justify the reclassification.

The ISO shall provide the preliminary results of its audit or review to the Market Monitoring Unit for its review and comment. The responsibilities of the Market Monitoring Unit that are addressed in this section of the Mitigation Measures are also addressed in Section 30.4.6.2.10 of Attachment O to this Services Tariff.

23.4.5.6.2.2 The audit and review pursuant to Section 23.4.5.6.2.1 shall be deferred by the ISO beyond the time period established in ISO Procedures for the audit and review of a reclassification of a Generator from a Forced Outage to an ICAP Ineligible Forced Outage if the Generator was in a Forced Outage for at least 180 days before the reclassification and one or more Exceptional Circumstances delayed the acquisition of data necessary for the ISO's audit and review.

The ISO shall conduct the audit and review after its receipt of data that it determines is necessary for the audit and review; provided, however, if, at the

time the ISO acquires the necessary data, the Market Participant has Commenced Repair of the Generator, or the Generator is determined by the ISO to have had a Catastrophic Failure, the Market Participant shall not be subject to an audit and review pursuant to Section 23.4.5.6.2.1 of this Services Tariff. A Generator that Commenced Repair while in an ICAP Ineligible Forced Outage but that ceased or unreasonably delayed that repair shall be subject to audit and review by the ISO pursuant to Section 23.4.5.6.2.1 of this Services Tariff.

The ISO shall provide the preliminary results of its audit or review to the Market Monitoring Unit for its review and comment. The responsibilities of the Market Monitoring Unit that are addressed in this section of the Mitigation Measures are also addressed in Section 30.4.6.2.10 of Attachment O to this Service Tariff.

23.4.5.6.2.3 The audit and review of the removal of a Generator from a Forced Outage to an ICAP Ineligible Forced Outage, and the determinations of Catastrophic Failure and Exceptional Circumstances, will be pursuant to specific timelines established in ISO Procedures.

23.4.5.6.2.4 The audit and review pursuant to Sections 23.4.5.6.2.1, and 23.4.5.6.2.2 shall be conducted to determine whether the decision not to repair a Generator had a legitimate economic justification, consistent with competitive behavior; that is, whether the cost of repair, including the risk-adjusted cost of capital, could not reasonably be expected to be recouped over the reasonably anticipated remaining life of the Generator. The elements of such audit and review may include, as appropriate, the historical revenue and maintenance cost data for the purpose of

the baseline, the duration of the repair, the costs including, but not limited to, capital expenditures necessary to comply with federal or state environmental, safety or reliability requirements that must be met in order to operate the Generator, the anticipated capacity, energy and ancillary services revenues following the repair, the projected costs of operating the Generator following the repair, any benefits that would be foregone from using the site for a purpose other than as the existing Generator (e.g., repowering), and other relevant data.

The criteria for the audit and review provided in this Services Tariff Section 23.4.5.6.2.4 may be incorporated, as appropriate, in an audit and review required to be conducted pursuant to other provisions in this Services Tariff Section 23.4.

23.4.5.6.2.5 For a requesting Market Participant, a determination that the Market Participant has experienced Exceptional Circumstances shall be made by the ISO by the 160th day of the Generator's Forced Outage. The ISO shall use reasonable efforts to issue a determination that a Market Participant has experienced Exceptional Circumstances after it has Commenced Repair and requests reclassification to an ICAP Ineligible Force Outage by the 40th day after the ISO's receipt of data necessary to conduct the analysis.

For a requesting Market Participant, a determination that a Generator has experienced a Catastrophic Failure shall be made by the ISO by the 160<sup>th</sup> day of the Forced Outage. If the ISO has determined that Exceptional Circumstances will delay the submission of data necessary for the ISO to perform an audit and review pursuant to Section 23.4.5.6.2.1 or 23.4.5.6.2, the ISO shall use reasonable



efforts to issue a determination that the Generator has experienced a Catastrophic Failure by the 40<sup>th</sup> day after receipt of data necessary to conduct the analysis.

#### **23.4.5.6.3 Penalties for Withholding Installed Capacity Physically In Order To Affect Prices**

If the ISO determines that either: i) pursuant to Section 23.4.5.6.1, the proposal or decision by a Market Participant to retire or otherwise remove an Installed Capacity Supplier from a Mitigated Capacity Zone, or to de-rate the amount of Installed Capacity available from such supplier, or ii) pursuant to Section 23.4.5.6.2, the ISO determines that the reclassification of an Installed Capacity Supplier that is a Generator from a Forced Outage to an ICAP Ineligible Forced Outage constitutes physical withholding, and would increase the Market-Clearing Price in one or more ICAP Spot Market Auctions for a Mitigated Capacity Zone by five percent or more, provided such increase is at least \$.50/kilowatt-month, for each such violation of the above requirements the Market Participant shall be assessed an amount equal to the product of (A) 1.5 times the difference between the Market Clearing Price for the Mitigated Capacity Zone in the ICAP Spot Market Auctions with and without the inclusion of the withheld UCAP in those auctions, and (B) the total of (1) the number of megawatts withheld in the month and (2) all other megawatts of Installed Capacity in the Mitigated Capacity Zone under common Control with such withheld megawatts in the month. The requirement to pay such amounts shall continue until the Market Participant demonstrates that the removal from service, retirement, or de-rate, as described in Section 23.4.5.6.1, or reclassification as described in Section 23.4.5.6.2 is justified by economic considerations other than the effect of such action on Market-Clearing Prices in the ICAP Spot Market Auctions for the Mitigated Capacity Zone. The ISO will distribute any amount recovered in accordance with the foregoing provisions among the LSEs serving Loads in

the Mitigated Capacity Zone(s) wherein the Market-Clearing Price was affected for the month corresponding to the penalty accordance with ISO Procedures.

#### **23.4.5.6.4      Aligning Physical Withholding Audits and Reviews with the Short-Term Reliability Process**

The rules in this Section 23.4.5.6.4 apply to Market Participants that initiate the Short-Term Reliability Process that is set forth in Attachment FF to the ISO OATT by submitting a Generator Deactivation Notice for a Generator. They provide an opportunity for such a Market Participant to receive a final physical withholding determination from the ISO before the Market Participant deactivates the Generator. Nothing in Attachment FF to the OATT or in this Section 23.4.5.6.4 of the ISO Services Tariff should be read as limiting the ISO's authority to impose a physical withholding penalty on a Generator that deactivates. Capitalized terms that appear in this Section 23.4.5.6.4 that are not defined in Article 2 to the ISO Services Tariff are defined in Section 38.1 of Attachment FF to the ISO OATT.

23.4.5.6.4.1    If the ISO has issued notice to the Market Participant or Generator Owner (as that term is defined in Section 38.1 of the ISO OATT) in accordance with Section 38.7.4 of Attachment FF to the ISO OATT that it has received all of the data and information it requires to perform its duties under both the Short-Term Reliability Process that is set forth in Attachment FF to the ISO OATT and Section 23 of the ISO Services Tariff, then the ISO shall complete a physical withholding review of the proposed deactivation, if needed, in accordance with Section 23.4.5.6 of the ISO Services Tariff and issue a final physical withholding determination to the Market Participant in accordance with the process set forth in Sections 23.4.5.6.4.2.1 or 23.4.5.6.4.2.2 of the ISO Services Tariff.

If the ISO has not issued a notice to the Market Participant or Generator Owner in accordance with Section 38.7.4 of Attachment FF to the ISO OATT that it has received all of the data and information it requires to perform its duties under both Attachment FF to the ISO OATT and Section 23 of the ISO Services Tariff, then the ISO is *not* required to issue a final physical withholding determination to the Market Participant for the Generator prior to the Generator's deactivation.

#### **23.4.5.6.4.2 Aligning Issuance of Final Physical Withholding Determination with the Short-Term Reliability Process**

**23.4.5.6.4.2.1 Based on deactivation date.** At least ninety days before the date the Generator determines it will timely (consistent with Section 38.14.1 of Attachment FF to the ISO OATT) deactivate, the Market Participant (which is also a Market Party) may notify the ISO in writing of the updated deactivation date and request that the ISO issue a final physical withholding determination to the Market Participant, which shall be conducted by the ISO in accordance with Section 23.4.5.6.1 above. The ISO shall issue its final determination at least 60 days before the updated deactivation date specified in the Market Participant's written notice. For purposes of the ISO's audit or review to issue a final physical withholding determination, conducted in accordance with Section 23.4.5.6.1 above, the date on which the Generator is deactivated is the "decision date," so long as it falls within the 16 day window specified below.

Exception: The earliest date the ISO shall be required to issue a final physical withholding determination is 90 days after the Short-Term Assessment of Reliability Start Date.

The ISO's final physical withholding determination shall only be valid if the Generator becomes Retired or enters into a Mothball Outage within a window that starts five days before the date specified in the Market Participant's notice to the ISO and concludes ten days after the date specified in the Market Participant's notice to the ISO.

**23.4.5.6.4.2.2 Based on date of irrevocable action or inaction.** If the Market Participant identifies and the ISO, in consultation with the Market Monitoring Unit, agrees that there is a point in the process of deactivating a Generator after which the deactivation process will become, essentially and practicably, irreversible, then the ISO shall inform the Market Participant in writing of the first such act, decision not to act, or event that the ISO agrees will have irreversible consequences.

The responsibilities of the Market Monitoring Unit that are addressed in this section of the Mitigation Measures are also addressed in Section 30.4.6.2.12 of Attachment O to this Services Tariff.

23.4.5.6.4.2.2.1 At least ninety days before the date the irreversible action, inaction or event specified by the ISO in its notice to the Market Participant will be taken, occur or come to pass (the "trigger date"), the Market Participant may notify the ISO in writing of the trigger date and request that the ISO issue a final physical withholding determination to the Market Participant. The Market Participant's notice must explain why the date it selected is the appropriate trigger date. If the ISO determines that the trigger date specified by the Market Participant is reasonable, then the ISO shall issue its final physical withholding determination at

least 60 days before the trigger date specified in the Market Participant's notice.

For purposes of the ISO's audit or review under this subsection conducted in accordance with Section 23.4.5.6.1 above, the trigger date is the "decision date."

Exception: The earliest date the ISO shall be required to issue a final physical withholding determination is 90 days after the Short-Term Assessment of Reliability Start Date.

23.4.5.6.4.2.2.2 If the ISO determines that the trigger date the Market Participant specified is not reasonable, then the ISO shall promptly notify the Market Participant of its determination and the reasons therefor in writing. The ISO is not required to issue a final physical withholding determination unless the Market Party provides additional information within two business days of the issuance of the ISO's written determination that causes the ISO to change its decision.

23.4.5.6.4.2.2.3 The ISO's final physical withholding determination shall only be valid if (a) the specified irreversible action, inaction or event is taken or occurs within a window that starts five days before the trigger date specified in the Market Participant's notice to the ISO and concludes ten days after the trigger date specified in the Market Participant's notice to the ISO, and (b) the Generator timely (consistent with Section 38.14.1 of Attachment FF to the ISO OATT) enters into a Mothball Outage or becomes Retired. Except where the ISO possesses contrary information, the ISO shall accept the Market Participant's reasonable assessment of the date by which an irrevocable failure to act occurs.

23.4.5.6.4.3 The Market Participant shall promptly send a written notice to the ISO rescinding a written notice that it previously submitted under Sections

23.4.5.6.4.2.1 or 23.4.5.6.4.2.2.1 of the ISO Services Tariff if it determines that  
the deactivation date or trigger date it specified in its written notice to the ISO is  
no longer accurate.

**30 Attachment O - Market Monitoring Plan**

## **30.1 INTRODUCTION AND PURPOSE**

### **30.1.1 Purposes and Objectives**

This Market Monitoring Plan is intended to provide for the independent, impartial and effective monitoring of and reporting on: (1) the competitive structure, performance and economic efficiency of the New York Electric Markets; (2) the conduct of Market Parties, including but not limited to any exercise or attempt to exercise market power or restrain competition in any New York Electric Market by any Market Party or group of Market Parties; (3) the operation and use of the New York State Transmission System as such system affects or may affect competitive conditions in or the economic efficiency of any of the New York Electric Markets, including but not limited to the nature, extent and causes of any congestion on such system and the costs of or charges for such congestion; (4) the adequacy and effectiveness of any tariff or services agreement, or any rule, standard or procedure, or any market power mitigation or other remedial measures, implemented, administered or overseen by the New York Independent System Operator, Inc. (“ISO”) and that affects or could affect the competitiveness or economic efficiency of any of the New York Electric Markets; and (5) any other condition, function or action affecting the foregoing.

Attachment O provides for review and evaluation by the Market Monitoring Unit of the ISO’s: (i) Tariffs and market rules, including the ISO’s imposition of appropriate measures for the mitigation of market power and imposition of appropriate sanctions or other remedial measures for actions or inaction that the ISO is authorized to address or remedy in its Tariffs; and (ii) administration of the New York Electric Markets. In addition, Attachment O requires the Market Monitoring Unit to timely: (a) report any failure by a Market Party or by the ISO to comply with any tariff or services agreement, or any law, regulation, rule, standard or procedure,



including any market power mitigation or other remedial measure, if such violation or failure to comply impairs or threatens to impair the competitiveness or economic efficiency of any of the New York Electric Markets; (b) submit to the FERC, or other appropriate regulatory or enforcement agency, evidence of possible violation of state or federal law for the preservation of competition (including violations of FERC's regulations and the ISO Tariff rules); and (c) report on perceived market design flaws that the Market Monitoring Unit believes could be effectively remedied by rule or tariff changes. Attachment O is intended to minimize interference with open and competitive markets.

### **30.1.2 Implementation of Attachment O**

All persons or entities responsible for the implementation of Attachment O shall do so in a manner consistent with and intended to achieve both: (i) the creation and operation of New York Electric Markets that are robust, competitive, efficient and non-discriminatory; and (ii) the safe and reliable operation of the electric system in New York Control Area.

### **30.1.3 Persons and Entities Subject to Attachment O**

The ISO, the Market Monitoring Unit, and any person or entity participating in any of the New York Electric Markets or that takes service under or is a party to any tariff or agreement administered by the ISO, shall be subject to the terms, conditions and obligations of Attachment O. Entities that are subject to Attachment O may also be held responsible for actions or inaction by their Affiliates.

## **30.2 Definitions**

For purposes of Attachment O, capitalized terms shall have the meanings specified below, or in the New York Independent System Operator Agreement or Market Administration and Control Area Services Tariff:

### **Affiliate**

For purposes of Attachment O, “Affiliate” includes both Affiliates, as defined in the ISO Services Tariff and, where appropriate, Affiliated Entities, as defined in the Market Mitigation Measures.

### **Board**

“Board” shall mean the Board of Directors of the New York Independent System Operator, a not-for-profit New York corporation.

### **Core Market Monitoring Functions**

“Core Market Monitoring Functions” or “Core Functions” shall mean the duties that the FERC determined the Market Monitoring Unit must be responsible for performing in Order 719. The Core Functions are set forth in Section 30.4.5 of Attachment O.

### **Interested Government Agencies**

“Interested Government Agencies” shall mean the FERC and the New York Public Service Commission.

### **ISO Market Power Mitigation Measures**

“ISO Market Power Mitigation Measures” or “Market Mitigation Measures” shall mean Attachment H to the ISO’s Market Administration and Control Area Services Tariff, or any successor provisions thereto.

### **Market Mitigation and Analysis Department**

“Market Mitigation and Analysis Department” or “MMA” shall mean a department, internal to the ISO that is responsible for participating in the ISO’s administration of its Tariffs. The MMA’s duties are described in Section 30.3, below.

### **Market Monitoring Unit**

“Market Monitoring Unit” shall mean the consulting or other professional services firm, or other similar entity, retained by the Board, as specified in Section 30.4.2 of Attachment O, that is responsible for carrying out the Core Market Monitoring Functions and the other functions that

are assigned to it in Attachment O. The Market Monitoring Unit shall recommend Tariff and market rule changes, but shall not participate in the administration of the ISO's Tariffs, except as specifically authorized in Attachment O.

### **Market Party**

"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 New York Electric Markets, or any combination of the foregoing. Under Attachment O and the ISO's Market Mitigation Measures, Market Parties may be held responsible for the actions of, or inaction by, their Affiliates.

### **Market Violation**

"Market Violation" shall mean any of (i) a tariff violation, (ii) violation of a Commission-accepted or approved order, rule or regulation including, but not limited to, violations of FERC's Market Behavior Rules, 18 CFR § 35.41, or any successor provisions thereto, (iii) market manipulation (*see* 18 CFR § 1c.2, or any successor provision thereto), or (iv) inappropriate dispatch that creates substantial concerns regarding unnecessary market inefficiencies.

### **New York Electric Markets**

"New York Electric Markets" shall mean the LBMP Market, the Wholesale Market, any market for the purchase or sale of TCCs, and any other market administered, coordinated or facilitated by, or involving transmission or other services scheduled or otherwise provided by, the ISO.

### **Order 719**

"Order 719" shall mean the Order issued by the FERC on October, 17, 2008 in Docket Nos. RM07-19-000 and AD07-7-000, including the regulations adopted by FERC in that Order, as amended by any subsequent orders issued by the FERC or by a Federal court of appeals.

### **Other State Commission**

"Other State Commission" shall mean the State regulatory agencies other than the New York Public Service Commission that possess primary jurisdiction over (a) the construction and siting of electric transmission and generating facilities, and/or (b) the regulation of retail electric rates, within their respective State.

### **Plan (Attachment O)**

"Plan" shall mean this ISO Market Monitoring Plan (Attachment O).

### **Protected Information**

"Protected Information" shall mean: (a) information that is confidential, proprietary, commercially valuable or competitively sensitive or is a trade secret, (b) information that is Confidential Information under Attachment F to the ISO OATT, (c) information that the Market

Monitoring Unit or the ISO is obligated by tariff, regulation or law to protect, (d) information which, if revealed, would present opportunities for collusion or other anticompetitive conduct, or that could facilitate conduct that is inconsistent with economic efficiency, (e) information relating to ongoing investigations and monitoring activities (including the identity of the person or Market Party that requested or is the subject of an investigation, unless such party consents to disclosure), (f) information subject to the attorney-client privilege, the attorney work product doctrine, or concerning pending or threatened litigation, or (g) information that has been designated as such in writing by the party supplying the information to the ISO or to its Market Monitoring Unit, or by the ISO or its Market Monitoring Unit, provided that such designation is consistent with the ISO's tariffs and this Plan.

### **30.3 NYISO Market Mitigation And Analysis Department**

#### **30.3.1 Establishment**

The ISO shall establish, and provide appropriate staffing and resources for, its internal Market Mitigation and Analysis Department (“MMA”).

#### **30.3.2 Staffing**

The MMA shall be comprised of full-time employees of the ISO having the experience and qualifications necessary to assist the ISO’s efforts to implement its obligations under its Tariffs and under Attachment O, including providing support to the ISO’s external Market Monitoring Unit where and when needed. In carrying out its responsibilities, the MMA, may retain such consultants and other experts as the ISO deems appropriate to the effective implementation of Attachment O, subject to the management oversight of the Chief Executive Officer (“CEO”) or the CEO’s designee, the Chief Operating Officer (“COO”). Such consultants or other experts shall comply with applicable ISO policies on conflicts of interest or other standards of conduct.

#### **30.3.3 Duties of MMA**

The MMA shall not be responsible for carrying out any of the Core Functions. Rather, the MMA is responsible for working collaboratively with the Market Monitoring Unit and other ISO departments to assist the ISO’s efforts to carry out its Tariff responsibilities, including the ISO’s obligation to provide adequate data and support to its Market Monitoring Unit. The MMA’s duties shall include: (1) administering mitigation in accordance with the ISO’s Tariffs, which will include performing daily monitoring of the ISO’s markets to identify potential violations of the Market Mitigation Measures, (2) assisting the ISO’s efforts to accurately and effectively implement the requirements of its Tariffs and its intended market design,

(3) responding to information and data requests the ISO receives from the FERC's Office of Enforcement staff and from the staff of the New York Department of Public Service, consistent with the provisions of Attachment O, the ISO's Code of Conduct, and any other provisions of the ISO's Tariffs that address the protection of Protected Information, (4) providing data and other assistance to support the Market Monitoring Unit, (5) working collaboratively with other ISO departments to analyze market outcomes, and (6) bringing to the Market Monitoring Unit's attention market-related concerns (including, but not limited to, possible Market Violations) it identifies while carrying out its responsibilities; and (7) participate in and review the ISO's development, implementation and administration of RMR Agreements and associated tariff provisions.

#### **30.3.4 Accountability**

The MMA shall act at the direction of the CEO or the CEO's designee, the COO, who shall be accountable for the ISO's implementation of Attachment O.

The CEO or the CEO's designee, the COO, shall ensure that the MMA has adequate employees, funding and other resources, access to required information, and the cooperation of other ISO staff, as necessary for it to perform its duties under Attachment O and under the ISO's Market Mitigation Measures.

## **30.4 Market Monitoring Unit**

### **30.4.1 Mission of the Market Monitoring Unit**

The Market Monitoring Unit's goals are (1) to ensure that the markets administered by the ISO function efficiently and appropriately, and (2) to protect both consumers and participants in the markets administered by the ISO by identifying and reporting Market Violations, market design flaws and market power abuses to the Commission in accordance with Sections 30.4.5.3 and 30.4.5.4 below.

### **30.4.2 Retention and Oversight of the Market Monitoring Unit**

The Board shall retain a consulting or other professional services firm, or other similar entity, to advise it on the matters encompassed by Attachment O and to carry out the responsibilities that are assigned to the Market Monitoring Unit in Attachment O. The Market Monitoring Unit selected by the Board shall have experience and expertise appropriate to the analysis of competitive conditions in markets for electric capacity, energy and ancillary services, and financial instruments such as TCCs, and to such other responsibilities as are assigned to the Market Monitoring Unit under Attachment O, and must also have sufficient resources and personnel to be able to perform the Core Functions and other assigned functions.

The Market Monitoring Unit shall be accountable to the non-management members of the Board, and shall serve at the pleasure of the non-management members of the Board.

### **30.4.3 Market Monitoring Unit Ethics Standards**

The Market Monitoring Unit, including all persons employed thereby, shall comply at all times with the ethics standards set forth below. The Market Monitoring Unit ethics standards set forth below shall apply in place of the standards set forth in the ISO's OATT Attachment F Code

of Conduct, and/or the more general policies and standards that apply to consultants retained by the ISO.

30.4.3.1 The Market Monitoring Unit and its employees must have no material affiliation with any Market Party or Affiliate of any Market Party.

30.4.3.2 The Market Monitoring Unit and its employees must not serve as an officer, employee, or partner of a Market Party.

30.4.3.3 The Market Monitoring Unit and its employees must have no material financial interest in any Market Party or Affiliate of a Market Party. Ownership of mutual funds by Market Monitoring Units and their employees that contain investments in Market Parties or their Affiliates is permitted so long as: (a) the fund is publicly traded; (b) the fund's prospectus does not indicate the objective or practice of concentrating its investment in Market Parties or their Affiliates; and (c) the Market Monitoring Unit/Market Monitoring Unit employee does not exercise or have the ability to exercise control over the financial interests held by the fund.

30.4.3.4 The Market Monitoring Unit and its employees are prohibited from engaging in transactions in the markets administered by the ISO, other than in the performance of duties under the ISO's Tariffs. This provision shall not, however, prevent the Market Monitoring Unit, or its employees, from purchasing electricity, power and Energy as retail customers for their own account and consumption.

30.4.3.5 The Market Monitoring Unit and its employees must not be compensated, other than by the ISO, for any expert witness testimony or other commercial



services, in connection with any legal or regulatory proceeding or commercial transaction relating to the ISO or to the markets that the ISO administers.

30.4.3.6 The Market Monitoring Unit and its employees may not accept anything that is of more than *de minimis* value from a Market Party.

30.4.3.7 The Market Monitoring Unit and its employees must advise the Board in the event they seek employment with a Market Party, and must disqualify themselves from participating in any matter that could have an effect on the financial interests of that Market Party until the outcome of the matter is determined.

30.4.3.8 If the Market Monitoring Unit or any of its employees provide services to entities other than the ISO, the Market Monitoring Unit shall provide to the ISO's Board, and shall regularly update, a list of such entities and services. When the Market Monitoring Unit issues an opinion, report or recommendation to, for or addressing the ISO or the markets it administers that relates to, or could reasonably be expected to affect, an entity (other than the ISO) to which the Market Monitoring Unit or its employees provide services, the Market Monitoring Unit shall inform the ISO's Board of the opinion, report or recommendation it has issued, and that its opinion, report or recommendation relates to, or could reasonably be expected to affect, an entity to which the Market Monitoring Unit or its employees provide services.

#### **30.4.4 Duties of the Market Monitoring Unit**

The Market Monitoring Unit shall advise the Board, shall perform the Core Functions specified in Section 30.4.5 of Attachment O, and shall have such other duties and responsibilities

as are specified in Attachment O. The Market Monitoring Unit may, at any time, bring any matter to the attention of the Board that the Market Monitoring Unit may deem necessary or appropriate for achieving the purposes, objectives and effective implementation of Attachment O.

The Market Monitoring Unit shall not participate in the administration of the ISO's Tariffs, except for performing its duties under Attachment O. The Market Monitoring Unit shall not be responsible for performing purely administrative duties, such as enforcement of late fees or Market Party reporting obligations, that are not specified in Attachment O. The Market Monitoring Unit may (i) provide, or assist the ISO's efforts to develop, the inputs required to conduct mitigation, and (ii) assist the ISO's efforts to conduct "retrospective" mitigation (*see* Order 719 at PP. 369, 375) that does not change bids or offers (including physical bid or offer parameters) at or before the time such bids or offers (including physical bid or offer parameters) are considered in the ISO's market solution.

#### **30.4.5 Core Market Monitoring Functions**

The Market Monitoring Unit shall be responsible for performing the following Core Functions:

30.4.5.1 Evaluate existing and proposed market rules, tariff provisions and market design elements and recommend proposed rule and tariff changes to the ISO, to the Commission's Office of Energy Market Regulation staff, and to other interested entities, including the New York Public Service Commission, and participants in the ISO's stakeholder governance process. Provided that:

30.4.5.1.1 The Market Monitoring Unit is not responsible for systematic review of every tariff and market rule; its role is monitoring, not audit.

- 30.4.5.1.2 The Market Monitoring Unit is not to effectuate its proposed market design itself.
- 30.4.5.1.3 The Market Monitoring Unit's role in recommending proposed rule and Tariff changes is advisory in nature, unless a Tariff provision specifically concerns actions to be undertaken by the Market Monitoring Unit itself.
- 30.4.5.1.4 The Market Monitoring Unit must limit distribution of issues or concerns it identifies, and its recommendations to the ISO and to Commission staff in the event it believes broader dissemination could lead to exploitation. Limited distributions should include an explanation of why further dissemination should be avoided at that time.
- 30.4.5.2 Review and report on the performance of the wholesale markets to the ISO, the Commission, and other interested entities such as the New York Public Service Commission and participants in its stakeholder governance process on at least a quarterly basis, and issue a more comprehensive annual state of the market report. The Market Monitoring Unit may issue additional reports as necessary.
- 30.4.5.2.1 In order to perform the Core Functions, the Market Monitoring Unit shall perform daily monitoring of the markets that the ISO administers. The Market Monitoring Unit's daily monitoring shall include monitoring of virtual bidding.
- 30.4.5.2.2 The Market Monitoring Unit shall submit drafts of each of its reports to the ISO for review and comment sufficiently in advance of the report's issuance to provide an effective opportunity for review and comment by the ISO. The Market Monitoring Unit may disregard any suggestions with which it disagrees. The ISO may not alter the reports prepared by the Market Monitoring Unit, nor

dictate the Market Monitoring Unit's conclusions.

30.4.5.3 Identify and notify the Commission staff of instances in which a Market Party's or the ISO's behavior may require investigation, including, but not limited to, suspected Market Violations.

30.4.5.3.1 Except as provided in Section 30.4.5.3.2 below, in compliance with § 35.28(g)(3)(iv) of the Commission's regulations (or any successor provisions thereto) the Market Monitoring Unit shall submit a non-public referral to the Commission in all instances where it has obtained sufficient credible information to believe a Market Violation has occurred. Once the Market Monitoring Unit has obtained sufficient credible information to warrant referral to the Commission, the Market Monitoring Unit shall immediately refer the matter to the Commission and desist from further investigation of independent action related to the alleged Market Violation, except at the express direction of the Commission or Commission staff. The Market Monitoring Unit may continue to monitor for repeated instances of the reported activity by the same or other entities and shall respond to requests from the Commission for additional information in connection with the alleged Market Violation it has referred.

30.4.5.3.2 The Market Monitoring Unit is not required to refer the actions (or failures to act) listed in this Section 30.4.5.3.2 to the Commission as Market Violations, because they have: (i) already been reported by the ISO as a Market Problem under Section 3.5.1 of the ISO Services Tariff; and/or (ii) because they pertain to actions or failures that: (a) are expressly set forth in the ISO's Tariffs; (b) involve objectively identifiable behavior; and (c) trigger a sanction or other consequence

that is expressly set forth in the ISO Tariffs and that is ultimately appealable to the Commission. The actions (or failures to act) that are exempt from mandatory referral to the Commission are:

- 30.4.5.3.2.1 failure to meet a Contract or Non-Contract CRIS MW Commitment pursuant to Sections 25.7.11.1.1 and 25.7.11.1.2 of Attachment S to the ISO OATT that results in a charge or other a sanction under Section 25.7.11.1.3 of Attachment S of the ISO OATT;
- 30.4.5.3.2.2 Black Start performance that results in reduction or forfeitures of payments under Rate Schedule 5 to the ISO Services Tariff;
- 30.4.5.3.2.3 any failure by the ISO to meet the deadlines for completing System Impact Studies, or any failure by a Transmission Owner to meet the deadlines for completing Facilities Studies, under Sections 3.7 and 4.5 of the ISO OATT that results in the filing of a notice and/or the imposition of sanctions under those provisions;
- 30.4.5.3.2.4 failure of a Market Party to comply with the ISO's creditworthiness requirements set forth in Attachment K of the ISO Services tariff, or other action, that triggers sanctions under Section 7.5 of the ISO Services Tariff or Section 2.7.5 of the ISO OATT, specifically: (i) failure of a Market Party to make timely payment under Section 7.2.2 of the ISO Services Tariff or Section 2.7.3.2 of the ISO OATT that triggers a sanction under Sections 7.5.3(i) or 7.5.3(iv) of the ISO Services Tariff, or Sections 2.7.5.3(i), 2.7.5.3(iv), or 2.7.5.4 of the ISO OATT; (ii) failure of a Market Party to comply with a demand for additional credit support under Section 26.6 of Attachment K of the ISO Services Tariff that triggers a

sanction under Section 7.5.3(i) of the ISO Services Tariff or Section 2.7.5.3(i) of the ISO OATT; (iii) failure of a Market Party to cure a default in another ISO/RTO market under Sections 7.5.3(iii) of the ISO Services Tariff, or Section 2.7.5.3(iii) of the ISO OATT that triggers a sanction under either of those tariff provisions; (iv) failure of a Market Party that has entered into a Prepayment Agreement with the ISO under Appendix K-1 to Attachment K to the ISO Services Tariff to make payment in accordance with the terms of the Prepayment Agreement that triggers a sanction under the Prepayment Agreement or 7.5.3(i) of the ISO Services Tariff; and (v) failure of a Market Party to make timely payment on two occasions within a rolling twelve month period under Section 7.5.3(iv) of the ISO Services Tariff, or Section 2.7.5.3(iv) of the ISO OATT that triggers a sanction under either of those provisions.

30.4.5.3.2.5 bidding in a manner that results in a penalty under Section 23.4.3.3.4 of the Market Mitigation Measures.

30.4.5.3.2.6 submission of inaccurate fuel type information into the Day-Ahead Market that results in a penalty under Section 23.4.3.3.3.3 of the Market Mitigation Measures.

30.4.5.3.2.7 submission of inaccurate fuel type and/or fuel price information into the Real-Time Market that results in a penalty under Section 23.4.3.3.3.4 of the Market Mitigation Measures.

To the extent the above list enumerates specific Tariff provisions, the exclusions specified above shall also apply to re-numbered and/or successor provisions thereto. The Market Monitoring Unit is not precluded from referring any of the activities listed above to the

Commission.

30.4.5.4 Identify and notify the Commission staff of perceived market design flaws that could be effectively remedied by rule or tariff changes.

30.4.5.4.1 In compliance with § 35.28(g)(3)(v) of the Commission's regulations (or any successor provisions thereto) the Market Monitoring Unit shall submit a referral to the Commission when the Market Monitoring Unit has reason to believe that a market design flaw exists, that the Market Monitoring Unit believes could effectively be remedied by rule or tariff changes.

30.4.5.4.1.1 If the Market Monitoring Unit believes broader dissemination of the possible market design flaw, and its recommendation could lead to exploitation, the Market Monitoring Unit shall limit distribution of its referral to the ISO and to the Commission. The referral shall explain why further dissemination should be avoided.

30.4.5.4.1.2 Following referral of a possible market design flaw, the Market Monitoring Unit shall continue to provide to the Commission additional information regarding the perceived market design flaw, its effects on the market, any additional or modified observations concerning the Market Monitoring Unit's proposed market rule or tariff change, any recommendations made by the Market Monitoring Unit to the ISO, its stakeholders, Market Parties or state public service commissions regarding the perceived market design flaw, and any actions taken by the ISO regarding the perceived market design flaw.

### **30.4.6 Market Monitoring Unit Responsibilities Set Forth Elsewhere in the ISO's Tariffs**

#### **30.4.6.1 Supremacy of (Attachment O)**

Provisions addressing the Market Monitoring Unit, its responsibilities and its authority, have been centralized in Attachment O. However, provisions that address the Market Monitoring Unit can also be found in the Market Mitigation Measures that are set forth in Attachment H to the ISO Services Tariff, and elsewhere in the ISO's Tariffs. In the event of any inconsistency between the provisions of Attachment O and any other provision of the ISO OATT, the ISO Services Tariff, or any of their attachments and schedules, with regard to the Market Monitoring Unit, its responsibilities and its authority, the provisions of Attachment O shall control.

#### **30.4.6.2 Market Monitoring Unit responsibilities set forth in the Market Mitigation Measures**

30.4.6.2.1 The ISO and its Market Monitoring Unit shall monitor the markets the ISO administers for conduct that the ISO or the Market Monitoring Unit determine constitutes an abuse of market power but that does not trigger the thresholds specified in the Market Mitigation Measures for the imposition of mitigation measures by the ISO. If the ISO identifies or is made aware of any such conduct, and in particular conduct exceeding the thresholds for presumptive market effects specified in Section 23.3.2.3 of the Market Mitigation Measures, it shall make a filing under § 205 of the Federal Power Act, 16 U.S.C. § 824d (1999) ("§ 205") with the Commission requesting authorization to apply appropriate mitigation measures. Any such filing shall identify the particular conduct the ISO believes warrants mitigation, shall propose a specific mitigation



measure for the conduct, shall incorporate or address the recommendation of its Market Monitoring Unit, and shall set forth the ISO's justification for imposing that mitigation measure. The Market Monitoring Unit's reporting obligations are specified in Sections 30.4.5.3 and 30.4.5.4 of Attachment O. *See* Market Mitigation Measures Section 23.1.2.

30.4.6.2.2 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. *See* Market Mitigation Measures Section 23.2.4.4.

30.4.6.2.3 If (i) the ISO determines, following consultation with the Market Party and review by the Market Monitoring Unit, that the Market Party or its representative has, over a time period of at least one week, submitted inaccurate fuel type or fuel price information that was, taken as a whole, biased in the Market Party's favor, *then* the ISO shall cease using the fuel type and fuel price information submitted to the ISO's Market Information System along with the Generator's Bid(s) to develop reference levels for the affected Generator(s) in the relevant (Day-Ahead or real-time) market for the durations specified in Sections 23.3.1.4.6.8.1, 23.3.1.4.6.8.2, and 23.3.1.4.6.8.3 of the Mitigation Measures. *See* Section 23.3.1.4.6.8 of the Market Mitigation Measures

30.4.6.2.4 When it has the capability to do so, the ISO shall determine the effect on prices or guarantee payments of questioned conduct through the use of sensitivity analyses performed using the ISO's SCUC, RTC and RTD computer models, and

such other computer modeling or analytic methods as the ISO shall deem appropriate following consultation with its Market Monitoring Unit. *See* Market Mitigation Measures Section 23.3.2.2.1.

30.4.6.2.5 Pending development of the capability to use automated market models, the ISO, following consultation with its Market Monitoring Unit, shall determine the effect on prices or guarantee payments of questioned conduct using the best available data and such models and methods as they shall deem appropriate. *See* Market Mitigation Measures Section 23.3.2.2.2.

30.4.6.2.6 If through the application of an appropriate index or screen or other monitoring of market conditions, conduct is identified that (i) exceeds an applicable threshold, and (ii) has a material effect, as specified above, on one or more prices or guarantee payments in an ISO Administered Market, the ISO shall, as and to the extent specified in Attachment O or in Section 23.3.3.2 of the Market Mitigation Measures, contact the Market Party engaging in the identified conduct to request an explanation of the conduct. If a Market Party anticipates submitting bids in a market administered by the ISO that will exceed the thresholds specified in Section 23.3.1 of the Market Mitigation Measures for identifying conduct inconsistent with competition, the Market Party may contact the ISO to provide an explanation of any legitimate basis for any such changes in the Market Party's bids. If a Market Party's explanation of the reasons for its bidding indicates to the satisfaction of the ISO that the questioned conduct is consistent with competitive behavior, no further action will be taken. Market Parties shall ensure that the information they submit to the ISO, including but not

limited to fuel price and fuel type information, is accurate. Except as set forth in Section 23.3.1.4.6.7 of the Market Mitigation Measures, the ISO may not retroactively revise a reference level to reflect additional fuel costs if a Market Party or its representative did not timely submit accurate fuel cost information. Unsupported speculation by a Market Party does not present a valid basis for the ISO to determine that Bids that a Market Party submitted are consistent with competitive behavior, or to determine that submitted costs are appropriate for inclusion in the ISO's development of reference levels. Consistent with Sections 30.6.2.2 and 30.6.3.2 of the Plan, the Market Party shall retain the documents and information supporting its Bids and the costs it proposes to include in reference levels. A preliminary determination by the ISO shall be provided to the Market Monitoring Unit for its review and comment, and the ISO shall consider the Market Monitoring Unit's recommendations before the ISO issues its decision or determination to the Market Party. Upon request, the ISO shall consult with a Market Party or its representative with respect to the information and analysis used to determine reference levels under Section 23.3.1.4 of the Market Mitigation Measures for that Market Party's Generator(s). If cost data or other information submitted by a Market Party indicates to the satisfaction of the ISO that the reference levels for that Market Party's Generator(s) should be changed, revised reference levels shall be proposed by the ISO, communicated to the Market Monitoring Unit for its review and comment and, following the ISO's consideration of any recommendation that the Market Monitoring Unit is able to timely provide, communicated to the Market Party, and implemented by the ISO

as soon as practicable. Changes to reference levels addressed pursuant to the terms of Section 23.3.3.1.4 of the Market Mitigation Measures shall be implemented on a going-forward basis commencing no earlier than the date that the Market Party's consultation request is received. *See* Market Mitigation Measures Sections 23.3.3.1.1 through 23.3.3.1.5.

30.4.6.2.7 With regard to a Market Party's request for consultation that satisfies the requirements of Sections 23.3.3.3.1.4 and 23.3.3.3.1.7 of the Market Mitigation Measures, and consistent with the duties assigned to the ISO in Section 23.3.3.3.1.7.1 of the Market Mitigation Measures, a preliminary determination by the ISO regarding the Market Party's consultation request shall be provided to the Market Monitoring Unit for its review and the ISO shall consider the Market Monitoring Unit's recommendations in reaching its decision. *See* Market Mitigation Measures Section 23.3.3.3.1.7.1 and 23.3.3.3.1.7.2.

30.4.6.2.8 Review pursuant to Market Mitigation Measures Section 23.4.5.4.3

(a) Reasonably in advance of the deadline for submitting offers in an External Reconfiguration Market and in accordance with the deadlines specified in ISO Procedures, the Responsible Market Party for External Sale UCAP may request the ISO to provide a projection of ICAP Spot Auction clearing prices for a Mitigated Capacity Zone over the Comparison Period for the External Reconfiguration Market. Prior to completing its projection of ICAP Spot Auction clearing prices for a Mitigated Capacity Zone over the Comparison Period for the External Reconfiguration Market, the ISO shall consult with the Market Monitoring Unit regarding such price projection. *See* Market Mitigation

Measures Section 23.4.5.4.3(a).

- (b) At least fifteen Business Days in advance of the opening of the ICAP Spot Market Auction, the Responsible Market Party for a Behind-the-Meter Net Generation Resource may request the ISO to make a determination regarding physical withholding that the sale of Net Unforced Capacity in a Mitigated Capacity Zone to its Host Load does not constitute physical withholding. Prior to reaching its decision on such a request, the ISO shall provide its preliminary determination to the Market Monitoring Unit for review and comment. *See* Market Mitigation Measures Section 23.4.5.4.3(b).

30.4.6.2.9 Prior to reaching its decision regarding whether the presumption of control of Unforced Capacity has been rebutted, the ISO shall provide its preliminary determination to the Market Monitoring Unit for review and comment. *See* Market Mitigation Measures Section 23.4.5.5.

30.4.6.2.10 Any proposal or decision by a Market Participant to retire or otherwise remove an Installed Capacity Supplier from a Mitigated Capacity Zone Unforced Capacity market, or to de-rate the amount of Installed Capacity available from such supplier, may be subject to audit and review by the ISO if the ISO determines that such action could reasonably be expected to affect Market-Clearing Prices in one or more ICAP Spot Market Auctions for a Mitigated Capacity Zone subsequent to such action; provided, however, no audit and review shall be necessary if the Installed Capacity Supplier is a Generator that is being retired or removed from a Mitigated Capacity Zone as the result of a Forced Outage that began on or after the effective date of the amendments to Section

23.4.5.6.1 of this Services Tariff that was determined by the ISO to be a Catastrophic Failure.

The ISO's audit or review of any proposal or decision by a Market Participant to retire or otherwise remove an Installed Capacity Supplier from a Mitigated Capacity Zone Unforced Capacity market, or to de-rate the amount of Installed Capacity available from such supplier (including a review the ISO conducts at the request of a Market Participant before it submits a proposal or makes a decision or a review the NYISO conducts in conjunction with the Short-Term Reliability Process), will consider the rationale offered by the Market Participant to support its proposal or decision. Such an audit or review shall assess whether the Market Participant's proposal or decision has a legitimate economic justification, which may include the economics of complying with regulatory requirements, or is based on an effort to withhold Installed Capacity physically in order to affect prices. The ISO's audit or review is conducted based on the expectation that a Market Participant's decision to retire or otherwise remove an Installed Capacity Supplier from a Mitigated Capacity Zone, or to de-rate the amount of Installed Capacity available from such supplier, accounts for the information available to that Market Participant at (or before) the time its decision is made on the "decision date" (*see, e.g.*, Sections 23.4.5.6.4.2.1 and 23.4.5.6.4.2.2.1 of this Services Tariff) specified by the Market Participant. A Market Participant may offer publicly available information and other information available to the Market Participant to support its proposal or decision.

The ISO shall provide the preliminary results of its audit or review to the

Market Monitoring Unit for its review and comment. *See* Market Mitigation Measures Section 23.4.5.6.

30.4.6.2.11 Any reclassification of a an Installed Capacity Supplier that is a Generator in a Mitigated Capacity Zone from a Forced Outage that began on or after the effective date of Section 23.4.5.6.2 of this Services Tariff to an ICAP Ineligible Forced Outage by a Market Participant or otherwise, pursuant to the terms of Section 5.18.2.1 of this Services Tariff, may be subject to audit and review by the ISO if the ISO determines that such reclassification could reasonably be expected to affect the Market-Clearing Price in one or more ICAP Spot Market Auctions for a Mitigated Capacity Zone in which the Generator(s) that is the subject of the reclassification is located, subsequent to such action; provided, however, if the Market Participant's Generator experienced the Forced Outage as a result of a Catastrophic Failure, the reclassification of a Generator in a Mitigated Capacity Zone from a Forced Outage to an ICAP Ineligible Forced Outage shall not be subject to audit and review pursuant to Section 23.4.5.6.2 of this Services Tariff.

The audit and review pursuant to the above paragraph shall assess whether the reclassification of the Generator in a Mitigated Capacity Zone from a Forced Outage to an ICAP Ineligible Forced Outage had a legitimate economic justification or is based on an effort to withhold Installed Capacity physically in order to affect prices. A Market Participant may offer publicly available information and other information available to the Market Participant to justify the reclassification.

The ISO shall provide the preliminary results of its audit or review to the

Market Monitoring Unit for its review and comment.

The audit and review pursuant to Section 23.4.5.6.2.1 of this Services Tariff shall be deferred by the ISO beyond the time period established in ISO Procedures for the audit and review until the ISO's receipt of data pursuant to Section 23.4.5.6.2.2 if the Generator was in a Forced Outage for at least 180 days before the reclassification and one or more Exceptional Circumstances delayed the acquisition of data necessary for the ISO's audit and review. If, at the time the ISO acquires the necessary data, the Market Participant has Commenced Repair of the Generator, or the Generator is determined by the ISO to have had a Catastrophic Failure, the Market Participant shall not be subject to an audit and review pursuant to Section 23.4.5.6.2.1 of this Services Tariff. The ISO shall provide the preliminary results of its audit or review to the Market Monitoring Unit for its review and comment.

30.4.6.2.12 The ISO shall consult with the Market Monitoring Unit when it is determining pursuant to Section 23.4.5.6.4.2.2 of this Services Tariff whether there is a point in the process of deactivating a Generator after which the deactivation process will become, essentially and practicably, irreversible.

30.4.6.2.13 When evaluating an Examined Facility or NCZ Examined Project pursuant to Section 23.4.5.7 of the Market Mitigation Measures, the ISO shall seek comment from the Market Monitoring Unit on matters relating to the determination of price projections, cost calculations, and the methodology the ISO will use to project net Energy and Ancillary Services for each UDR project, and the inputs used to perform the calculation the ISO's draft list of recommended



Exempt Renewable Technologies and the basis for the recommendation; requests pursuant to Section 23.4.5.7.14.1.2(e)(C) regarding whether a “contract” (as defined in Section 23.4.5.7.14.2(e) would make it ineligible to obtain or (if previously granted) retain a Self Supply Exemption. As required by Section 23.4.5.7 of Attachment H to this Services Tariff, the Market Monitoring Unit shall prepare a written report discussing factors that affect the ISO’s mitigation exemption and Offer Floor determinations, and confirming whether the ISO’s Offer Floor and exemption determinations and calculations conducted pursuant to Sections 23.4.5.7.2 and 23.4.5.7.6, the NYISO’s determination of eligible or ineligible for an exemption pursuant to Section 23.4.5.7.9, 23.4.5.7.13, and 23.4.5.7.14 were conducted in accordance with the terms of the Services Tariff, and if not, identifying the flaws inherent in the ISO’s approach. This report shall be presented concurrent with the ISO’s posting of its mitigation exemption and Offer Floor determinations. Pursuant to Section 23.4.5.7.8 of the Market Mitigation Measures, the ISO shall also consult with the Market Monitoring Unit when evaluating whether any existing or proposed Generator or UDR project in a Mitigated Capacity Zone, except New York City, has Commenced Construction, and determinations of whether it shall be exempted from an Offer Floor under that Section. Prior to the ISO making an exemption determination pursuant to Section 23.4.5.7.8, the Market Monitoring Unit shall provide the ISO a written opinion and recommendation. The Market Monitoring Unit shall also provide a public report on its assessment of an ISO determination that an existing or proposed Generator or UDR project is exempt from an Offer Floor under Section

23.4.5.7.8. *See* Market Mitigation Measures Section 23.4.5.7.

30.4.6.2.14 RMR Generator Energy and Ancillary Service Market Participation Rules.

If a new operating constraint arises while a Generator that is required to comply with the bidding requirements in Section 30.6 of the ISO Services Tariff is an Interim Service Provider that prevents the Market Party from offering all or a portion of the Generator's capability via an ISO-committed flexible Bid, the Market Party shall promptly inform the ISO of the change, shall provide all documentation requested by the ISO or by the Market Monitoring Unit, and shall permit the ISO and/or the Market Monitoring Unit to inspect the affected Generator (including all requested plant records) on five days prior notice. *See* Market Mitigation Measures Section 23.6.1.1.3.

The ISO, in consultation with the Market Monitoring Unit, may review and update an Interim Service Provider's reference levels. The Generator Owner may propose updates to its Interim Service Provider's reference levels. The ISO shall make the ultimate determination with regard to each reference level. *See* Market Mitigation Measures Section 23.6.2.2.

In advance of the execution of an RMR Agreement, the ISO, in consultation with the Market Monitoring Unit and the Generator Owner, shall review and update the reference levels for each affected Generator. The ISO shall make the ultimate determination with regard to each reference level. *See* Market Mitigation Measures Section 23.6.2.3.

If a possible RMR Generator or Interim Service Provider faces operational constraints the ISO, in consultation with the Market Monitoring Unit and the

Generator Owner, will develop reference levels that will permit the Generator to operate consistent with the identified constraints, while ensuring that the Generator will be available (a) to resolve the Reliability Need the Generator is being retained to address, and (b) for economic commitment when appropriate. *See* Market Mitigation Measures Section 23.6.2.3.1.

If a physical change to the RMR Generator occurs that alters the RMR Generator's capabilities (*e.g.*, damage to the generator or Capital Expenditures that alter an RMR Generator's capabilities), then the ISO shall determine revised reference levels in consultation with the Market Monitoring Unit and the Generator Owner. *See* Market Mitigation Measures Section 23.6.2.4.4.

The ISO and the Generator Owner, in consultation with the Market Monitoring Unit, may mutually agree to a reference level change that they expect will better reflect an RMR Generator's actual operating characteristics or variable costs. *See* Market Mitigation Measures Section 23.6.2.4.5.

### **30.4.6.3 Market Monitoring Unit responsibilities set forth in the ISO Services Tariff**

30.4.6.3.1 The ICAP Demand Curve periodic review schedule and procedures shall provide an opportunity for the Market Monitoring Unit to review and comment on the draft request for proposals, the independent consultant's report, and the ISO's proposed ICAP Demand Curves. *See* ISO Services Tariff Sections 5.14.1.2.1.5 and 5.14.1.2.2.4.5.

30.4.6.3.2 The new capacity zone periodic review shall provide an opportunity for the Market Monitoring Unit to review and comment on the NCZ Study, and any proposed NCZ tariff revisions. *See* ISO Services Tariff Sections 5.16.1.3 and

5.16.4.

**30.4.6.4 Market Monitoring Unit responsibilities set forth in the Rate Schedules to the ISO Services Tariff.**

**30.4.6.4.1 Responsibilities related to the Regulation Service Demand Curve**

In order to respond to operational or reliability problems that arise in real-time, the ISO may procure Regulation Service at a quantity and/or price point different than those specified in Section 15.3.7 of Rate Schedule 3 to the ISO Services Tariff. The ISO shall post a notice of any such purchase as soon as reasonably possible and shall report on the reasons for such purchases at the next meeting of its Business Issues Committee. The ISO shall also immediately initiate an investigation to determine whether it is necessary to modify the quantity and price points specified above to avoid future operational or reliability problems. The ISO will consult with its Market Monitoring Unit when it conducts this investigation.

If the ISO determines that it is necessary to modify the quantity and/or price points specified above in order to avoid future operational or reliability problems it may temporarily modify them for a period of up to 90 days. If circumstances reasonably allow, the ISO will consult with its Market Monitoring Unit, the Business Issues Committee, the Commission, and the PSC before implementing any such modification. In all circumstances, the ISO will consult with those entities as soon as reasonably possible after implementing a temporary modification.

After the first year the Regulation Service Demand Curve is in place, the ISO shall perform periodic reviews, subject to the scope requirement specified in Section 15.3.7 of Rate Schedule 3 to the ISO Services Tariff, and the Market Monitoring Unit shall be given the opportunity to review and comment on the ISO's periodic reviews of the Regulation Service Demand Curve. *See* Section 15.3.7 of Rate Schedule 3 to the ISO Services Tariff.

#### **30.4.6.4.2 Responsibilities related to the Operating Reserves Demand Curves and Scarcity Reserve Demand Curve**

In order to respond to operational or reliability problems that arise in real-time, the ISO may procure any Operating Reserve product at a quantity and/or price point different than those specified in Section 15.4.7 of Rate Schedule 4 to the ISO Services Tariff. The ISO shall post a notice of any such purchase as soon as reasonably possible and shall report on the reasons for such purchases at the next meeting of its Business Issues Committee. The ISO shall also immediately initiate an investigation to determine whether it is necessary to modify the quantity and price points specified above to avoid future operational or reliability problems. The ISO will consult with its Market Monitoring Unit when it conducts this investigation.

If the ISO determines that it is necessary to modify the quantity and/or price points specified in Section 15.4.7 of Rate Schedule 4 to the ISO Services Tariff in order to avoid future operational or reliability problems it may temporarily modify them for a period of up to 90 days. If circumstances reasonably allow, the ISO will consult with its Market Monitoring Unit, the Business Issues Committee, the Commission, and the PSC before implementing any such modification. In all circumstances, the ISO will consult with those entities as soon as reasonably possible after implementing a temporary modification.

After the first year the Operating Reserves Demand Curves are in place, the ISO shall perform periodic reviews, subject to the scope requirement specified in Section 15.4.7 of Rate Schedule 4 to the ISO Services Tariff, and the Market Monitoring Unit shall be given the opportunity to review and comment on the ISO's periodic reviews of the Operating Reserve Demand Curves and Scarcity Reserve Demand Curve. *See* Section 15.4.7 of Rate Schedule 4 to the ISO Services Tariff.

### **30.4.6.5 Market Monitoring Unit responsibilities set forth in the Attachments to the ISO Services Tariff (other than the Market Mitigation Measures).**

#### **30.4.6.5.1 Responsibilities related to Transmission Shortage Cost**

The ISO may periodically evaluate the Transmission Shortage Cost to determine whether it is necessary to modify the Transmission Shortage Cost to avoid future operational or reliability problems. The ISO will consult with its Market Monitoring Unit after it conducts this evaluation.

If the ISO determines that it is necessary to modify the Transmission Shortage Cost in order to avoid future operational or reliability problems the resolution of which would otherwise require recurring operator intervention outside normal market scheduling procedures, in order to avoid among other reliability issues, a violation of NERC Interconnection Reliability Operating Limits or System Operating Limits, it may temporarily modify it for a period of up to 90 days, provided however the ISO shall file such change with the Commission pursuant to § 205 of the Federal Power Act within 45 days of such modification. If circumstances reasonably allow, the ISO will consult with its Market Monitoring Unit, the Business Issues Committee, the Commission, and the PSC before implementing any such modification. In all circumstances, the ISO will consult with those entities as soon as reasonably possible after implementing a temporary modification and shall explain the reasons for the change. *See* Section 17.1.4 of Attachment B to the ISO Services Tariff.

**30.4.6.6 Market Monitoring Unit responsibilities set forth in the ISO OATT**

**30.4.6.7 Market Monitoring Unit responsibilities set forth in the Rate Schedules to the ISO OATT**

**30.4.6.8 Market Monitoring Unit responsibilities set forth in the Attachments to the ISO OATT**

**30.4.6.8.1 Responsibilities related to implementing new scheduling path prohibitions**

If the ISO, acting in consultation with its Market Monitoring Unit, identifies transmission scheduling paths that are being used to schedule External Transactions in a manner that is not consistent with the manner in which power is actually expected to flow, the ISO may submit a compliance filing in FERC Docket No. ER13-780 proposing to expand the list of prohibited scheduling paths included in Section 16.3.3.8 of the ISO OATT. The ISO's compliance filing will include, or be accompanied by, a discussion of the Market Monitoring Unit's position regarding the ISO's proposal to add a new prohibited scheduling path or new prohibited scheduling paths. The Market Monitoring Unit's position may be explained in the ISO's filing letter, be set forth in an accompanying affidavit, or be submitted by the Market Monitoring Unit as a companion filing or as comments on the ISO's compliance filing in Docket No. ER13-780. *See* Section 16.3.3.8 of Attachment J to the ISO OATT.

**30.4.6.8.2 Responsibilities related to the draft Reliability Needs Assessment**

Following the Management Committee vote, the draft Reliability Needs Assessment (RNA), with working group, Operating Committee, and Management Committee input, will be forwarded to the ISO Board for review and action. Concurrently, the draft RNA will be provided to the Market Monitoring Unit for its review and consideration of whether market rules changes are necessary to address an identified failure, if any, in one of the ISO's competitive markets. *See* Section 31.2.3.2 of Attachment Y to the ISO OATT.

#### **30.4.6.8.3 Responsibilities related to the draft Comprehensive Reliability Plan**

Following the Management Committee vote, the draft Comprehensive Reliability Plan (CRP), with working group, Operating Committee, and Management Committee input, will be forwarded to the ISO Board for review and action. Concurrently, the draft CRP will also be provided to the Market Monitoring Unit for its review and consideration of whether market rule changes are necessary to address an identified failure, if any, in one of the ISO's competitive markets. *See* Section 31.2.7.2 of Attachment Y to the ISO OATT.

#### **30.4.6.8.4 Responsibilities related to the draft System & Resource Outlook**

Following the Management Committee vote, the draft System & Resource Outlook, with Business Issues Committee and Management Committee input, will be forwarded to the ISO Board for review and action. Concurrently, the draft System & Resource Outlook will be provided to the Market Monitoring Unit for its review and consideration. *See* Section 31.3.1.8.2 of Attachment Y to the ISO OATT.

#### **30.4.6.8.5 Responsibilities related to the draft Public Policy Transmission Planning Report**

The ISO will provide the draft Public Policy Transmission Planning Report to the Market Monitoring Unit for its review and consideration of any impact on the ISO-administered markets of regulated transmission solutions proposed to satisfy a Public Policy Transmission Need. *See* Sections 31.4.9 and 31.4.10.1 of Attachment Y to the ISO OATT. The Market Monitoring Unit's evaluation will be provided to the Management Committee before the Management Committee's advisory vote. *See* Section 31.4.10.1 of Attachment Y. Following the Management Committee vote, the draft Public Policy Transmission Planning Report, with Business Issues Committee and Management Committee input, will be forwarded to the ISO Board for review



and action. Concurrent with the submission to the ISO Board of the draft Public Policy Transmission Planning Report, the Market Monitoring Unit's evaluation will be provided to the ISO Board. *See* Section 31.4.7 of Attachment Y to the ISO OATT.

#### **30.4.6.8.6 Responsibilities Related to Market Monitoring Unit Review of Reliability Must Run Costs and RMR Avoidable Cost Determinations**

The ISO shall seek comments from the Market Monitoring Unit on matters relating to the inputs and the calculations the ISO performed pursuant to Section 38.8 of Attachment FF of the ISO OATT. *See* Section 38.8.2 of Attachment FF of the ISO OATT.

The ISO shall seek comments from the Market Monitoring Unit on its review of Proposed Additional Costs and its determinations of Substantiated Additional Costs under Section 38.16 of Attachment FF of the ISO OATT. *See* Section 38.16.2.2 of Attachment FF of the ISO OATT.

Concurrent with the ISO or a Generator filing with the Commission an RMR Agreement pursuant to Sections 38.11.3, 38.11.4 or 38.11.5 of Attachment FF to the ISO OATT, the Market Monitoring Unit shall publish a report. The report shall review the ISO's determination of the highest net present value offer (or more than one offer) to provide RMR service in accordance with Sections 38.8, 38.9 and 38.10 of Attachment FF to the ISO OATT. In the event that cost alone did not provide for a clear delineation between two or more RMR Service Offers, the report shall also review the ISO's consideration of the Generator Owner's proposed changes to the *Form of Reliability Must Run Agreement* and the operational, performance and market impacts, and the size of the Generators. If the RMR Agreement contains RMR Avoidable Costs and an Availability and Performance Rate, the report shall also review the inputs to, and ISO's calculation of, the RMR Avoidable Costs and the Availability and Performance Rate. *See* Section 38.18.3 of Attachment FF to the ISO OATT.

**30.4.6.9 Market Monitoring Unit responsibilities set forth in other documents that have been formally filed with the Commission**

**30.4.6.10 Market Monitoring Unit responsibilities set forth in the Form of Reliability Must Run Agreement, Appendix C to Attachment FF of the ISO OATT**

The ISO and the Market Monitoring Unit shall monitor deviations from each RMR Generator's historic planned outage schedules. Owner shall promptly respond to ISO and Market Monitoring Unit requests for explanations, information and data regarding or supporting outage schedules. *See Section 7.1.3 of the Form of Reliability Must Run Agreement.*

The ISO and the Market Monitoring Unit shall monitor deviations from each RMR Generator's historic forced outage rate. Owner shall promptly respond to ISO and Market Monitoring Unit requests for explanations, information and data regarding or supporting forced outages, including the time required to return from a Forced Outage. *See Section 7.2.2 of the Form of Reliability Must Run Agreement.*

**30.4.6.11 Additional Market Monitoring Unit responsibilities related to Reliability Must Run Agreements**

The Market Monitoring Unit shall review any Owner-Developed Rate that is filed with the Commission as described in Section 4.5 of the *Form of Reliability Must Run Agreement*. The Market Monitoring Unit shall intervene and participate in Commission proceedings concerning such filings. It shall submit, as appropriate, comments or a protest in such a proceeding describing its review and informing the Commission of whether it has found a proposed Owner Developed Rate to be consistent with, or in excess of, an RMR Generator's full cost of service. The Market Monitoring Unit shall also inform the Commission of whether: (i) it believes the proposed Owner Developed Rate, including its terms and conditions of service, is or is not just and reasonable; and (ii) it has any other concerns with the proposed Owner Developed Rate.

### **30.4.7 Availability of Data and Resources to Market Monitoring Unit**

- 30.4.7.1 The ISO shall ensure that the Market Monitoring Unit has sufficient access to ISO resources, personnel and market data to enable the Market Monitoring Unit to carry out its functions under Attachment O. Consistent with Section 30.6.1 of Attachment O, the Market Monitoring Unit shall have complete access to the ISO's databases of market information.
- 30.4.7.2 Any data created by the Market Monitoring Unit, including but not limited to reconfiguration of the ISO's data, will be kept within the exclusive control of the Market Monitoring Unit. The Market Monitoring Unit may share the data it creates, subject to the limitations on distribution of and obligation to protect the confidentiality of Protected Information that are contained in Attachment O, the ISO Services Tariff, and the ISO's Code of Conduct.
- 30.4.7.3 Where data outside the ISO's geographic footprint would be helpful to the Market Monitoring Unit in carrying out its duties, the Market Monitoring Unit should seek out that data (with assistance from the ISO, where appropriate).

## **30.5 Monitoring Implementation And Responsibilities**

### **30.5.1 Monitoring Methods, Procedures and Resources**

#### **30.5.1.1 Adequacy**

The Market Monitoring Unit and MMA shall develop and implement methods, procedures, staffing and other resources for achieving the purposes and objectives of Attachment O. Such methods, procedures, staffing and other resources shall be appropriate to realizing the purposes and objectives and effective implementation of Attachment O, and shall be subject to review, modification and approval by the ISO's CEO or the CEO's designee, the COO, where the measures involve the MMA, or by the ISO's Board, where the measures involve the Market Monitoring Unit.

#### **30.5.1.2 Conditions, Functions or Actions Monitored**

The monitoring methods, procedures, staffing and other resources shall ensure, to the extent practicable, that the Market Monitoring Unit and the ISO (consistent with the division of duties specified above) are able to achieve the purposes and objectives of Attachment O through review and analysis of conditions, functions or actions affecting the competitiveness, economic efficiency and proper operation of any of the New York Electric Markets, including but not limited to the following, as and to the extent each may be deemed relevant to the purposes and objectives of Attachment O by the Market Monitoring Unit or by the ISO:

30.5.1.2.1 The nature, extent and causes of any undue concentration in the ownership or control of generation or other facilities in or affecting any of the New York Electric Markets;

30.5.1.2.2 Any evidence of or other information relating to collusive or other anticompetitive or inefficient behavior in or affecting any of the New York

Electric Markets;

30.5.1.2.3 The bids or offers submitted to each of the New York Electric Markets administered by the ISO, the evaluation of those bids or offers, and as appropriate the relationship of those bids or offers to marginal or other costs;

30.5.1.2.4 Schedules submitted to the ISO for bilateral or other transactions;

30.5.1.2.5 Unit commitment and dispatch in the New York Control Area;

30.5.1.2.6 The determination and level of LBMPs or other prices in the New York Electric Markets;

30.5.1.2.7 The provision of transmission services in the New York Control Area, including but not limited to auctions and other markets for TCCs;

30.5.1.2.8 The nature and extent, causes of, and costs of and charges for, transmission congestion on the New York State Transmission System or, to the extent practicable, transmission congestion on any other system that affects any of the New York Electric Markets;

30.5.1.2.9 Competitive or other market impacts of tariffs and agreements, or other rules, standards or procedures, governing or affecting any of the New York Electric Markets;

30.5.1.2.10 The need for and the implementation and efficacy of market power mitigation or other remedial measures for competitive or other market defects, including mitigation measures implemented in accordance with the provisions of Attachment O or other mitigation measures that the FERC has authorized or directed the ISO to implement;

30.5.1.2.11 The need for and the implementation and efficacy of appropriate sanctions

or other remedial measures for violations of or other failures to comply with any tariff or services agreement, or any rule, standard or procedure, or any market power mitigation or other remedial measure, to the extent such violation or failure to comply impairs or threatens to impair the competitiveness or economic efficiency of any of the New York Electric Markets;

30.5.1.2.12 To the extent practicable, conditions or events outside the New York Control Area affecting the supply and demand for, and the quantity and price of, products or services sold or to be sold in any of the New York Electric Markets; and

30.5.1.2.13 Such other conditions, functions or actions as may be approved by the CEO or the CEO's designee, the COO, or by the Board (as appropriate).

### **30.5.3 Legal Advice**

The Market Monitoring Unit and MMA may consult legal counsel for the ISO for advice on antitrust, regulatory or other legal issues pertinent to Attachment O.

## **30.6 Data Collection and Disclosure**

### **30.6.1 Access to ISO Data and Information**

For purposes of carrying out their responsibilities under Attachment O, the Market Monitoring Unit and MMA shall have access to, and shall endeavor primarily to rely upon (but shall not be limited to), data or other information gathered or generated by the ISO in the course of its operations. This data and information shall include, but not be limited to, data or information gathered or generated by the ISO in connection with its scheduling, commitment and dispatch of generation, its determination of Locational Based Marginal Pricing, its operation or administration of the New York State Transmission System, and data or other information produced by, or required to be provided to the ISO under its Tariffs, the New York Independent System Operator Agreement, the New York State Reliability Council Agreement, or any other relevant tariffs or agreements.

### **30.6.2 Data from Market Parties**

#### **30.6.2.1 Data Requests**

If the Market Monitoring Unit or MMA, determines that additional data or other information is required to accomplish the objectives of Attachment O or of the Market Mitigation Measures, the ISO may request the persons or entities possessing, having access to, or having the ability to generate or produce such data or other information to furnish it to the ISO or to its Market Monitoring Unit. Any such request shall be accompanied by an explanation of the need for such data or other information, a specification of the form or format in which the data is to be produced, and an acknowledgment of the obligation of the ISO and its Market Monitoring Unit to maintain the confidentiality of data or information appropriately designated as Protected Information by the party producing it.

A party receiving an information request from the ISO shall furnish all information, in the requested form or format, that is: (i) included on the below list of categories of data or information that it may routinely request from a Market Party; or (ii) reasonably necessary to achieve the purposes or objectives of Attachment O, not readily available from some other source that is more convenient, less burdensome and less expensive, and not subject to an attorney-client or other generally recognized evidentiary doctrine of confidentiality or privilege.

The categories data or information that may be routinely requested shall be limited to data or information the routine provision of which would not be unduly burdensome or expensive, and which has been reasonably determined by the ISO, in consultation with its Market Monitoring Unit, to be likely to be relevant to the purposes and objectives of Attachment O or the Market Mitigation Measures.

### **30.6.2.2 Categories of Data the ISO May Request from Market Parties**

The following categories of data or information may be obtained by the ISO from Market Parties in accordance with Attachment O. Market Parties shall retain the following categories of data or information for the period specified in Section 30.6.3 of Attachment O.

30.6.2.2.1 Production costs – Data or information relating to the costs or operating a specified Electric Facility (for generating units such data or information shall include, but not be limited to, heat rates, start-up fuel requirements, fuel purchase costs, and operating and maintenance expenses) or data or information relating to the costs of providing load reductions from a specified facility participating as a Demand Side Resource in the ISO Operating Reserves or Regulation Service markets.



30.6.2.2.2 Opportunity costs – Data or information relating to a claim of opportunity costs, including, but not limited to, contracts or price quotes.

30.6.2.2.3 Logs – Data or information relating to the operating status of an Electric Facility, including, for generating units, generator logs showing the generating status of a specified unit or data or information relating to the operating status of a specified facility participating as a Demand Side Resource in the ISO Operating Reserves or Regulation Service markets. Such data or information shall include, but not be limited to, any information relating to the validity of a claimed forced outage or derating of a generating unit or other Electric Facility or a facility participating as a Demand Side Resource in the ISO Operating Reserves or Regulation Service markets.

30.6.2.2.4 Bidding or Capacity Agreements – Documents, data, or information relating to a Market Party or its Affiliate conveying to or receiving from another entity the ability: (i) to determine the bid/offer of (in any of the markets administered by the ISO); (ii) to determine the output level of; or (iii) to withhold; generation that is owned by another entity. At the request of the producing entity, the ISO may (but is not required to) permit the documents, data or information produced in response to the foregoing specification to be partially redacted, or the ISO may agree to other measures for the protection of confidential or commercially sensitive information, provided that the ISO receives the complete text of all provisions relating to the subjects specified in this Section 30.6.2.2.4

30.6.2.2.5 Other Cost and Risk Data Supporting Reference Levels or ICAP mitigation determinations or Going-Forward Costs – All data or information not

specifically identified above that: (i) supports or relates to a Market Party's claimed, requested, or approved reference levels or Going-Forward Costs (as that term is defined in the Market Mitigation Measures) for a particular resource; or (ii) are necessary for the ISO to make a mitigation determination under Services Tariff Section 23.4.5.7, including data or information: (a) necessary to determine a Market Party's Unit Net CONE (as that term is defined in the Market Mitigation Measures) for a particular resource; or (b) required to evaluate a Market Party for a mitigation determination, including information from a Market Party's Affiliates, as appropriate.

30.6.2.2.6 Information Related to RMR Agreements -- All information that the NYISO is authorized to obtain under Appendix F to Attachment Y to the OATT.

30.6.2.2.7 Ownership and Control – Data or information identifying a Market Party's Affiliates.

### **30.6.2.3 Enforcement of Data Requests**

30.6.2.3.1 A party receiving a request for data or information specified in Section 30.6.2.2 of Attachment O shall promptly provide it to the ISO, and may not contest the right of the ISO to obtain such data or information except to the extent that the party has a good faith basis to assert that the data or information is not included in any of the categories on the list.

30.6.2.3.2 If a party receiving a request for data or information not specified in Section 30.6.2.2 of Attachment O believes that production of the requested data or information would impose a substantial burden or expense, or would require the party to produce information that is not relevant to achieving the purposes or

objectives of Attachment O, or would require the production of data or information of extraordinary commercial sensitivity, the party receiving the request shall promptly so notify the ISO, and the ISO shall review the request with the receiving party with a view toward determining whether, without unduly compromising the objectives of Attachment O, the request can be narrowed or otherwise modified to reduce the burden or expense of compliance, or special confidentiality protections are warranted, and if so shall so modify the request or the procedures for handling data or information produced in response to the request.

30.6.2.3.3 If the ISO determines that the requested information has not or will not be provided within a reasonable time, the ISO may invoke the dispute resolution provisions of the ISO Services Tariff to determine the ISO's right to obtain the requested information. The parties may agree to submit any such determination to binding arbitration and may seek expedited resolution, in accordance with the applicable dispute resolution procedures. The ISO may initiate judicial or regulatory proceedings at any time to compel the production of the requested information.

### **30.6.3 Data Retention**

30.6.3.1 Section 30.6.3 of Attachment O sets forth requirements for the retention of market information by the ISO, by the Market Monitoring Unit and by Market Parties. The provisions of this data retention policy are binding on the ISO, on the Market Monitoring Unit and on Market Parties.

- 30.6.3.2 Except as specified herein, a Market Party shall retain the data and information specified in Section 30.6.2.2 of Attachment O for a period of six years from the date to which the data relates.
- 30.6.3.3 The ISO or its Market Monitoring Unit (as appropriate) shall retain for a period of six years from the date to which the data or information relates:
- 30.6.3.3.1 data or information required to be submitted to, or otherwise used by, the ISO in connection with the bidding, scheduling and dispatch of resources or loads in the New York energy, ancillary services, TCC or Installed Capacity (ICAP) markets;
- 30.6.3.3.2 data or information used or monitored by the ISO on system conditions in the New York Control Area, including but not limited to transmission constraints or planned or forced facility outages, that materially affect transmission congestion costs or market conditions in the New York energy, ancillary services or ICAP markets;
- 30.6.3.3.3 data or information collected by the ISO or by the Market Monitoring Unit (as appropriate) in the course of their implementation of Attachment O or the Market Mitigation Measures, on conditions in markets external to New York, or on fuel prices or other economic conditions that materially affect market conditions in the New York energy, ancillary services, TCC or ICAP markets;
- 30.6.3.3.4 data or information relating to the imposition of, or a decision not to impose, mitigation measures; and

30.6.3.3.5 such other data or information as the MMA or Market Monitoring Unit deem it necessary to collect in order to implement Attachment O or the Market Mitigation Measures.

30.6.3.4 The foregoing obligations to retain data or information shall not alter any data retention requirements that may otherwise be applicable to the ISO, to the Market Monitoring Unit, or to a Market Party; nor shall any such other data retention requirement alter the requirements specified above.

30.6.3.5 The ISO, Market Monitoring Unit or a Market Party may, at its option, purge or otherwise destroy any data or information that has been retained for the longest applicable period specified above, provided the retention of such data or information is not mandated by the FERC, the New York Public Service Commission, or other applicable requirement or obligation.

30.6.3.6 Compliance with the requirements specified herein for the retention of data or information shall not suspend or waive any statute of limitations or doctrine of laches, estoppel or waiver that may be applicable to any claim asserted against the ISO, the Market Monitoring Unit, or a Market Party.

#### **30.6.4 Confidentiality**

The Market Monitoring Unit and the ISO shall use all reasonable procedures necessary to protect and preserve the confidentiality of Protected Information, provided that such information is not available from public sources, is not otherwise subject to disclosure under any tariff or agreement administered by the ISO, and is properly designated as Protected Information. The ISO and the Market Monitoring Unit's obligation to protect and preserve the confidentiality of

Protected Information shall be of a continuing nature, and shall survive the rescission, termination or expiration of this Plan.

Except as may be required by subpoena or other compulsory process, or as authorized in the ISO's Tariffs and governing documents (including this Plan), the Market Monitoring Unit and the ISO shall not disclose Protected Information to any person or entity without the prior written consent of the party that the Protected Information pertains to. Upon receipt of a subpoena or other compulsory process for the disclosure of Protected Information, the ISO and/or the Market Monitoring Unit shall promptly notify the party that the Protected Information pertains to, and shall provide all reasonable assistance requested by the party to prevent or limit disclosure. Upon receipt of a subpoena or other compulsory process for the disclosure of Protected Information that was provided to the ISO or the Market Monitoring Unit pursuant to Section 30.6.6 below, the ISO or the Market Monitoring Unit, as appropriate, shall promptly notify the entity that provided the Protected Information and shall provide all reasonable assistance requested by that party to prevent or limit disclosure. Nothing in this Plan alters any existing statutory jurisdiction or authority to compel disclosure that may apply to the ISO, its Market Monitoring Unit, or to any other ISO, RTO, or market monitoring unit.

The ISO may, in consultation with the Market Monitoring Unit, adopt further or different procedures for the designation of information as Protected Information, or for the reasonable protection of Protected Information, after providing an opportunity for interested parties to review and comment on such procedures; provided, however, that such further or different procedures shall not permit the ISO or Market Monitoring Unit to disclose data or information that would be protected from disclosure under the procedures in place at the time the data or information was provided to the ISO or to the Market Monitoring Unit.

### **30.6.5 Collection and Availability of Information**

30.6.5.1 The ISO and the Market Monitoring Unit shall regularly collect and maintain the information necessary for implementing Attachment O.

The ISO and the Market Monitoring Unit may provide Protected Information to each other as they determine necessary to carry out the purposes of this Plan.

30.6.5.2 The ISO, in consultation with the Market Monitoring Unit, shall make publicly available: (i) a description of the categories of data and information collected and maintained by the MMA and Market Monitoring Unit; (ii) such data or information as may be useful for the competitive or efficient functioning of any of the New York Electric Markets that can be made publicly available consistent with the confidentiality of Protected Information; and (iii) if and to the extent consistent with confidentiality requirements, such summaries, redactions, abstractions or other non-confidential compilations, versions or reports of Protected Information as may be useful for the competitive or efficient functioning of any of the New York Electric Markets. Any such proposed methods for creating non-confidential reports of such information shall only be adopted after provision of a reasonable opportunity for, and consideration of, the comments of Market Parties and other interested parties. All such proposed or adopted methods shall be set forth in the ISO Procedures, shall be made available through the ISO web site or comparable means, and shall be subject to review and approval by the Board.

30.6.5.3 Consistent with the foregoing requirements, the ISO and its Market Monitoring Unit shall make available, through the ISO web site or comparable

means, such reports on the New York Electric Markets as they determine will, at reasonable cost, facilitate competition in those markets.

30.6.5.4 Any data or other information collected by the ISO relating to any of the New York Electric Markets shall be provided upon request, and without undue discrimination between requests, to a Market Party, other interested party, or an Interested Government Agency, provided: (i) such data or information is not Protected Information, or the party designating it as Protected Information has consented in writing to its disclosure; (ii) such information can be provided without undue burden or disruption to, or interference with the other duties and responsibilities of the ISO; and (iii) the requesting party, if other than an Interested Government Agency, provides appropriate guarantees of reimbursement of the costs to the ISO of compiling and disclosing the data or information. If the ISO determines that doing so would not be unduly burdensome or expensive, or inconsistent with maintaining the competitiveness or economic efficiency of any market, the ISO shall make data or information provided in accordance with this paragraph available to interested parties through the ISO web site or other appropriate means.

30.6.5.5 The New York Public Service Commission and any Other State Commission may make tailored requests to the Market Monitoring Unit for information related to general market trends and the performance of the New York Electric Markets. If the Market Monitoring Unit determines that such a request is not unduly burdensome, it shall provide the information sought, subject



to the restrictions and limitations established in Sections 30.6.5.5.1, 30.6.5.5.2 and 30.6.5.5.4, below.

30.6.5.5.1 Except as provided in this Section 30.6.5.5.1, the Market Monitoring Unit shall not provide Protected Information to the New York Public Service Commission or to an Other State Commission in response to a request under Section 30.6.5.5 above. The Market Monitoring Unit may, but is not required to, provide Protected Information to the New York Public Service Commission or any Other State Commission when the party to which the requested Protected Information pertains has consented in writing to its disclosure. The Market Monitoring Unit may, but is not required to, provide Protected Information to the New York Public Service Commission or an Other State Commission if the general counsel/chief legal officer of the requesting state commission certifies, in writing, that: (i) the requested Protected Information will be protected from disclosure by law (and provides copies of the relevant laws, rules or regulations under which the requested Protected Information is protected from public disclosure); (ii) the requested Protected Information will be treated as confidential to the fullest extent of the laws of its state; (iii) the state commission will promptly notify the Market Monitoring Unit if it receives a request for disclosure of all or part of the Protected (iv) the state commission agrees to provide all reasonable and permissible assistance to prevent further disclosure of Protected Information provided by the Market Monitoring Unit to the state commission in response to a request governed by Section 30.6.5.5 of this Plan; and (v) the Protected Information will not be used for a state enforcement action.

The Market Monitoring Unit shall not provide Protected Information it received from another ISO or RTO, or from a market monitoring unit for another ISO or RTO, pursuant to the authority to share information granted by Section 30.6.6 of this Plan, in response to a request under Section 30.6.5.5 of this Plan. Instead, the Market Monitoring Unit shall identify to the requesting state commission the ISO, RTO or market monitoring unit that provided the information to the Market Monitoring Unit, so that the New York Public Service Commission or Other State Commission may request the Protected Information directly from its source in accordance with the provisions of the providing entity's tariffs, other governing documents, or an applicable law or rule.

30.6.5.5.2 Prior to disclosing Protected Information pertaining to a particular Market Party in response to a tailored request made under Section 30.6.5.5, the Market Monitoring Unit shall (1) notify the Market Party or Parties to which the Protected Information pertains of the request and describe the information that the Market Monitoring Unit proposes to disclose, and (2) allow the Market Party or Parties a reasonable time to object to the disclosure and to provide context to the Protected Information related to it. Providing the opportunity for Market Parties to object to disclosure, or to provide context to the information being produced shall not be permitted to unduly delay its release.

30.6.5.5.3 Section 30.6.5.5 of Attachment O pertains to requests by the New York Public Service Commission and Other State Commissions to the Market Monitoring Unit to provide information. Section 30.6.4 of Attachment O

addresses how the Market Monitoring Unit responds to compulsory processes, such as subpoenas and court orders.

30.6.5.5.4 In responding to a request under Section 30.6.5.5 of Attachment O, the Market Monitoring Unit shall not knowingly provide information to the New York Public Service Commission, or to any Other State Commission, that is designed to aid a state enforcement action.

30.6.5.5.5 The New York Public Service Commission or any Other State Commission may petition FERC to require the ISO to release information that the Market Monitoring Unit is not required to release, or that the Market Monitoring Unit is proscribed from releasing, under this Section 30.6.5.5 of Attachment O.

30.6.5.6 The Market Monitoring Unit shall respond to information and data requests issued to it by the Commission or its staff. If the Commission or its staff, during the course of an investigation or otherwise, requests Protected Information from the Market Monitoring Unit that is otherwise required to be maintained in confidence, the Market Monitoring Unit shall provide the requested information to the Commission or its staff within the time provided for in the request for information. In providing the information to the FERC or its staff, the Market Monitoring Unit shall, consistent with any FERC rules or regulations that may provide for privileged treatment of that information, request that the information be treated as confidential and non-public by the FERC and its staff and that the information be withheld from public disclosure. The Market Monitoring Unit shall not be held liable for any losses, consequential or otherwise, resulting from the Market Monitoring Unit divulging such Protected Information pursuant to a

request under this Section 30.6.5.6. After the Protected Information has been provided to the Commission or its staff, the Market Monitoring Unit shall immediately notify any affected Market Participant(s) when it becomes aware that a request for disclosure of such Protected Information has been received by the Commission or its staff, or a decision to disclose such Protected Information has been made by the Commission, at which time the Market Monitoring Unit and the affected Market Participant(s) may respond before such information would be made public, pursuant to the Commission's rules and regulations that may provide for privileged treatment of information provided to the Commission or its staff.

### **30.6.6 Sharing Information with Other ISOs/RTOs and Market Monitoring Units**

30.6.6.1 The Market Monitoring Unit or the ISO may disclose Protected Information to another ISO or RTO or to another ISO or RTO's market monitoring unit (each a "Requesting Entity" in Section 30.6.6 of the Plan) if the Requesting Entity submits a written request stating that the requested Protected Information is necessary to an investigation or evaluation that the Requesting Entity is undertaking within the scope of its approved tariffs, other governing documents, or an applicable law or rule to determine (a) if market power is being, or has been, exercised, (b) if market manipulation is occurring or has occurred, or (c) if a market design flaw exists between interconnected markets, and either (i) demonstrates (by providing copies of the relevant documents, provisions, statutes, rules, orders, etc.) that its tariff or other governing document limits further disclosure of the Protected Information in a manner that satisfies all of the requirements set forth in Section 30.6.6.1.1, below, or (ii) executes a non-

disclosure agreement with the ISO and/or the Market Monitoring Unit that incorporates all of the requirements set forth in Section 30.6.6.1.1 below, and provides a written certification that the Requesting Entity possesses legal authority to enter into the required non-disclosure agreement and to be bound by its terms.

30.6.6.1.1 The Requesting Entity's governing documents or non-disclosure agreement must:

- (1) protect Protected Information that the ISO or the Market Monitoring Unit provides from disclosure, except where disclosure may be required by the FERC or by subpoena or other compulsory process;
- (2) establish a legally enforceable obligation to treat Protected Information provided by the ISO or its Market Monitoring Unit as confidential. Such obligation must be of a continuing nature, and must survive the rescission, termination or expiration of the applicable tariff(s), other governing document(s) or non-disclosure agreement;
- (3) require state commissions to request Protected Information provided by the ISO or its Market Monitoring Unit directly from the ISO or its Market Monitoring Unit, in a manner consistent with Section 30.6.5.5.1 of this Plan, and promptly inform the ISO or its Market Monitoring Unit of any requests received from a state commission for Protected Information provided by the ISO or its Market Monitoring Unit;
- (4) require the Requesting Entity to promptly notify the ISO or its Market Monitoring Unit and seek appropriate relief to prevent or, if it is not possible to prevent, to

limit disclosure in the event that a subpoena or other compulsory process seeks to require disclosure of Protected Information provided by the ISO or its Market Monitoring Unit;

- (5) require the Requesting Entity to promptly notify the ISO or its Market Monitoring Unit of any third party requests for additional disclosure of the Protected Information where Protected Information provided by the ISO or its Market Monitoring Unit has been disclosed to a court or regulatory body in response to a subpoena or other compulsory process, and to seek appropriate relief to prevent or limit further disclosure; and
- (6) require the destruction of the Protected Information at the earlier of (i) five business days after a request from the ISO or its Market Monitoring Unit for the return of the Protected Information is received, or (ii) the conclusion or resolution of the investigation or evaluation.

30.6.6.2 The ISO or the Market Monitoring Unit may undertake a joint investigation with another ISO/RTO or with another ISO or RTO's market monitoring unit to determine (a) if market power is being, or has been, exercised, (b) if market manipulation is occurring or has occurred, or (c) if a market design flaw exists in or between interconnected markets. In such a case, the ISO and the Market Monitoring Unit may disclose Protected Information to the other ISO/RTO or market monitoring unit as necessary to achieve the objectives of the investigation; provided that the ISO or Market Monitoring Unit first receives a written certification from the other ISO/RTO or market monitoring unit that its tariffs or other governing documents meet the standards set forth in this Section

30.6.6 or executes a non-disclosure agreement.

30.6.6.3 If the ISO discloses Protected Information to a Requesting Entity that is a jurisdictional ISO or RTO, the ISO shall also provide the Protected Information to the Requesting Entity's market monitoring unit as soon as the Requesting Entity's market monitoring unit satisfies the requirements of Section 30.6.6.1.1, above.

30.6.6.4 Protected Information provided by another ISO/RTO or market monitoring unit to the ISO or to the Market Monitoring Unit pursuant to the provisions of this Plan shall either be destroyed or returned to the entity that provided the Protected Information at the earlier of (i) five business days after receipt of a request from that entity for the return of the Protected, or (ii) the conclusion or resolution of the matter being investigated.

## **30.7 Performance Indices and screens**

### **30.7.1 Development of Indices and Screens**

The MMA or the Market Monitoring Unit, with due consideration of the proposals and comments of Market Parties and other interested parties submitted as specified below, with the approval of the CEO or the CEO's designee, the COO, and the Market Monitoring Unit (for indices and screens developed by the MMA), or subject to review and comment by the ISO and review and approval by the Board (for indices and screens developed by the Market Monitoring Unit), shall develop, adopt and refine on the basis of experience with their application, such indices or other screens for reviewing the data or other information collected in connection with the implementation of Attachment O, or the ISO's Market Mitigation Measures, as the MMA or Market Monitoring Unit deem appropriate. All proposed or adopted indices and screens shall be described in the ISO Procedures and shall be made available through the ISO web site or comparable means, provided and to the extent that any such description does not provide details of the standards, criteria or thresholds for evaluating such data or information that would facilitate conduct inconsistent with the competitiveness or economic efficiency of any of the New York Electric Markets.

### **30.7.2 Consultation with Market Parties**

In connection with the development of indices and screens as specified above, Market Parties or other interested parties may submit proposed indices or screens for review of the data or other information collected in connection with the implementation of Attachment O, along with any justification for the adoption thereof, to the ISO or Market Monitoring Unit for consideration and adoption if and to the extent appropriate.



### **30.7.3 Use of Indices and Screens**

As much as practicable, the MMA and the Market Monitoring Unit shall review data or other information collected in connection with implementation of Attachment O and the Market Mitigation Measures in accordance with the indices or screens adopted as specified above; provided, however, that nothing herein shall be deemed to prevent the ISO or the Market Monitoring Unit from conducting such further or different review or evaluation of such data or information as appropriate for the effective implementation of Attachment O.

## **30.8 Market Power Mitigation Measures**

### **30.8.1 Review and Regulatory Approval**

A mitigation measure developed as specified below and recommended by the Market Monitoring Unit and the CEO or the CEO's designee, the COO, shall, with the review and approval of the Board, and in accordance with the ISO procedures applicable to tariff filings, be submitted by the ISO to the FERC for approval as an addendum to Attachment O or to the Market Mitigation Measures, and shall be provided as an informational submission to the other Interested Government Agencies. A market power mitigation measure shall become effective and available for use by the ISO as soon as practicable upon FERC approval.

### **30.8.2 Development of Mitigation Measures**

The Market Monitoring Unit, with the assistance of the MMA and the approval of the Reliability and Markets Committee of the Board (or any successor committee thereto), shall propose, and refine or revise as may be appropriate in consideration of the comments of Market Parties and other interested parties and market experience, measures for the mitigation of market power in any of the New York Energy Markets administered by the ISO, and standards for determining the actual or potential existence of market power requiring the application of such measures. A description of all effective and proposed mitigation measures and of the standards for the application of each such measure shall be made available through the ISO web site or comparable means. Except for mitigation measures that the ISO is required to file in accordance with Section 23.3.2.3 of the Market Mitigation Measures, prior to the submission of any market power mitigation measure to the FERC for approval as specified above, the ISO shall notify the Market Parties and other interested parties and provide an opportunity for comment on the proposed measure, and shall submit such measure for review and vote by the Management

Committee in accordance with the procedures applicable to tariff filings.

### **30.8.3 Implementation of Mitigation Measures**

The ISO, as directed and authorized by the CEO or the CEO's designee, the COO, shall implement the mitigation measures developed as specified above and such other mitigation measures as may be authorized or required by the FERC as a result of filings or other submissions by Market Parties or other interested parties or otherwise. The Market Monitoring Unit may participate in the implementation of mitigation measures to the extent permitted in Section 30.4.4 of Attachment O.

### **30.9 Complaints and Requests for Investigations**

Any Market Party or other interested person or entity may at any time submit information to the Market Monitoring Unit concerning any matter relevant to the responsibilities of the Market Monitoring Unit under Attachment O, or may submit a request to the Market Monitoring Unit for the Market Monitoring Unit to conduct an investigation, or take any other action contemplated by Attachment O. Such submissions or requests may be made on a confidential basis. The Market Monitoring Unit's authority to conduct an investigation may be limited by Section 30.4.5.3 of Attachment O. The Market Monitoring Unit shall provide a copy of any such submission or request to the ISO, unless a confidential investigation request addresses the ISO's actions or inaction, and the Market Monitoring Unit determines that it would not be appropriate to reveal the submission or request to the ISO, or that it would not be appropriate to reveal the submission or request to certain ISO personnel or departments. At the time it provides a copy of a confidential submission or request to the ISO, the Market Monitoring Unit may include written instructions to the ISO staff to whom the copy of the submission or request is sent, requiring them to limit their distribution of such submission or request. ISO staff shall abide by any limitation on distribution imposed by the Market Monitoring Unit until the information is made public, or the Market Monitoring Unit, FERC, or FERC staff provide written instructions to the contrary. The MMA shall be available to assist the Market Monitoring Unit's efforts to process or investigate the submissions and requests it receives. The Market Monitoring Unit may request further relevant information available from the submitting Market Party, or from any other person or entity, as a condition of undertaking any further investigation. Following a preliminary review, acting in a timely manner, the Market Monitoring Unit shall decline to take further action, or shall carry out such investigation as it deems appropriate, or as may be required by the

Board acting on its own initiative or at the request of a Market Party or other interested party.

The Market Monitoring Unit shall include a summary of its actions or decisions not to act under this Section 30.9 in its annual report to the Board. The summary included in the annual report to the Board need not contain any Protected Information.

## **30.10 Reports**

### **30.10.1 Annual Reports**

The Market Monitoring Unit shall prepare and submit to the Board an annual report on the competitive structure of, market trends in, and performance of, other competitive conditions in or affecting, and the economic efficiency of, the New York Electric Markets. Such report shall include recommendations for the improvement of the New York Electric Markets or of the monitoring, reporting and other functions undertaken pursuant to Attachment O and the Market Mitigation Measures. A copy of the report shall be forwarded by the Board to each of the Interested Government Agencies, with such comments or other remarks as the Board shall deem appropriate. Copies of the report shall be made publicly available by the Board by posting them on the ISO's web site, subject to redaction or other measures necessary for the protection of Protected Information.

### **30.10.2 Quarterly Reports**

In addition to the annual report, the Market Monitoring Unit shall issue three quarterly reports that are less extensive than the annual report. Each quarterly report shall provide timely updates to the annual report, emphasizing issues of concern to the Market Monitoring Unit. Quarterly reports shall be distributed in the same manner as the annual report.

### **30.10.3 Report on Virtual Bid and Offer Market Design and Rules**

The Market Monitoring Unit shall monitor and assess the impact of virtual bids and offers on the competitive structure and performance of, and the economic efficiency of, the ISO Administered Markets. Such monitoring and assessment shall include the effects, if any, of virtual bids and offers on any automated mitigation procedures, or any mitigation measures

specified in Section 23.5 of the Market Mitigation Measures. An assessment of the market impacts of virtual bids and offers shall be included in the annual report required by Section 30.10.1, above, and in a quarterly report when the Market Monitoring Unit deems appropriate.

#### **30.10.4 Reports on Offer Floor or Exemption Determinations**

The Market Monitoring Unit shall prepare a written report as described in Section 30.4.6.2.13 confirming whether the ISO's determinations and calculations conducted pursuant to Section 23.4.5.7 were conducted in accordance with the terms of the Services Tariff, and if not, identifying the flaws inherent in the ISO's approach. The Market Monitoring Unit's report shall be presented concurrently with the ISO's posting of the exempt/non-exempt determinations.

#### **30.10.5 Conference Calls**

The Market Monitoring Unit shall participate in regular conference calls for the presentation of market data and analyses of the type regularly gathered and prepared by the Market Monitoring Unit under Attachment O, subject to limitations on dissemination of Protected Information. Market Participants, staff of the Commission and the New York Public Service Commission, and representatives of the ISO may attend such conference calls.

#### **30.10.6 Other Reports or Filings**

The Market Monitoring Unit, with the assistance of the MMA, where appropriate, shall prepare such other periodic or other reports on any matters within their purview as the Market Monitoring Unit determines are necessary, or as may be requested by the Board, the CEO or the CEO's designee, the COO, or any of the Interested Government Agencies. Unless the Board or the Interested Government Agency requesting such report specifies to the contrary, copies of such reports shall be made publicly available by the Board, subject to redaction or other

measures necessary for the protection of Protected Information. All reasonable fees and expenses for the preparation of reports or other filings relating to the New York Electric Markets that are requested by an Interested Government Agency from the Market Monitoring Unit, or that are requested by an Interested Government Agency from a former Market Monitoring Unit with respect to conditions or conduct occurring in or relating to the period during which the person, persons or entity receiving the request served as the Market Monitoring Unit, shall be borne by the ISO.



### **30.11 Liability**

The liability of the ISO and its directors, officers, employees and agents, and of the Market Monitoring Unit and its directors, officers, employees and agents, for any matter arising under or relating to Attachment O shall be governed by this section. The ISO and its directors, officers, employees and agents, and the Market Monitoring Unit and its directors, officers, employees and agents, shall not be liable to any person or entity for any matter, act or omission described in or contemplated by Attachment O, as the same may be amended or supplemented from time to time, including but not limited to liability for any financial loss, loss of economic advantage, opportunity cost, or actual, direct, indirect or consequential damages of any kind resulting from or attributable to any act or omission of the ISO or the Market Monitoring Unit under Attachment O. The ISO shall indemnify and hold harmless its directors, officers, employees and agents and the Market Monitoring Unit and its directors, officers, employees and agents of and from any and all actions, claims, demands, costs (including any form of damages or other economic loss and all court costs and reasonable attorneys' fees) and liabilities to third parties, arising from or in any way connected with, the implementation or a failure to implement Attachment O, except to the extent that such action, claim, demand, cost or liability results from the willful misconduct of any of the foregoing persons or entities.

## **30.12 Rights and Remedies**

### **30.12.1**

With the exception of the limitation of liability specified in Attachment O, nothing herein shall prevent the ISO or any other person or entity from asserting any rights it may have under the Federal Power Act or any other applicable law, statute, or regulation, including the filing of a petition with or otherwise initiating a proceeding before the FERC regarding any matter which is the subject of Attachment O.

### **30.12.2**

Except as and to the extent otherwise specified in Attachment O, parties with disputes as to the implementation of or compliance with Attachment O may utilize the dispute resolution procedures of the ISO Services Tariff.

**30.13 Effective Date**

Attachment O shall be effective as of the date it is accepted for filing by the FERC.