

## 23.2 Conduct Warranting Mitigation

### 23.2.1 Definitions

The following definitions are applicable to this Attachment H:

For purposes of Section 23.4.5 of this Attachment H, “**Additional CRIS MW**” shall mean the MW of Capacity for which CRIS was requested for an Examined Facility pursuant to the provisions in ISO OATT Sections 25, 30, or 32 (OATT Attachments S, X, or Z), including either: (i) all, or a portion, of the MW of Capacity of that Examined Facility for which CRIS had not been obtained in prior Class Years through a prior Class Year process or through a transfer completed in accordance with OATT Section 25 (OATT Attachment S); and/or (ii) all, or a portion, of an increase in the Capacity of that Examined Facility. Additional CRIS MW does not include any MW quantity of CRIS that is exempt from an Offer Floor pursuant to Section 23.4.5.7.7(a) or (b), Section 23.4.5.7.8, or an increase of 2 MW or less in an Examined Facility’s MW quantity of CRIS obtained pursuant to Section 30.3.2.6 of Attachment X to the OATT.

“**Additional SDU Study**” shall mean a deliverability study that a Developer may elect to pursue as that term is defined in OATT Section 25 (OATT Attachment S).

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

- i) all persons or Entities that directly or indirectly control such person or Entity;
- ii) all persons or Entities that are directly or indirectly controlled by or under common control with such person or Entity, and (1) are authorized under ISO Procedures to participate in a market for Capacity administered by the ISO, or (2) possess, directly or indirectly, an ownership, voting or equivalent interest of ten percent or more in a Mitigated Capacity Zone Installed Capacity Supplier;
- iii) all persons or Entities that provide services to such person or Entity, or for which such person or Entity provides services, if such services relate to the determination or submission of offers for Unforced Capacity in a market administered by the ISO or offers of capacity from a Generator electrically located in a MCZ Import Constrained Locality; or
- iv) all persons or Entities, except if for ISP UCAP MW or an RMR Generator, with which such person or Entity has any form of agreement under which such person or Entity has retained or has conferred rights of (i) Control of Unforced Capacity or (ii) the ability to determine the quantity or price of offers to supply capacity from a Generator that has Capacity Resource Interconnection Service, pursuant to the applicable provisions of Attachment X, Attachment S and Attachment Z and is electrically located in an MCZ Import Constrained Locality, even if such capacity does not meet the requirements to be Unforced Capacity.

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

**Annual Transmission Baseline Assessment:** means an assessment conducted by the ISO as defined in OATT Section 25 (OATT Attachment S).

**Catastrophic Failure:** shall mean a Forced Outage initially suffered by a Generator which would have reasonably required a repair time of at least 270 days, from the date of the event resulting in the Forced Outage, had it, or a comparable Forced Outage been suffered at a generating facility that is reasonably the same as or similar to the Generator’s, the owner of which is intending to return it to service. Repair time includes the reasonable number of days for initial clean up, safety inspections, engineering assessment; damage assessment, cost estimates; site prep and clean up, equipment orders, and actual repair, provided the foregoing are necessitated by the Catastrophic Failure. The determination that a Generator has suffered a Catastrophic Failure shall be based on a technical/engineering evaluation, shall be made by the ISO, and may be made at any time following the event that caused the Forced Outage provided that adequate information is provided to the ISO to support such determination.

“**Class Year Study**” means a Class Year Interconnection Facilities Study as that term is defined in OATT Section 25 (OATT Attachment S).

“**Cleared UCAP**” means the amount of MW (rounded down to the nearest tenth of a MW) that had been subject to an Offer Floor but has cleared in accordance with Section 23.4.5.7.

“**Commenced Construction**” shall mean (a) all of the following site preparation work is completed: ingress and egress routes exist; the site on which the Project will be located is cleared and graded; there is power service to the site; footings are prepared; and foundations have been poured consistent with purchased equipment specifications and project design; or (b) the following financial commitments have been made: (i) (A) an engineering, procurement, and construction contract (“EPC”) has been executed by all parties and is effective; or (B) contracts (collectively, “EPC Equivalents”) for all of the following have been executed by all parties and is effective: (1) project engineering, (2) procurement of all major equipment, and (3) construction of the Project, and (ii) the cumulative payments made by the Developer under the EPC or EPC Equivalents to the counterparties to those respective agreements is equal to at least thirty (30) percent of the total costs of the EPC or EPC Equivalents.

“**Competitive and Non-Discriminatory Hedging Contract**” shall mean a contract to hedge a risk associated with a product offered in the ISO Administered Markets between a Non-Qualifying Entry Sponsor and the Developer, Owner or Operator of an Examined Facility with a term that shall not exceed three years (inclusive of all options to extend and extensions) and that the ISO determines has been executed pursuant to a procurement process that satisfies the requirements enumerated below. Competitive and Non-Discriminatory Hedging Contracts shall not be deemed to be a non-qualifying contractual relationship that would prevent an Examined Facility from obtaining a Competitive Entry Exemption pursuant to 23.4.5.7.9 of Attachment H of this Services Tariff. The ISO shall determine that a contract is a Competitive and Non-Discriminatory Hedging Contract only if it concludes, and the Non-Qualifying Entry Sponsor

executes a certification confirming that, the contract was executed through a procurement process that met all of the following requirements: (A) both new and existing resources satisfy the requirements of the procurement; (B) the requirements of the procurement were fully objective and transparent ; (C) the contract was awarded based on the lowest cost offers of qualified bidders that responded to the solicitation; (D) the procurement terms did not restrict the type of capacity resources that may participate in, and satisfy the requirements of, the procurement; (E) the procurement terms did not include selection criteria that could otherwise give preference to new resources; and (F) the procurement terms did not use indirect means to discriminate against existing resources, including, but not limited to, by imposing geographic constraints, unit fuel requirements, maximum unit heat-rate requirements or requirements for new construction.

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

For purposes of Section 23.4.5 of this Attachment H, “**Control**” with respect to Unforced Capacity shall mean the ability to determine the quantity or price of offers to supply Unforced Capacity from a Mitigated Capacity Zone Installed Capacity Supplier submitted into an ICAP Spot Market Auction; but excluding ISP UCAP MW or UCAP from an RMR Generator.

For purposes of Section 23.4.5.6 of this Attachment H, “**CRIS Transfer Confirmation Date**” shall mean the date in which the transferor and transferee confirms the proposed CRIS transfer (e.g., through a CRIS transfer notification form submitted prior to August 1st for same location CRIS transfers for active facilities looking to transfer CRIS rights for the next Capability Year) and is considered by ISO, in consultation with the Market Monitoring Unit, to be a date which will become, essentially and practicably, an irreversible action for the transferor with respect to effectuating the CRIS transfer and for purposes with respect to the NYISO’s issuance of a final physical withholding determination to the transferor.

For purposes of Section 23.4.5.7 “**CRIS MW**” shall mean the MW of Capacity for which CRIS was assigned to a Generator or UDR project pursuant to ISO OATT Sections 25, 30, or 32 (OATT Attachments S, X, or Z).

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

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

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

Beginning with the Class Year immediately following Class Year 2021, subsequent Class Year Studies, Additional SDU Studies, and Expedited Deliverability Studies that are commenced after August 1, 2022, the ISO will establish an “**Estimated Initial Decision Period**” to be twelve

months from the Class Year Study Start Date and three months from the Expedited Deliverability Study Start Date for the purpose of establishing the starting Capability Years for the Part A Mitigation Study Period Years 1 through 3 and Part A Mitigation Study Period Years 4 through 6.

**“Examined Facility”** shall mean (I) each proposed new Generator and proposed new UDR project, and each existing Generator that has ERIS only and no CRIS, that is a member of the Class Year Study, Additional SDU Study or Expedited Deliverability Study that requested CRIS , or that requested an evaluation of the transfer of CRIS rights from another location in the Class Year Facilities Study commencing in the calendar year in which the Class Year Facility Study determination is being made (the Capability Periods of expected entry as further described below in this Section, the “Mitigation Study Period”), and (II) each (i) existing Generator that did not have CRIS rights, and (ii) proposed new Generator and proposed new UDR project, provided such Generator under Subsection (i) or (ii) is an expected recipient of transferred CRIS rights at the same location regarding which the ISO has been notified by the transferor or the transferee of a transfer pursuant to OATT Attachment S Section 25.9.4 that will be effective on a date within the Mitigation Study Period (“Expected CRIS Transferee”). The term “Examined Facilities” does not include any facility exempt from an Offer Floor pursuant to the provisions of Section 23.4.5.7.7; or any Generator or UDR project that meets the definition of Excluded Facilities below.

**“Exceptional Circumstances”**: shall mean one or more unavoidable circumstances, as determined by the ISO, that individually or collectively render as unavailable the data necessary for the ISO to perform an audit and review of a Market Party, pursuant to Section 23.4.5.6.2 of this Services Tariff. Exceptional Circumstances may include, but are not limited to: the inaccessibility of the physical facility; the inaccessibility of necessary documentation or other data; and the unavailability of information regarding the regulatory obligations with which the Market Party will be required to comply in order to return its Generator to service which regulatory obligations are not yet known but which will be made known by the applicable regulatory authority under existing laws and regulations provided that none of the above described circumstances are the result of delay or inaction by the Market Party. The magnitude of the repair cost, alone, shall not be an Exceptional Circumstance.

**Excluded Facilities** shall mean Resources or UDR project(s) that are qualified to satisfy the goals specified in the New York State Climate Leadership and Community Protection Act, Chapter 106 of the Laws of 2019, as may be amended (“CLCPA”) and such Resources and UDR Projects will not be subject to review by the NYISO under the BSM rules or otherwise subject to an Offer Floor. Excluded Facilities shall include but are not limited to Resources comprised exclusively of one or more the following technologies: energy storage, demand response, wind generation, solar generation, geothermal generation, hydroelectric generation (which may also include generation created by tidal, wave and other ocean activity), and fuel cells that operate without utilizing fossil fuel. Excluded Facilities will also include Resources using additional technology types not explicitly listed above and UDR projects that satisfy the CLCPA goals, if the Developer, Owner or Operator of the Resource or UDR project certifies in accordance with Section 23.4.5.7.5 of this Services Tariff and ISO Procedures that the Resource or UDR Project meets one of the following criteria:(i) the Resource technology type is specifically identified by the CLCPA or is publicly identified by New York State as supporting the goals of the CLCPA;

(ii) the Resource or UDR project has a contract with the State of New York to achieve the goals of the CLCPA (such as a Tier 1 or Tier 4 contract with NYSERDA); or (iii) the Resource or UDR project is eligible to receive a contract authorized by New York State that is supporting the goals of the CLCPA (such as a Tier 1 or Tier 4 contract with NYSERDA).

“**Expedited Deliverability Study**” shall mean a deliverability study that an eligible Developer may elect to pursue as that term is defined in OATT Section 25 (OATT Attachment S) that may determine the extent to which an existing or proposed facility satisfies the ISO Deliverability Interconnection Standard at its requested CRIS level without the need for System Deliverability Upgrades. The schedule and scope of the study is defined in Sections 25.5.9.2.1 and 25.7.1.2 of this Attachment S.

“**Final Decision Round**” shall have the meaning specified in Section 25 (Attachment S) of the ISO’s Open Access Transmission Tariff.

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

For purposes of Section 23.4.5 of this Attachment H, “**Indicative Mitigation Net CONE**” shall mean the capacity price calculated by the ISO for informational purposes only if there is not an effective ICAP Demand Curve and the Commission (i) has accepted an ICAP Demand Curve for the Mitigated Capacity Zone that will become effective when the Mitigated Capacity Zone is first effective, in which case, the Indicative Mitigation Net CONE shall be the capacity price on such ICAP Demand Curve for the Mitigated Capacity Zone corresponding to the average amount of excess capacity above the Indicative NCZ Locational Minimum Installed Capacity Requirement, as applicable, expressed as a percentage of that requirement that formed the basis for the ICAP Demand Curve accepted by the Commission; or, (ii) has not accepted an ICAP Demand Curve for the Mitigated Capacity Zone, but the ISO has filed an ICAP Demand Curve for the Mitigated Capacity Zone pursuant to Services Tariff Section 5.14.1.2.2.4.11, in which case the Indicative Mitigation Net CONE shall be the capacity price on such ICAP Demand Curve corresponding to the average amount of excess capacity above the Indicative NCZ Locational Minimum Installed Capacity Requirement, expressed as a percentage of that requirement, that formed the basis for such ICAP Demand Curve.

“**Initial Decision Period**” shall have the meaning specified in Section 25 (Attachment S) of the ISO’s Open Access Transmission Tariff.

“**Interconnection Customer**” shall have the meaning specified in Section 32 (Attachment Z) of the ISO’s Open Access Transmission Tariff.

“**Interconnection Facilities Study Agreement**” shall have the meaning specified in Section 30 (Attachment X) of the ISO’s Open Access Transmission Tariff.

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

“**Market Party**” shall mean any person or entity that is, or for purposes of the determinations to be made pursuant to Section 23.4.5.7 of this Attachment H proposes or plans a Project that would be, a buyer and/or a seller in; or that makes bids or offers to buy or sell in; or that schedules or seeks to schedule Transactions with the ISO in or affecting any of the ISO Administered Markets including through the submission of bids or offers into any External Control Area, or any combination of the foregoing.

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

For purposes of Section 23.4.5 of this Attachment H, “**Mitigation Net CONE**” shall mean the capacity price on the currently effective ICAP Demand Curve for the Mitigated Capacity Zone corresponding to the average amount of excess capacity above the Mitigated Capacity Zone Installed Capacity requirement, expressed as a percentage of that requirement, that formed the basis for the ICAP Demand Curve approved by the Commission.

“**Mitigation Study Period**” shall mean the duration of time extending six consecutive Capability Periods and beginning with the Starting Capability Period associated with a Class Year Study, Additional SDU Study, and/or Expedited Deliverability Study.

“**NCZ Examined Project**” shall mean any Generator or UDR project that is not an Excluded Facility and that is not exempt pursuant to 23.4.5.7.8 and either (i) is in a Class Year on the date the Commission accepts the first ICAP Demand Curve to apply to a Mitigated Capacity Zone or (ii) meets the criteria found in (II) of the definition of Examined Facility above. An NCZ Examined Project may be at any phase of development or in operation or an Installed Capacity Supplier.

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

“**New Capacity**” shall mean a new Generator, a substantial addition to the capacity of an existing Generator, or the reactivation of all or a portion of a Generator that has been out of

service for five years or more that commences commercial service after the effective date of this definition.

For the purposes of Section 23.4.5 of this Attachment H, **“Non-Qualifying Entry Sponsors”** shall mean a Transmission Owner, Public Power Entity, or any other entity with a Transmission District in the NYCA, or an agency or instrumentality of New York State or a political subdivision thereof.

For purposes of Section 23.4.5 of this Attachment H, **“Offer Floor”** for a Mitigated Capacity Zone Installed Capacity Supplier that is not a Special Case Resource shall mean the lesser of (i) a numerical value equal to 75% of the Mitigation Net CONE translated into a seasonally adjusted monthly UCAP value (“Mitigation Net CONE Offer Floor”), or (ii) the numerical value that is the first year value of the Unit Net CONE determined as specified in Section 23.4.5.7, translated into a seasonally adjusted monthly UCAP value using an appropriate class outage rate, (“Unit Net CONE Offer Floor”). The Offer Floor for Additional CRIS MW shall mean a numerical value determined as specified in Section 23.4.5.7.6.

**“Owner”** shall have the meaning specified in Section 31.1.1 of the ISO’s Open Access Transmission Tariff.

**“Part A Exemption”** shall mean an exemption awarded to an Examined Facility (i) pursuant to the Part A Exemption Test conducted by the ISO prior to the Class Year immediately following Class Year 2021 as described in Section 23.4.5.7.2(a) of the Services Tariff or (ii) pursuant to the Part A Exemption Test described in Section 23.4.5.7.3.1 of the Services Tariff which shall be conducted by the ISO beginning with Class Year immediately following Class Year 2021, and in all subsequent Class Year Studies, Additional SDU Studies, and Expedited Deliverability Studies that are commenced after August 1, 2022.

**“Part A Exemption Test”** shall mean (i) for any Class Year Study that was conducted prior to the Class Year immediately following Class Year 2021, the test conducted by the ISO to determine if an Examined Facility would be exempt from an Offer Floor under Section 23.4.5.7.2 (a) of the Services Tariff; or (ii) for the Class Year immediately following Class Year 2021 and any subsequent Class Year Study, Additional SDU Study, and Expedited Deliverability Study that starts after August 1, 2022, the test conducted by the ISO to determine if an Examined Facility shall be exempt from an Offer Floor in accordance with Section 23.4.5.7.3.1 of the Services Tariff.

**“Part A Group 1 Examined Facilities”** for the Class Year immediately following Class Year 2021 and any subsequent Class Year Study, Additional SDU Study, and Expedited Deliverability Study that starts after August 1, 2022 shall mean the set of Examined Facilities being evaluated for the Part A Exemption Test described in Section 23.4.5.7.3.1 using the Part A Mitigation Study Period Years 1 through 3 as determined by the ISO pursuant to the criteria set forth in Section 23.4.5.7.3.1.3 of the Services Tariff.

**“Part A Group 2 Examined Facilities”** for the Class Year immediately following Class Year 2021 and any subsequent Class Year Study, Additional SDU Study, and Expedited Deliverability

Study that starts after August 1, 2022 shall mean the set of Examined Facilities being evaluated for the Part A Exemption Test described in Section 23.4.5.7.3.1 using the Part A Mitigation Study Period Years 4 through 6 as determined by the ISO pursuant to the criteria set forth in Section 23.4.5.7.3.1.3 of the Services Tariff.

**“Part A Mitigation Study Period Years 1 through 3”** for the Class Year immediately following Class Year 2021 and any subsequent Class Year Study, Additional SDU Study, and any Expedited Deliverability Study that starts after August 1, 2022 shall mean the evaluation period applied to Part A Group 1 Examined Facilities which shall be considered concurrently to receive a Part A Exemption in accordance with Section 23.4.5.7.3.1 of the Services Tariff. Such evaluation period shall be composed of the three consecutive Capability Years starting with the Capability Year following the Capability Year in which the Estimated Initial Decision Period for the then current Class Year Study or Expedited Deliverability Study falls.

**“Part A Mitigation Study Period Years 4 through 6”** for the Class Year immediately following the Class Year 2021 and any subsequent Class Year Study, Additional SDU Study, and any Expedited Deliverability Study that starts after August 1, 2022 shall mean the evaluation period applied to Part A Group 2 Examined Facilities which shall be considered concurrently to receive a Part A Exemption in accordance with Section 23.4.5.7.3.1 of the Services Tariff. Such evaluation period shall be composed of the three consecutive Capability Years starting with the fourth Capability Year following the Capability Year in which the Estimated Initial Decision Period for the then current Class Year Study or Expedited Deliverability Study falls.

**“Part B Exemption Test”** shall mean the test conducted by the ISO in accordance with 23.4.5.7.2 (b) and ISO Procedures for an Examined Facility in any Class Year Study, Additional SDU Study, or Expedited Deliverability Study.

For purposes of Section 23.4.5 of this Attachment H, **“Pivotal Supplier”** shall mean (i) for the New York City Locality, a Market Party that, together with any of its Affiliated Entities, (a) Controls 500 MW or more of Unforced Capacity, and (b) Controls Unforced Capacity some portion of which is necessary to meet the New York City Locality Locational Minimum Installed Capacity Requirement in an ICAP Spot Market Auction; (ii) for the G-J Locality, a Market Party that, together with any of its Affiliated Entities, (a) Controls 650 MW or more of Unforced Capacity; and (b) Controls Unforced Capacity some portion of which is necessary to meet the G-J Locality Locational Minimum Installed Capacity Requirement in an ICAP Spot Market Auction; and (iii) for each Mitigated Capacity Zone except the New York City Locality and the G-J Locality, if any, a Market Party that Controls at least the quantity of MW of Unforced Capacity specified for the Mitigated Capacity Zone and accepted by the Commission. Unforced Capacity that are MW of an External Sale of Capacity shall not be included in the foregoing calculations

**“Project Cost Allocation”** shall have the meaning specified in Section 25 (Attachment S) of the ISO’s Open Access Transmission Tariff.

**“Public Policy Resource”** shall mean for purposes of Section 23.4.5 of this Attachment H, an Examined Facility that is determined by the ISO to be a zero-emitting resource and that does not meet the definition of Excluded Facility under Section 23.2 of this Attachment H and, where



applicable, as also determined by the NYISO under Section 23.4.5.7.5.1 of this Attachment H. A resource may request an ex-ante determination from the ISO if it qualifies as a zero-emitting resource prior to their entrance into a Class Year Study or Expedited Deliverability Study. The ISO, in consultation with the MMU, shall issue a determination no later than 20 days after the necessary information has been submitted for consideration. This determination will be binding as long as the resource's technology and characteristics are not modified before issuance of a final determination to the Examined Facility. The ISO will post such ex-ante determinations to its website concurrent with the response to the resource. Public Policy Resources shall be identified and posted on the ISO website no later than the ISO's posting of the Part A Group 1 Examined Facilities and the Part A Group 2 Examined Facilities for the Class Year immediately following Class Year 2021, and any subsequent Class Year Study, Additional SDU Study, and Expedited Deliverability Study that start after August 1, 2022, as provided in Section 23.4.5.7.3.1.4 of this Services Tariff.

**"Project"** shall have the meaning specified in Section 30.1 of the ISO's Open Access Transmission Tariff.

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

**"Revised Project Cost Allocation"** shall have the meaning specified in Section 25 (Attachment S) of the ISO's Open Access Transmission Tariff.

**"Self Supply LSE"** shall mean a Load Serving Entity in one or more Mitigated Capacity Zones that operates under a long-standing business model to meet more than fifty percent of its Load obligations through its own generation and that is (i) a municipally owned electric system that was created by an act of one or more local governments pursuant to the laws of the State of New York to own or control distribution facilities and/or provide electric service, (ii) a cooperatively owned electric system that was created by an act of one or more local governments pursuant to the laws of State of New York or otherwise created pursuant to the Rural Electric Cooperative Law of New York to own or control distribution facilities and/or provide electric service, (iii) a "Single Customer Entity," or (iv) a "Vertically Integrated Utility." A Self Supply LSE cannot be an entity that is a public authority or corporate municipal instrumentality created by the State of New York (including a subsidiary of such an authority or instrumentality) that owns or operates generation or transmission and that is authorized to produce, transmit or distribute electricity for the benefit of the public unless it meets the criteria provided in section (i), (ii), or (iii) of this definition. For purposes of this definition only: "Vertically Integrated Utility" means a utility that owns generation, includes such generation in a non-bypassable charge in its regulated rates, earns a regulated return on its investment in such generation, and that as of the date of its request for a Self Supply Exemption, has not divested more than seventy-five percent of its generation assets owned on May 20, 1996; and "Single Customer Entity" means an LSE that serves at retail only customers that are under common control with such LSE, where such control means holding 51% or more of the voting securities or voting interests of the LSE and all its retail customers.

**“Starting Capability Period”** is the Summer Capability Period that will commence three years from the start of the year of the Class Year Study and shall be the start of the Mitigation Study Period for any Examined Facility in a Class Year Study, as well as any Additional SDU Studies and Expedited Deliverability Studies and that are completed while the Class Year Study is ongoing. If no Class Year Study is ongoing when an Expedited Deliverability Study or Additional SDU Study arrives at the Decision Period, the Starting Capability Period used for the purposes of Section 23.4.5 of this Attachment H shall be the Starting Capability Period that applied to the most recently completed Class Year Study.

**“Subsequent Decision Period”** shall have the meaning specified in Section 25 (Attachment S) of the ISO’s Open Access Transmission Tariff.

For purposes of Section 23.4.5 of this Attachment H, **“Surplus Capacity”** shall mean the amount of Installed Capacity, in MW, available in a Mitigated Capacity Zone in excess of the Locational Minimum Installed Capacity Requirement for such Mitigated Capacity Zone.

**“Total Evaluated CRIS MW”** shall mean the Additional CRIS MW requested plus either (i) if the Installed Capacity Supplier previously received an exemption under Sections 23.4.5.7.2(b), 23.4.5.7.6(b), 23.4.5.7.7 or 23.4.5.7.8, all prior Additional CRIS MW since the facility was last exempted under Sections 23.4.5.7.2(b), 23.4.5.7.6(b), or 23.4.5.7.8, or (ii) for all other Installed Capacity Suppliers, all MW of Capacity for which an Examined Facility obtained CRIS pursuant to the provisions in ISO OATT Sections 25, 30, or 32 (OATT Attachments S, X, or Z).

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

For purposes of Section 23.4.5 of this Attachment H, **“Unit Net CONE”** shall mean localized levelized embedded costs of a specified Installed Capacity Supplier, including interconnection costs, and for an Installed Capacity Supplier located outside a Mitigated Capacity Zone including embedded costs of transmission service, in either case net of likely projected annual Energy and Ancillary Services revenues, and revenues associated with other energy products (such as energy services and renewable energy credits, as determined by the ISO, translated into a seasonally adjusted monthly UCAP value using an appropriate class outage rate. The Unit Net CONE of an Installed Capacity Supplier that has functions beyond the generation or transmission of power shall include only the embedded costs allocated to the production and transmission of power, and shall not net the revenues from functions other than the generation or transmission of power.

### **23.2.2 Conduct Subject to Mitigation**

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

### **23.2.3 Conditions for the Imposition of Mitigation Measures**

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

Accordingly, the ISO shall seek to impose Mitigation Measures only to remedy conduct that:

23.2.3.1.1 is significantly inconsistent with competitive conduct; and

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

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

### **23.2.4 Categories of Conduct that May Warrant Mitigation**

23.2.4.1 The following categories of conduct, whether by a single firm or by multiple firms acting in concert, may cause a material effect on prices or guarantee payments in an ISO Administered Market if exercised from a position of market power. Accordingly, the ISO shall monitor the ISO Administered Markets for the following categories of conduct, and shall impose appropriate

Mitigation Measures if such conduct is detected and the other applicable

conditions for the imposition of Mitigation Measures are met:

23.2.4.1.1 Physical withholding of an Electric Facility, that is, not offering to sell or schedule the output of or services provided by an Electric Facility capable of serving an ISO Administered Market. Such withholding may include, but not be limited to, (i) falsely declaring that an Electric Facility has been forced out of service or otherwise become unavailable, (ii) refusing to offer Bids or schedules for an Electric Facility when such conduct would not be in the economic interest of the Market Party or its Affiliates in the absence of market power (includes refusing to offer Bids or schedules to withdraw Energy for a Generator that must withdraw Energy in order to be able to later inject Energy); (iii); making an unjustifiable change to one or more operating parameters of an Electric Facility that reduces a Resource's ability to provide Energy or Ancillary Services or (iv) operating a Generator in real-time at a lower output level than the Generator would have been expected to provide had the Generator followed the ISO's dispatch instructions, in a manner that is not attributable to the Generator's verifiable physical operating capabilities and that would not be in the economic interest of the Market Party or its Affiliates in the absence of market power. For purposes of this Section and Section 23.4.3.2, the term "unjustifiable change" shall mean a change in an Electric Facility's operating parameters that is: (a) not attributable to an Electric Facility's verifiable physical operating capabilities, and (b) is not a rational competitive response to economic factors other than market power.

23.2.4.1.2 Economic withholding of an Electric Facility, that is, submitting Bids for an Electric Facility that are unjustifiably high so that (i) the Electric Facility is not or will not be dispatched or scheduled, or (ii) the Bids will set a market clearing price; or submitting Bids for a Withdrawal-Eligible Generator to withdraw Energy that are unjustifiably high, so that (i) the Electric Facility is or will be dispatched or scheduled to withdraw Energy, or (ii) the Bids will set a market clearing price.

23.2.4.1.3 Uneconomic production from an Electric Facility is increasing the output of an Electric Facility to levels that would not be in the economic interest of the Market Party or its Affiliates in the absence of market power. Uneconomic withdrawal by an Electric Facility is withdrawing Energy that would not be in the economic interest of the Market Party or its Affiliates in the absence of market power.

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

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

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

## **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.