

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

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|---|---|-------------------------------|
| Consolidated Edison Company of New York, |) | |
| Inc., Orange and Rockland Utilities, Inc., |) | |
| New York State Electric and Gas Corp., |) | |
| Rochester Gas and Electric Corp., and |) | |
| Central Hudson Gas and Electric Corp., |) | |
| |) | |
| Complainants |) | |
| |) | Docket No. EL15-26-000 |
| v. |) | |
| |) | |
| New York Independent System Operator, |) | |
| |) | |
| Respondent |) | |

**ANSWER OF NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.
IN SUPPORT OF COMPLAINT**

In accordance with Rule 213 of the Commission’s Rules of Practice and Procedure¹ and the December 19, 2014 *Notice of Extension of Time*, the New York Independent System Operator, Inc. (“NYISO”) respectfully submits its answer to the *Complaint of the Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc., New York State Electric and Gas Corporation, Rochester Gas and Electric Corporation, and Central Hudson Gas and Electric Corporation* (“Complaint”). As set forth below, the NYISO supports the creation of a competitive entry exemption from its buyer-side capacity market power mitigation measures (“BSM Rules”).² The exemption should be available through prospectively applicable tariff rules that include clear and transparent eligibility criteria. With a few minor exceptions, the Complaint’s proposed tariff language includes such criteria. Accordingly, the NYISO supports

¹ 18 C.F.R. § 385.213 (2014).

² The BSM Rules are set forth in the NYISO’s Market Administration and Control Area Services Tariff (“Services Tariff”) Section 23.4.5.7, *et seq.*

the Complaint but recommends certain limited modifications to the Complaint's proposed tariff revisions.

Specifically, the NYISO asks that the Commission: (i) replace certain proposals in the Complaint with alternatives previously advanced by the NYISO in its stakeholder process; and (ii) direct the NYISO to adopt additional tariff language that will be needed if the competitive entry exemption is to be legally effective and practicably implementable. The necessary adjustments to the Services Tariff are discussed in Section II.C.2 below.

In addition, the NYISO respectfully asks that the Commission act promptly to grant the Complaint (with the modifications proposed by the NYISO). The timely establishment of a competitive entry exemption will facilitate economic investments while reducing uncertainty for developers and Market Participants. Prompt Commission action should also obviate the need for a developer that might anticipate it will be a competitive entrant (as described herein) to seek an *ad hoc* exemption from the BSM Rules. In particular, it would eliminate the need for the Commission to act on the pending *Complaint and Request for Fast Track Processing and Shortened Comment Period* of TDI USA Holdings Corp. ("TDI") in Docket No. EL15-33-000 (the "TDI Proceeding").³

I. BACKGROUND

On December 4, 2014, the Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc., New York State Electric and Gas Corporation, Rochester Gas and Electric Corporation, and Central Hudson Gas and Electric Corporation (collectively, the

³ The NYISO's support for the Complaint, and for a generally applicable competitive entry exemption does not mean that it necessarily supports any particular current or future project's request for an exemption. Concurrent with this filing, the NYISO is submitting an answer in the TDI Proceeding that asks that the Commission grant the Complaint in this proceeding so that TDI may seek an exemption under a generally applicable tariff-based rule.

“Complainants”) filed a Complaint pursuant to Sections 206 and 306 of the Federal Power Act (“FPA”). Complainants request that the NYISO be directed to amend the BSM Rules to introduce a competitive entry exemption for generators and UDR facilities.⁴ The BSM Rules currently apply to all new entrants into New York City and the G-J Locality.⁵ Unless determined to be exempt pursuant to one of two tests, new entrants are subject to an Offer Floor⁶ on capacity sales.⁷

The NYISO and the independent Market Monitoring Unit (“MMU”) have long supported the creation of a competitive entry exemption. The NYISO has previously informed the Commission that an exemption for capacity projects that are not receiving support outside of competitive markets” would improve the NYISO’s capacity market.⁸ The NYISO reiterated its support for a competitive entry exemption at the *Joint Technical Conference on New York Markets & Infrastructure* sponsored by the Commission and the New York State Public Service Commission on November 5, 2014 in Docket No. AD14-18-000.⁹

⁴ The Complaint, and therefore this Answer, addresses the BSM Rules that apply to generators and controllable transmission projects that might request Unforced Capacity Deliverability Rights (“UDR projects”). This Answer should not be construed as pertaining to the BSM Rule sections that apply only to Special Case Resources.

⁵ Capitalized terms that are not otherwise defined in this Answer shall have the meaning specified in the Services Tariff, and if not defined therein, then as defined in the NYISO’s Open Access Transmission Tariff (“OATT”). The G- J Locality encompasses Load Zones G, H, I (collectively sometimes referred to as the lower Hudson Valley) and Load Zone K (New York City).

⁶ Services Tariff Section 23.4.5.7.

⁷ Complaint at 19.

⁸ *Post-Technical Conference Comments of the New York Independent System Operator, Inc.* at 13, Docket No. AD13-7-000 (filed Jan. 18, 2014) (“NYISO Post-Technical Conference Comments”).

⁹ *Written Statement of Emilie Nelson, Vice President - Market Operations, on Behalf of the New York Independent System Operator, Inc.* at 28-29, Docket No. AD14-18-000 (Nov. 5, 2014).

Similarly, the independent MMU supported a competitive entry exemption in its *State of the Market Reports* for 2012 and 2013.¹⁰ The independent MMU again highlighted this recommendation at the November 5 joint technical conference.¹¹

The NYISO initiated a stakeholder process to develop a competitive entry exemption in December 2012.¹² Throughout 2013 and 2014, the NYISO brought multiple revisions of the proposal to its ICAP Working Group.¹³ Each new version responded to stakeholder input. In May 2014, motions before the NYISO's Business Issues Committee and Management Committee to adopt the competitive entry exemption did not obtain the requisite super-majority of stakeholder support¹⁴ required under the NYISO's shared governance model for the NYISO to file the proposal under Section 205 of the FPA.

¹⁰ See *2013 State of the Market Report for the New York ISO Markets* (May 2014) ("2013 SOM Report") at xii, 25-26, 95, available at: <https://www.potomaceconomics.com/uploads/nyiso_reports/NYISO_2013_SOM_Report.pdf>. See also *2012 State of the Market Report for the New York ISO Markets* at vii, 23-24, 80 (April 2013), available at: <https://www.potomaceconomics.com/uploads/nyiso_reports/NYISO_2012_SOM_Report_2013-04-17.pdf> and *Comments of MMU on the 2014 Reliability Needs Assessment* (Aug. 13, 2014), available at: <http://www.nyiso.com/public/webdocs/markets_operations/committees/mc/meeting_materials/2014-08-27/MMU%20Review%20of%202014%20RNA_final.pdf>.

¹¹ See *Written Statement of Dr. David B. Patton, Market Monitoring Unit for the New York Independent System Operator* at 7, Docket No. AD14-18-000 (Nov. 5, 2014) ("We have proposed granting an exemption to suppliers engaged in purely private investment would allow merchant investors to make investment decisions based on their own expectations of the increased capacity revenues that would occur if additional retirements occur (beyond those that have been noticed to the PSC).").

¹² See, e.g., *Proposed ICAP Buyer Side Mitigation Competitive Entry Exemption* (Dec. 3, 2012) at 3, available at: <http://www.nyiso.com/public/webdocs/markets_operations/committees/bic_icapwg/meeting_materials/2012-12-03/Competitive_EntryExemptionFINAL12042012.pdf>.

¹³ See the ICAP Working Group home page at: <http://www.nyiso.com/public/markets_operations/committees/meeting_materials/index.jsp?com=bic_icapwg> for the NYISO's presentations on its competitive entry exemption proposals on December 3, 2012, January 30, 2013; March 11, 2013; May 28, 2013; June 18, 2013; August 1, 2013; December 10, 2013; February 19, 2014; March 3, 2014; April 28, 2014; and May 7, 2014.

¹⁴ The NYISO proposed for a vote, and the stakeholder Business Issues Committee and Management Committee voted on, a package of revisions to the BSM Rules. The package included a competitive entry exemption, a revision to the Offer Floor, an exemption that applied to certain renewable generators, and an exemption for certain municipal utility and cooperative utility generators. See *Final*

The NYISO has previously expressed its view that the recent difficulty securing stakeholder support for revisions to its BSM Rules is attributable in part to stakeholders' disparate views and priorities in the complex area of buyer-side capacity market power mitigation. The difficulty also appears to be partially attributable to pending, and possibly to anticipated, litigation, over related issues. Such concerns can impede productive stakeholder discussions.¹⁵ In any event, the NYISO believes that its shared governance process generally works well and that market design issues should be addressed with stakeholders in the first instance. But the stakeholder process regarding the competitive entry exemption issues has been exhausted.

II. ANSWER

A. The NYISO Strongly Supports a Competitive Entry Exemption Tariff Rule in the General Form Specified in the Complaint

The NYISO strongly supports the Complaint. As discussed below in Section II.C, the NYISO believes that certain modifications should be made to the tariff language proposed in the Complaint. But the need for these changes in no way detracts from the NYISO's support for a competitive entry exemption with the core features proposed by the Complaint.

1. The BSM Rules Should Include a Generally Applicable Tariff-Based Competitive Entry Exemption from Offer Floor Mitigation as Proposed by the Complaint

The Commission has stated that the purpose of the BSM Rules is to deter uneconomic entry, not economic entry. The rules are not intended to protect market participants from

Motions, Business Issues Committee Meeting (May 12, 2014), available at:

<http://www.nyiso.com/public/webdocs/markets_operations/committees/bic/meeting_materials/2014-05-12/051214%20BIC%20Final%20Motions.pdf>; *Final Motions, Management Committee Meeting* (May 28, 2014), available at:

<http://www.nyiso.com/public/webdocs/markets_operations/committees/mc/meeting_materials/2014-05-28/052814_MC_Final_Motions.pdf, and Exhibit C to Complaint>.

¹⁵ NYISO Post-Technical Conference Comments at 10.

genuine competition. The NYISO believes that the BSM Rules provide necessary protections to the market and that adding a competitive entry exemption would be entirely consistent with their purpose.

The Complaint explains that the BSM Rules should not apply to “unsubsidized, competitive entrants who have no incentive to inappropriately suppress capacity market prices.”¹⁶ It discusses how the BSM Rules should allow investors to “enter the capacity markets based on their own forecasts of market conditions at the time of entry” and not subject them to a test of whether their proposed facilities are economic if they have not received an inappropriate subsidy.¹⁷ The NYISO agrees with those principles. Moreover, as discussed in Section II.A below, the NYISO also agrees that these principles should be embodied in clear and generally applicable tariff rules and that the tariff revisions proposed in the Complaint are just and reasonable.

Uneconomic entry supported by subsidies or other non-market-based advantages can result in artificial price suppression. Capacity market mitigation rules exist to protect capacity markets from artificial price suppression, not to protect competitive entrants¹⁸ from making investment mistakes that might incidentally result in lower capacity market clearing prices. Nor should competitive entrants be prohibited from taking the risk of entry based on their projections of future capacity prices, and thus of whether their projects will be economic.

As the Commission explained in an order accepting a form of competitive entry exemption in PJM Interconnection, LLC,

¹⁶ Complaint at 2.

¹⁷ *Id.*

¹⁸ As discussed below references to “competitive entrants” in this Answer are meant to apply to entrants that would qualify for the competitive entry exemption proposed by the Complaint (with the NYISO’s recommended modifications.)

The economics of a merchant resource, however, differ markedly from a resource built pursuant to a state contract. Because a purely merchant generator places its own capital at risk when it invests in a new resource, any such resource will have a strong incentive to bid its true costs into the auction, and it will clear the market only when it is cost effective. As such, a bid from a merchant project below Net CONE likely represents the economics of that resource, and if it does not, the resource will not be able to recover its costs. The purpose of the . . . [buyer side mitigation rules] . . . , however, is not to protect a merchant resource from making a poor investment decision with its own capital. By contrast, a resource built pursuant to a state contract will likely remain indifferent to actual . . . [capacity auction] . . . clearing prices because of its guaranteed revenue stream from the state, and such a resource can therefore remain in the market long-term even if its sell offer does not reflect its competitive costs.¹⁹

The NYISO has previously described to the Commission that “[n]ew entrants that satisfy specified criteria defining truly competitive entrants are unlikely to serve as vehicles for artificial price suppression.”²⁰ Creating an exemption for competitive entrants “would allow capacity project developers that have a different view of future market developments than an ISO/RTO forecasts to enter in a competitive market environment.”²¹ An exemption could also “establish clear parameters that would allow state-sponsored or state-mandated procurements to not be subject to mitigation measures if it is the result of a procurement that is competitive and non-discriminatory.”²²

As noted above, the independent MMU has long supported the adoption of a competitive entry exemption for similar reasons. The NYISO understands that the independent MMU will be submitting its own pleading in support of the Complaint.

Finally, adding a competitive entry exemption to the BSM Rules is justified even though the NYISO is currently pursuing in the stakeholder process improvements that should ameliorate

¹⁹ *PJM Interconnection, LLC*, 143 FERC ¶ 61,090 at P 57 (2013).

²⁰ See NYISO Post-Technical Conference Comments at 13.

²¹ *Id.*

²² *Id.*

Complainants' concerns regarding the forecasts used under the BSM Rules.²³ Entities that satisfy specified tariff criteria defining competitive entrants should be exempt from Offer Floor mitigation even after the NYISO's forecast improvements have been made.

2. Complainants' Proposed Tariff Revisions Are Just and Reasonable

Complainants' proposed competitive entry exemption is very similar to the one that the NYISO developed through its stakeholder²⁴ process, and it uses many of the same concepts and terms. The core features of Complainants' proposal are reasonable and were fully supported by the Complaint. Establishing a competitive entry exemption with these features would prevent potentially harmful over-mitigation²⁵ of competitive entrants without encouraging uneconomic entry that could artificially suppress capacity prices. The proposed exemption would thus be consistent with policy and precedent requiring the NYISO to seek a balance between the extremes of under- and over-mitigation.²⁶

It is preferable to add a generally applicable exemption to the Services Tariff rather than introduce the uncertainty that might result from individual project requests for exemptions. A rule-based approach would provide all developers and Market Participants with consistency, and greater certainty and predictability. A valid rule should specify, as Complainants' proposal does, clear criteria that can be administered consistently to identify competitive entrants.

Proposed Section 23.3.4.5.7.8.1.1 of the Services Tariff establishes clear and reasonable eligibility criteria. It specifies that both new generation and "UDR projects," *i.e.*, entities that

²³ See http://www.nyiso.com/public/webdocs/markets_operations/committees/bic_icapwg/meeting_materials/2014-12-12/EnhancementsICAPEnergyFrcstBSM_ICAPWG_12-12-2014.pdf. See Complaint at 9-10.

²⁴ See Complaint, Exhibit B.

²⁵ See *New York Independent System Operator, Inc.*, 143 FERC ¶ 61,217 (2013) (addressing the potential harms of over-mitigation).

²⁶ See Complaint at 13-14.

would hold Unforced Capacity Deliverability Rights, may qualify for an exemption from Offer Floor Mitigation if they are a member of a NYISO Class Year subsequent to Class Year 2012. In order to qualify for an exemption, an applicant must have no “non-qualifying contractual relationships” with “Non-Qualifying Entry Sponsors,”²⁷ *i.e.*, any New York electric distribution company, Municipal Utility, or any New York state or local governmental entity, prior to the date that they first generate or transmit energy (the “Entry Date”).²⁸

Complainants’ proposed Section 23.4.5.7.8.1.2 provides specific examples of the kinds of arrangements that would constitute both direct and indirect “non-qualifying contractual relationships.” The list includes known arrangements that have the potential to support uneconomic entry and result in artificial price suppression. But the provision does not preclude the NYISO from identifying other potentially problematic relationships with Non-Qualifying Entry Sponsors. This flexibility is a necessary safeguard to foreclose gaming the exemption.

At the same time, proposed Section 23.4.5.7.8.1.3 identifies numerous arrangements with Non-Qualifying Entry Sponsors that would not be treated as non-qualifying contractual relationships. These include necessary arrangements that developers must enter into with Non-Qualifying Entry Sponsors, *e.g.*, standard facility interconnection agreements or gas transportation contracts, other routine arrangements that are universally available, or are offered at fair market value, and typical governmental economic development incentives. None of these potential arrangements represent viable vehicles for subsidizing uneconomic entry.

²⁷ Except for non-qualifying contractual relationships that fall under the *de minimis* exception in proposed Section 23.4.5.7.8.1.3 (discussed below).

²⁸ Section 23.4.5.7.8.1.1(a) of the proposed draft Services Tariff revisions that the NYISO presented to the Business Issues Committee and Management Committee in May 2014, *see* n.14 above, defined “Entry Date” for purposes of qualifying for the exemption, as the date “that the Generator first produces or the UDR project first transmits energy ”

Similarly, proposed Section 23.4.5.7.8.1.4 adds an exception so that entering into arrangements identified in Section 23.4.5.7.8.1.2 will not disqualify an entrant from obtaining a competitive entry exemption so long as the arrangement is of *de minimis* value. The exception in 23.4.5.7.8.1.4 is necessary to avoid an overly mechanical application of the general rule in 23.4.5.7.8.1.2 that would unreasonably subject competitive entrants to Offer Floor mitigation due to contractual relationships too minor to plausibly support uneconomic entry.²⁹

Consistent with other provisions in the BSM Rules, proposed Section 23.4.5.7.8.1.5 establishes that the NYISO will make the exemption determination in consultation with the independent MMU (with standard cross-references to other market power mitigation related tariff provisions).

Proposed Section 23.4.5.7.8.1.6 requires entities seeking an exemption to certify that they do not have non-qualifying contractual relationships above the permissible *de minimis* value.³⁰ Such a requirement is hardly burdensome for applicants and is necessary to guard against applications founded on inaccurate or false information. Having such a requirement also provides a basis for, and reasonable notice to applicants that they will be subject to, potential sanctions for false submissions.³¹

Proposed Section 23.4.5.7.8.3.1 requires that a certification be included along with a request for competitive entry exemption, empowers the NYISO to require additional certifications at any time prior to the Entry Date, and requires a final up-to-date certification to

²⁹ As discussed below, in Section II.C.1.a, the NYISO is calling for certain adjustments to the specific test used to identify such *de minimis* arrangements but it agrees in principle that such an exception is just and reasonable.

³⁰ As discussed below, in Section II.C.1.c, the NYISO is proposing that the Commission restore the broader certification requirement that the NYISO developed in its stakeholder process.

³¹ As discussed below, in Section II.C.1.b, the NYISO is proposing that the Commission restore a specific penalty provision for false submissions.

be made upon the Entry Date. Section 23.4.5.7.8.3.2 specifies when requests for competitive entry exemptions must be submitted and when the NYISO will make the determinations. As with other provisions under the BSM Rules, these timing requirements are closely integrated with the NYISO's Class Year process under Attachment S to the OATT. Proposed Section 23.4.5.7.8.3.3 establishes a mechanism for applicants to withdraw exemption requests if they enter into a prohibited non-qualifying contractual relationship.

Proposed Section 23.4.5.7.8.4 specifies that the NYISO shall post an up-to-date list of competitive entry exemption applications and shall post the outcomes of exemption determinations. It also specifies that the independent MMU will concurrently post a report on the NYISO's determination. These requirements conform to previously accepted posting rules related to determinations under the BSM Rules and provide market participants with appropriate transparency.

B. The Commission Should Act Promptly to Establish a Competitive Entry Exemption

As noted above, the NYISO strongly supports its shared governance process. The NYISO has consistently opposed, and will continue to oppose, unilateral stakeholder attempts to make "end-runs" around that process. The Complaint, however, does not represent an impermissible end-run. The competitive entry issue has been fully vetted by stakeholders in the NYISO's ICAP Working Group and other stakeholder committees. Stakeholders have had numerous opportunities to review and comment on the proposal, and the NYISO has previously considered all of their input. In short, the stakeholder process has been exhausted.³² Therefore, the Commission should not treat the Complaint with the disfavor that ordinarily applies to

³² Compare *Niagara Mohawk v. New York State Reliability Council and New York Independent System Operator, Inc.*, 114 FERC ¶ 61,098 at PP 1, 21-22 (2006) (finding a complaint to be premature because, among other things, the complainant had not exhausted the remedies available through the NYISO and NYSRC stakeholder processes.)

“unilateral” stakeholder proposals. Instead, it should approve the Complaint because it is meritorious, well-supported, and proposes tariff revisions that will improve the BSM Rules. Moreover, the Commission should do so promptly in order to provide certainty to the market and to obviate any need for action in the TDI Proceeding. A new Class Year is commencing March 1, 2015 and the NYISO will need to review the projects in it under the BSM Rules. Prompt Commission action granting this Complaint and accepting tariff revisions filed in compliance with a Commission directive would provide an opportunity for a competitive entry exemption to be available to those projects. If projects are eligible, then prompt action would avoid over-mitigation and its negative effects on the market.

C. Proposed Modifications to Complainants’ Tariff Revisions

As noted above, the NYISO strongly supports the Complaint. At the same time, it respectfully asks that, when the Commission issues an order granting the Complaint, it also direct the NYISO to include the following tariff revisions in a compliance filing. Such a directive would be well within the scope of this proceeding because the NYISO’s proposed modifications simply make necessary adjustments to, Complainants’ proposal.

1. The Commission Should Direct the NYISO to Include in a Compliance Filing Certain Provisions that Were Developed in the NYISO’s Stakeholder Process, in Place of Complainants’ Substituted Version

The NYISO does not support certain changes that the Complainants’ would make to the most recent version of the NYISO’s competitive entry proposal. Instead of accepting those departures, the Commission should direct the NYISO to make a compliance filing that includes

the core features of Complainants' proposal with the adjustments discussed below and shown for informational purposes in Attachments 3, 4, and 5.³³

a. The “*De Minimis*” Exception

The NYISO had proposed a clear bright line exception under which *de minimis* “non-qualifying contractual relationships” would not disqualify an entrant from the competitive entry exemption. As the Complaint notes, the NYISO proposed that a project’s contracts not disqualify it from an exemption if the total value of the non-qualifying contracts, “defined as the greater of the total payment to the Generator or UDR project or the fair market value of the contract, collectively, does not exceed five percent of the total levelized cost of all capital and fixed operation and maintenance costs of the proposed ‘new’ project.”³⁴ The Complaint proposes to revise the exception so that contracts would not be “deemed to be non-qualifying contractual relationships to the extent that their *subsidy value*, defined as the benefit provided by the Non-Qualifying Entry Sponsor for the commodity or service as compared to an arms-length

³³ Attachments 3 and 4 contain mark-ups of Section 23.4.5.7.8 of the Services Tariff, *i.e.*, the proposed competitive entry exemption, for the Commission’s information and convenience. Attachment 3 is an excerpt from the NYISO’s May 2014 proposed package of tariff revisions that was presented to the Management Committee. With one exception, it excludes provisions that were included in the package but that are unrelated to the competitive entry exemption and that are not necessary to the implementation of the exemption. The exception is a reference in Section 23.4.5.7.2 to two other previously proposed exemptions that were not accepted by stakeholders, that are not addressed by the Complaint, and that the NYISO is not asking the Commission to address at this time. Attachment 4 shows the NYISO’s recommended changes to the Complainants’ proposed competitive entry exemption, as set forth in Exhibit B to the Complaint. That is, Attachment 4 shows: (i) the NYISO’s recommended re-insertion of provisions that were presented to the Management Committee in May 2014 but deleted by the Complainants; (ii) and the NYISO’s recommended deletion of certain changes proposed by Complainants. If ordered by the Commission to include competitive entry exemption provisions to the Services Tariff through a compliance filing in this proceeding, the NYISO reserves the right to propose any necessary minor changes at that time. Note that Attachment 5 also shows additional NYISO-recommended revisions to Services Tariff Sections 23.4.5.7 and 23.4.5.7.2 that are discussed separately below in Sections C.1.b and C.2.

³⁴ Complaint at 14.

transaction, does not exceed five percent of the total levelized cost of all capital and fixed operation and maintenance costs of the proposed new Generator or UDR project ”³⁵

Complainants believe that “the five percent should be focused on the subsidy value of the contract . . . because the purpose of the exemption is to deter inappropriate subsidization of new entrants.”³⁶ Even if this were true in principle, the Complaint does not specify, and the NYISO cannot imagine how it could practicably determine, the “subsidy value” of new entrants’ contracts. The difficulties posed by Complainants’ proposal would be exacerbated by the number and variety of contracts to be evaluated.

In short, the NYISO believes that there should be a *de minimis* exception to the general rule against non-qualifying contractual relationships but that the Complainants’ version is administratively unworkable. In contrast, the five percent limit developed through the stakeholder process creates an objective and administrable standard. Accordingly, it would be just and reasonable for the Commission to replace Complainants’ proposed exception with the language (quoted above) from the NYISO’s earlier proposal. For reference, Attachment 4 includes a mark-up of Section 23.4.5.7.8.1.4 that shows the NYISO’s recommended removal of Complainants’ revision and restoration of the language presented to the Management Committee in May 2014.

b. Penalties for False, Misleading, or Inaccurate Submissions

The NYISO’s version of the competitive entry exemption included penalties for the submission of false, misleading or inaccurate information in a request for a competitive entry

³⁵ *Id.* (emphasis added).

³⁶ Complaint at 14; Miller Affidavit at P 32, and Exhibit B to the Complaint, Proposed Section 23.4.5.7.8.1.4.

exemption.³⁷ As discussed in the attached affidavit of NYISO Senior Vice President Rana Mukerji, the NYISO believes that such penalties are necessary to deter misuse of the exemption and protect the ICAP market from uncompetitive entry.³⁸ Otherwise, there would not be an express, automatic, and immediately applicable sanction in the Services Tariff for submitting false information pertaining to a competitive entry exemption request, despite the likely lasting detrimental market consequences of such conduct.

Under the NYISO's proposal, a project that provided false, misleading or inaccurate information as part of its certification would have its exemption revoked and a financial penalty would be imposed unless it were determined that the exemption would still have been granted if complete and accurate information had been submitted. The financial penalty would be equal to 1.5 times the maximum capacity revenue that the project would have earned in the ICAP Spot Market Auction for the capacity it transacted in the NYISO's market. This formula is similar to the currently effective formula used to calculate penalties under another part of the BSM Rules.³⁹ The NYISO would refund any penalties collected to ICAP Suppliers that, at the time of collection, are in the same Mitigated Capacity Zone(s) as the penalized project on a basis that is proportionate to the amount of megawatts sold by the ICAP Supplier during the relevant time period.⁴⁰

The NYISO recognizes that Market Participants are prohibited from making false statements to the NYISO by the Commission's market-behavior rules,⁴¹ and that this

³⁷ This provision would be set forth in a new section of the Services Tariff and is included for reference in Attachment 4 hereto at Section 23.4.5.7.8.5.

³⁸ See Affidavit of Rana Mukerji. Attachment 2 (the "Mukerji Affidavit"), at PP 4, 12-17.

³⁹ See Section 23.4.3.3.2 of the Services Tariff; *see also* Mukerji Affidavit at P 16.

⁴⁰ See Mukerji Affidavit at P 11.

⁴¹ See 18 C.F.R. § 35.41(b).

requirement is incorporated into market-based rate tariffs.⁴² In addition, a violation of the existing Commission market behavior rule would appear to be a violation of Section 4.1.7 of the Services Tariff.

Nevertheless, the potential market harm of uneconomic entry can be very significant and difficult to remedy after it occurs. The misuse of the competitive entry exemption could result in uneconomic entry in a Mitigated Capacity Zone, which could inflict serious and long-lasting damage on the market. Such a danger warrants special safeguards.⁴³ As Mr. Mukerji explains, “if an exemption were granted based on false information capacity payments to all capacity resources could be depressed. The result would be distorted long-term market signals that would undermine market efficiency and, ultimately, hurt consumers.”⁴⁴

Accordingly, the NYISO is proposing a specific and automatic penalty provision to be included in the Services Tariff. The penalty would be a strong and immediate deterrent to attempts to abuse the competitive entry exemption. It would reinforce and complement, not supplant, the Commission’s existing market manipulation requirements and authority.⁴⁵ There would be minimal risk that the penalty would have adverse market impacts, such as potentially chilling investment, because it would penalize bad conduct that is contrary to a clear rule. In addition, not revoking an exemption that would have been granted if complete and accurate

⁴² See, *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, Appendix C, FERC Stats. & Regs. ¶ 31,252, order on reh’g, Order No. 697-A at P 388, 73 FR 25832 (May 7, 2008), FERC Stats. & Regs. ¶ 31,268 (2008).

⁴³ See Mukerji Affidavit at P 13.

⁴⁴ *Id.*

⁴⁵ See *Id.* at PP 10, 14. The NYISO’s proposal that its tariff-based penalty not be applicable to entrants that would have received an exemption if they had provided complete and accurate information is not intended to, and legally could not, preclude the Commission from exercising its enforcement authority against any entity that makes false, misleading, or inaccurate submissions. Similarly, it is not intended, and the NYISO does not believe that it would have the legal effect, of preventing the NYISO or the independent MMU from referring such submissions to the Commission.

information were provided would protect the market against unreasonable mitigation that could unreasonably increase capacity prices.⁴⁶

The NYISO's proposal is fully consistent with Commission policy and precedent dictating that penalties directly administered by ISOs/RTOs be clearly articulated in tariffs and expressly define specific sanctions for specific violations.⁴⁷ The Commission should therefore direct the NYISO to adopt the penalty provision included in Attachment 4 to this Answer when it grants the Complaint. Also included in Attachment 4 is a necessary revision to Section 23.4.5.7 that explains how Offer Floors would be applied in the event that a competitive entry exemption is revoked pursuant to the penalty provision.

c. Certifications

Complainants' proposed certification requirement is narrower and less complete than the version the NYISO developed in its stakeholder process. The NYISO's version would not impose unreasonable burdens and would better protect the market from the risk that applicants might inappropriately secure competitive entry exemptions. Accordingly, the Commission should direct the NYISO to adopt the certification tariff provisions included in Attachment 4 hereto, which is the same as the NYISO proposed in its stakeholder process.

Similarly, Complainants proposed to "streamline" the certification form developed by the NYISO in its stakeholder process⁴⁸ and to incorporate it into the Services Tariff.⁴⁹ But this is not warranted under the Commission's "Rule of Reason" precedent.⁵⁰ The form's provisions are

⁴⁶ *Id.* at P 10.

⁴⁷ *See, e.g., New York Independent System Operator*, 129 FERC ¶ 61,164 at P 98 (2009).

⁴⁸ *See* Complaint at 14; Miller Affidavit at P 32.

⁴⁹ *See* Exhibit B to the Complaint, Proposed Section 23.4.5.7.8.2.1.

⁵⁰ *City of Cleveland v. Federal Energy Regulatory Comm'n*, 773 F.2d 1368, 1376 (1985) (noting that the rule of reason requires that only provisions that significantly affect rates, terms, and conditions of

too far removed from the rates or the terms or conditions of jurisdictional service to necessitate their review by the Commission. The form is simply intended to implement the tariff requirements that a generator or UDR facility must satisfy to qualify for this exemption initially and through the date of entry. Such details should be left for the NYISO to establish with stakeholder input. Posting such a document on the NYISO website would provide developers and Market Participants with transparency while also leaving the NYISO with flexibility to make any adjustments that might be needed over time. Thus, the Commission should decline to rule on the Complainants' version of the proposed form.

2. Miscellaneous Necessary Tariff Adjustments

The proposed competitive entry exemption language included in the Complaint omitted various additional provisions that were developed through the NYISO stakeholder process. Some of this omitted language is necessary in order for the tariff to contain all of the provisions needed for a competitive entry exemption to be clearly operative and implementable. Other omitted language addresses implementation details, clarifies the relationship between the competitive entry exemption and other tariff provisions, or provides for consistency with other BSM determinations. The NYISO has included the omitted language in Attachment 5⁵¹ to this Answer and explains the need for it below. The Commission should require that these tariff

service must be filed for Commission approval). *See also Astoria Generating Company, L.P. v. New York Independent System Operator, Inc.*, 139 FERC ¶ 61,244 at P 44, n.57 (2012) (emphasizing that not all of the details related to the implementation of the BSM Rules should be included in the Services Tariff) citing *New York Indep. Sys. Operator, Inc.*, 122 FERC ¶ 61,064 at P 47 (2008).

⁵¹ The omitted language is shown in Attachment 5 for the Commission's information and convenience. The Attachment shows tariff revisions that the NYISO previously filed with, and that are pending before, the Commission in single underline. The omitted language that the NYISO recommends the Commission restore is shown in bold double underline. The base tariff language onto which the proposed changes are shown in blackline is the current eTariff version of these sections. The omitted language is the same as was presented to the NYISO's Management Committee in May 2014. If ordered by the Commission to include these provisions a compliance filing, the NYISO reserves the right to propose any necessary minor changes at that time.

revisions be added to the Services Tariff and OATT when it accepts the Complaint, with the modifications and additions described herein.

First, the Complaint omitted a necessary revision to Section 23.4.5.7.2 that expressly authorizes the NYISO to exempt competitive entrants from the Offer Floor if they qualify for the competitive entry exemption. Without this language the NYISO would not have a clear tariff basis for implementing the proposed competitive entry exemption. Thus, it should be included in the Services Tariff if the Commission decides to grant the Complaint.

Second, the Commission should direct the NYISO to revise the Services Tariff to include:

- A change to Section 30.4.6.2.12 to reflect the addition of the competitive entry exemption provisions in tariff language governing reports prepared by the independent MMU.
- Changes to Section 30.6.2.2.5 to allow the NYISO to request information needed to determine the availability of the competitive entry exemption; and
- An addition to OATT Section 12.4 to clarify that information disclosures authorized under the competitive entry exemption provisions are consistent with OATT rules regarding the disclosure of Confidential Information.

III. COMMUNICATIONS

Communications regarding this proceeding should be addressed to:

Robert E. Fernandez, General Counsel
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* Gloria Kavanah, Senior Attorney
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⁵² The NYISO respectfully requests waiver of the Commission's regulations (18 C.F.R. § 385.203(b)(3)(2014)) to the extent necessary to permit service on counsel for the NYISO in both Miami and Washington, D.C.

Miami, FL 33131
Tel: (305) 536-2734
Fax: (305) 810-1635
ncoates@hunton.com

*Designated for receipt of service.

IV. COMPLIANCE WITH RULE 213(c)(2)(i)

Attachment 1 to this Answer addresses the formal requirements of Commission Rule 213(c)(2).

V. CONCLUSION

The NYISO respectfully requests that the Commission: (i) grant the Complaint; and (ii) direct the NYISO to make a compliance filing to revise the BSM Rules to establish a competitive entry exemption from buyer-side mitigation as proposed by the Complaint with the revisions and additions discussed in this Answer.

Respectfully submitted,

/s/ Ted J. Murphy

Counsel for
the New York Independent System Operator, Inc.

January 15, 2015

cc: Michael Bardee
Gregory Berson
Anna Cochrane
Jignasa Gadani
Morris Margolis
David Morenoff
Daniel Nowak
Jamie Simler

Attachment 1

Attachment 1

Compliance with Commission Rule 213(c)(2)

A. Specific Admissions and Denials of Material Allegations

In accordance with Commission Rule 213(c)(2)(i), to the extent practicable and to the best of the NYISO's knowledge and belief at this time, the NYISO admits or denies below the factual allegations in the Complaint.¹ To the extent that any fact or allegation in the Complaint is not specifically admitted below, it is denied. Except as specifically stated below, the NYISO does not admit any facts in the form or manner stated in the Complaint.

1. Denials

- The NYISO strongly supports the Complaint but denies that certain of the Complainants' proposed modifications to the competitive entry exemption proposal developed by the NYISO in its stakeholder process are appropriate. The Commission should direct the NYISO to file the tariff revisions proposed in the Complaint, revised to include and replace certain proposals in the Complaint with the version previously advanced by the NYISO and described in the Answer.

2. Admissions

- The NYISO admits that the BSM Rules should be modified to include a generally applicable, tariff-based competitive entry exemption, with clear and transparent eligibility criteria that can be administered consistently, in order to prevent over-mitigation by permitting truly competitive entrants (generally, as described therein) to take the risk of investing in projects that the NYISO forecasts to be economic without being subject to an Offer Floor. Complaint at 3.
- The NYISO admits that it is the entity responsible for providing open access transmission service, maintaining reliability and administering non-discriminatory competitive wholesale markets for electricity, capacity and ancillary services in New York State, and for implementing mitigation measures pursuant to the provisions of the Services Tariff. Complaint at 17.
- The NYISO admits that it administers the ICAP market, which is designed to provide economic signals to procure sufficient capacity to meet New York's peak demand plus its planning reserve margin, and that it runs the monthly spot auctions in which suppliers sell capacity for the upcoming month. Complaint at 4.
- The NYISO admits that it administers both buyer and seller market power mitigation rules, which the Commission approved in 2008, pursuant to Section 23 of its Services Tariff. Complaint at 5.

¹ Capitalized terms that are not otherwise defined in this Attachment or the Answer shall have the meaning specified in the Services Tariff, and if not defined therein, then as defined in the NYISO's Open Access Transmission Tariff.

Attachment 1

- The NYISO admits that the BSM Rules are intended to avoid artificially depressed prices and to assure that the market clearing capacity prices reflect competitive outcomes. Complaint at 2, 5.
- The NYISO admits that the BSM Rules are applicable to each proposed new generating unit or UDR project that seeks to sell capacity into a Mitigated Capacity Zone. Complaint at 5.
- The NYISO admits that a new entrant in a Mitigated Capacity Zone must offer capacity at a price no lower than the applicable Offer Floor, unless it is exempt under the “Part A” or “Part B” tests in the BSM Rules. Complaint at 6.
- The NYISO admits that, pursuant to the BSM Rules, it conducts the mitigation exemption tests for a unit based on a Mitigation Study Period (as defined in the BSM Rules) that commences three years from the start of the year of the Class Year, and that the Part A and Part B tests are based on a forecast of market prices during that Mitigation Study Period. Complaint at 9.
- The NYISO admits that its forecasts cannot account for all future market conditions but notes that improvements to the forecast used in the buyer-side mitigation determinations are being developed through its stakeholder process. Complaint at 9, 10.
- The NYISO admits that its MMU (and the NYISO) recognized the need for a competitive entry exemption in 2012 (or earlier). Complaint at 7, 10, 11.
- The NYISO admits that it has proposed a competitive entry exemption but that its proposals were not approved by the supermajority of the NYISO’s stakeholders, as was required to submit the rule changes to the Commission under Section 205 of the FPA. Complaint at 3, 7, 10, 12, 13.
- The NYISO admits that, under its proposal, eligibility for the exemption would not be limited if an entrant had certain arrangements with Non-Qualifying Entity Sponsors, such as fair market value leases or sale agreements for land, standardized interconnection agreements, developmental grants and service agreements for natural gas, and that certain non-qualifying contractual relationships would be allowed up to a *de minimis* amount of 5% of the project’s expected capital costs. Complaint at 12.

B. Defenses

Commission Rule 213(c)(2)(ii) requires answers to set forth every defense “to the extent practicable.” The NYISO supports the Complaint and urges the Commission to grant it promptly with limited modifications.

C. Proposed Resolution Process

Commission Rule 213(c)(4) states that an answer “is also required to describe the formal or consensual process it proposes for resolving the complaint.” As explained in the Complaint and in the Answer, the NYISO and its stakeholders have been discussing the implementation of a competitive entry exemption to the BSM Rules for over two years. The NYISO exhausted the stakeholder process without resolution and does not believe that further stakeholder discussions will result in a viable competitive entry exemption proposal.

Attachment 2

Attachment 2

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

| | | |
|---|---|-------------------------------|
| Consolidated Edison Company of New York, |) | |
| Inc., |) | |
| Orange and Rockland Utilities, Inc., |) | |
| New York State Electric and Gas Corp., |) | |
| Rochester Gas and Electric Corp., and |) | |
| Central Hudson Gas and Electric Corp., |) | |
| |) | |
| Complainants |) | |
| |) | Docket No. EL15-26-000 |
| v. |) | |
| |) | |
| New York Independent System Operator, |) | |
| |) | |
| Respondent |) | |

AFFIDAVIT OF RANA MUKERJI

Mr. Rana Mukerji declares:

1. I have personal knowledge of the facts and opinions in this affidavit and if called to testify could and would testify competently to those facts and opinions.
2. I am Rana Mukerji, Senior Vice President Market Structures, of the New York Independent System Operator (NYISO).
3. The purpose of this affidavit is to support a specific aspect of the NYISO's *Answer in Support of the Complaint* of the Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc., New York State Electric and Gas Corporation, Rochester Gas and Electric Corporation, and Central Hudson Gas and Electric Corporation ("NYISO Answer").
4. Specifically, I believe that, when a competitive entry exemption is established in the NYISO's rules, it must include provisions that penalize the submission of false, misleading, or inaccurate information in support of an exemption request.

Attachment 2

A. Background

5. The Complaint asks the Commission to order the NYISO to amend the NYISO's buyer-side capacity market power mitigation rules ("BSM Rules") to introduce a competitive entry exemption.
6. The Complaint's proposed competitive entry exemption is very similar to the one that the NYISO developed through its stakeholder process. The Complaint's proposal uses many of the same concepts and terms. But it differs from the NYISO's proposal in certain significant ways.
7. In particular, the Complaint omitted provisions from the NYISO's proposal that established penalties for the submission of false, misleading, or inaccurate information in a request for a competitive entry exemption.

B. The Need for Penalty Provisions

8. The NYISO's Answer supports the Complaint, but calls for certain modifications, including the addition of penalty provisions.
9. The NYISO's version of the competitive entry exemption proposal would add a new Section 23.4.5.7.8.5 to the NYISO's Market Administration and Control Area Services Tariff ("Services Tariff") to establish penalties for the submission of false, misleading, or inaccurate information in a request for a competitive entry exemption. It is described in Section II.C.1.b of the Answer.
10. Under the NYISO's proposal, a project that provided false, misleading, or inaccurate information as part of its exemption request and review process would have its exemption revoked and a penalty would be imposed unless it were determined that the exemption would still have been granted if complete and accurate information were submitted. The financial penalty would be equal to 1.5 times the maximum capacity revenues that it

Attachment 2

would have earned in the Spot Market for the capacity it transacted in the NYISO's market. Limiting the proposed penalty's application to only instances where a project would not have been eligible for an exemption would protect the market from over-mitigation, which could artificially increase prices. The limitation, however, is not intended to limit the Commission's authority to take enforcement action against entities that make false, misleading, or inaccurate submissions. Nor would it prevent the NYISO or the independent Market Monitoring Unit from making a referral to the Commission if it identifies a developer which provided false, misleading, or inaccurate information.

11. The NYISO would refund any penalties collected to Installed Capacity ("ICAP") Suppliers that, at the time of collection, are in the same Mitigated Capacity Zone as the penalized project on a basis that is proportionate to the amount of megawatts sold by the ICAP Supplier during the relevant time period.
12. I recognize that Market Participants are already prohibited from making false statements to ISOs/RTOs by the Commission's market-behavior rules, that this requirement is incorporated into market-based rate tariffs, and that violating the existing Commission rule could also be a violation of Section 4.1.7 of the Services Tariff.
13. Nevertheless, the potential market harm of uneconomic entry is both very great and very difficult to remedy after it occurs. The danger that uneconomic entry in a Mitigated Capacity Zone could inflict serious and long-lasting damage on the market warrants special safeguards. If an exemption were granted based on false information capacity payments to all capacity resources could be depressed. The result would be distorted long-term market signals that would undermine market efficiency and, ultimately, hurt consumers.

Attachment 2

14. I therefore believe that a specific and automatic penalty for providing false information pertaining to a request for a competitive entry exemption request should be included in the Services Tariff. Such a penalty would provide a strong deterrent that should eliminate any possible incentive for entrants to try to abuse the competitive entry exemption. Additionally, it would prevent the project from suppressing prices in any future auction. It would reinforce and complement, not supplant, the Commission's existing market manipulation requirements and authority.
15. I believe that the penalty proposed in the NYISO Answer will provide the desired additional deterrent. I do not believe that there is any risk that the proposed penalty provision would have adverse effects, such as potentially chilling investment or competitive behavior. The conduct that it would penalize, *i.e.*, submitting false, misleading, or inaccurate information pertaining to a competitive entry exemption, would be contrary to a clear rule.
16. It is my understanding that the NYISO's proposal is fully consistent with the Commission's policy that penalties directly administered by ISOs/RTOs be clearly articulated in tariffs and expressly define specific sanctions for specific violations. The proposed penalty formula is also similar to the currently effective formula used to calculate deficiency charges for ICAP shortfalls under Section 5.14.2.1 of the Services Tariff.¹

¹ In addition, the BSM Rules currently include capacity market penalties based on a "1.5 times" multiplier in Sections 23.4.5.4.2 (regarding External Sale UCAP) and 23.4.5.6 (regarding physical withholding tied to decisions to retire or remove capacity) of the Services Tariff.

Attachment 2

17. I therefore believe that the Commission should grant the Complaint with the modifications proposed in the Answer, including the NYISO's proposed penalty provision.

This concludes my Affidavit.

ATTESTATION

I am the witness identified in the foregoing affidavit. I have read the affidavit and am familiar with its contents. The facts set forth therein are true to the best of my knowledge, information, and belief.


Rana Mukerji

Subscribed and sworn to before me
this 15 day of January, 2015


Notary Public

My commission expires:

6/24/2018



Attachment 3

23.4.5.7 Unless exempt as specified below, offers to supply Unforced Capacity from a Mitigated Capacity Zone Installed Capacity Supplier: (i) shall equal or exceed the applicable Offer Floor; and (ii) can only be offered in the ICAP Spot Market Auctions. Except for Offer Floors applied pursuant to Section 23.4.5.7.8.5.3.1 (i.e., after the revocation of a Competitive Entry Exemption), ~~The~~ Offer Floor shall apply to offers for Unforced Capacity from the Installed Capacity Supplier, if it is not a Special Case Resource, starting with the Capability Period for which the Installed Capacity Supplier first offers to supply UCAP. Offer Floors applied pursuant to Section 23.4.5.7.8.5.3.1 shall apply to offers for Unforced Capacity from an Installed Capacity Supplier starting with all ICAP auction activity subsequent to the date of the revocation. Offer Floors shall cease to apply to; ~~provided, however,~~ that portion of a resource's UCAP (rounded down to the nearest tenth of a MW) that has cleared for any twelve, not-necessarily-consecutive, months (such cleared amount, "Cleared UCAP") ~~shall cease to be subject to the Offer Floor requirement.~~ Offer Floors shall be adjusted annually using the inflation rate component of the escalation factor of the relevant effective ICAP Demand Curves that have been accepted by the Commission

23.4.5.7.2 An Installed Capacity Supplier, in a Mitigated Capacity Zone for which the Commission has accepted an ICAP Demand Curve, shall be exempt from an

Offer Floor if: (a) the price that is equal to the (x) average of the ICAP Spot Market Auction price for each month in the two Capability Periods, beginning with the Summer Capability Period commencing three years from the start of the year of the Class Year (the "Starting Capability Period") is projected by the ISO to be higher, with the inclusion of the Installed Capacity Supplier, than (y) the ~~highest Offer Floor based on numerical value equal to seventy-five percent of the~~ Mitigation Net CONE that would be applicable to such supplier in the same two (2) Capability Periods (utilized to compute (x)), ~~or~~ (b) the price that is equal to the average of the ICAP Spot Market Auction prices in the six Capability Periods beginning with the Starting Capability Period is projected by the ISO to be higher, with the inclusion of the Installed Capacity Supplier, than the reasonably anticipated Unit Net CONE of the Installed Capacity Supplier, or (c) it has been determined to be exempt pursuant to Section 23.4.5.7.8 (the "Competitive Entry Exemption") or 23.4.5.7.9(Renewable Generator Exemption). The amount of the CRIS MW of the Generator or UDR project that has been determined to be exempt pursuant to Section 23.4.5.7.10 (Municipal Utilities Exemption) shall be exempt to an Offer Floor. For purposes of the determinations pursuant to (a) and (b) of this section, the ISO shall identify Unit Net CONE and the price on the ICAP Demand Curve projected for a future Mitigation Study Period consistent with Section 23.4.5.7.4.

23.4.5.7.8 Competitive Entry Exemption

23.4.5.7.8.1 Eligibility

23.4.5.7.8.1.1 A proposed new Generator or UDR project that is a member of a Class Year after Class Year 2012 may request to be evaluated for a "Competitive Entry Exemption" for its CRIS MW and shall qualify for such exemption if the ISO determines that the proposed Generator or UDR project: (a) does not have, and at no time before the Generator first produces or the UDR project first transmits energy (for purposes of this Section 23.4.5.7.8, the "Entry Date") shall not have, a direct or indirect "non-qualifying contractual relationship," as defined in Section 23.4.5.7.8.1.2, with a Transmission Owner, a 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, (collectively "Non-Qualifying Entry Sponsors"); or (b) is not itself, and is not an Affiliate of, a Non-Qualifying Entity Sponsor.

23.4.5.7.8.1.2 For purposes of Section 23.4.5.7.6, a direct "non-qualifying contractual relationship" shall include but not be limited to any contract, agreement, arrangement, or relationship (for the purposes of this Section 23.4.5.7.6, a "contract") that: (a) directly relates to the planning, siting, interconnection, operation, or construction of the Generator or UDR project that is the subject of the request for the Competitive Entry Exemption; (b) is for the energy or capacity produced by or delivered from or by the Generator or UDR project, including an agreement for rights to schedule or use a UDR; or (c) provides services, financial support, or tangible goods to a Generator or UDR project. For purposes of Section 23.4.5.7.8, an indirect "non-qualifying contractual relationship" is any

contract between the Generator or UDR project and an entity (for purposes of this section 23.4.5.7.8, a "third party") if the third party has a non-qualifying contractual relationship with a Non-Qualifying Entry Sponsors, the recital, purpose, or subject of which includes, or has the effect of including, this Generator or UDR project.

23.4.5.7. 8.1.3 A contract with a Non-Qualifying Entry Sponsor shall not constitute a "non-qualifying contractual relationship" if it is (i) an Interconnection Agreement; (ii) an agreement for the construction or use of interconnection facilities or transmission or distribution facilities, or directly connected joint use transmission or distribution facilities (including contracts required for compliance with Articles VII or X of the New York State Public Service Law or orders issued pursuant to Articles VII or X); (iii) a grant of permission by any department, agency, instrumentality, or political subdivision of New York State to bury, lay, erect or construct wires, cables or other conductors, with the necessary poles, pipes or other fixtures in, on, over or under public property; (iv) a contract for the sale or lease of real property to or from a Non-Qualifying Entry Sponsor at or above fair market value as of the date of the agreement was executed, such value demonstrated by an independent appraisal at the time of execution prepared by an accountant or appraiser with specific experience in such valuations; (v) an easement or license to use real property; (vi) a contract, with any department, agency, instrumentality, or political subdivision of New York State providing for a payment-in-lieu of taxes (i.e., a "PILOT" agreement) or industrial siting incentives, such as tax abatements or financing incentives, provided the PILOT

agreement or incentives are generally available to industrial entities; (vii) a contract that provides for payments to prevent or delay the mothballing or retirement of an existing Generator or UDR project at the time of the certification to address a reliability need recognized by the NYISO, as long as (A) the value of such reliability payments will not increase because of the entry of the new Generator or UDR project, and (B) the contract does not exceed the shorter of (1) the time to develop the permanent solution selected to address the reliability need or (2) seven years; (viii) a service agreement for natural gas entered into under a tariff accepted by a regulatory body with jurisdiction over that service; (ix) a service agreement entered into under a tariff accepted by a regulatory body with jurisdiction over that service at a regulated rate for electric Station Power, or steam service, excluding an agreement for a rate that is a negotiated rate pursuant to any such regulated electric, or steam tariff; or (x) a short term financial hedge not to exceed one year in duration with a Non-Qualifying Entry Sponsor, as long as there is no provision for renewal or extension in the financial hedge. Notwithstanding the foregoing, a contract with a Non-Qualifying Entry Sponsor that includes a provision that is a non-qualifying contractual relationship will render the entire contract described in (i) through (x) of this Section a non-qualifying contractual relationship.

23.4.5.7.8.1.4 All contracts described in 23.4.5.7.8.1.2 and not excluded pursuant to sections 23.4.5.7.8.1.3(i) – (x) above shall be deemed not to be non-qualifying contractual relationships to the extent that their total value, defined as the greater of the total payment to the Generator or UDR project or the fair market value of

the contract, collectively, does not exceed five percent of the total levelized cost of all capital and fixed operation and maintenance costs of the proposed new Generator or UDR project, as of the date of the Competitive Entry Exemption request and through the date of each certification pursuant to Section 23.4.5.7.8.2 until the date Generator's or UDR project's Entry Date .

23.4.5.7.8.1.5 The ISO shall determine whether a Generator or UDR project is eligible for a Competitive Entry Exemption based on its review of the certifications required by Section 23.4.5.7.8.2, below, and any other supporting data requested by the ISO. When evaluating eligibility for a Competitive Entry Exemption the ISO shall consult with the Market Monitoring Unit. The responsibilities of the Market Monitoring Unit that are addressed in this section of the Mitigation Measures are also addressed in Section 30.4.6.2.11 of Attachment O.

23.4.5.7. 8.2 Certifications

23.4.5.7.8.2.1 A Generator or UDR Project requesting a Competitive Entry Exemption shall submit to the ISO in accordance with ISO Procedures a certification from a duly authorized officer that the Generator or UDR project: (a) has not entered, and at no time before the Generator first synchronizes to the grid and produces, or the UDR project first transmits, energy shall not, enter, either directly or indirectly a "non-qualifying contractual relationship," as defined in Section 23.4.5.7.8.1.2, with a Non-Qualifying Entry Sponsor; (b) is not itself, and is not an Affiliate of, a Non-Qualifying Entry Sponsor; (c) acknowledges and consents that it would be subject to civil penalties under Section 316A of the Federal Power Act (or its successor) if it were to submit false, misleading, or inaccurate

information to the ISO, and (d) shall provide any information or cooperation requested by the ISO.

23.4.5.7.8.2.2 A duly authorized officer of the Generator or UDR project shall also submit a certification acknowledging that parents or Affiliates shall provide any information or cooperation requested by the ISO.

23.4.5.7.8.2.3 The certifying officers must have knowledge of the facts and circumstances supporting the request for a Generator's or UDR project's Competitive Entry Exemption.

23.4.5.7.8.2.4 Such certifications shall be submitted concurrent with the request for a Competitive Entry Exemption and each time the ISO requests a resubmittal of a certification, until the Generator's or UDR project's Entry Date.

23.4.5.7.8.2.5 The Generator or UDR project must notify the ISO if information in a certification ceases to be true, promptly upon such occurrence or learning information previously provided was not true.

23.4.5.7.8.2.6 Failure to provide, without prior notification, information or cooperation consistent with any certification shall be considered a false, misleading, or inaccurate submission for purposes of Section 23.4.5.7.8.5.

23.4.5.7.8.2.7 Where a notification is provided to the ISO, within 2 business days of receipt of a request from the ISO for information or cooperation, that the information or cooperation requested will not be provided, such refusal will not be considered a false, misleading, or inaccurate submission for purposes of Section 23.4.5.7.8.5 as long as the information is provided by the earlier of a mutually agreed upon deadline or thirty (30) calendar days. A refusal to provide

information or any other failure to provide information by that deadline will make the Generator or UDR project requesting a Competitive Entry Exemption ineligible for such exemption, and such Generator or UDR project shall be subject to the Mitigation Net CONE Offer Floor.

23.4.5.7.8.3 Timing for Requests, Required Submittals, and Withdrawals

23.4.5.7.8.3.1 The certification required by Section 23.4.5.7.8.2 shall be submitted concurrent with a request for a Competitive Entry Exemption. The ISO may request additional information or certifications at any time prior to a Generator's or UDR project's Entry Date. A Generator or UDR project that is granted an exemption pursuant to this Section 23.4.5.7.8, shall be required to resubmit the Section 23.4.5.7.8.2 certifications, updated as appropriate, upon its Entry Date.

23.4.5.7.8.3.2 Requests for Competitive Entry Exemptions for Generators or UDR projects in Class Years subsequent to Class Year 2012 must be received by the ISO no later than the Class Year Start Date, as defined in OATT Attachment S. Generators or UDR projects in Class Year 2012 or prior Class Years shall not be eligible to request or receive a Competitive Entry Exemption. The ISO shall determine whether a Generator or UDR project is exempt, subject to any required further submissions of information, or not exempt under the Competitive Entry Exemption, prior to such Generator's or UDR project's Project Cost Allocation, as defined in OATT Attachment S.

23.4.5.7.8.3.3 A Generator or UDR project that submits a request for a Competitive Entry Exemption, including the required certification, responses to information requests, and resubmittal, but enters into a "non-qualifying contractual relationship" may

withdraw such request, provided that it notifies the ISO that it has entered into such “non-qualifying contractual relationship” within 2 business days of doing so. A Generator or UDR project seeking to withdraw its request pursuant to this section 23.4.5.7.8.3 shall be subject to the Mitigation Net CONE Offer Floor, but will not be subject to the provisions of Section 23.4.5.7.8.5.

23.4.5.7.8.4 Notifications

23.4.5.7.8.4.1 The ISO shall post on its website a list of Generator or UDR projects requesting a Competitive Entry Exemption promptly after receiving a request, and shall update the list as necessary. The ISO shall also post on its website whether a request for a Competitive Entry Exemption was denied or granted as soon as its determination is final.

23.4.5.7.8.4.2 Concurrent with the ISO’s posting of its final determination, the Market Monitoring Unit shall publish a report on the ISO’s determination in accordance with Sections 30.4.6.2.11 and 30.10.4 of Attachment O to this Services Tariff.

23.4.5.7.8.5 Penalties and Violations

23.4.5.7.8.5.1 The submission of false, misleading, or inaccurate information, or the failure to submit requested information, except to the extent permitted in Section 23.4.5.7.8.2.6 in connection with a request for a Competitive Entry Exemption shall constitute a violation of this Tariff. Such violation shall be reported, by the ISO, to the Market Monitoring Unit and to the Commission’s Office of Enforcement (or any successor to its responsibilities). The entity requesting a Competitive Entry Exemption must acknowledge and consent in the certification required by Section 23.4.5.7.8.2 that it would be subject to civil penalties under

Section 316A of the Federal Power Act (or its successor) if it were to submit false, misleading, or inaccurate information to the ISO.

23.4.5.7.8.5.2 Where the ISO reasonably believes that a request for a Competitive Entry Exemption was granted based on false, misleading, or inaccurate information, the ISO shall notify the Generator or UDR project that its Competitive Entry Exemption may be revoked. To the extent practicable, the ISO shall provide the Generator or UDR project an opportunity to explain any statement, information, or action prior to the ISO submitting a report to the Market Monitoring Unit and the Commission's Office of Enforcement (or any successor to its responsibilities).

23.4.5.7.8.5.3 An Installed Capacity Supplier that had or has registered a Generator or UDR project with the ISO that is determined by the ISO to have submitted false, misleading, or inaccurate information, or that has failed to submit requested information without prior notification shall:

23.4.5.7.8.5.3.1 have its Competitive Entry Exemption revoked unless the ISO determines that it would have granted the Competitive Entry Exemption if complete and accurate information had been submitted. Upon revocation, the Generator or UDR project shall be subject to an Offer Floor set at the Mitigation Net CONE Offer Floor as of the date of the revocation.

23.4.5.7.8.5.3.2 be assessed a penalty equal to the absolute value of product of (a) 1.5 and (b) the MW of UCAP of the Generator or ~~for transmission using a UDR~~ pProject that were certified against a Capability Period or Monthly Auction obligation or in Bilateral Transaction, or offered in an ICAP Spot Market Auction, and (c) the Market-Clearing Price of the ICAP Spot Market Auction for the

smallest Locality that contains the Load Zone in which Generator or UDR project is electrically located for the most recent 36 calendar months, for which the UCAP from the Generator or UDR project is offered or certified. The ISO shall consult with the Market Monitoring Unit regarding the imposition of a penalty pursuant to this section. The ISO shall not impose a penalty under this section if it determines that the Competitive Entry Exemption would have been granted if complete and accurate information had been submitted.

23.4.5.7.8.5.3.3 be subject to additional penalties determined to be appropriate by the Commission. The ISO, after consultation with the Market Monitoring Unit, may propose additional penalties to be submitted to the Commission.

23.4.5.7.8.5.4 All penalties collected by the ISO under this section shall be refunded to any Installed Capacity Supplier that, at time the penalties are collected, is an Installed Capacity Supplier in the same Mitigated Capacity Zone(s) as the Generator or UDR facility during the relevant time period. Such refunds shall be paid proportionally to such Installed Capacity Supplier's sold or certified MW for each month in each ICAP Spot Market Auction in which it sold or certified MW.

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This Attachment 4 utilizes Complaint Exhibit B with the alterations shown in green text. The Green text shows the insertions and deletions that the NYISO recommends comprise the proposed CEE rules.

23.4 Mitigation Measures

23.4.5.7 Unless exempt as specified below, offers to supply Unforced Capacity from a Mitigated Capacity Zone Installed Capacity Supplier: (i) shall equal or exceed the applicable Offer Floor; and (ii) can only be offered in the ICAP Spot Market Auctions. Except for Offer Floors applied pursuant to Section 23.4.5.7.8.5.3.1 (i.e., after the revocation of a Competitive Entry Exemption), the Offer Floor shall apply to offers for Unforced Capacity from the Installed Capacity Supplier, if it is not a Special Case Resource, starting with the Capability Period for which the Installed Capacity Supplier first offers to supply UCAP. Offer Floors applied pursuant to Section 23.4.5.7.8.5.3.1 shall apply to offers for Unforced Capacity from an Installed Capacity Supplier starting with all ICAP auction activity subsequent to the date of the revocation. Offer Floors shall cease to apply to ; provided, however, that portion of a resource's UCAP (rounded down to the nearest tenth of a MW) that has cleared for any twelve, not-necessarily-consecutive, months (such cleared amount, "Cleared UCAP") shall cease to be subject to the Offer Floor requirement. Offer Floors shall be adjusted annually using the inflation rate component of the escalation factor of the relevant effective ICAP Demand Curves that have been accepted by the Commission.

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23.4.5.7.2 An Installed Capacity Supplier, in a Mitigated Capacity Zone for which the Commission has accepted an ICAP Demand Curve, shall be exempt from an Offer Floor if: (a) the price that is equal to the (x) average of the ICAP Spot Market Auction price for each month in the two Capability Periods, beginning with the Summer Capability Period commencing three years from the start of the year of the Class Year (the “Starting Capability Period”) is projected by the ISO to be higher, with the inclusion of the Installed Capacity Supplier, than (y) the highest Offer Floor based on numerical value equal to seventy-five percent of the Mitigation Net CONE that would be applicable to such supplier in the same two (2) Capability Periods (utilized to compute (x)), or (b) the price that is equal to the average of the ICAP Spot Market Auction prices in the six Capability Periods beginning with the Starting Capability Period is projected by the ISO to be higher, with the inclusion of the Installed Capacity Supplier, than the reasonably anticipated Unit Net CONE of the Installed Capacity Supplier; or (c) it has been determined to be exempt pursuant to Section 23.4.5.7.8 (the “Competitive Entry Exemption”). For purposes of the determinations pursuant to (a) and (b) of this section, the ISO shall identify Unit Net CONE and the price on the ICAP Demand Curve projected for a future Mitigation Study Period consistent with Section 23.4.5.7.4.

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23.4.5.7.68 Competitive Entry Exemption

23.4.5.7.-68.1 Eligibility

23.4.5.7.-68.1.1 A proposed new Generator or UDR project that is a member of a Class Year after Class Year 2012 may request to be evaluated for a “Competitive Entry Exemption” for its CRIS MW and shall qualify for such exemption if the ISO determines that the proposed Generator or UDR project: (a) does not have, and at no time before the Generator first produces or the UDR project first transmits energy (for purposes of this Section 23.4.5.7.8, the “Entry Date”) shall not have, a direct or indirect “non-qualifying contractual relationship,” as defined in Section 23.4.5.7.8.1.2, with a Transmission Owner, a 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, (collectively “Non-Qualifying Entry Sponsors”); or (b) is not itself, and is not an Affiliate of, a Non-Qualifying Entity Sponsor.

23.4.5.7.-68.1.2 For purposes of Section 23.4.5.7.68, a direct “non-qualifying contractual relationship” shall include but not be limited to any contract, agreement, arrangement, or relationship (for the purposes of this Section 23.4.5.7.68, a “contract”) that: (a) directly relates to the planning, siting, interconnection, operation, or construction of the Generator or UDR project that is the subject of the request for the Competitive Entry Exemption; (b) is for the energy or capacity produced by or delivered from or by the Generator or UDR project, including an agreement for rights to schedule or use a UDR; or (c) provides services, financial support, or tangible goods to a Generator or UDR project. For purposes of Section 23.4.5.7.8, an indirect “non-qualifying contractual relationship” is any contract between the Generator or UDR project and an entity (for purposes of this section 23.4.5.7.68, a “third party”) if the third party has a non-qualifying contractual relationship with a Non-Qualifying

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Entry Sponsors, the recital, purpose, or subject of which includes, or has the effect of including, this Generator or UDR project.

23.4.5.7.68.1.3 A contract with a Non-Qualifying Entry Sponsor shall not constitute a “non-qualifying contractual relationship” if it is (i) an Interconnection Agreement; (ii) an agreement for the construction or use of interconnection facilities or transmission or distribution facilities, or directly connected joint use transmission or distribution facilities (including contracts required for compliance with Articles VII or X of the New York State Public Service Law or orders issued pursuant to Articles VII or X); (iii) a grant of permission by any department, agency, instrumentality, or political subdivision of New York State to bury, lay, erect or construct wires, cables or other conductors, with the necessary poles, pipes or other fixtures in, on, over or under public property; (iv) a contract for the sale or lease of real property to or from a Non-Qualifying Entry Sponsor at or above fair market value as of the date of the agreement was executed, such value demonstrated by an independent appraisal at the time of execution prepared by an accountant or appraiser with specific experience in such valuations; (v) an easement or license to use real property; (vi) a contract, with any department, agency, instrumentality, or political subdivision of New York State providing for a payment-in-lieu of taxes (i.e., a “PILOT” agreement) or industrial siting incentives, such as tax abatements or financing incentives, provided the PILOT agreement or incentives are generally available to industrial entities; (vii) a contract that provides for payments to prevent or delay the mothballing or retirement of an existing Generator or UDR project at the time of the certification to address a reliability need recognized by the NYISO, as long as (A) the value of such reliability payments will not increase because of the entry of the new Generator or UDR project, and (B) the contract does not exceed the shorter of (1) the time to develop the permanent solution selected to address the reliability need or (2) seven years; (viii) a

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service agreement for natural gas entered into under a tariff accepted by a regulatory body with jurisdiction over that service; (ix) a service agreement entered into under a tariff accepted by a regulatory body with jurisdiction over that service at a regulated rate for electric Station Power, or steam service, excluding an agreement for a rate that is a negotiated rate pursuant to any such regulated electric or steam tariff; or (x) a short term financial hedge not to exceed one year in duration with a Non-Qualifying Entry Sponsor, as long as there is no provision for renewal or extension in the financial hedge. Notwithstanding the foregoing, a contract with a Non-Qualifying Entry Sponsor that includes a provision that is a non-qualifying contractual relationship will render the entire contract described in (i) through (x) of this Section a non-qualifying contractual relationship.

23.4.5.7. ~~68.1.4~~ All contracts described in 23.4.5.7. ~~68.1.2~~ and not excluded pursuant to sections 23.4.5.7.8.1.3(i) - (x) above shall be deemed not to be non-qualifying contractual relationships to the extent that their ~~total value~~ subsidy value, total value defined as the greater of the total payment to the Generator or UDR project or the fair market value of the contract, collectively, benefit provided by the Non-Qualifying Entry Sponsor for the commodity or service as compared to an arms-length transaction, greater of the total payment to the Generator or UDR project or the fair market value of the contract, collectively, does not exceed five percent of the total levelized cost of all capital and fixed operation and maintenance costs of the proposed new Generator or UDR project, as of the date of the Competitive Entry Exemption request and through the date of each certification pursuant to Section 23.4.5.7.8.2 until the date Generator's or UDR project's Entry Date.

23.4.5.7. ~~68.1.5~~ The ISO shall determine whether a Generator or UDR project is eligible for a Competitive Entry Exemption based on its review of the certifications required by Section 23.4.5.7.8.2, below, and any other supporting data requested by the ISO. When evaluating

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eligibility for a Competitive Entry Exemption the ISO shall consult with the Market Monitoring Unit. The responsibilities of the Market Monitoring Unit that are addressed in this section of the Mitigation Measures are also addressed in Section 30.4.6.2.11 of Attachment O.

23.4.5.7. 68.2 Certifications

23.4.5.7. 68.2.1 A Generator or UDR Project requesting a Competitive Entry Exemption shall submit to the ISO in accordance with ISO Procedures a certification from a duly authorized officer that ~~the Generator or UDR project: (a) has not entered, and at no time before the~~ Generator first synchronizes to the grid and produces, or the UDR project first transmits, energy shall not, enter, either directly or indirectly a “non-qualifying contractual relationship,” as defined in Section 23.4.5.7.68.1.2, with a Non-Qualifying Entry Sponsor; (b) is not itself, and is not an Affiliate of, a Non-Qualifying Entry Sponsor; (c) acknowledges and consents that it would be subject to civil penalties under Section 316A of the Federal Power Act (or its successor) if it were to submit false, misleading, or inaccurate information to the ISO, and (d) shall provide any information or cooperation requested by the ISO.

23.4.5.7.68.2.2 A duly authorized officer of the Generator or UDR project shall also submit a certification acknowledging that parents or Affiliates shall provide any information or cooperation requested by the ISO.

23.4.5.7.68.2.3 The certifying officers must have knowledge of the facts and circumstances supporting the request for a Generator’s or UDR project’s Competitive Entry Exemption.

to the best of his/her knowledge and having conducted due diligence that is current as of the date of the Certification, the corporate entity developing the Project has either (A) not

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~~executed contracts that are direct or indirect non-qualifying contractual relationships~~
~~with a “Non-Qualifying Entry Sponsor,” as those terms are defined in Section~~
~~23.4.5.7.68.1.2.; or (B) has executed contracts that are direct or indirect non-qualifying~~
~~contractual relationships with a “Non-Qualifying Entry Sponsor” and that all such~~
~~contracts are listed on the Certification and the total of all such contracts evaluated at~~
~~the greater of the subsidy value of the contracts, collectively, other than contracts~~
~~described in (i) through (viii) in Section 23.4.5.7.8.1.2, do not exceed five percent of the~~
~~total levelized cost of all capital and fixed operation and maintenance costs of the~~
~~proposed new Generator or UDR project, calculated consistently with corporate~~
~~standards and accepted accounting principles, pursuant to Section 23.4.5.7.8.1.2.~~
~~the Generator or UDR project: (a) has not entered, and at no time before the Generator~~
~~first synchronizes to the grid and produces, or the UDR project first transmits, energy~~
~~shall not, enter, either directly or indirectly a “non-qualifying contractual relationship,”~~
~~as defined in Section 23.4.5.7.8.1.2, with a Non-Qualifying Entry Sponsor; (b) is not~~
~~itself, and is not an Affiliate of, a Non-Qualifying Entry Sponsor; (c) acknowledges and~~
~~consents that it would be subject to civil penalties under Section 316A of the Federal~~
~~Power Act (or its successor) if it were to submit false, misleading, or inaccurate~~
~~information to the ISO, and (d) shall provide any information or cooperation requested~~
~~by the ISO.~~

23.4.5.7.8.2.2 A duly authorized officer of the Generator or UDR project shall also submit a
certification acknowledging that parents or Affiliates shall provide any information or
cooperation requested by the ISO.

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23.4.5.7.8.2.3 The certifying officers must have knowledge of the facts and circumstances supporting the request for a Generator's or UDR project's Competitive Entry Exemption.

23.4.5.7.8.2.4 Such certifications shall be submitted concurrent with the request for a Competitive Entry Exemption and each time the ISO requests a resubmittal of a certification, until the Generator's or UDR project's Entry Date.

23.4.5.7.8.2.5 The Generator or UDR project must notify the ISO if information in a certification ceases to be true, promptly upon such occurrence or learning information previously provided was not true.

23.4.5.7.8.2.6 Failure to provide, without prior notification, information or cooperation consistent with any certification shall be considered a false, misleading, or inaccurate submission for purposes of Section 23.4.5.7.8.5.

23.4.5.7.8.2.7 Where a notification is provided to the ISO, within 2 business days of receipt of a request from the ISO for information or cooperation, that the information or cooperation requested will not be provided, such refusal will not be considered a false, misleading, or inaccurate submission for purposes of Section 23.4.5.7.8.5 as long as the information is provided by the earlier of a mutually agreed upon deadline or thirty (30) calendar days. A refusal to provide information or any other failure to provide information by that deadline will make the Generator or UDR project requesting a Competitive Entry Exemption ineligible for such exemption, and such Generator or UDR project shall be subject to the Mitigation Net CONE Offer Floor.

23.4.5.7.8.2.5 The Generator or UDR project must notify the ISO if information in a certification ceases to be true, promptly upon such occurrence or learning information previously provided was not true.

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23.4.5.7.8.2.6 Failure to provide, without prior notification, information or cooperation

consistent with any certification shall be considered a false, misleading, or inaccurate submission for purposes of Section 23.4.5.7.8.5.

23.4.5.7.8.2.7 Where a notification is provided to the ISO, within 2 business days of receipt of a

request from the ISO for information or cooperation, that the information or cooperation requested will not be provided, such refusal will not be considered a false, misleading, or inaccurate submission for purposes of Section 23.4.5.7.8.5 as long as the information is provided by the earlier of a mutually agreed upon deadline or thirty (30) calendar days. A refusal to provide information or any other failure to provide information by that deadline will make the Generator or UDR project requesting a Competitive Entry Exemption ineligible for such exemption, and such Generator or UDR project shall be subject to the Mitigation Net CONE Offer Floor.

23.4.5.7.68.3 Timing for Requests, Required Submittals, and Withdrawals

23.4.5.7.68.3.1 The certification required by Section 23.4.5.7.8.2 shall be submitted concurrent with a request for a Competitive Entry Exemption. The ISO may request additional information or certifications at any time prior to a Generator's or UDR project's Entry Date. A Generator or UDR project that is granted an exemption pursuant to this Section 23.4.5.7.8, shall be required to resubmit the Section 23.4.5.7.8.2 certifications, updated as appropriate, upon its Entry Date.

23.4.5.7.68.3.2 Requests for Competitive Entry Exemptions for Generators or UDR projects in Class Years subsequent to Class Year 2012 must be received by the ISO no later than the Class Year Start Date, as defined in OATT Attachment S. Generators or UDR projects in Class Year 2012 or prior Class Years shall not be eligible to request or receive a Competitive Entry Exemption. The ISO shall determine whether a Generator or UDR project is exempt, subject

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to any required further submissions of information, or not exempt under the Competitive Entry Exemption, prior to such Generator's or UDR project's Project Cost Allocation, as defined in OATT Attachment S.

23.4.5.7.8.3.3 A Generator or UDR project that submits a request for a Competitive Entry Exemption, including the required certification, responses to information requests, and resubmittal, but enters into a "non-qualifying contractual relationship" may withdraw such request, provided that it notifies the ISO that it has entered into such "non-qualifying contractual relationship" within 2 business days of doing so. A Generator or UDR project seeking to withdraw its request pursuant to this section 23.4.5.7.8.3.3 shall be subject to the Mitigation Net CONE Offer Floor, but will not be subject to the provisions of Section 23.4.5.7.8.5.

23.4.5.7.-68.4 Notifications

23.4.5.7.-68.4.1 The ISO shall post on its website a list of Generator or UDR projects requesting a Competitive Entry Exemption promptly after receiving a request, and shall update the list as necessary. The ISO shall also post on its website whether a request for a Competitive Entry Exemption was denied or granted as soon as its determination is final.

23.4.5.7.-68.4.2 Concurrent with the ISO's posting of its final determination, the Market Monitoring Unit shall publish a report on the ISO's determination in accordance with Sections 30.4.6.2.11 and 30.10.4 of Attachment O to this Services Tariff.

23.4.5.7.8.5 Penalties and Violations

23.4.5.7.8.5.1 The submission of false, misleading, or inaccurate information, or the failure to submit requested information, except to the extent permitted in Section 23.4.5.7.8.2.6 in connection with a request for a Competitive Entry Exemption shall constitute a violation of this Tariff. Such violation shall be reported, by the ISO, to

the Market Monitoring Unit and to the Commission's Office of Enforcement (or any successor to its responsibilities). The entity requesting a Competitive Entry Exemption must acknowledge and consent in the certification required by Section 23.4.5.7.8.2 that it would be subject to civil penalties under Section 316A of the Federal Power Act (or its successor) if it were to submit false, misleading, or inaccurate information to the ISO.

23.4.5.7.8.5.2 Where the ISO reasonably believes that a request for a Competitive Entry Exemption was granted based on false, misleading, or inaccurate information, the ISO shall notify the Generator or UDR project that its Competitive Entry Exemption may be revoked. To the extent practicable, the ISO shall provide the Generator or UDR project an opportunity to explain any statement, information, or action prior to the ISO submitting a report to the Market Monitoring Unit and the Commission's Office of Enforcement (or any successor to its responsibilities).

23.4.5.7.8.5.3 An Installed Capacity Supplier that had or has registered a Generator or UDR project with the ISO that is determined by the ISO to have submitted false, misleading, or inaccurate information, or that has failed to submit requested information without prior notification shall:

23.4.5.7.8.5.3.1 have its Competitive Entry Exemption revoked unless the ISO determines that it would have granted the Competitive Entry Exemption if complete and accurate information had been submitted. Upon revocation, the Generator or UDR project shall be subject to an Offer Floor set at the Mitigation Net CONE Offer Floor as of the date of the revocation.

23.4.5.7.8.5.3.2 be assessed a penalty equal to the absolute value of product of (a) 1.5 and (b) the MW of UCAP of the Generator or using a UDR Project that were certified against a Capability Period or Monthly Auction obligation or in Bilateral Transaction, or offered in an ICAP Spot Market Auction, and (c) the Market-Clearing Price of the ICAP Spot Market Auction for the smallest Locality that contains the Load Zone in which Generator or UDR project is electrically located for the most recent 36 calendar months, for which the UCAP from the Generator or UDR project is offered or certified. The ISO shall consult with the Market Monitoring Unit regarding the imposition of a penalty pursuant to this section. The ISO shall not impose a penalty under this section if it determines that the Competitive Entry Exemption would have been granted if complete and accurate information had been submitted.

23.4.5.7.8.5.3.3 be subject to additional penalties determined to be appropriate by the Commission. The ISO, after consultation with the Market Monitoring Unit, may propose additional penalties to be submitted to the Commission.

23.4.5.7.8.5.4 All penalties collected by the ISO under this section shall be refunded to any Installed Capacity Supplier that, at time the penalties are collected, is an Installed Capacity Supplier in the same Mitigated Capacity Zone(s) as the Generator or UDR facility during the relevant time period. Such refunds shall be paid proportionally to such Installed Capacity Supplier's sold or certified MW for each month in each ICAP Spot Market Auction in which it sold or certified MW.

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Services Tariff Section 30.4 Market Monitoring Unit

30.4.6.2.1~~12~~ When evaluating a request by a Developer or Interconnection Customer 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 and cost calculations. As required by Section 23.4.5.7.8 of Attachment H to this Services Tariff, the Market Monitoring Unit shall prepare a written report confirming whether the ISO's Offer Floor and exemption determinations and calculations conducted pursuant to Sections 23.4.5.7.2 **and 23.4.5.7.8** of the Market Mitigation Measures 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 determinations. Pursuant to Section 23.4.5.7.7 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, shall be exempted from an Offer Floor under that Section. Prior to the ISO making an exemption determination pursuant to Section 23.4.5.7.7, 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 23.4.5.7.7. *See* Market Mitigation Measures Section 23.4.5.7.

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Services Tariff Section 30.6 Data Collection and Disclosure

30.6.2.2.5 Other Cost and Risk Data Supporting Reference Levels **or Mitigation**

Exemption 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 exemption 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's eligibility for a mitigation exemption determination, including information from a Market Party's Affiliates, as appropriate.**

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OATT Section 12.4 Treatment of Confidential and Transmission System Information

This section deals with Confidential Information, including Transmission System Information. Confidential Information consists of: (1) data designated as such in NYPP Operating Policy OP-18 (or its successor); (2) any commercially sensitive information including, without limitation, trade secrets, equipment specific information (*e.g.*, Generator specific data such as heat rates, etc.), and business strategies, affirmatively designated as Confidential Information by its supplier or owner; and (3) Transmission System Information (“TSI”) that has not yet been posted on the OASIS or provided in some public forum such as a FERC filing. TSI is information: (1) that is commercially valuable and (2) access to which is necessary to buy, sell or schedule Energy, Capacity, Ancillary Services or Transmission Service. Examples of TSI include, but are not limited to, the following:

- Available Transfer Capability;
- Total Transfer Capability;
- Information regarding physical Curtailments and Interruptions;
- Information regarding Ancillary Services;
- Pricing for Transmission Service; and
- Discounts offered.

In the course of responding to requests for Energy, Capacity, Transmission Services or Ancillary Services, the ISO shall not disclose Confidential Information to any Market Participant. The ISO shall disclose data that is not Confidential Information, and information required to be disclosed by FERC, by posting the information on the OASIS. If an ISO Employee improperly discloses TSI to any Market Participant, the ISO shall immediately post the information on the OASIS and notify the Commission.

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ISO Employees shall also report all improper disclosures of Confidential Information to the ISO compliance officer (as described in Section 12.10) or its designee immediately. In the case of an Emergency, the ISO may disclose such TSI, and then notify the Commission, posting the information on the OASIS as soon as practicable but no later than twenty-four (24) hours after the information is disclosed.

The procedures described in this section does not apply to the following:

- (1) communication of TSI between the ISO and the Transmission Owner's control centers, and other power pools or ISOs;
- (2) communication of non-public, operational information concerning natural gas-fueled generation from resources located within the New York Control Area between the ISO and the operating personnel of an interstate natural gas pipeline company for the purpose of promoting reliable service or operational planning;
- (3) communication of non-public, operational information concerning natural gas-fueled generation from resources located within the New York Control Area between the ISO and the operating personnel of natural gas local distribution companies ("LDCs") and/or intrastate natural gas pipeline companies operators for the purpose of promoting reliable service or operational planning, provided that if such party has acknowledged, in writing, that it is prohibited from disclosing—or using anyone as a conduit for disclosure of—non-public, operational information received from the ISO to: (a) an employee other than operating personnel of that LDC and/or intrastate natural gas pipeline company, (b) a affiliate or third party, or (c) any affiliate except for (i) the operating personnel of an affiliated interstate natural gas pipeline company, or (ii) the

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operating personnel of an intrastate pipeline which has a non-disclosure agreement with the ISO. The operating personnel of an affiliated interstate natural gas pipeline company accepting non-public operational information pursuant to this section shall agree to comply with 18 CFR 284.12(b)(4)(ii).
Unless otherwise authorized by the Commission, for purposes of this section LDC or intrastate pipeline “operating personnel” shall exclude employees engaged in marketing functions as defined by 18 CFR 358.3(c) or who make sales of natural gas;

- (4) communication of information from a Market Participant to the ISO;
- (5) information that is no longer Confidential Information because it was made public by posting it on the OASIS; or it was legally disclosed by a third party in good faith and without violating a trade secret, secrecy agreement or employment contract with a non-disclosure clause; or it was made public by a government agency, court or other process of law;
- (6) requests by a Market Participant for a report regarding the status of that Market Participant’s particular contracts or transactions. The ISO shall provide all Market Participants requesting a report the same type and level of detail of information; and
- (7) information that is not listed in NYPP OP-18 and has not been designated by the supplier or owner as Confidential Information; and
- (8) disclosures by the ISO that are authorized under ISO Services Tariff**

Attachment H Section 23.4.5.7 and its subsections (except as restricted in section 23.4.5.7.3.2).

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding in accordance with the requirements of Rule 2010 of the Rules of Practice and Procedure, 18 C.F.R. §385.2010.

Dated at Rensselaer, NY this 15th day of January, 2015.

/s/ Joy A. Zimmerlin

Joy A. Zimmerlin
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