

30.6 Data Collection and Disclosure

30.6.1 Access to ISO Data and Information

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

30.6.2 Data from Market Parties

30.6.2.1 Data Requests

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

Unit to maintain the confidentiality of data or information appropriately designated as Protected Information by the party producing it.

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

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

30.6.2.2 Categories of Data the ISO May Request from Market Parties

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

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

Demand Side Resource in the ISO Operating Reserves or Regulation Service markets.

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

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

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

30.6.2.2.5 Other Cost and Risk Data Supporting Reference Levels or Going-Forward

Costs – All data or information not specifically identified above that 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.

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

30.6.2.3 Enforcement of Data Requests

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

30.6.2.3.2 If a party receiving a request for data or information not specified in Section 30.6.2.2 of Attachment O believes that production of the requested data or information would impose a substantial burden or expense, or would require the party to produce information that is not relevant to achieving the purposes or objectives of Attachment O, or would require the production of data or information of extraordinary commercial sensitivity, the party receiving the request shall promptly so notify the ISO, and the ISO shall review the request with the receiving party with a view toward determining whether, without unduly compromising the objectives of Attachment O, the request can be narrowed or otherwise modified to reduce the burden or expense of compliance, or special

confidentiality protections are warranted, and if so shall so modify the request or the procedures for handling data or information produced in response to the request.

30.6.2.3.3 If the ISO determines that the requested information has not or will not be provided within a reasonable time, the ISO may invoke the dispute resolution provisions of the New York Independent System Operator Agreement, or if the foregoing is not applicable to the party from which the information has been requested the dispute resolution provisions of the New York ISO Tariffs, if applicable, to determine the ISO's right to obtain the requested information. The parties shall submit any such determination to binding arbitration, or other form of binding resolution, and shall seek expedited resolution, in accordance with the applicable dispute resolution procedures. If the entity from which the data or other information has been requested is not subject to either of the foregoing dispute resolution procedures and does not voluntarily agree to the use of either or a comparable dispute resolution procedure, the ISO may initiate such judicial or regulatory proceedings to compel the production of the requested information as may be available and deemed appropriate.

30.6.3 Data Retention

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

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

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

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

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

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

30.6.4 Confidentiality

The Market Monitoring Unit and the SO shall use all reasonable procedures necessary to protect and preserve the confidentiality of Protected Information, provided that such information is not available from public sources, is not otherwise subject to disclosure under any tariff or agreement administered by the ISO, and is properly designated as Protected Information. Except as may be required by subpoena or other compulsory process, the Market Monitoring Unit and the ISO shall not disclose Protected Information to any person or entity without the prior written

consent of the party that the Protected Information pertains to. Upon receipt of a subpoena or other compulsory process for the disclosure of Protected Information, the ISO and the Market Monitoring Unit shall promptly notify the party that the Protected Information pertains to, and shall provide all reasonable assistance requested by the party to prevent disclosure. The ISO may, in consultation with the Market Monitoring Unit, adopt further or different procedures for the designation of information as Protected Information, or for the reasonable protection of Protected Information, after providing an opportunity for interested parties to review and comment on such procedures; provided, however, that such further or different procedures shall not permit the ISO or Market Monitoring Unit to disclose data or information that would be protected from disclosure under the procedures in place at the time the data or information was provided to the ISO or to the Market Monitoring Unit.

30.6.5 Collection and Availability of Information

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

30.6.5.2 The ISO, in consultation with the Market Monitoring Unit, shall make publicly available: (i) a description of the categories of data and information collected and maintained by the MMA and Market Monitoring Unit; (ii) such data or information as may be useful for the competitive or efficient functioning of any of the New York Electric Markets that can be made publicly available consistent with the confidentiality of Protected Information; and (iii) if and to the extent consistent with confidentiality requirements, such summaries, redactions, abstractions or other non-confidential compilations, versions or reports of Protected Information as may be useful for the competitive or efficient

functioning of any of the New York Electric Markets. Any such proposed methods for creating non-confidential reports of such information shall only be adopted after provision of a reasonable opportunity for, and consideration of, the comments of Market Parties and other interested parties. All such proposed or adopted methods shall be set forth in the ISO Procedures, shall be made available through the ISO web site or comparable means, and shall be subject to review and approval by the Board.

30.6.5.3 Consistent with the foregoing requirements, the ISO and its Market Monitoring Unit shall make available, through the ISO web site or comparable means, such reports on the New York Electric Markets as they determine will, at reasonable cost, facilitate competition in those markets.

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

efficiency of any market, the ISO shall make data or information provided in accordance with this paragraph available to interested parties through the ISO web site or other appropriate means.

30.6.5.5 The New York Public Service Commission and any Other State Commission may make tailored requests to the Market Monitoring Unit for information related to general market trends and the performance of the New York Electric Markets. If the Market Monitoring Unit determines that such a request is not unduly burdensome, it shall provide the information sought, subject to the restrictions and limitations established in Sections 30.6.5.5.1, 30.6.5.5.2 and 30.6.5.5.4, below.

30.6.5.5.1 Until such time as the ISO is able to develop with its stakeholders and FERC accepts appropriate confidentiality protections (*See* Order 719 at PP. 448, 459), the Market Monitoring Unit shall not provide Protected Information in response to a request under this Section 30.6.5.5 of Attachment O, except where the party designating the requested information as Protected Information has consented in writing to its disclosure.

30.6.5.5.2 Prior to disclosing Protected Information pertaining to a particular Market Party in response to a tailored request made under Section 30.6.5.5, the Market Monitoring Unit shall (1) notify the Market Party or Parties to which the Protected Information pertains of the request and describe the information that the Market Monitoring Unit proposes to disclose, and (2) allow the Market Party or Parties a reasonable time to object to the disclosure and to provide context to the Protected Information related to it. Providing the opportunity for Market Parties

to object to disclosure, or to provide context to the information being produced shall not be permitted to unduly delay its release.

30.6.5.5.3 Section 30.6.5.5 of Attachment O pertains to requests by the New York Public Service Commission and Other State Commissions to the Market Monitoring Unit to provide information. Section 30.6.4 of Attachment O addresses how the Market Monitoring Unit responds to compulsory processes, such as subpoenas and court orders.

30.6.5.5.4 In responding to a request under Section 30.6.5.45 of Attachment O, the Market Monitoring Unit shall not knowingly provide information to the New York Public Service Commission, or to any Other State Commission, that is designed to aid a state enforcement action.

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

30.6.5.6 The Market Monitoring Unit shall respond to information and data requests issued to it by the Commission or its staff. If the Commission or its staff, during the course of an investigation or otherwise, requests Protected Information from the Market Monitoring Unit that is otherwise required to be maintained in confidence, the Market Monitoring Unit shall provide the requested information to the Commission or its staff within the time provided for in the request for information. In providing the information to the FERC or its staff, the Market Monitoring Unit shall, consistent with any FERC rules or regulations that may

provide for privileged treatment of that information, request that the information be treated as confidential and non-public by the FERC and its staff and that the information be withheld from public disclosure. The Market Monitoring Unit shall not be held liable for any losses, consequential or otherwise, resulting from the Market Monitoring Unit divulging such Protected Information pursuant to a request under this Section 30.6.5.6. After the Protected Information has been provided to the Commission or its staff, the Market Monitoring Unit shall immediately notify any affected Market Participant(s) when it becomes aware that a request for disclosure of such Protected Information has been received by the Commission or its staff, or a decision to disclose such Protected Information has been made by the Commission, at which time the Market Monitoring Unit and the affected Market Participant(s) may respond before such information would be made public, pursuant to the Commission's rules and regulations that may provide for privileged treatment of information provided to the Commission or its staff.

30.6.6 Sharing Information with PJM Interconnection LLC to Comply with FERC Opinion No. 476

30.6.6.1 Subject to the requirements of Section 30.6.6.2, the ISO and the Market Monitoring Unit may release Protected Information of Public Service Electric & Gas Company ("PSE&G"), Consolidated Edison Company of New York ("ConEd"), and their affiliates, and the Protected Information of any Market Participant regarding generation and/or transmission facilities located within the ConEd Transmission District (see "CARL Data" Section 2.3 of the ISO's Open Access Transmission Tariff) to PJM Interconnection LLC ("PJM") and the PJM Market Monitoring Unit ("PJM Market Monitor") to the limited extent that the

ISO or the ISO's Market Monitoring Unit determines necessary to carry out the responsibilities of the Market Monitoring Units of PJM Interconnection LLC ("PJM") and the ISO under FERC Opinion No. 476 (*see Consolidated Edison Company v. Public Service Electric and Gas Company, et al.*, 108 FERC ¶ 61,120 at P 215 (2004)) to conduct joint investigations to ensure that gaming, abuse of market power, or similar activities do not take place with regard to power transfers under the contracts that are the subject of FERC Opinion No. 476.

30.6.6.2 The ISO and the Market Monitoring Unit may release a Market Participant's Protected Information pursuant to Section 30.6.6.1 to PJM and/or the PJM Market Monitor only if the entity receiving the Protected Information is subject to obligations limiting the disclosure of such Protected Information that are equivalent to or greater than the limitations on disclosure specified in Section 30.6.4 of Attachment O. Information received from PJM or the PJM Market Monitor under Section 30.6.6.1 that is designated as Protected Information shall be protected from disclosure in accordance with Section 30.6.4 of Attachment O by the ISO and by its Market Monitoring Unit.

30.6.7 Sharing Confidential, Transmission System and Protected Information with ISO New England Inc. and PJM

30.6.7.1 Subject to the terms, requirements and conditions set forth below, the ISO is authorized to exchange Protected Information (including, but not limited to, information that is confidential, proprietary, commercially valuable or competitively sensitive or is a trade secret, and that has been designated as such in writing by the party supplying the information to the ISO or by the ISO) that is related to External Transactions at the Proxy Generator Buses representing the

electrical interfaces between the NYCA and New England, with ISO New England Inc. ("ISO-NE") for the specific and limited purposes of: (i) identifying and preventing the actual or intended gaming of the market rules set forth in the New York and/or New England (NEPOOL and ISO-NE) tariffs, procedures and technical documents, and/or (ii) identifying and preventing the actual or intended exercise of market power in New York or in New England; and

30.6.7.2 to exchange Protected Information (including, but not limited to, information that is confidential, proprietary, commercially valuable or competitively sensitive or is a trade secret, and that has been designated as such in writing by the party supplying the information to the ISO or by the ISO) that is related to External Transactions at the Proxy Generator Buses representing the electrical interfaces between the NYCA and the PJM Control Area, with PJM for the specific and limited purposes of: (i) identifying and preventing the actual or intended gaming of the market rules set forth in the New York and/or PJM tariffs, procedures and technical documents, and/or (ii) identifying and preventing the actual or intended exercise of market power in New York or in PJM.

30.6.7.3 Prior to disclosing any Protected Information, the ISO shall ensure that ISO-NE or PJM (as appropriate) will provide protections for Protected Information that are the substantial equivalent of those required by Attachment O, and that are the substantial equivalent of the protections that are required by Section 12.4 of the ISO's OATT Attachment F Code of Conduct for Confidential Information. In particular, ISO-NE and PJM shall be required to provide the following protections, and the ISO and its Market Monitoring Unit are authorized

to provide reciprocal protections for Protected Information that is provided by
ISO-NE or PJM:

- 30.6.7.3.1 ISO-NE or PJM (as appropriate) shall be subject to a legally enforceable obligation to treat as confidential, in accordance with all applicable tariffs and rules (including, but not limited to, their FERC Code of Conduct and the FERC Standards of Conduct), all information that is designated in writing by the ISO as being Protected Information, except where such information would not be subject to protection under the ISO's Code of Conduct OATT Attachment F) or this Attachment O. ISO-NE's or PJM's legally enforceable obligation to treat Protected Information provided by the ISO as confidential shall be of a continuing nature, and shall survive the rescission, termination or expiration of any applicable tariffs, rules, Code of Conduct and/or Standards of Conduct;
- 30.6.7.3.2 ISO-NE or PJM (as appropriate) shall possess reciprocal legal authority to provide Protected Information to the ISO;
- 30.6.7.3.3 ISO-NE or PJM (as appropriate) shall notice the ISO of all requests from courts or regulatory entities for access to Protected Information provided by the ISO and shall provide all reasonable assistance requested by the ISO to prevent disclosure of such information. Upon receipt of notice from ISO-NE or PJM, the ISO shall inform the party or parties that are the source or subject of the Protected Information and, in conjunction with ISO-NE or PJM, shall undertake reasonable efforts to ensure that the source(s) or subject(s) of the information are provided an opportunity to participate in defending the information from disclosure;

- 30.6.7.3.4 if required to release Protected Information to a court or regulatory body, ISO-NE or PJM (as appropriate) shall take measures to ensure that it receives notice of any requests from third parties for access to such data and shall notice the ISO of any such requests. Upon receipt of notice from ISO-NE or PJM, the ISO shall inform the party or parties that are the source or subject of the Protected Information and, in conjunction with ISO-NE or PJM, shall undertake reasonable efforts to ensure that the source(s) or subject(s) of the information are provided an opportunity to participate in defending the information from disclosure;
- 30.6.7.3.5 if required to release Protected Information to a court or regulatory body, ISO-NE or PJM (as appropriate) shall seek appropriate protective relief to limit the disclosure to the greatest extent possible; and
- 30.6.7.3.6 ISO-NE or PJM shall return or destroy Protected Information received from the ISO when the issue underlying ISO-NE's or PJM's inquiry has been resolved.