

## Attachment I

## 23.2 Conduct Warranting Mitigation

### 23.2.1 Definitions

The following definitions are applicable to this Attachment H:

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

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

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

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

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

Catastrophic Failure shall be based on a technical/engineering evaluation, shall be made by the ISO, and may be made at any time following the event that caused the Forced Outage provided that adequate information is provided to the ISO to support such determination.

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

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

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

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

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

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

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

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

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

**Exceptional Circumstances:** shall mean one or more unavoidable circumstances, as determined by the ISO, that individually or collectively render as unavailable the data necessary for the ISO to perform an audit and review of a Market Party, pursuant to Section 23.4.5.6.2 of this Services Tariff. Exceptional Circumstances may include, but are not limited to: the inaccessibility of the physical facility; the inaccessibility of necessary documentation or other data; and the unavailability of information regarding the regulatory obligations with which the Market Party

will be required to comply in order to return its Generator to service which regulatory obligations are not yet known but which will be made known by the applicable regulatory authority under existing laws and regulations provided that none of the above described circumstances are the result of delay or inaction by the Market Party. The magnitude of the repair cost, alone, shall not be an Exceptional Circumstance.

**“Exempt Renewable Technology”** shall mean, in all Mitigated Capacity Zones, an Intermittent Power Resource solely powered by wind or solar energy.

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

For purposes of Section 23.4.5 of this Attachment H, **“Indicative Mitigation Net CONE”** shall mean the capacity price calculated by the NYISO for informational purposes only if there is not an effective ICAP Demand Curve and the Commission (i) has accepted an ICAP Demand Curve for the Mitigated Capacity Zone that will become effective when the Mitigated Capacity Zone is first effective, in which case, the Indicative Mitigation Net CONE shall be the capacity price on such ICAP Demand Curve for the Mitigated Capacity Zone corresponding to the average amount of excess capacity above the Indicative NCZ Locational Minimum Installed Capacity Requirement, as applicable, expressed as a percentage of that requirement that formed the basis for the ICAP Demand Curve accepted by the Commission; or, (ii) has not accepted an ICAP Demand Curve for the Mitigated Capacity Zone, but the ISO has filed an ICAP Demand Curve for the Mitigated Capacity Zone pursuant to Services Tariff Section 5.14.1.2.11, in which case the Indicative Mitigation Net CONE shall be the capacity price on such ICAP Demand Curve corresponding to the average amount of excess capacity above the Indicative NCZ Locational Minimum Installed Capacity Requirement, expressed as a percentage of that requirement, that formed the basis for such ICAP Demand Curve.

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

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

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

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

**“Market Party”** shall mean any person or entity that is, or for purposes of the determinations to be made pursuant to Section 23.4.5.7 of this Attachment H proposes or plans a project that would

be, a buyer or a seller in, or that makes bids or offers to buy or sell in, or that schedules or seeks to schedule Transactions with the ISO in or affecting any of the ISO Administered Markets, or any combination of the foregoing.

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

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

**“NCZ Examined Project”** shall mean any Generator or UDR project that is not exempt pursuant to 23.4.5.7.8 and either (i) is in a Class Year on the date the Commission accepts the first ICAP Demand Curve to apply to a Mitigated Capacity Zone, (ii) meets the criteria specified in 23.4.5.7.3(II), or (iii) meets the criteria specified in 23.4.5.7.3(III) but the time period therein has passed on the date the Commission accepts the first ICAP Demand Curve. An NCZ Examined Project may be at any phase of development or in operation or an Installed Capacity Supplier.

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

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

For purposes of Section 23.4.5 of this Attachment H, **“Offer Floor”** for a Mitigated Capacity Zone Installed Capacity Supplier that is not a Special Case Resource shall mean the lesser of (i) a numerical value equal to 75% of the Mitigation Net CONE translated into a seasonally adjusted monthly UCAP value (**“Mitigation Net CONE Offer Floor”**), or (ii) the numerical value that is the first year value of the Unit Net CONE determined as specified in Section 23.4.5.7, translated into a seasonally adjusted monthly UCAP value using an appropriate class outage rate, (**“Unit Net CONE Offer Floor”**). The Offer Floor for a Mitigated Capacity Zone Installed Capacity Supplier that is a Special Case Resource shall mean a numerical value determined as specified in Section 23.4.5.7.5. The Offer Floor for Additional CRIS MW shall mean a numerical value determined as specified in Section 23.4.5.7.6.

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

that, together with any of its Affiliated Entities, (a) Controls 650 MW or more of Unforced Capacity; and (b) Controls Unforced Capacity some portion of which is necessary to meet the G-J Locality Locational Minimum Installed Capacity Requirement in an ICAP Spot Market Auction; and (iii) for each Mitigated Capacity Zone except the New York City Locality and the G-J Locality, if any, a Market Party that Controls at least the quantity of MW of Unforced Capacity specified for the Mitigated Capacity Zone and accepted by the Commission.

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

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

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

**“Self Supply LSE”** shall mean a Load Serving Entity in one or more Mitigated Capacity Zones that operates under a long-standing business model to meet more than fifty percent of its Load obligations through its own generation and that is a Public Power Entity, “Single Customer Entity,” or “Vertically Integrated Utility.” For purposes of this definition only: (i) “Vertically Integrated Utility” means a utility that owns generation, includes such generation in a non-bypassable charge in its regulated rates, earns a regulated return on its investment in such generation, and that as of the date of its request for a Self Supply Exemption, has not divested more than seventy-five percent of its generation assets owned on May 20, 1996; and (ii) “Single Customer Entity” means an LSE that serves at retail only customers that are under common control with such LSE, where such control means holding 51% or more of the voting securities or voting interests of the LSE and all its retail customers.

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

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

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

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

For purposes of Section 23.4.5 of this Attachment H, **“Unit Net CONE”** shall mean localized levelized embedded costs of a specified Installed Capacity Supplier, including interconnection

costs, and for an Installed Capacity Supplier located outside a Mitigated Capacity Zone including embedded costs of transmission service, in either case net of likely projected annual Energy and Ancillary Services revenues, as determined by the ISO, translated into a seasonally adjusted monthly UCAP value using an appropriate class outage rate.

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

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

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

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

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

23.2.3.1.1 is significantly inconsistent with competitive conduct; and

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

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

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

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

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

For purposes of this Section and Section 23.4.3.2, the term "unjustifiable change" shall mean a change in an Electric Facility's operating parameters that is: (a) not



attributable to the Electric Facility's verifiable physical operating capabilities, and  
(b) is not a rational competitive response to economic factors other than market power.

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

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

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

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

23.2.4.4 The ISO and the Market Monitoring Unit shall monitor the ISO Administered Markets for other categories of conduct, whether by a single firm or by multiple firms acting in concert, that have material effects on prices or

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

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

- 23.4.5.1 If and to the extent that sufficient installed capacity is not under a contractual obligation to be available to serve load in New York and if physical or economic withholding of installed capacity would be likely to result in a material change in the price for installed capacity in all or some portion of New York, the ISO, in consideration of the comments of the Market Parties and other interested parties, shall amend this Attachment H, in accordance with the procedures and requirements for amending the Plan, to implement appropriate mitigation measures for installed capacity markets.
- 23.4.5.2 Offers to sell Mitigated UCAP in an ICAP Spot Market Auction shall not be higher than the higher of (a) the UCAP Offer Reference Level for the applicable ICAP Spot Market Auction, or (b) the Going-Forward Costs of the Installed Capacity Supplier supplying the Mitigated UCAP. Where an Installed Capacity Supplier is a Pivotal Supplier in some, but not all, Mitigated Capacity Zones in which it has Resources, such Installed Capacity Supplier's offer to sell Mitigated UCAP in any ICAP Spot Market Auction for any Resource for which it is a Pivotal Supplier shall not be higher than the higher of (a) the lowest of the UCAP Offer Reference Levels for each Mitigated Capacity Zone in which such Installed Capacity Supplier has Resources; or (b) if an Offer for a Resource has an applicable Going-Forward Cost, such Going-Forward Cost.
- 23.4.5.3 An Installed Capacity Supplier's Going-Forward Costs for an ICAP Spot Market Auction shall be determined upon the request of the Responsible Market Party for that Installed Capacity Supplier. The Going-Forward Costs shall be

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

actually plans to mothball or retire it if the Installed Capacity revenues it receives are not sufficient to cover those costs.

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

23.4.5.4.1 An export to an External Control Area or sale to meet an Installed Capacity requirement outside the Mitigated Capacity Zone in which the ICAP Supplier is a Pivotal Supplier is located of Mitigated UCAP (either of the foregoing being referred to as “External Sale UCAP”) may be subject to audit and review by the ISO to assess whether such action constituted physical withholding of UCAP from a Mitigated Capacity Zone. External Sale UCAP shall be deemed to have been physically withheld on the basis of a comparison of the net revenues from UCAP sales that would have been earned by the sale in a Mitigated Capacity Zone of External Sale UCAP. The comparison shall be made for the period for which Installed Capacity is committed (the “Comparison Period”) in each of the shortest term organized capacity markets (the “External Reconfiguration Markets”) for the area and during the period in which the Mitigated UCAP was exported or sold. External Sale ICAP shall be deemed to have been withheld from a Mitigated Capacity Zone if: (1) the Responsible Market Party for the External Sale UCAP could have made all or a portion of the External Sale UCAP

available to be offered in the Mitigated Capacity Zone by buying out of its external capacity obligation through participation in an External Reconfiguration Market; and (2) the net revenues over the Comparison Period from sale in the Mitigated Capacity Zone of the External Sale UCAP that could have been made available for sale in that Locality would have been greater by 15% or more, provided that the net revenues were at least \$2.00/kilowatt-month more than the net UCAP revenues from that portion of the External Sale UCAP over the Comparison Period.

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

and without the inclusion of the External Sale UCAP in those auctions, or (B) the difference between such average price and the clearing price in the External Reconfiguration Market for the relevant Comparison Period, times the total of (1) the amount of Mitigated UCAP not offered or sold as specified above, and (2) all other megawatts of Unforced Capacity in the Mitigated Capacity Zone under common Control with such Mitigated UCAP. The ISO will distribute any amounts recovered in accordance with the foregoing provisions among the LSEs serving Loads in regions affected by the withholding in accordance with ISO Procedures.

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

from sale of the External UCAP Sales capacity in the Mitigated Capacity Zone at the ICAP Spot Auction prices projected by the ISO. The responsibilities of the Market Monitoring Unit that are addressed in this section of the Mitigation Measures are also addressed in Section 30.4.6.2.8 of Attachment O to this Services Tariff.

23.4.5.5 Control of Unforced Capacity shall be rebuttably presumed from (i) ownership of an Installed Capacity Supplier, or (ii) status as the Responsible Market Party for an Installed Capacity Supplier, but may also be determined on the basis of other evidence. For purposes of determining if a Responsible Market Party is a Pivotal Supplier in a Mitigated Capacity Zone except the G-J Locality, the presumption of Control of Unforced Capacity can be rebutted by: (1) the sale of Unforced Capacity in a Capability Period Auction or a Monthly Auction, or (2) demonstrating to the reasonable satisfaction of the ISO that the ability to determine the price and quantity of offers to supply Unforced Capacity has been conveyed to a person or entity that is not an Affiliated Entity without limitation or condition. For purposes of determining if a Responsible Market Party is a Pivotal Supplier in the G-J Locality, the presumption of Control of Unforced Capacity can be rebutted by demonstrating to the reasonable satisfaction of the ISO that the ability to determine the price and quantity of offers to supply Unforced Capacity has been conveyed to a person or entity that is not an Affiliated Entity without limitation or condition, but cannot be rebutted by the sale of Unforced Capacity in a Capability Period or Monthly Auction. For any Mitigated Capacity Zone, if the presumption has not been rebutted, and if two or more Market Parties each have



rights or obligations with respect to Unforced Capacity from an Installed Capacity Supplier that could reasonably be anticipated to affect the quantity or price of Unforced Capacity transactions in an ICAP Spot Market Auction, the ISO may attribute Control of the affected MW of Unforced Capacity from the Installed Capacity Supplier to each such Market Party. Prior to reaching its decision regarding whether the presumption of control of Unforced Capacity has been rebutted, the ISO shall provide its preliminary determination to the Market Monitoring Unit for review and comment. The responsibilities of the Market Monitoring Unit that are addressed in this section of the Mitigation Measures are also addressed in Section 30.4.6.2.9 of Attachment O to this Services Tariff.

#### **23.4.5.6 Audit, Review, and Penalties for Physical Withholding to Increase Market-Clearing Prices**

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

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

the proposal or decision has a legitimate economic justification or is based on an effort to withhold Installed Capacity physically in order to affect prices. The ISO shall provide the preliminary results of its audit or review to the Market Monitoring Unit for its review and comment. The responsibilities of the Market Monitoring Unit that are addressed in this section of the Mitigation Measures are also addressed in Section 30.4.6.2.10 of Attachment O to this Services Tariff.

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

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

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

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

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

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

The ISO shall conduct the audit and review after its receipt of data that it determines is necessary for the audit and review; provided, however, if, at the time the ISO acquires the necessary data, the Market Party has Commenced Repair of the Generator, or the Generator is determined by the ISO to have had a Catastrophic Failure, the Market Party shall not be subject to an audit and review pursuant to Section 23.4.5.6.2.1 of this Services Tariff. A Generator that Commenced Repair while in an ICAP Ineligible Forced Outage but that ceased or

unreasonably delayed that repair shall be subject to audit and review by the ISO pursuant to Section 23.4.5.6.2.1 of this Services Tariff.

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

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

23.4.5.6.2.4 The audit and review pursuant to Sections 23.4.5.6.2.1, and 23.4.5.6.2.2 shall be conducted to determine whether the decision not to repair a Generator had a legitimate economic justification, consistent with competitive behavior; that is, whether the cost of repair, including the risk-adjusted cost of capital, could not reasonably be expected to be recouped over the reasonably anticipated remaining life of the generator. The elements of such audit and review may include, as appropriate, the historical revenue and maintenance cost data for the purpose of the baseline, the duration of the repair, the costs including, but not limited to, capital expenditures necessary to comply with federal or state environmental, safety or reliability requirements that must be met in order to operate the Generator, the anticipated capacity, energy and ancillary services revenues following the repair, the projected costs of operating the Generator following the

repair, any benefits that would be foregone from using the site for a purpose other than as the existing Generator (e.g., repowering), and other relevant data.

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

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

For a requesting Market Party, a determination that a Generator has experienced a Catastrophic Failure shall be made by the ISO by the 160<sup>th</sup> day of the Forced Outage. If the ISO has determined that Exceptional Circumstances will delay the submission of data necessary for the ISO to perform an audit and review pursuant to Section 23.4.5.6.2.1 or 23.4.5.6.2, the ISO shall use reasonable efforts to issue a determination that the Generator has experienced a Catastrophic Failure by the 40th day after receipt of data necessary to conduct the analysis.

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

If the ISO determines that either: i) pursuant to Section 23.4.5.6.1, the proposal or decision by a Market Party to retire or otherwise remove an Installed Capacity Supplier from a

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

#### **23.4.5.7 Buyer-Side Market Power Mitigation Measures for Installed Capacity**

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 23.4.5.7.9.5.2 (*i.e.*, after the revocation of a Competitive Entry Exemption,) Section 23.4.5.7.13.3 (*i.e.*, after the revocation of a Renewable Exemption) or Section 23.4.5.7.14.5 (*i.e.*, after the revocation of a Self Supply 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 23.4.5.7.9.5.2 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 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"). 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.

23.4.5.7.1      Unforced Capacity from an Installed Capacity Supplier that is subject to an Offer Floor may not be used to satisfy any LSE Unforced Capacity Obligation for Mitigated Capacity Zone Load unless such Unforced Capacity is obtained through participation in an ICAP Spot Market Auction.

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

numerical value equal to 75 percent of the Mitigation Net CONE that would be applicable to such supplier in the same two (2) Capability Periods (utilized to compute (x)), (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, (c) it has been determined to be exempt pursuant to Section 23.4.5.7.9 (the “Competitive Entry Exemption”), (d) it has been determined, and in the quantity of MW for which it has been determined, to be exempt pursuant to Section 23.4.5.7.13 (the “Renewable Exemption”), or (e) it has been determined, and in the quantity of MW for which it has been determined, to be exempt pursuant to Section 23.4.5.7.14 (the “Self Supply 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 Sections 23.4.5.7.3.2 or 23.4.5.7.4, as appropriate, for each Examined Facility promptly after it (i) has accepted its SDU Project Cost Allocation and deliverable MW, if any, from the Final Decision Round and (ii) along with all other remaining members, has posted any associated Security pursuant to OATT Section 25 (OATT Attachment S) (for purposes of Section 23.4, a project that “remains a member of a completed Class Year”). The first year value of an Examined Facility’s Unit Net CONE will be calculated pursuant to Section 23.4.5.7, Section 23.4.5.7.2.4, or 23.4.5.7.3.2, will be established at the time such Examined Facility first offers UCAP, and will be



used by the ISO in subsequent mitigation exemption or Offer Floor determinations for Additional CRIS MW. Any determination received pursuant to Sections 23.4.5.7.2, 23.4.5.7.6. or 23.4.5.7.7 shall not become final for the relevant Examined Facility unless the Examined Facility accepts its SDU Project Cost Allocation and deliverable MW, if any, from the Final Decision Round, and posted any associated security pursuant to OATT Section 25, and remains a member of the completed Class Year. The Unit Net CONE or exemption determination pursuant to this Section shall be final on the date the ISO issues a notice to stakeholders that the Class Year decisional process has been completed.

23.4.5.7.2.1 Promptly after Commission acceptance of the first ICAP Demand Curve to apply to a Mitigated Capacity Zone, the ISO shall make an exemption and Offer Floor determination for any NCZ Examined Project that is in a completed Class Year and has received CRIS, unless exempt pursuant to section 23.4.5.7.6 or 23.4.5.7.8.

23.4.5.7.2.2 The ISO shall make an “Indicative Buyer-Side Mitigation Exemption Determination” for any NCZ Examined Project if (i) the Commission has accepted an ICAP Demand Curve for the Mitigated Capacity Zone that will become effective when the Mitigated Capacity Zone is first effective, or (ii) if the Commission has not accepted the first ICAP Demand Curve to apply specifically to the Mitigated Capacity Zone in which the NCZ Examined Project is located, provided the ISO has filed an ICAP Demand Curve pursuant to Services Tariff Section 5.14.1.2.11. The Indicative Buyer-Side Mitigation Exemption Determination shall be computed using such ICAP Demand Curve for the

Mitigated Capacity Zone concurrent with the determinations the ISO makes for Examined Facilities pursuant to Sections 23.4.5.7.3.2 and 23.4.5.7.3.3. The ISO shall recompute the Indicative Buyer-Side Mitigation Exemption Determination promptly after Commission acceptance of the first ICAP Demand Curve for the applicable Locality provided that such NCZ Examined Project (i) received CRIS if the Class Year completed at the time the Commission accepts the Demand Curve, or (ii) has not been removed from the Class Year Deliverability Study if the Class Year is not completed. The Indicative Buyer-Side Mitigation Exemption Determination is for informational purposes only. The exemption or Offer Floor for an NCZ Examined Project to which this Section applies shall be determined for such projects receiving CRIS using the Commission-accepted Locality Demand Curve.

23.4.5.7.2.3 Any NCZ Examined Project not exempt pursuant to 23.4.5.7.8 shall provide data and information requested by the ISO by the date specified by the ISO, in accordance with the ISO Procedures.

The ISO shall compute the reasonably anticipated ICAP Spot Market Auction forecast price based on Expected Retirements (as defined in subsection 23.4.5.7.2.3.1), plus each NCZ Examined Project.

23.4.5.7.2.3.1 Expected Retirements shall be determined based on any Generator that provided written notice to the New York State Public Service Commission that it intends to retire, plus any UDR facilities, or any Generator 2 MW or less that provided written notice to the ISO that it intends to retire.

23.4.5.7.2.3.2 The Load forecast shall be based on data used to develop the Indicative Locational Minimum Installed Capacity Requirement, and Special Case Resources based on data for the Mitigated Capacity Zone that is part of the Special Case Resource data set forth in the most-recently published Load and Capacity Data (Gold Book).

23.4.5.7.2.4 The ISO shall post on its website the inputs of the reasonably anticipated ICAP Spot Market Auction forecast prices determined in accordance with 23.4.5.7.2.3 (except for the posting of an input which would disclose Confidential Information), the Expected Retirements, and the NCZ Examined Projects, before the exemption or Offer Floor determination under this Section.

When the ISO is evaluating more than one NCZ Examined Project concurrently, the ISO shall recognize in its computation of the anticipated ICAP Spot Market Auction forecast price that Generators or UDR facilities will clear from lowest to highest, using for each NCZ Examined Project the lower of (i) the first year value of its Unit Net CONE, or (ii) the numerical value equal to 75 percent of the Mitigation Net Cone, then inflated in accordance with 23.4.5.7 for each of the year two and year three of the Mitigation Study Period.

23.4.5.7.2.5 When evaluating NCZ Examined Projects pursuant to Sections 23.4.5.7.2.1 or 23.4.5.7.2.2, the ISO shall seek comment from the Market Monitoring Unit on matters relating to the determination of price projections and cost calculations. The ISO shall inform the NCZ Examined Project of the Offer Floor or Offer Floor exemption determination or Indicative Buyer-Side Mitigation Exemption Determination promptly. The responsibilities of the Market

Monitoring Unit that are addressed in this Section 23.4.5.7.2.5 are also addressed in Section 30.4.6.2.12 of Attachment O to this Services Tariff.

23.4.5.7.2.6 If an NCZ Examined Project under the criteria in 23.4.5.7.2.1 or 23.4.5.7.2.2 does not provide all of the requested data by the date specified by the ISO, the MW of CRIS received at that time by the project shall be subject to the Mitigation Net CONE Offer Floor for the period determined by the ISO in accordance with Section 23.4.5.7.

23.4.5.7.2.7 An NCZ Examined Project or Examined Facility located in more than one Mitigated Capacity Zone shall be evaluated pursuant to the tests in Section 23.4.5.7.2 (a) and (b) or 23.4.5.7.3 (as applicable), calculating Mitigation Net CONE for the smallest Mitigated Capacity Zone that contains the Load Zone in which such NCZ Examined Project or Examined Facility is electrically located.

23.4.5.7.3 The ISO shall make such exemption and Unit Net CONE determination for each “Examined Facility” (collectively “Examined Facilities”) which term shall mean (I) each proposed new Generator and proposed new UDR project, and each existing Generator that has ERIS only and no CRIS, that is a member of the Class Year that requested CRIS, or that requested an evaluation of the transfer of CRIS rights from another location, in the Class Year Facilities Study commencing in the calendar year in which the Class Year Facility Study determination is being made (the Capability Periods of expected entry as further described below in this Section, the “Mitigation Study Period”), (II) each (i) existing Generator that did not have CRIS rights, and (ii) proposed new Generator and proposed new UDR project, that is an expected recipient of transferred CRIS rights at the same

location regarding which the ISO has been notified by the transferor or the transferee of a transfer pursuant to OATT Attachment S Section 25.9.4 that will be effective on a date within the Mitigation Study Period, (III) each proposed new Generator that (a) is either (i) in the ISO Interconnection Queue, in a Class Year prior to 2009/10, and has not commenced commercial operation or been canceled, and for which the ISO has not made an exemption or Unit Net CONE determination, or (ii) not subject to a deliverability requirement (and therefore, is not in a Class Year) and (b) provides specific written notification to the ISO no later than the date identified by the ISO, that it plans to commence commercial operation and offer UCAP in a month that coincides with a Capability Period of the Mitigation Study Period. The term “Examined Facilities” does not include any facility exempt from an Offer Floor pursuant to the provisions of Section 23.4.5.7.

23.4.5.7.3.1 The commercial operation date to be used by the ISO solely for purposes of identifying the Examined Facilities will be determined by the ISO at the time of the Class Year Study as the date most-recently (A) identified by the project to the ISO in the Interconnection Facilities Study process or (B) reflected in the Interconnection Queue, or if neither of the foregoing is applicable, then the date identified by the project to the Transmission Owner to which it has proposed interconnecting.

23.4.5.7.3.2 The ISO shall compute the reasonably anticipated ICAP Spot Market Auction forecast price for any Mitigated Capacity Zone based on Expected

Retirements (as defined in this subsection 23.4.5.7.3.2), plus each Examined Facility in 23.4.5.7.3 (I), (II), and (III).

Expected Retirements shall be determined based on any Generator that provided written notice to the New York State Public Service Commission that it intends to retire, plus any UDR facility or Generator 2 MW or less that provided written notice to the ISO that it intends to retire.

The load forecast and Special Case Resources shall be as set forth in the most-recently published Load and Capacity Data (Gold Book).

Before the commencement of the Initial Decision Period for the Class Year, the ISO shall post on its website the inputs of the reasonably anticipated ICAP Spot Market Auction forecast prices determined in accordance with 23.4.5.7.3.2, the Expected Retirements, and the Examined Facilities, before the Initial Project Cost Allocation, subject to any restrictions on the disclosure of Confidential Information or Critical Energy Infrastructure Information.

When the ISO is evaluating more than one Examined Facility concurrently, the ISO shall recognize in its computation of the anticipated ICAP Spot Market Auction forecast price that Generators or UDR facilities will clear from lowest to highest, using for each Examined Facility the lower of (i) the first year value of its Unit Net CONE, or (ii) the numerical value equal to 75 percent of the Mitigation Net Cone, then inflated in accordance with 23.4.5.7 for each of the year two and year three of the Mitigation Study Period.

23.4.5.7.3.3 All developers, Interconnection Customers, and Installed Capacity

Suppliers for any Examined Facility that do not request CRIS shall provide data

and information requested by the ISO by the date specified by the ISO, in accordance with the ISO Procedures. For any such Examined Facility that is in a Class Year but that only has ERIS rights after the Project Cost Allocation process is complete, the ISO shall utilize the data first provided in its analysis of the Unit Net CONE in its review of the project in any future Class Year in which the Generator or UDR facility requests CRIS. The ISO shall determine the reasonably anticipated Unit Net CONE less the costs to be determined in the Project Cost Allocation or Revised Project Cost Allocation, as applicable, prior to the commencement of the Initial Decision Period Class Year, and shall provide to the Examined Facility the ISO's initial determination of an exemption or the Offer Floor. On or before the three (3) days prior to the ISO's issuance of the Revised Project Cost Allocation, the ISO will revise its forecast of ICAP Spot Market Auction prices for the Capability Periods in the Mitigation Study Period based on the Examined Facilities that remain in the Class Year for CRIS and the Examined Facilities that meet 23.4.5.7.3 (II) or (III). When evaluating Examined Capacity pursuant to this Section 23.4.5.7, the ISO shall seek comment from the Market Monitoring Unit on matters relating to the determination of price projections and cost calculations. The ISO shall provide to each project its revised price forecast and a revised initial determination for a Subsequent Decision Period no later than the ISO's issuance of a Revised Project Cost Allocation. If a project remains a member of a completed Class Year, the ISO shall inform the project of the final determination of the Offer Floor or whether the Offer Floor exemption specified above in this Section is applicable as soon as practicable after the date the ISO

issues a notice to stakeholders that the Class Year decisional process has been completed, in accordance with methods and procedures specified in ISO Procedures. The responsibilities of the Market Monitoring Unit that are addressed in this section of the Mitigation Measures are also addressed in Section 30.4.6.2.12 of Attachment O to this Services Tariff.

23.4.5.7.3.4 If an Examined Facility under the criteria in 23.4.5.7.3 (II) or (III) has not provided written notice to the ISO on or before the date specified by the ISO, or any Examined Facility required to be reviewed does not provide all of the requested data by the date specified by the ISO, the proposed Capacity shall be subject to the Mitigation Net CONE Offer Floor for the period determined by the ISO in accordance with Section 23.4.5.7.

23.4.5.7.3.5 Except as specified in Section 23.4.5.7.6 with respect to Additional CRIS MW, an Examined Facility for which an exemption or Offer Floor determination has been rendered may only be reevaluated for an exemption or Offer Floor determination if it meets the criteria in Section 23.4.5.7.3 (I) and was not previously in a Class Year at the time of the completion of the Class Year either (a) enters a new Class Year and requests CRIS or (b) intends to receive transferred CRIS rights at the same location. An Examined Facility under the criteria in Section 23.4.5.7.3 (II) that did receive CRIS rights will be bound by the determination rendered and will not be reevaluated, and an Examined Facility under the criteria in Section 23.4.5.7.3 (III) will not be reevaluated.

23.4.5.7.3.6 If an Installed Capacity Supplier demonstrates to the reasonable satisfaction of the ISO that the value equal to the first of the three year values in



the Mitigation Study Period that comprise its Unit Net CONE is less than any Offer Floor that would otherwise be applicable to the Installed Capacity Supplier, then its Offer Floor shall be reduced to a numerical value equal to the first year of its Unit Net CONE.

23.4.5.7.3.7 If the Installed Capacity Supplier first offers UCAP prior to the first Capability Year of the Mitigation Study Period for which it was evaluated, its Offer Floor shall be reduced using the inflation rate component identified in Section 23.4.5.7. If the Installed Capacity Supplier first offers UCAP after the first Capability Year of the Mitigation Study Period for which it was evaluated, its Offer Floor shall be increased using the inflation rate component identified in 23.4.5.7.

23.4.5.7.4 For purposes of Sections 23.4.5.7.2(b) and 23.4.5.7.6(b), the ISO shall identify (A) the Unit Net CONE projected for a Mitigation Study Period using: (i) the inflation rate component of the escalation factor of the relevant ICAP Demand Curves for any year for which there are accepted ICAP Demand Curves, and (ii) the inflation rate component of the escalation factor of the last year of accepted relevant ICAP Demand Curves if relevant ICAP Demand Curves do not apply to the year; and (B) the price on the ICAP Demand Curve projected for a Mitigation Study Period using (i) the escalation factor of the relevant ICAP Demand Curves for any year for which there are accepted ICAP Demand Curves; and (ii) the escalation factor of the last year of accepted ICAP Demand Curves if relevant ICAP Demand Curves do not apply to the year. For purposes of Section

23.4.5.7.2(a), the ISO shall use the escalation factor of the relevant ICAP Demand Curves.

23.4.5.7.5 A Mitigated Capacity Zone Installed Capacity Supplier that is a Special Case Resource shall be subject to an Offer Floor beginning with the month of its initial offer to supply Installed Capacity, and until its offers of Installed Capacity have been accepted in the ICAP Spot Market Auction at a price at or above its Offer Floor for a total of twelve, not necessarily consecutive, months. A Special Case Resource shall be exempt from the Offer Floor if (a) it is located in a Mitigated Capacity Zone except New York City and is enrolled as a Special Case Resource with the ISO for any month within the Capability Year that includes March 31 in an ICAP Demand Curve Reset Filing Year in which the ISO proposes a New Capacity Zone that includes the location of the Special Case Resource, or (b) the ISO projects that the ICAP Spot Market Auction price will exceed the Special Case Resource's Offer Floor for the first twelve months that the Special Case Resource reasonably anticipated to offer to supply UCAP. If a Responsible Interface Party fails to provide Special Case Resource data that the ISO needs to conduct the calculations described in the two preceding sentences by the deadline established in ISO Procedures, the Special Case Resource will cease to be eligible to offer or sell Installed Capacity. The Offer Floor for a Special Case Resource shall be equal to the minimum monthly payment for providing Installed Capacity payable by its Responsible Interface Party, plus the monthly value of any payments or other benefits the Special Case Resource receives from a third party for providing Installed Capacity, or that is received by the

Responsible Interface Party for the provision of Installed Capacity by the Special Case Resource. The Offer Floor calculation for a Special Case Resource located in New York City shall include any payment or the value of other benefits that are awarded for offering or supplying Mitigated Capacity Zone Capacity unless such payment or the value of other benefits is ruled exempt by Commission order in response to a request for exemption filed under section 206 of the Federal Power Act by New York State or a government instrumentality of New York State. The Offer Floor calculation for a Special Case Resource located in a Mitigated Capacity Zone except New York City shall include any payment or the value of other benefits that are awarded for offering or supplying Mitigated Capacity Zone Capacity, except for payments or the value of other benefits provided under programs administered or approved by New York State or a government instrumentality of New York State. Offers by a Responsible Interface Party at a PTID shall be not lower than the highest Offer Floor applicable to a Special Case Resource providing Installed Capacity at that PTID. Such offers may comprise a set of points for which prices may vary with the quantity offered. If this set includes megawatts from a Special Case Resource(s) with an Offer Floor, then at least the quantity of megawatts in the offer associated with each Special Case Resource must be offered at or above the Special Case Resource's Offer Floor. Offers by a Responsible Interface Party shall be subject to audit to determine whether they conformed to the foregoing Offer Floor requirements. If a Responsible Interface Party together with its Affiliated Entities submits one or more offers below the applicable Offer Floor, and such offer or offers cause or

contribute to a decrease in UCAP prices in the Mitigated Capacity Zone of 5 percent or more, provided such decrease is at least \$.50/kilowatt-month, the Responsible Interface Party shall be required to pay to the ISO an amount equal to 1.5 times the difference between the Market-Clearing Price for the Mitigated Capacity Zone in the ICAP Spot Auction for which the offers below the Offer Floor were submitted with and without such offers being set to the Offer Floor, times the total amount of UCAP sold by the Responsible Interface Party and its Affiliated Entities in such ICAP Spot Auction. If an offer is submitted below the applicable Offer Floor, the ISO will notify the Responsible Market Party and the notification will identify the offer, the Special Case Resource, the price impact, and the penalty amount. The ISO will provide the notice reasonably in advance of imposing such penalty. The ISO shall distribute any amounts recovered in accordance with the foregoing provisions among the entities, other than the entity subject to the foregoing payment requirement, supplying Installed Capacity in regions affected by one or more offers below an applicable Offer Floor in accordance with ISO Procedures.

**23.4.5.7.6 Exemption and Offer Floor Determinations for Additional CRIS MW:**

All requests for Additional CRIS MW located in a Mitigated Capacity Zone, in a Class Year or through a transfer, shall be evaluated for a buyer-side mitigation exemption or Offer Floor in accordance with this Section. Additional CRIS MW obtained in a Class Year or obtained through a transfer at the same location shall be exempt from an Offer Floor (a) if the price that is equal to (x) the 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 Class Year (the “Starting Capability Period”) is projected by the ISO, with the inclusion of the Additional CRIS MW, to be higher than (y) the highest Offer Floor based on the Mitigation Net CONE that would be applicable to such Additional CRIS MW in the same two (2) Capability Periods (utilized to compute (x)); (b) if 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, with the inclusion of the Installed Capacity Supplier’s Additional CRIS MW, to be higher than the reasonably anticipated Unit Net CONE computed in accordance with (i) and (ii) of Section 23.4.5.7.6.1 for the Installed Capacity Supplier’s Additional CRIS MW, or (c) for the quantity of MW determined to be exempt pursuant to Section 23.4.5.7.13 or 23.4.5.7.14 (*i.e.*, a Self Supply Exemption can be received for some Additional CRIS MW and a Renewable Exemption for other Additional CRIS MW that comprise all or part of the same request for Additional CRIS MW in a given Class Year.

23.4.5.7.6.1 For Additional CRIS MW that have an exemption or Offer Floor determined pursuant to this Section 23.4.5.7.6, the ISO shall compute Unit Net CONE as follows:

- (i) Unit Net CONE for the Additional CRIS MW shall be based on the Additional CRIS MW and the costs and revenues of and associated with the Additional CRIS MW if:

- (a) the most recent prior determination concluded that the Capacity for which the Examined Facility accepted CRIS was exempt from the Offer Floor pursuant to Section 23.4.5.7.2(b), 23.4.5.7.6(b), 23.4.5.7.7, or 23.4.5.7.8; or
  - (b) at the time of an Examined Facility's request for Additional CRIS MW: (1) it has accepted CRIS MW equal to, or greater than, 95 percent of the Examined Facility's maximum MW of electrical capability, net of auxiliary load, at an ambient temperature of 93° F as determined in accordance with ISO Procedures and (2) the amount of Cleared UCAP is greater than or equal to the amount of UCAP calculated pursuant to Section 23.4.5.7.6.3; or
  - (c) the Examined Facility's Total Evaluated CRIS MW includes exempted CRIS MW for which the Examined Facility did not receive a Unit Net CONE determination and thus did not provide data to the ISO because the determination for the exempt CRIS MW received was not based on Unit Net CONE and was made prior to November 27, 2010.
- (ii) or in all other cases, Unit Net CONE, shall be the greater of two values, one based on the Total Evaluated CRIS MW, and the costs and revenues of the Total Evaluated CRIS MW, and one based on the Additional CRIS MW, and the costs and revenues of the Additional CRIS MW.

23.4.5.7.6.2 When calculating the Unit Net CONE of the Total Evaluated CRIS MW for an Examined Facility, the ISO shall utilize the Examined Facility's first year Unit Net CONE determined pursuant to Section 23.4.5.7 and Sections 23.4.5.7.2.4 or 23.4.5.7.3.2, adjusted to the year's dollars at the time of an Examined Facility's request for Additional CRIS MW using: (i) the relevant value from the price

index for non-farm business output published in the Survey of Current Business by the Department of Commerce's Bureau of Economic Analysis ("BEA Non-Farm Price Index"), or its successor; or (ii) the inflation rate component of the escalation factor of the most currently accepted ICAP Demand Curves for any future year which is beyond the published BEA Non-Farm Price Index, or its successor.

23.4.5.7.6.3 For purposes of making the determination pursuant to Section 23.4.5.7.6.1(i)(b)(2), the amount of Cleared UCAP shall be compared to an amount of UCAP calculated as the product of the CRIS MW held by the Examined Facility immediately prior to its request for Additional CRIS MW and (1-EFORd). Except as specified in the next paragraph, for purposes of this calculation, if the Examined Facility is a Generator, its EFORd shall be derived using the data in the 5-year average NERC-GADS Generating Availability Report, or its successor, for the main class of the unit (hereinafter the "Class Average EFORd") that is current at the time of the request for Additional CRIS MW, when available. If the Examined Facility is an Intermittent Power Resource or Limited Control Run-of-River Hydro Resource, the ISO shall apply a 5-year average derating factor based on ISO data to establish the EFORd to be utilized in the calculation pursuant to this paragraph. In all other cases, the ISO will apply the 5-year average derating factor from the ICAP/UCAP translation, for the smallest Mitigated Capacity Zone in which the resource is located at the time of the request. The EFORd applied by the ISO at the time that the Examined Facility first offers or certifies UCAP in an Installed Capacity auction ("Initial

Entry EFORD”) shall be used instead of Class Average EFORD when it is higher (*i.e.*, a greater outage rate) than the Class Average EFORD calculated at the time of the Examined Facility’s request for Additional CRIS MW.

23.4.5.7.6.4 Additional CRIS MW shall be subject to the Mitigation Net CONE Offer Floor for the period specified in Section 23.4.5.7, for any Examined Facility whose Total Evaluated CRIS MW includes CRIS MW that are or have ever been subject to the Mitigation Net CONE Offer Floor, pursuant to Section 23.4.5.7.3.4.

23.4.5.7.6.5 The Offer Floor for Additional CRIS MW shall be equal to the lesser of:  
(a) the Unit Net CONE for the Additional CRIS MW; or (b) a numerical value equal to 75 percent of the Mitigation Net CONE translated into a seasonally adjusted monthly UCAP value for the Additional CRIS MW.

23.4.5.7.6.6 The results of this exemption determination shall apply only to the Additional CRIS MW and shall not alter or affect any prior exemption or Offer Floor determination for the Examined Facility. The Additional CRIS MW for which CRIS is received shall be bound by the determination rendered and will not be reevaluated unless the Examined Facility enters a new Class Year for the Additional CRIS MW.

23.4.5.7.6.7 When the ISO makes a mitigation exemption or Offer Floor determination for an Examined Facility’s Additional CRIS MW for an Installed Capacity Supplier other than that to which the Unit Net CONE determination for the Examined Facility was rendered, the ISO shall provide such Installed Capacity Supplier with the Examined Facility’s first year Unit Net CONE value if the Installed Capacity Supplier (a) requests that information, and (b) represents that it:



(i) will use that information solely for purposes of considering a request for Additional CRIS MW for the Examined Facility, and (ii) will not share that information with or make it available to any other person except those that are assisting it in considering a request for Additional CRIS MW.

23.4.5.7.6.8 The ISO shall post on its website the determination of whether the project is exempt or non-exempt from an Offer Floor as soon as the determination is final. Concurrent with the ISO's posting, the Market Monitoring Unit shall publish a report on the ISO's determination, as further specified in Section 30.4.6.2.12 of Attachment O to this Services Tariff.

23.4.5.7.7 (a) An In-City Installed Capacity Supplier that is not a Special Case Resource shall be exempt from an Offer Floor if it was an existing facility on or before March 7, 2008. (b) A Generator or UDR project that was an existing facility on or before June 29, 2012, which: (i) is in a Mitigated Capacity Zone except New York City, and (ii) was grandfathered from the deliverability requirement at a certain quantity of MW of CRIS pursuant to Section 25.9.3.1 of OATT Attachment S ("Deliverability Grandfathering Process") shall be exempt from an Offer Floor for the MW quantity of CRIS that was provided through the Deliverability Grandfathering Process plus an additional 2 MW obtained through Section 30.3.2.6 of Attachment X to the OATT. If the Generator or UDR project subsequently received CRIS above the quantity established through the Deliverability Grandfathering Process, this exemption shall not apply to any such increase above the 2 MW allowed in Section 30.3.2.6 of Attachment X to the OATT.

23.4.5.7.8 For any Mitigated Capacity Zone except New York City:

- (I) Any existing or proposed Generator or UDR project that has the characteristics specified in this Section 23.4.5.7.8(I) shall be exempt from an Offer Floor with respect to the MW of CRIS that it received at the time, or for which it satisfied the specific CRIS transfer requirements stated in this Section. To be eligible for an exemption under this Section: (a) the existing or proposed Generator or UDR project's location must be included in the ISO's March 31 Filing in the ICAP Demand Curve Reset Filing Year in which a Mitigated Capacity Zone is first applied to such location; (b) prior to that March 31 Filing the existing or proposed Generator or UDR project must have both: (i) Commenced Construction and (ii) either (1) received the MW of CRIS in a Class Year that was completed or (2) submitted to the ISO an Interconnection Request that specifically states that the Generator or UDR project will be requesting or has requested a transfer of a specific MW quantity of CRIS at the same location in accordance with Section 25.9.4 of OATT Attachment S (provided that the transfer is ultimately approved by the ISO and consummated); and (c) the existing or proposed Generator or UDR project must demonstrate to the ISO no later than the deadline established by the ISO that it satisfies the requirements of (b) (i) and (ii) above; and
- (II) An existing or proposed Generator or UDR project that is not subject to a deliverability requirement (and therefore, is not in a Class Year and does not receive CRIS MW) shall be exempt from an Offer Floor if it meets the following requirements prior to the ISO's March 31 Filing in an ICAP Demand Curve Reset Filing Year in which a Mitigated Capacity Zone is first applied to such location:

(a) has Commenced Construction, (b) has an effective interconnection agreement, and (c) provides specific written notification to the ISO that it meets requirements (a) and (b) of this subsection 23.4.5.7.8(II) no later than the deadline established by the ISO.

The ISO shall consult with the Market Monitoring Unit prior to determining whether an existing or proposed Generator or UDR project has Commenced Construction. Prior to the ISO making its determination, the Market Monitoring Unit shall provide the ISO a written opinion and recommendation regarding whether an existing or proposed Generator or UDR project Commenced Construction. The responsibilities of the Market Monitoring Unit that are addressed in this section of the Mitigation Measures are also addressed in Section 30.4.6.2.12 of Attachment O. The ISO shall only make a determination pursuant to this Section for an existing or proposed Generator or UDR project for the Mitigated Capacity Zone's first application to the location of the project. 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 pursuant to this Section 23.4.5.7.8.

#### **23.4.5.7.9 Competitive Entry Exemption**

##### **23.4.5.7.9.1 Eligibility**

23.4.5.7.9.1.1 A proposed new Generator or UDR project that becomes 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 meets each of the

following requirements: (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 23.4.5.7.9, the “Entry Date”) shall have, (i) a direct or indirect “non-qualifying contractual relationship,” as defined in Section 23.4.5.7.9.1.2, 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 (ii) an unexecuted agreement, written or unwritten, with a Non-Qualifying Entry Sponsor that would support the development of the project, except those agreements that would not constitute a “non-qualifying contractual relationship,” as set forth in Section 23.4.5.7.9.1.3(i) – (viii), (b) is not itself, and is not an Affiliate of, a Non-Qualifying Entry Sponsor.

23.4.5.7.9.1.2 For purposes of Section 23.4.5.7.9, 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 23.4.5.7.9, 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 23.4.5.7.9, an indirect “non-qualifying contractual relationship” is any contract between the Generator or UDR project and an entity (for purposes of this

Section 23.4.5.7.9, a “third party”) if the third party has a non-qualifying contractual relationship with a Non-Qualifying Entry Sponsor, the recital, purpose, or subject of which includes, or has the effect of including, this Generator or UDR project.

23.4.5.7.9.1.3 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 10 of the New York State Public Service Law or orders issued pursuant to Articles VII or 10); (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 or commercial siting incentives, such as tax abatements or financing incentives, provided the PILOT agreement or incentives are generally available to industrial

or commercial entities; (vii) a service agreement for natural gas entered into under a tariff accepted by a regulatory body with jurisdiction over that service; or (viii) 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. 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 (viii) of this Section a non-qualifying contractual relationship.

23.4.5.7.9.1.4 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 23.4.5.7.9.2, 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 30.4.6.2.12 of Attachment O to this Services Tariff.

#### **23.4.5.7.9.2 Certifications and Acknowledgements**

23.4.5.7.9.2.1 A Generator or UDR project requesting a Competitive Entry Exemption shall submit to the ISO in accordance with ISO Procedures, and shall be legally bound by, the following Certification and Acknowledgement form executed by a duly authorized officer:

## **CERTIFICATION AND ACKNOWLEDGMENT**

I [NAME & TITLE] hereby certify on behalf of myself, [NAME OF PROJECT], and [NAME OF DEVELOPER] that each of the following statements is true and correct:

1. I am an officer whose responsibilities include the development of the [EXAMINED FACILITY], New York Independent System Operator, Inc.'s ("NYISO") Interconnection queue position Number [INSERT NUMBER] (the "Project").
2. I am duly authorized to make representations concerning the Project, including each of the certifications and acknowledgements that I have made in this document.
3. I hereby [REQUEST ON BEHALF OF/ACKNOWLEDGE THE PRIOR SUBMISSION IN THIS CLASS YEAR BY] the Developer a Competitive Entry Exemption for the Project.
4. I have reviewed and I understand the requirements established under the NYISO Market Administration and Control Area Services Tariff ("Services Tariff") related to a "Competitive Entry Exemption" pursuant to Section 23.4.5.7.9.
5. I have personal knowledge of the facts and circumstances supporting the Project's request and eligibility for a Competitive Entry Exemption as of the date of this Certification and Acknowledgment, including all data and other information submitted by the Project to the NYISO.
6. To the best of my knowledge and having conducted due diligence that is current as of the date of this Certification there [ARE/ARE NOT ANY] direct or indirect contractual relationships for the Project with a "Non-Qualifying Entry Sponsor," as those terms are defined in Section 23.4.5.7.9 of the Services Tariff. I have listed all contracts with Non-Qualifying Entry Sponsors on Schedule 1 to this Certification.
7. If the Answer to (6) is that there are one or more direct or indirect contractual relationships for the Project with a Non-Qualifying Entry Sponsor, then I certify that to the best of my knowledge and having conducted due diligence that they are "allowable contracts" as set forth in Section 23.4.5.7.9.1.3(i) – (viii) of the Services Tariff.
8. To the best of my knowledge and having conducted due diligence that is current as of the date of this Certification, (a) no unexecuted agreements, written or unwritten, with a Non-Qualifying Entry Sponsor exist that would support the development of the Project except those agreements that would not constitute a non-qualifying contractual relationship, as set forth in Section 23.4.5.7.9.1.3(i) – (viii) of the Services Tariff, and (b) all agreements that would not constitute a non-qualifying contractual relationship are on Schedule 1 to this certification.

9. To the best of my knowledge and having conducted due diligence, the Project is not a Non-Qualifying Entry Sponsor, and it is not an “Affiliate” (as Affiliate is defined in Section 2.1 of the Services Tariff) of, a Non-Qualifying Entry Sponsor.
10. The Project shall provide any information or cooperation requested by the NYISO in connection with the Project’s request for a Competitive Entry Exemption.
11. All parents or Affiliates of the Project shall provide any information or cooperation requested by the ISO.

I hereby acknowledge on behalf of myself, [INSERT NAME OF PROJECT], and [NAME OF DEVELOPER] that:

- a. The submission of false, misleading, or inaccurate information, or the failure to submit information requested by the NYISO related to the Project’s request for a Competitive Entry Exemption, including but not limited to information contained or submitted in this Certification and Acknowledgement on behalf of the Project, shall constitute a violation of Section 4.1.7 of the Services Tariff, and subject to the Commission’s review, a violation of the Commission’s regulations and Section 316A of the Federal Power Act.
- b. If the Project submits false, misleading, or inaccurate information, or fails to submit requested information to the NYISO, including but not limited to information contained or submitted in this Certification and Acknowledgement on behalf of the Project, it shall cease to be eligible for a Competitive Entry Exemption and, if the Project has already received a Competitive Entry Exemption, that exemption shall be subject to revocation by the NYISO or the Commission after which the Project shall be subject to an Offer Floor set at the Mitigation Net CONE Offer Floor (such value calculated based on the date it first Offers UCAP, in accordance with Section 23.4.5.7.3.7, and adjusted annually in accordance with Section 23.4.5.7 of the Services Tariff,) starting with the date of the revocation pursuant to Section 23.4.5.7.9.5.3 of the Services Tariff.
- c. If the Project submits false, misleading, or inaccurate information, or fails to submit requested information to the NYISO, including but not limited to information contained or submitted in the Certification and Acknowledgement on behalf of the Project, it may be subject to civil penalties that may be imposed by the Commission for violations of Section 4.1.7 of Services Tariff, the Commission’s rules, and/or Section 316A of the Federal Power Act.

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[PRINT NAME]

[DATE]



Subscribed and sworn to before me  
this [ ] day of [MONTH] [YEAR].

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

**PROJECT NAME] SCHEDULE 1 CERTIFICATION AND ACKNOWLEDGEMENT  
[DATE]**

**Parties to agreement   Date Executed   Effective Date   Date Performance Commences**

23.4.5.7.9.2.2 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.

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

23.4.5.7.9.2.4 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.

23.4.5.7.9.2.5 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.

23.4.5.7.9.2.6 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 23.4.5.7.9.5.

23.4.5.7.9.2.7 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 23.4.5.7.9.5 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 (such value based on the date it first offers UCAP, in accordance with Section 23.4.5.7.3.7, and adjusted annually in accordance with Section 23.4.5.7 of the Services Tariff.)

### **23.4.5.7.9.3 Timing for Requests, Required Submittals, and Withdrawals**

23.4.5.7.9.3.1 The executed Certification and Acknowledgement form required by Section 23.4.5.7.9.2 shall be submitted concurrent with a request for a Competitive Entry Exemption. The ISO may request additional information and updated 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 23.4.5.7.9, shall be required to submit an executed Certification and

Acknowledgement form set forth in Section 23.4.5.7.9.2 of the Services Tariff, updated as appropriate, upon its Entry Date.

23.4.5.7.9.3.2 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 deadline by which a facility must notify the ISO of its election to enter the Class Year, such date as set forth in Section 25.5.9 OATT Attachment S. A Generator or UDR project that requests a Competitive Entry Exemption in a Class Year may not also request a Renewable Exemption or Self Supply Exemption. A Generator or UDR project that remains a member of a completed Class Year if such Class Year is Class Year 2012 or prior Class Year, 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 the Initial Decision Period within which a Developer must provide an Acceptance Notice or Non-Acceptance Notice to the ISO in response to the first Project Cost Allocation issued by the ISO to the Developer.

23.4.5.7.9.3.3 A Generator or UDR project that submits a request for a Competitive Entry Exemption, including the required Certification and Acknowledgement, responses to information requests, and resubmittal, but (a) enters into a “non-qualifying contractual relationship” or (b) enters into an unexecuted agreement, written or unwritten, with a Non-Qualifying Entry Sponsor that would support the development of the Project, except those agreements identified in 23.4.5.7. 9.1.3

that would not constitute 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 23.4.5.7.9.3.3 shall be subject to the Mitigation Net CONE Offer Floor (such value calculated based on its the date it first offers UCAP, in accordance with Section 23.4.5.7.3.7, and adjusted annually in accordance with Section 23.4.5.7 of the Services Tariff,) but will not be subject to the provisions of Section 23.4.5.7.9.5.

#### **23.4.5.7.9.4 Notifications**

23.4.5.7.9.4.1 The ISO shall post on its website a list of each Generator or UDR project that requests a Competitive Entry Exemption that becomes a member of the Class Year, promptly after the deadline set forth in Section 30.8.1 of the OATT (Attachment X) (by which the ISO must receive the Developer’s executed Class Year Interconnection Facilities Study Agreement and deposit.) The ISO 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.

23.4.5.7.9.4.2 Concurrent with the ISO posting of its final determination, the Market Monitoring Unit shall publish a report on the ISO’s determination in accordance with Section 30.4.6.2.12 of Attachment O to this Services Tariff.

#### **23.4.5.7.9.5 Revocation**

23.4.5.7.9.5.1 The submission of false, misleading, or inaccurate information, or the failure to submit requested information in connection with a request for a Competitive Entry Exemption shall constitute a violation of the Services 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).

23.4.5.7.9.5.2 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, and provided 30 days written notice has been given to the Generator or UDR project (such notice to the extent practicable,) the ISO may revoke the Competitive Entry Exemption and apply the Mitigation Net CONE Offer Floor (such value calculated based on the date it first offers UCAP, in accordance with Section 23.4.5.7.3.7, and adjusted annually in accordance with Section 23.4.5.7 of the Services Tariff.) Prior to the revocation of a Competitive Entry Exemption and the submission of a report to the Commission's Office of Enforcement (or any successor to its responsibilities,) the ISO shall provide the Generator or UDR project an opportunity to explain any statement, information, or action. The ISO cannot revoke the Competitive Entry Exemption until after the 30 days written notice period has expired, unless ordered to do so by the Commission.

23.4.5.7.10 The ISO shall post on its website the identity of the project in a Mitigated Capacity Zone and the determination of either exempt or non-exempt as soon as the determination is final. Concurrent with the ISO's posting, the Market

Monitoring Unit shall publish a report on the ISO's determinations, as further specified in Section 30.4.6.2.12 of Attachment O to this Services Tariff.

23.4.5.7.11 Mitigated UCAP that is subject to an Offer Floor shall remain subject to the requirements of Section 23.4.5.4, and if the Offer Floor is higher than the applicable offer cap shall submit offers not lower than the applicable Offer Floor.

**23.4.5.7.12 Reserved for future use.**

**23.4.5.7.13 Renewable Exemption**

**23.4.5.7.13.1 Eligibility**

23.4.5.7.13.1.1 An Examined Facility or an NCZ Examined Project, may request to be evaluated for a Renewable Exemption in the amount of its CRIS MW requested in the Class Year or which it expects to receive through a transfer of CRIS at the same location. For purposes of this Section 23.4.5.7.13, an Examined Facility or NCZ Examined Project for which the ISO receives such a request shall be referred to as a "Renewable Exemption Applicant." A UDR project may not be a Renewable Exemption Applicant. For purposes of this Section 23.4.5.7.13, references to a Renewable Exemption Applicant's CRIS MW shall be understood to encompass Additional CRIS MW in cases where the Renewable Exemption Applicant is an existing Generator seeking a Renewable Exemption for Additional CRIS MW. An Examined Facility or an NCZ Examined Project that is a member of a Class Year may not request a Renewable Exemption in the same Class Year that it requests a Competitive Entry Exemption, and an Examined Facility or an NCZ Examined Project that is the expected transferee of CRIS being considered with a Class Year may not request a Renewable Exemption in respect of the same

Class Year that it requests a Competitive Entry Exemption. The ISO shall evaluate requests for a Renewable Exemption from (x) members of Class Year 2015 that are received on or before April 28, 2016, (y) members of a Class Year after Class Year 2015 provided that the CRIS rights are received no later than the deadline by which the facility must notify the ISO of its election to enter the Class Year, such date as set forth in Section 25.5.9 of OATT Attachment S, and (z) expected recipients of transferred CRIS rights at the same location from which the ISO has been notified, by the transferor or the transferee, of a transfer pursuant to OATT Attachment S Section 25.9.4 that will be effective on a date within the Mitigation Study Period for the Class Year, provided that they are received no later than the Class Year Start Date for such Class Year. Examined Facilities and NCZ Examined Projects will not be evaluated for a Renewable Exemption if the ISO does not receive the request to be evaluated by the deadline established in accordance with the preceding sentence, or if the Examined Facility or NCZ Examined Project also submits a request for a Competitive Entry Exemption prohibited by this paragraph.

A Generator that remains a member of a completed Class Year, if such Class Year is Class Year 2012 or a prior Class Year, shall not be eligible for a Renewable Exemption, except for Additional CRIS MW. Up to the quantity of CRIS MW specified by the Renewable Exemption Applicant in its exemption request shall be exempt from an Offer Floor if it remains a member of the completed Class Year (or if the transferee does not notify the ISO, on or before the date the Class Year is completed, that it no longer expects to be the recipient

of the transferred CRIS) and the ISO determines that it meets the requirements of Section (a), subject to the limitation in Section (b) of this Section 23.4.5.7.13.1, and subject to Section 23.4.5.7.13.3.

(a) The Renewable Exemption Applicant:

(i) must have, for its Interconnection Queue position, a proposed design that is a Generator to be powered solely by a device that can qualify as an Intermittent Power Resource, or must be a Limited Control Run-of-River Resource, as such terms are (A) defined on the date by which the ISO must receive the request for a Renewable Exemption in accordance with Section 23.4.5.7.13.1.1, or (B) in the ISO's judgment, are reasonably expected to be defined at the time that the Renewable Exemption Applicant is first qualified as an Installed Capacity Supplier; and

(ii) (A) be proposed in the Class Year to be powered solely by a technology that is an Exempt Renewable Technology; or

(B) be determined by the ISO, in accordance with ISO Procedures, to have (1) high development costs, and (2) a low capacity factor such that there would be limited or no incentive and ability to develop the Renewable Exemption Applicant in order to artificially suppress capacity prices. The ISO shall make this determination by evaluating pertinent factors, including whether the reasonably projected costs of new entry and operation of the Renewable Exemption Applicant, net of the likely projected revenues from the sale of Capacity, Energy and Ancillary Services, and any other generally available revenues associated with the production of those products, are greater than the



reasonably estimated cost savings to Loads due to a reduction in ICAP Market-Clearing Prices projected to result from the entry of the Renewable Exemption Applicant's requested CRIS MW (or CRIS MW to be transferred at the same location.)

- (b) A total amount not exceeding 1,000 MW of Installed Capacity may be determined to be exempt pursuant to the Renewable Exemption in any one Class Year. This amount includes any amount for which an NCZ Examined Project is determined to be eligible at the time the ISO issues an Indicative Buyer Side Mitigation Determination pursuant to Section 23.4.5.7.2.2, or a determination pursuant to Section 23.4.5.7.2.1. If the ISO determines that more than 1,000 MW of Installed Capacity would be eligible for a Renewable Exemption for any one Class Year (including transferred CRIS at the same location) but for the 1,000 MW limitation, then each Renewable Exemption Applicant determined by the ISO to be eligible for a Renewable Exemption other than those that were also determined to be exempt pursuant to Sections 23.4.5.7.2(a) or (b) or Section 23.4.5.7.14, shall have only a portion of its evaluated CRIS MW exempted. Such portion of the 1,000 MW shall be the MW equal to the proportion of the CRIS MW for which the Renewable Exemptions were requested to the total Installed Capacity MW of those MW determined to be eligible for the Renewable Exemption for the Class Year that are not also determined to be exempt pursuant to Sections 23.4.5.7.2(a) or (b) or Section 23.4.5.7.14.

#### **23.4.5.7.13.2 Periodic Review and Determination of Exempt Renewable Technologies**

23.4.5.7.13.2.1 In each ICAP Demand Curve Reset Filing Year after 2016, the ISO shall conduct a periodic review, in accordance with this Section and ISO Procedures, to determine the technology types that should be Exempt Renewable Technologies for Class Years with a Class Year Start Date during the Capability Years covered by the ICAP Demand Curve periodic review conducted for the relevant ICAP Demand Curve Reset Filing Year.

23.4.5.7.13.2.1(a) The ISO's periodic review will identify, by Mitigated Capacity Zone, the technologies that, at the time of the periodic review, are technically feasible in the ISO Administered Markets (whether as a single unit, or a plant comprised of more than one unit) and that could qualify as either Intermittent Power Resources or Limited Control Run-of-River Hydro Resources ("candidate intermittent renewable technologies").

23.4.5.7.13.2.1(b): For each candidate intermittent renewable technology, the ISO's periodic review will reasonably project:

- (i) the costs of new entry and operation;
- (ii) the revenues from the sale of Capacity, Energy and Ancillary Services, and any other generally available revenues associated with the production of those products by it; and
- (iii) the cost savings to Loads due to a reduction in ICAP Market-Clearing Prices from the new entry of the candidate intermittent renewable technology.

23.4.5.7.13.2.2 The ISO will utilize pertinent factors including results of the computation in accordance with Section 23.4.5.7.13.2.1(b) to determine, for each

Mitigated Capacity Zone, which candidate intermittent renewable technologies have (a) high development costs and (b) a low capacity factor, such that considering (a) and (b) there is limited or no incentive and ability to develop the candidate intermittent renewable technology in order to artificially suppress capacity prices.

23.4.5.7.13.2.3 The ISO's periodic review shall provide for:

- (a) The ISO's preliminary identification of candidate intermittent renewable technologies for stakeholder review and comment;
- (b) The ISO's issuance of a draft list of recommended Exempt Renewable Technologies and the basis for the recommendation, for stakeholder and Market Monitoring Unit review and comment; (The responsibilities of the Market Monitoring Unit that are addressed in this section of the Services Tariff are also addressed in Section 30.4.6.2.12 of Attachment O to this Services Tariff.)

23.4.5.7.13.2.4 On or before the 60th day subsequent to the Commission issuance of an order accepting ICAP Demand Curves based on the ICAP Demand Curve periodic review, the ISO shall file with the Commission the results of its Exempt Renewable Technology periodic review and determination pursuant to Section 23.4.5.7.13.2.2. If the ISO's determination of technology types that satisfy the provisions of Section 23.4.5.7.13.2.2 for any Mitigated Capacity Zone is different than the then-current definition of Exempt Renewable Technology, the ISO shall propose in the filing, for Commission review, a revised definition that is in accordance with its periodic determination, to be effective for Class Years with a Class Year Start Date during the Capability Years covered by the ICAP Demand

Curve periodic review conducted for the relevant ICAP Demand Curve Reset Filing Year. The ISO's filing shall describe the basis for the ISO's determination.

### **23.4.5.7.13.3. Revocation**

23.4.5.7.13.3.1 A Renewable Exemption Applicant that received a Renewable Exemption for any amount of CRIS MW shall notify the ISO in writing within five (5) business days if (a) at the time it first qualifies as an Installed Capacity Supplier, or at any time thereafter, it is not solely powered by the same technology based on which it was evaluated for a Renewable Exemption, or (b) at the time it first qualifies as an Installed Capacity Supplier it is not solely powered by a technology that is defined as an Intermittent Power Resource or Limited Control Run-of-River Hydro Resource, even if the Renewable Exemption Applicant was determined to be eligible because, at the time it was evaluated, the ISO expected the technology would become defined as an Intermittent Power Resource or Limited Control Run-of-River Hydro Resource. Upon notification, the ISO shall revoke the Renewable Exemption unless the Generator provides documentation with its notice in accordance with the prior sentence that demonstrates, to the ISO's satisfaction, that after the change it will be solely powered by an Exempt Renewable Technology as such term is defined on the date that the Generator first transmits energy using the different technology. Upon revocation, the ISO shall apply the Mitigation Net CONE Offer Floor (such value calculated by the ISO based on the date that the Generator (or Additional CRIS MW) first offers UCAP, in accordance with Section 23.4.5.7.3.7, and adjusted annually in accordance with Section 23.4.5.7 of the Services Tariff) to all

offers of UCAP by the Generator or Additional CRIS MW subsequent to the deadline for Unforced Capacity certification prior to an ICAP Spot Market Auction (such date in accordance with ISO Procedures) next following revocation. Nothing in this paragraph shall relieve a Generator from or alter any obligation it may have under the ISO Tariffs or any other tariff, agreement, or regulation to obtain permissions, authorizations provide notifications, or take any other action in advance of changing the technology which powers it (in whole or in part.)

23.4.5.7.13.3.2           The failure to provide the ISO written notice in accordance with Section 23.4.5.7.13.3.1 shall constitute a violation of the Services 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.)

23.4.5.7.13.3.3           If a Generator has not provided notice in accordance with Section 23.4.5.7.13.3.1 and the ISO determines that the Generator is not solely powered by a technology as described Section 23.4.5.7.13.3.1, the ISO shall notify the Generator that its Renewable Exemption may be revoked, and provided 30 days written notice has been given to the Generator (such notice to the extent practicable,) the ISO may revoke the Renewable Exemption. In the event of a revocation, the Mitigation Net CONE Offer Floor such value calculated by the ISO based on the date that the Generator or Additional CRIS MW) first offers UCAP, in accordance with Section 23.4.5.7.3.7, and adjusted annually in accordance with Section 23.4.5.7 of the Services Tariff) shall apply to all offers of UCAP subsequent to the deadline for Unforced Capacity certification prior to an

ICAP Spot Market Auction (such date in accordance with ISO Procedures) next following revocation. Prior to the revocation of a Renewable Exemption, the ISO shall provide the Generator an opportunity to respond to the ISO's determination. The ISO cannot revoke the Renewable Exemption until after the 30 days written notice period has expired, unless ordered to do so by the Commission.

#### **23.4.5.7.13.4 Timing of Requests for a Renewable Exemption, Required Submittals, and Determinations**

23.4.5.7.13.4.1 Requests for a Renewable Exemption must be received by the ISO no later than the deadline specified in Section 23.4.5.7.13.1. If any Examined Facility or NCZ Examined Project submits both a request for a Renewable Exemption and a Competitive Entry Exemption (*i.e.*, seeking to be considered for both exemptions at the same time,) the ISO shall not consider the request for a Renewable Exemption. The ISO may request additional information and updated information at any time regarding eligibility and continued eligibility. The Renewable Exemption Applicant (if after entry, the Generator) shall timely provide the information.

23.4.5.7.13.2 The ISO shall determine whether a Renewable Exemption Applicant is or is not eligible for a Renewable Exemption, and whether it is eligible or is not eligible for an exemption pursuant to Section 23.4.5.7.2(a) and (b) or Section 23.4.5.7.14, prior to the Initial Decision Period. The ISO shall determine prior to the Initial Decision Period, at each Subsequent Decision Period, and upon completion of the Class Year, whether more than 1,000 MW of Installed Capacity would be eligible for a Renewable Exemption (including MW of NCZ Examined Projects) in a Class Year but for the 1,000 MW limitation. If at the time of the

ISO's issuance of initial determinations, or the completion of the Class Year, more than 1,000 MW, then remaining in the Class Year or associated with a transfer of CRIS at the same location, are eligible for a Renewable Exemption, the ISO shall (i) first, exclude from the 1,000 MW cap the CRIS MW of any Examined Facility or NCZ Examined Project that was determined to be exempt pursuant to Sections 23.4.5.7.2 (a), or (b) or Section 23.4.5.7.14, and (ii) second, issue an initial determination (prior to the Initial Decision Period or at the time of any Subsequent Decision Period) or a final determination (if a member of the completed Class Year, or if a transfer of CRIS rights at the same location unless the transferee has notified the ISO, on or before the date the Class Year is completed, that it no longer expects to be the recipient of the transferred CRIS) of the MW that will be exempt from an Offer Floor, equal to the proportion of the requested CRIS MW as determined in accordance with Section 23.4.5.7.13.1.1(b).

23.4.5.7.13.4.3 Determinations made pursuant to Section 23.4.5.7.13.4.2 shall be provided to the Renewable Exemption Applicants (other than NCZ Examined Projects) concurrent with the issuance of determinations in accordance with Section 23.4.5.7.3.3, and for an NCZ Examined Project at the time of the ISO's determination pursuant to Section 23.4.5.7.2.1.

23.4.5.7.13.4.4 The ISO shall post on its website its determination of whether the Renewable Exemption Applicant has been determined to be exempt for any quantity of MW, and if exempt, the quantity of MW exempt, or non-exempt, from an Offer Floor as soon as the determination is final. Concurrent with the ISO's posting, the Market Monitoring Unit shall publish a report on the ISO's

determination, as further specified in Section 30.4.6.2.12 of Attachment O to this Services Tariff.23.4.5.7.14 Self Supply Exemption

#### **23.4.5.7.14.1 Eligibility**

23.4.5.7.14.1.1 In order to be evaluated for a Self Supply Exemption, each of the following requirements must be satisfied, by the deadline, in the required form, and with the required information in accordance with ISO Procedures. If one or more of the requirements is not satisfied, the ISO shall not evaluate the request for a Self Supply Exemption.

- (a) An Examined Facility or NCZ Examined Project, (for purposes of this Section 23.4.5.7.14 an “SSE Applicant”) may request to be evaluated for a Self Supply Exemption for a specified quantity of MW up to the amount of the CRIS MW requested in the Class Year or, of which it is the expected recipient of transferred CRIS rights at the same location, in accordance with ISO Procedures. A UDR project may be a SSE Applicant. For purposes of this Section 23.4.5.7.14, references to a SSE Applicant’s CRIS MW shall be understood to encompass Additional CRIS MW in cases where the SSE Applicant is an existing Generator or UDR project seeking a Self Supply Exemption for Additional CRIS MW. The ISO will evaluate the request if the SSE Applicant is (i) a member of Class Year 2015 and its request is received on or before April 28, 2016, (ii) a member of a Class Year after Class Year 2015 and its request is received no later than the deadline by which a facility must notify the ISO of its election to enter the Class Year, such date as set forth in Section 25.5.9 OATT Attachment S, or (iii) an expected recipient of transferred CRIS rights at the same location and the ISO has



been notified, by the transferor or the transferee, of a transfer pursuant to OATT Attachment S Section 25.9.4 that will be effective on a date within the Mitigation Study Period for the Class Year, provided that the request is received no later than the Class Year Start Date for such Class Year. An Examined Facility or an NCZ Examined Project that is a member of a Class Year may not request a Self Supply Exemption in the same Class Year that it requests a Competitive Entry Exemption, and an Examined Facility or an NCZ Examined Project that is the expected transferee of CRIS being considered with a Class Year may not request a Self Supply Exemption in respect of the same Class Year that it requests a Competitive Entry Exemption.

A proposed new Generator or UDR project that remained a member of Class Year 2012 or a prior Class Year at the time of the completion of such Class Year, shall not be eligible to request or receive a Self Supply Exemption except in relation to a request for Additional CRIS MW.

- (b) If the SSE Applicant is not the wholly owned property of the Self Supply LSE(s), or the wholly owned property of an entity that is wholly owned by the Self Supply LSE(s) or that wholly owns the Self Supply LSE(s), it must have a Long Term Contract (in accordance with Subsection (1) of this Section 23.4.5.7.14.1.1(b)(1) with the Self Supply LSE(s) that shall obligate the SSE Applicant to provide the capacity forming the basis for its eligibility for a Self Supply Exemption. Such an SSE Applicant must make its Self Supply Exemption request jointly, in a single request, with the Self Supply LSE(s) with which it has a Long Term Contract. If the proposed SSE Applicant is the wholly owned property of the Self Supply

LSE(s), or the wholly owned property of an entity that is wholly owned by the Self Supply LSE(s) or that wholly owns the Self Supply LSE(s), then the SSE Applicant must provide documentation at the time it requests the exemption that demonstrates to the reasonable satisfaction of the ISO that it has a statutory, regulatory, or organizational obligation to provide Energy and Capacity to meet the Self Supply LSE's (or Self Supply LSEs') ICAP Obligation(s).

(1) Long Term Contract: For the purposes of a Self Supply Exemption, a "Long Term Contract" shall mean (i) a fully executed contract between the SSE Applicant that is a proposed new or existing Generator and a Self Supply LSE that is joining it in requesting the exemption, pursuant to which the SSE Applicant is obligated to provide to the Self Supply LSE (or LSEs if more than one Self Supply LSE,) for a minimum of 10 years, Installed Capacity in an amount greater than or equal to the CRIS MW for which the Self Supply Exemption is requested; or (ii) a fully executed contract between a Self Supply Applicant that is a proposed new or existing UDR project and a Self Supply LSE (or LSEs if more than one Self Supply LSE,) that is joining it in requesting the exemption, pursuant to which the Self Supply LSE(s) will have all rights to the UDRs and the use of the facility, for a minimum of 10 years, in the amount greater than or equal to the CRIS MW for which the Self Supply Exemption is requested.

(c) The Self Supply Applicant's request for a Self Supply Exemption must specify the total quantity of CRIS MW for which it is requesting a Self Supply Exemption, and such quantity shall not exceed the MW of CRIS requested by it in the Class Year, or the quantity of the transferred CRIS rights at the same location

it expects to receive. If there is more than one Self Supply LSE associated with the request for a Self Supply Exemption received from an SSE Applicant then: (i) the request shall identify the quantity of MW associated with each Self Supply LSE, and (ii) the total quantity of MW associated with the Self Supply LSEs shall not exceed the total MW for which the SSE Applicant requests a Self Supply Exemption. (d) All Certification and Acknowledgement(s) required by Section 23.4.5.7.14.2 must be received at the same time as the request for a Self Supply Exemption, in accordance with ISO Procedures, along with other data and information requested by the ISO.

23.4.5.7.14.1.2 The lesser of (i) the quantity of CRIS MW for which the Self Supply Exemption was requested and (ii) the quantity determined in accordance with Section 23.4.5.7.14.3 shall be exempt from an Offer Floor if the SSE Applicant is a member of the Class Year at the time of its completion and the ISO determines that the request satisfies all of the following requirements:

- (a) The proposed Generator or UDR project terminus will be, or the existing Generator or UDR project terminus is, electrically located in the same Mitigated Capacity Zone in which the Self-Supply LSE has Projected ICAP Requirements (as such term is defined in Section 23.4.5.7.14.1.3),
- (b) The SSE Applicant and the Developer are not and will not be owned, in whole or in part, by an LSE or an Affiliate of an LSE unless such entity is a Self Supply LSE.
- (c) The SSE Applicant provides the completed Certification and Acknowledgement form set forth in Section 23.4.5.7.14.2.1 or 23.4.5.7.14.2.3, as applicable to it and

its request for a Self Supply Exemption, and satisfies each requirement stated therein. If the SSE Applicant is not the wholly owned property of the Self Supply LSE(s), or the wholly owned property of an entity that is either wholly owned by the Self Supply LSE(s), or that wholly owns the Self Supply LSE(s), then both the SSE Applicant and the Self Supply LSE(s) provide the applicable completed Certification and Acknowledgement form set forth in Section 23.4.5.7.14.2 and satisfy each requirement stated therein. The ISO must receive the required completed Certification and Acknowledgement forms, in accordance with ISO Procedures, (i) if the SSE Applicant is a member of Class Year 2015 and its request is received on or before April 28, 2016, (ii) no later than the deadline by which the SSE Applicant must notify the ISO of its election to enter the Class Year, such date as set forth in Section 25.5.9 of OATT Attachment S, or (iii) if the Self Supply LSE is an expected recipient of transferred CRIS rights at the same location that will be effective on a date within the Mitigation Study Period for the Class Year, no later than the Class Year Start Date of such Class Year. All other information requested by the ISO must also be timely received.

- (d) The ISO determines that the Self Supply LSE satisfies both the Net Short Threshold set forth in Section 23.4.5.7.14.3.1 and the Net Long Threshold set forth in Section 23.4.5.7.14.3.2 for a specified quantity of CRIS MW.
- (e) The SSE Applicant certifies that it does not have any contract, agreement, arrangement, or relationship (for purposes of this Section 23.4.5.7.14.1.2(e), and the Certification and Acknowledgment in Section 23.4.5.7.14.2, a “contract”) for any material (in whole or in aggregate) payments, concessions, rebates, or

subsidies, connected to or contingent on the SSE Applicant's: (i) construction or operation, except as expressly permitted in Subsection (A) or (B) of this Section, or (ii) clearing in the ISO's Installed Capacity market except as expressly permitted in Subsection (B).

(A) An SSE Applicant will not be ineligible for a Self Supply Exemption if it has an executed contract, is associated with a contract, or there is a contract associated with it, that is listed in (I) through (VIII) of this Section that provides for a material payment, concession, rebate or subsidy, and either (i) is not irregular or anomalous, and only reflects arms-length transactions, or (ii) is consistent with the overall objectives of the Self Supply Exemption.

**Listed contracts:**

- (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 10 of the New York State Public Service Law or orders issued pursuant to Articles VII or 10);
- (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 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 or commercial siting incentives, such as tax abatements or financing incentives, provided the PILOT agreement or incentives are generally available to industrial or commercial entities;

(VII) a service agreement for natural gas entered into under a tariff accepted by a regulatory body with jurisdiction over that service; or

(VIII) 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.

(B) An SSE Applicant that requests a Self Supply Exemption with only one Self Supply LSE will not be ineligible for a Self Supply Exemption if the contract(s) that otherwise would render it ineligible under any clause of Section 23.4.5.7.14.2 is (or are) with its Self Supply LSE.

(C ) Contract Review Opportunity

(1) A proposed new Generator or UDR project or an existing Generator or UDR project for Additional CRIS that is reasonably expected to be eligible to enter the immediately following Class Year or be the recipient of transferred CRIS rights at the same location on a date within the Mitigation Study Period of

such Class Year, and that in connection with its own Load or for the Load of one or more Self Supply LSE(s) is planning on requesting a Self Supply Exemption;

(2) an SSE Applicant that is in a Class Year that is not completed (in accordance with Section 25.5.9 of the OATT; or (3) an SSE Applicant that received a Self Supply Exemption, may request that the ISO inform it whether, in the ISO's view, any specific executed contract, unexecuted but substantially developed contract, or any pending request that if approved, granted, or otherwise conferred, would constitute a contract pursuant to Subsection 23.4.5.7.14.1.2 (e)(i) and (e)(ii) would make it ineligible to obtain or (if previously granted) retain a Self Supply Exemption. Any such request must satisfy all of the following requirements:

(a) The SSE Applicant (unless it is for its own Load) must make any such request jointly with any Self Supply LSE(s) with which it has executed or has an unexecuted but substantially developed Long Term Contract. Any such Self Supply LSE(s) must make any such request jointly with the SSE Applicant, or proposed new or existing Generator or UDR project, with which it would seek, or has sought, a Self Supply Exemption.

(b) As part of the submission of the request for a determination pursuant to Subsection (a) of this Section, the SSE Applicant, or proposed new or existing Generator or UDR project, and any relevant Self Supply LSE(s) as applicable, must provide the ISO with all information regarding the contract or pending request regarding which it is requesting the ISO's view, and if the request is made jointly with a Self Supply LSE, the executed or unexecuted and substantially

developed Long Term Contract that would form the basis of a Self Supply Exemption Request, including copies of original documentation. In addition and at the time of the submission of the request, the SSE Applicant, or proposed new or existing Generator or UDR project, and any relevant Self Supply LSE shall also provide any other information identified by the ISO in accordance with ISO Procedures. They also must timely provide any further information that is requested by the ISO.

(c) Such requests can only be submitted to the ISO on or after the date established by the ISO in accordance with ISO Procedures, such date to be at least 60 days prior to the date that the ISO anticipates will be the deadline by which facilities must notify the ISO of their election to enter a Class Year (such Class Year deadline pursuant to Section 25.5.9 of OATT Attachment S.)

(ii) Provided that the ISO has timely received all of the information it needs to make a determination, the ISO shall state its view in response to such requests within 60 days.

(iii) When evaluating any such request, 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 30.4.6.2.12 of Attachment O to this Services Tariff.)

#### **23.4.5.7.14.2 Certifications and Acknowledgements**

23.4.5.7.14.2.1 An SSE Applicant that is not the wholly owned property of the Self Supply LSE(s), or the wholly owned property of an entity that is either wholly owned by the Self Supply LSE(s), or that wholly owns the Self Supply



LSE(s), and that is requesting a Self Supply Exemption shall submit the following completed Certification and Acknowledgment form. The submission must be received by the ISO by the deadline pursuant to Section 23.4.5.7.14.1.2(c), and thereafter upon the request of the ISO, in accordance with ISO Procedures. The Self Supply Applicant shall be legally bound by the Certification and Acknowledgement form which must be executed by a duly authorized officer:

### **CERTIFICATION AND ACKNOWLEDGMENT**

I [NAME & TITLE] hereby certify on behalf of myself, [NAME OF PROJECT], and [NAME OF DEVELOPER] that each of the following statements is true and correct:

1. I am an officer whose responsibilities include the development of the [EXAMINED FACILITY OR NCZ EXAMINED PROJECT, New York Independent System Operator, Inc.'s ("NYISO") Interconnection queue position Number [INSERT NUMBER] (the "Project").
2. I am duly authorized to make representations concerning the Project, including each of the certifications and acknowledgements that I have made in this document.
3. I hereby [REQUEST ON BEHALF OF] the Developer, a Self Supply Exemption for [MW REQUESTED FOR THE SELF SUPPLY EXEMPTION] for the Project in connection with [LOAD SERVING ENTITY THAT IS THE SELF SUPPLY LSE].
4. I have reviewed and I understand the requirements established under the NYISO Market Administration and Control Area Services Tariff ("Services Tariff") related to a "Self Supply Exemption" pursuant to Section 23.4.5.7.14.
5. I have personal knowledge of the facts and circumstances supporting the Project's request and eligibility for a Self Supply Exemption as of the date of this Certification and Acknowledgment, including all data and other information submitted by the Project to the NYISO.
6. [NAME OF DEVELOPER] is not owned in whole or in part by, and is not an Affiliate (as Affiliate is defined in Section 2.1 of the Services Tariff) of, a Load Serving Entity [OTHER THAN THE LOAD SERVING ENTITY THAT IS THE SELF SUPPLY LSE].

7. [NAME OF PROJECT] has a Long Term Contract (as such term is defined in Services Tariff Section 23.4.5.7.14.1.1 (b)(1)) with the Self Supply LSE[s], that is [are] the subject of the request for a Self Supply Exemption.
8. To the best of my knowledge and having conducted due diligence that is current as of the date of this Certification there is no contract, arrangement, arrangement, or relationship (for purposes of Section 23.4.5.7.14. 2(e) of the Services Tariff, and this Certification and Acknowledgment, a “contract”) for any material (in whole or in aggregate) payments, concessions, rebates or subsidies connected to or contingent on the [PROJECT’S]: (i) construction or operation, except as expressly permitted in Subsection (A) or (B) of Section 23.4.5.7.14.1. 2(e) of the Services Tariff, or (ii) clearing in the NYISO’s Installed Capacity market except as expressly permitted in Subsection (B) of Section 23.4.5.7.14. 1.2(e).
9. I have listed in Schedule 1 to this Certification all contracts that involve payments, concessions, rebates, or subsidies connected to or contingent upon the [PROJECT’S] construction or operation that are not material or that are otherwise expressly permissible under Subsection (A) or (B) of Section 23.4.5.7.14.1.2(e).
10. The Project shall provide any information or cooperation requested by the NYISO in connection with the Project’s request for a Self Supply Exemption.

I hereby acknowledge on behalf of myself, [INSERT NAME OF PROJECT], and [NAME OF DEVELOPER] that:

- a. The submission of false, misleading, or inaccurate information, or the failure to submit information requested by the NYISO related to the Project’s request for a Self Supply Exemption, including but not limited to information contained or submitted in this Certification and Acknowledgement on behalf of the Project, shall constitute a violation of Section 4.1.7 of the Services Tariff, and subject to the Commission’s review, a violation of the Commission’s regulations and Section 316A of the Federal Power Act.
- b. If the Project submits false, misleading, or inaccurate information, or fails to submit requested information to the NYISO, including but not limited to information contained or submitted in this Certification and Acknowledgement on behalf of the Project, it shall cease to be eligible for a Self Supply Exemption and, if the Project has already received a Self Supply Exemption, that exemption shall be subject to revocation by the NYISO or the Commission after which the Project shall be subject to an Offer Floor set at the Mitigation Net CONE Offer Floor (such value calculated based on the date it first Offers UCAP, in accordance with Section 23.4.5.7.3.7, and adjusted annually in accordance with Section 23.4.5.7 of the Services Tariff,) starting with the next following deadline for Unforced Capacity certification prior to an ICAP Spot Market Auction subsequent to the date of revocation (such date in accordance with ISO Procedures) pursuant to Section 23.4.5.7.9.5 of the Services Tariff.

- c. If the Project submits false, misleading, or inaccurate information, or fails to submit requested information to the NYISO, including but not limited to information contained or submitted in the Certification and Acknowledgement on behalf of the Project, it may be subject to civil penalties that may be imposed by the Commission for violations of Section 4.1.7 of Services Tariff, the Commission's rules, and/or Section 316A of the Federal Power Act.

\_\_\_\_\_  
[PRINT NAME]

[DATE]

Subscribed and sworn to before me  
this [ ] day of [MONTH] [YEAR].

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

23.4.5.7.14.2.2 A Self Supply LSE that has a Long Term Contract (as such term is defined in Section 23.4.5.14.1(b)(1)) with an SSE Applicant shall submit to the ISO the following completed Certification and Acknowledgement Form as part of the SSE Applicant's request for a Self Supply Exemption and thereafter upon the request of the ISO, in accordance with ISO Procedures. The Self Supply LSE shall be legally bound by the completed Certification and Acknowledgement form which must be executed by a duly authorized officer:

## **CERTIFICATION AND ACKNOWLEDGMENT**

I [NAME & TITLE] hereby certify on behalf of myself and [NAME OF SELF SUPPLY LSE] (the “LSE”) that each of the following statements is true and correct:

1. I am an officer whose responsibilities include overseeing the capacity supply portfolio and obligations, and addressing Load requirements of the [LSE], and LSE’s Long Term Contract (as such term is defined in Services Tariff Section 23.4.5.7.14.1.1 (b)(1)) with [EXAMINED FACILITY or NCZ EXAMINED PROJECT], New York Independent System Operator, Inc.’s (“NYISO”) Interconnection queue position Number [INSERT NUMBER] (the “Project”).
2. I am duly authorized to make representations concerning the capacity supply portfolio, and obligations, Load requirements of [the LSE], and LSE’s Long Term Contract with the Project (the “Subject Long Term Contract”), including each of the certifications and acknowledgements that I have made in this document.
3. I hereby [REQUEST ON BEHALF OF] the LSE, a Self Supply Exemption for [MW REQUESTED FOR THE SELF SUPPLY EXEMPTION] for the Project associated with the Subject Long Term Contract.
4. I have reviewed and I understand the requirements established under the NYISO Market Administration and Control Area Services Tariff (“Services Tariff”) related to a “Self Supply Exemption” pursuant to Section 23.4.5.7.14.
5. I have personal knowledge of the facts and circumstances supporting the Subject Long Term Contract and LSE’s Load Obligations and supply obligations related to the Project’s request and eligibility for a Self Supply Exemption as of the date of this Certification and Acknowledgment, including all data and other information submitted by LSE to the NYISO.
6. The LSE is a Self Supply LSE [INSERT SUBSECTION OF DEFINITION BY WHICH THE LSE MEETS THE REQUIREMENTS OF THAT TERM] of that term.
7. [NAME OF DEVELOPER] [is // is not] owned in part by, and [is // is not] an Affiliate (as Affiliate is defined in Section 2.1 of the Services Tariff) of, LSE. Appendix A to this Certification and Acknowledgement fully and completely sets forth and describes the organizational relationship between or among LSE, Developer and the Project, or any Affiliate of the foregoing entities in relation to the project; and any ownership or investment interest of LSE, Developer, and the Project, in either of the other entities, or any of the Affiliates thereof in relation to the Project.
8. [NAME OF PROJECT] and LSE are parties to the Subject Long Term Contract.

9. To the best of my knowledge and having conducted due diligence that is current as of the date of this Certification there are no arrangements for any payments or subsidies, that are directly or indirectly tied to the Unforced Capacity from the Project clearing in the NYISO's Installed Capacity market other than those between the [NAME OF DEVELOPER],[PROJECT] and [SELF SUPPLY LSE] that is provided to the ISO with this Certification and Acknowledgement [and other than agreements between [NAME OF DEVELOPER], [PROJECT] and [NAME OF OTHER SELF SUPPLY LSE(S) ASSOCIATED WITH THE SELF SUPPLY APPLICANT'S REQUEST FOR A SELF SUPPLY EXEMPTION].
10. I have listed in Schedule 1 to this Certification all contracts that involve payments, concessions, rebates, or subsidies connected to or contingent upon the [PROJECT'S] construction or operation that are not material or that are otherwise expressly permissible under Subsection (A) or (B) of Section 23.4.5.7.14.1.2(e).
11. LSE shall provide any information or cooperation requested by the NYISO in connection with the LSE and the Project's request for a Self Supply Exemption.

I hereby acknowledge on behalf of myself and LSE that:

- a. The submission of false, misleading, or inaccurate information, or the failure to submit information requested by the NYISO related to the LSE's and the Project's request for a Self Supply Exemption, including but not limited to information contained or submitted in this Certification and Acknowledgement on behalf of the Project, shall constitute a violation of Section 4.1.7 of the Services Tariff, and subject to the Commission's review, a violation of the Commission's regulations and Section 316A of the Federal Power Act.
- b. If the LSE or the Project submits false, misleading, or inaccurate information, or fails to submit requested information to the NYISO, including but not limited to information contained or submitted in this Certification and Acknowledgement on behalf of the LSE, the Project shall cease to be eligible for a Self Supply Exemption in respect of Subject Long Term Contract and, if the Project has already received a Self Supply Exemption, that exemption shall be subject to revocation by the NYISO or the Commission after which the Project shall be subject to an Offer Floor set at the Mitigation Net CONE Offer Floor (such value calculated based on the date it first Offers UCAP, in accordance with Section 23.4.5.7.3.7, and adjusted annually in accordance with Section 23.4.5.7 of the Services Tariff,) starting with the next following deadline for Unforced Capacity certification prior to an ICAP Spot Market Auction subsequent to the date of revocation (such date in accordance with ISO Procedures) pursuant to Section 23.4.5.7.9.5 of the Services Tariff.
- c. If the LSE submits false, misleading, or inaccurate information, or fails to submit requested information to the NYISO, including but not limited to information contained or submitted in the Certification and Acknowledgement on behalf of the Project, it may be subject to civil penalties that may be imposed by the

Commission for violations of Section 4.1.7 of Services Tariff, the Commission's rules, and/or Section 316A of the Federal Power Act.

\_\_\_\_\_  
[PRINT NAME]

[DATE]

Subscribed and sworn to before me  
this [ ] day of [MONTH] [YEAR].

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

23.4.5.7.14.2.3 An SSE Applicant that is the wholly owned property of the Self Supply LSE, or the wholly owned property of an entity that is either wholly owned by the Self Supply LSE, or that wholly owns the Self Supply LSE, and that is requesting a Self Supply Exemption shall submit the following completed Certification and Acknowledgment Form. The submission must be received by the ISO by the deadline pursuant to Section 23.4.5.7.14.1.2(c), and thereafter upon the request of the ISO, in accordance with ISO Procedures. The Self Supply Applicant shall be legally bound by the following Certification and Acknowledgement form which must be executed by a duly authorized officer:

#### **CERTIFICATION AND ACKNOWLEDGMENT**

I [NAME & TITLE] hereby certify on behalf of myself, [NAME OF PROJECT], and [NAME OF DEVELOPER/LSE] that each of the following statements is true and correct:

1. I am an officer whose responsibilities include; (i) the development of the [EXAMINED FACILITY or NCZ EXAMINED PROJECT], New York Independent System Operator, Inc.'s ("NYISO") Interconnection queue position Number [INSERT NUMBER] (the "Project"); and (ii) overseeing the capacity supply portfolio and obligations, and addressing Load Obligations of the Self Supply LSE and its obligations to serve retail customers.
2. I am duly authorized to make representations concerning the Project and the capacity supply portfolio, and obligations, Load requirements of [the DEVELOPER/LSE], including, if applicable the Long Term Contract between the Project and any entity performing the Self Supply LSE function (the "Subject Long Term Contract"), and also including each of the certifications and acknowledgements that I have made in this document.
3. I hereby [REQUEST ON BEHALF OF] the [DEVELOPER/LSE], a Self Supply Exemption for [MW REQUESTED FOR THE SELF SUPPLY EXEMPTION] for the Project associated with [DEVELOPER/LSE'S] self supply arrangements, including, if applicable, any Subject Long Term Contract.
4. I have reviewed and I understand the requirements established under the NYISO Market Administration and Control Area Services Tariff ("Services Tariff") related to a "Self Supply Exemption" pursuant to Section 23.4.5.7.14.
5. I have personal knowledge of the facts and circumstances supporting: (i) the Project's request and eligibility for a Self Supply Exemption; and (ii) the Load Obligations and supply obligations related to the Project's request and eligibility for a Self Supply Exemption, as of the date of this Certification and Acknowledgment, including all data and other information submitted by the Project and by [DEVELOPER/LSE] to the NYISO.
6. The LSE is a Self Supply LSE pursuant to Section [INSERT SUBSECTION OF DEFINITION BY WHICH THE LSE MEETS THE REQUIREMENTS OF THAT TERM] of that term.
7. [NAME OF DEVELOPER/LSE] is not owned in whole or in part by, and is not an Affiliate (as Affiliate is defined in Section 2.1 of the Services Tariff) of, any other Load Serving Entity. Appendix A to this Certification and Acknowledgment fully and completely sets forth and describes the organizational relationship between [DEVELOPER/LSE's] Self Supply LSE and Developer functions or affiliates and the Project.
8. To the best of my knowledge and having conducted due diligence that is current as of the date of this Certification there is not any contract, agreement, arrangement, or relationship (for purposes of Section 23.4.5.7.14.1. 2(e), and this Certification and Acknowledgment, a "contract") for any material (in whole or in aggregate) payments, concessions, rebates, or subsidies, connected to or contingent on the [PROJECT's]: (i) construction or operation, except as expressly

permitted in Subsection (A) or (B) of Section 23.4.5.7.14.1.2(e) of the Services Tariff, or (ii) clearing in the NYISO's ICAP market except as expressly permitted in Subsection (B) of Section 23.4.5.7.14.1.2(e).

9. I have listed in Schedule 1 to this Certification all contracts that involve payments, concessions, rebates, or subsidies connected to or contingent upon the [PROJECT'S] construction or operation that are not material or that are otherwise expressly permissible under Subsection (A) or (B) of Section 23.4.5.7.14.1.2(e).
10. The Project and [DEVELOPER/LSE] shall provide any information or cooperation requested by the NYISO in connection with the Project's request for a Self Supply Exemption.

I hereby acknowledge on behalf of myself, [INSERT NAME OF PROJECT], and [NAME OF DEVELOPER/LSE] that:

- a. The submission of false, misleading, or inaccurate information, or the failure to submit information requested by the NYISO related to the Project's and [DEVELOPER/LSE's] request for a Self Supply Exemption, including but not limited to information contained or submitted in this Certification and Acknowledgement on behalf of the Project, shall constitute a violation of Section 4.1.7 of the Services Tariff, and subject to the Commission's review, a violation of the Commission's regulations and Section 316A of the Federal Power Act.
- b. If the DEVELOPER/LSE or the Project submits false, misleading, or inaccurate information, or fails to submit requested information to the NYISO, including but not limited to information contained or submitted in this Certification and Acknowledgement on behalf of the Project, it shall cease to be eligible for a Self Supply Exemption and, if the Project has already received a Self Supply Exemption, that exemption shall be subject to revocation by the NYISO or the Commission after which the Project shall be subject to an Offer Floor set at the Mitigation Net CONE Offer Floor (such value calculated based on the date it first Offers UCAP, in accordance with Section 23.4.5.7.3.7, and adjusted annually in accordance with Section 23.4.5.7 of the Services Tariff,) starting with the next following deadline for Unforced Capacity certification prior to an ICAP Spot Market Auction subsequent to the date of revocation (such date in accordance with ISO Procedures) pursuant to Section 23.4.5.7.9.5 of the Services Tariff.
- c. If the DEVELOPER/LSE or the Project submits false, misleading, or inaccurate information, or fails to submit requested information to the NYISO, including but not limited to information contained or submitted in the Certification and Acknowledgement on behalf of the Project, it may be subject to civil penalties that may be imposed by the Commission for violations of Section 4.1.7 of Services Tariff, the Commission's rules, and/or Section 316A of the Federal Power Act.



\_\_\_\_\_  
[PRINT NAME]

[DATE]

Subscribed and sworn to before me  
this [ ] day of [MONTH] [YEAR].

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

#### **23.4.5.7.14.3 Net Short Threshold and Net Long Threshold**

For the purposes of Section 23.4.5.7.14.3, “SSE Evaluated ICAP” shall mean the quantity of MW of CRIS for which a Self Supply Exemption is requested by an individual Self Supply LSE (or by an SSE Applicant in respect of its own Load) in accordance with Section 23.4.5.7.14.1.1(c), unless reduced as follows: If (i) following a notice that an additional System Deliverability Upgrade study(ies) will be conducted in accordance with Section 25.7.7.1 of the OATT, an SSE Applicant elects to keep its CRIS request but with no System Deliverability Upgrade identified to make the project fully deliverable (as provided for in Section 25.7.7.1(3),) and (ii) the total quantity of MW of CRIS for which the Self Supply Exemption is requested exceeds the total amount of Deliverable MW, as specified in the next Class Year Interconnection Facilities Study report, the ISO shall reduce the total quantity of MW of CRIS for which a Self Supply Exemption is requested to the total amount of Deliverable MW identified in such Interconnection Facilities Study Report. If there is more than one LSE associated with the SSE Applicant, the ISO shall reduce the quantity of MW of CRIS for each Self Supply LSE by the

ratio of Deliverable MW to the total MW of CRIS for which Self Supply exemptions were initially requested.

The ISO shall compute the Net Short Threshold and Net Long Threshold, and determine whether each is satisfied, based on its computation of each of the values specified in this Section. If there is more than one Self Supply LSE associated with the SSE Applicant's request for a Self Supply Exemption, the MW associated with each Self Supply LSE shall be considered separately.

If the Self Supply LSE or its Affiliates are associated with more than one request for a Self Supply Exemption in the Class Year (including any associated with a transfer of CRIS at the same location,) and the Self Supply LSE and its Affiliates satisfy the Net Long Threshold in a non-zero amount that is greater than the "Cumulative Affiliated Quantity" (as defined in Section 23.4.5.7.14.3,) then remaining in the Class Year, the ISO shall reduce the quantity of MW for which they are eligible to receive a Self Supply Exemption by the ratio of (a) the quantity of MW by which the Self Supply LSE and its Affiliates satisfy the Net Long Threshold, to (b) the Cumulative Affiliated Quantity associated with SSE Applicant(s) then remaining in the Class Year or associated with a transfer of CRIS at the same location (provided the transferee does not notify the ISO, on or before the date the Class Year is completed, that it no longer expects to be the recipient of the transferred CRIS.)

For the purposes of Section 23.4.5.7.14.3, "Projected ICAP Requirements" is the reasonably projected ICAP MW that the Self Supply LSE and all its Affiliates will be required to purchase in each Locality and the NYCA. Such projection shall be based on the Self Supply LSE's and all its Affiliates' share(s) of the Locational Minimum Unforced Capacity Requirements and the NYCA Minimum Unforced Capacity Requirement, as applicable and in

accordance with ISO Procedures, over the three most recently completed Capability Years preceding the Class Year Start Date. Such projection shall also reflect that ICAP MW purchased in a Locality may be used to meet capacity requirements for each Locality in which they are contained, as well as for the NYCA.

When calculating the Self Supply LSE's and all its Affiliates' Projected ICAP Requirements, each of their shares of the Locational Minimum Unforced Capacity Requirements and the NYCA Minimum Unforced Capacity Requirement over these three Capability Years shall be translated to their ICAP MW equivalent(s) using the derating factor that was applied to translate the Installed Capacity Requirement into the Unforced Capacity Requirement in the same Capability Period and Locality, or the NYCA if applicable, in which the purchase was made.

For the purposes of Section 23.4.5.7.14.3, "Excess Award Percentage" is the reasonably projected amount of excess capacity that the Self Supply LSE and all its Affiliates will be required to purchase in each Locality, and the NYCA, expressed as a percentage of its "Projected ICAP Requirements", Such projection shall be based on the total excess UCAP MW awarded in each ICAP Spot Market Auction, divided by the Locational Minimum Unforced Capacity Requirement, or the NYCA Minimum Unforced Capacity Requirement, for the same Capability Period and Locality (or the NYCA) in which the award was made, over the three most recent completed Capability Years preceding the Class Year Start Date.

For the purposes of Section 23.4.5.7.14.3, "Capacity Obligations without Entry", calculated for each Locality and the NYCA, is the product of (a) Projected ICAP Requirements and (b) one plus the Excess Award Percentage.

For the purposes of Section 23.4.5.7.14.3, “Capacity Obligations with Entry”, calculated for each Locality and the NYCA, is the product of (a) Projected ICAP Requirements and (b) one plus the Excess Award Percentage, adjusted to reflect the projected increase in excess that the Self Supply LSE would be obligated to purchase as a result of the entry of the SSE Applicant.

For the purposes of Section 23.4.5.7.14.3, “Self Supply Capacity” for a given Locality (or the NYCA,) is (a) the full amount of ICAP MW associated with each Generator or UDR project that the Self Supply LSE or any of its Affiliates own directly or indirectly, in at least a 50.01% interest (in the aggregate) as of the Class Year Start Date, or have the power to direct the management or policies of, excluding any whose CRIS MW are projected by the ISO to be expired on or before the date that marks the end of Mitigation Study Period, based on a demonstration by the Self Supply LSE, and (b) the ICAP MW that the Self Supply LSE and all its Affiliates are reasonably projected by the ISO to receive, including ICAP MW which they have a call option to receive, either by way of ownership or under “Existing Long Term Commitments” in that Locality (or the NYCA), and that are associated with a Generator or UDR project that the Self Supply LSE or any of its Affiliates do not own directly or indirectly, at least a 50.01% interest (in the aggregate) as of the Class Year Start Date, and that they do not have the power to direct the management or policies of, excluding those that are associated with any Expected Retirement. For purposes of Self Supply Capacity, “Existing Long Term Commitments” is the amount of Capacity that the Self Supply LSE or any of its Affiliates are projected by the ISO to receive, including ICAP which they have a call option to receive, under a written agreement (whether stated in ICAP or otherwise,) with a minimum term of ten years, and a minimum of six years remaining thereon on the Class Year Start Date. When calculating the term and remaining term of a written agreement for the purposes of this section, the ISO, using

its independent judgment and at its sole discretion, will determine whether to reflect in its calculation any potential extension to the current term of a written agreement that may reasonably result from renewal provisions.

For the purposes of Section 23.4.5.7.14.3, “Additional Self Supply Capacity”, for a given Locality (or the NYCA,) is the ICAP MW of a Generator or UDR project that were granted a Self Supply Exemption at the time of the completed Class Year based on the Self Supply LSE or any of its Affiliates’ being a Self Supply LSE for such Generator or UDR project, in the 10 year period immediately preceding the Class Year Start Date of the Class Year, in that Locality (or the NYCA), excluding: (i) any ICAP MW that are included in Self Supply Capacity, (ii) any ICAP MW associated with a Generator or UDR project that the Self Supply LSE and any of its Affiliates own directly or indirectly, at least a 50.01% interest(in the aggregate) as of the Class Year Start Date, or have the power to direct the management or policies of, and that the CRIS of which is projected by the ISO to be expired on or before the date that marks the end of Mitigation Study Period, based on a demonstration by the Self Supply LSE; and (iii) any ICAP MW of a Generator or UDR project that neither the Self Supply LSE nor any of its Affiliates own directly or indirectly, at least a 50.01% interest (in the aggregate) as of the Class Year Start Date, or have the power to direct the management or policies of, and that is an Expected Retirement.

#### **23.4.5.7.14.3.1 Net Short Threshold**

The Net Short Threshold will be satisfied for the “SSE Evaluated ICAP” if the ISO determines that, summed over all Localities and the NYCA, the Self Supply LSE’s and all of its Affiliates’ “Total Capacity Costs without Entry” are expected to be less than the Self Supply LSE’s and all of its Affiliates’ “Total Capacity Costs with Entry”.

23.4.5.7.14.3.1.1 The ISO will calculate the estimated “Total Capacity Costs without

Entry” as the sum over all Localities, and the NYCA, of the product of (a) the “ICAP Spot Auction Price without Entry” and (b) the “Capacity Exposed to Market Prices without Entry”.

(a) “ICAP Spot Market Auction Price without Entry” shall be based on the ICAP Spot Market Auction prices for each Locality and the NYCA, averaged over the three most recently completed Capability Years preceding the Class Year Start Date.

(b) “Capacity Exposed to Market Prices without Entry” is calculated for each Locality and the NYCA as:

“Capacity Obligations without Entry” for each Locality and the NYCA, translated from ICAP MW into UCAP MW using the average derating factor for each Locality and the NYCA corresponding to the ICAP Spot Market Auctions used to determine the ICAP Spot Market Auction Price without Entry;

minus

“Self Supply Capacity” for each Locality and the NYCA, translated from ICAP MW into UCAP MW using a derating factor, as determined by the ISO, that is reasonably anticipated to be associated with ICAP Suppliers included in this Self Supply Capacity;

minus

“Additional Self Supply Capacity” for each Locality and the NYCA, translated from ICAP MW into UCAP MW using a derating factor, as determined by the

ISO, that is reasonably anticipated to be associated with ICAP Suppliers included in this Additional Self Supply Capacity;

23.4.5.7.14.3.1.2 The ISO will calculate “Total Capacity Costs with Entry” as the sum of “Proportional Entry Costs” and the sum over all Localities, and the NYCA, of the product of (a) “ICAP Spot Market Auction Price With Entry” and (b) “Capacity Exposed to Market Prices With Entry”.

“Proportional Entry Costs” is the percentage of the Unit Net CONE (expressed in dollars) of the SSE Applicant (calculated in accordance with Section 23.4.5.7.3 if an Examined Facility, or in accordance with Section 23.4.5.7.2.1 if an NCZ Examined Project, or in accordance with Section 23.4.5.7.6.1 if Additional CRIS MW) that is equal to the SSE Evaluated ICAP divided by the total MW of CRIS requested by the SSE Applicant in the Class Year.

(a) The “ICAP Spot Market Auction Price with Entry” shall be based on the ICAP Spot Market Auction prices calculated for each Locality and the NYCA, averaged over the three most recently completed Capability Years preceding the Class Year Start Date, and adjusted to reflect the entry of the SSE Applicant.

(b) the “Capacity Exposed to Market Prices with Entry” is calculated for each Locality and the NYCA as:

“Capacity Obligations with Entry” for each Locality and the NYCA, translated from ICAP MW into UCAP MW using the average derating factor for each Locality and the NYCA corresponding to the ICAP Spot Market Auctions used to determine the ICAP Spot Market Auction Price with Entry;

minus

“Self Supply Capacity” for each Locality and the NYCA, translated from ICAP MW into UCAP MW using a derating factor, as determined by the ISO, that is reasonably anticipated to be associated with ICAP Suppliers included in this Self Supply Capacity;

minus

“Additional Self Supply Capacity” for each Locality and the NYCA, translated from ICAP MW into UCAP MW using a derating factor, as determined by the ISO, that is reasonably anticipated to be associated with ICAP Suppliers included in this Additional Self Supply Capacity;

minus

“SSE Evaluated ICAP”, translated from ICAP MW into UCAP MW using a derating factor, as determined by the ISO that is reasonably anticipated to be associated with the SSE Applicant.

#### **23.4.5.7.14.3.2 Net Long Threshold**

If the Self Supply LSE and any of its Affiliates are associated with more than one Self Supply Exemption Request in the Class Year, the Net Long Threshold determination will be made based on the sum of the Self Supply LSE’s and all of its Affiliates’ SSE Evaluated ICAP (“Cumulative Affiliated Quantity”) prior to the Initial Decision Period. The ISO shall recalculate the Cumulative Affiliated Quantity prior to the ISO’s issuance of a Revised Project Cost Allocation Subsequent Decision Period if any SSE Applicant with which it is associated is no longer in the Class Year.

For each Mitigated Capacity Zone containing the location of the SSE Applicant, the ISO will determine the largest amount of SSE Evaluated ICAP MW that is (a) less than or equal to



the sum of the Self Supply LSE's and all of its Affiliates' "SSE Evaluated ICAP" and (b) for which the Self Supply LSE's and all of its Affiliates' "Total Self Supply Capacity" is less than or equal to the "Future Capacity Obligation." The Net Long Threshold will be satisfied for the smallest of these determined amounts of SSE Evaluated ICAP MW, and will be considered not satisfied if the smallest of these amounts is less than or equal to zero.

- (i) The "Total Self Supply Capacity" is the sum, in each Mitigated Capacity Zone, of ICAP MW of (A) Self Supply Capacity, (B) Additional Self-Supply Capacity, and (C) the cumulative quantity of the Self Supply LSE's and all of its Affiliates' SSE Evaluated ICAP.
- (ii) the "Future Capacity Obligation" is the product of (A) ICAP MW of Capacity Obligations without Entry, and (B) the higher of (x) one plus the "10 year growth rate of peak demand" and (y) one plus one percent. The "10 year growth rate of peak demand" shall be determined based on the longest available NYSO Baseline forecast of non-coincident peak demand for the corresponding Mitigated Capacity Zone found in the "Baseline Forecast of Non-Coincident Peak Demand" table, or its successor in the most current Gold Book, published by the Class Year Start Date of the Class Year, for each Mitigated Capacity Zone.

#### **23.4.5.7.14.4 Timing of Determinations**

##### **23.4.5.7.14.4.1 Determinations.**

- (a) Prior to the Initial Decision Period, the ISO shall determine whether all or a portion of the MW specified in the request for a Self Supply Exemption is eligible for a Self Supply Exemption in accordance with Section 23.4.5.7.14.1.2. If the ISO determines that all or a portion of the CRIS MW for which a Self Supply

Exemption was requested is not eligible for a Self Supply Exemption, the ISO shall make a determination in accordance with Section 23.4.5.7.3.2 prior to the commencement of the Initial Decision Period, and prior to the ISO's issuance of a Revised Project Cost Allocation. When evaluating eligibility for a Self Supply 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 30.4.6.2.12 of Attachment O to this Services Tariff.

- (b) Determinations made pursuant to Section 23.4.5.7.14.4 shall be provided to the SSE Applicant concurrent with the issuance of determinations in accordance with Section 23.4.5.7.3.3, and to an NCZ Examined Project at the time of the ISO's determination pursuant to Section 23.4.5.7.2.1.
- (c ) The ISO shall post on its web site and concurrently notify the Self Supply LSE of the ISO's determination of exempt, and if exempt the quantity of MW exempted, or non-exempt, from an Offer Floor as soon as the determination is final. Concurrent with the ISO's posting, the Market Monitoring Unit shall publish a report on the ISO's determination, as further specified in Sections 30.4.6.2.12 of Attachment O to this Services Tariff.

#### **23.4.5.7.14.5 Revocation of a Self Supply Exemption**

- (a) If, at the time prior to the SSE Applicant first producing or transmitting, Energy it or the Self Supply LSE no longer satisfies the requirements of Section 23.4.5.7.14.1(b) or no longer meets the requirements of the Acknowledgement and Certification, the SSE Applicant and the Self Supply LSE shall notify each

other and other ISO in writing within 3 business days of the event or basis for the failure to meet the requirements for a Self Supply Exemption. Upon notification, the ISO shall revoke the Self Supply Exemption and apply the Mitigation Net CONE Offer Floor (such value calculated based on the date it first offers UCAP, in accordance with Section 23.4.5.7.3.7, and adjusted annually in accordance with Section 23.4.5.7 of this Services Tariff.)

- (b) The failure to provide the ISO written notice in accordance with Section 23.4.5.7.14.5(a) shall constitute a violation of the Services 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.)
- (c) Where the ISO reasonably believes that a request for a Self Supply Exemption was granted based on (i) false, misleading, or inaccurate information, or (ii) the Self Supply LSE's inclusion within "Self Supply Capacity" (as that term is used in Section 23.4.5.7.14.3) of a Generator or UDR project's capacity that was identified by the Self Supply LSE whose CRIS was projected to expire before the end of the Mitigation Study Period but has not expired on or before the date that marked the end of the Mitigation Study Period, the ISO shall notify the SSE Applicant and the Self Supply LSE that the Self Supply Exemption may be revoked. Provided that 30 days written notice has been given to the SSE Applicant (such notice to the extent practicable,) the ISO may revoke the Self Supply Exemption and apply the Mitigation Net CONE Offer Floor (such value calculated based on the date the SSE Applicant first offers UCAP, in accordance with Section 23.4.5.7.3.7, and adjusted annually in accordance with Section

23.4.5.7 of this Services Tariff.) Prior to the revocation of a Self Supply Exemption and the submission of a report to the Commission's Office of Enforcement (or any successor to its responsibilities,) the ISO shall provide the SSE Applicant an opportunity to explain any statement, information, or action, and if a statement information or action of the Self Supply LSE, it shall also provide an opportunity to that entity. The ISO cannot revoke the Self Supply Exemption until after the 30 days written notice period has expired, unless ordered to do so by the Commission.

## **30.4 Market Monitoring Unit**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



30.4.5.1.2 The Market Monitoring Unit is not to effectuate its proposed market design itself.

30.4.5.1.3 The Market Monitoring Unit's role in recommending proposed rule and Tariff changes is advisory in nature, unless a Tariff provision specifically concerns actions to be undertaken by the Market Monitoring Unit itself.

30.4.5.1.4 The Market Monitoring Unit must limit distribution of issues or concerns it identifies, and its recommendations to the ISO and to Commission staff in the event it believes broader dissemination could lead to exploitation. Limited distributions should include an explanation of why further dissemination should be avoided at that time.

30.4.5.2 Review and report on the performance of the wholesale markets to the ISO, the Commission, and other interested entities such as the New York Public Service Commission and participants in its stakeholder governance process on at least a quarterly basis, and issue a more comprehensive annual state of the market report. The Market Monitoring Unit may issue additional reports as necessary.

30.4.5.2.1 In order to perform the Core Functions, the Market Monitoring Unit shall perform daily monitoring of the markets that the ISO administers. The Market Monitoring Unit's daily monitoring shall include monitoring of virtual bidding.

30.4.5.2.2 The Market Monitoring Unit shall submit drafts of each of its reports to the ISO for review and comment sufficiently in advance of the report's issuance to provide an effective opportunity for review and comment by the ISO. The Market Monitoring Unit may disregard any suggestions with which it disagrees. The ISO may not alter the reports prepared by the Market Monitoring Unit, nor

dictate the Market Monitoring Unit's conclusions.

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

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

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

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

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

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

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

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

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

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

Commission.

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

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

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

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

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

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

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

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

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

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

30.4.6.2.2 The ISO and the Market Monitoring Unit shall monitor the ISO Administered Markets for other categories of conduct, whether by a single firm or by multiple firms acting in concert, that have material effects on prices or guarantee payments in an ISO Administered Market. *See* Market Mitigation Measures Section 23.2.4.4.

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

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

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

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

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



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

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

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

30.4.6.2.8 Reasonably in advance of the deadline for submitting offers in an External Reconfiguration Market and in accordance with the deadlines specified in ISO Procedures, the Responsible Market Party for External Sale UCAP may request the ISO to provide a projection of ICAP Spot Auction clearing prices for a Mitigated Capacity Zone over the Comparison Period for the External Reconfiguration Market. Prior to completing its projection of ICAP Spot Auction clearing prices for a Mitigated Capacity Zone over the Comparison Period for the External Reconfiguration Market, the ISO shall consult with the Market Monitoring Unit regarding such price projection. *See* Market Mitigation Measures Section 23.4.5.4.3.

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

30.4.6.2.10 Any proposal or decision by a Market Participant to retire or otherwise remove an Installed Capacity Supplier from a Mitigated Capacity Zone Unforced Capacity market, or to de-rate the amount of Installed Capacity available from such supplier, may be subject to audit and review by the ISO if the ISO determines that such action could reasonably be expected to affect Market-Clearing Prices in one or more ICAP Spot Market Auctions for a Mitigated Capacity Zone subsequent to such action; provided, however, no audit and review shall be necessary if the Installed Capacity Supplier is a Generator that is being retired or removed from a Mitigated Capacity Zone as the result of a Forced Outage that began on or after the effective date of the amendments to Section 23.4.5.6.1 of this Services Tariff that was determined by the ISO to be a Catastrophic Failure. Such an audit or review shall assess whether the proposal or decision has a legitimate economic justification or is based on an effort to withhold Installed Capacity physically in order to affect prices. The ISO shall provide the preliminary results of its audit or review to the Market Monitoring Unit for its review and comment. *See* Market Mitigation Measures Section 23.4.5.6.

30.4.6.2.11 Any reclassification of a an Installed Capacity Supplier that is a Generator in a Mitigated Capacity Zone from a Forced Outage that began on or after the

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

The audit and review pursuant to the above paragraph shall assess whether the reclassification of the Generator in a Mitigated Capacity Zone from a Forced Outage to an ICAP Ineligible Forced Outage had a legitimate economic justification or is based on an effort to withhold Installed Capacity physically in order to affect prices. The ISO shall provide the preliminary results of its audit or review to the Market Monitoring Unit for its review and comment.

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

acquires the necessary data, the Market Party has Commenced Repair of the Generator, or the Generator is determined by the ISO to have had a Catastrophic Failure, the Market Party shall not be subject to an audit and review pursuant to Section 23.4.5.6.2.1 of this Services Tariff. The ISO shall provide the preliminary results of its audit or review to the Market Monitoring Unit for its review and comment.

30.4.6.2.12 When evaluating an Examined Facility or NCZ Examined Project pursuant to Section 23.4.5.7 of the Market Mitigation Measures, the ISO shall seek comment from the Market Monitoring Unit on matters relating to the determination of price projections; and cost calculations, the ISO's draft list of recommended Exempt Renewable Technologies and the basis for the recommendation; requests pursuant to Section 23.4.5.7.14.1.2(e)(C) regarding whether a "contract" (as defined in Section 23.4.5.7.14.2(e)) would make it ineligible to obtain or (if previously granted) retain a Self Supply Exemption;. As required by Section 23.4.5.7 of Attachment H to this Services Tariff, the Market Monitoring Unit shall prepare a written report discussing factors that affect the ISO's mitigation exemption and Offer Floor determinations, and confirming whether the ISO's Offer Floor and exemption determinations and calculations conducted pursuant to Sections 23.4.5.7.2 and 23.4.5.7.6, the NYISO's determination of eligible or ineligible for an exemption pursuant to Section 23.4.5.7.9, 23.4.5.7.13, and 23.4.5.7.14 were conducted in accordance with the terms of the Services Tariff, and if not, identifying the flaws inherent in the ISO's approach. This report shall be presented concurrent with the ISO's posting of its

mitigation exemption and Offer Floor determinations. Pursuant to Section 23.4.5.7.8 of the Market Mitigation Measures, the ISO shall also consult with the Market Monitoring Unit when evaluating whether any existing or proposed Generator or UDR project in a Mitigated Capacity Zone, except New York City, has Commenced Construction, and determinations of whether it shall be exempted from an Offer Floor under that Section. Prior to the ISO making an exemption determination pursuant to Section 23.4.5.7.8, the Market Monitoring Unit shall provide the ISO a written opinion and recommendation. The Market Monitoring Unit shall also provide a public report on its assessment of an ISO determination that an existing or proposed Generator or UDR project is exempt from an Offer Floor under Section 23.4.5.7.8. *See* Market Mitigation Measures Section 23.4.5.7.

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

30.4.6.3.1 The ICAP Demand Curve periodic review schedule and procedures shall provide an opportunity for the Market Monitoring Unit to review and comment on the draft request for proposals, the independent consultant's report, and the ISO's proposed ICAP Demand Curves. *See* ISO Services Tariff Section 5.14.1.2.5.

30.4.6.3.2 The new capacity zone periodic review shall provide an opportunity for the Market Monitoring Unit to review and comment on the NCZ Study, and any proposed NCZ tariff revisions. *See* ISO Services Tariff Sections 5.16.1.3 and 5.16.4.

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

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

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

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

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

##### **30.4.6.4.2 Responsibilities related to the Operating Reserves Demand Curves**

In order to respond to operational or reliability problems that arise in real-time, the ISO

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

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

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

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

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

The ISO may periodically evaluate the Transmission Shortage Cost to determine whether it is necessary to modify the Transmission Shortage Cost to avoid future operational or reliability



problems. The ISO will consult with its Market Monitoring Unit after it conducts this evaluation.

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

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

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

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

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

If the ISO, acting in consultation with its Market Monitoring Unit, identifies transmission scheduling paths that are being used to schedule External Transactions in a manner that is not consistent with the manner in which power is actually expected to flow, the ISO may submit a compliance filing in FERC Docket No. ER13-780 proposing to expand the list of prohibited

scheduling paths included in Section 16.3.3.8 of the ISO OATT. The ISO's compliance filing will include, or be accompanied by, a discussion of the Market Monitoring Unit's position regarding the ISO's proposal to add a new prohibited scheduling path or new prohibited scheduling paths. The Market Monitoring Unit's position may be explained in the ISO's filing letter, be set forth in an accompanying affidavit, or be submitted by the Market Monitoring Unit as a companion filing or as comments on the ISO's compliance filing in Docket No. ER13-780. *See* Section 16.3.3.8 of Attachment J to the ISO OATT.

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

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

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

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

#### **30.4.6.8.4 Responsibilities related to the draft Congestion Analysis and Resource Integration Study**

Following the Management Committee vote, the draft Congestion Analysis and Resource Integration Study (CARIS), with Business Issues Committee and Management Committee input, will be forwarded to the ISO Board for review and action. Concurrently, the draft CARIS will be provided to the Market Monitoring Unit for its review and consideration. *See* Section 31.3.2.2 of Attachment Y to the ISO OATT.

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

The ISO will provide the draft Public Policy Transmission Planning Report to the Market Monitoring Unit for its review and consideration of any impact on the ISO-administered markets of regulated transmission solutions proposed to satisfy a Public Policy Transmission Need. *See* Sections 31.4.9 and 31.4.10.1 of Attachment Y to the ISO OATT. The Market Monitoring Unit's evaluation will be provided to the Management Committee before the Management Committee's advisory vote. *See* Section 31.4.10.1 of Attachment Y. Following the Management Committee vote, the draft Public Policy Transmission Planning Report, with Business Issues Committee and Management Committee input, will be forwarded to the ISO Board for review and action. Concurrent with the submission to the ISO Board of the draft Public Policy Transmission Planning Report, the Market Monitoring Unit's evaluation will be provided to the ISO Board. *See* Section 31.4.7 of Attachment Y to the ISO OATT.

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

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

30.4.7.1 The ISO shall ensure that the Market Monitoring Unit has sufficient

access to ISO resources, personnel and market data to enable the Market Monitoring Unit to carry out its functions under Attachment O. Consistent with Section 30.6.1 of Attachment O, the Market Monitoring Unit shall have complete access to the ISO's databases of market information.

30.4.7.2 Any data created by the Market Monitoring Unit, including but not limited to reconfiguration of the ISO's data, will be kept within the exclusive control of the Market Monitoring Unit. The Market Monitoring Unit may share the data it creates, subject to the limitations on distribution of and obligation to protect the confidentiality of Protected Information that are contained in Attachment O, the ISO Services Tariff, and the ISO's Code of Conduct.

30.4.7.3 Where data outside the ISO's geographic footprint would be helpful to the Market Monitoring Unit in carrying out its duties, the Market Monitoring Unit should seek out that data (with assistance from the ISO, where appropriate).

## 23.2 Conduct Warranting Mitigation

### 23.2.1 Definitions

The following definitions are applicable to this Attachment H:

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

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

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

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

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

Catastrophic Failure shall be based on a technical/engineering evaluation, shall be made by the ISO, and may be made at any time following the event that caused the Forced Outage provided that adequate information is provided to the ISO to support such determination.

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

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

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

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

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

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

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

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

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

**Exceptional Circumstances:** shall mean one or more unavoidable circumstances, as determined by the ISO, that individually or collectively render as unavailable the data necessary for the ISO to perform an audit and review of a Market Party, pursuant to Section 23.4.5.6.2 of this Services Tariff. Exceptional Circumstances may include, but are not limited to: the inaccessibility of the physical facility; the inaccessibility of necessary documentation or other data; and the unavailability of information regarding the regulatory obligations with which the Market Party

will be required to comply in order to return its Generator to service which regulatory obligations are not yet known but which will be made known by the applicable regulatory authority under existing laws and regulations provided that none of the above described circumstances are the result of delay or inaction by the Market Party. The magnitude of the repair cost, alone, shall not be an Exceptional Circumstance.

**“Exempt Renewable Technology”** shall mean, in all Mitigated Capacity Zones, an Intermittent Power Resource solely powered by wind or solar energy.

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

For purposes of Section 23.4.5 of this Attachment H, **“Indicative Mitigation Net CONE”** shall mean the capacity price calculated by the NYISO for informational purposes only if there is not an effective ICAP Demand Curve and the Commission (i) has accepted an ICAP Demand Curve for the Mitigated Capacity Zone that will become effective when the Mitigated Capacity Zone is first effective, in which case, the Indicative Mitigation Net CONE shall be the capacity price on such ICAP Demand Curve for the Mitigated Capacity Zone corresponding to the average amount of excess capacity above the Indicative NCZ Locational Minimum Installed Capacity Requirement, as applicable, expressed as a percentage of that requirement that formed the basis for the ICAP Demand Curve accepted by the Commission; or, (ii) has not accepted an ICAP Demand Curve for the Mitigated Capacity Zone, but the ISO has filed an ICAP Demand Curve for the Mitigated Capacity Zone pursuant to Services Tariff Section 5.14.1.2.11, in which case the Indicative Mitigation Net CONE shall be the capacity price on such ICAP Demand Curve corresponding to the average amount of excess capacity above the Indicative NCZ Locational Minimum Installed Capacity Requirement, expressed as a percentage of that requirement, that formed the basis for such ICAP Demand Curve.

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

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

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

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

**“Market Party”** shall mean any person or entity that is, or for purposes of the determinations to be made pursuant to Section 23.4.5.7 of this Attachment H proposes or plans a project that would

be, a buyer or a seller in, or that makes bids or offers to buy or sell in, or that schedules or seeks to schedule Transactions with the ISO in or affecting any of the ISO Administered Markets, or any combination of the foregoing.

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

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

**“NCZ Examined Project”** shall mean any Generator or UDR project that is not exempt pursuant to 23.4.5.7.8 and either (i) is in a Class Year on the date the Commission accepts the first ICAP Demand Curve to apply to a Mitigated Capacity Zone, (ii) meets the criteria specified in 23.4.5.7.3(II), or (iii) meets the criteria specified in 23.4.5.7.3(III) but the time period therein has passed on the date the Commission accepts the first ICAP Demand Curve. An NCZ Examined Project may be at any phase of development or in operation or an Installed Capacity Supplier.

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

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

For purposes of Section 23.4.5 of this Attachment H, **“Offer Floor”** for a Mitigated Capacity Zone Installed Capacity Supplier that is not a Special Case Resource shall mean the lesser of (i) a numerical value equal to 75% of the Mitigation Net CONE translated into a seasonally adjusted monthly UCAP value (**“Mitigation Net CONE Offer Floor”**), or (ii) the numerical value that is the first year value of the Unit Net CONE determined as specified in Section 23.4.5.7, translated into a seasonally adjusted monthly UCAP value using an appropriate class outage rate, (**“Unit Net CONE Offer Floor”**). The Offer Floor for a Mitigated Capacity Zone Installed Capacity Supplier that is a Special Case Resource shall mean a numerical value determined as specified in Section 23.4.5.7.5. The Offer Floor for Additional CRIS MW shall mean a numerical value determined as specified in Section 23.4.5.7.6.

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



that, together with any of its Affiliated Entities, (a) Controls 650 MW or more of Unforced Capacity; and (b) Controls Unforced Capacity some portion of which is necessary to meet the G-J Locality Locational Minimum Installed Capacity Requirement in an ICAP Spot Market Auction; and (iii) for each Mitigated Capacity Zone except the New York City Locality and the G-J Locality, if any, a Market Party that Controls at least the quantity of MW of Unforced Capacity specified for the Mitigated Capacity Zone and accepted by the Commission.

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

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

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

**“Self Supply LSE”** shall mean a Load Serving Entity in one or more Mitigated Capacity Zones that operates under a long-standing business model to meet more than fifty percent of its Load obligations through its own generation and that is a Public Power Entity, “Single Customer Entity,” or “Vertically Integrated Utility.” For purposes of this definition only: (i) “Vertically Integrated Utility” means a utility that owns generation, includes such generation in a non-bypassable charge in its regulated rates, earns a regulated return on its investment in such generation, and that as of the date of its request for a Self Supply Exemption, has not divested more than seventy-five percent of its generation assets owned on May 20, 1996; and (ii) “Single Customer Entity” means an LSE that serves at retail only customers that are under common control with such LSE, where such control means holding 51% or more of the voting securities or voting interests of the LSE and all its retail customers.

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

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

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

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

For purposes of Section 23.4.5 of this Attachment H, **“Unit Net CONE”** shall mean localized levelized embedded costs of a specified Installed Capacity Supplier, including interconnection

costs, and for an Installed Capacity Supplier located outside a Mitigated Capacity Zone including embedded costs of transmission service, in either case net of likely projected annual Energy and Ancillary Services revenues, as determined by the ISO, translated into a seasonally adjusted monthly UCAP value using an appropriate class outage rate.

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

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

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

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

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

23.2.3.1.1 is significantly inconsistent with competitive conduct; and

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

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

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

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

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

For purposes of this Section and Section 23.4.3.2, the term "unjustifiable change" shall mean a change in an Electric Facility's operating parameters that is: (a) not

attributable to the Electric Facility's verifiable physical operating capabilities, and  
(b) is not a rational competitive response to economic factors other than market power.

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

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

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

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

23.2.4.4 The ISO and the Market Monitoring Unit shall monitor the ISO Administered Markets for other categories of conduct, whether by a single firm or by multiple firms acting in concert, that have material effects on prices or

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

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

- 23.4.5.1 If and to the extent that sufficient installed capacity is not under a contractual obligation to be available to serve load in New York and if physical or economic withholding of installed capacity would be likely to result in a material change in the price for installed capacity in all or some portion of New York, the ISO, in consideration of the comments of the Market Parties and other interested parties, shall amend this Attachment H, in accordance with the procedures and requirements for amending the Plan, to implement appropriate mitigation measures for installed capacity markets.
- 23.4.5.2 Offers to sell Mitigated UCAP in an ICAP Spot Market Auction shall not be higher than the higher of (a) the UCAP Offer Reference Level for the applicable ICAP Spot Market Auction, or (b) the Going-Forward Costs of the Installed Capacity Supplier supplying the Mitigated UCAP. Where an Installed Capacity Supplier is a Pivotal Supplier in some, but not all, Mitigated Capacity Zones in which it has Resources, such Installed Capacity Supplier's offer to sell Mitigated UCAP in any ICAP Spot Market Auction for any Resource for which it is a Pivotal Supplier shall not be higher than the higher of (a) the lowest of the UCAP Offer Reference Levels for each Mitigated Capacity Zone in which such Installed Capacity Supplier has Resources; or (b) if an Offer for a Resource has an applicable Going-Forward Cost, such Going-Forward Cost.
- 23.4.5.3 An Installed Capacity Supplier's Going-Forward Costs for an ICAP Spot Market Auction shall be determined upon the request of the Responsible Market Party for that Installed Capacity Supplier. The Going-Forward Costs shall be

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

actually plans to mothball or retire it if the Installed Capacity revenues it receives are not sufficient to cover those costs.

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

23.4.5.4.1 An export to an External Control Area or sale to meet an Installed Capacity requirement outside the Mitigated Capacity Zone in which the ICAP Supplier is a Pivotal Supplier is located of Mitigated UCAP (either of the foregoing being referred to as “External Sale UCAP”) may be subject to audit and review by the ISO to assess whether such action constituted physical withholding of UCAP from a Mitigated Capacity Zone. External Sale UCAP shall be deemed to have been physically withheld on the basis of a comparison of the net revenues from UCAP sales that would have been earned by the sale in a Mitigated Capacity Zone of External Sale UCAP. The comparison shall be made for the period for which Installed Capacity is committed (the “Comparison Period”) in each of the shortest term organized capacity markets (the “External Reconfiguration Markets”) for the area and during the period in which the Mitigated UCAP was exported or sold. External Sale ICAP shall be deemed to have been withheld from a Mitigated Capacity Zone if: (1) the Responsible Market Party for the External Sale UCAP could have made all or a portion of the External Sale UCAP



available to be offered in the Mitigated Capacity Zone by buying out of its external capacity obligation through participation in an External Reconfiguration Market; and (2) the net revenues over the Comparison Period from sale in the Mitigated Capacity Zone of the External Sale UCAP that could have been made available for sale in that Locality would have been greater by 15% or more, provided that the net revenues were at least \$2.00/kilowatt-month more than the net UCAP revenues from that portion of the External Sale UCAP over the Comparison Period.

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

and without the inclusion of the External Sale UCAP in those auctions, or (B) the difference between such average price and the clearing price in the External Reconfiguration Market for the relevant Comparison Period, times the total of (1) the amount of Mitigated UCAP not offered or sold as specified above, and (2) all other megawatts of Unforced Capacity in the Mitigated Capacity Zone under common Control with such Mitigated UCAP. The ISO will distribute any amounts recovered in accordance with the foregoing provisions among the LSEs serving Loads in regions affected by the withholding in accordance with ISO Procedures.

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

from sale of the External UCAP Sales capacity in the Mitigated Capacity Zone at the ICAP Spot Auction prices projected by the ISO. The responsibilities of the Market Monitoring Unit that are addressed in this section of the Mitigation Measures are also addressed in Section 30.4.6.2.8 of Attachment O to this Services Tariff.

23.4.5.5 Control of Unforced Capacity shall be rebuttably presumed from (i) ownership of an Installed Capacity Supplier, or (ii) status as the Responsible Market Party for an Installed Capacity Supplier, but may also be determined on the basis of other evidence. For purposes of determining if a Responsible Market Party is a Pivotal Supplier in a Mitigated Capacity Zone except the G-J Locality, the presumption of Control of Unforced Capacity can be rebutted by: (1) the sale of Unforced Capacity in a Capability Period Auction or a Monthly Auction, or (2) demonstrating to the reasonable satisfaction of the ISO that the ability to determine the price and quantity of offers to supply Unforced Capacity has been conveyed to a person or entity that is not an Affiliated Entity without limitation or condition. For purposes of determining if a Responsible Market Party is a Pivotal Supplier in the G-J Locality, the presumption of Control of Unforced Capacity can be rebutted by demonstrating to the reasonable satisfaction of the ISO that the ability to determine the price and quantity of offers to supply Unforced Capacity has been conveyed to a person or entity that is not an Affiliated Entity without limitation or condition, but cannot be rebutted by the sale of Unforced Capacity in a Capability Period or Monthly Auction. For any Mitigated Capacity Zone, if the presumption has not been rebutted, and if two or more Market Parties each have

rights or obligations with respect to Unforced Capacity from an Installed Capacity Supplier that could reasonably be anticipated to affect the quantity or price of Unforced Capacity transactions in an ICAP Spot Market Auction, the ISO may attribute Control of the affected MW of Unforced Capacity from the Installed Capacity Supplier to each such Market Party. Prior to reaching its decision regarding whether the presumption of control of Unforced Capacity has been rebutted, the ISO shall provide its preliminary determination to the Market Monitoring Unit for review and comment. The responsibilities of the Market Monitoring Unit that are addressed in this section of the Mitigation Measures are also addressed in Section 30.4.6.2.9 of Attachment O to this Services Tariff.

#### **23.4.5.6 Audit, Review, and Penalties for Physical Withholding to Increase Market-Clearing Prices**

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

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

the proposal or decision has a legitimate economic justification or is based on an effort to withhold Installed Capacity physically in order to affect prices. The ISO shall provide the preliminary results of its audit or review to the Market Monitoring Unit for its review and comment. The responsibilities of the Market Monitoring Unit that are addressed in this section of the Mitigation Measures are also addressed in Section 30.4.6.2.10 of Attachment O to this Services Tariff.

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

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

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

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

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

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

The ISO shall conduct the audit and review after its receipt of data that it determines is necessary for the audit and review; provided, however, if, at the time the ISO acquires the necessary data, the Market Party has Commenced Repair of the Generator, or the Generator is determined by the ISO to have had a Catastrophic Failure, the Market Party shall not be subject to an audit and review pursuant to Section 23.4.5.6.2.1 of this Services Tariff. A Generator that Commenced Repair while in an ICAP Ineligible Forced Outage but that ceased or

unreasonably delayed that repair shall be subject to audit and review by the ISO pursuant to Section 23.4.5.6.2.1 of this Services Tariff.

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

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

23.4.5.6.2.4 The audit and review pursuant to Sections 23.4.5.6.2.1, and 23.4.5.6.2.2 shall be conducted to determine whether the decision not to repair a Generator had a legitimate economic justification, consistent with competitive behavior; that is, whether the cost of repair, including the risk-adjusted cost of capital, could not reasonably be expected to be recouped over the reasonably anticipated remaining life of the generator. The elements of such audit and review may include, as appropriate, the historical revenue and maintenance cost data for the purpose of the baseline, the duration of the repair, the costs including, but not limited to, capital expenditures necessary to comply with federal or state environmental, safety or reliability requirements that must be met in order to operate the Generator, the anticipated capacity, energy and ancillary services revenues following the repair, the projected costs of operating the Generator following the

repair, any benefits that would be foregone from using the site for a purpose other than as the existing Generator (e.g., repowering), and other relevant data.

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

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

For a requesting Market Party, a determination that a Generator has experienced a Catastrophic Failure shall be made by the ISO by the 160<sup>th</sup> day of the Forced Outage. If the ISO has determined that Exceptional Circumstances will delay the submission of data necessary for the ISO to perform an audit and review pursuant to Section 23.4.5.6.2.1 or 23.4.5.6.2, the ISO shall use reasonable efforts to issue a determination that the Generator has experienced a Catastrophic Failure by the 40<sup>th</sup> day after receipt of data necessary to conduct the analysis.

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

If the ISO determines that either: i) pursuant to Section 23.4.5.6.1, the proposal or decision by a Market Party to retire or otherwise remove an Installed Capacity Supplier from a



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

#### **23.4.5.7 Buyer-Side Market Power Mitigation Measures for Installed Capacity**

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 23.4.5.7.9.5.2 (*i.e.*, after the revocation of a Competitive Entry Exemption,) Section 23.4.5.7.13.3 (*i.e.*, after the revocation of a Renewable Exemption) or Section 23.4.5.7.14.5 (*i.e.*, after the revocation of a Self Supply 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 23.4.5.7.9.5.2 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 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"). 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.

23.4.5.7.1      Unforced Capacity from an Installed Capacity Supplier that is subject to an Offer Floor may not be used to satisfy any LSE Unforced Capacity Obligation for Mitigated Capacity Zone Load unless such Unforced Capacity is obtained through participation in an ICAP Spot Market Auction.

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

numerical value equal to 75 percent of the Mitigation Net CONE that would be applicable to such supplier in the same two (2) Capability Periods (utilized to compute (x)), (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, (c) it has been determined to be exempt pursuant to Section 23.4.5.7.9 (the “Competitive Entry Exemption”), (d) it has been determined, and in the quantity of MW for which it has been determined, to be exempt pursuant to Section 23.4.5.7.13 (the “Renewable Exemption”), or (e) it has been determined, and in the quantity of MW for which it has been determined, to be exempt pursuant to Section 23.4.5.7.14 (the “Self Supply 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 Sections 23.4.5.7.3.2 or 23.4.5.7.4, as appropriate, for each Examined Facility promptly after it (i) has accepted its SDU Project Cost Allocation and deliverable MW, if any, from the Final Decision Round and (ii) along with all other remaining members, has posted any associated Security pursuant to OATT Section 25 (OATT Attachment S) (for purposes of Section 23.4, a project that “remains a member of a completed Class Year”). The first year value of an Examined Facility’s Unit Net CONE will be calculated pursuant to Section 23.4.5.7, Section 23.4.5.7.2.4, or 23.4.5.7.3.2, will be established at the time such Examined Facility first offers UCAP, and will be

used by the ISO in subsequent mitigation exemption or Offer Floor determinations for Additional CRIS MW. Any determination received pursuant to Sections 23.4.5.7.2, 23.4.5.7.6. or 23.4.5.7.7 shall not become final for the relevant Examined Facility unless the Examined Facility accepts its SDU Project Cost Allocation and deliverable MW, if any, from the Final Decision Round, and posted any associated security pursuant to OATT Section 25, and remains a member of the completed Class Year. The Unit Net CONE or exemption determination pursuant to this Section shall be final on the date the ISO issues a notice to stakeholders that the Class Year decisional process has been completed.

23.4.5.7.2.1 Promptly after Commission acceptance of the first ICAP Demand Curve to apply to a Mitigated Capacity Zone, the ISO shall make an exemption and Offer Floor determination for any NCZ Examined Project that is in a completed Class Year and has received CRIS, unless exempt pursuant to section 23.4.5.7.6 or 23.4.5.7.8.

23.4.5.7.2.2 The ISO shall make an “Indicative Buyer-Side Mitigation Exemption Determination” for any NCZ Examined Project if (i) the Commission has accepted an ICAP Demand Curve for the Mitigated Capacity Zone that will become effective when the Mitigated Capacity Zone is first effective, or (ii) if the Commission has not accepted the first ICAP Demand Curve to apply specifically to the Mitigated Capacity Zone in which the NCZ Examined Project is located, provided the ISO has filed an ICAP Demand Curve pursuant to Services Tariff Section 5.14.1.2.11. The Indicative Buyer-Side Mitigation Exemption Determination shall be computed using such ICAP Demand Curve for the

Mitigated Capacity Zone concurrent with the determinations the ISO makes for Examined Facilities pursuant to Sections 23.4.5.7.3.2 and 23.4.5.7.3.3. The ISO shall recompute the Indicative Buyer-Side Mitigation Exemption Determination promptly after Commission acceptance of the first ICAP Demand Curve for the applicable Locality provided that such NCZ Examined Project (i) received CRIS if the Class Year completed at the time the Commission accepts the Demand Curve, or (ii) has not been removed from the Class Year Deliverability Study if the Class Year is not completed. The Indicative Buyer-Side Mitigation Exemption Determination is for informational purposes only. The exemption or Offer Floor for an NCZ Examined Project to which this Section applies shall be determined for such projects receiving CRIS using the Commission-accepted Locality Demand Curve.

23.4.5.7.2.3 Any NCZ Examined Project not exempt pursuant to 23.4.5.7.8 shall provide data and information requested by the ISO by the date specified by the ISO, in accordance with the ISO Procedures.

The ISO shall compute the reasonably anticipated ICAP Spot Market Auction forecast price based on Expected Retirements (as defined in subsection 23.4.5.7.2.3.1), plus each NCZ Examined Project.

23.4.5.7.2.3.1 Expected Retirements shall be determined based on any Generator that provided written notice to the New York State Public Service Commission that it intends to retire, plus any UDR facilities, or any Generator 2 MW or less that provided written notice to the ISO that it intends to retire.

23.4.5.7.2.3.2 The Load forecast shall be based on data used to develop the Indicative Locational Minimum Installed Capacity Requirement, and Special Case Resources based on data for the Mitigated Capacity Zone that is part of the Special Case Resource data set forth in the most-recently published Load and Capacity Data (Gold Book).

23.4.5.7.2.4 The ISO shall post on its website the inputs of the reasonably anticipated ICAP Spot Market Auction forecast prices determined in accordance with 23.4.5.7.2.3 (except for the posting of an input which would disclose Confidential Information), the Expected Retirements, and the NCZ Examined Projects, before the exemption or Offer Floor determination under this Section.

When the ISO is evaluating more than one NCZ Examined Project concurrently, the ISO shall recognize in its computation of the anticipated ICAP Spot Market Auction forecast price that Generators or UDR facilities will clear from lowest to highest, using for each NCZ Examined Project the lower of (i) the first year value of its Unit Net CONE, or (ii) the numerical value equal to 75 percent of the Mitigation Net Cone, then inflated in accordance with 23.4.5.7 for each of the year two and year three of the Mitigation Study Period.

23.4.5.7.2.5 When evaluating NCZ Examined Projects pursuant to Sections 23.4.5.7.2.1 or 23.4.5.7.2.2, the ISO shall seek comment from the Market Monitoring Unit on matters relating to the determination of price projections and cost calculations. The ISO shall inform the NCZ Examined Project of the Offer Floor or Offer Floor exemption determination or Indicative Buyer-Side Mitigation Exemption Determination promptly. The responsibilities of the Market

Monitoring Unit that are addressed in this Section 23.4.5.7.2.5 are also addressed in Section 30.4.6.2.12 of Attachment O to this Services Tariff.

23.4.5.7.2.6 If an NCZ Examined Project under the criteria in 23.4.5.7.2.1 or 23.4.5.7.2.2 does not provide all of the requested data by the date specified by the ISO, the MW of CRIS received at that time by the project shall be subject to the Mitigation Net CONE Offer Floor for the period determined by the ISO in accordance with Section 23.4.5.7.

23.4.5.7.2.7 An NCZ Examined Project or Examined Facility located in more than one Mitigated Capacity Zone shall be evaluated pursuant to the tests in Section 23.4.5.7.2 (a) and (b) or 23.4.5.7.3 (as applicable), calculating Mitigation Net CONE for the smallest Mitigated Capacity Zone that contains the Load Zone in which such NCZ Examined Project or Examined Facility is electrically located.

23.4.5.7.3 The ISO shall make such exemption and Unit Net CONE determination for each “Examined Facility” (collectively “Examined Facilities”) which term shall mean (I) each proposed new Generator and proposed new UDR project, and each existing Generator that has ERIS only and no CRIS, that is a member of the Class Year that requested CRIS, or that requested an evaluation of the transfer of CRIS rights from another location, in the Class Year Facilities Study commencing in the calendar year in which the Class Year Facility Study determination is being made (the Capability Periods of expected entry as further described below in this Section, the “Mitigation Study Period”), (II) each (i) existing Generator that did not have CRIS rights, and (ii) proposed new Generator and proposed new UDR project, that is an expected recipient of transferred CRIS rights at the same

location regarding which the ISO has been notified by the transferor or the transferee of a transfer pursuant to OATT Attachment S Section 25.9.4 that will be effective on a date within the Mitigation Study Period, (III) each proposed new Generator that (a) is either (i) in the ISO Interconnection Queue, in a Class Year prior to 2009/10, and has not commenced commercial operation or been canceled, and for which the ISO has not made an exemption or Unit Net CONE determination, or (ii) not subject to a deliverability requirement (and therefore, is not in a Class Year) and (b) provides specific written notification to the ISO no later than the date identified by the ISO, that it plans to commence commercial operation and offer UCAP in a month that coincides with a Capability Period of the Mitigation Study Period. The term “Examined Facilities” does not include any facility exempt from an Offer Floor pursuant to the provisions of Section 23.4.5.7.

23.4.5.7.3.1 The commercial operation date to be used by the ISO solely for purposes of identifying the Examined Facilities will be determined by the ISO at the time of the Class Year Study as the date most-recently (A) identified by the project to the ISO in the Interconnection Facilities Study process or (B) reflected in the Interconnection Queue, or if neither of the foregoing is applicable, then the date identified by the project to the Transmission Owner to which it has proposed interconnecting.

23.4.5.7.3.2 The ISO shall compute the reasonably anticipated ICAP Spot Market Auction forecast price for any Mitigated Capacity Zone based on Expected



Retirements (as defined in this subsection 23.4.5.7.3.2), plus each Examined Facility in 23.4.5.7.3 (I), (II), and (III).

Expected Retirements shall be determined based on any Generator that provided written notice to the New York State Public Service Commission that it intends to retire, plus any UDR facility or Generator 2 MW or less that provided written notice to the ISO that it intends to retire.

The load forecast and Special Case Resources shall be as set forth in the most-recently published Load and Capacity Data (Gold Book).

Before the commencement of the Initial Decision Period for the Class Year, the ISO shall post on its website the inputs of the reasonably anticipated ICAP Spot Market Auction forecast prices determined in accordance with 23.4.5.7.3.2, the Expected Retirements, and the Examined Facilities, before the Initial Project Cost Allocation, subject to any restrictions on the disclosure of Confidential Information or Critical Energy Infrastructure Information.

When the ISO is evaluating more than one Examined Facility concurrently, the ISO shall recognize in its computation of the anticipated ICAP Spot Market Auction forecast price that Generators or UDR facilities will clear from lowest to highest, using for each Examined Facility the lower of (i) the first year value of its Unit Net CONE, or (ii) the numerical value equal to 75 percent of the Mitigation Net Cone, then inflated in accordance with 23.4.5.7 for each of the year two and year three of the Mitigation Study Period.

23.4.5.7.3.3 All developers, Interconnection Customers, and Installed Capacity

Suppliers for any Examined Facility that do not request CRIS shall provide data

and information requested by the ISO by the date specified by the ISO, in accordance with the ISO Procedures. For any such Examined Facility that is in a Class Year but that only has ERIS rights after the Project Cost Allocation process is complete, the ISO shall utilize the data first provided in its analysis of the Unit Net CONE in its review of the project in any future Class Year in which the Generator or UDR facility requests CRIS. The ISO shall determine the reasonably anticipated Unit Net CONE less the costs to be determined in the Project Cost Allocation or Revised Project Cost Allocation, as applicable, prior to the commencement of the Initial Decision Period Class Year, and shall provide to the Examined Facility the ISO's initial determination of an exemption or the Offer Floor. On or before the three (3) days prior to the ISO's issuance of the Revised Project Cost Allocation, the ISO will revise its forecast of ICAP Spot Market Auction prices for the Capability Periods in the Mitigation Study Period based on the Examined Facilities that remain in the Class Year for CRIS and the Examined Facilities that meet 23.4.5.7.3 (II) or (III). When evaluating Examined Capacity pursuant to this Section 23.4.5.7, the ISO shall seek comment from the Market Monitoring Unit on matters relating to the determination of price projections and cost calculations. The ISO shall provide to each project its revised price forecast and a revised initial determination for a Subsequent Decision Period no later than the ISO's issuance of a Revised Project Cost Allocation. If a project remains a member of a completed Class Year, the ISO shall inform the project of the final determination of the Offer Floor or whether the Offer Floor exemption specified above in this Section is applicable as soon as practicable after the date the ISO

issues a notice to stakeholders that the Class Year decisional process has been completed, in accordance with methods and procedures specified in ISO Procedures. The responsibilities of the Market Monitoring Unit that are addressed in this section of the Mitigation Measures are also addressed in Section 30.4.6.2.12 of Attachment O to this Services Tariff.

23.4.5.7.3.4 If an Examined Facility under the criteria in 23.4.5.7.3 (II) or (III) has not provided written notice to the ISO on or before the date specified by the ISO, or any Examined Facility required to be reviewed does not provide all of the requested data by the date specified by the ISO, the proposed Capacity shall be subject to the Mitigation Net CONE Offer Floor for the period determined by the ISO in accordance with Section 23.4.5.7.

23.4.5.7.3.5 Except as specified in Section 23.4.5.7.6 with respect to Additional CRIS MW, an Examined Facility for which an exemption or Offer Floor determination has been rendered may only be reevaluated for an exemption or Offer Floor determination if it meets the criteria in Section 23.4.5.7.3 (I) and was not previously in a Class Year at the time of the completion of the Class Year either (a) enters a new Class Year and requests CRIS or (b) intends to receive transferred CRIS rights at the same location. An Examined Facility under the criteria in Section 23.4.5.7.3 (II) that did receive CRIS rights will be bound by the determination rendered and will not be reevaluated, and an Examined Facility under the criteria in Section 23.4.5.7.3 (III) will not be reevaluated.

23.4.5.7.3.6 If an Installed Capacity Supplier demonstrates to the reasonable satisfaction of the ISO that the value equal to the first of the three year values in

the Mitigation Study Period that comprise its Unit Net CONE is less than any Offer Floor that would otherwise be applicable to the Installed Capacity Supplier, then its Offer Floor shall be reduced to a numerical value equal to the first year of its Unit Net CONE.

23.4.5.7.3.7 If the Installed Capacity Supplier first offers UCAP prior to the first Capability Year of the Mitigation Study Period for which it was evaluated, its Offer Floor shall be reduced using the inflation rate component identified in Section 23.4.5.7. If the Installed Capacity Supplier first offers UCAP after the first Capability Year of the Mitigation Study Period for which it was evaluated, its Offer Floor shall be increased using the inflation rate component identified in 23.4.5.7.

23.4.5.7.4 For purposes of Sections 23.4.5.7.2(b) and 23.4.5.7.6(b), the ISO shall identify (A) the Unit Net CONE projected for a Mitigation Study Period using: (i) the inflation rate component of the escalation factor of the relevant ICAP Demand Curves for any year for which there are accepted ICAP Demand Curves, and (ii) the inflation rate component of the escalation factor of the last year of accepted relevant ICAP Demand Curves if relevant ICAP Demand Curves do not apply to the year; and (B) the price on the ICAP Demand Curve projected for a Mitigation Study Period using (i) the escalation factor of the relevant ICAP Demand Curves for any year for which there are accepted ICAP Demand Curves; and (ii) the escalation factor of the last year of accepted ICAP Demand Curves if relevant ICAP Demand Curves do not apply to the year. For purposes of Section

23.4.5.7.2(a), the ISO shall use the escalation factor of the relevant ICAP Demand Curves.

23.4.5.7.5 A Mitigated Capacity Zone Installed Capacity Supplier that is a Special Case Resource shall be subject to an Offer Floor beginning with the month of its initial offer to supply Installed Capacity, and until its offers of Installed Capacity have been accepted in the ICAP Spot Market Auction at a price at or above its Offer Floor for a total of twelve, not necessarily consecutive, months. A Special Case Resource shall be exempt from the Offer Floor if (a) it is located in a Mitigated Capacity Zone except New York City and is enrolled as a Special Case Resource with the ISO for any month within the Capability Year that includes March 31 in an ICAP Demand Curve Reset Filing Year in which the ISO proposes a New Capacity Zone that includes the location of the Special Case Resource, or (b) the ISO projects that the ICAP Spot Market Auction price will exceed the Special Case Resource's Offer Floor for the first twelve months that the Special Case Resource reasonably anticipated to offer to supply UCAP. If a Responsible Interface Party fails to provide Special Case Resource data that the ISO needs to conduct the calculations described in the two preceding sentences by the deadline established in ISO Procedures, the Special Case Resource will cease to be eligible to offer or sell Installed Capacity. The Offer Floor for a Special Case Resource shall be equal to the minimum monthly payment for providing Installed Capacity payable by its Responsible Interface Party, plus the monthly value of any payments or other benefits the Special Case Resource receives from a third party for providing Installed Capacity, or that is received by the

Responsible Interface Party for the provision of Installed Capacity by the Special Case Resource. The Offer Floor calculation for a Special Case Resource located in New York City shall include any payment or the value of other benefits that are awarded for offering or supplying Mitigated Capacity Zone Capacity unless such payment or the value of other benefits is ruled exempt by Commission order in response to a request for exemption filed under section 206 of the Federal Power Act by New York State or a government instrumentality of New York State. The Offer Floor calculation for a Special Case Resource located in a Mitigated Capacity Zone except New York City shall include any payment or the value of other benefits that are awarded for offering or supplying Mitigated Capacity Zone Capacity, except for payments or the value of other benefits provided under programs administered or approved by New York State or a government instrumentality of New York State. Offers by a Responsible Interface Party at a PTID shall be not lower than the highest Offer Floor applicable to a Special Case Resource providing Installed Capacity at that PTID. Such offers may comprise a set of points for which prices may vary with the quantity offered. If this set includes megawatts from a Special Case Resource(s) with an Offer Floor, then at least the quantity of megawatts in the offer associated with each Special Case Resource must be offered at or above the Special Case Resource's Offer Floor. Offers by a Responsible Interface Party shall be subject to audit to determine whether they conformed to the foregoing Offer Floor requirements. If a Responsible Interface Party together with its Affiliated Entities submits one or more offers below the applicable Offer Floor, and such offer or offers cause or

contribute to a decrease in UCAP prices in the Mitigated Capacity Zone of 5 percent or more, provided such decrease is at least \$.50/kilowatt-month, the Responsible Interface Party shall be required to pay to the ISO an amount equal to 1.5 times the difference between the Market-Clearing Price for the Mitigated Capacity Zone in the ICAP Spot Auction for which the offers below the Offer Floor were submitted with and without such offers being set to the Offer Floor, times the total amount of UCAP sold by the Responsible Interface Party and its Affiliated Entities in such ICAP Spot Auction. If an offer is submitted below the applicable Offer Floor, the ISO will notify the Responsible Market Party and the notification will identify the offer, the Special Case Resource, the price impact, and the penalty amount. The ISO will provide the notice reasonably in advance of imposing such penalty. The ISO shall distribute any amounts recovered in accordance with the foregoing provisions among the entities, other than the entity subject to the foregoing payment requirement, supplying Installed Capacity in regions affected by one or more offers below an applicable Offer Floor in accordance with ISO Procedures.

**23.4.5.7.6 Exemption and Offer Floor Determinations for Additional CRIS MW:**

All requests for Additional CRIS MW located in a Mitigated Capacity Zone, in a Class Year or through a transfer, shall be evaluated for a buyer-side mitigation exemption or Offer Floor in accordance with this Section. Additional CRIS MW obtained in a Class Year or obtained through a transfer at the same location shall be exempt from an Offer Floor (a) if the price that is equal to (x) the 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 Class Year (the “Starting Capability Period”) is projected by the ISO, with the inclusion of the Additional CRIS MW, to be higher than (y) the highest Offer Floor based on the Mitigation Net CONE that would be applicable to such Additional CRIS MW in the same two (2) Capability Periods (utilized to compute (x)); (b) if 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, with the inclusion of the Installed Capacity Supplier’s Additional CRIS MW, to be higher than the reasonably anticipated Unit Net CONE computed in accordance with (i) and (ii) of Section 23.4.5.7.6.1 for the Installed Capacity Supplier’s Additional CRIS MW, or (c) for the quantity of MW determined to be exempt pursuant to Section 23.4.5.7.13 or 23.4.5.7.14 (*i.e.*, a Self Supply Exemption can be received for some Additional CRIS MW and a Renewable Exemption for other Additional CRIS MW that comprise all or part of the same request for Additional CRIS MW in a given Class Year.

23.4.5.7.6.1 For Additional CRIS MW that have an exemption or Offer Floor determined pursuant to this Section 23.4.5.7.6, the ISO shall compute Unit Net CONE as follows:

- (i) Unit Net CONE for the Additional CRIS MW shall be based on the Additional CRIS MW and the costs and revenues of and associated with the Additional CRIS MW if:



- (a) the most recent prior determination concluded that the Capacity for which the Examined Facility accepted CRIS was exempt from the Offer Floor pursuant to Section 23.4.5.7.2(b), 23.4.5.7.6(b), 23.4.5.7.7, or 23.4.5.7.8; or
  - (b) at the time of an Examined Facility's request for Additional CRIS MW: (1) it has accepted CRIS MW equal to, or greater than, 95 percent of the Examined Facility's maximum MW of electrical capability, net of auxiliary load, at an ambient temperature of 93° F as determined in accordance with ISO Procedures and (2) the amount of Cleared UCAP is greater than or equal to the amount of UCAP calculated pursuant to Section 23.4.5.7.6.3; or
  - (c) the Examined Facility's Total Evaluated CRIS MW includes exempted CRIS MW for which the Examined Facility did not receive a Unit Net CONE determination and thus did not provide data to the ISO because the determination for the exempt CRIS MW received was not based on Unit Net CONE and was made prior to November 27, 2010.
- (ii) or in all other cases, Unit Net CONE, shall be the greater of two values, one based on the Total Evaluated CRIS MW, and the costs and revenues of the Total Evaluated CRIS MW, and one based on the Additional CRIS MW, and the costs and revenues of the Additional CRIS MW.

23.4.5.7.6.2 When calculating the Unit Net CONE of the Total Evaluated CRIS MW for an Examined Facility, the ISO shall utilize the Examined Facility's first year Unit Net CONE determined pursuant to Section 23.4.5.7 and Sections 23.4.5.7.2.4 or 23.4.5.7.3.2, adjusted to the year's dollars at the time of an Examined Facility's request for Additional CRIS MW using: (i) the relevant value from the price

index for non-farm business output published in the Survey of Current Business by the Department of Commerce's Bureau of Economic Analysis ("BEA Non-Farm Price Index"), or its successor; or (ii) the inflation rate component of the escalation factor of the most currently accepted ICAP Demand Curves for any future year which is beyond the published BEA Non-Farm Price Index, or its successor.

23.4.5.7.6.3 For purposes of making the determination pursuant to Section 23.4.5.7.6.1(i)(b)(2), the amount of Cleared UCAP shall be compared to an amount of UCAP calculated as the product of the CRIS MW held by the Examined Facility immediately prior to its request for Additional CRIS MW and (1-EFORd). Except as specified in the next paragraph, for purposes of this calculation, if the Examined Facility is a Generator, its EFORd shall be derived using the data in the 5-year average NERC-GADS Generating Availability Report, or its successor, for the main class of the unit (hereinafter the "Class Average EFORd") that is current at the time of the request for Additional CRIS MW, when available. If the Examined Facility is an Intermittent Power Resource or Limited Control Run-of-River Hydro Resource, the ISO shall apply a 5-year average derating factor based on ISO data to establish the EFORd to be utilized in the calculation pursuant to this paragraph. In all other cases, the ISO will apply the 5-year average derating factor from the ICAP/UCAP translation, for the smallest Mitigated Capacity Zone in which the resource is located at the time of the request. The EFORd applied by the ISO at the time that the Examined Facility first offers or certifies UCAP in an Installed Capacity auction ("Initial

Entry EFORD”) shall be used instead of Class Average EFORD when it is higher (*i.e.*, a greater outage rate) than the Class Average EFORD calculated at the time of the Examined Facility’s request for Additional CRIS MW.

23.4.5.7.6.4 Additional CRIS MW shall be subject to the Mitigation Net CONE Offer Floor for the period specified in Section 23.4.5.7, for any Examined Facility whose Total Evaluated CRIS MW includes CRIS MW that are or have ever been subject to the Mitigation Net CONE Offer Floor, pursuant to Section 23.4.5.7.3.4.

23.4.5.7.6.5 The Offer Floor for Additional CRIS MW shall be equal to the lesser of:  
(a) the Unit Net CONE for the Additional CRIS MW; or (b) a numerical value equal to 75 percent of the Mitigation Net CONE translated into a seasonally adjusted monthly UCAP value for the Additional CRIS MW.

23.4.5.7.6.6 The results of this exemption determination shall apply only to the Additional CRIS MW and shall not alter or affect any prior exemption or Offer Floor determination for the Examined Facility. The Additional CRIS MW for which CRIS is received shall be bound by the determination rendered and will not be reevaluated unless the Examined Facility enters a new Class Year for the Additional CRIS MW.

23.4.5.7.6.7 When the ISO makes a mitigation exemption or Offer Floor determination for an Examined Facility’s Additional CRIS MW for an Installed Capacity Supplier other than that to which the Unit Net CONE determination for the Examined Facility was rendered, the ISO shall provide such Installed Capacity Supplier with the Examined Facility’s first year Unit Net CONE value if the Installed Capacity Supplier (a) requests that information, and (b) represents that it:

(i) will use that information solely for purposes of considering a request for Additional CRIS MW for the Examined Facility, and (ii) will not share that information with or make it available to any other person except those that are assisting it in considering a request for Additional CRIS MW.

23.4.5.7.6.8 The ISO shall post on its website the determination of whether the project is exempt or non-exempt from an Offer Floor as soon as the determination is final. Concurrent with the ISO's posting, the Market Monitoring Unit shall publish a report on the ISO's determination, as further specified in Section 30.4.6.2.12 of Attachment O to this Services Tariff.

23.4.5.7.7 (a) An In-City Installed Capacity Supplier that is not a Special Case Resource shall be exempt from an Offer Floor if it was an existing facility on or before March 7, 2008. (b) A Generator or UDR project that was an existing facility on or before June 29, 2012, which: (i) is in a Mitigated Capacity Zone except New York City, and (ii) was grandfathered from the deliverability requirement at a certain quantity of MW of CRIS pursuant to Section 25.9.3.1 of OATT Attachment S ("Deliverability Grandfathering Process") shall be exempt from an Offer Floor for the MW quantity of CRIS that was provided through the Deliverability Grandfathering Process plus an additional 2 MW obtained through Section 30.3.2.6 of Attachment X to the OATT. If the Generator or UDR project subsequently received CRIS above the quantity established through the Deliverability Grandfathering Process, this exemption shall not apply to any such increase above the 2 MW allowed in Section 30.3.2.6 of Attachment X to the OATT.

23.4.5.7.8 For any Mitigated Capacity Zone except New York City:

- (I) Any existing or proposed Generator or UDR project that has the characteristics specified in this Section 23.4.5.7.8(I) shall be exempt from an Offer Floor with respect to the MW of CRIS that it received at the time, or for which it satisfied the specific CRIS transfer requirements stated in this Section. To be eligible for an exemption under this Section: (a) the existing or proposed Generator or UDR project's location must be included in the ISO's March 31 Filing in the ICAP Demand Curve Reset Filing Year in which a Mitigated Capacity Zone is first applied to such location; (b) prior to that March 31 Filing the existing or proposed Generator or UDR project must have both: (i) Commenced Construction and (ii) either (1) received the MW of CRIS in a Class Year that was completed or (2) submitted to the ISO an Interconnection Request that specifically states that the Generator or UDR project will be requesting or has requested a transfer of a specific MW quantity of CRIS at the same location in accordance with Section 25.9.4 of OATT Attachment S (provided that the transfer is ultimately approved by the ISO and consummated); and (c) the existing or proposed Generator or UDR project must demonstrate to the ISO no later than the deadline established by the ISO that it satisfies the requirements of (b) (i) and (ii) above; and
- (II) An existing or proposed Generator or UDR project that is not subject to a deliverability requirement (and therefore, is not in a Class Year and does not receive CRIS MW) shall be exempt from an Offer Floor if it meets the following requirements prior to the ISO's March 31 Filing in an ICAP Demand Curve Reset Filing Year in which a Mitigated Capacity Zone is first applied to such location:

(a) has Commenced Construction, (b) has an effective interconnection agreement, and (c) provides specific written notification to the ISO that it meets requirements (a) and (b) of this subsection 23.4.5.7.8(II) no later than the deadline established by the ISO.

The ISO shall consult with the Market Monitoring Unit prior to determining whether an existing or proposed Generator or UDR project has Commenced Construction. Prior to the ISO making its determination, the Market Monitoring Unit shall provide the ISO a written opinion and recommendation regarding whether an existing or proposed Generator or UDR project Commenced Construction. The responsibilities of the Market Monitoring Unit that are addressed in this section of the Mitigation Measures are also addressed in Section 30.4.6.2.12 of Attachment O. The ISO shall only make a determination pursuant to this Section for an existing or proposed Generator or UDR project for the Mitigated Capacity Zone's first application to the location of the project. 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 pursuant to this Section 23.4.5.7.8.

#### **23.4.5.7.9 Competitive Entry Exemption**

##### **23.4.5.7.9.1 Eligibility**

23.4.5.7.9.1.1 A proposed new Generator or UDR project that becomes 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 meets each of the

following requirements: (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 23.4.5.7.9, the “Entry Date”) shall have, (i) a direct or indirect “non-qualifying contractual relationship,” as defined in Section 23.4.5.7.9.1.2, 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 (ii) an unexecuted agreement, written or unwritten, with a Non-Qualifying Entry Sponsor that would support the development of the project, except those agreements that would not constitute a “non-qualifying contractual relationship,” as set forth in Section 23.4.5.7.9.1.3(i) – (viii), (b) is not itself, and is not an Affiliate of, a Non-Qualifying Entry Sponsor.

23.4.5.7.9.1.2 For purposes of Section 23.4.5.7.9, 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 23.4.5.7.9, 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 23.4.5.7.9, an indirect “non-qualifying contractual relationship” is any contract between the Generator or UDR project and an entity (for purposes of this

Section 23.4.5.7.9, a “third party”) if the third party has a non-qualifying contractual relationship with a Non-Qualifying Entry Sponsor, the recital, purpose, or subject of which includes, or has the effect of including, this Generator or UDR project.

23.4.5.7.9.1.3 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 10 of the New York State Public Service Law or orders issued pursuant to Articles VII or 10); (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 or commercial siting incentives, such as tax abatements or financing incentives, provided the PILOT agreement or incentives are generally available to industrial



or commercial entities; (vii) a service agreement for natural gas entered into under a tariff accepted by a regulatory body with jurisdiction over that service; or (viii) 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. 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 (viii) of this Section a non-qualifying contractual relationship.

23.4.5.7.9.1.4 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 23.4.5.7.9.2, 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 30.4.6.2.12 of Attachment O to this Services Tariff.

#### **23.4.5.7.9.2 Certifications and Acknowledgements**

23.4.5.7.9.2.1 A Generator or UDR project requesting a Competitive Entry Exemption shall submit to the ISO in accordance with ISO Procedures, and shall be legally bound by, the following Certification and Acknowledgement form executed by a duly authorized officer:

## **CERTIFICATION AND ACKNOWLEDGMENT**

I [NAME & TITLE] hereby certify on behalf of myself, [NAME OF PROJECT], and [NAME OF DEVELOPER] that each of the following statements is true and correct:

1. I am an officer whose responsibilities include the development of the [EXAMINED FACILITY], New York Independent System Operator, Inc.'s ("NYISO") Interconnection queue position Number [INSERT NUMBER] (the "Project").
2. I am duly authorized to make representations concerning the Project, including each of the certifications and acknowledgements that I have made in this document.
3. I hereby [REQUEST ON BEHALF OF/ACKNOWLEDGE THE PRIOR SUBMISSION IN THIS CLASS YEAR BY] the Developer a Competitive Entry Exemption for the Project.
4. I have reviewed and I understand the requirements established under the NYISO Market Administration and Control Area Services Tariff ("Services Tariff") related to a "Competitive Entry Exemption" pursuant to Section 23.4.5.7.9.
5. I have personal knowledge of the facts and circumstances supporting the Project's request and eligibility for a Competitive Entry Exemption as of the date of this Certification and Acknowledgment, including all data and other information submitted by the Project to the NYISO.
6. To the best of my knowledge and having conducted due diligence that is current as of the date of this Certification there [ARE/ARE NOT ANY] direct or indirect contractual relationships for the Project with a "Non-Qualifying Entry Sponsor," as those terms are defined in Section 23.4.5.7.9 of the Services Tariff. I have listed all contracts with Non-Qualifying Entry Sponsors on Schedule 1 to this Certification.
7. If the Answer to (6) is that there are one or more direct or indirect contractual relationships for the Project with a Non-Qualifying Entry Sponsor, then I certify that to the best of my knowledge and having conducted due diligence that they are "allowable contracts" as set forth in Section 23.4.5.7.9.1.3(i) – (viii) of the Services Tariff.
8. To the best of my knowledge and having conducted due diligence that is current as of the date of this Certification, (a) no unexecuted agreements, written or unwritten, with a Non-Qualifying Entry Sponsor exist that would support the development of the Project except those agreements that would not constitute a non-qualifying contractual relationship, as set forth in Section 23.4.5.7.9.1.3(i) – (viii) of the Services Tariff, and (b) all agreements that would not constitute a non-qualifying contractual relationship are on Schedule 1 to this certification.

9. To the best of my knowledge and having conducted due diligence, the Project is not a Non-Qualifying Entry Sponsor, and it is not an “Affiliate” (as Affiliate is defined in Section 2.1 of the Services Tariff) of, a Non-Qualifying Entry Sponsor.
10. The Project shall provide any information or cooperation requested by the NYISO in connection with the Project’s request for a Competitive Entry Exemption.
11. All parents or Affiliates of the Project shall provide any information or cooperation requested by the ISO.

I hereby acknowledge on behalf of myself, [INSERT NAME OF PROJECT], and [NAME OF DEVELOPER] that:

- a. The submission of false, misleading, or inaccurate information, or the failure to submit information requested by the NYISO related to the Project’s request for a Competitive Entry Exemption, including but not limited to information contained or submitted in this Certification and Acknowledgement on behalf of the Project, shall constitute a violation of Section 4.1.7 of the Services Tariff, and subject to the Commission’s review, a violation of the Commission’s regulations and Section 316A of the Federal Power Act.
- b. If the Project submits false, misleading, or inaccurate information, or fails to submit requested information to the NYISO, including but not limited to information contained or submitted in this Certification and Acknowledgement on behalf of the Project, it shall cease to be eligible for a Competitive Entry Exemption and, if the Project has already received a Competitive Entry Exemption, that exemption shall be subject to revocation by the NYISO or the Commission after which the Project shall be subject to an Offer Floor set at the Mitigation Net CONE Offer Floor (such value calculated based on the date it first Offers UCAP, in accordance with Section 23.4.5.7.3.7, and adjusted annually in accordance with Section 23.4.5.7 of the Services Tariff,) starting with the date of the revocation pursuant to Section 23.4.5.7.9.5.3 of the Services Tariff.
- c. If the Project submits false, misleading, or inaccurate information, or fails to submit requested information to the NYISO, including but not limited to information contained or submitted in the Certification and Acknowledgement on behalf of the Project, it may be subject to civil penalties that may be imposed by the Commission for violations of Section 4.1.7 of Services Tariff, the Commission’s rules, and/or Section 316A of the Federal Power Act.

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[PRINT NAME]

[DATE]

Subscribed and sworn to before me  
this [ ] day of [MONTH] [YEAR].

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

**PROJECT NAME] SCHEDULE 1 CERTIFICATION AND ACKNOWLEDGEMENT  
[DATE]**

**Parties to agreement   Date Executed   Effective Date   Date Performance Commences**

23.4.5.7.9.2.2 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.

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

23.4.5.7.9.2.4 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.

23.4.5.7.9.2.5 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.

23.4.5.7.9.2.6 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 23.4.5.7.9.5.

23.4.5.7.9.2.7 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 23.4.5.7.9.5 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 (such value based on the date it first offers UCAP, in accordance with Section 23.4.5.7.3.7, and adjusted annually in accordance with Section 23.4.5.7 of the Services Tariff.)

### **23.4.5.7.9.3 Timing for Requests, Required Submittals, and Withdrawals**

23.4.5.7.9.3.1 The executed Certification and Acknowledgement form required by Section 23.4.5.7.9.2 shall be submitted concurrent with a request for a Competitive Entry Exemption. The ISO may request additional information and updated 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 23.4.5.7.9, shall be required to submit an executed Certification and

Acknowledgement form set forth in Section 23.4.5.7.9.2 of the Services Tariff, updated as appropriate, upon its Entry Date.

23.4.5.7.9.3.2 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 deadline by which a facility must notify the ISO of its election to enter the Class Year, such date as set forth in Section 25.5.9 OATT Attachment S. A Generator or UDR project that requests a Competitive Entry Exemption in a Class Year may not also request a Renewable Exemption or Self Supply Exemption. A Generator or UDR project that remains a member of a completed Class Year if such Class Year is Class Year 2012 or prior Class Year, 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 the Initial Decision Period within which a Developer must provide an Acceptance Notice or Non-Acceptance Notice to the ISO in response to the first Project Cost Allocation issued by the ISO to the Developer.

23.4.5.7.9.3.3 A Generator or UDR project that submits a request for a Competitive Entry Exemption, including the required Certification and Acknowledgement, responses to information requests, and resubmittal, but (a) enters into a “non-qualifying contractual relationship” or (b) enters into an unexecuted agreement, written or unwritten, with a Non-Qualifying Entry Sponsor that would support the development of the Project, except those agreements identified in 23.4.5.7. 9.1.3

that would not constitute 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 23.4.5.7.9.3.3 shall be subject to the Mitigation Net CONE Offer Floor (such value calculated based on its the date it first offers UCAP, in accordance with Section 23.4.5.7.3.7, and adjusted annually in accordance with Section 23.4.5.7 of the Services Tariff,) but will not be subject to the provisions of Section 23.4.5.7.9.5.

#### **23.4.5.7.9.4 Notifications**

23.4.5.7.9.4.1 The ISO shall post on its website a list of each Generator or UDR project that requests a Competitive Entry Exemption that becomes a member of the Class Year, promptly after the deadline set forth in Section 30.8.1 of the OATT (Attachment X) (by which the ISO must receive the Developer’s executed Class Year Interconnection Facilities Study Agreement and deposit.) The ISO 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.

23.4.5.7.9.4.2 Concurrent with the ISO posting of its final determination, the Market Monitoring Unit shall publish a report on the ISO’s determination in accordance with Section 30.4.6.2.12 of Attachment O to this Services Tariff.

#### **23.4.5.7.9.5 Revocation**

23.4.5.7.9.5.1 The submission of false, misleading, or inaccurate information, or the failure to submit requested information in connection with a request for a Competitive Entry Exemption shall constitute a violation of the Services 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).

23.4.5.7.9.5.2 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, and provided 30 days written notice has been given to the Generator or UDR project (such notice to the extent practicable,) the ISO may revoke the Competitive Entry Exemption and apply the Mitigation Net CONE Offer Floor (such value calculated based on the date it first offers UCAP, in accordance with Section 23.4.5.7.3.7, and adjusted annually in accordance with Section 23.4.5.7 of the Services Tariff.) Prior to the revocation of a Competitive Entry Exemption and the submission of a report to the Commission's Office of Enforcement (or any successor to its responsibilities,) the ISO shall provide the Generator or UDR project an opportunity to explain any statement, information, or action. The ISO cannot revoke the Competitive Entry Exemption until after the 30 days written notice period has expired, unless ordered to do so by the Commission.

23.4.5.7.10 The ISO shall post on its website the identity of the project in a Mitigated Capacity Zone and the determination of either exempt or non-exempt as soon as the determination is final. Concurrent with the ISO's posting, the Market



Monitoring Unit shall publish a report on the ISO's determinations, as further specified in Section 30.4.6.2.12 of Attachment O to this Services Tariff.

23.4.5.7.11 Mitigated UCAP that is subject to an Offer Floor shall remain subject to the requirements of Section 23.4.5.4, and if the Offer Floor is higher than the applicable offer cap shall submit offers not lower than the applicable Offer Floor.

**23.4.5.7.12 Reserved for future use.**

**23.4.5.7.13 Renewable Exemption**

**23.4.5.7.13.1 Eligibility**

23.4.5.7.13.1.1 An Examined Facility or an NCZ Examined Project, may request to be evaluated for a Renewable Exemption in the amount of its CRIS MW requested in the Class Year or which it expects to receive through a transfer of CRIS at the same location. For purposes of this Section 23.4.5.7.13, an Examined Facility or NCZ Examined Project for which the ISO receives such a request shall be referred to as a "Renewable Exemption Applicant." A UDR project may not be a Renewable Exemption Applicant. For purposes of this Section 23.4.5.7.13, references to a Renewable Exemption Applicant's CRIS MW shall be understood to encompass Additional CRIS MW in cases where the Renewable Exemption Applicant is an existing Generator seeking a Renewable Exemption for Additional CRIS MW. An Examined Facility or an NCZ Examined Project that is a member of a Class Year may not request a Renewable Exemption in the same Class Year that it requests a Competitive Entry Exemption, and an Examined Facility or an NCZ Examined Project that is the expected transferee of CRIS being considered with a Class Year may not request a Renewable Exemption in respect of the same

Class Year that it requests a Competitive Entry Exemption. The ISO shall evaluate requests for a Renewable Exemption from (x) members of Class Year 2015 that are received on or before April 28, 2016, (y) members of a Class Year after Class Year 2015 provided that the CRIS rights are received no later than the deadline by which the facility must notify the ISO of its election to enter the Class Year, such date as set forth in Section 25.5.9 of OATT Attachment S, and (z) expected recipients of transferred CRIS rights at the same location from which the ISO has been notified, by the transferor or the transferee, of a transfer pursuant to OATT Attachment S Section 25.9.4 that will be effective on a date within the Mitigation Study Period for the Class Year, provided that they are received no later than the Class Year Start Date for such Class Year. Examined Facilities and NCZ Examined Projects will not be evaluated for a Renewable Exemption if the ISO does not receive the request to be evaluated by the deadline established in accordance with the preceding sentence, or if the Examined Facility or NCZ Examined Project also submits a request for a Competitive Entry Exemption prohibited by this paragraph.

A Generator that remains a member of a completed Class Year, if such Class Year is Class Year 2012 or a prior Class Year, shall not be eligible for a Renewable Exemption, except for Additional CRIS MW. Up to the quantity of CRIS MW specified by the Renewable Exemption Applicant in its exemption request shall be exempt from an Offer Floor if it remains a member of the completed Class Year (or if the transferee does not notify the ISO, on or before the date the Class Year is completed, that it no longer expects to be the recipient

of the transferred CRIS) and the ISO determines that it meets the requirements of Section (a), subject to the limitation in Section (b) of this Section 23.4.5.7.13.1, and subject to Section 23.4.5.7.13.3.

(a) The Renewable Exemption Applicant:

(i) must have, for its Interconnection Queue position, a proposed design that is a Generator to be powered solely by a device that can qualify as an Intermittent Power Resource, or must be a Limited Control Run-of-River Resource, as such terms are (A) defined on the date by which the ISO must receive the request for a Renewable Exemption in accordance with Section 23.4.5.7.13.1.1, or (B) in the ISO's judgment, are reasonably expected to be defined at the time that the Renewable Exemption Applicant is first qualified as an Installed Capacity Supplier; and

(ii) (A) be proposed in the Class Year to be powered solely by a technology that is an Exempt Renewable Technology; or

(B) be determined by the ISO, in accordance with ISO Procedures, to have (1) high development costs, and (2) a low capacity factor such that there would be limited or no incentive and ability to develop the Renewable Exemption Applicant in order to artificially suppress capacity prices. The ISO shall make this determination by evaluating pertinent factors, including whether the reasonably projected costs of new entry and operation of the Renewable Exemption Applicant, net of the likely projected revenues from the sale of Capacity, Energy and Ancillary Services, and any other generally available revenues associated with the production of those products, are greater than the

reasonably estimated cost savings to Loads due to a reduction in ICAP Market-Clearing Prices projected to result from the entry of the Renewable Exemption Applicant's requested CRIS MW (or CRIS MW to be transferred at the same location.)

- (b) A total amount not exceeding 1,000 MW of Installed Capacity may be determined to be exempt pursuant to the Renewable Exemption in any one Class Year. This amount includes any amount for which an NCZ Examined Project is determined to be eligible at the time the ISO issues an Indicative Buyer Side Mitigation Determination pursuant to Section 23.4.5.7.2.2, or a determination pursuant to Section 23.4.5.7.2.1. If the ISO determines that more than 1,000 MW of Installed Capacity would be eligible for a Renewable Exemption for any one Class Year (including transferred CRIS at the same location) but for the 1,000 MW limitation, then each Renewable Exemption Applicant determined by the ISO to be eligible for a Renewable Exemption other than those that were also determined to be exempt pursuant to Sections 23.4.5.7.2(a) or (b) or Section 23.4.5.7.14, shall have only a portion of its evaluated CRIS MW exempted. Such portion of the 1,000 MW shall be the MW equal to the proportion of the CRIS MW for which the Renewable Exemptions were requested to the total Installed Capacity MW of those MW determined to be eligible for the Renewable Exemption for the Class Year that are not also determined to be exempt pursuant to Sections 23.4.5.7.2(a) or (b) or Section 23.4.5.7.14.

#### **23.4.5.7.13.2 Periodic Review and Determination of Exempt Renewable Technologies**

23.4.5.7.13.2.1 In each ICAP Demand Curve Reset Filing Year after 2016, the ISO shall conduct a periodic review, in accordance with this Section and ISO Procedures, to determine the technology types that should be Exempt Renewable Technologies for Class Years with a Class Year Start Date during the Capability Years covered by the ICAP Demand Curve periodic review conducted for the relevant ICAP Demand Curve Reset Filing Year.

23.4.5.7.13.2.1(a) The ISO's periodic review will identify, by Mitigated Capacity Zone, the technologies that, at the time of the periodic review, are technically feasible in the ISO Administered Markets (whether as a single unit, or a plant comprised of more than one unit) and that could qualify as either Intermittent Power Resources or Limited Control Run-of-River Hydro Resources ("candidate intermittent renewable technologies").

23.4.5.7.13.2.1(b): For each candidate intermittent renewable technology, the ISO's periodic review will reasonably project:

- (i) the costs of new entry and operation;
- (ii) the revenues from the sale of Capacity, Energy and Ancillary Services, and any other generally available revenues associated with the production of those products by it; and
- (iii) the cost savings to Loads due to a reduction in ICAP Market-Clearing Prices from the new entry of the candidate intermittent renewable technology.

23.4.5.7.13.2.2 The ISO will utilize pertinent factors including results of the computation in accordance with Section 23.4.5.7.13.2.1(b) to determine, for each

Mitigated Capacity Zone, which candidate intermittent renewable technologies have (a) high development costs and (b) a low capacity factor, such that considering (a) and (b) there is limited or no incentive and ability to develop the candidate intermittent renewable technology in order to artificially suppress capacity prices.

23.4.5.7.13.2.3 The ISO's periodic review shall provide for:

- (a) The ISO's preliminary identification of candidate intermittent renewable technologies for stakeholder review and comment;
- (b) The ISO's issuance of a draft list of recommended Exempt Renewable Technologies and the basis for the recommendation, for stakeholder and Market Monitoring Unit review and comment; (The responsibilities of the Market Monitoring Unit that are addressed in this section of the Services Tariff are also addressed in Section 30.4.6.2.12 of Attachment O to this Services Tariff.)

23.4.5.7.13.2.4 On or before the 60th day subsequent to the Commission issuance of an order accepting ICAP Demand Curves based on the ICAP Demand Curve periodic review, the ISO shall file with the Commission the results of its Exempt Renewable Technology periodic review and determination pursuant to Section 23.4.5.7.13.2.2. If the ISO's determination of technology types that satisfy the provisions of Section 23.4.5.7.13.2.2 for any Mitigated Capacity Zone is different than the then-current definition of Exempt Renewable Technology, the ISO shall propose in the filing, for Commission review, a revised definition that is in accordance with its periodic determination, to be effective for Class Years with a Class Year Start Date during the Capability Years covered by the ICAP Demand

Curve periodic review conducted for the relevant ICAP Demand Curve Reset Filing Year. The ISO's filing shall describe the basis for the ISO's determination.

### **23.4.5.7.13.3. Revocation**

23.4.5.7.13.3.1 A Renewable Exemption Applicant that received a Renewable Exemption for any amount of CRIS MW shall notify the ISO in writing within five (5) business days if (a) at the time it first qualifies as an Installed Capacity Supplier, or at any time thereafter, it is not solely powered by the same technology based on which it was evaluated for a Renewable Exemption, or (b) at the time it first qualifies as an Installed Capacity Supplier it is not solely powered by a technology that is defined as an Intermittent Power Resource or Limited Control Run-of-River Hydro Resource, even if the Renewable Exemption Applicant was determined to be eligible because, at the time it was evaluated, the ISO expected the technology would become defined as an Intermittent Power Resource or Limited Control Run-of-River Hydro Resource. Upon notification, the ISO shall revoke the Renewable Exemption unless the Generator provides documentation with its notice in accordance with the prior sentence that demonstrates, to the ISO's satisfaction, that after the change it will be solely powered by an Exempt Renewable Technology as such term is defined on the date that the Generator first transmits energy using the different technology. Upon revocation, the ISO shall apply the Mitigation Net CONE Offer Floor (such value calculated by the ISO based on the date that the Generator (or Additional CRIS MW) first offers UCAP, in accordance with Section 23.4.5.7.3.7, and adjusted annually in accordance with Section 23.4.5.7 of the Services Tariff) to all

offers of UCAP by the Generator or Additional CRIS MW subsequent to the deadline for Unforced Capacity certification prior to an ICAP Spot Market Auction (such date in accordance with ISO Procedures) next following revocation. Nothing in this paragraph shall relieve a Generator from or alter any obligation it may have under the ISO Tariffs or any other tariff, agreement, or regulation to obtain permissions, authorizations provide notifications, or take any other action in advance of changing the technology which powers it (in whole or in part.)

23.4.5.7.13.3.2           The failure to provide the ISO written notice in accordance with Section 23.4.5.7.13.3.1 shall constitute a violation of the Services 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.)

23.4.5.7.13.3.3           If a Generator has not provided notice in accordance with Section 23.4.5.7.13.3.1 and the ISO determines that the Generator is not solely powered by a technology as described Section 23.4.5.7.13.3.1, the ISO shall notify the Generator that its Renewable Exemption may be revoked, and provided 30 days written notice has been given to the Generator (such notice to the extent practicable,) the ISO may revoke the Renewable Exemption. In the event of a revocation, the Mitigation Net CONE Offer Floor such value calculated by the ISO based on the date that the Generator or Additional CRIS MW) first offers UCAP, in accordance with Section 23.4.5.7.3.7, and adjusted annually in accordance with Section 23.4.5.7 of the Services Tariff) shall apply to all offers of UCAP subsequent to the deadline for Unforced Capacity certification prior to an



ICAP Spot Market Auction (such date in accordance with ISO Procedures) next following revocation. Prior to the revocation of a Renewable Exemption, the ISO shall provide the Generator an opportunity to respond to the ISO's determination. The ISO cannot revoke the Renewable Exemption until after the 30 days written notice period has expired, unless ordered to do so by the Commission.

**23.4.5.7.13.4 Timing of Requests for a Renewable Exemption, Required Submittals, and Determinations**

23.4.5.7.13.4.1 Requests for a Renewable Exemption must be received by the ISO no later than the deadline specified in Section 23.4.5.7.13.1. If any Examined Facility or NCZ Examined Project submits both a request for a Renewable Exemption and a Competitive Entry Exemption (*i.e.*, seeking to be considered for both exemptions at the same time,) the ISO shall not consider the request for a Renewable Exemption. The ISO may request additional information and updated information at any time regarding eligibility and continued eligibility. The Renewable Exemption Applicant (if after entry, the Generator) shall timely provide the information.

23.4.5.7.13.2 The ISO shall determine whether a Renewable Exemption Applicant is or is not eligible for a Renewable Exemption, and whether it is eligible or is not eligible for an exemption pursuant to Section 23.4.5.7.2(a) and (b) or Section 23.4.5.7.14, prior to the Initial Decision Period. The ISO shall determine prior to the Initial Decision Period, at each Subsequent Decision Period, and upon completion of the Class Year, whether more than 1,000 MW of Installed Capacity would be eligible for a Renewable Exemption (including MW of NCZ Examined Projects) in a Class Year but for the 1,000 MW limitation. If at the time of the

ISO's issuance of initial determinations, or the completion of the Class Year, more than 1,000 MW, then remaining in the Class Year or associated with a transfer of CRIS at the same location, are eligible for a Renewable Exemption, the ISO shall (i) first, exclude from the 1,000 MW cap the CRIS MW of any Examined Facility or NCZ Examined Project that was determined to be exempt pursuant to Sections 23.4.5.7.2 (a), or (b) or Section 23.4.5.7.14, and (ii) second, issue an initial determination (prior to the Initial Decision Period or at the time of any Subsequent Decision Period) or a final determination (if a member of the completed Class Year, or if a transfer of CRIS rights at the same location unless the transferee has notified the ISO, on or before the date the Class Year is completed, that it no longer expects to be the recipient of the transferred CRIS) of the MW that will be exempt from an Offer Floor, equal to the proportion of the requested CRIS MW as determined in accordance with Section 23.4.5.7.13.1.1(b).

23.4.5.7.13.4.3 Determinations made pursuant to Section 23.4.5.7.13.4.2 shall be provided to the Renewable Exemption Applicants (other than NCZ Examined Projects) concurrent with the issuance of determinations in accordance with Section 23.4.5.7.3.3, and for an NCZ Examined Project at the time of the ISO's determination pursuant to Section 23.4.5.7.2.1.

23.4.5.7.13.4.4 The ISO shall post on its website its determination of whether the Renewable Exemption Applicant has been determined to be exempt for any quantity of MW, and if exempt, the quantity of MW exempt, or non-exempt, from an Offer Floor as soon as the determination is final. Concurrent with the ISO's posting, the Market Monitoring Unit shall publish a report on the ISO's

determination, as further specified in Section 30.4.6.2.12 of Attachment O to this Services Tariff.23.4.5.7.14 Self Supply Exemption

#### **23.4.5.7.14.1 Eligibility**

23.4.5.7.14.1.1 In order to be evaluated for a Self Supply Exemption, each of the following requirements must be satisfied, by the deadline, in the required form, and with the required information in accordance with ISO Procedures. If one or more of the requirements is not satisfied, the ISO shall not evaluate the request for a Self Supply Exemption.

- (a) An Examined Facility or NCZ Examined Project, (for purposes of this Section 23.4.5.7.14 an “SSE Applicant”) may request to be evaluated for a Self Supply Exemption for a specified quantity of MW up to the amount of the CRIS MW requested in the Class Year or, of which it is the expected recipient of transferred CRIS rights at the same location, in accordance with ISO Procedures. A UDR project may be a SSE Applicant. For purposes of this Section 23.4.5.7.14, references to a SSE Applicant’s CRIS MW shall be understood to encompass Additional CRIS MW in cases where the SSE Applicant is an existing Generator or UDR project seeking a Self Supply Exemption for Additional CRIS MW. The ISO will evaluate the request if the SSE Applicant is (i) a member of Class Year 2015 and its request is received on or before April 28, 2016, (ii) a member of a Class Year after Class Year 2015 and its request is received no later than the deadline by which a facility must notify the ISO of its election to enter the Class Year, such date as set forth in Section 25.5.9 OATT Attachment S, or (iii) an expected recipient of transferred CRIS rights at the same location and the ISO has

been notified, by the transferor or the transferee, of a transfer pursuant to OATT Attachment S Section 25.9.4 that will be effective on a date within the Mitigation Study Period for the Class Year, provided that the request is received no later than the Class Year Start Date for such Class Year. An Examined Facility or an NCZ Examined Project that is a member of a Class Year may not request a Self Supply Exemption in the same Class Year that it requests a Competitive Entry Exemption, and an Examined Facility or an NCZ Examined Project that is the expected transferee of CRIS being considered with a Class Year may not request a Self Supply Exemption in respect of the same Class Year that it requests a Competitive Entry Exemption.

A proposed new Generator or UDR project that remained a member of Class Year 2012 or a prior Class Year at the time of the completion of such Class Year, shall not be eligible to request or receive a Self Supply Exemption except in relation to a request for Additional CRIS MW.

- (b) If the SSE Applicant is not the wholly owned property of the Self Supply LSE(s), or the wholly owned property of an entity that is wholly owned by the Self Supply LSE(s) or that wholly owns the Self Supply LSE(s), it must have a Long Term Contract (in accordance with Subsection (1) of this Section 23.4.5.7.14.1.1(b)(1) with the Self Supply LSE(s) that shall obligate the SSE Applicant to provide the capacity forming the basis for its eligibility for a Self Supply Exemption. Such an SSE Applicant must make its Self Supply Exemption request jointly, in a single request, with the Self Supply LSE(s) with which it has a Long Term Contract. If the proposed SSE Applicant is the wholly owned property of the Self Supply

LSE(s), or the wholly owned property of an entity that is wholly owned by the Self Supply LSE(s) or that wholly owns the Self Supply LSE(s), then the SSE Applicant must provide documentation at the time it requests the exemption that demonstrates to the reasonable satisfaction of the ISO that it has a statutory, regulatory, or organizational obligation to provide Energy and Capacity to meet the Self Supply LSE's (or Self Supply LSEs') ICAP Obligation(s).

(1) Long Term Contract: For the purposes of a Self Supply Exemption, a "Long Term Contract" shall mean (i) a fully executed contract between the SSE Applicant that is a proposed new or existing Generator and a Self Supply LSE that is joining it in requesting the exemption, pursuant to which the SSE Applicant is obligated to provide to the Self Supply LSE (or LSEs if more than one Self Supply LSE,) for a minimum of 10 years, Installed Capacity in an amount greater than or equal to the CRIS MW for which the Self Supply Exemption is requested; or (ii) a fully executed contract between a Self Supply Applicant that is a proposed new or existing UDR project and a Self Supply LSE (or LSEs if more than one Self Supply LSE,) that is joining it in requesting the exemption, pursuant to which the Self Supply LSE(s) will have all rights to the UDRs and the use of the facility, for a minimum of 10 years, in the amount greater than or equal to the CRIS MW for which the Self Supply Exemption is requested.

(c) The Self Supply Applicant's request for a Self Supply Exemption must specify the total quantity of CRIS MW for which it is requesting a Self Supply Exemption, and such quantity shall not exceed the MW of CRIS requested by it in the Class Year, or the quantity of the transferred CRIS rights at the same location

it expects to receive. If there is more than one Self Supply LSE associated with the request for a Self Supply Exemption received from an SSE Applicant then: (i) the request shall identify the quantity of MW associated with each Self Supply LSE, and (ii) the total quantity of MW associated with the Self Supply LSEs shall not exceed the total MW for which the SSE Applicant requests a Self Supply Exemption. (d) All Certification and Acknowledgement(s) required by Section 23.4.5.7.14.2 must be received at the same time as the request for a Self Supply Exemption, in accordance with ISO Procedures, along with other data and information requested by the ISO.

23.4.5.7.14.1.2 The lesser of (i) the quantity of CRIS MW for which the Self Supply Exemption was requested and (ii) the quantity determined in accordance with Section 23.4.5.7.14.3 shall be exempt from an Offer Floor if the SSE Applicant is a member of the Class Year at the time of its completion and the ISO determines that the request satisfies all of the following requirements:

- (a) The proposed Generator or UDR project terminus will be, or the existing Generator or UDR project terminus is, electrically located in the same Mitigated Capacity Zone in which the Self-Supply LSE has Projected ICAP Requirements (as such term is defined in Section 23.4.5.7.14.1.3),
- (b) The SSE Applicant and the Developer are not and will not be owned, in whole or in part, by an LSE or an Affiliate of an LSE unless such entity is a Self Supply LSE.
- (c) The SSE Applicant provides the completed Certification and Acknowledgement form set forth in Section 23.4.5.7.14.2.1 or 23.4.5.7.14.2.3, as applicable to it and

its request for a Self Supply Exemption, and satisfies each requirement stated therein. If the SSE Applicant is not the wholly owned property of the Self Supply LSE(s), or the wholly owned property of an entity that is either wholly owned by the Self Supply LSE(s), or that wholly owns the Self Supply LSE(s), then both the SSE Applicant and the Self Supply LSE(s) provide the applicable completed Certification and Acknowledgement form set forth in Section 23.4.5.7.14.2 and satisfy each requirement stated therein. The ISO must receive the required completed Certification and Acknowledgement forms, in accordance with ISO Procedures, (i) if the SSE Applicant is a member of Class Year 2015 and its request is received on or before April 28, 2016, (ii) no later than the deadline by which the SSE Applicant must notify the ISO of its election to enter the Class Year, such date as set forth in Section 25.5.9 of OATT Attachment S, or (iii) if the Self Supply LSE is an expected recipient of transferred CRIS rights at the same location that will be effective on a date within the Mitigation Study Period for the Class Year, no later than the Class Year Start Date of such Class Year. All other information requested by the ISO must also be timely received.

- (d) The ISO determines that the Self Supply LSE satisfies both the Net Short Threshold set forth in Section 23.4.5.7.14.3.1 and the Net Long Threshold set forth in Section 23.4.5.7.14.3.2 for a specified quantity of CRIS MW.
- (e) The SSE Applicant certifies that it does not have any contract, agreement, arrangement, or relationship (for purposes of this Section 23.4.5.7.14.1.2(e), and the Certification and Acknowledgment in Section 23.4.5.7.14.2, a “contract”) for any material (in whole or in aggregate) payments, concessions, rebates, or

subsidies, connected to or contingent on the SSE Applicant's: (i) construction or operation, except as expressly permitted in Subsection (A) or (B) of this Section, or (ii) clearing in the ISO's Installed Capacity market except as expressly permitted in Subsection (B).

(A) An SSE Applicant will not be ineligible for a Self Supply Exemption if it has an executed contract, is associated with a contract, or there is a contract associated with it, that is listed in (I) through (VIII) of this Section that provides for a material payment, concession, rebate or subsidy, and either (i) is not irregular or anomalous, and only reflects arms-length transactions, or (ii) is consistent with the overall objectives of the Self Supply Exemption.

**Listed contracts:**

- (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 10 of the New York State Public Service Law or orders issued pursuant to Articles VII or 10);
- (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 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 or commercial siting incentives, such as tax abatements or financing incentives, provided the PILOT agreement or incentives are generally available to industrial or commercial entities;

(VII) a service agreement for natural gas entered into under a tariff accepted by a regulatory body with jurisdiction over that service; or

(VIII) 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.

(B) An SSE Applicant that requests a Self Supply Exemption with only one Self Supply LSE will not be ineligible for a Self Supply Exemption if the contract(s) that otherwise would render it ineligible under any clause of Section 23.4.5.7.14.2 is (or are) with its Self Supply LSE.

(C ) Contract Review Opportunity

(i) (1) A proposed new Generator or UDR project or an existing Generator or UDR project for Additional CRIS that is reasonably expected to be eligible to enter the immediately following Class Year or be the recipient of transferred CRIS rights at the same location on a date within the Mitigation Study Period of

such Class Year, and that in connection with its own Load or for the Load of one or more Self Supply LSE(s) is planning on requesting a Self Supply Exemption;

(2) an SSE Applicant that is in a Class Year that is not completed (in accordance with Section 25.5.9 of the OATT; or (3) an SSE Applicant that received a Self Supply Exemption, may request that the ISO inform it whether, in the ISO's view, any specific executed contract, unexecuted but substantially developed contract, or any pending request that if approved, granted, or otherwise conferred, would constitute a contract pursuant to Subsection 23.4.5.7.14.1.2 (e)(i) and (e)(ii) would make it ineligible to obtain or (if previously granted) retain a Self Supply Exemption. Any such request must satisfy all of the following requirements:

(a) The SSE Applicant (unless it is for its own Load) must make any such request jointly with any Self Supply LSE(s) with which it has executed or has an unexecuted but substantially developed Long Term Contract. Any such Self Supply LSE(s) must make any such request jointly with the SSE Applicant, or proposed new or existing Generator or UDR project, with which it would seek, or has sought, a Self Supply Exemption.

(b) As part of the submission of the request for a determination pursuant to Subsection (a) of this Section, the SSE Applicant, or proposed new or existing Generator or UDR project, and any relevant Self Supply LSE(s) as applicable, must provide the ISO with all information regarding the contract or pending request regarding which it is requesting the ISO's view, and if the request is made jointly with a Self Supply LSE, the executed or unexecuted and substantially

developed Long Term Contract that would form the basis of a Self Supply Exemption Request, including copies of original documentation. In addition and at the time of the submission of the request, the SSE Applicant, or proposed new or existing Generator or UDR project, and any relevant Self Supply LSE shall also provide any other information identified by the ISO in accordance with ISO Procedures. They also must timely provide any further information that is requested by the ISO.

(c) Such requests can only be submitted to the ISO on or after the date established by the ISO in accordance with ISO Procedures, such date to be at least 60 days prior to the date that the ISO anticipates will be the deadline by which facilities must notify the ISO of their election to enter a Class Year (such Class Year deadline pursuant to Section 25.5.9 of OATT Attachment S.)

(ii) Provided that the ISO has timely received all of the information it needs to make a determination, the ISO shall state its view in response to such requests within 60 days.

(iii) When evaluating any such request, 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 30.4.6.2.12 of Attachment O to this Services Tariff.)

#### **23.4.5.7.14.2 Certifications and Acknowledgements**

23.4.5.7.14.2.1 An SSE Applicant that is not the wholly owned property of the Self Supply LSE(s), or the wholly owned property of an entity that is either wholly owned by the Self Supply LSE(s), or that wholly owns the Self Supply

LSE(s), and that is requesting a Self Supply Exemption shall submit the following completed Certification and Acknowledgment form. The submission must be received by the ISO by the deadline pursuant to Section 23.4.5.7.14.1.2(c), and thereafter upon the request of the ISO, in accordance with ISO Procedures. The Self Supply Applicant shall be legally bound by the Certification and Acknowledgement form which must be executed by a duly authorized officer:

### **CERTIFICATION AND ACKNOWLEDGMENT**

I [NAME & TITLE] hereby certify on behalf of myself, [NAME OF PROJECT], and [NAME OF DEVELOPER] that each of the following statements is true and correct:

1. I am an officer whose responsibilities include the development of the [EXAMINED FACILITY OR NCZ EXAMINED PROJECT, New York Independent System Operator, Inc.'s ("NYISO") Interconnection queue position Number [INSERT NUMBER] (the "Project").
2. I am duly authorized to make representations concerning the Project, including each of the certifications and acknowledgements that I have made in this document.
3. I hereby [REQUEST ON BEHALF OF] the Developer, a Self Supply Exemption for [MW REQUESTED FOR THE SELF SUPPLY EXEMPTION] for the Project in connection with [LOAD SERVING ENTITY THAT IS THE SELF SUPPLY LSE].
4. I have reviewed and I understand the requirements established under the NYISO Market Administration and Control Area Services Tariff ("Services Tariff") related to a "Self Supply Exemption" pursuant to Section 23.4.5.7.14.
5. I have personal knowledge of the facts and circumstances supporting the Project's request and eligibility for a Self Supply Exemption as of the date of this Certification and Acknowledgment, including all data and other information submitted by the Project to the NYISO.
6. [NAME OF DEVELOPER] is not owned in whole or in part by, and is not an Affiliate (as Affiliate is defined in Section 2.1 of the Services Tariff) of, a Load Serving Entity [OTHER THAN THE LOAD SERVING ENTITY THAT IS THE SELF SUPPLY LSE].

7. [NAME OF PROJECT] has a Long Term Contract (as such term is defined in Services Tariff Section 23.4.5.7.14.1.1 (b)(1)) with the Self Supply LSE[s], that is [are] the subject of the request for a Self Supply Exemption.
8. To the best of my knowledge and having conducted due diligence that is current as of the date of this Certification there is no contract, arrangement, arrangement, or relationship (for purposes of Section 23.4.5.7.14. 2(e) of the Services Tariff, and this Certification and Acknowledgment, a “contract”) for any material (in whole or in aggregate) payments, concessions, rebates or subsidies connected to or contingent on the [PROJECT’S]: (i) construction or operation, except as expressly permitted in Subsection (A) or (B) of Section 23.4.5.7.14.1. 2(e) of the Services Tariff, or (ii) clearing in the NYISO’s Installed Capacity market except as expressly permitted in Subsection (B) of Section 23.4.5.7.14. 1.2(e).
9. I have listed in Schedule 1 to this Certification all contracts that involve payments, concessions, rebates, or subsidies connected to or contingent upon the [PROJECT’S] construction or operation that are not material or that are otherwise expressly permissible under Subsection (A) or (B) of Section 23.4.5.7.14.1.2(e).
10. The Project shall provide any information or cooperation requested by the NYISO in connection with the Project’s request for a Self Supply Exemption.

I hereby acknowledge on behalf of myself, [INSERT NAME OF PROJECT], and [NAME OF DEVELOPER] that:

- a. The submission of false, misleading, or inaccurate information, or the failure to submit information requested by the NYISO related to the Project’s request for a Self Supply Exemption, including but not limited to information contained or submitted in this Certification and Acknowledgement on behalf of the Project, shall constitute a violation of Section 4.1.7 of the Services Tariff, and subject to the Commission’s review, a violation of the Commission’s regulations and Section 316A of the Federal Power Act.
- b. If the Project submits false, misleading, or inaccurate information, or fails to submit requested information to the NYISO, including but not limited to information contained or submitted in this Certification and Acknowledgement on behalf of the Project, it shall cease to be eligible for a Self Supply Exemption and, if the Project has already received a Self Supply Exemption, that exemption shall be subject to revocation by the NYISO or the Commission after which the Project shall be subject to an Offer Floor set at the Mitigation Net CONE Offer Floor (such value calculated based on the date it first Offers UCAP, in accordance with Section 23.4.5.7.3.7, and adjusted annually in accordance with Section 23.4.5.7 of the Services Tariff,) starting with the next following deadline for Unforced Capacity certification prior to an ICAP Spot Market Auction subsequent to the date of revocation (such date in accordance with ISO Procedures) pursuant to Section 23.4.5.7.9.5 of the Services Tariff.

- c. If the Project submits false, misleading, or inaccurate information, or fails to submit requested information to the NYISO, including but not limited to information contained or submitted in the Certification and Acknowledgement on behalf of the Project, it may be subject to civil penalties that may be imposed by the Commission for violations of Section 4.1.7 of Services Tariff, the Commission's rules, and/or Section 316A of the Federal Power Act.

\_\_\_\_\_  
[PRINT NAME]

[DATE]

Subscribed and sworn to before me  
this [ ] day of [MONTH] [YEAR].

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

23.4.5.7.14.2.2 A Self Supply LSE that has a Long Term Contract (as such term is defined in Section 23.4.5.14.1(b)(1)) with an SSE Applicant shall submit to the ISO the following completed Certification and Acknowledgement Form as part of the SSE Applicant's request for a Self Supply Exemption and thereafter upon the request of the ISO, in accordance with ISO Procedures. The Self Supply LSE shall be legally bound by the completed Certification and Acknowledgement form which must be executed by a duly authorized officer:

## **CERTIFICATION AND ACKNOWLEDGMENT**

I [NAME & TITLE] hereby certify on behalf of myself and [NAME OF SELF SUPPLY LSE] (the “LSE”) that each of the following statements is true and correct:

1. I am an officer whose responsibilities include overseeing the capacity supply portfolio and obligations, and addressing Load requirements of the [LSE], and LSE’s Long Term Contract (as such term is defined in Services Tariff Section 23.4.5.7.14.1.1 (b)(1)) with [EXAMINED FACILITY or NCZ EXAMINED PROJECT], New York Independent System Operator, Inc.’s (“NYISO”) Interconnection queue position Number [INSERT NUMBER] (the “Project”).
2. I am duly authorized to make representations concerning the capacity supply portfolio, and obligations, Load requirements of [the LSE], and LSE’s Long Term Contract with the Project (the “Subject Long Term Contract”), including each of the certifications and acknowledgements that I have made in this document.
3. I hereby [REQUEST ON BEHALF OF] the LSE, a Self Supply Exemption for [MW REQUESTED FOR THE SELF SUPPLY EXEMPTION] for the Project associated with the Subject Long Term Contract.
4. I have reviewed and I understand the requirements established under the NYISO Market Administration and Control Area Services Tariff (“Services Tariff”) related to a “Self Supply Exemption” pursuant to Section 23.4.5.7.14.
5. I have personal knowledge of the facts and circumstances supporting the Subject Long Term Contract and LSE’s Load Obligations and supply obligations related to the Project’s request and eligibility for a Self Supply Exemption as of the date of this Certification and Acknowledgment, including all data and other information submitted by LSE to the NYISO.
6. The LSE is a Self Supply LSE [INSERT SUBSECTION OF DEFINITION BY WHICH THE LSE MEETS THE REQUIREMENTS OF THAT TERM] of that term.
7. [NAME OF DEVELOPER] [is // is not] owned in part by, and [is // is not] an Affiliate (as Affiliate is defined in Section 2.1 of the Services Tariff) of, LSE. Appendix A to this Certification and Acknowledgement fully and completely sets forth and describes the organizational relationship between or among LSE, Developer and the Project, or any Affiliate of the foregoing entities in relation to the project; and any ownership or investment interest of LSE, Developer, and the Project, in either of the other entities, or any of the Affiliates thereof in relation to the Project.
8. [NAME OF PROJECT] and LSE are parties to the Subject Long Term Contract.

9. To the best of my knowledge and having conducted due diligence that is current as of the date of this Certification there are no arrangements for any payments or subsidies, that are directly or indirectly tied to the Unforced Capacity from the Project clearing in the NYISO's Installed Capacity market other than those between the [NAME OF DEVELOPER],[PROJECT] and [SELF SUPPLY LSE] that is provided to the ISO with this Certification and Acknowledgement [and other than agreements between [NAME OF DEVELOPER], [PROJECT] and [NAME OF OTHER SELF SUPPLY LSE(S) ASSOCIATED WITH THE SELF SUPPLY APPLICANT'S REQUEST FOR A SELF SUPPLY EXEMPTION].
10. I have listed in Schedule 1 to this Certification all contracts that involve payments, concessions, rebates, or subsidies connected to or contingent upon the [PROJECT'S] construction or operation that are not material or that are otherwise expressly permissible under Subsection (A) or (B) of Section 23.4.5.7.14.1.2(e).
11. LSE shall provide any information or cooperation requested by the NYISO in connection with the LSE and the Project's request for a Self Supply Exemption.

I hereby acknowledge on behalf of myself and LSE that:

- a. The submission of false, misleading, or inaccurate information, or the failure to submit information requested by the NYISO related to the LSE's and the Project's request for a Self Supply Exemption, including but not limited to information contained or submitted in this Certification and Acknowledgement on behalf of the Project, shall constitute a violation of Section 4.1.7 of the Services Tariff, and subject to the Commission's review, a violation of the Commission's regulations and Section 316A of the Federal Power Act.
- b. If the LSE or the Project submits false, misleading, or inaccurate information, or fails to submit requested information to the NYISO, including but not limited to information contained or submitted in this Certification and Acknowledgement on behalf of the LSE, the Project shall cease to be eligible for a Self Supply Exemption in respect of Subject Long Term Contract and, if the Project has already received a Self Supply Exemption, that exemption shall be subject to revocation by the NYISO or the Commission after which the Project shall be subject to an Offer Floor set at the Mitigation Net CONE Offer Floor (such value calculated based on the date it first Offers UCAP, in accordance with Section 23.4.5.7.3.7, and adjusted annually in accordance with Section 23.4.5.7 of the Services Tariff,) starting with the next following deadline for Unforced Capacity certification prior to an ICAP Spot Market Auction subsequent to the date of revocation (such date in accordance with ISO Procedures) pursuant to Section 23.4.5.7.9.5 of the Services Tariff.
- c. If the LSE submits false, misleading, or inaccurate information, or fails to submit requested information to the NYISO, including but not limited to information contained or submitted in the Certification and Acknowledgement on behalf of the Project, it may be subject to civil penalties that may be imposed by the



Commission for violations of Section 4.1.7 of Services Tariff, the Commission's rules, and/or Section 316A of the Federal Power Act.

\_\_\_\_\_  
[PRINT NAME]

[DATE]

Subscribed and sworn to before me  
this [ ] day of [MONTH] [YEAR].

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

23.4.5.7.14.2.3 An SSE Applicant that is the wholly owned property of the Self Supply LSE, or the wholly owned property of an entity that is either wholly owned by the Self Supply LSE, or that wholly owns the Self Supply LSE, and that is requesting a Self Supply Exemption shall submit the following completed Certification and Acknowledgment Form. The submission must be received by the ISO by the deadline pursuant to Section 23.4.5.7.14.1.2(c), and thereafter upon the request of the ISO, in accordance with ISO Procedures. The Self Supply Applicant shall be legally bound by the following Certification and Acknowledgement form which must be executed by a duly authorized officer:

#### **CERTIFICATION AND ACKNOWLEDGMENT**

I [NAME & TITLE] hereby certify on behalf of myself, [NAME OF PROJECT], and [NAME OF DEVELOPER/LSE] that each of the following statements is true and correct:

1. I am an officer whose responsibilities include; (i) the development of the [EXAMINED FACILITY or NCZ EXAMINED PROJECT], New York Independent System Operator, Inc.'s ("NYISO") Interconnection queue position Number [INSERT NUMBER] (the "Project"); and (ii) overseeing the capacity supply portfolio and obligations, and addressing Load Obligations of the Self Supply LSE and its obligations to serve retail customers.
2. I am duly authorized to make representations concerning the Project and the capacity supply portfolio, and obligations, Load requirements of [the DEVELOPER/LSE], including, if applicable the Long Term Contract between the Project and any entity performing the Self Supply LSE function (the "Subject Long Term Contract"), and also including each of the certifications and acknowledgements that I have made in this document.
3. I hereby [REQUEST ON BEHALF OF] the [DEVELOPER/LSE], a Self Supply Exemption for [MW REQUESTED FOR THE SELF SUPPLY EXEMPTION] for the Project associated with [DEVELOPER/LSE'S] self supply arrangements, including, if applicable, any Subject Long Term Contract.
4. I have reviewed and I understand the requirements established under the NYISO Market Administration and Control Area Services Tariff ("Services Tariff") related to a "Self Supply Exemption" pursuant to Section 23.4.5.7.14.
5. I have personal knowledge of the facts and circumstances supporting: (i) the Project's request and eligibility for a Self Supply Exemption; and (ii) the Load Obligations and supply obligations related to the Project's request and eligibility for a Self Supply Exemption, as of the date of this Certification and Acknowledgment, including all data and other information submitted by the Project and by [DEVELOPER/LSE] to the NYISO.
6. The LSE is a Self Supply LSE pursuant to Section [INSERT SUBSECTION OF DEFINITION BY WHICH THE LSE MEETS THE REQUIREMENTS OF THAT TERM] of that term.
7. [NAME OF DEVELOPER/LSE] is not owned in whole or in part by, and is not an Affiliate (as Affiliate is defined in Section 2.1 of the Services Tariff) of, any other Load Serving Entity. Appendix A to this Certification and Acknowledgment fully and completely sets forth and describes the organizational relationship between [DEVELOPER/LSE's] Self Supply LSE and Developer functions or affiliates and the Project.
8. To the best of my knowledge and having conducted due diligence that is current as of the date of this Certification there is not any contract, agreement, arrangement, or relationship (for purposes of Section 23.4.5.7.14.1. 2(e), and this Certification and Acknowledgment, a "contract") for any material (in whole or in aggregate) payments, concessions, rebates, or subsidies, connected to or contingent on the [PROJECT's]: (i) construction or operation, except as expressly

permitted in Subsection (A) or (B) of Section 23.4.5.7.14.1.2(e) of the Services Tariff, or (ii) clearing in the NYISO's ICAP market except as expressly permitted in Subsection (B) of Section 23.4.5.7.14.1.2(e).

9. I have listed in Schedule 1 to this Certification all contracts that involve payments, concessions, rebates, or subsidies connected to or contingent upon the [PROJECT'S] construction or operation that are not material or that are otherwise expressly permissible under Subsection (A) or (B) of Section 23.4.5.7.14.1.2(e).
10. The Project and [DEVELOPER/LSE] shall provide any information or cooperation requested by the NYISO in connection with the Project's request for a Self Supply Exemption.

I hereby acknowledge on behalf of myself, [INSERT NAME OF PROJECT], and [NAME OF DEVELOPER/LSE] that:

- a. The submission of false, misleading, or inaccurate information, or the failure to submit information requested by the NYISO related to the Project's and [DEVELOPER/LSE's] request for a Self Supply Exemption, including but not limited to information contained or submitted in this Certification and Acknowledgement on behalf of the Project, shall constitute a violation of Section 4.1.7 of the Services Tariff, and subject to the Commission's review, a violation of the Commission's regulations and Section 316A of the Federal Power Act.
- b. If the DEVELOPER/LSE or the Project submits false, misleading, or inaccurate information, or fails to submit requested information to the NYISO, including but not limited to information contained or submitted in this Certification and Acknowledgement on behalf of the Project, it shall cease to be eligible for a Self Supply Exemption and, if the Project has already received a Self Supply Exemption, that exemption shall be subject to revocation by the NYISO or the Commission after which the Project shall be subject to an Offer Floor set at the Mitigation Net CONE Offer Floor (such value calculated based on the date it first Offers UCAP, in accordance with Section 23.4.5.7.3.7, and adjusted annually in accordance with Section 23.4.5.7 of the Services Tariff,) starting with the next following deadline for Unforced Capacity certification prior to an ICAP Spot Market Auction subsequent to the date of revocation (such date in accordance with ISO Procedures) pursuant to Section 23.4.5.7.9.5 of the Services Tariff.
- c. If the DEVELOPER/LSE or the Project submits false, misleading, or inaccurate information, or fails to submit requested information to the NYISO, including but not limited to information contained or submitted in the Certification and Acknowledgement on behalf of the Project, it may be subject to civil penalties that may be imposed by the Commission for violations of Section 4.1.7 of Services Tariff, the Commission's rules, and/or Section 316A of the Federal Power Act.

\_\_\_\_\_  
[PRINT NAME]

[DATE]

Subscribed and sworn to before me  
this [ ] day of [MONTH] [YEAR].

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

#### **23.4.5.7.14.3 Net Short Threshold and Net Long Threshold**

For the purposes of Section 23.4.5.7.14.3, “SSE Evaluated ICAP” shall mean the quantity of MW of CRIS for which a Self Supply Exemption is requested by an individual Self Supply LSE (or by an SSE Applicant in respect of its own Load) in accordance with Section 23.4.5.7.14.1.1(c), unless reduced as follows: If (i) following a notice that an additional System Deliverability Upgrade study(ies) will be conducted in accordance with Section 25.7.7.1 of the OATT, an SSE Applicant elects to keep its CRIS request but with no System Deliverability Upgrade identified to make the project fully deliverable (as provided for in Section 25.7.7.1(3),) and (ii) the total quantity of MW of CRIS for which the Self Supply Exemption is requested exceeds the total amount of Deliverable MW, as specified in the next Class Year Interconnection Facilities Study report, the ISO shall reduce the total quantity of MW of CRIS for which a Self Supply Exemption is requested to the total amount of Deliverable MW identified in such Interconnection Facilities Study Report. If there is more than one LSE associated with the SSE Applicant, the ISO shall reduce the quantity of MW of CRIS for each Self Supply LSE by the

ratio of Deliverable MW to the total MW of CRIS for which Self Supply exemptions were initially requested.

The ISO shall compute the Net Short Threshold and Net Long Threshold, and determine whether each is satisfied, based on its computation of each of the values specified in this Section. If there is more than one Self Supply LSE associated with the SSE Applicant's request for a Self Supply Exemption, the MW associated with each Self Supply LSE shall be considered separately.

If the Self Supply LSE or its Affiliates are associated with more than one request for a Self Supply Exemption in the Class Year (including any associated with a transfer of CRIS at the same location,) and the Self Supply LSE and its Affiliates satisfy the Net Long Threshold in a non-zero amount that is greater than the "Cumulative Affiliated Quantity" (as defined in Section 23.4.5.7.14.3,) then remaining in the Class Year, the ISO shall reduce the quantity of MW for which they are eligible to receive a Self Supply Exemption by the ratio of (a) the quantity of MW by which the Self Supply LSE and its Affiliates satisfy the Net Long Threshold, to (b) the Cumulative Affiliated Quantity associated with SSE Applicant(s) then remaining in the Class Year or associated with a transfer of CRIS at the same location (provided the transferee does not notify the ISO, on or before the date the Class Year is completed, that it no longer expects to be the recipient of the transferred CRIS.)

For the purposes of Section 23.4.5.7.14.3, "Projected ICAP Requirements" is the reasonably projected ICAP MW that the Self Supply LSE and all its Affiliates will be required to purchase in each Locality and the NYCA. Such projection shall be based on the Self Supply LSE's and all its Affiliates' share(s) of the Locational Minimum Unforced Capacity Requirements and the NYCA Minimum Unforced Capacity Requirement, as applicable and in

accordance with ISO Procedures, over the three most recently completed Capability Years preceding the Class Year Start Date. Such projection shall also reflect that ICAP MW purchased in a Locality may be used to meet capacity requirements for each Locality in which they are contained, as well as for the NYCA.

When calculating the Self Supply LSE's and all its Affiliates' Projected ICAP Requirements, each of their shares of the Locational Minimum Unforced Capacity Requirements and the NYCA Minimum Unforced Capacity Requirement over these three Capability Years shall be translated to their ICAP MW equivalent(s) using the derating factor that was applied to translate the Installed Capacity Requirement into the Unforced Capacity Requirement in the same Capability Period and Locality, or the NYCA if applicable, in which the purchase was made.

For the purposes of Section 23.4.5.7.14.3, "Excess Award Percentage" is the reasonably projected amount of excess capacity that the Self Supply LSE and all its Affiliates will be required to purchase in each Locality, and the NYCA, expressed as a percentage of its "Projected ICAP Requirements", Such projection shall be based on the total excess UCAP MW awarded in each ICAP Spot Market Auction, divided by the Locational Minimum Unforced Capacity Requirement, or the NYCA Minimum Unforced Capacity Requirement, for the same Capability Period and Locality (or the NYCA) in which the award was made, over the three most recent completed Capability Years preceding the Class Year Start Date.

For the purposes of Section 23.4.5.7.14.3, "Capacity Obligations without Entry", calculated for each Locality and the NYCA, is the product of (a) Projected ICAP Requirements and (b) one plus the Excess Award Percentage.

For the purposes of Section 23.4.5.7.14.3, “Capacity Obligations with Entry”, calculated for each Locality and the NYCA, is the product of (a) Projected ICAP Requirements and (b) one plus the Excess Award Percentage, adjusted to reflect the projected increase in excess that the Self Supply LSE would be obligated to purchase as a result of the entry of the SSE Applicant.

For the purposes of Section 23.4.5.7.14.3, “Self Supply Capacity” for a given Locality (or the NYCA,) is (a) the full amount of ICAP MW associated with each Generator or UDR project that the Self Supply LSE or any of its Affiliates own directly or indirectly, in at least a 50.01% interest (in the aggregate) as of the Class Year Start Date, or have the power to direct the management or policies of, excluding any whose CRIS MW are projected by the ISO to be expired on or before the date that marks the end of Mitigation Study Period, based on a demonstration by the Self Supply LSE, and (b) the ICAP MW that the Self Supply LSE and all its Affiliates are reasonably projected by the ISO to receive, including ICAP MW which they have a call option to receive, either by way of ownership or under “Existing Long Term Commitments” in that Locality (or the NYCA), and that are associated with a Generator or UDR project that the Self Supply LSE or any of its Affiliates do not own directly or indirectly, at least a 50.01% interest (in the aggregate) as of the Class Year Start Date, and that they do not have the power to direct the management or policies of, excluding those that are associated with any Expected Retirement. For purposes of Self Supply Capacity, “Existing Long Term Commitments” is the amount of Capacity that the Self Supply LSE or any of its Affiliates are projected by the ISO to receive, including ICAP which they have a call option to receive, under a written agreement (whether stated in ICAP or otherwise,) with a minimum term of ten years, and a minimum of six years remaining thereon on the Class Year Start Date. When calculating the term and remaining term of a written agreement for the purposes of this section, the ISO, using

its independent judgment and at its sole discretion, will determine whether to reflect in its calculation any potential extension to the current term of a written agreement that may reasonably result from renewal provisions.

For the purposes of Section 23.4.5.7.14.3, “Additional Self Supply Capacity”, for a given Locality (or the NYCA,) is the ICAP MW of a Generator or UDR project that were granted a Self Supply Exemption at the time of the completed Class Year based on the Self Supply LSE or any of its Affiliates’ being a Self Supply LSE for such Generator or UDR project, in the 10 year period immediately preceding the Class Year Start Date of the Class Year, in that Locality (or the NYCA), excluding: (i) any ICAP MW that are included in Self Supply Capacity, (ii) any ICAP MW associated with a Generator or UDR project that the Self Supply LSE and any of its Affiliates own directly or indirectly, at least a 50.01% interest(in the aggregate) as of the Class Year Start Date, or have the power to direct the management or policies of, and that the CRIS of which is projected by the ISO to be expired on or before the date that marks the end of Mitigation Study Period, based on a demonstration by the Self Supply LSE; and (iii) any ICAP MW of a Generator or UDR project that neither the Self Supply LSE nor any of its Affiliates own directly or indirectly, at least a 50.01% interest (in the aggregate) as of the Class Year Start Date, or have the power to direct the management or policies of, and that is an Expected Retirement.

#### **23.4.5.7.14.3.1 Net Short Threshold**

The Net Short Threshold will be satisfied for the “SSE Evaluated ICAP” if the ISO determines that, summed over all Localities and the NYCA, the Self Supply LSE’s and all of its Affiliates’ “Total Capacity Costs without Entry” are expected to be less than the Self Supply LSE’s and all of its Affiliates’ “Total Capacity Costs with Entry”.



23.4.5.7.14.3.1.1 The ISO will calculate the estimated “Total Capacity Costs without

Entry” as the sum over all Localities, and the NYCA, of the product of (a) the “ICAP Spot Auction Price without Entry” and (b) the “Capacity Exposed to Market Prices without Entry”.

(a) “ICAP Spot Market Auction Price without Entry” shall be based on the ICAP Spot Market Auction prices for each Locality and the NYCA, averaged over the three most recently completed Capability Years preceding the Class Year Start Date.

(b) “Capacity Exposed to Market Prices without Entry” is calculated for each Locality and the NYCA as:

“Capacity Obligations without Entry” for each Locality and the NYCA, translated from ICAP MW into UCAP MW using the average derating factor for each Locality and the NYCA corresponding to the ICAP Spot Market Auctions used to determine the ICAP Spot Market Auction Price without Entry;

minus

“Self Supply Capacity” for each Locality and the NYCA, translated from ICAP MW into UCAP MW using a derating factor, as determined by the ISO, that is reasonably anticipated to be associated with ICAP Suppliers included in this Self Supply Capacity;

minus

“Additional Self Supply Capacity” for each Locality and the NYCA, translated from ICAP MW into UCAP MW using a derating factor, as determined by the

ISO, that is reasonably anticipated to be associated with ICAP Suppliers included in this Additional Self Supply Capacity;

23.4.5.7.14.3.1.2 The ISO will calculate “Total Capacity Costs with Entry” as the sum of “Proportional Entry Costs” and the sum over all Localities, and the NYCA, of the product of (a) “ICAP Spot Market Auction Price With Entry” and (b) “Capacity Exposed to Market Prices With Entry”.

“Proportional Entry Costs” is the percentage of the Unit Net CONE (expressed in dollars) of the SSE Applicant (calculated in accordance with Section 23.4.5.7.3 if an Examined Facility, or in accordance with Section 23.4.5.7.2.1 if an NCZ Examined Project, or in accordance with Section 23.4.5.7.6.1 if Additional CRIS MW) that is equal to the SSE Evaluated ICAP divided by the total MW of CRIS requested by the SSE Applicant in the Class Year.

(a) The “ICAP Spot Market Auction Price with Entry” shall be based on the ICAP Spot Market Auction prices calculated for each Locality and the NYCA, averaged over the three most recently completed Capability Years preceding the Class Year Start Date, and adjusted to reflect the entry of the SSE Applicant.

(b) the “Capacity Exposed to Market Prices with Entry” is calculated for each Locality and the NYCA as:

“Capacity Obligations with Entry” for each Locality and the NYCA, translated from ICAP MW into UCAP MW using the average derating factor for each Locality and the NYCA corresponding to the ICAP Spot Market Auctions used to determine the ICAP Spot Market Auction Price with Entry;

minus

“Self Supply Capacity” for each Locality and the NYCA, translated from ICAP MW into UCAP MW using a derating factor, as determined by the ISO, that is reasonably anticipated to be associated with ICAP Suppliers included in this Self Supply Capacity;

minus

“Additional Self Supply Capacity” for each Locality and the NYCA, translated from ICAP MW into UCAP MW using a derating factor, as determined by the ISO, that is reasonably anticipated to be associated with ICAP Suppliers included in this Additional Self Supply Capacity;

minus

“SSE Evaluated ICAP”, translated from ICAP MW into UCAP MW using a derating factor, as determined by the ISO that is reasonably anticipated to be associated with the SSE Applicant.

#### **23.4.5.7.14.3.2 Net Long Threshold**

If the Self Supply LSE and any of its Affiliates are associated with more than one Self Supply Exemption Request in the Class Year, the Net Long Threshold determination will be made based on the sum of the Self Supply LSE’s and all of its Affiliates’ SSE Evaluated ICAP (“Cumulative Affiliated Quantity”) prior to the Initial Decision Period. The ISO shall recalculate the Cumulative Affiliated Quantity prior to the ISO’s issuance of a Revised Project Cost Allocation Subsequent Decision Period if any SSE Applicant with which it is associated is no longer in the Class Year.

For each Mitigated Capacity Zone containing the location of the SSE Applicant, the ISO will determine the largest amount of SSE Evaluated ICAP MW that is (a) less than or equal to

the sum of the Self Supply LSE's and all of its Affiliates' "SSE Evaluated ICAP" and (b) for which the Self Supply LSE's and all of its Affiliates' "Total Self Supply Capacity" is less than or equal to the "Future Capacity Obligation." The Net Long Threshold will be satisfied for the smallest of these determined amounts of SSE Evaluated ICAP MW, and will be considered not satisfied if the smallest of these amounts is less than or equal to zero.

- (i) The "Total Self Supply Capacity" is the sum, in each Mitigated Capacity Zone, of ICAP MW of (A) Self Supply Capacity, (B) Additional Self-Supply Capacity, and (C) the cumulative quantity of the Self Supply LSE's and all of its Affiliates' SSE Evaluated ICAP.
- (ii) the "Future Capacity Obligation" is the product of (A) ICAP MW of Capacity Obligations without Entry, and (B) the higher of (x) one plus the "10 year growth rate of peak demand" and (y) one plus one percent. The "10 year growth rate of peak demand" shall be determined based on the longest available NYSO Baseline forecast of non-coincident peak demand for the corresponding Mitigated Capacity Zone found in the "Baseline Forecast of Non-Coincident Peak Demand" table, or its successor in the most current Gold Book, published by the Class Year Start Date of the Class Year, for each Mitigated Capacity Zone.

#### **23.4.5.7.14.4 Timing of Determinations**

##### **23.4.5.7.14.4.1 Determinations.**

- (a) Prior to the Initial Decision Period, the ISO shall determine whether all or a portion of the MW specified in the request for a Self Supply Exemption is eligible for a Self Supply Exemption in accordance with Section 23.4.5.7.14.1.2. If the ISO determines that all or a portion of the CRIS MW for which a Self Supply

Exemption was requested is not eligible for a Self Supply Exemption, the ISO shall make a determination in accordance with Section 23.4.5.7.3.2 prior to the commencement of the Initial Decision Period, and prior to the ISO's issuance of a Revised Project Cost Allocation. When evaluating eligibility for a Self Supply 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 30.4.6.2.12 of Attachment O to this Services Tariff.

- (b) Determinations made pursuant to Section 23.4.5.7.14.4 shall be provided to the SSE Applicant concurrent with the issuance of determinations in accordance with Section 23.4.5.7.3.3, and to an NCZ Examined Project at the time of the ISO's determination pursuant to Section 23.4.5.7.2.1.
- (c ) The ISO shall post on its web site and concurrently notify the Self Supply LSE of the ISO's determination of exempt, and if exempt the quantity of MW exempted, or non-exempt, from an Offer Floor as soon as the determination is final. Concurrent with the ISO's posting, the Market Monitoring Unit shall publish a report on the ISO's determination, as further specified in Sections 30.4.6.2.12 of Attachment O to this Services Tariff.

#### **23.4.5.7.14.5 Revocation of a Self Supply Exemption**

- (a) If, at the time prior to the SSE Applicant first producing or transmitting, Energy it or the Self Supply LSE no longer satisfies the requirements of Section 23.4.5.7.14.1(b) or no longer meets the requirements of the Acknowledgement and Certification, the SSE Applicant and the Self Supply LSE shall notify each

other and other ISO in writing within 3 business days of the event or basis for the failure to meet the requirements for a Self Supply Exemption. Upon notification, the ISO shall revoke the Self Supply Exemption and apply the Mitigation Net CONE Offer Floor (such value calculated based on the date it first offers UCAP, in accordance with Section 23.4.5.7.3.7, and adjusted annually in accordance with Section 23.4.5.7 of this Services Tariff.)

- (b) The failure to provide the ISO written notice in accordance with Section 23.4.5.7.14.5(a) shall constitute a violation of the Services 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.)
- (c) Where the ISO reasonably believes that a request for a Self Supply Exemption was granted based on (i) false, misleading, or inaccurate information, or (ii) the Self Supply LSE's inclusion within "Self Supply Capacity" (as that term is used in Section 23.4.5.7.14.3) of a Generator or UDR project's capacity that was identified by the Self Supply LSE whose CRIS was projected to expire before the end of the Mitigation Study Period but has not expired on or before the date that marked the end of the Mitigation Study Period, the ISO shall notify the SSE Applicant and the Self Supply LSE that the Self Supply Exemption may be revoked. Provided that 30 days written notice has been given to the SSE Applicant (such notice to the extent practicable,) the ISO may revoke the Self Supply Exemption and apply the Mitigation Net CONE Offer Floor (such value calculated based on the date the SSE Applicant first offers UCAP, in accordance with Section 23.4.5.7.3.7, and adjusted annually in accordance with Section

23.4.5.7 of this Services Tariff.) Prior to the revocation of a Self Supply Exemption and the submission of a report to the Commission's Office of Enforcement (or any successor to its responsibilities,) the ISO shall provide the SSE Applicant an opportunity to explain any statement, information, or action, and if a statement information or action of the Self Supply LSE, it shall also provide an opportunity to that entity. The ISO cannot revoke the Self Supply Exemption until after the 30 days written notice period has expired, unless ordered to do so by the Commission.

## **30.4 Market Monitoring Unit**

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30.4.5.1.2 The Market Monitoring Unit is not to effectuate its proposed market design itself.

30.4.5.1.3 The Market Monitoring Unit's role in recommending proposed rule and Tariff changes is advisory in nature, unless a Tariff provision specifically concerns actions to be undertaken by the Market Monitoring Unit itself.

30.4.5.1.4 The Market Monitoring Unit must limit distribution of issues or concerns it identifies, and its recommendations to the ISO and to Commission staff in the event it believes broader dissemination could lead to exploitation. Limited distributions should include an explanation of why further dissemination should be avoided at that time.

30.4.5.2 Review and report on the performance of the wholesale markets to the ISO, the Commission, and other interested entities such as the New York Public Service Commission and participants in its stakeholder governance process on at least a quarterly basis, and issue a more comprehensive annual state of the market report. The Market Monitoring Unit may issue additional reports as necessary.

30.4.5.2.1 In order to perform the Core Functions, the Market Monitoring Unit shall perform daily monitoring of the markets that the ISO administers. The Market Monitoring Unit's daily monitoring shall include monitoring of virtual bidding.

30.4.5.2.2 The Market Monitoring Unit shall submit drafts of each of its reports to the ISO for review and comment sufficiently in advance of the report's issuance to provide an effective opportunity for review and comment by the ISO. The Market Monitoring Unit may disregard any suggestions with which it disagrees. The ISO may not alter the reports prepared by the Market Monitoring Unit, nor

dictate the Market Monitoring Unit's conclusions.

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

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

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

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

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

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

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

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

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

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

Commission.

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

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

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

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



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

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

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

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

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

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

30.4.6.2.2 The ISO and the Market Monitoring Unit shall monitor the ISO Administered Markets for other categories of conduct, whether by a single firm or by multiple firms acting in concert, that have material effects on prices or guarantee payments in an ISO Administered Market. *See* Market Mitigation Measures Section 23.2.4.4.

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

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

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

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

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

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

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

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

30.4.6.2.8 Reasonably in advance of the deadline for submitting offers in an External Reconfiguration Market and in accordance with the deadlines specified in ISO Procedures, the Responsible Market Party for External Sale UCAP may request the ISO to provide a projection of ICAP Spot Auction clearing prices for a Mitigated Capacity Zone over the Comparison Period for the External Reconfiguration Market. Prior to completing its projection of ICAP Spot Auction clearing prices for a Mitigated Capacity Zone over the Comparison Period for the External Reconfiguration Market, the ISO shall consult with the Market Monitoring Unit regarding such price projection. *See* Market Mitigation Measures Section 23.4.5.4.3.

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

30.4.6.2.10 Any proposal or decision by a Market Participant to retire or otherwise remove an Installed Capacity Supplier from a Mitigated Capacity Zone Unforced Capacity market, or to de-rate the amount of Installed Capacity available from such supplier, may be subject to audit and review by the ISO if the ISO determines that such action could reasonably be expected to affect Market-Clearing Prices in one or more ICAP Spot Market Auctions for a Mitigated Capacity Zone subsequent to such action; provided, however, no audit and review shall be necessary if the Installed Capacity Supplier is a Generator that is being retired or removed from a Mitigated Capacity Zone as the result of a Forced Outage that began on or after the effective date of the amendments to Section 23.4.5.6.1 of this Services Tariff that was determined by the ISO to be a Catastrophic Failure. Such an audit or review shall assess whether the proposal or decision has a legitimate economic justification or is based on an effort to withhold Installed Capacity physically in order to affect prices. The ISO shall provide the preliminary results of its audit or review to the Market Monitoring Unit for its review and comment. *See* Market Mitigation Measures Section 23.4.5.6.

30.4.6.2.11 Any reclassification of a an Installed Capacity Supplier that is a Generator in a Mitigated Capacity Zone from a Forced Outage that began on or after the

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

The audit and review pursuant to the above paragraph shall assess whether the reclassification of the Generator in a Mitigated Capacity Zone from a Forced Outage to an ICAP Ineligible Forced Outage had a legitimate economic justification or is based on an effort to withhold Installed Capacity physically in order to affect prices. The ISO shall provide the preliminary results of its audit or review to the Market Monitoring Unit for its review and comment.

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

acquires the necessary data, the Market Party has Commenced Repair of the Generator, or the Generator is determined by the ISO to have had a Catastrophic Failure, the Market Party shall not be subject to an audit and review pursuant to Section 23.4.5.6.2.1 of this Services Tariff. The ISO shall provide the preliminary results of its audit or review to the Market Monitoring Unit for its review and comment.

30.4.6.2.12 When evaluating an Examined Facility or NCZ Examined Project pursuant to Section 23.4.5.7 of the Market Mitigation Measures, the ISO shall seek comment from the Market Monitoring Unit on matters relating to the determination of price projections; and cost calculations, the ISO's draft list of recommended Exempt Renewable Technologies and the basis for the recommendation; requests pursuant to Section 23.4.5.7.14.1.2(e)(C) regarding whether a "contract" (as defined in Section 23.4.5.7.14.2(e)) would make it ineligible to obtain or (if previously granted) retain a Self Supply Exemption;. As required by Section 23.4.5.7 of Attachment H to this Services Tariff, the Market Monitoring Unit shall prepare a written report discussing factors that affect the ISO's mitigation exemption and Offer Floor determinations, and confirming whether the ISO's Offer Floor and exemption determinations and calculations conducted pursuant to Sections 23.4.5.7.2 and 23.4.5.7.6, the NYISO's determination of eligible or ineligible for an exemption pursuant to Section 23.4.5.7.9, 23.4.5.7.13, and 23.4.5.7.14 were conducted in accordance with the terms of the Services Tariff, and if not, identifying the flaws inherent in the ISO's approach. This report shall be presented concurrent with the ISO's posting of its



mitigation exemption and Offer Floor determinations. Pursuant to Section 23.4.5.7.8 of the Market Mitigation Measures, the ISO shall also consult with the Market Monitoring Unit when evaluating whether any existing or proposed Generator or UDR project in a Mitigated Capacity Zone, except New York City, has Commenced Construction, and determinations of whether it shall be exempted from an Offer Floor under that Section. Prior to the ISO making an exemption determination pursuant to Section 23.4.5.7.8, the Market Monitoring Unit shall provide the ISO a written opinion and recommendation. The Market Monitoring Unit shall also provide a public report on its assessment of an ISO determination that an existing or proposed Generator or UDR project is exempt from an Offer Floor under Section 23.4.5.7.8. *See* Market Mitigation Measures Section 23.4.5.7.

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

30.4.6.3.1 The ICAP Demand Curve periodic review schedule and procedures shall provide an opportunity for the Market Monitoring Unit to review and comment on the draft request for proposals, the independent consultant's report, and the ISO's proposed ICAP Demand Curves. *See* ISO Services Tariff Section 5.14.1.2.5.

30.4.6.3.2 The new capacity zone periodic review shall provide an opportunity for the Market Monitoring Unit to review and comment on the NCZ Study, and any proposed NCZ tariff revisions. *See* ISO Services Tariff Sections 5.16.1.3 and 5.16.4.

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

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

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

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

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

##### **30.4.6.4.2 Responsibilities related to the Operating Reserves Demand Curves**

In order to respond to operational or reliability problems that arise in real-time, the ISO

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

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

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

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

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

The ISO may periodically evaluate the Transmission Shortage Cost to determine whether it is necessary to modify the Transmission Shortage Cost to avoid future operational or reliability

problems. The ISO will consult with its Market Monitoring Unit after it conducts this evaluation.

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

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

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

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

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

If the ISO, acting in consultation with its Market Monitoring Unit, identifies transmission scheduling paths that are being used to schedule External Transactions in a manner that is not consistent with the manner in which power is actually expected to flow, the ISO may submit a compliance filing in FERC Docket No. ER13-780 proposing to expand the list of prohibited

scheduling paths included in Section 16.3.3.8 of the ISO OATT. The ISO's compliance filing will include, or be accompanied by, a discussion of the Market Monitoring Unit's position regarding the ISO's proposal to add a new prohibited scheduling path or new prohibited scheduling paths. The Market Monitoring Unit's position may be explained in the ISO's filing letter, be set forth in an accompanying affidavit, or be submitted by the Market Monitoring Unit as a companion filing or as comments on the ISO's compliance filing in Docket No. ER13-780. *See* Section 16.3.3.8 of Attachment J to the ISO OATT.

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

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

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

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

#### **30.4.6.8.4 Responsibilities related to the draft Congestion Analysis and Resource Integration Study**

Following the Management Committee vote, the draft Congestion Analysis and Resource Integration Study (CARIS), with Business Issues Committee and Management Committee input, will be forwarded to the ISO Board for review and action. Concurrently, the draft CARIS will be provided to the Market Monitoring Unit for its review and consideration. *See* Section 31.3.2.2 of Attachment Y to the ISO OATT.

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

The ISO will provide the draft Public Policy Transmission Planning Report to the Market Monitoring Unit for its review and consideration of any impact on the ISO-administered markets of regulated transmission solutions proposed to satisfy a Public Policy Transmission Need. *See* Sections 31.4.9 and 31.4.10.1 of Attachment Y to the ISO OATT. The Market Monitoring Unit's evaluation will be provided to the Management Committee before the Management Committee's advisory vote. *See* Section 31.4.10.1 of Attachment Y. Following the Management Committee vote, the draft Public Policy Transmission Planning Report, with Business Issues Committee and Management Committee input, will be forwarded to the ISO Board for review and action. Concurrent with the submission to the ISO Board of the draft Public Policy Transmission Planning Report, the Market Monitoring Unit's evaluation will be provided to the ISO Board. *See* Section 31.4.7 of Attachment Y to the ISO OATT.

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

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

30.4.7.1 The ISO shall ensure that the Market Monitoring Unit has sufficient

access to ISO resources, personnel and market data to enable the Market Monitoring Unit to carry out its functions under Attachment O. Consistent with Section 30.6.1 of Attachment O, the Market Monitoring Unit shall have complete access to the ISO's databases of market information.

30.4.7.2 Any data created by the Market Monitoring Unit, including but not limited to reconfiguration of the ISO's data, will be kept within the exclusive control of the Market Monitoring Unit. The Market Monitoring Unit may share the data it creates, subject to the limitations on distribution of and obligation to protect the confidentiality of Protected Information that are contained in Attachment O, the ISO Services Tariff, and the ISO's Code of Conduct.

30.4.7.3 Where data outside the ISO's geographic footprint would be helpful to the Market Monitoring Unit in carrying out its duties, the Market Monitoring Unit should seek out that data (with assistance from the ISO, where appropriate).

## 23.2 Conduct Warranting Mitigation

### 23.2.1 Definitions

The following definitions are applicable to this Attachment H:

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

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

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

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

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



Catastrophic Failure shall be based on a technical/engineering evaluation, shall be made by the ISO, and may be made at any time following the event that caused the Forced Outage provided that adequate information is provided to the ISO to support such determination.

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

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

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

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

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

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

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

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

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

**Exceptional Circumstances:** shall mean one or more unavoidable circumstances, as determined by the ISO, that individually or collectively render as unavailable the data necessary for the ISO to perform an audit and review of a Market Party, pursuant to Section 23.4.5.6.2 of this Services Tariff. Exceptional Circumstances may include, but are not limited to: the inaccessibility of the physical facility; the inaccessibility of necessary documentation or other data; and the unavailability of information regarding the regulatory obligations with which the Market Party

will be required to comply in order to return its Generator to service which regulatory obligations are not yet known but which will be made known by the applicable regulatory authority under existing laws and regulations provided that none of the above described circumstances are the result of delay or inaction by the Market Party. The magnitude of the repair cost, alone, shall not be an Exceptional Circumstance.

**“Exempt Renewable Technology”** shall mean, in all Mitigated Capacity Zones, an Intermittent Power Resource solely powered by wind or solar energy.

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

For purposes of Section 23.4.5 of this Attachment H, **“Indicative Mitigation Net CONE”** shall mean the capacity price calculated by the NYISO for informational purposes only if there is not an effective ICAP Demand Curve and the Commission (i) has accepted an ICAP Demand Curve for the Mitigated Capacity Zone that will become effective when the Mitigated Capacity Zone is first effective, in which case, the Indicative Mitigation Net CONE shall be the capacity price on such ICAP Demand Curve for the Mitigated Capacity Zone corresponding to the average amount of excess capacity above the Indicative NCZ Locational Minimum Installed Capacity Requirement, as applicable, expressed as a percentage of that requirement that formed the basis for the ICAP Demand Curve accepted by the Commission; or, (ii) has not accepted an ICAP Demand Curve for the Mitigated Capacity Zone, but the ISO has filed an ICAP Demand Curve for the Mitigated Capacity Zone pursuant to Services Tariff Section 5.14.1.2.11, in which case the Indicative Mitigation Net CONE shall be the capacity price on such ICAP Demand Curve corresponding to the average amount of excess capacity above the Indicative NCZ Locational Minimum Installed Capacity Requirement, expressed as a percentage of that requirement, that formed the basis for such ICAP Demand Curve.

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

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

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

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

**“Market Party”** shall mean any person or entity that is, or for purposes of the determinations to be made pursuant to Section 23.4.5.7 of this Attachment H proposes or plans a project that would

be, a buyer or a seller in, or that makes bids or offers to buy or sell in, or that schedules or seeks to schedule Transactions with the ISO in or affecting any of the ISO Administered Markets, or any combination of the foregoing.

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

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

**“NCZ Examined Project”** shall mean any Generator or UDR project that is not exempt pursuant to 23.4.5.7.8 and either (i) is in a Class Year on the date the Commission accepts the first ICAP Demand Curve to apply to a Mitigated Capacity Zone, (ii) meets the criteria specified in 23.4.5.7.3(II), or (iii) meets the criteria specified in 23.4.5.7.3(III) but the time period therein has passed on the date the Commission accepts the first ICAP Demand Curve. An NCZ Examined Project may be at any phase of development or in operation or an Installed Capacity Supplier.

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

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

For purposes of Section 23.4.5 of this Attachment H, **“Offer Floor”** for a Mitigated Capacity Zone Installed Capacity Supplier that is not a Special Case Resource shall mean the lesser of (i) a numerical value equal to 75% of the Mitigation Net CONE translated into a seasonally adjusted monthly UCAP value (**“Mitigation Net CONE Offer Floor”**), or (ii) the numerical value that is the first year value of the Unit Net CONE determined as specified in Section 23.4.5.7, translated into a seasonally adjusted monthly UCAP value using an appropriate class outage rate, (**“Unit Net CONE Offer Floor”**). The Offer Floor for a Mitigated Capacity Zone Installed Capacity Supplier that is a Special Case Resource shall mean a numerical value determined as specified in Section 23.4.5.7.5. The Offer Floor for Additional CRIS MW shall mean a numerical value determined as specified in Section 23.4.5.7.6.

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

that, together with any of its Affiliated Entities, (a) Controls 650 MW or more of Unforced Capacity; and (b) Controls Unforced Capacity some portion of which is necessary to meet the G-J Locality Locational Minimum Installed Capacity Requirement in an ICAP Spot Market Auction; and (iii) for each Mitigated Capacity Zone except the New York City Locality and the G-J Locality, if any, a Market Party that Controls at least the quantity of MW of Unforced Capacity specified for the Mitigated Capacity Zone and accepted by the Commission.

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

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

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

**“Self Supply LSE”** shall mean a Load Serving Entity in one or more Mitigated Capacity Zones that operates under a long-standing business model to meet more than fifty percent of its Load obligations through its own generation and that is a Public Power Entity, “Single Customer Entity,” or “Vertically Integrated Utility.” For purposes of this definition only: (i) “Vertically Integrated Utility” means a utility that owns generation, includes such generation in a non-bypassable charge in its regulated rates, earns a regulated return on its investment in such generation, and that as of the date of its request for a Self Supply Exemption, has not divested more than seventy-five percent of its generation assets owned on May 20, 1996; and (ii) “Single Customer Entity” means an LSE that serves at retail only customers that are under common control with such LSE, where such control means holding 51% or more of the voting securities or voting interests of the LSE and all its retail customers.

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

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

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

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

For purposes of Section 23.4.5 of this Attachment H, **“Unit Net CONE”** shall mean localized levelized embedded costs of a specified Installed Capacity Supplier, including interconnection

costs, and for an Installed Capacity Supplier located outside a Mitigated Capacity Zone including embedded costs of transmission service, in either case net of likely projected annual Energy and Ancillary Services revenues, as determined by the ISO, translated into a seasonally adjusted monthly UCAP value using an appropriate class outage rate.

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

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

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

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

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

23.2.3.1.1 is significantly inconsistent with competitive conduct; and

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

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

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

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

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

For purposes of this Section and Section 23.4.3.2, the term "unjustifiable change" shall mean a change in an Electric Facility's operating parameters that is: (a) not

attributable to the Electric Facility's verifiable physical operating capabilities, and  
(b) is not a rational competitive response to economic factors other than market power.

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

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

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

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

23.2.4.4 The ISO and the Market Monitoring Unit shall monitor the ISO Administered Markets for other categories of conduct, whether by a single firm or by multiple firms acting in concert, that have material effects on prices or

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



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

- 23.4.5.1 If and to the extent that sufficient installed capacity is not under a contractual obligation to be available to serve load in New York and if physical or economic withholding of installed capacity would be likely to result in a material change in the price for installed capacity in all or some portion of New York, the ISO, in consideration of the comments of the Market Parties and other interested parties, shall amend this Attachment H, in accordance with the procedures and requirements for amending the Plan, to implement appropriate mitigation measures for installed capacity markets.
- 23.4.5.2 Offers to sell Mitigated UCAP in an ICAP Spot Market Auction shall not be higher than the higher of (a) the UCAP Offer Reference Level for the applicable ICAP Spot Market Auction, or (b) the Going-Forward Costs of the Installed Capacity Supplier supplying the Mitigated UCAP. Where an Installed Capacity Supplier is a Pivotal Supplier in some, but not all, Mitigated Capacity Zones in which it has Resources, such Installed Capacity Supplier's offer to sell Mitigated UCAP in any ICAP Spot Market Auction for any Resource for which it is a Pivotal Supplier shall not be higher than the higher of (a) the lowest of the UCAP Offer Reference Levels for each Mitigated Capacity Zone in which such Installed Capacity Supplier has Resources; or (b) if an Offer for a Resource has an applicable Going-Forward Cost, such Going-Forward Cost.
- 23.4.5.3 An Installed Capacity Supplier's Going-Forward Costs for an ICAP Spot Market Auction shall be determined upon the request of the Responsible Market Party for that Installed Capacity Supplier. The Going-Forward Costs shall be

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

actually plans to mothball or retire it if the Installed Capacity revenues it receives are not sufficient to cover those costs.

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

23.4.5.4.1 An export to an External Control Area or sale to meet an Installed Capacity requirement outside the Mitigated Capacity Zone in which the ICAP Supplier is a Pivotal Supplier is located of Mitigated UCAP (either of the foregoing being referred to as “External Sale UCAP”) may be subject to audit and review by the ISO to assess whether such action constituted physical withholding of UCAP from a Mitigated Capacity Zone. External Sale UCAP shall be deemed to have been physically withheld on the basis of a comparison of the net revenues from UCAP sales that would have been earned by the sale in a Mitigated Capacity Zone of External Sale UCAP. The comparison shall be made for the period for which Installed Capacity is committed (the “Comparison Period”) in each of the shortest term organized capacity markets (the “External Reconfiguration Markets”) for the area and during the period in which the Mitigated UCAP was exported or sold. External Sale ICAP shall be deemed to have been withheld from a Mitigated Capacity Zone if: (1) the Responsible Market Party for the External Sale UCAP could have made all or a portion of the External Sale UCAP

available to be offered in the Mitigated Capacity Zone by buying out of its external capacity obligation through participation in an External Reconfiguration Market; and (2) the net revenues over the Comparison Period from sale in the Mitigated Capacity Zone of the External Sale UCAP that could have been made available for sale in that Locality would have been greater by 15% or more, provided that the net revenues were at least \$2.00/kilowatt-month more than the net UCAP revenues from that portion of the External Sale UCAP over the Comparison Period.

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

and without the inclusion of the External Sale UCAP in those auctions, or (B) the difference between such average price and the clearing price in the External Reconfiguration Market for the relevant Comparison Period, times the total of (1) the amount of Mitigated UCAP not offered or sold as specified above, and (2) all other megawatts of Unforced Capacity in the Mitigated Capacity Zone under common Control with such Mitigated UCAP. The ISO will distribute any amounts recovered in accordance with the foregoing provisions among the LSEs serving Loads in regions affected by the withholding in accordance with ISO Procedures.

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

from sale of the External UCAP Sales capacity in the Mitigated Capacity Zone at the ICAP Spot Auction prices projected by the ISO. The responsibilities of the Market Monitoring Unit that are addressed in this section of the Mitigation Measures are also addressed in Section 30.4.6.2.8 of Attachment O to this Services Tariff.

23.4.5.5 Control of Unforced Capacity shall be rebuttably presumed from (i) ownership of an Installed Capacity Supplier, or (ii) status as the Responsible Market Party for an Installed Capacity Supplier, but may also be determined on the basis of other evidence. For purposes of determining if a Responsible Market Party is a Pivotal Supplier in a Mitigated Capacity Zone except the G-J Locality, the presumption of Control of Unforced Capacity can be rebutted by: (1) the sale of Unforced Capacity in a Capability Period Auction or a Monthly Auction, or (2) demonstrating to the reasonable satisfaction of the ISO that the ability to determine the price and quantity of offers to supply Unforced Capacity has been conveyed to a person or entity that is not an Affiliated Entity without limitation or condition. For purposes of determining if a Responsible Market Party is a Pivotal Supplier in the G-J Locality, the presumption of Control of Unforced Capacity can be rebutted by demonstrating to the reasonable satisfaction of the ISO that the ability to determine the price and quantity of offers to supply Unforced Capacity has been conveyed to a person or entity that is not an Affiliated Entity without limitation or condition, but cannot be rebutted by the sale of Unforced Capacity in a Capability Period or Monthly Auction. For any Mitigated Capacity Zone, if the presumption has not been rebutted, and if two or more Market Parties each have

rights or obligations with respect to Unforced Capacity from an Installed Capacity Supplier that could reasonably be anticipated to affect the quantity or price of Unforced Capacity transactions in an ICAP Spot Market Auction, the ISO may attribute Control of the affected MW of Unforced Capacity from the Installed Capacity Supplier to each such Market Party. Prior to reaching its decision regarding whether the presumption of control of Unforced Capacity has been rebutted, the ISO shall provide its preliminary determination to the Market Monitoring Unit for review and comment. The responsibilities of the Market Monitoring Unit that are addressed in this section of the Mitigation Measures are also addressed in Section 30.4.6.2.9 of Attachment O to this Services Tariff.

#### **23.4.5.6 Audit, Review, and Penalties for Physical Withholding to Increase Market-Clearing Prices**

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

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

the proposal or decision has a legitimate economic justification or is based on an effort to withhold Installed Capacity physically in order to affect prices. The ISO shall provide the preliminary results of its audit or review to the Market Monitoring Unit for its review and comment. The responsibilities of the Market Monitoring Unit that are addressed in this section of the Mitigation Measures are also addressed in Section 30.4.6.2.10 of Attachment O to this Services Tariff.

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

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

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



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

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

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

The ISO shall conduct the audit and review after its receipt of data that it determines is necessary for the audit and review; provided, however, if, at the time the ISO acquires the necessary data, the Market Party has Commenced Repair of the Generator, or the Generator is determined by the ISO to have had a Catastrophic Failure, the Market Party shall not be subject to an audit and review pursuant to Section 23.4.5.6.2.1 of this Services Tariff. A Generator that Commenced Repair while in an ICAP Ineligible Forced Outage but that ceased or

unreasonably delayed that repair shall be subject to audit and review by the ISO pursuant to Section 23.4.5.6.2.1 of this Services Tariff.

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

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

23.4.5.6.2.4 The audit and review pursuant to Sections 23.4.5.6.2.1, and 23.4.5.6.2.2 shall be conducted to determine whether the decision not to repair a Generator had a legitimate economic justification, consistent with competitive behavior; that is, whether the cost of repair, including the risk-adjusted cost of capital, could not reasonably be expected to be recouped over the reasonably anticipated remaining life of the generator. The elements of such audit and review may include, as appropriate, the historical revenue and maintenance cost data for the purpose of the baseline, the duration of the repair, the costs including, but not limited to, capital expenditures necessary to comply with federal or state environmental, safety or reliability requirements that must be met in order to operate the Generator, the anticipated capacity, energy and ancillary services revenues following the repair, the projected costs of operating the Generator following the

repair, any benefits that would be foregone from using the site for a purpose other than as the existing Generator (e.g., repowering), and other relevant data.

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

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

For a requesting Market Party, a determination that a Generator has experienced a Catastrophic Failure shall be made by the ISO by the 160<sup>th</sup> day of the Forced Outage. If the ISO has determined that Exceptional Circumstances will delay the submission of data necessary for the ISO to perform an audit and review pursuant to Section 23.4.5.6.2.1 or 23.4.5.6.2, the ISO shall use reasonable efforts to issue a determination that the Generator has experienced a Catastrophic Failure by the 40th day after receipt of data necessary to conduct the analysis.

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

If the ISO determines that either: i) pursuant to Section 23.4.5.6.1, the proposal or decision by a Market Party to retire or otherwise remove an Installed Capacity Supplier from a

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

#### **23.4.5.7 Buyer-Side Market Power Mitigation Measures for Installed Capacity**

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 23.4.5.7.9.5.2 (*i.e.*, after the revocation of a Competitive Entry Exemption,) Section 23.4.5.7.13.3 (*i.e.*, after the revocation of a Renewable Exemption) or Section 23.4.5.7.14.5 (*i.e.*, after the revocation of a Self Supply 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 23.4.5.7.9.5.2 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 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"). 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.

23.4.5.7.1      Unforced Capacity from an Installed Capacity Supplier that is subject to an Offer Floor may not be used to satisfy any LSE Unforced Capacity Obligation for Mitigated Capacity Zone Load unless such Unforced Capacity is obtained through participation in an ICAP Spot Market Auction.

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

numerical value equal to 75 percent of the Mitigation Net CONE that would be applicable to such supplier in the same two (2) Capability Periods (utilized to compute (x)), (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, (c) it has been determined to be exempt pursuant to Section 23.4.5.7.9 (the “Competitive Entry Exemption”), (d) it has been determined, and in the quantity of MW for which it has been determined, to be exempt pursuant to Section 23.4.5.7.13 (the “Renewable Exemption”), or (e) it has been determined, and in the quantity of MW for which it has been determined, to be exempt pursuant to Section 23.4.5.7.14 (the “Self Supply 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 Sections 23.4.5.7.3.2 or 23.4.5.7.4, as appropriate, for each Examined Facility promptly after it (i) has accepted its SDU Project Cost Allocation and deliverable MW, if any, from the Final Decision Round and (ii) along with all other remaining members, has posted any associated Security pursuant to OATT Section 25 (OATT Attachment S) (for purposes of Section 23.4, a project that “remains a member of a completed Class Year”). The first year value of an Examined Facility’s Unit Net CONE will be calculated pursuant to Section 23.4.5.7, Section 23.4.5.7.2.4, or 23.4.5.7.3.2, will be established at the time such Examined Facility first offers UCAP, and will be

used by the ISO in subsequent mitigation exemption or Offer Floor determinations for Additional CRIS MW. Any determination received pursuant to Sections 23.4.5.7.2, 23.4.5.7.6. or 23.4.5.7.7 shall not become final for the relevant Examined Facility unless the Examined Facility accepts its SDU Project Cost Allocation and deliverable MW, if any, from the Final Decision Round, and posted any associated security pursuant to OATT Section 25, and remains a member of the completed Class Year. The Unit Net CONE or exemption determination pursuant to this Section shall be final on the date the ISO issues a notice to stakeholders that the Class Year decisional process has been completed.

23.4.5.7.2.1 Promptly after Commission acceptance of the first ICAP Demand Curve to apply to a Mitigated Capacity Zone, the ISO shall make an exemption and Offer Floor determination for any NCZ Examined Project that is in a completed Class Year and has received CRIS, unless exempt pursuant to section 23.4.5.7.6 or 23.4.5.7.8.

23.4.5.7.2.2 The ISO shall make an “Indicative Buyer-Side Mitigation Exemption Determination” for any NCZ Examined Project if (i) the Commission has accepted an ICAP Demand Curve for the Mitigated Capacity Zone that will become effective when the Mitigated Capacity Zone is first effective, or (ii) if the Commission has not accepted the first ICAP Demand Curve to apply specifically to the Mitigated Capacity Zone in which the NCZ Examined Project is located, provided the ISO has filed an ICAP Demand Curve pursuant to Services Tariff Section 5.14.1.2.11. The Indicative Buyer-Side Mitigation Exemption Determination shall be computed using such ICAP Demand Curve for the

Mitigated Capacity Zone concurrent with the determinations the ISO makes for Examined Facilities pursuant to Sections 23.4.5.7.3.2 and 23.4.5.7.3.3. The ISO shall recompute the Indicative Buyer-Side Mitigation Exemption Determination promptly after Commission acceptance of the first ICAP Demand Curve for the applicable Locality provided that such NCZ Examined Project (i) received CRIS if the Class Year completed at the time the Commission accepts the Demand Curve, or (ii) has not been removed from the Class Year Deliverability Study if the Class Year is not completed. The Indicative Buyer-Side Mitigation Exemption Determination is for informational purposes only. The exemption or Offer Floor for an NCZ Examined Project to which this Section applies shall be determined for such projects receiving CRIS using the Commission-accepted Locality Demand Curve.

23.4.5.7.2.3 Any NCZ Examined Project not exempt pursuant to 23.4.5.7.8 shall provide data and information requested by the ISO by the date specified by the ISO, in accordance with the ISO Procedures.

The ISO shall compute the reasonably anticipated ICAP Spot Market Auction forecast price based on Expected Retirements (as defined in subsection 23.4.5.7.2.3.1), plus each NCZ Examined Project.

23.4.5.7.2.3.1 Expected Retirements shall be determined based on any Generator that provided written notice to the New York State Public Service Commission that it intends to retire, plus any UDR facilities, or any Generator 2 MW or less that provided written notice to the ISO that it intends to retire.



23.4.5.7.2.3.2 The Load forecast shall be based on data used to develop the Indicative Locational Minimum Installed Capacity Requirement, and Special Case Resources based on data for the Mitigated Capacity Zone that is part of the Special Case Resource data set forth in the most-recently published Load and Capacity Data (Gold Book).

23.4.5.7.2.4 The ISO shall post on its website the inputs of the reasonably anticipated ICAP Spot Market Auction forecast prices determined in accordance with 23.4.5.7.2.3 (except for the posting of an input which would disclose Confidential Information), the Expected Retirements, and the NCZ Examined Projects, before the exemption or Offer Floor determination under this Section.

When the ISO is evaluating more than one NCZ Examined Project concurrently, the ISO shall recognize in its computation of the anticipated ICAP Spot Market Auction forecast price that Generators or UDR facilities will clear from lowest to highest, using for each NCZ Examined Project the lower of (i) the first year value of its Unit Net CONE, or (ii) the numerical value equal to 75 percent of the Mitigation Net Cone, then inflated in accordance with 23.4.5.7 for each of the year two and year three of the Mitigation Study Period.

23.4.5.7.2.5 When evaluating NCZ Examined Projects pursuant to Sections 23.4.5.7.2.1 or 23.4.5.7.2.2, the ISO shall seek comment from the Market Monitoring Unit on matters relating to the determination of price projections and cost calculations. The ISO shall inform the NCZ Examined Project of the Offer Floor or Offer Floor exemption determination or Indicative Buyer-Side Mitigation Exemption Determination promptly. The responsibilities of the Market

Monitoring Unit that are addressed in this Section 23.4.5.7.2.5 are also addressed in Section 30.4.6.2.12 of Attachment O to this Services Tariff.

23.4.5.7.2.6 If an NCZ Examined Project under the criteria in 23.4.5.7.2.1 or 23.4.5.7.2.2 does not provide all of the requested data by the date specified by the ISO, the MW of CRIS received at that time by the project shall be subject to the Mitigation Net CONE Offer Floor for the period determined by the ISO in accordance with Section 23.4.5.7.

23.4.5.7.2.7 An NCZ Examined Project or Examined Facility located in more than one Mitigated Capacity Zone shall be evaluated pursuant to the tests in Section 23.4.5.7.2 (a) and (b) or 23.4.5.7.3 (as applicable), calculating Mitigation Net CONE for the smallest Mitigated Capacity Zone that contains the Load Zone in which such NCZ Examined Project or Examined Facility is electrically located.

23.4.5.7.3 The ISO shall make such exemption and Unit Net CONE determination for each “Examined Facility” (collectively “Examined Facilities”) which term shall mean (I) each proposed new Generator and proposed new UDR project, and each existing Generator that has ERIS only and no CRIS, that is a member of the Class Year that requested CRIS, or that requested an evaluation of the transfer of CRIS rights from another location, in the Class Year Facilities Study commencing in the calendar year in which the Class Year Facility Study determination is being made (the Capability Periods of expected entry as further described below in this Section, the “Mitigation Study Period”), (II) each (i) existing Generator that did not have CRIS rights, and (ii) proposed new Generator and proposed new UDR project, that is an expected recipient of transferred CRIS rights at the same

location regarding which the ISO has been notified by the transferor or the transferee of a transfer pursuant to OATT Attachment S Section 25.9.4 that will be effective on a date within the Mitigation Study Period, (III) each proposed new Generator that (a) is either (i) in the ISO Interconnection Queue, in a Class Year prior to 2009/10, and has not commenced commercial operation or been canceled, and for which the ISO has not made an exemption or Unit Net CONE determination, or (ii) not subject to a deliverability requirement (and therefore, is not in a Class Year) and (b) provides specific written notification to the ISO no later than the date identified by the ISO, that it plans to commence commercial operation and offer UCAP in a month that coincides with a Capability Period of the Mitigation Study Period. The term “Examined Facilities” does not include any facility exempt from an Offer Floor pursuant to the provisions of Section 23.4.5.7.

23.4.5.7.3.1 The commercial operation date to be used by the ISO solely for purposes of identifying the Examined Facilities will be determined by the ISO at the time of the Class Year Study as the date most-recently (A) identified by the project to the ISO in the Interconnection Facilities Study process or (B) reflected in the Interconnection Queue, or if neither of the foregoing is applicable, then the date identified by the project to the Transmission Owner to which it has proposed interconnecting.

23.4.5.7.3.2 The ISO shall compute the reasonably anticipated ICAP Spot Market Auction forecast price for any Mitigated Capacity Zone based on Expected

Retirements (as defined in this subsection 23.4.5.7.3.2), plus each Examined Facility in 23.4.5.7.3 (I), (II), and (III).

Expected Retirements shall be determined based on any Generator that provided written notice to the New York State Public Service Commission that it intends to retire, plus any UDR facility or Generator 2 MW or less that provided written notice to the ISO that it intends to retire.

The load forecast and Special Case Resources shall be as set forth in the most-recently published Load and Capacity Data (Gold Book).

Before the commencement of the Initial Decision Period for the Class Year, the ISO shall post on its website the inputs of the reasonably anticipated ICAP Spot Market Auction forecast prices determined in accordance with 23.4.5.7.3.2, the Expected Retirements, and the Examined Facilities, before the Initial Project Cost Allocation, subject to any restrictions on the disclosure of Confidential Information or Critical Energy Infrastructure Information.

When the ISO is evaluating more than one Examined Facility concurrently, the ISO shall recognize in its computation of the anticipated ICAP Spot Market Auction forecast price that Generators or UDR facilities will clear from lowest to highest, using for each Examined Facility the lower of (i) the first year value of its Unit Net CONE, or (ii) the numerical value equal to 75 percent of the Mitigation Net Cone, then inflated in accordance with 23.4.5.7 for each of the year two and year three of the Mitigation Study Period.

23.4.5.7.3.3 All developers, Interconnection Customers, and Installed Capacity

Suppliers for any Examined Facility that do not request CRIS shall provide data

and information requested by the ISO by the date specified by the ISO, in accordance with the ISO Procedures. For any such Examined Facility that is in a Class Year but that only has ERIS rights after the Project Cost Allocation process is complete, the ISO shall utilize the data first provided in its analysis of the Unit Net CONE in its review of the project in any future Class Year in which the Generator or UDR facility requests CRIS. The ISO shall determine the reasonably anticipated Unit Net CONE less the costs to be determined in the Project Cost Allocation or Revised Project Cost Allocation, as applicable, prior to the commencement of the Initial Decision Period Class Year, and shall provide to the Examined Facility the ISO's initial determination of an exemption or the Offer Floor. On or before the three (3) days prior to the ISO's issuance of the Revised Project Cost Allocation, the ISO will revise its forecast of ICAP Spot Market Auction prices for the Capability Periods in the Mitigation Study Period based on the Examined Facilities that remain in the Class Year for CRIS and the Examined Facilities that meet 23.4.5.7.3 (II) or (III). When evaluating Examined Capacity pursuant to this Section 23.4.5.7, the ISO shall seek comment from the Market Monitoring Unit on matters relating to the determination of price projections and cost calculations. The ISO shall provide to each project its revised price forecast and a revised initial determination for a Subsequent Decision Period no later than the ISO's issuance of a Revised Project Cost Allocation. If a project remains a member of a completed Class Year, the ISO shall inform the project of the final determination of the Offer Floor or whether the Offer Floor exemption specified above in this Section is applicable as soon as practicable after the date the ISO

issues a notice to stakeholders that the Class Year decisional process has been completed, in accordance with methods and procedures specified in ISO Procedures. The responsibilities of the Market Monitoring Unit that are addressed in this section of the Mitigation Measures are also addressed in Section 30.4.6.2.12 of Attachment O to this Services Tariff.

23.4.5.7.3.4 If an Examined Facility under the criteria in 23.4.5.7.3 (II) or (III) has not provided written notice to the ISO on or before the date specified by the ISO, or any Examined Facility required to be reviewed does not provide all of the requested data by the date specified by the ISO, the proposed Capacity shall be subject to the Mitigation Net CONE Offer Floor for the period determined by the ISO in accordance with Section 23.4.5.7.

23.4.5.7.3.5 Except as specified in Section 23.4.5.7.6 with respect to Additional CRIS MW, an Examined Facility for which an exemption or Offer Floor determination has been rendered may only be reevaluated for an exemption or Offer Floor determination if it meets the criteria in Section 23.4.5.7.3 (I) and was not previously in a Class Year at the time of the completion of the Class Year either (a) enters a new Class Year and requests CRIS or (b) intends to receive transferred CRIS rights at the same location. An Examined Facility under the criteria in Section 23.4.5.7.3 (II) that did receive CRIS rights will be bound by the determination rendered and will not be reevaluated, and an Examined Facility under the criteria in Section 23.4.5.7.3 (III) will not be reevaluated.

23.4.5.7.3.6 If an Installed Capacity Supplier demonstrates to the reasonable satisfaction of the ISO that the value equal to the first of the three year values in

the Mitigation Study Period that comprise its Unit Net CONE is less than any Offer Floor that would otherwise be applicable to the Installed Capacity Supplier, then its Offer Floor shall be reduced to a numerical value equal to the first year of its Unit Net CONE.

23.4.5.7.3.7 If the Installed Capacity Supplier first offers UCAP prior to the first Capability Year of the Mitigation Study Period for which it was evaluated, its Offer Floor shall be reduced using the inflation rate component identified in Section 23.4.5.7. If the Installed Capacity Supplier first offers UCAP after the first Capability Year of the Mitigation Study Period for which it was evaluated, its Offer Floor shall be increased using the inflation rate component identified in 23.4.5.7.

23.4.5.7.4 For purposes of Sections 23.4.5.7.2(b) and 23.4.5.7.6(b), the ISO shall identify (A) the Unit Net CONE projected for a Mitigation Study Period using: (i) the inflation rate component of the escalation factor of the relevant ICAP Demand Curves for any year for which there are accepted ICAP Demand Curves, and (ii) the inflation rate component of the escalation factor of the last year of accepted relevant ICAP Demand Curves if relevant ICAP Demand Curves do not apply to the year; and (B) the price on the ICAP Demand Curve projected for a Mitigation Study Period using (i) the escalation factor of the relevant ICAP Demand Curves for any year for which there are accepted ICAP Demand Curves; and (ii) the escalation factor of the last year of accepted ICAP Demand Curves if relevant ICAP Demand Curves do not apply to the year. For purposes of Section

23.4.5.7.2(a), the ISO shall use the escalation factor of the relevant ICAP Demand Curves.

23.4.5.7.5 A Mitigated Capacity Zone Installed Capacity Supplier that is a Special Case Resource shall be subject to an Offer Floor beginning with the month of its initial offer to supply Installed Capacity, and until its offers of Installed Capacity have been accepted in the ICAP Spot Market Auction at a price at or above its Offer Floor for a total of twelve, not necessarily consecutive, months. A Special Case Resource shall be exempt from the Offer Floor if (a) it is located in a Mitigated Capacity Zone except New York City and is enrolled as a Special Case Resource with the ISO for any month within the Capability Year that includes March 31 in an ICAP Demand Curve Reset Filing Year in which the ISO proposes a New Capacity Zone that includes the location of the Special Case Resource, or (b) the ISO projects that the ICAP Spot Market Auction price will exceed the Special Case Resource's Offer Floor for the first twelve months that the Special Case Resource reasonably anticipated to offer to supply UCAP. If a Responsible Interface Party fails to provide Special Case Resource data that the ISO needs to conduct the calculations described in the two preceding sentences by the deadline established in ISO Procedures, the Special Case Resource will cease to be eligible to offer or sell Installed Capacity. The Offer Floor for a Special Case Resource shall be equal to the minimum monthly payment for providing Installed Capacity payable by its Responsible Interface Party, plus the monthly value of any payments or other benefits the Special Case Resource receives from a third party for providing Installed Capacity, or that is received by the



Responsible Interface Party for the provision of Installed Capacity by the Special Case Resource. The Offer Floor calculation for a Special Case Resource located in New York City shall include any payment or the value of other benefits that are awarded for offering or supplying Mitigated Capacity Zone Capacity unless such payment or the value of other benefits is ruled exempt by Commission order in response to a request for exemption filed under section 206 of the Federal Power Act by New York State or a government instrumentality of New York State. The Offer Floor calculation for a Special Case Resource located in a Mitigated Capacity Zone except New York City shall include any payment or the value of other benefits that are awarded for offering or supplying Mitigated Capacity Zone Capacity, except for payments or the value of other benefits provided under programs administered or approved by New York State or a government instrumentality of New York State. Offers by a Responsible Interface Party at a PTID shall be not lower than the highest Offer Floor applicable to a Special Case Resource providing Installed Capacity at that PTID. Such offers may comprise a set of points for which prices may vary with the quantity offered. If this set includes megawatts from a Special Case Resource(s) with an Offer Floor, then at least the quantity of megawatts in the offer associated with each Special Case Resource must be offered at or above the Special Case Resource's Offer Floor. Offers by a Responsible Interface Party shall be subject to audit to determine whether they conformed to the foregoing Offer Floor requirements. If a Responsible Interface Party together with its Affiliated Entities submits one or more offers below the applicable Offer Floor, and such offer or offers cause or

contribute to a decrease in UCAP prices in the Mitigated Capacity Zone of 5 percent or more, provided such decrease is at least \$.50/kilowatt-month, the Responsible Interface Party shall be required to pay to the ISO an amount equal to 1.5 times the difference between the Market-Clearing Price for the Mitigated Capacity Zone in the ICAP Spot Auction for which the offers below the Offer Floor were submitted with and without such offers being set to the Offer Floor, times the total amount of UCAP sold by the Responsible Interface Party and its Affiliated Entities in such ICAP Spot Auction. If an offer is submitted below the applicable Offer Floor, the ISO will notify the Responsible Market Party and the notification will identify the offer, the Special Case Resource, the price impact, and the penalty amount. The ISO will provide the notice reasonably in advance of imposing such penalty. The ISO shall distribute any amounts recovered in accordance with the foregoing provisions among the entities, other than the entity subject to the foregoing payment requirement, supplying Installed Capacity in regions affected by one or more offers below an applicable Offer Floor in accordance with ISO Procedures.

**23.4.5.7.6 Exemption and Offer Floor Determinations for Additional CRIS MW:**

All requests for Additional CRIS MW located in a Mitigated Capacity Zone, in a Class Year or through a transfer, shall be evaluated for a buyer-side mitigation exemption or Offer Floor in accordance with this Section. Additional CRIS MW obtained in a Class Year or obtained through a transfer at the same location shall be exempt from an Offer Floor (a) if the price that is equal to (x) the 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 Class Year (the “Starting Capability Period”) is projected by the ISO, with the inclusion of the Additional CRIS MW, to be higher than (y) the highest Offer Floor based on the Mitigation Net CONE that would be applicable to such Additional CRIS MW in the same two (2) Capability Periods (utilized to compute (x)); (b) if 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, with the inclusion of the Installed Capacity Supplier’s Additional CRIS MW, to be higher than the reasonably anticipated Unit Net CONE computed in accordance with (i) and (ii) of Section 23.4.5.7.6.1 for the Installed Capacity Supplier’s Additional CRIS MW, or (c) for the quantity of MW determined to be exempt pursuant to Section 23.4.5.7.13 or 23.4.5.7.14 (*i.e.*, a Self Supply Exemption can be received for some Additional CRIS MW and a Renewable Exemption for other Additional CRIS MW that comprise all or part of the same request for Additional CRIS MW in a given Class Year.

23.4.5.7.6.1 For Additional CRIS MW that have an exemption or Offer Floor determined pursuant to this Section 23.4.5.7.6, the ISO shall compute Unit Net CONE as follows:

- (i) Unit Net CONE for the Additional CRIS MW shall be based on the Additional CRIS MW and the costs and revenues of and associated with the Additional CRIS MW if:

- (a) the most recent prior determination concluded that the Capacity for which the Examined Facility accepted CRIS was exempt from the Offer Floor pursuant to Section 23.4.5.7.2(b), 23.4.5.7.6(b), 23.4.5.7.7, or 23.4.5.7.8; or
  - (b) at the time of an Examined Facility's request for Additional CRIS MW: (1) it has accepted CRIS MW equal to, or greater than, 95 percent of the Examined Facility's maximum MW of electrical capability, net of auxiliary load, at an ambient temperature of 93° F as determined in accordance with ISO Procedures and (2) the amount of Cleared UCAP is greater than or equal to the amount of UCAP calculated pursuant to Section 23.4.5.7.6.3; or
  - (c) the Examined Facility's Total Evaluated CRIS MW includes exempted CRIS MW for which the Examined Facility did not receive a Unit Net CONE determination and thus did not provide data to the ISO because the determination for the exempt CRIS MW received was not based on Unit Net CONE and was made prior to November 27, 2010.
- (ii) or in all other cases, Unit Net CONE, shall be the greater of two values, one based on the Total Evaluated CRIS MW, and the costs and revenues of the Total Evaluated CRIS MW, and one based on the Additional CRIS MW, and the costs and revenues of the Additional CRIS MW.

23.4.5.7.6.2 When calculating the Unit Net CONE of the Total Evaluated CRIS MW for an Examined Facility, the ISO shall utilize the Examined Facility's first year Unit Net CONE determined pursuant to Section 23.4.5.7 and Sections 23.4.5.7.2.4 or 23.4.5.7.3.2, adjusted to the year's dollars at the time of an Examined Facility's request for Additional CRIS MW using: (i) the relevant value from the price

index for non-farm business output published in the Survey of Current Business by the Department of Commerce's Bureau of Economic Analysis ("BEA Non-Farm Price Index"), or its successor; or (ii) the inflation rate component of the escalation factor of the most currently accepted ICAP Demand Curves for any future year which is beyond the published BEA Non-Farm Price Index, or its successor.

23.4.5.7.6.3 For purposes of making the determination pursuant to Section 23.4.5.7.6.1(i)(b)(2), the amount of Cleared UCAP shall be compared to an amount of UCAP calculated as the product of the CRIS MW held by the Examined Facility immediately prior to its request for Additional CRIS MW and (1-EFORd). Except as specified in the next paragraph, for purposes of this calculation, if the Examined Facility is a Generator, its EFORd shall be derived using the data in the 5-year average NERC-GADS Generating Availability Report, or its successor, for the main class of the unit (hereinafter the "Class Average EFORd") that is current at the time of the request for Additional CRIS MW, when available. If the Examined Facility is an Intermittent Power Resource or Limited Control Run-of-River Hydro Resource, the ISO shall apply a 5-year average derating factor based on ISO data to establish the EFORd to be utilized in the calculation pursuant to this paragraph. In all other cases, the ISO will apply the 5-year average derating factor from the ICAP/UCAP translation, for the smallest Mitigated Capacity Zone in which the resource is located at the time of the request. The EFORd applied by the ISO at the time that the Examined Facility first offers or certifies UCAP in an Installed Capacity auction ("Initial

Entry EFORD”) shall be used instead of Class Average EFORD when it is higher (*i.e.*, a greater outage rate) than the Class Average EFORD calculated at the time of the Examined Facility’s request for Additional CRIS MW.

23.4.5.7.6.4 Additional CRIS MW shall be subject to the Mitigation Net CONE Offer Floor for the period specified in Section 23.4.5.7, for any Examined Facility whose Total Evaluated CRIS MW includes CRIS MW that are or have ever been subject to the Mitigation Net CONE Offer Floor, pursuant to Section 23.4.5.7.3.4.

23.4.5.7.6.5 The Offer Floor for Additional CRIS MW shall be equal to the lesser of:  
(a) the Unit Net CONE for the Additional CRIS MW; or (b) a numerical value equal to 75 percent of the Mitigation Net CONE translated into a seasonally adjusted monthly UCAP value for the Additional CRIS MW.

23.4.5.7.6.6 The results of this exemption determination shall apply only to the Additional CRIS MW and shall not alter or affect any prior exemption or Offer Floor determination for the Examined Facility. The Additional CRIS MW for which CRIS is received shall be bound by the determination rendered and will not be reevaluated unless the Examined Facility enters a new Class Year for the Additional CRIS MW.

23.4.5.7.6.7 When the ISO makes a mitigation exemption or Offer Floor determination for an Examined Facility’s Additional CRIS MW for an Installed Capacity Supplier other than that to which the Unit Net CONE determination for the Examined Facility was rendered, the ISO shall provide such Installed Capacity Supplier with the Examined Facility’s first year Unit Net CONE value if the Installed Capacity Supplier (a) requests that information, and (b) represents that it:

(i) will use that information solely for purposes of considering a request for Additional CRIS MW for the Examined Facility, and (ii) will not share that information with or make it available to any other person except those that are assisting it in considering a request for Additional CRIS MW.

23.4.5.7.6.8 The ISO shall post on its website the determination of whether the project is exempt or non-exempt from an Offer Floor as soon as the determination is final. Concurrent with the ISO's posting, the Market Monitoring Unit shall publish a report on the ISO's determination, as further specified in Section 30.4.6.2.12 of Attachment O to this Services Tariff.

23.4.5.7.7 (a) An In-City Installed Capacity Supplier that is not a Special Case Resource shall be exempt from an Offer Floor if it was an existing facility on or before March 7, 2008. (b) A Generator or UDR project that was an existing facility on or before June 29, 2012, which: (i) is in a Mitigated Capacity Zone except New York City, and (ii) was grandfathered from the deliverability requirement at a certain quantity of MW of CRIS pursuant to Section 25.9.3.1 of OATT Attachment S ("Deliverability Grandfathering Process") shall be exempt from an Offer Floor for the MW quantity of CRIS that was provided through the Deliverability Grandfathering Process plus an additional 2 MW obtained through Section 30.3.2.6 of Attachment X to the OATT. If the Generator or UDR project subsequently received CRIS above the quantity established through the Deliverability Grandfathering Process, this exemption shall not apply to any such increase above the 2 MW allowed in Section 30.3.2.6 of Attachment X to the OATT.

23.4.5.7.8 For any Mitigated Capacity Zone except New York City:

- (I) Any existing or proposed Generator or UDR project that has the characteristics specified in this Section 23.4.5.7.8(I) shall be exempt from an Offer Floor with respect to the MW of CRIS that it received at the time, or for which it satisfied the specific CRIS transfer requirements stated in this Section. To be eligible for an exemption under this Section: (a) the existing or proposed Generator or UDR project's location must be included in the ISO's March 31 Filing in the ICAP Demand Curve Reset Filing Year in which a Mitigated Capacity Zone is first applied to such location; (b) prior to that March 31 Filing the existing or proposed Generator or UDR project must have both: (i) Commenced Construction and (ii) either (1) received the MW of CRIS in a Class Year that was completed or (2) submitted to the ISO an Interconnection Request that specifically states that the Generator or UDR project will be requesting or has requested a transfer of a specific MW quantity of CRIS at the same location in accordance with Section 25.9.4 of OATT Attachment S (provided that the transfer is ultimately approved by the ISO and consummated); and (c) the existing or proposed Generator or UDR project must demonstrate to the ISO no later than the deadline established by the ISO that it satisfies the requirements of (b) (i) and (ii) above; and
- (II) An existing or proposed Generator or UDR project that is not subject to a deliverability requirement (and therefore, is not in a Class Year and does not receive CRIS MW) shall be exempt from an Offer Floor if it meets the following requirements prior to the ISO's March 31 Filing in an ICAP Demand Curve Reset Filing Year in which a Mitigated Capacity Zone is first applied to such location:



(a) has Commenced Construction, (b) has an effective interconnection agreement, and (c) provides specific written notification to the ISO that it meets requirements (a) and (b) of this subsection 23.4.5.7.8(II) no later than the deadline established by the ISO.

The ISO shall consult with the Market Monitoring Unit prior to determining whether an existing or proposed Generator or UDR project has Commenced Construction. Prior to the ISO making its determination, the Market Monitoring Unit shall provide the ISO a written opinion and recommendation regarding whether an existing or proposed Generator or UDR project Commenced Construction. The responsibilities of the Market Monitoring Unit that are addressed in this section of the Mitigation Measures are also addressed in Section 30.4.6.2.12 of Attachment O. The ISO shall only make a determination pursuant to this Section for an existing or proposed Generator or UDR project for the Mitigated Capacity Zone's first application to the location of the project. 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 pursuant to this Section 23.4.5.7.8.

#### **23.4.5.7.9 Competitive Entry Exemption**

##### **23.4.5.7.9.1 Eligibility**

23.4.5.7.9.1.1 A proposed new Generator or UDR project that becomes 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 meets each of the

following requirements: (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 23.4.5.7.9, the “Entry Date”) shall have, (i) a direct or indirect “non-qualifying contractual relationship,” as defined in Section 23.4.5.7.9.1.2, 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 (ii) an unexecuted agreement, written or unwritten, with a Non-Qualifying Entry Sponsor that would support the development of the project, except those agreements that would not constitute a “non-qualifying contractual relationship,” as set forth in Section 23.4.5.7.9.1.3(i) – (viii), (b) is not itself, and is not an Affiliate of, a Non-Qualifying Entry Sponsor.

23.4.5.7.9.1.2 For purposes of Section 23.4.5.7.9, 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 23.4.5.7.9, 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 23.4.5.7.9, an indirect “non-qualifying contractual relationship” is any contract between the Generator or UDR project and an entity (for purposes of this

Section 23.4.5.7.9, a “third party”) if the third party has a non-qualifying contractual relationship with a Non-Qualifying Entry Sponsor, the recital, purpose, or subject of which includes, or has the effect of including, this Generator or UDR project.

23.4.5.7.9.1.3 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 10 of the New York State Public Service Law or orders issued pursuant to Articles VII or 10); (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 or commercial siting incentives, such as tax abatements or financing incentives, provided the PILOT agreement or incentives are generally available to industrial

or commercial entities; (vii) a service agreement for natural gas entered into under a tariff accepted by a regulatory body with jurisdiction over that service; or (viii) 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. 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 (viii) of this Section a non-qualifying contractual relationship.

23.4.5.7.9.1.4 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 23.4.5.7.9.2, 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 30.4.6.2.12 of Attachment O to this Services Tariff.

#### **23.4.5.7.9.2 Certifications and Acknowledgements**

23.4.5.7.9.2.1 A Generator or UDR project requesting a Competitive Entry Exemption shall submit to the ISO in accordance with ISO Procedures, and shall be legally bound by, the following Certification and Acknowledgement form executed by a duly authorized officer:

## **CERTIFICATION AND ACKNOWLEDGMENT**

I [NAME & TITLE] hereby certify on behalf of myself, [NAME OF PROJECT], and [NAME OF DEVELOPER] that each of the following statements is true and correct:

1. I am an officer whose responsibilities include the development of the [EXAMINED FACILITY], New York Independent System Operator, Inc.'s ("NYISO") Interconnection queue position Number [INSERT NUMBER] (the "Project").
2. I am duly authorized to make representations concerning the Project, including each of the certifications and acknowledgements that I have made in this document.
3. I hereby [REQUEST ON BEHALF OF/ACKNOWLEDGE THE PRIOR SUBMISSION IN THIS CLASS YEAR BY] the Developer a Competitive Entry Exemption for the Project.
4. I have reviewed and I understand the requirements established under the NYISO Market Administration and Control Area Services Tariff ("Services Tariff") related to a "Competitive Entry Exemption" pursuant to Section 23.4.5.7.9.
5. I have personal knowledge of the facts and circumstances supporting the Project's request and eligibility for a Competitive Entry Exemption as of the date of this Certification and Acknowledgment, including all data and other information submitted by the Project to the NYISO.
6. To the best of my knowledge and having conducted due diligence that is current as of the date of this Certification there [ARE/ARE NOT ANY] direct or indirect contractual relationships for the Project with a "Non-Qualifying Entry Sponsor," as those terms are defined in Section 23.4.5.7.9 of the Services Tariff. I have listed all contracts with Non-Qualifying Entry Sponsors on Schedule 1 to this Certification.
7. If the Answer to (6) is that there are one or more direct or indirect contractual relationships for the Project with a Non-Qualifying Entry Sponsor, then I certify that to the best of my knowledge and having conducted due diligence that they are "allowable contracts" as set forth in Section 23.4.5.7.9.1.3(i) – (viii) of the Services Tariff.
8. To the best of my knowledge and having conducted due diligence that is current as of the date of this Certification, (a) no unexecuted agreements, written or unwritten, with a Non-Qualifying Entry Sponsor exist that would support the development of the Project except those agreements that would not constitute a non-qualifying contractual relationship, as set forth in Section 23.4.5.7.9.1.3(i) – (viii) of the Services Tariff, and (b) all agreements that would not constitute a non-qualifying contractual relationship are on Schedule 1 to this certification.

9. To the best of my knowledge and having conducted due diligence, the Project is not a Non-Qualifying Entry Sponsor, and it is not an “Affiliate” (as Affiliate is defined in Section 2.1 of the Services Tariff) of, a Non-Qualifying Entry Sponsor.
10. The Project shall provide any information or cooperation requested by the NYISO in connection with the Project’s request for a Competitive Entry Exemption.
11. All parents or Affiliates of the Project shall provide any information or cooperation requested by the ISO.

I hereby acknowledge on behalf of myself, [INSERT NAME OF PROJECT], and [NAME OF DEVELOPER] that:

- a. The submission of false, misleading, or inaccurate information, or the failure to submit information requested by the NYISO related to the Project’s request for a Competitive Entry Exemption, including but not limited to information contained or submitted in this Certification and Acknowledgement on behalf of the Project, shall constitute a violation of Section 4.1.7 of the Services Tariff, and subject to the Commission’s review, a violation of the Commission’s regulations and Section 316A of the Federal Power Act.
- b. If the Project submits false, misleading, or inaccurate information, or fails to submit requested information to the NYISO, including but not limited to information contained or submitted in this Certification and Acknowledgement on behalf of the Project, it shall cease to be eligible for a Competitive Entry Exemption and, if the Project has already received a Competitive Entry Exemption, that exemption shall be subject to revocation by the NYISO or the Commission after which the Project shall be subject to an Offer Floor set at the Mitigation Net CONE Offer Floor (such value calculated based on the date it first Offers UCAP, in accordance with Section 23.4.5.7.3.7, and adjusted annually in accordance with Section 23.4.5.7 of the Services Tariff,) starting with the date of the revocation pursuant to Section 23.4.5.7.9.5.3 of the Services Tariff.
- c. If the Project submits false, misleading, or inaccurate information, or fails to submit requested information to the NYISO, including but not limited to information contained or submitted in the Certification and Acknowledgement on behalf of the Project, it may be subject to civil penalties that may be imposed by the Commission for violations of Section 4.1.7 of Services Tariff, the Commission’s rules, and/or Section 316A of the Federal Power Act.

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[PRINT NAME]

[DATE]

Subscribed and sworn to before me  
this [ ] day of [MONTH] [YEAR].

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

**PROJECT NAME] SCHEDULE 1 CERTIFICATION AND ACKNOWLEDGEMENT  
[DATE]**

**Parties to agreement   Date Executed   Effective Date   Date Performance Commences**

23.4.5.7.9.2.2 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.

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

23.4.5.7.9.2.4 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.

23.4.5.7.9.2.5 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.

23.4.5.7.9.2.6 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 23.4.5.7.9.5.

23.4.5.7.9.2.7 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 23.4.5.7.9.5 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 (such value based on the date it first offers UCAP, in accordance with Section 23.4.5.7.3.7, and adjusted annually in accordance with Section 23.4.5.7 of the Services Tariff.)

### **23.4.5.7.9.3 Timing for Requests, Required Submittals, and Withdrawals**

23.4.5.7.9.3.1 The executed Certification and Acknowledgement form required by Section 23.4.5.7.9.2 shall be submitted concurrent with a request for a Competitive Entry Exemption. The ISO may request additional information and updated 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 23.4.5.7.9, shall be required to submit an executed Certification and



Acknowledgement form set forth in Section 23.4.5.7.9.2 of the Services Tariff, updated as appropriate, upon its Entry Date.

23.4.5.7.9.3.2 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 deadline by which a facility must notify the ISO of its election to enter the Class Year, such date as set forth in Section 25.5.9 OATT Attachment S. A Generator or UDR project that requests a Competitive Entry Exemption in a Class Year may not also request a Renewable Exemption or Self Supply Exemption. A Generator or UDR project that remains a member of a completed Class Year if such Class Year is Class Year 2012 or prior Class Year, 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 the Initial Decision Period within which a Developer must provide an Acceptance Notice or Non-Acceptance Notice to the ISO in response to the first Project Cost Allocation issued by the ISO to the Developer.

23.4.5.7.9.3.3 A Generator or UDR project that submits a request for a Competitive Entry Exemption, including the required Certification and Acknowledgement, responses to information requests, and resubmittal, but (a) enters into a “non-qualifying contractual relationship” or (b) enters into an unexecuted agreement, written or unwritten, with a Non-Qualifying Entry Sponsor that would support the development of the Project, except those agreements identified in 23.4.5.7. 9.1.3

that would not constitute 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 23.4.5.7.9.3.3 shall be subject to the Mitigation Net CONE Offer Floor (such value calculated based on its the date it first offers UCAP, in accordance with Section 23.4.5.7.3.7, and adjusted annually in accordance with Section 23.4.5.7 of the Services Tariff,) but will not be subject to the provisions of Section 23.4.5.7.9.5.

#### **23.4.5.7.9.4 Notifications**

23.4.5.7.9.4.1 The ISO shall post on its website a list of each Generator or UDR project that requests a Competitive Entry Exemption that becomes a member of the Class Year, promptly after the deadline set forth in Section 30.8.1 of the OATT (Attachment X) (by which the ISO must receive the Developer’s executed Class Year Interconnection Facilities Study Agreement and deposit.) The ISO 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.

23.4.5.7.9.4.2 Concurrent with the ISO posting of its final determination, the Market Monitoring Unit shall publish a report on the ISO’s determination in accordance with Section 30.4.6.2.12 of Attachment O to this Services Tariff.

#### **23.4.5.7.9.5 Revocation**

23.4.5.7.9.5.1 The submission of false, misleading, or inaccurate information, or the failure to submit requested information in connection with a request for a Competitive Entry Exemption shall constitute a violation of the Services 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).

23.4.5.7.9.5.2 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, and provided 30 days written notice has been given to the Generator or UDR project (such notice to the extent practicable,) the ISO may revoke the Competitive Entry Exemption and apply the Mitigation Net CONE Offer Floor (such value calculated based on the date it first offers UCAP, in accordance with Section 23.4.5.7.3.7, and adjusted annually in accordance with Section 23.4.5.7 of the Services Tariff.) Prior to the revocation of a Competitive Entry Exemption and the submission of a report to the Commission's Office of Enforcement (or any successor to its responsibilities,) the ISO shall provide the Generator or UDR project an opportunity to explain any statement, information, or action. The ISO cannot revoke the Competitive Entry Exemption until after the 30 days written notice period has expired, unless ordered to do so by the Commission.

23.4.5.7.10 The ISO shall post on its website the identity of the project in a Mitigated Capacity Zone and the determination of either exempt or non-exempt as soon as the determination is final. Concurrent with the ISO's posting, the Market

Monitoring Unit shall publish a report on the ISO's determinations, as further specified in Section 30.4.6.2.12 of Attachment O to this Services Tariff.

23.4.5.7.11 Mitigated UCAP that is subject to an Offer Floor shall remain subject to the requirements of Section 23.4.5.4, and if the Offer Floor is higher than the applicable offer cap shall submit offers not lower than the applicable Offer Floor.

**23.4.5.7.12 Reserved for future use.**

**23.4.5.7.13 Renewable Exemption**

**23.4.5.7.13.1 Eligibility**

23.4.5.7.13.1.1 An Examined Facility or an NCZ Examined Project, may request to be evaluated for a Renewable Exemption in the amount of its CRIS MW requested in the Class Year or which it expects to receive through a transfer of CRIS at the same location. For purposes of this Section 23.4.5.7.13, an Examined Facility or NCZ Examined Project for which the ISO receives such a request shall be referred to as a "Renewable Exemption Applicant." A UDR project may not be a Renewable Exemption Applicant. For purposes of this Section 23.4.5.7.13, references to a Renewable Exemption Applicant's CRIS MW shall be understood to encompass Additional CRIS MW in cases where the Renewable Exemption Applicant is an existing Generator seeking a Renewable Exemption for Additional CRIS MW. An Examined Facility or an NCZ Examined Project that is a member of a Class Year may not request a Renewable Exemption in the same Class Year that it requests a Competitive Entry Exemption, and an Examined Facility or an NCZ Examined Project that is the expected transferee of CRIS being considered with a Class Year may not request a Renewable Exemption in respect of the same

Class Year that it requests a Competitive Entry Exemption. The ISO shall evaluate requests for a Renewable Exemption from (x) members of Class Year 2015 that are received on or before April 28, 2016, (y) members of a Class Year after Class Year 2015 provided that the CRIS rights are received no later than the deadline by which the facility must notify the ISO of its election to enter the Class Year, such date as set forth in Section 25.5.9 of OATT Attachment S, and (z) expected recipients of transferred CRIS rights at the same location from which the ISO has been notified, by the transferor or the transferee, of a transfer pursuant to OATT Attachment S Section 25.9.4 that will be effective on a date within the Mitigation Study Period for the Class Year, provided that they are received no later than the Class Year Start Date for such Class Year. Examined Facilities and NCZ Examined Projects will not be evaluated for a Renewable Exemption if the ISO does not receive the request to be evaluated by the deadline established in accordance with the preceding sentence, or if the Examined Facility or NCZ Examined Project also submits a request for a Competitive Entry Exemption prohibited by this paragraph.

A Generator that remains a member of a completed Class Year, if such Class Year is Class Year 2012 or a prior Class Year, shall not be eligible for a Renewable Exemption, except for Additional CRIS MW. Up to the quantity of CRIS MW specified by the Renewable Exemption Applicant in its exemption request shall be exempt from an Offer Floor if it remains a member of the completed Class Year (or if the transferee does not notify the ISO, on or before the date the Class Year is completed, that it no longer expects to be the recipient

of the transferred CRIS) and the ISO determines that it meets the requirements of Section (a), subject to the limitation in Section (b) of this Section 23.4.5.7.13.1, and subject to Section 23.4.5.7.13.3.

(a) The Renewable Exemption Applicant:

(i) must have, for its Interconnection Queue position, a proposed design that is a Generator to be powered solely by a device that can qualify as an Intermittent Power Resource, or must be a Limited Control Run-of-River Resource, as such terms are (A) defined on the date by which the ISO must receive the request for a Renewable Exemption in accordance with Section 23.4.5.7.13.1.1, or (B) in the ISO's judgment, are reasonably expected to be defined at the time that the Renewable Exemption Applicant is first qualified as an Installed Capacity Supplier; and

(ii) (A) be proposed in the Class Year to be powered solely by a technology that is an Exempt Renewable Technology; or

(B) be determined by the ISO, in accordance with ISO Procedures, to have (1) high development costs, and (2) a low capacity factor such that there would be limited or no incentive and ability to develop the Renewable Exemption Applicant in order to artificially suppress capacity prices. The ISO shall make this determination by evaluating pertinent factors, including whether the reasonably projected costs of new entry and operation of the Renewable Exemption Applicant, net of the likely projected revenues from the sale of Capacity, Energy and Ancillary Services, and any other generally available revenues associated with the production of those products, are greater than the

reasonably estimated cost savings to Loads due to a reduction in ICAP Market-Clearing Prices projected to result from the entry of the Renewable Exemption Applicant's requested CRIS MW (or CRIS MW to be transferred at the same location.)

- (b) A total amount not exceeding 1,000 MW of Installed Capacity may be determined to be exempt pursuant to the Renewable Exemption in any one Class Year. This amount includes any amount for which an NCZ Examined Project is determined to be eligible at the time the ISO issues an Indicative Buyer Side Mitigation Determination pursuant to Section 23.4.5.7.2.2, or a determination pursuant to Section 23.4.5.7.2.1. If the ISO determines that more than 1,000 MW of Installed Capacity would be eligible for a Renewable Exemption for any one Class Year (including transferred CRIS at the same location) but for the 1,000 MW limitation, then each Renewable Exemption Applicant determined by the ISO to be eligible for a Renewable Exemption other than those that were also determined to be exempt pursuant to Sections 23.4.5.7.2(a) or (b) or Section 23.4.5.7.14, shall have only a portion of its evaluated CRIS MW exempted. Such portion of the 1,000 MW shall be the MW equal to the proportion of the CRIS MW for which the Renewable Exemptions were requested to the total Installed Capacity MW of those MW determined to be eligible for the Renewable Exemption for the Class Year that are not also determined to be exempt pursuant to Sections 23.4.5.7.2(a) or (b) or Section 23.4.5.7.14.

#### **23.4.5.7.13.2 Periodic Review and Determination of Exempt Renewable Technologies**

23.4.5.7.13.2.1 In each ICAP Demand Curve Reset Filing Year after 2016, the ISO shall conduct a periodic review, in accordance with this Section and ISO Procedures, to determine the technology types that should be Exempt Renewable Technologies for Class Years with a Class Year Start Date during the Capability Years covered by the ICAP Demand Curve periodic review conducted for the relevant ICAP Demand Curve Reset Filing Year.

23.4.5.7.13.2.1(a) The ISO's periodic review will identify, by Mitigated Capacity Zone, the technologies that, at the time of the periodic review, are technically feasible in the ISO Administered Markets (whether as a single unit, or a plant comprised of more than one unit) and that could qualify as either Intermittent Power Resources or Limited Control Run-of-River Hydro Resources ("candidate intermittent renewable technologies").

23.4.5.7.13.2.1(b): For each candidate intermittent renewable technology, the ISO's periodic review will reasonably project:

- (i) the costs of new entry and operation;
- (ii) the revenues from the sale of Capacity, Energy and Ancillary Services, and any other generally available revenues associated with the production of those products by it; and
- (iii) the cost savings to Loads due to a reduction in ICAP Market-Clearing Prices from the new entry of the candidate intermittent renewable technology.

23.4.5.7.13.2.2 The ISO will utilize pertinent factors including results of the computation in accordance with Section 23.4.5.7.13.2.1(b) to determine, for each



Mitigated Capacity Zone, which candidate intermittent renewable technologies have (a) high development costs and (b) a low capacity factor, such that considering (a) and (b) there is limited or no incentive and ability to develop the candidate intermittent renewable technology in order to artificially suppress capacity prices.

23.4.5.7.13.2.3 The ISO's periodic review shall provide for:

- (a) The ISO's preliminary identification of candidate intermittent renewable technologies for stakeholder review and comment;
- (b) The ISO's issuance of a draft list of recommended Exempt Renewable Technologies and the basis for the recommendation, for stakeholder and Market Monitoring Unit review and comment; (The responsibilities of the Market Monitoring Unit that are addressed in this section of the Services Tariff are also addressed in Section 30.4.6.2.12 of Attachment O to this Services Tariff.)

23.4.5.7.13.2.4 On or before the 60th day subsequent to the Commission issuance of an order accepting ICAP Demand Curves based on the ICAP Demand Curve periodic review, the ISO shall file with the Commission the results of its Exempt Renewable Technology periodic review and determination pursuant to Section 23.4.5.7.13.2.2. If the ISO's determination of technology types that satisfy the provisions of Section 23.4.5.7.13.2.2 for any Mitigated Capacity Zone is different than the then-current definition of Exempt Renewable Technology, the ISO shall propose in the filing, for Commission review, a revised definition that is in accordance with its periodic determination, to be effective for Class Years with a Class Year Start Date during the Capability Years covered by the ICAP Demand

Curve periodic review conducted for the relevant ICAP Demand Curve Reset Filing Year. The ISO's filing shall describe the basis for the ISO's determination.

### **23.4.5.7.13.3. Revocation**

23.4.5.7.13.3.1 A Renewable Exemption Applicant that received a Renewable Exemption for any amount of CRIS MW shall notify the ISO in writing within five (5) business days if (a) at the time it first qualifies as an Installed Capacity Supplier, or at any time thereafter, it is not solely powered by the same technology based on which it was evaluated for a Renewable Exemption, or (b) at the time it first qualifies as an Installed Capacity Supplier it is not solely powered by a technology that is defined as an Intermittent Power Resource or Limited Control Run-of-River Hydro Resource, even if the Renewable Exemption Applicant was determined to be eligible because, at the time it was evaluated, the ISO expected the technology would become defined as an Intermittent Power Resource or Limited Control Run-of-River Hydro Resource. Upon notification, the ISO shall revoke the Renewable Exemption unless the Generator provides documentation with its notice in accordance with the prior sentence that demonstrates, to the ISO's satisfaction, that after the change it will be solely powered by an Exempt Renewable Technology as such term is defined on the date that the Generator first transmits energy using the different technology. Upon revocation, the ISO shall apply the Mitigation Net CONE Offer Floor (such value calculated by the ISO based on the date that the Generator (or Additional CRIS MW) first offers UCAP, in accordance with Section 23.4.5.7.3.7, and adjusted annually in accordance with Section 23.4.5.7 of the Services Tariff) to all

offers of UCAP by the Generator or Additional CRIS MW subsequent to the deadline for Unforced Capacity certification prior to an ICAP Spot Market Auction (such date in accordance with ISO Procedures) next following revocation. Nothing in this paragraph shall relieve a Generator from or alter any obligation it may have under the ISO Tariffs or any other tariff, agreement, or regulation to obtain permissions, authorizations provide notifications, or take any other action in advance of changing the technology which powers it (in whole or in part.)

23.4.5.7.13.3.2           The failure to provide the ISO written notice in accordance with Section 23.4.5.7.13.3.1 shall constitute a violation of the Services 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.)

23.4.5.7.13.3.3           If a Generator has not provided notice in accordance with Section 23.4.5.7.13.3.1 and the ISO determines that the Generator is not solely powered by a technology as described Section 23.4.5.7.13.3.1, the ISO shall notify the Generator that its Renewable Exemption may be revoked, and provided 30 days written notice has been given to the Generator (such notice to the extent practicable,) the ISO may revoke the Renewable Exemption. In the event of a revocation, the Mitigation Net CONE Offer Floor such value calculated by the ISO based on the date that the Generator or Additional CRIS MW) first offers UCAP, in accordance with Section 23.4.5.7.3.7, and adjusted annually in accordance with Section 23.4.5.7 of the Services Tariff) shall apply to all offers of UCAP subsequent to the deadline for Unforced Capacity certification prior to an

ICAP Spot Market Auction (such date in accordance with ISO Procedures) next following revocation. Prior to the revocation of a Renewable Exemption, the ISO shall provide the Generator an opportunity to respond to the ISO's determination. The ISO cannot revoke the Renewable Exemption until after the 30 days written notice period has expired, unless ordered to do so by the Commission.

**23.4.5.7.13.4 Timing of Requests for a Renewable Exemption, Required Submittals, and Determinations**

23.4.5.7.13.4.1 Requests for a Renewable Exemption must be received by the ISO no later than the deadline specified in Section 23.4.5.7.13.1. If any Examined Facility or NCZ Examined Project submits both a request for a Renewable Exemption and a Competitive Entry Exemption (*i.e.*, seeking to be considered for both exemptions at the same time,) the ISO shall not consider the request for a Renewable Exemption. The ISO may request additional information and updated information at any time regarding eligibility and continued eligibility. The Renewable Exemption Applicant (if after entry, the Generator) shall timely provide the information.

23.4.5.7.13.2 The ISO shall determine whether a Renewable Exemption Applicant is or is not eligible for a Renewable Exemption, and whether it is eligible or is not eligible for an exemption pursuant to Section 23.4.5.7.2(a) and (b) or Section 23.4.5.7.14, prior to the Initial Decision Period. The ISO shall determine prior to the Initial Decision Period, at each Subsequent Decision Period, and upon completion of the Class Year, whether more than 1,000 MW of Installed Capacity would be eligible for a Renewable Exemption (including MW of NCZ Examined Projects) in a Class Year but for the 1,000 MW limitation. If at the time of the

ISO's issuance of initial determinations, or the completion of the Class Year, more than 1,000 MW, then remaining in the Class Year or associated with a transfer of CRIS at the same location, are eligible for a Renewable Exemption, the ISO shall (i) first, exclude from the 1,000 MW cap the CRIS MW of any Examined Facility or NCZ Examined Project that was determined to be exempt pursuant to Sections 23.4.5.7.2 (a), or (b) or Section 23.4.5.7.14, and (ii) second, issue an initial determination (prior to the Initial Decision Period or at the time of any Subsequent Decision Period) or a final determination (if a member of the completed Class Year, or if a transfer of CRIS rights at the same location unless the transferee has notified the ISO, on or before the date the Class Year is completed, that it no longer expects to be the recipient of the transferred CRIS) of the MW that will be exempt from an Offer Floor, equal to the proportion of the requested CRIS MW as determined in accordance with Section 23.4.5.7.13.1.1(b).

23.4.5.7.13.4.3 Determinations made pursuant to Section 23.4.5.7.13.4.2 shall be provided to the Renewable Exemption Applicants (other than NCZ Examined Projects) concurrent with the issuance of determinations in accordance with Section 23.4.5.7.3.3, and for an NCZ Examined Project at the time of the ISO's determination pursuant to Section 23.4.5.7.2.1.

23.4.5.7.13.4.4 The ISO shall post on its website its determination of whether the Renewable Exemption Applicant has been determined to be exempt for any quantity of MW, and if exempt, the quantity of MW exempt, or non-exempt, from an Offer Floor as soon as the determination is final. Concurrent with the ISO's posting, the Market Monitoring Unit shall publish a report on the ISO's

determination, as further specified in Section 30.4.6.2.12 of Attachment O to this Services Tariff.23.4.5.7.14 Self Supply Exemption

#### **23.4.5.7.14.1 Eligibility**

23.4.5.7.14.1.1 In order to be evaluated for a Self Supply Exemption, each of the following requirements must be satisfied, by the deadline, in the required form, and with the required information in accordance with ISO Procedures. If one or more of the requirements is not satisfied, the ISO shall not evaluate the request for a Self Supply Exemption.

- (a) An Examined Facility or NCZ Examined Project, (for purposes of this Section 23.4.5.7.14 an “SSE Applicant”) may request to be evaluated for a Self Supply Exemption for a specified quantity of MW up to the amount of the CRIS MW requested in the Class Year or, of which it is the expected recipient of transferred CRIS rights at the same location, in accordance with ISO Procedures. A UDR project may be a SSE Applicant. For purposes of this Section 23.4.5.7.14, references to a SSE Applicant’s CRIS MW shall be understood to encompass Additional CRIS MW in cases where the SSE Applicant is an existing Generator or UDR project seeking a Self Supply Exemption for Additional CRIS MW. The ISO will evaluate the request if the SSE Applicant is (i) a member of Class Year 2015 and its request is received on or before April 28, 2016, (ii) a member of a Class Year after Class Year 2015 and its request is received no later than the deadline by which a facility must notify the ISO of its election to enter the Class Year, such date as set forth in Section 25.5.9 OATT Attachment S, or (iii) an expected recipient of transferred CRIS rights at the same location and the ISO has

been notified, by the transferor or the transferee, of a transfer pursuant to OATT Attachment S Section 25.9.4 that will be effective on a date within the Mitigation Study Period for the Class Year, provided that the request is received no later than the Class Year Start Date for such Class Year. An Examined Facility or an NCZ Examined Project that is a member of a Class Year may not request a Self Supply Exemption in the same Class Year that it requests a Competitive Entry Exemption, and an Examined Facility or an NCZ Examined Project that is the expected transferee of CRIS being considered with a Class Year may not request a Self Supply Exemption in respect of the same Class Year that it requests a Competitive Entry Exemption.

A proposed new Generator or UDR project that remained a member of Class Year 2012 or a prior Class Year at the time of the completion of such Class Year, shall not be eligible to request or receive a Self Supply Exemption except in relation to a request for Additional CRIS MW.

- (b) If the SSE Applicant is not the wholly owned property of the Self Supply LSE(s), or the wholly owned property of an entity that is wholly owned by the Self Supply LSE(s) or that wholly owns the Self Supply LSE(s), it must have a Long Term Contract (in accordance with Subsection (1) of this Section 23.4.5.7.14.1.1(b)(1) with the Self Supply LSE(s) that shall obligate the SSE Applicant to provide the capacity forming the basis for its eligibility for a Self Supply Exemption. Such an SSE Applicant must make its Self Supply Exemption request jointly, in a single request, with the Self Supply LSE(s) with which it has a Long Term Contract. If the proposed SSE Applicant is the wholly owned property of the Self Supply

LSE(s), or the wholly owned property of an entity that is wholly owned by the Self Supply LSE(s) or that wholly owns the Self Supply LSE(s), then the SSE Applicant must provide documentation at the time it requests the exemption that demonstrates to the reasonable satisfaction of the ISO that it has a statutory, regulatory, or organizational obligation to provide Energy and Capacity to meet the Self Supply LSE's (or Self Supply LSEs') ICAP Obligation(s).

(1) Long Term Contract: For the purposes of a Self Supply Exemption, a "Long Term Contract" shall mean (i) a fully executed contract between the SSE Applicant that is a proposed new or existing Generator and a Self Supply LSE that is joining it in requesting the exemption, pursuant to which the SSE Applicant is obligated to provide to the Self Supply LSE (or LSEs if more than one Self Supply LSE,) for a minimum of 10 years, Installed Capacity in an amount greater than or equal to the CRIS MW for which the Self Supply Exemption is requested; or (ii) a fully executed contract between a Self Supply Applicant that is a proposed new or existing UDR project and a Self Supply LSE (or LSEs if more than one Self Supply LSE,) that is joining it in requesting the exemption, pursuant to which the Self Supply LSE(s) will have all rights to the UDRs and the use of the facility, for a minimum of 10 years, in the amount greater than or equal to the CRIS MW for which the Self Supply Exemption is requested.

(c) The Self Supply Applicant's request for a Self Supply Exemption must specify the total quantity of CRIS MW for which it is requesting a Self Supply Exemption, and such quantity shall not exceed the MW of CRIS requested by it in the Class Year, or the quantity of the transferred CRIS rights at the same location



it expects to receive. If there is more than one Self Supply LSE associated with the request for a Self Supply Exemption received from an SSE Applicant then: (i) the request shall identify the quantity of MW associated with each Self Supply LSE, and (ii) the total quantity of MW associated with the Self Supply LSEs shall not exceed the total MW for which the SSE Applicant requests a Self Supply Exemption. (d) All Certification and Acknowledgement(s) required by Section 23.4.5.7.14.2 must be received at the same time as the request for a Self Supply Exemption, in accordance with ISO Procedures, along with other data and information requested by the ISO.

23.4.5.7.14.1.2 The lesser of (i) the quantity of CRIS MW for which the Self Supply Exemption was requested and (ii) the quantity determined in accordance with Section 23.4.5.7.14.3 shall be exempt from an Offer Floor if the SSE Applicant is a member of the Class Year at the time of its completion and the ISO determines that the request satisfies all of the following requirements:

- (a) The proposed Generator or UDR project terminus will be, or the existing Generator or UDR project terminus is, electrically located in the same Mitigated Capacity Zone in which the Self-Supply LSE has Projected ICAP Requirements (as such term is defined in Section 23.4.5.7.14.1.3),
- (b) The SSE Applicant and the Developer are not and will not be owned, in whole or in part, by an LSE or an Affiliate of an LSE unless such entity is a Self Supply LSE.
- (c) The SSE Applicant provides the completed Certification and Acknowledgement form set forth in Section 23.4.5.7.14.2.1 or 23.4.5.7.14.2.3, as applicable to it and

its request for a Self Supply Exemption, and satisfies each requirement stated therein. If the SSE Applicant is not the wholly owned property of the Self Supply LSE(s), or the wholly owned property of an entity that is either wholly owned by the Self Supply LSE(s), or that wholly owns the Self Supply LSE(s), then both the SSE Applicant and the Self Supply LSE(s) provide the applicable completed Certification and Acknowledgement form set forth in Section 23.4.5.7.14.2 and satisfy each requirement stated therein. The ISO must receive the required completed Certification and Acknowledgement forms, in accordance with ISO Procedures, (i) if the SSE Applicant is a member of Class Year 2015 and its request is received on or before April 28, 2016, (ii) no later than the deadline by which the SSE Applicant must notify the ISO of its election to enter the Class Year, such date as set forth in Section 25.5.9 of OATT Attachment S, or (iii) if the Self Supply LSE is an expected recipient of transferred CRIS rights at the same location that will be effective on a date within the Mitigation Study Period for the Class Year, no later than the Class Year Start Date of such Class Year. All other information requested by the ISO must also be timely received.

- (d) The ISO determines that the Self Supply LSE satisfies both the Net Short Threshold set forth in Section 23.4.5.7.14.3.1 and the Net Long Threshold set forth in Section 23.4.5.7.14.3.2 for a specified quantity of CRIS MW.
- (e) The SSE Applicant certifies that it does not have any contract, agreement, arrangement, or relationship (for purposes of this Section 23.4.5.7.14.1.2(e), and the Certification and Acknowledgment in Section 23.4.5.7.14.2, a “contract”) for any material (in whole or in aggregate) payments, concessions, rebates, or

subsidies, connected to or contingent on the SSE Applicant's: (i) construction or operation, except as expressly permitted in Subsection (A) or (B) of this Section, or (ii) clearing in the ISO's Installed Capacity market except as expressly permitted in Subsection (B).

(A) An SSE Applicant will not be ineligible for a Self Supply Exemption if it has an executed contract, is associated with a contract, or there is a contract associated with it, that is listed in (I) through (VIII) of this Section that provides for a material payment, concession, rebate or subsidy, and either (i) is not irregular or anomalous, and only reflects arms-length transactions, or (ii) is consistent with the overall objectives of the Self Supply Exemption.

**Listed contracts:**

- (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 10 of the New York State Public Service Law or orders issued pursuant to Articles VII or 10);
- (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 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 or commercial siting incentives, such as tax abatements or financing incentives, provided the PILOT agreement or incentives are generally available to industrial or commercial entities;

(VII) a service agreement for natural gas entered into under a tariff accepted by a regulatory body with jurisdiction over that service; or

(VIII) 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.

(B) An SSE Applicant that requests a Self Supply Exemption with only one Self Supply LSE will not be ineligible for a Self Supply Exemption if the contract(s) that otherwise would render it ineligible under any clause of Section 23.4.5.7.14.2 is (or are) with its Self Supply LSE.

(C ) Contract Review Opportunity

(i) (1) A proposed new Generator or UDR project or an existing Generator or UDR project for Additional CRIS that is reasonably expected to be eligible to enter the immediately following Class Year or be the recipient of transferred CRIS rights at the same location on a date within the Mitigation Study Period of

such Class Year, and that in connection with its own Load or for the Load of one or more Self Supply LSE(s) is planning on requesting a Self Supply Exemption;

(2) an SSE Applicant that is in a Class Year that is not completed (in accordance with Section 25.5.9 of the OATT; or (3) an SSE Applicant that received a Self Supply Exemption, may request that the ISO inform it whether, in the ISO's view, any specific executed contract, unexecuted but substantially developed contract, or any pending request that if approved, granted, or otherwise conferred, would constitute a contract pursuant to Subsection 23.4.5.7.14.1.2 (e)(i) and (e)(ii) would make it ineligible to obtain or (if previously granted) retain a Self Supply Exemption. Any such request must satisfy all of the following requirements:

(a) The SSE Applicant (unless it is for its own Load) must make any such request jointly with any Self Supply LSE(s) with which it has executed or has an unexecuted but substantially developed Long Term Contract. Any such Self Supply LSE(s) must make any such request jointly with the SSE Applicant, or proposed new or existing Generator or UDR project, with which it would seek, or has sought, a Self Supply Exemption.

(b) As part of the submission of the request for a determination pursuant to Subsection (a) of this Section, the SSE Applicant, or proposed new or existing Generator or UDR project, and any relevant Self Supply LSE(s) as applicable, must provide the ISO with all information regarding the contract or pending request regarding which it is requesting the ISO's view, and if the request is made jointly with a Self Supply LSE, the executed or unexecuted and substantially

developed Long Term Contract that would form the basis of a Self Supply Exemption Request, including copies of original documentation. In addition and at the time of the submission of the request, the SSE Applicant, or proposed new or existing Generator or UDR project, and any relevant Self Supply LSE shall also provide any other information identified by the ISO in accordance with ISO Procedures. They also must timely provide any further information that is requested by the ISO.

(c) Such requests can only be submitted to the ISO on or after the date established by the ISO in accordance with ISO Procedures, such date to be at least 60 days prior to the date that the ISO anticipates will be the deadline by which facilities must notify the ISO of their election to enter a Class Year (such Class Year deadline pursuant to Section 25.5.9 of OATT Attachment S.)

(ii) Provided that the ISO has timely received all of the information it needs to make a determination, the ISO shall state its view in response to such requests within 60 days.

(iii) When evaluating any such request, 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 30.4.6.2.12 of Attachment O to this Services Tariff.)

#### **23.4.5.7.14.2 Certifications and Acknowledgements**

23.4.5.7.14.2.1 An SSE Applicant that is not the wholly owned property of the Self Supply LSE(s), or the wholly owned property of an entity that is either wholly owned by the Self Supply LSE(s), or that wholly owns the Self Supply

LSE(s), and that is requesting a Self Supply Exemption shall submit the following completed Certification and Acknowledgment form. The submission must be received by the ISO by the deadline pursuant to Section 23.4.5.7.14.1.2(c), and thereafter upon the request of the ISO, in accordance with ISO Procedures. The Self Supply Applicant shall be legally bound by the Certification and Acknowledgement form which must be executed by a duly authorized officer:

### **CERTIFICATION AND ACKNOWLEDGMENT**

I [NAME & TITLE] hereby certify on behalf of myself, [NAME OF PROJECT], and [NAME OF DEVELOPER] that each of the following statements is true and correct:

1. I am an officer whose responsibilities include the development of the [EXAMINED FACILITY OR NCZ EXAMINED PROJECT, New York Independent System Operator, Inc.'s ("NYISO") Interconnection queue position Number [INSERT NUMBER] (the "Project").
2. I am duly authorized to make representations concerning the Project, including each of the certifications and acknowledgements that I have made in this document.
3. I hereby [REQUEST ON BEHALF OF] the Developer, a Self Supply Exemption for [MW REQUESTED FOR THE SELF SUPPLY EXEMPTION] for the Project in connection with [LOAD SERVING ENTITY THAT IS THE SELF SUPPLY LSE].
4. I have reviewed and I understand the requirements established under the NYISO Market Administration and Control Area Services Tariff ("Services Tariff") related to a "Self Supply Exemption" pursuant to Section 23.4.5.7.14.
5. I have personal knowledge of the facts and circumstances supporting the Project's request and eligibility for a Self Supply Exemption as of the date of this Certification and Acknowledgment, including all data and other information submitted by the Project to the NYISO.
6. [NAME OF DEVELOPER] is not owned in whole or in part by, and is not an Affiliate (as Affiliate is defined in Section 2.1 of the Services Tariff) of, a Load Serving Entity [OTHER THAN THE LOAD SERVING ENTITY THAT IS THE SELF SUPPLY LSE].

7. [NAME OF PROJECT] has a Long Term Contract (as such term is defined in Services Tariff Section 23.4.5.7.14.1.1 (b)(1)) with the Self Supply LSE[s], that is [are] the subject of the request for a Self Supply Exemption.
8. To the best of my knowledge and having conducted due diligence that is current as of the date of this Certification there is no contract, arrangement, arrangement, or relationship (for purposes of Section 23.4.5.7.14. 2(e) of the Services Tariff, and this Certification and Acknowledgment, a “contract”) for any material (in whole or in aggregate) payments, concessions, rebates or subsidies connected to or contingent on the [PROJECT’S]: (i) construction or operation, except as expressly permitted in Subsection (A) or (B) of Section 23.4.5.7.14.1. 2(e) of the Services Tariff, or (ii) clearing in the NYISO’s Installed Capacity market except as expressly permitted in Subsection (B) of Section 23.4.5.7.14. 1.2(e).
9. I have listed in Schedule 1 to this Certification all contracts that involve payments, concessions, rebates, or subsidies connected to or contingent upon the [PROJECT’S] construction or operation that are not material or that are otherwise expressly permissible under Subsection (A) or (B) of Section 23.4.5.7.14.1.2(e).
10. The Project shall provide any information or cooperation requested by the NYISO in connection with the Project’s request for a Self Supply Exemption.

I hereby acknowledge on behalf of myself, [INSERT NAME OF PROJECT], and [NAME OF DEVELOPER] that:

- a. The submission of false, misleading, or inaccurate information, or the failure to submit information requested by the NYISO related to the Project’s request for a Self Supply Exemption, including but not limited to information contained or submitted in this Certification and Acknowledgement on behalf of the Project, shall constitute a violation of Section 4.1.7 of the Services Tariff, and subject to the Commission’s review, a violation of the Commission’s regulations and Section 316A of the Federal Power Act.
- b. If the Project submits false, misleading, or inaccurate information, or fails to submit requested information to the NYISO, including but not limited to information contained or submitted in this Certification and Acknowledgement on behalf of the Project, it shall cease to be eligible for a Self Supply Exemption and, if the Project has already received a Self Supply Exemption, that exemption shall be subject to revocation by the NYISO or the Commission after which the Project shall be subject to an Offer Floor set at the Mitigation Net CONE Offer Floor (such value calculated based on the date it first Offers UCAP, in accordance with Section 23.4.5.7.3.7, and adjusted annually in accordance with Section 23.4.5.7 of the Services Tariff,) starting with the next following deadline for Unforced Capacity certification prior to an ICAP Spot Market Auction subsequent to the date of revocation (such date in accordance with ISO Procedures) pursuant to Section 23.4.5.7.9.5 of the Services Tariff.



- c. If the Project submits false, misleading, or inaccurate information, or fails to submit requested information to the NYISO, including but not limited to information contained or submitted in the Certification and Acknowledgement on behalf of the Project, it may be subject to civil penalties that may be imposed by the Commission for violations of Section 4.1.7 of Services Tariff, the Commission's rules, and/or Section 316A of the Federal Power Act.

\_\_\_\_\_  
[PRINT NAME]

[DATE]

Subscribed and sworn to before me  
this [ ] day of [MONTH] [YEAR].

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

23.4.5.7.14.2.2 A Self Supply LSE that has a Long Term Contract (as such term is defined in Section 23.4.5.14.1(b)(1)) with an SSE Applicant shall submit to the ISO the following completed Certification and Acknowledgement Form as part of the SSE Applicant's request for a Self Supply Exemption and thereafter upon the request of the ISO, in accordance with ISO Procedures. The Self Supply LSE shall be legally bound by the completed Certification and Acknowledgement form which must be executed by a duly authorized officer:

## **CERTIFICATION AND ACKNOWLEDGMENT**

I [NAME & TITLE] hereby certify on behalf of myself and [NAME OF SELF SUPPLY LSE] (the “LSE”) that each of the following statements is true and correct:

1. I am an officer whose responsibilities include overseeing the capacity supply portfolio and obligations, and addressing Load requirements of the [LSE], and LSE’s Long Term Contract (as such term is defined in Services Tariff Section 23.4.5.7.14.1.1 (b)(1)) with [EXAMINED FACILITY or NCZ EXAMINED PROJECT], New York Independent System Operator, Inc.’s (“NYISO”) Interconnection queue position Number [INSERT NUMBER] (the “Project”).
2. I am duly authorized to make representations concerning the capacity supply portfolio, and obligations, Load requirements of [the LSE], and LSE’s Long Term Contract with the Project (the “Subject Long Term Contract”), including each of the certifications and acknowledgements that I have made in this document.
3. I hereby [REQUEST ON BEHALF OF] the LSE, a Self Supply Exemption for [MW REQUESTED FOR THE SELF SUPPLY EXEMPTION] for the Project associated with the Subject Long Term Contract.
4. I have reviewed and I understand the requirements established under the NYISO Market Administration and Control Area Services Tariff (“Services Tariff”) related to a “Self Supply Exemption” pursuant to Section 23.4.5.7.14.
5. I have personal knowledge of the facts and circumstances supporting the Subject Long Term Contract and LSE’s Load Obligations and supply obligations related to the Project’s request and eligibility for a Self Supply Exemption as of the date of this Certification and Acknowledgment, including all data and other information submitted by LSE to the NYISO.
6. The LSE is a Self Supply LSE [INSERT SUBSECTION OF DEFINITION BY WHICH THE LSE MEETS THE REQUIREMENTS OF THAT TERM] of that term.
7. [NAME OF DEVELOPER] [is // is not] owned in part by, and [is // is not] an Affiliate (as Affiliate is defined in Section 2.1 of the Services Tariff) of, LSE. Appendix A to this Certification and Acknowledgement fully and completely sets forth and describes the organizational relationship between or among LSE, Developer and the Project, or any Affiliate of the foregoing entities in relation to the project; and any ownership or investment interest of LSE, Developer, and the Project, in either of the other entities, or any of the Affiliates thereof in relation to the Project.
8. [NAME OF PROJECT] and LSE are parties to the Subject Long Term Contract.

9. To the best of my knowledge and having conducted due diligence that is current as of the date of this Certification there are no arrangements for any payments or subsidies, that are directly or indirectly tied to the Unforced Capacity from the Project clearing in the NYISO's Installed Capacity market other than those between the [NAME OF DEVELOPER],[PROJECT] and [SELF SUPPLY LSE] that is provided to the ISO with this Certification and Acknowledgement [and other than agreements between [NAME OF DEVELOPER], [PROJECT] and [NAME OF OTHER SELF SUPPLY LSE(S) ASSOCIATED WITH THE SELF SUPPLY APPLICANT'S REQUEST FOR A SELF SUPPLY EXEMPTION].
10. I have listed in Schedule 1 to this Certification all contracts that involve payments, concessions, rebates, or subsidies connected to or contingent upon the [PROJECT'S] construction or operation that are not material or that are otherwise expressly permissible under Subsection (A) or (B) of Section 23.4.5.7.14.1.2(e).
11. LSE shall provide any information or cooperation requested by the NYISO in connection with the LSE and the Project's request for a Self Supply Exemption.

I hereby acknowledge on behalf of myself and LSE that:

- a. The submission of false, misleading, or inaccurate information, or the failure to submit information requested by the NYISO related to the LSE's and the Project's request for a Self Supply Exemption, including but not limited to information contained or submitted in this Certification and Acknowledgement on behalf of the Project, shall constitute a violation of Section 4.1.7 of the Services Tariff, and subject to the Commission's review, a violation of the Commission's regulations and Section 316A of the Federal Power Act.
- b. If the LSE or the Project submits false, misleading, or inaccurate information, or fails to submit requested information to the NYISO, including but not limited to information contained or submitted in this Certification and Acknowledgement on behalf of the LSE, the Project shall cease to be eligible for a Self Supply Exemption in respect of Subject Long Term Contract and, if the Project has already received a Self Supply Exemption, that exemption shall be subject to revocation by the NYISO or the Commission after which the Project shall be subject to an Offer Floor set at the Mitigation Net CONE Offer Floor (such value calculated based on the date it first Offers UCAP, in accordance with Section 23.4.5.7.3.7, and adjusted annually in accordance with Section 23.4.5.7 of the Services Tariff,) starting with the next following deadline for Unforced Capacity certification prior to an ICAP Spot Market Auction subsequent to the date of revocation (such date in accordance with ISO Procedures) pursuant to Section 23.4.5.7.9.5 of the Services Tariff.
- c. If the LSE submits false, misleading, or inaccurate information, or fails to submit requested information to the NYISO, including but not limited to information contained or submitted in the Certification and Acknowledgement on behalf of the Project, it may be subject to civil penalties that may be imposed by the

Commission for violations of Section 4.1.7 of Services Tariff, the Commission's rules, and/or Section 316A of the Federal Power Act.

\_\_\_\_\_  
[PRINT NAME]

[DATE]

Subscribed and sworn to before me  
this [ ] day of [MONTH] [YEAR].

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

23.4.5.7.14.2.3 An SSE Applicant that is the wholly owned property of the Self Supply LSE, or the wholly owned property of an entity that is either wholly owned by the Self Supply LSE, or that wholly owns the Self Supply LSE, and that is requesting a Self Supply Exemption shall submit the following completed Certification and Acknowledgment Form. The submission must be received by the ISO by the deadline pursuant to Section 23.4.5.7.14.1.2(c), and thereafter upon the request of the ISO, in accordance with ISO Procedures. The Self Supply Applicant shall be legally bound by the following Certification and Acknowledgement form which must be executed by a duly authorized officer:

#### **CERTIFICATION AND ACKNOWLEDGMENT**

I [NAME & TITLE] hereby certify on behalf of myself, [NAME OF PROJECT], and [NAME OF DEVELOPER/LSE] that each of the following statements is true and correct:

1. I am an officer whose responsibilities include; (i) the development of the [EXAMINED FACILITY or NCZ EXAMINED PROJECT], New York Independent System Operator, Inc.'s ("NYISO") Interconnection queue position Number [INSERT NUMBER] (the "Project"); and (ii) overseeing the capacity supply portfolio and obligations, and addressing Load Obligations of the Self Supply LSE and its obligations to serve retail customers.
2. I am duly authorized to make representations concerning the Project and the capacity supply portfolio, and obligations, Load requirements of [the DEVELOPER/LSE], including, if applicable the Long Term Contract between the Project and any entity performing the Self Supply LSE function (the "Subject Long Term Contract"), and also including each of the certifications and acknowledgements that I have made in this document.
3. I hereby [REQUEST ON BEHALF OF] the [DEVELOPER/LSE], a Self Supply Exemption for [MW REQUESTED FOR THE SELF SUPPLY EXEMPTION] for the Project associated with [DEVELOPER/LSE'S] self supply arrangements, including, if applicable, any Subject Long Term Contract.
4. I have reviewed and I understand the requirements established under the NYISO Market Administration and Control Area Services Tariff ("Services Tariff") related to a "Self Supply Exemption" pursuant to Section 23.4.5.7.14.
5. I have personal knowledge of the facts and circumstances supporting: (i) the Project's request and eligibility for a Self Supply Exemption; and (ii) the Load Obligations and supply obligations related to the Project's request and eligibility for a Self Supply Exemption, as of the date of this Certification and Acknowledgment, including all data and other information submitted by the Project and by [DEVELOPER/LSE] to the NYISO.
6. The LSE is a Self Supply LSE pursuant to Section [INSERT SUBSECTION OF DEFINITION BY WHICH THE LSE MEETS THE REQUIREMENTS OF THAT TERM] of that term.
7. [NAME OF DEVELOPER/LSE] is not owned in whole or in part by, and is not an Affiliate (as Affiliate is defined in Section 2.1 of the Services Tariff) of, any other Load Serving Entity. Appendix A to this Certification and Acknowledgment fully and completely sets forth and describes the organizational relationship between [DEVELOPER/LSE's] Self Supply LSE and Developer functions or affiliates and the Project.
8. To the best of my knowledge and having conducted due diligence that is current as of the date of this Certification there is not any contract, agreement, arrangement, or relationship (for purposes of Section 23.4.5.7.14.1. 2(e), and this Certification and Acknowledgment, a "contract") for any material (in whole or in aggregate) payments, concessions, rebates, or subsidies, connected to or contingent on the [PROJECT's]: (i) construction or operation, except as expressly

permitted in Subsection (A) or (B) of Section 23.4.5.7.14.1.2(e) of the Services Tariff, or (ii) clearing in the NYISO's ICAP market except as expressly permitted in Subsection (B) of Section 23.4.5.7.14.1.2(e).

9. I have listed in Schedule 1 to this Certification all contracts that involve payments, concessions, rebates, or subsidies connected to or contingent upon the [PROJECT'S] construction or operation that are not material or that are otherwise expressly permissible under Subsection (A) or (B) of Section 23.4.5.7.14.1.2(e).
10. The Project and [DEVELOPER/LSE] shall provide any information or cooperation requested by the NYISO in connection with the Project's request for a Self Supply Exemption.

I hereby acknowledge on behalf of myself, [INSERT NAME OF PROJECT], and [NAME OF DEVELOPER/LSE] that:

- a. The submission of false, misleading, or inaccurate information, or the failure to submit information requested by the NYISO related to the Project's and [DEVELOPER/LSE's] request for a Self Supply Exemption, including but not limited to information contained or submitted in this Certification and Acknowledgement on behalf of the Project, shall constitute a violation of Section 4.1.7 of the Services Tariff, and subject to the Commission's review, a violation of the Commission's regulations and Section 316A of the Federal Power Act.
- b. If the DEVELOPER/LSE or the Project submits false, misleading, or inaccurate information, or fails to submit requested information to the NYISO, including but not limited to information contained or submitted in this Certification and Acknowledgement on behalf of the Project, it shall cease to be eligible for a Self Supply Exemption and, if the Project has already received a Self Supply Exemption, that exemption shall be subject to revocation by the NYISO or the Commission after which the Project shall be subject to an Offer Floor set at the Mitigation Net CONE Offer Floor (such value calculated based on the date it first Offers UCAP, in accordance with Section 23.4.5.7.3.7, and adjusted annually in accordance with Section 23.4.5.7 of the Services Tariff,) starting with the next following deadline for Unforced Capacity certification prior to an ICAP Spot Market Auction subsequent to the date of revocation (such date in accordance with ISO Procedures) pursuant to Section 23.4.5.7.9.5 of the Services Tariff.
- c. If the DEVELOPER/LSE or the Project submits false, misleading, or inaccurate information, or fails to submit requested information to the NYISO, including but not limited to information contained or submitted in the Certification and Acknowledgement on behalf of the Project, it may be subject to civil penalties that may be imposed by the Commission for violations of Section 4.1.7 of Services Tariff, the Commission's rules, and/or Section 316A of the Federal Power Act.

\_\_\_\_\_  
[PRINT NAME]

[DATE]

Subscribed and sworn to before me  
this [ ] day of [MONTH] [YEAR].

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

#### **23.4.5.7.14.3 Net Short Threshold and Net Long Threshold**

For the purposes of Section 23.4.5.7.14.3, “SSE Evaluated ICAP” shall mean the quantity of MW of CRIS for which a Self Supply Exemption is requested by an individual Self Supply LSE (or by an SSE Applicant in respect of its own Load) in accordance with Section 23.4.5.7.14.1.1(c), unless reduced as follows: If (i) following a notice that an additional System Deliverability Upgrade study(ies) will be conducted in accordance with Section 25.7.7.1 of the OATT, an SSE Applicant elects to keep its CRIS request but with no System Deliverability Upgrade identified to make the project fully deliverable (as provided for in Section 25.7.7.1(3),) and (ii) the total quantity of MW of CRIS for which the Self Supply Exemption is requested exceeds the total amount of Deliverable MW, as specified in the next Class Year Interconnection Facilities Study report, the ISO shall reduce the total quantity of MW of CRIS for which a Self Supply Exemption is requested to the total amount of Deliverable MW identified in such Interconnection Facilities Study Report. If there is more than one LSE associated with the SSE Applicant, the ISO shall reduce the quantity of MW of CRIS for each Self Supply LSE by the

ratio of Deliverable MW to the total MW of CRIS for which Self Supply exemptions were initially requested.

The ISO shall compute the Net Short Threshold and Net Long Threshold, and determine whether each is satisfied, based on its computation of each of the values specified in this Section. If there is more than one Self Supply LSE associated with the SSE Applicant's request for a Self Supply Exemption, the MW associated with each Self Supply LSE shall be considered separately.

If the Self Supply LSE or its Affiliates are associated with more than one request for a Self Supply Exemption in the Class Year (including any associated with a transfer of CRIS at the same location,) and the Self Supply LSE and its Affiliates satisfy the Net Long Threshold in a non-zero amount that is greater than the "Cumulative Affiliated Quantity" (as defined in Section 23.4.5.7.14.3,) then remaining in the Class Year, the ISO shall reduce the quantity of MW for which they are eligible to receive a Self Supply Exemption by the ratio of (a) the quantity of MW by which the Self Supply LSE and its Affiliates satisfy the Net Long Threshold, to (b) the Cumulative Affiliated Quantity associated with SSE Applicant(s) then remaining in the Class Year or associated with a transfer of CRIS at the same location (provided the transferee does not notify the ISO, on or before the date the Class Year is completed, that it no longer expects to be the recipient of the transferred CRIS.)

For the purposes of Section 23.4.5.7.14.3, "Projected ICAP Requirements" is the reasonably projected ICAP MW that the Self Supply LSE and all its Affiliates will be required to purchase in each Locality and the NYCA. Such projection shall be based on the Self Supply LSE's and all its Affiliates' share(s) of the Locational Minimum Unforced Capacity Requirements and the NYCA Minimum Unforced Capacity Requirement, as applicable and in



accordance with ISO Procedures, over the three most recently completed Capability Years preceding the Class Year Start Date. Such projection shall also reflect that ICAP MW purchased in a Locality may be used to meet capacity requirements for each Locality in which they are contained, as well as for the NYCA.

When calculating the Self Supply LSE's and all its Affiliates' Projected ICAP Requirements, each of their shares of the Locational Minimum Unforced Capacity Requirements and the NYCA Minimum Unforced Capacity Requirement over these three Capability Years shall be translated to their ICAP MW equivalent(s) using the derating factor that was applied to translate the Installed Capacity Requirement into the Unforced Capacity Requirement in the same Capability Period and Locality, or the NYCA if applicable, in which the purchase was made.

For the purposes of Section 23.4.5.7.14.3, "Excess Award Percentage" is the reasonably projected amount of excess capacity that the Self Supply LSE and all its Affiliates will be required to purchase in each Locality, and the NYCA, expressed as a percentage of its "Projected ICAP Requirements", Such projection shall be based on the total excess UCAP MW awarded in each ICAP Spot Market Auction, divided by the Locational Minimum Unforced Capacity Requirement, or the NYCA Minimum Unforced Capacity Requirement, for the same Capability Period and Locality (or the NYCA) in which the award was made, over the three most recent completed Capability Years preceding the Class Year Start Date.

For the purposes of Section 23.4.5.7.14.3, "Capacity Obligations without Entry", calculated for each Locality and the NYCA, is the product of (a) Projected ICAP Requirements and (b) one plus the Excess Award Percentage.

For the purposes of Section 23.4.5.7.14.3, “Capacity Obligations with Entry”, calculated for each Locality and the NYCA, is the product of (a) Projected ICAP Requirements and (b) one plus the Excess Award Percentage, adjusted to reflect the projected increase in excess that the Self Supply LSE would be obligated to purchase as a result of the entry of the SSE Applicant.

For the purposes of Section 23.4.5.7.14.3, “Self Supply Capacity” for a given Locality (or the NYCA,) is (a) the full amount of ICAP MW associated with each Generator or UDR project that the Self Supply LSE or any of its Affiliates own directly or indirectly, in at least a 50.01% interest (in the aggregate) as of the Class Year Start Date, or have the power to direct the management or policies of, excluding any whose CRIS MW are projected by the ISO to be expired on or before the date that marks the end of Mitigation Study Period, based on a demonstration by the Self Supply LSE, and (b) the ICAP MW that the Self Supply LSE and all its Affiliates are reasonably projected by the ISO to receive, including ICAP MW which they have a call option to receive, either by way of ownership or under “Existing Long Term Commitments” in that Locality (or the NYCA), and that are associated with a Generator or UDR project that the Self Supply LSE or any of its Affiliates do not own directly or indirectly, at least a 50.01% interest (in the aggregate) as of the Class Year Start Date, and that they do not have the power to direct the management or policies of, excluding those that are associated with any Expected Retirement. For purposes of Self Supply Capacity, “Existing Long Term Commitments” is the amount of Capacity that the Self Supply LSE or any of its Affiliates are projected by the ISO to receive, including ICAP which they have a call option to receive, under a written agreement (whether stated in ICAP or otherwise,) with a minimum term of ten years, and a minimum of six years remaining thereon on the Class Year Start Date. When calculating the term and remaining term of a written agreement for the purposes of this section, the ISO, using

its independent judgment and at its sole discretion, will determine whether to reflect in its calculation any potential extension to the current term of a written agreement that may reasonably result from renewal provisions.

For the purposes of Section 23.4.5.7.14.3, “Additional Self Supply Capacity”, for a given Locality (or the NYCA,) is the ICAP MW of a Generator or UDR project that were granted a Self Supply Exemption at the time of the completed Class Year based on the Self Supply LSE or any of its Affiliates’ being a Self Supply LSE for such Generator or UDR project, in the 10 year period immediately preceding the Class Year Start Date of the Class Year, in that Locality (or the NYCA), excluding: (i) any ICAP MW that are included in Self Supply Capacity, (ii) any ICAP MW associated with a Generator or UDR project that the Self Supply LSE and any of its Affiliates own directly or indirectly, at least a 50.01% interest(in the aggregate) as of the Class Year Start Date, or have the power to direct the management or policies of, and that the CRIS of which is projected by the ISO to be expired on or before the date that marks the end of Mitigation Study Period, based on a demonstration by the Self Supply LSE; and (iii) any ICAP MW of a Generator or UDR project that neither the Self Supply LSE nor any of its Affiliates own directly or indirectly, at least a 50.01% interest (in the aggregate) as of the Class Year Start Date, or have the power to direct the management or policies of, and that is an Expected Retirement.

#### **23.4.5.7.14.3.1 Net Short Threshold**

The Net Short Threshold will be satisfied for the “SSE Evaluated ICAP” if the ISO determines that, summed over all Localities and the NYCA, the Self Supply LSE’s and all of its Affiliates’ “Total Capacity Costs without Entry” are expected to be less than the Self Supply LSE’s and all of its Affiliates’ “Total Capacity Costs with Entry”.

23.4.5.7.14.3.1.1 The ISO will calculate the estimated “Total Capacity Costs without

Entry” as the sum over all Localities, and the NYCA, of the product of (a) the “ICAP Spot Auction Price without Entry” and (b) the “Capacity Exposed to Market Prices without Entry”.

(a) “ICAP Spot Market Auction Price without Entry” shall be based on the ICAP Spot Market Auction prices for each Locality and the NYCA, averaged over the three most recently completed Capability Years preceding the Class Year Start Date.

(b) “Capacity Exposed to Market Prices without Entry” is calculated for each Locality and the NYCA as:

“Capacity Obligations without Entry” for each Locality and the NYCA, translated from ICAP MW into UCAP MW using the average derating factor for each Locality and the NYCA corresponding to the ICAP Spot Market Auctions used to determine the ICAP Spot Market Auction Price without Entry;

minus

“Self Supply Capacity” for each Locality and the NYCA, translated from ICAP MW into UCAP MW using a derating factor, as determined by the ISO, that is reasonably anticipated to be associated with ICAP Suppliers included in this Self Supply Capacity;

minus

“Additional Self Supply Capacity” for each Locality and the NYCA, translated from ICAP MW into UCAP MW using a derating factor, as determined by the

ISO, that is reasonably anticipated to be associated with ICAP Suppliers included in this Additional Self Supply Capacity;

23.4.5.7.14.3.1.2 The ISO will calculate “Total Capacity Costs with Entry” as the sum of “Proportional Entry Costs” and the sum over all Localities, and the NYCA, of the product of (a) “ICAP Spot Market Auction Price With Entry” and (b) “Capacity Exposed to Market Prices With Entry”.

“Proportional Entry Costs” is the percentage of the Unit Net CONE (expressed in dollars) of the SSE Applicant (calculated in accordance with Section 23.4.5.7.3 if an Examined Facility, or in accordance with Section 23.4.5.7.2.1 if an NCZ Examined Project, or in accordance with Section 23.4.5.7.6.1 if Additional CRIS MW) that is equal to the SSE Evaluated ICAP divided by the total MW of CRIS requested by the SSE Applicant in the Class Year.

(a) The “ICAP Spot Market Auction Price with Entry” shall be based on the ICAP Spot Market Auction prices calculated for each Locality and the NYCA, averaged over the three most recently completed Capability Years preceding the Class Year Start Date, and adjusted to reflect the entry of the SSE Applicant.

(b) the “Capacity Exposed to Market Prices with Entry” is calculated for each Locality and the NYCA as:

“Capacity Obligations with Entry” for each Locality and the NYCA, translated from ICAP MW into UCAP MW using the average derating factor for each Locality and the NYCA corresponding to the ICAP Spot Market Auctions used to determine the ICAP Spot Market Auction Price with Entry;

minus

“Self Supply Capacity” for each Locality and the NYCA, translated from ICAP MW into UCAP MW using a derating factor, as determined by the ISO, that is reasonably anticipated to be associated with ICAP Suppliers included in this Self Supply Capacity;

minus

“Additional Self Supply Capacity” for each Locality and the NYCA, translated from ICAP MW into UCAP MW using a derating factor, as determined by the ISO, that is reasonably anticipated to be associated with ICAP Suppliers included in this Additional Self Supply Capacity;

minus

“SSE Evaluated ICAP”, translated from ICAP MW into UCAP MW using a derating factor, as determined by the ISO that is reasonably anticipated to be associated with the SSE Applicant.

#### **23.4.5.7.14.3.2 Net Long Threshold**

If the Self Supply LSE and any of its Affiliates are associated with more than one Self Supply Exemption Request in the Class Year, the Net Long Threshold determination will be made based on the sum of the Self Supply LSE’s and all of its Affiliates’ SSE Evaluated ICAP (“Cumulative Affiliated Quantity”) prior to the Initial Decision Period. The ISO shall recalculate the Cumulative Affiliated Quantity prior to the ISO’s issuance of a Revised Project Cost Allocation Subsequent Decision Period if any SSE Applicant with which it is associated is no longer in the Class Year.

For each Mitigated Capacity Zone containing the location of the SSE Applicant, the ISO will determine the largest amount of SSE Evaluated ICAP MW that is (a) less than or equal to

the sum of the Self Supply LSE's and all of its Affiliates' "SSE Evaluated ICAP" and (b) for which the Self Supply LSE's and all of its Affiliates' "Total Self Supply Capacity" is less than or equal to the "Future Capacity Obligation." The Net Long Threshold will be satisfied for the smallest of these determined amounts of SSE Evaluated ICAP MW, and will be considered not satisfied if the smallest of these amounts is less than or equal to zero.

- (i) The "Total Self Supply Capacity" is the sum, in each Mitigated Capacity Zone, of ICAP MW of (A) Self Supply Capacity, (B) Additional Self-Supply Capacity, and (C) the cumulative quantity of the Self Supply LSE's and all of its Affiliates' SSE Evaluated ICAP.
- (ii) the "Future Capacity Obligation" is the product of (A) ICAP MW of Capacity Obligations without Entry, and (B) the higher of (x) one plus the "10 year growth rate of peak demand" and (y) one plus one percent. The "10 year growth rate of peak demand" shall be determined based on the longest available NYSO Baseline forecast of non-coincident peak demand for the corresponding Mitigated Capacity Zone found in the "Baseline Forecast of Non-Coincident Peak Demand" table, or its successor in the most current Gold Book, published by the Class Year Start Date of the Class Year, for each Mitigated Capacity Zone.

#### **23.4.5.7.14.4 Timing of Determinations**

##### **23.4.5.7.14.4.1 Determinations.**

- (a) Prior to the Initial Decision Period, the ISO shall determine whether all or a portion of the MW specified in the request for a Self Supply Exemption is eligible for a Self Supply Exemption in accordance with Section 23.4.5.7.14.1.2. If the ISO determines that all or a portion of the CRIS MW for which a Self Supply

Exemption was requested is not eligible for a Self Supply Exemption, the ISO shall make a determination in accordance with Section 23.4.5.7.3.2 prior to the commencement of the Initial Decision Period, and prior to the ISO's issuance of a Revised Project Cost Allocation. When evaluating eligibility for a Self Supply 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 30.4.6.2.12 of Attachment O to this Services Tariff.

- (b) Determinations made pursuant to Section 23.4.5.7.14.4 shall be provided to the SSE Applicant concurrent with the issuance of determinations in accordance with Section 23.4.5.7.3.3, and to an NCZ Examined Project at the time of the ISO's determination pursuant to Section 23.4.5.7.2.1.
- (c ) The ISO shall post on its web site and concurrently notify the Self Supply LSE of the ISO's determination of exempt, and if exempt the quantity of MW exempted, or non-exempt, from an Offer Floor as soon as the determination is final. Concurrent with the ISO's posting, the Market Monitoring Unit shall publish a report on the ISO's determination, as further specified in Sections 30.4.6.2.12 of Attachment O to this Services Tariff.

#### **23.4.5.7.14.5 Revocation of a Self Supply Exemption**

- (a) If, at the time prior to the SSE Applicant first producing or transmitting, Energy it or the Self Supply LSE no longer satisfies the requirements of Section 23.4.5.7.14.1(b) or no longer meets the requirements of the Acknowledgement and Certification, the SSE Applicant and the Self Supply LSE shall notify each



other and other ISO in writing within 3 business days of the event or basis for the failure to meet the requirements for a Self Supply Exemption. Upon notification, the ISO shall revoke the Self Supply Exemption and apply the Mitigation Net CONE Offer Floor (such value calculated based on the date it first offers UCAP, in accordance with Section 23.4.5.7.3.7, and adjusted annually in accordance with Section 23.4.5.7 of this Services Tariff.)

- (b) The failure to provide the ISO written notice in accordance with Section 23.4.5.7.14.5(a) shall constitute a violation of the Services 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.)
- (c) Where the ISO reasonably believes that a request for a Self Supply Exemption was granted based on (i) false, misleading, or inaccurate information, or (ii) the Self Supply LSE's inclusion within "Self Supply Capacity" (as that term is used in Section 23.4.5.7.14.3) of a Generator or UDR project's capacity that was identified by the Self Supply LSE whose CRIS was projected to expire before the end of the Mitigation Study Period but has not expired on or before the date that marked the end of the Mitigation Study Period, the ISO shall notify the SSE Applicant and the Self Supply LSE that the Self Supply Exemption may be revoked. Provided that 30 days written notice has been given to the SSE Applicant (such notice to the extent practicable,) the ISO may revoke the Self Supply Exemption and apply the Mitigation Net CONE Offer Floor (such value calculated based on the date the SSE Applicant first offers UCAP, in accordance with Section 23.4.5.7.3.7, and adjusted annually in accordance with Section

23.4.5.7 of this Services Tariff.) Prior to the revocation of a Self Supply Exemption and the submission of a report to the Commission's Office of Enforcement (or any successor to its responsibilities,) the ISO shall provide the SSE Applicant an opportunity to explain any statement, information, or action, and if a statement information or action of the Self Supply LSE, it shall also provide an opportunity to that entity. The ISO cannot revoke the Self Supply Exemption until after the 30 days written notice period has expired, unless ordered to do so by the Commission.

## **30.4 Market Monitoring Unit**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 30.4.5.1 Evaluate existing and proposed market rules, tariff provisions and market design elements and recommend proposed rule and tariff changes to the ISO, to the Commission's Office of Energy Market Regulation staff, and to other interested entities, including the New York Public Service Commission, and participants in the ISO's stakeholder governance process. Provided that:
  - 30.4.5.1.1 The Market Monitoring Unit is not responsible for systematic review of every tariff and market rule; its role is monitoring, not audit.

30.4.5.1.2 The Market Monitoring Unit is not to effectuate its proposed market design itself.

30.4.5.1.3 The Market Monitoring Unit's role in recommending proposed rule and Tariff changes is advisory in nature, unless a Tariff provision specifically concerns actions to be undertaken by the Market Monitoring Unit itself.

30.4.5.1.4 The Market Monitoring Unit must limit distribution of issues or concerns it identifies, and its recommendations to the ISO and to Commission staff in the event it believes broader dissemination could lead to exploitation. Limited distributions should include an explanation of why further dissemination should be avoided at that time.

30.4.5.2 Review and report on the performance of the wholesale markets to the ISO, the Commission, and other interested entities such as the New York Public Service Commission and participants in its stakeholder governance process on at least a quarterly basis, and issue a more comprehensive annual state of the market report. The Market Monitoring Unit may issue additional reports as necessary.

30.4.5.2.1 In order to perform the Core Functions, the Market Monitoring Unit shall perform daily monitoring of the markets that the ISO administers. The Market Monitoring Unit's daily monitoring shall include monitoring of virtual bidding.

30.4.5.2.2 The Market Monitoring Unit shall submit drafts of each of its reports to the ISO for review and comment sufficiently in advance of the report's issuance to provide an effective opportunity for review and comment by the ISO. The Market Monitoring Unit may disregard any suggestions with which it disagrees. The ISO may not alter the reports prepared by the Market Monitoring Unit, nor

dictate the Market Monitoring Unit's conclusions.

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

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

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



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

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

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

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

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

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

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

Commission.

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

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

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

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

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

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

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

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

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

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

30.4.6.2.2 The ISO and the Market Monitoring Unit shall monitor the ISO Administered Markets for other categories of conduct, whether by a single firm or by multiple firms acting in concert, that have material effects on prices or guarantee payments in an ISO Administered Market. *See* Market Mitigation Measures Section 23.2.4.4.

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

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

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

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

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

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

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

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

30.4.6.2.8 Reasonably in advance of the deadline for submitting offers in an External Reconfiguration Market and in accordance with the deadlines specified in ISO Procedures, the Responsible Market Party for External Sale UCAP may request the ISO to provide a projection of ICAP Spot Auction clearing prices for a Mitigated Capacity Zone over the Comparison Period for the External Reconfiguration Market. Prior to completing its projection of ICAP Spot Auction clearing prices for a Mitigated Capacity Zone over the Comparison Period for the External Reconfiguration Market, the ISO shall consult with the Market Monitoring Unit regarding such price projection. *See* Market Mitigation Measures Section 23.4.5.4.3.



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

30.4.6.2.10 Any proposal or decision by a Market Participant to retire or otherwise remove an Installed Capacity Supplier from a Mitigated Capacity Zone Unforced Capacity market, or to de-rate the amount of Installed Capacity available from such supplier, may be subject to audit and review by the ISO if the ISO determines that such action could reasonably be expected to affect Market-Clearing Prices in one or more ICAP Spot Market Auctions for a Mitigated Capacity Zone subsequent to such action; provided, however, no audit and review shall be necessary if the Installed Capacity Supplier is a Generator that is being retired or removed from a Mitigated Capacity Zone as the result of a Forced Outage that began on or after the effective date of the amendments to Section 23.4.5.6.1 of this Services Tariff that was determined by the ISO to be a Catastrophic Failure. Such an audit or review shall assess whether the proposal or decision has a legitimate economic justification or is based on an effort to withhold Installed Capacity physically in order to affect prices. The ISO shall provide the preliminary results of its audit or review to the Market Monitoring Unit for its review and comment. *See* Market Mitigation Measures Section 23.4.5.6.

30.4.6.2.11 Any reclassification of a an Installed Capacity Supplier that is a Generator in a Mitigated Capacity Zone from a Forced Outage that began on or after the

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

The audit and review pursuant to the above paragraph shall assess whether the reclassification of the Generator in a Mitigated Capacity Zone from a Forced Outage to an ICAP Ineligible Forced Outage had a legitimate economic justification or is based on an effort to withhold Installed Capacity physically in order to affect prices. The ISO shall provide the preliminary results of its audit or review to the Market Monitoring Unit for its review and comment.

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

acquires the necessary data, the Market Party has Commenced Repair of the Generator, or the Generator is determined by the ISO to have had a Catastrophic Failure, the Market Party shall not be subject to an audit and review pursuant to Section 23.4.5.6.2.1 of this Services Tariff. The ISO shall provide the preliminary results of its audit or review to the Market Monitoring Unit for its review and comment.

30.4.6.2.12 When evaluating an Examined Facility or NCZ Examined Project pursuant to Section 23.4.5.7 of the Market Mitigation Measures, the ISO shall seek comment from the Market Monitoring Unit on matters relating to the determination of price projections; and cost calculations, the ISO's draft list of recommended Exempt Renewable Technologies and the basis for the recommendation; requests pursuant to Section 23.4.5.7.14.1.2(e)(C) regarding whether a "contract" (as defined in Section 23.4.5.7.14.2(e)) would make it ineligible to obtain or (if previously granted) retain a Self Supply Exemption;. As required by Section 23.4.5.7 of Attachment H to this Services Tariff, the Market Monitoring Unit shall prepare a written report discussing factors that affect the ISO's mitigation exemption and Offer Floor determinations, and confirming whether the ISO's Offer Floor and exemption determinations and calculations conducted pursuant to Sections 23.4.5.7.2 and 23.4.5.7.6, the NYISO's determination of eligible or ineligible for an exemption pursuant to Section 23.4.5.7.9, 23.4.5.7.13, and 23.4.5.7.14 were conducted in accordance with the terms of the Services Tariff, and if not, identifying the flaws inherent in the ISO's approach. This report shall be presented concurrent with the ISO's posting of its

mitigation exemption and Offer Floor determinations. Pursuant to Section 23.4.5.7.8 of the Market Mitigation Measures, the ISO shall also consult with the Market Monitoring Unit when evaluating whether any existing or proposed Generator or UDR project in a Mitigated Capacity Zone, except New York City, has Commenced Construction, and determinations of whether it shall be exempted from an Offer Floor under that Section. Prior to the ISO making an exemption determination pursuant to Section 23.4.5.7.8, the Market Monitoring Unit shall provide the ISO a written opinion and recommendation. The Market Monitoring Unit shall also provide a public report on its assessment of an ISO determination that an existing or proposed Generator or UDR project is exempt from an Offer Floor under Section 23.4.5.7.8. *See* Market Mitigation Measures Section 23.4.5.7.

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

- 30.4.6.3.1 The ICAP Demand Curve periodic review schedule and procedures shall provide an opportunity for the Market Monitoring Unit to review and comment on the draft request for proposals, the independent consultant's report, and the ISO's proposed ICAP Demand Curves. *See* ISO Services Tariff Section 5.14.1.2.5.
- 30.4.6.3.2 The new capacity zone periodic review shall provide an opportunity for the Market Monitoring Unit to review and comment on the NCZ Study, and any proposed NCZ tariff revisions. *See* ISO Services Tariff Sections 5.16.1.3 and 5.16.4.

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

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

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

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

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

##### **30.4.6.4.2 Responsibilities related to the Operating Reserves Demand Curves**

In order to respond to operational or reliability problems that arise in real-time, the ISO

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

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

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

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

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

The ISO may periodically evaluate the Transmission Shortage Cost to determine whether it is necessary to modify the Transmission Shortage Cost to avoid future operational or reliability

problems. The ISO will consult with its Market Monitoring Unit after it conducts this evaluation.

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

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

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

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

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

If the ISO, acting in consultation with its Market Monitoring Unit, identifies transmission scheduling paths that are being used to schedule External Transactions in a manner that is not consistent with the manner in which power is actually expected to flow, the ISO may submit a compliance filing in FERC Docket No. ER13-780 proposing to expand the list of prohibited

scheduling paths included in Section 16.3.3.8 of the ISO OATT. The ISO's compliance filing will include, or be accompanied by, a discussion of the Market Monitoring Unit's position regarding the ISO's proposal to add a new prohibited scheduling path or new prohibited scheduling paths. The Market Monitoring Unit's position may be explained in the ISO's filing letter, be set forth in an accompanying affidavit, or be submitted by the Market Monitoring Unit as a companion filing or as comments on the ISO's compliance filing in Docket No. ER13-780. *See* Section 16.3.3.8 of Attachment J to the ISO OATT.

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

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

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

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



#### **30.4.6.8.4 Responsibilities related to the draft Congestion Analysis and Resource Integration Study**

Following the Management Committee vote, the draft Congestion Analysis and Resource Integration Study (CARIS), with Business Issues Committee and Management Committee input, will be forwarded to the ISO Board for review and action. Concurrently, the draft CARIS will be provided to the Market Monitoring Unit for its review and consideration. *See* Section 31.3.2.2 of Attachment Y to the ISO OATT.

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

The ISO will provide the draft Public Policy Transmission Planning Report to the Market Monitoring Unit for its review and consideration of any impact on the ISO-administered markets of regulated transmission solutions proposed to satisfy a Public Policy Transmission Need. *See* Sections 31.4.9 and 31.4.10.1 of Attachment Y to the ISO OATT. The Market Monitoring Unit's evaluation will be provided to the Management Committee before the Management Committee's advisory vote. *See* Section 31.4.10.1 of Attachment Y. Following the Management Committee vote, the draft Public Policy Transmission Planning Report, with Business Issues Committee and Management Committee input, will be forwarded to the ISO Board for review and action. Concurrent with the submission to the ISO Board of the draft Public Policy Transmission Planning Report, the Market Monitoring Unit's evaluation will be provided to the ISO Board. *See* Section 31.4.7 of Attachment Y to the ISO OATT.

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

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

30.4.7.1 The ISO shall ensure that the Market Monitoring Unit has sufficient

access to ISO resources, personnel and market data to enable the Market Monitoring Unit to carry out its functions under Attachment O. Consistent with Section 30.6.1 of Attachment O, the Market Monitoring Unit shall have complete access to the ISO's databases of market information.

30.4.7.2 Any data created by the Market Monitoring Unit, including but not limited to reconfiguration of the ISO's data, will be kept within the exclusive control of the Market Monitoring Unit. The Market Monitoring Unit may share the data it creates, subject to the limitations on distribution of and obligation to protect the confidentiality of Protected Information that are contained in Attachment O, the ISO Services Tariff, and the ISO's Code of Conduct.

30.4.7.3 Where data outside the ISO's geographic footprint would be helpful to the Market Monitoring Unit in carrying out its duties, the Market Monitoring Unit should seek out that data (with assistance from the ISO, where appropriate).