

### 23.4.5.7.9 Competitive Entry Exemption

#### 23.4.5.7.9.1 Eligibility

The eligibility of an Examined Facility, except an Examined Facility that has made a request for Additional CRIS MW, to request and receive a Competitive Entry Exemption is governed by Sections 23.4.5.7.9.1 through 23.4.5.7.9.5. The eligibility of an Examined Facility that that has made a request for Additional CRIS MW to request and receive a Competitive Entry Exemption is governed by Sections 23.4.5.7.9.6 and otherwise as referenced in Section 23.4.5.7.9.1 and Sections 23.4.5.7.9.2.2 through 23.4.5.7.9.5 except as expressly excluded.

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23.4.5.7.9.1.1 ~~An proposed new Generator or UDR project~~ Examined Facility that becomes a member of a Class Year Study after Class Year 2012 or is a member of an Expedited Deliverability Study 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~~ Examined Facility meets each of the following requirements: (a) it does not have, and at no time before the Examined Facility that is a Generator first produces or ~~the that is a~~ 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, 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”) of the Developer or any Affiliate of the Developer of the Examined Facility that is the subject of the request for a Competitive Entry Exemption 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~~ Examined Facility; (b) is for the energy or capacity produced by or delivered from or by the ~~Generator or UDR project~~ Examined Facility, 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~~ the Examined Facility, its Developer, or Affiliates which could benefit the Developer, its Affiliates, the Examined Facility, or potential future Additional CRIS MW associated with it. For purposes of Section 23.4.5.7.9, an indirect “non-qualifying contractual relationship” is any contract between the ~~Generator or UDR project~~ Developer of the Examined Facility or its Affiliate 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 that states that it will benefit, or which~~

the ISO determines has the purpose or effect of benefitting, at the time of the Competitive Entry Exemption evaluation or thereafter (including after an Examined Facility or Additional CRIS MW enters the market), (i) any portion of the Examined Facility, or its Developer/Owner (ii) the owner of the site on which the Examined Facility is located, (iii) any facilities, equipment, or personnel shared by an Examined Facility and another entity.

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; or (ix) a contract that is determined by the ISO, and that is certified in accordance with Section 23.4.5.7.9.6.6 to be a Competitive and Non-Discriminatory Hedging Contract. 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 ~~an Generator or UDR project~~ Examined Facility is eligible for a Competitive Entry Exemption based on its review of the certifications required by Section 23.4.5.7.9.2 for a proposed new Examined Facility and Section 23.4.5.7.9.6.5 for requests for Additional CRIS MW, 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 30.4.6.2.13 of Attachment O to this Services Tariff.

#### 23.4.5.7.9.2 Certifications and Acknowledgements

Certifications and Acknowledgments that must be made on behalf of Examined Facilities, except for Examined Facilities that have requested Additional CRIS MW, in order to receive a Competitive Entry Exemption, are governed by Sections 23.4.5.7.9.2.1 (and otherwise as referenced in Section 23.4.5.7.9). Certifications and Acknowledgments that must be made on behalf of Examined Facilities that have requested Additional CRIS MW Examined Facilities, in order to receive a Competitive Entry Exemption, are governed by Sections 23.4.5.7.9.6.5 (and otherwise as referenced in Section 23.4.5.7.9 except as expressly excluded). Additional Certifications and Acknowledgements that must be made on behalf of Examined Facilities that assert that a contract should be deemed to be a Competitive and Non-Discriminatory Hedging Contract are governed by Section 23.4.5.7.9.6.6.

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##### 23.4.5.7.9.2.1 An ~~Generator or UDR project~~ Examined Facility (except an Examined

Facility requesting Additional CRIS MW) 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 [DEVELOPER/OWNER, and DEVELOPER's/OWNER's AFFILIATES], including each of the certifications and acknowledgements that I have made in this document.

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3. I hereby [REQUEST ON BEHALF OF/ACKNOWLEDGE THE PRIOR SUBMISSION IN THIS CLASS YEAR STUDY, ADDITIONAL SDU STUDY, or EXPEDITED DELIVERABILITY STUDY 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 of the Project, Developer/Owner and all of its Affiliates with Non-Qualifying Entry Sponsors on Schedule 1 to this Certification including those that have expired or been terminated, and those for which performance remains to be completed.
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. For each such contractual relationship, I have identified on Schedule 1 to this Certification the subsection(s) of 23.4.5.7.9.1.3(i) – (ix) which causes the contractual relationship to be an "allowable contract."
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, the Developer/Owner, or an Affiliate that directly or indirectly could reasonably be expected to benefit 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 such written agreements that and a description of all such unwritten agreements is set forth on Schedule 2 to this certification, and (c) none of the foregoing would not constitute a non-qualifying contractual relationship are. For each such unexecuted agreement I have identified on Schedule 42 to this certification the specific tariff subsection(s) of (i) – (ix) which causes the contractual relationship to be an "allowable contract."

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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 Developer/Owner 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/OWNER] that:

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- a. The submission of false, misleading, or inaccurate information, or the failure to submit information requested by the NYISO or to cooperate with a request 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 or to cooperate with a request, 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 potentially 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, as specified under Section 23.4.5.7.9.5~~ starting with the date of the revocation pursuant to Section 23.4.5.7.9.5.3 of the Services Tariff unless otherwise determined to be exempt pursuant to Section 23.4.5.7.2(a) or (b) of the Services Tariff.
- c. If the Project submits false, misleading, or inaccurate information, or fails to submit requested information to the NYISO or to cooperate with a request, 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: \_\_\_\_\_

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

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**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, (a) each time there is a proposed new contract, an  
executed new contract, or an amendment, revision, or addendum (or any similar  
change) to an executed or unexecuted contract, with a Non-Qualifying Entry



Sponsor, and (b) each time the ISO requests a resubmittal of a certification, until the Generator's or UDR-Examined Facility project's Entry Date.

23.4.5.7.9.2.5 The Generator or UDR-project-Developer or Owner of the Examined Facility must notify the ISO if information in a certification ceases to be true, promptly upon such occurrence or learning within two (2) business days after the earlier of the date that it learned that the information previously provided was not had ceased to be true or the date that it should have reasonably determined that the information was likely no longer to be true.

23.4.5.7.9.2.6 Failure to provide, without prior notification (such notification as described in Section 23.4.5.9.2.7 below), 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 written notification is provided to that information requested by the ISO or cooperation with a request will not be provided is received by the ISO's Market Mitigation and Analysis Department, within two (2) business days of a Developer/Owner or its Affiliate's receipt of at the ISO's request from the ISO for information or cooperation, that the information or cooperation requested will not be provided, such refusal will shall not be considered a false, misleading, or inaccurate submission for purposes of Section 23.4.5.7.9.5 as long as the information and cooperation is provided by the earlier of a mutually agreed upon deadline or thirtyfifteen (3015) calendar days. A failure by any other party to any such contract to provide any consent that might be necessary to disclose it or associated information to the ISO shall not excuse the Developer/Owner and its

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Affiliates from their obligations hereunder. A failure to provide a Certification and Acknowledgement in accordance with Sections 23.4.5.7.9.2.1, 23.4.5.7.9.2.4 and 23.4.5.7.9.2.5, any refusal to provide information, ~~or cooperation, or~~ any other failure to provide information or cooperation by ~~that the~~ deadline will (a) make the ~~Generator or UDR project~~ Examined Facility 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 in that Class Year and ineligible to request a Competitive Entry Exemption in the future, whether in a Class Year or as an Expected CRIS Transferee (in either case, under the same interconnection queue position number or a different queue number), and (b) 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). The Examined Facility will receive a determination of exempt or non-exempt (and if the latter, an Offer Floor) under Sections 23.4.5.7.2(a) or (b) and 23.4.5.7.6(a) or (b) provided that the Examined Facility's (or its Affiliate's) failure under this Section does not also constitute a failure under Section 23.4.5.7.3.4 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 at

any time and updated certifications at any time prior to ~~a Generator's or UDR project's~~ the latter of the Examined Facility's Entry Date or the date that the Class Year decisional process of which the Examined Facility is a member has been completed (or in the case of an Examined Facility that is an expected recipient of transferred CRIS rights, such Class Year along with which it is being examined).

~~An Generator or UDR project~~ Examined Facility that is granted ~~an~~ Competitive Entry eExemption 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 or Section 23.4.5.7.9.6.5, as applicable of the Services Tariff, updated ~~as appropriate~~ when required by or upon request from the ISO pursuant to Section 23.4.5.7.9.2.4, upon-until 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 and Requests for Competitive Entry Exemptions for Generators in Expedited Deliverability Studies 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 Study or Expedited Deliverability Study, such date as set forth in Section 25.5.9 OATT Attachment S, except as noted below. If the Examined Facility is a request for transferred CRIS at the same location and a determination under Section 25.9.4 of the OATT] has been made that it does not need to be a member of a Class Year, then the request for a Competitive Entry Exemption must be received by the election date of the Class Year with which the Examined Facility will be examined under Section 23.4.5.7. With respect to Class Year 2019, requests for Competitive Entry

Exemptions may be submitted after the deadline specified in the first sentence of this Section 23.4.5.7.9.3.2 within fifteen (15) calendar days of the day of the Commission's issuance of an order accepting revisions to Section 23.4.5.7.9 of the Services Tariff that were filed with the Commission on [December 20, 2019].

A Generator or UDR project that requests a Competitive Entry Exemption in a Class Year Study or a Generator that requests a Competitive Entry Exemption in an Expedited Deliverability Study may not also request a Renewable Exemption or Self Supply Exemption. An Generator or UDR project Examined Facility (except a request for Additional CRIS) that remains a member of the 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 an an Generator or UDR project Examined Facility 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 Examined Facility 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 two (2) business days of doing so. An ~~Generator or UDR project seeking to~~ Examined Facility that withdraws its request pursuant to this Section 23.4.5.7.9.3.3 Competitive Entry Exemption request by this deadline shall remain eligible to obtain an exemption under Section 23.4.5.7.2(a) or (b) and 23.4.5.7.6(a) or (b) if the criteria of those provisions are satisfied. If an Examined Facility enters into the kind of impermissible arrangement described above and seeks to withdraw its request before the Class Year Initial Decision Period commences, but does not seek to withdraw until after this provision’s deadline, then it shall be subject to the lesser of the Mitigation Net CONE Offer Floor or Unit Net CONE Offer Floor (such value calculated based on ~~its~~ the date that 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~~ Examined Facility that requests a Competitive Entry Exemption that becomes a member of the Class Year Study or Expedited Deliverability Study, 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 30.4.6.2.13 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 and cooperate 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~~ Examin ed Facility (or if no longer an Examin ed Facility, the Developer/Owner of the Generator, UDR project or Additional CRIS MW) that its Competitive Entry Exemption may be revoked, and provided 30 days written notice has been given to the ~~Generator or UDR project~~ Examin ed Facility (such notice to the extent practicable,) the ISO may revoke the Competitive Entry Exemption ~~and apply~~. If the ISO revokes the Competitive Entry Exemption it shall determine whether the Generator, UDR project, or Additional CRIS MW is nevertheless exempt from an Offer Floor under Section

23.4.5.7.2(a) or (b) or 23.4.5.7.6(a) or 23.4.5.7.6(a), unless the failure that led to the revocation is also a failure under 23.4.5.7.3.4. If the Generator, UDR project, or Additional CRIS MW does not qualify for such an exemption it shall be subject to the lesser of the Mitigation Net CONE Offer Floor or Unit Net CONE Offer Floor (such value calculated based on the date ~~that the MW was~~ first offered as 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~~ Examined Facility (or if no longer an Examined Facility, the Developer/Owner of the Generator, UDR project or Additional CRIS MW) 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.

#### **23.4.5.7.9.6 Competitive Entry Exemption Requests for Additional CRIS MW**

23.4.5.7.9.6.1 An Examined Facility shall be eligible to request a Competitive Entry Exemption for Additional CRIS MW if:

(a) the most recent prior final determination in a completed Class Year concluded that the Capacity for which the Examined Facility accepted CRIS was exempt from an Offer Floor under Sections 23.4.5.7.2(b), 23.4.5.7.6(b), 23.4.5.7.7 (with respect to MW of CRIS that the Examined Facility had at that time unless the CRIS subsequently expired under Section 25.9.3.1 of the ISO OATT), 23.4.5.7.8,

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or 23.4.5.7.9 (except for an Examined Facility for which an exemption was revoked under Section 23.4.5.7.9.5.2); or (b) (i) 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 (ii) 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.

23.4.5.7.9.6.2 An Examined Facility that requests Additional CRIS MW and that requests a Competitive Entry Exemption in accordance with Sections 23.4.5.7.9.3.1 and 23.4.5.7.9.3.2 shall qualify for such exemption if the ISO makes the determination specified in Section 23.4.5.7.9.1.1, i.e., that the Examined Facility does not have a direct or indirect "non-qualifying contractual relationship" as defined in Sections 23.4.5.7.9.1.2 and 23.4.5.7.9.1.3 with one or more Non-Qualifying Entry Sponsors as defined in Section 23.2.1. However, an Examined Facility would not be disqualified from obtaining a Competitive Entry Exemption for Additional CRIS MW if prior to the date on which the exemption request and Certification and Acknowledgment were due and were made in accordance with Sections 23.4.5.7.9.3.1 and 23.4.5.7.9.3.2 of this Services Tariff



the Examined Facility had a non-qualifying contractual relationship under which (a) full performance has been completed by all parties, or (b) all obligations of each party to all other parties were terminated or expired..

23.4.5.7.9.6.3 An Examined Facility that obtains a Competitive Entry Exemption for Additional CRIS MW must maintain compliance with the requirements of Section 23.4.5.7.9 until the later of: (i) the Examined Facility demonstrating, in accordance with ISO Procedures, that its generating capacity or total transfer capability has increased from the uprate associated with the Additional CRIS MW; and (ii) the date that the Class Year decisional process of which the Examined Facility is a member has been completed (or in the case of an Examined Facility that is an Expected CRIS transferee, the date that the transfer is effective).

23.4.5.7.9.6.4 An Examined Facility that requests Additional CRIS MW and that requests a Competitive Entry Exemption shall also be subject to the requirements of Sections 23.4.5.7.9.2.2 through 23.4.5.7.9.5. The ISO shall likewise follow the requirements of Section 23.4.5.7.9.2 through 23.4.5.7.9.5 when making Competitive Entry Exemption determinations for Additional CRIS MW. In the event of a conflict between the application of Sections 23.4.5.7.9.6 and Sections 23.4.5.7.9.2 through 23.4.5.7.9.5 to a Competitive Entry Exemption request for Additional CRIS MW, the requirements of Section 23.4.5.7.9.6 will control.

23.4.5.7.9.6.5 An Examined Facility that requests Additional CRIS MW and that requests 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 executed by a duly authorized officer:

**ADDITIONAL CRIS MW CERTIFICATION AND ACKNOWLEDGMENT**

I [NAME & TITLE] hereby certify on behalf of myself, [NAME OF EXAMINED

FACILITY ON THE INTERCONNECTION QUEUE], 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 [ADDITIONAL CRIS MW APPLICABLE TO EXAMINED FACILITY], New York Independent System Operator, Inc.'s ("NYISO") Interconnection queue position Number [INSERT NUMBER – if applicable].
2. I am duly authorized to make representations concerning the Additional CRIS MW and the [DEVELOPER and DEVELOPER's AFFILIATES], 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] a Competitive Entry Exemption for the Additional CRIS MW.
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 Request for Additional CRIS MW" pursuant to Section 23.4.5.7.9.6.
5. I have personal knowledge of the facts and circumstances supporting the request and eligibility for a Competitive Entry Exemption for the Additional CRIS MW as of the date of this Certification and Acknowledgment, including all data and

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other information submitted by the [OWNER OF THE GENERATOR OR UDR FACILITY REQUESTING ADDITIONAL CRIS MW] 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 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 of the Project, Developer and all of its Affiliates with Non-Qualifying Entry Sponsors on Schedule 1 to this Certification including those that have expired or been terminated, and those for which performance remains to be completed.
7. If the Answer to (6) is that there are one or more direct or indirect contractual relationships 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) – (ix) of the Services Tariff. For each such contractual relationship, I have identified on Schedule 1 to this Certification the subsection(s) of 23.4.5.7.9.1.3(i) – (ix) which causes the contractual relationship to be an “allowable contract.”
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 Additional CRIS MW, or the Developer or its Affiliate, that directly or indirectly could reasonably be expected to benefit the Examined Facility 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) – (ix) of the

Services Tariff, and (b) all such written agreements and a description of all such unwritten agreements is set forth on Schedule 2 to this certification, and (c) none of the foregoing would constitute a non-qualifying contractual relationship. For each such unexecuted agreement I have identified the specific tariff subsection(s) of (i) – (ix) which causes the contractual relationship to be an “allowable contract”.

9. To the best of my knowledge and having conducted due diligence, the [DEVELOPER] 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 [DEVELOPER] shall provide any information or cooperation requested by the NYISO in connection with the request for a Competitive Entry Exemption for the Additional CRIS MW.
11. All parents or Affiliates of the [OWNER OF THE GENERATOR OR UDR FACILITY REQUESTING ADDITIONAL CRIS MW] shall provide any information or cooperation requested by the ISO.
- I hereby acknowledge on behalf of myself, [INSERT NAME OF THE GENERATOR OR UDR FACILITY REQUESTING ADDITIONAL CRIS MW ], and [OWNER OF THE GENERATOR OR UDR FACILITY REQUESTING ADDITIONAL CRIS MW] that:
- a. The submission of false, misleading, or inaccurate information, or the failure to submit information requested by the NYISO or to cooperate with a request related to the request for a Competitive Entry Exemption, including but not limited to

information contained or submitted in this Certification and Acknowledgement for the [OWNER OF THE GENERATOR OR UDR FACILITY REQUESTING ADDITIONAL CRIS MW] that requested Additional CRIS MW, 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 [OWNER OF THE GENERATOR OR UDR FACILITY REQUESTING ADDITIONAL CRIS MW] submits false, misleading, or inaccurate information, or fails to submit requested information to the NYISO or cooperate with a request, including but not limited to information contained or submitted in this Certification and Acknowledgement on behalf of the Additional CRIS MW, or to cooperate with a request it shall cease to be eligible for a Competitive Entry Exemption and, if a Competitive Entry Exemption has already been granted for the Additional CRIS MW, that exemption shall be subject to revocation by the NYISO or the Commission after which the Additional CRIS MW shall potentially be subject to an Offer Floor set at the Mitigation Net CONE Offer Floor as specified under Section 23.4.5.7.9.5 starting with the date of the revocation pursuant to Section 23.4.5.7.9.5.3 of the Services Tariff.

c. If [OWNER OF THE GENERATOR OR UDR FACILITY REQUESTING ADDITIONAL CRIS MW] 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, 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: \_\_\_\_\_

[NAME OF OWNER OF THE EXAMINED FACILITY REQUESTING

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ADDITIONAL CRIS MW AND PROJECT NAME OF THE ADDITIONAL  
CRIS MW EXAMINED FACILITY NAME]

SCHEDULE 1 CERTIFICATION AND ACKNOWLEDGEMENT

[DATE]

Parties to agreement Date Executed Effective Date Date Performance

Commences

23.4.5.7.9.6.6 An Examined Facility that requests that a contract be deemed to be a Competitive and Non-Discriminatory Hedging Contract must obtain the following certification and acknowledgment from the entity that awarded the contract and must ensure that that the certification and acknowledgement is submitted to the ISO in accordance with ISO Procedures. If the Examined Facility does not submit the required certification and acknowledgement the contract will not qualify as a Competitive and Non-Discriminatory Hedging Contract. If the entity that awarded the contract makes false, misleading, or inaccurate statements in the certification and acknowledgement that the Examined Facility knew, or reasonably should have known, were false, misleading, or inaccurate then the Examined Facility shall be deemed to have made a false and misleading statement to the ISO in 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. Such violations may subject the Examined Facility to civil penalties under the Federal Power Act. In addition, if information submitted by the Entity is false, misleading, or inaccurate or if either the

Examined Facility or the entity that submits the information fails to submit required information, or to cooperate with a request for information from the ISO pertaining to the certification and acknowledgement, then the Examined Facility shall cease to be eligible for a Competitive Entry Exemption. If a Competitive Entry Exemption has already been granted that exemption shall be subject to revocation by the ISO or the Commission under Section 23.4.5.7.9.5.

**CERTIFICATION AND ACKNOWLEDGMENT FOR COMPETITIVE AND NON-DISCRIMINATORY HEDGING CONTRACTS**

I [NAME & TITLE] hereby certify on behalf of myself and [NAME OF ENTITY THAT PROCURED HEDGING CONTRACT] that each of the following statements is true and correct:

1. I am an officer whose responsibilities include the solicitation and procurement of the contract (or contracts) that is (or are) the subject of this statement.
2. I am duly authorized to make representations concerning [ENTITY's] solicitation and procurement of the relevant contract(s).
3. 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 of the Services Tariff [or, if applicable, "Competitive Entry Exemption Request for Additional CRIS MW" pursuant to Section 23.4.5.7.9.6.], including the requirements under Section 23.2 that must be met before a contract may be deemed to be a "Competitive and Non-Discriminatory Hedging Contract."

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4. I have personal knowledge of the facts and circumstances regarding the solicitation and procurement of the contract[s] that [NAME OF EXAMINED FACILITY AND DEVELOPER] is [are] requesting be treated as [a] Competitive and Non-Discriminatory Hedging Contract[s] as of the date of this Certification and Acknowledgment. These contracts are identified in Schedule I to this Certification and Acknowledgment.
5. To the best of my knowledge and having conducted due diligence that is current as of the date of this Certification and Acknowledgment, each contract identified in Schedule I was executed through a solicitation and procurement process that met all of the following requirements (which are the requirements specified in Section 23.2 of the Services Tariff): (A) both new and existing resources could satisfy the requirements of the procurement; (B) the requirements of the procurement were fully objective and transparent; (C) the contract was (or will be) awarded based on the lowest cost offers of qualified bidders; (D) the procurement terms did not restrict the type of capacity resources that may participate in, and satisfy the requirements of, the procurement; (E) the procurement terms did not include selection criteria that could otherwise give preference to new resources; and (F) the procurement terms did not use indirect means to discriminate against existing resources, including, but not limited to, by imposing geographic constraints, unit fuel requirements, maximum unit heat-rate requirements or requirements for new construction.
6. [ENTITY] shall provide any information or cooperation requested by the NYISO in connection with its determination of whether the contracts I have identified in

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Schedule I shall be deemed to be Competitive and Non-Discriminatory Hedging Contracts.

I hereby acknowledge on behalf of myself and [ENTITY] that:

- a. The submission of false, misleading, or inaccurate information, or the failure to submit information requested by the NYISO, including but not limited to information contained or submitted in this Certification and Acknowledgement or to cooperate with a request from the NYISO related to this Certification and Acknowledgment, 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. These violations may subject [ENTITY] to civil penalties under the Federal Power Act.
- b. If information contained or submitted in this Certification and Acknowledgment is false, misleading, or inaccurate, or the [PROJECT OR EXAMINED FACILITY REQUESTING ADDITIONAL CRIS MW OWNER] fails to submit requested information to the NYISO or cooperate with a request, pertaining to information contained or submitted in this Certification and Acknowledgment, then the [PROJECT OR EXAMINED FACILITY REQUESTING ADDITIONAL CRIS MW OWNER] shall cease to be eligible for a Competitive Entry Exemption. If a Competitive Entry Exemption has already been granted that exemption shall be subject to revocation by the NYISO or the Commission after which the Examined Facility [if applicable -- Additional CRIS MW] shall potentially be subject to an Offer Floor set at the Mitigation Net

CONE Offer Floor as specified under Section 23.4.5.7.9.5 starting with the date  
of the revocation pursuant to Section 23.4.5.7.9.5.3 of the Services Tariff.

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

[DATE]

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

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

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

[NAME OF OWNER OF THE EXAMINED FACILITY REQUESTING

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COMPETITIVE AND NON-DISCRIMINATORY HEDGING CONTRACT

STATUS [NAME]

SCHEDULE 1 CERTIFICATION AND ACKNOWLEDGEMENT

NYISO Tariffs --> Market Administration and Control Area Services Tariff (MST) --> 23 MST Att H - ISO Market Power Mitigation Measures --> 23.4.5 MST Att Installed Capacity Market Mitigation Measures --> 23.4.5.7 MST Att H --> 23.4.5.7.9 MST Att H Competitive Entry Exemption

[DATE]

Parties to agreement   Date Executed   Effective Date   Date Performance

Commences