

#### **23.4.5.6 Audit, Review, and Penalties for Physical Withholding to Increase Market-Clearing Prices; Alignment with both Short-Term Reliability and Transfer of Deliverability Rights Processes**

##### **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 (except as specified in 23.4.5.6.1.1) 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 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.

The ISO's audit or review of 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, (including a review the ISO conducts at the request of a Market Participant before it submits a proposal or makes a decision or a review the NYISO conducts in conjunction with the Short-Term Reliability Process) will consider the rationale offered by the Market Participant to support its proposal or decision. Such an audit or review shall assess whether the Market Participant's proposal or decision has a legitimate economic justification, which may include the economics of complying with regulatory requirements, or is based on an effort to withhold Installed Capacity physically in order to affect prices. The ISO's audit or review is conducted based on the

expectation that a Market Participant's decision 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, accounts for the information available to that Market Participant at (or before) the time its decision is made on the "decision date" (see, e.g., Sections 23.4.5.6.4.2.1 and 23.4.5.6.4.2.2.1 below) specified by the Market Participant or the CRIS Transfer Confirmation Date for CRIS Transfers described below in Section 23.4.5.6.5. A Market Participant may offer publicly available information and other information available to the Market Participant to support its proposal or decision.

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.

23.4.5.6.1.1 A proposal or decision to retire or otherwise remove a (a) Demand Side Resource except one that is (i) a Generator that is electrically located in the NYCA or (ii) a facility, electrically located in the NYCA, comprising two or more resource types one of which is a Generator, behind a single point of interconnection with an Injection Limit of less than 20 MW, and in the case of (i) and (ii) that at any time participated directly in any ISO Administered Market or (b) a DER Aggregation from the Installed Capacity market will not be subject to audit and review. Notwithstanding the foregoing, members of a DER Aggregation otherwise subject to audit or review are not excluded by the preceding sentence.

#### **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 Participant 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 Participant 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 Participant'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. A Market Participant may offer publicly available information and other information available to the Market Participant to justify the reclassification.

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.

23.4.5.6.2.2 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 Participant has Commenced Repair of the Generator, or the Generator is determined by the ISO to have had a Catastrophic Failure, the Market Participant 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 Service 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 Participant, a determination that the Market

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

For a requesting Market Participant, a determination that a Generator has experienced a Catastrophic Failure shall be made by the ISO by the 160th 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 Participant 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 Participant 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 Participant 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.

#### **23.4.5.6.4      Aligning Physical Withholding Audits and Reviews with the Short-Term Reliability Process**

The rules in this Section 23.4.5.6.4 apply to Market Participants that initiate the Short-Term Reliability Process that is set forth in Attachment FF to the ISO OATT by submitting a Generator Deactivation Notice for a Generator. They provide an opportunity for such a Market Participant to receive a final physical withholding determination from the ISO before the Market Participant deactivates the Generator. Nothing in Attachment FF to the OATT or in this Section 23.4.5.6.4 of the ISO Services Tariff should be read as limiting the ISO's authority to impose a physical withholding penalty on a Generator that deactivates. Capitalized terms that appear in this Section 23.4.5.6.4 that are not defined in Article 2 to the ISO Services Tariff are defined in Section 38.1 of Attachment FF to the ISO OATT.

23.4.5.6.4.1 If the ISO has issued notice to the Market Participant or Generator Owner (as that term is defined in Section 38.1 of the ISO OATT) in accordance with Section 38.7.4 of Attachment FF to the ISO OATT that it has received all of the data and information it requires to perform its duties under both the Short-Term Reliability Process that is set forth in Attachment FF to the ISO OATT and Section 23 of the ISO Services Tariff, then the ISO shall complete a physical withholding review of the proposed deactivation, if needed, in accordance with Section 23.4.5.6 of the ISO Services Tariff and issue a final physical withholding determination to the Market Participant in accordance with the process set forth in Sections 23.4.5.6.4.2.1 or 23.4.5.6.4.2.2 of the ISO Services Tariff.

If the ISO has not issued a notice to the Market Participant or Generator Owner in accordance with Section 38.7.4 of Attachment FF to the ISO OATT that it has received all of the data and information it requires to perform its duties under both Attachment FF to the ISO OATT and Section 23 of the ISO Services Tariff, then the ISO is not required to issue a final physical withholding determination to the Market Participant for the Generator prior to the Generator's deactivation.

**23.4.5.6.4.2 Aligning Issuance of Final Physical Withholding Determination with the Short-Term Reliability Process**

23.4.5.6.4.2.1 **Based on deactivation date.** At least ninety days before the date the Generator determines it will timely (consistent with Section 38.14.1 of Attachment FF to the ISO OATT) deactivate, the Market Participant (which is also a Market Party) may notify the ISO in writing of the updated deactivation date and request that the ISO issue a final physical withholding determination to



the Market Participant, which shall be conducted by the ISO in accordance with Section 23.4.5.6.1 above. The ISO shall issue its final determination at least 60 days before the updated deactivation date specified in the Market Participant's written notice. For purposes of the ISO's audit or review to issue a final physical withholding determination, conducted in accordance with Section 23.4.5.6.1 above, the date on which the Generator is deactivated is the "decision date," so long as it falls within the 16 day window specified below.

Exception: The earliest date the ISO shall be required to issue a final physical withholding determination is 90 days after the Short-Term Assessment of Reliability Start Date.

The ISO's final physical withholding determination shall only be valid if the Generator becomes Retired or enters into a Mothball Outage within a window that starts five days before the date specified in the Market Participant's notice to the ISO and concludes ten days after the date specified in the Market Participant's notice to the ISO, unless the conditions of described below in Section 23.4.5.6.4.2.2 are met.

**23.4.5.6.4.2.2 Based on date of irrevocable action or inaction.** If the Market

Participant identifies and the ISO, in consultation with the Market Monitoring Unit, agrees that there is a point in the process of deactivating a Generator after which the deactivation process will become, essentially and practicably, irreversible, then the ISO shall inform the Market Participant in writing of the first such act, decision not to act, or event that the ISO agrees will have irreversible consequences.

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.

23.4.5.6.4.2.2.1 At least ninety days before the date the irreversible action, inaction or event specified by the ISO in its notice to the Market Participant will be taken, occur or come to pass (the “trigger date”), the Market Participant may notify the ISO in writing of the trigger date and request that the ISO issue a final physical withholding determination to the Market Participant. The Market Participant’s notice must explain why the date it selected is the appropriate trigger date. If the ISO determines that the trigger date specified by the Market Participant is reasonable, then the ISO shall issue its final physical withholding determination at least 60 days before the trigger date specified in the Market Participant’s notice. For purposes of the ISO’s audit or review under this subsection conducted in accordance with Section 23.4.5.6.1 above, the trigger date is the “decision date.”

Exception: The earliest date the ISO shall be required to issue a final physical withholding determination is 90 days after the Short-Term Assessment of Reliability Start Date.

23.4.5.6.4.2.2.2 If the ISO determines that the trigger date the Market Participant specified is not reasonable, then the ISO shall promptly notify the Market Participant of its determination and the reasons therefor in writing. The ISO is not required to issue a final physical withholding determination unless the Market Party provides additional information within two business days of the issuance of the ISO’s written determination that causes the ISO to change its decision.

23.4.5.6.4.2.2.3 The ISO's final physical withholding determination shall only be valid if (a) the specified irreversible action, inaction or event is taken or occurs within a window that starts five days before the trigger date specified in the Market Participant's notice to the ISO and concludes ten days after the trigger date specified in the Market Participant's notice to the ISO, and (b) the Generator timely (consistent with Section 38.14.1 of Attachment FF to the ISO OATT) enters into a Mothball Outage or becomes Retired. Except where the ISO possesses contrary information, the ISO shall accept the Market Participant's reasonable assessment of the date by which an irrevocable failure to act occurs.

23.4.5.6.4.3 The Market Participant shall promptly send a written notice to the ISO rescinding a written notice that it previously submitted under Sections 23.4.5.6.4.2.1 or 23.4.5.6.4.2.2.1 of the ISO Services Tariff if it determines that the deactivation date or trigger date it specified in its written notice to the ISO is no longer accurate.

#### **23.4.5.6.5 Aligning Physical Withholding Audits and Reviews with the Transfer of Deliverability Rights Process for Same Location CRIS Transfers**

The rules in this Section 23.4.5.6.5 apply to a Market Participant or Generator Owner that initiate a transfer of deliverability rights request as set forth in Attachment S to the ISO OATT by submitting a CRIS transfer request notice for a same location transfer where the Market Participant/Generator Owner does not intend to initiate the Short Term Reliability Process that is set forth in Attachment FF to the ISO OATT. They provide an opportunity for such a Market Participant to receive a final physical withholding determination from the ISO before the transfer of deliverability rights is confirmed under the rules set forth in Sections 25.9.4 and 25.9.5 of Attachment S to the ISO OATT. Nothing in Attachment S to the OATT or in this Section

23.4.5.6.5 of the ISO Services Tariff should be read as limiting the ISO's authority to impose a physical withholding penalty on a Generator that transfers its CRIS to a new facility at the same location.

23.4.5.6.5.1 If the ISO has issued notice to the Market Participant or Generator Owner in accordance with Section 23.4.5.6.5.3 of this Attachment H that it has received all of the data and information it requires to perform its duties under Section 23 of the ISO Services Tariff, then the ISO shall complete a physical withholding review of the proposed transfer of deliverability rights, if needed, in accordance with Section 23.4.5.6 of this Attachment H and issue a final physical withholding determination to the Market Participant in accordance with the process set forth in Section 23.4.5.6.5.5 of this Attachment H.

23.4.5.6.5.2 If the ISO has not issued a notice to the Market Participant or Generator Owner in accordance with Section 23.4.5.6.5.3 of this Attachment H to the ISO OATT that it has received all of the data and information it requires to perform its duties under Section 23 of the ISO Services Tariff, then the ISO is not required to issue a final physical withholding determination to the Market Participant prior to the CRIS Transfer Confirmation Date, as defined in Section 23.2.1 of this Attachment H, and as set forth in Section 25.9.4 and 25.9.5 of Attachment S to the ISO OATT.

23.4.5.6.5.3 **ISO Notification to Market Participants or Generator Owners.** The ISO shall notify the Market Participant or the Generator Owner, in writing, when the ISO has received all of the data and information it requires as set forth in

Section 23.4.5.6.5.4 of this Attachment H to perform its duties under Sections 23.4.5.6.5 of this Attachment H.

The notice that the ISO provides to Market Participant (which is also a Market Party) or to the Generator Owner that it has received all of the data and information it requires to perform its obligations under this Attachment H does not absolve the Market Party or the Generator Owner of its affirmative and continuing obligation under Section 23.4.5.6.5.5 of this Attachment H to supplement and update information and data it has submitted to the ISO when a material change in facts or circumstances occurs that makes the previously submitted information insufficient or inaccurate.

The notice that the ISO provides to Market Participant or Generator Owner that it has received all of the data and information it requires to perform its obligations under Sections 23.4.5.6.5 of this Attachment H does not bar the ISO from asking additional questions of the Market Participant or the Generator Owner, nor does it excuse the Market Participant or the Generator Owner from its continuing obligation to promptly respond to ISO requests for information or data pursuant to ISO Tariffs.

#### **23.4.5.6.5.4 Information Requirements**

23.4.5.6.5.4.1 The Market Participant or the Generator Owner (also known as the “transferor facility” as defined in Attachment S to the ISO OATT) shall be responsible for providing the ISO with any information that the ISO determines it requires, in accordance with ISO Procedures, in order to assess market impacts under Section 23.4.5.6.1 of this Attachment H.

23.4.5.6.5.4.2            The Second Party (also known as the “transferee facility” as defined in Attachment S to the ISO OATT) shall be responsible for providing the ISO with any information that the ISO determines it requires, in accordance with ISO Procedures, in order to assess market impacts under Section 23.4.5.6.1 of this Attachment H.

23.4.5.6.5.4.3            The ISO shall review, verify and/or validate to the extent necessary the information provided in accordance with Sections 23.4.5.6.5.4.1 and 23.4.5.6.5.4.2 of this Attachment H. The ISO may reject, and may require to any of the involved Parties to re-submit, or substantiate information (including estimates) that the ISO determines is not adequately supported or otherwise verifiable. The Party shall promptly provide any additional information that the ISO may request, and update and revise information previously provided, and provide new information as set forth in Section 23.4.5.6.5.5 of this Attachment H.

Upon the ISO’s request, the Parties involved shall make qualified representatives available to answer the ISO’s question(s) and otherwise facilitate the ISO’s review of the information. NYISO may terminate its consideration for a physical withholding review if one of the Parties involved fails to provide requested information.

Note: If the Second Party (also known as the “transferee facility” as defined in Attachment S to the ISO OATT) is subject to a Buyer Side Mitigation Examination (as set forth in Sections 25.9.4 and 25.9.5 of Attachment S to the ISO OATT) it must provide the ISO with any information that the ISO determines it requires regarding its Buyer Side Mitigation determination (as

defined in Section 23.4.5.7 of this Attachment H), as part of the physical withholding determination request set forth in Section 23.4.5.6.5 of this Attachment H.

**23.4.5.6.5.4.4 Obligation to Submit Further Information.** (a) Market

Participant or Generator Owner that requested a physical withholding determination in accordance with Section 23.4.5.6.1 of this Attachment H and (b) any other Second Party involved in the physical withholding determination request set forth in Section 23.4.5.6.5 of this Attachment H. shall provide any new information, and shall update and revise information previously submitted to the ISO in accordance with Section 23.4.5.6.5.4 of Attachment H, no more than ten days after any event occurring that makes any element of the information submitted materially inaccurate or insufficient.

**23.4.5.6.5.5 Aligning Issuance of Final Physical Withholding Determination with the Transfer of Deliverability Rights Process for Same Location CRIS Transfers**

23.4.5.6.5.5.1 At least ninety days prior to the CRIS Transfer Confirmation Date as set forth in Section 25.9.4 and 25.9.5 of Attachment S to the ISO OATT, the Market Participant (which is also a Market Party) may notify the ISO in writing of the same location transfer of deliverability rights proposed confirmation and effective date and request that the ISO issue a final physical withholding determination to the Market Participant, which shall be conducted by the ISO in accordance with Section 23.4.5.6.1 above. If the ISO, in consultation with the Market Monitoring Unit, determine that the CRIS Transfer Confirmation Date is, essentially and practicably, an irreversible point in the transfer process, then the ISO shall inform the Market Participant in writing and issue its final determination at least sixty

days before the proposed CRIS Transfer Confirmation Date (as specified in the Market Participant's written notice).

The ISO's final physical withholding determination shall only be valid if the CRIS Transfer Confirmation Date becomes effective within a window that starts five days before the proposed effective date specified in the Market Participant's notice to the ISO and concludes ten days after the proposed effective date specified in the Market Participant's notice to the ISO.

23.4.5.6.5.5.2 A final physical withholding determination as specified in Section

23.4.5.6.6.1 of this Attachment H may only be requested by an active holder of CRIS rights as defined in Attachment S to the ISO OATT.