

## **23 Attachment H - ISO Market Power Mitigation Measures**

## **23.1. Purpose and Objectives**

23.1.1 These ISO market power mitigation measures (“Mitigation Measures”) are intended to provide the means for the ISO to mitigate the market effects of any conduct that would substantially distort competitive outcomes in the ISO Administered Markets, while avoiding unnecessary interference with competitive price signals. Consistent with the provisions of the ISO’s Market Monitoring Plan (“Plan”) that is set forth in Attachment O to the ISO Services Tariff, these Mitigation Measures are intended to minimize interference with open and competitive markets, and thus to permit, to the maximum extent practicable, price levels to be determined by competitive forces under the prevailing market conditions. To that end, the Mitigation Measures authorize the mitigation only of specific conduct that exceeds well-defined thresholds specified below.

23.1.2 In addition, the ISO and its Market Monitoring Unit shall monitor the markets the ISO administers for conduct that the ISO or the Market Monitoring Unit determines constitutes an abuse of market power but that does not trigger the thresholds specified below 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 below, it shall make a filing under Section 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. The responsibilities of the Market Monitoring Unit that are addressed in this section of the Mitigation Measures are also addressed in Section 30.4.6.2.1 of Attachment O.

## 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.

“**Additional SDU Study**” shall mean a deliverability study that a Developer may elect to pursue as that term is defined in OATT Section 25 (OATT Attachment S).

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 offers of capacity from a Generator electrically located in a MCZ Import Constrained Locality; or
- iv) all persons or Entities, except if for ISP UCAP MW or an RMR Generator, with which such person or Entity has any form of agreement under which such person or Entity has retained or has conferred rights of (i) Control of Unforced Capacity or (ii) the ability to determine the quantity or price of offers to supply capacity from a Generator that has Capacity Resource Interconnection Service, pursuant to the applicable provisions of Attachment X, Attachment S and Attachment Z and

is electrically located in an MCZ Import Constrained Locality, even if such capacity does not meet the requirements to be 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.

**Annual Transmission Baseline Assessment:** means an assessment conducted by the ISO as defined in OATT Section 25 (OATT Attachment S).

**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.

“**Competitive and Non-Discriminatory Hedging Contract**” shall mean a contract to hedge a risk associated with a product offered in the ISO Administered Markets between a Non-

Qualifying Entry Sponsor and the Developer, Owner or Operator of an Examined Facility with a term that shall not exceed three years (inclusive of all options to extend and extensions) and that the ISO determines has been executed pursuant to a procurement process that satisfies the requirements enumerated below. Competitive and Non-Discriminatory Hedging Contracts shall not be deemed to be a non-qualifying contractual relationship that would prevent an Examined Facility from obtaining a Competitive Entry Exemption pursuant to 23.4.5.7.9 of Attachment H of this Services Tariff. The ISO shall determine that a contract is a Competitive and Non-Discriminatory Hedging Contract only if it concludes, and the Non-Qualifying Entry Sponsor executes a certification confirming that, the contract was executed through a procurement process that met all of the following requirements: (A) both new and existing resources satisfy the requirements of the procurement; (B) the requirements of the procurement were fully objective and transparent ; (C) the contract was awarded based on the lowest cost offers of qualified bidders that responded to the solicitation; (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.

“**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; but excluding ISP UCAP MW or UCAP from an RMR Generator.

For purposes of Section 23.4.5.6 of this Attachment H, “**CRIS Transfer Confirmation Date**” shall mean the date in which the transferor and transferee confirms the proposed CRIS transfer (e.g., through a CRIS transfer notification form submitted prior to August 1st for same location CRIS transfers for active facilities looking to transfer CRIS rights for the next Capability Year) and is considered by ISO, in consultation with the Market Monitoring Unit, to be a date which will become, essentially and practicably, an irreversible action for the transferor with respect to effectuating the CRIS transfer and for purposes with respect to the NYISO’s issuance of a final physical withholding determination to the transferor.

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.

Beginning with the Class Year immediately following Class Year 2021, subsequent Class Year Studies, Additional SDU Studies, and Expedited Deliverability Studies that are commenced after August 1, 2022, the ISO will establish an “**Estimated Initial Decision Period**” to be twelve months from the Class Year Study Start Date and three months from the Expedited Deliverability Study Start Date for the purpose of establishing the starting Capability Years for the Part A Mitigation Study Period Years 1 through 3 and Part A Mitigation Study Period Years 4 through 6.

“**Examined Facility**” 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 Study, Additional SDU Study or Expedited Deliverability Study 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”), and (II) each (i) existing Generator that did not have CRIS rights, and (ii) proposed new Generator and proposed new UDR project, provided such Generator under Subsection (i) or (ii) 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 (“Expected CRIS Transferee”). The term “Examined Facilities” does not include any facility exempt from an Offer Floor pursuant to the provisions of Section 23.4.5.7.7; or any Generator or UDR project that meets the definition of Excluded Facilities below.

“**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.

**Excluded Facilities** shall mean Resources or UDR project(s) that are qualified to satisfy the goals specified in the New York State Climate Leadership and Community Protection Act, Chapter 106 of the Laws of 2019, as may be amended (“CLCPA”) and such Resources and UDR Projects will not be subject to review by the NYISO under the BSM rules or otherwise subject to an Offer Floor. Excluded Facilities shall include but are not limited to Resources comprised exclusively of one or more the following technologies: energy storage, demand response, wind generation, solar generation, geothermal generation, hydroelectric generation (which may also include generation created by tidal, wave and other ocean activity), and fuel cells that operate without utilizing fossil fuel. Excluded Facilities will also include Resources using additional technology types not explicitly listed above and UDR projects that satisfy the CLCPA goals, if the Developer, Owner or Operator of the Resource or UDR project certifies in accordance with Section 23.4.5.7.5 of this Services Tariff and ISO Procedures that the Resource or UDR Project meets one of the following criteria:(i) the Resource technology type is specifically identified by the CLCPA or is publicly identified by New York State as supporting the goals of the CLCPA; (ii) the Resource or UDR project has a contract with the State of New York to achieve the goals of the CLCPA (such as a Tier 1 or Tier 4 contract with NYSERDA); or (iii) the Resource or UDR project is eligible to receive a contract authorized by New York State that is supporting the goals of the CLCPA (such as a Tier 1 or Tier 4 contract with NYSERDA).

**“Expedited Deliverability Study”** shall mean a deliverability study that an eligible Developer may elect to pursue as that term is defined in OATT Section 25 (OATT Attachment S) that may determine the extent to which an existing or proposed facility satisfies the ISO Deliverability Interconnection Standard at its requested CRIS level without the need for System Deliverability Upgrades. The schedule and scope of the study is defined in Sections 25.5.9.2.1 and 25.7.1.2 of this Attachment S.

**“Final Decision Round”** 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, **“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 ISO 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 5.14.1.2.2.4.11, 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 and/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 including through the submission of bids or offers into any External Control Area, 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.

“**Mitigation Study Period**” shall mean the duration of time extending six consecutive Capability Periods and beginning with the Starting Capability Period associated with a Class Year Study, Additional SDU Study, and/or Expedited Deliverability Study.

“**NCZ Examined Project**” shall mean any Generator or UDR project that is not an Excluded Facility and 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 or (ii) meets the criteria found in (II) of the definition of Examined Facility above. 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 Cost of New Entry”, or “**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 the purposes of Section 23.4.5 of this Attachment H, “**Non-Qualifying Entry Sponsors**” shall mean 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.

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 Additional CRIS MW shall mean a numerical value determined as specified in Section 23.4.5.7.6.

“**Owner**” shall have the meaning specified in Section 31.1.1 of the ISO’s Open Access Transmission Tariff.

“**Part A Exemption**” shall mean an exemption awarded to an Examined Facility (i) pursuant to the Part A Exemption Test conducted by the ISO prior to the Class Year immediately following Class Year 2021 as described in Section 23.4.5.7.2(a) of the Services Tariff or (ii) pursuant to the Part A Exemption Test described in Section 23.4.5.7.3.1 of the Services Tariff which shall be conducted by the ISO beginning with Class Year immediately following Class Year 2021, and in all subsequent Class Year Studies, Additional SDU Studies, and Expedited Deliverability Studies that are commenced after August 1, 2022.

“**Part A Exemption Test**” shall mean (i) for any Class Year Study that was conducted prior to the Class Year immediately following Class Year 2021, the test conducted by the ISO to determine if an Examined Facility would be exempt from an Offer Floor under Section 23.4.5.7.2 (a) of the Services Tariff; or (ii) for the Class Year immediately following Class Year 2021 and any subsequent Class Year Study, Additional SDU Study, and Expedited Deliverability Study that starts after August 1, 2022, the test conducted by the ISO to determine if an Examined Facility shall be exempt from an Offer Floor in accordance with Section 23.4.5.7.3.1 of the Services Tariff.

“**Part A Group 1 Examined Facilities**” for the Class Year immediately following Class Year 2021 and any subsequent Class Year Study, Additional SDU Study, and Expedited Deliverability Study that starts after August 1, 2022 shall mean the set of Examined Facilities being evaluated for the Part A Exemption Test described in Section 23.4.5.7.3.1 using the Part A Mitigation Study Period Years 1 through 3 as determined by the ISO pursuant to the criteria set forth in Section 23.4.5.7.3.1.3 of the Services Tariff.

“**Part A Group 2 Examined Facilities**” for the Class Year immediately following Class Year 2021 and any subsequent Class Year Study, Additional SDU Study, and Expedited Deliverability Study that starts after August 1, 2022 shall mean the set of Examined Facilities being evaluated for the Part A Exemption Test described in Section 23.4.5.7.3.1 using the Part A Mitigation Study Period Years 4 through 6 as determined by the ISO pursuant to the criteria set forth in Section 23.4.5.7.3.1.3 of the Services Tariff.

“**Part A Mitigation Study Period Years 1 through 3**” for the Class Year immediately following Class Year 2021 and any subsequent Class Year Study, Additional SDU Study, and any Expedited Deliverability Study that starts after August 1, 2022 shall mean the evaluation period applied to Part A Group 1 Examined Facilities which shall be considered concurrently to receive a Part A Exemption in accordance with Section 23.4.5.7.3.1 of the Services Tariff. Such evaluation period shall be composed of the three consecutive Capability Years starting with the Capability Year following the Capability Year in which the Estimated Initial Decision Period for the then current Class Year Study or Expedited Deliverability Study falls.

**“Part A Mitigation Study Period Years 4 through 6”** for the Class Year immediately following the Class Year 2021 and any subsequent Class Year Study, Additional SDU Study, and any Expedited Deliverability Study that starts after August 1, 2022 shall mean the evaluation period applied to Part A Group 2 Examined Facilities which shall be considered concurrently to receive a Part A Exemption in accordance with Section 23.4.5.7.3.1 of the Services Tariff. Such evaluation period shall be composed of the three consecutive Capability Years starting with the fourth Capability Year following the Capability Year in which the Estimated Initial Decision Period for the then current Class Year Study or Expedited Deliverability Study falls.

**“Part B Exemption Test”** shall mean the test conducted by the ISO in accordance with 23.4.5.7.2 (b) and ISO Procedures for an Examined Facility in any Class Year Study, Additional SDU Study, or Expedited Deliverability Study.

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. Unforced Capacity that are MW of an External Sale of Capacity shall not be included in the foregoing calculations

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

**“Public Policy Resource”** shall mean for purposes of Section 23.4.5 of this Attachment H, an Examined Facility that is determined by the ISO to be a zero-emitting resource and that does not meet the definition of Excluded Facility under Section 23.2 of this Attachment H and, where applicable, as also determined by the NYISO under Section 23.4.5.7.5.1 of this Attachment H. A resource may request an ex-ante determination from the ISO if it qualifies as a zero-emitting resource prior to their entrance into a Class Year Study or Expedited Deliverability Study. The ISO, in consultation with the MMU, shall issue a determination no later than 20 days after the necessary information has been submitted for consideration. This determination will be binding as long as the resource’s technology and characteristics are not modified before issuance of a final determination to the Examined Facility. The ISO will post such ex-ante determinations to its website concurrent with the response to the resource. Public Policy Resources shall be identified and posted on the ISO website no later than the ISO’s posting of the Part A Group 1 Examined Facilities and the Part A Group 2 Examined Facilities for the Class Year immediately following Class Year 2021, and any subsequent Class Year Study, Additional SDU Study, and

Expedited Deliverability Study that start after August 1, 2022, as provided in Section 23.4.5.7.3.1.4 of this Services Tariff.

“**Project**” shall have the meaning specified in Section 30.1 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 (i) a municipally owned electric system that was created by an act of one or more local governments pursuant to the laws of the State of New York to own or control distribution facilities and/or provide electric service, (ii) a cooperatively owned electric system that was created by an act of one or more local governments pursuant to the laws of State of New York or otherwise created pursuant to the Rural Electric Cooperative Law of New York to own or control distribution facilities and/or provide electric service, (iii) a “Single Customer Entity,” or (iv) a “Vertically Integrated Utility.” A Self Supply LSE cannot be an entity that is a public authority or corporate municipal instrumentality created by the State of New York (including a subsidiary of such an authority or instrumentality) that owns or operates generation or transmission and that is authorized to produce, transmit or distribute electricity for the benefit of the public unless it meets the criteria provided in section (i), (ii), or (iii) of this definition. For purposes of this definition only: “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 “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.

“**Starting Capability Period**” is the Summer Capability Period that will commence three years from the start of the year of the Class Year Study and shall be the start of the Mitigation Study Period for any Examined Facility in a Class Year Study, as well as any Additional SDU Studies and Expedited Deliverability Studies and that are completed while the Class Year Study is ongoing. If no Class Year Study is ongoing when an Expedited Deliverability Study or Additional SDU Study arrives at the Decision Period, the Starting Capability Period used for the

purposes of Section 23.4.5 of this Attachment H shall be the Starting Capability Period that applied to the most recently completed Class Year Study.

“**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, and revenues associated with other energy products (such as energy services and renewable energy credits, as determined by the ISO, translated into a seasonally adjusted monthly UCAP value using an appropriate class outage rate. The Unit Net CONE of an Installed Capacity Supplier that has functions beyond the generation or transmission of power shall include only the embedded costs allocated to the production and transmission of power, and shall not net the revenues from functions other than the generation or transmission of power.

### **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 (includes refusing to offer Bids or schedules to withdraw Energy for a Generator that must withdraw Energy in order to be able to later inject Energy); (iii); making an unjustifiable change to one or more operating parameters of an Electric Facility that reduces a Resource's 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 provide 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 an 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; or submitting Bids for a Withdrawal-Eligible Generator to withdraw Energy that are unjustifiably high, so that (i) the Electric Facility is or will be dispatched or scheduled to withdraw Energy, or (ii) the Bids will set a market clearing price.

23.2.4.1.3 Uneconomic production from an Electric Facility is increasing the output of an Electric Facility to levels that would not be in the economic interest of the Market Party or its Affiliates in the absence of market power. Uneconomic withdrawal by an Electric Facility is withdrawing Energy that would not be in the economic interest of the Market Party or its Affiliates in the absence of market power.

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.

## **23.3 Criteria for Imposing Mitigation Measures**

### **23.3.1 Identification of Conduct Inconsistent with Competition**

Conduct that may potentially warrant the imposition of a mitigation measure includes the categories described in Section 23.2.4 above, which shall be detected through the use of indices and screens developed, adopted and made available as specified in Attachment O. The thresholds listed in Sections 23.3.1.1 to 23.3.1.3 below shall be used to identify substantial departures from competitive conduct indicative of an absence of workable competition.

#### **23.3.1.1 Thresholds for Identifying Physical Withholding**

23.3.1.1.1 The following initial thresholds will be employed by the ISO to identify physical withholding of a Generator or generation or a CSR Scheduling Limit by a Market Party and its Affiliates:

23.3.1.1.1.1 Except for conduct addressed in Section 23.3.1.1.1.2: Withholding that exceeds (i) 10 percent of a Generator's capability or 10 percent of a CSR Scheduling Limit, or (ii) 100 MW of a Generator's capability or 100 MW of a CSR Scheduling Limit, or (iii) 5 percent of the total capability of a Market Party and its Affiliates, or (iv) 200 MW of the total capability of a Market Party and its Affiliates.

For a Generator or a Market Party in a Constrained Area for intervals in which an interface or facility into the area in which the Generator or generation is located has a Shadow Price greater than \$0.04/MWh, indicating an active constraint, withholding that exceeds (i) 10 percent of a Generator's capability or 10 percent of a CSR Scheduling Limit, or (ii) 50 MW of a Generator's capability

or 50 MW of a CSR Scheduling Limit, or (iii) 5 percent of the total capability of a Market Party and its Affiliates, or (iv) 100 MW of the total capability of a Market Party and its Affiliates.

23.3.1.1.1.2 Operating a Generator or generation in real-time at a lower output level than would have been expected had the Market Party's and its Affiliate's Generator or generation followed the ISO's dispatch instructions, resulting in a difference in output that exceeds (i) 15 minutes times a Generator's stated response rate per minute at the output level that would have been expected had the Generator followed the ISO's dispatch instructions, or (ii) 100 MW for a Generator, or (iii) 200 MW of the total capability of a Market Party and its Affiliates. For a Generator or a Market Party in a Constrained Area for intervals in which an interface or facility into the area in which the generation is located has a Shadow Price greater than \$0.04/MWh, indicating an active constraint, operating a Generator or generation in real-time at a lower output level than would have been expected had the Market Party's and its Affiliate's Generator or generation followed the ISO's dispatch instructions, resulting in a difference in output that exceeds (i) 15 minutes times a Generator's stated response rate per minute at the output level that would have been expected had the Generator followed the ISO's dispatch instructions, or (ii) 50 MW of a Generator's capability, or (iii) 100 MW of the total capability of a Market Party and its Affiliates.

23.3.1.1.2 The amounts of generating capacity considered withheld for purposes of applying the thresholds in this Section 23.3.1.1 shall include unjustified deratings,

and the portions of a Generator's output that is not Bid or subject to economic withholding. The amounts deemed withheld shall not include (i) generating output that is subject to a forced outage, subject to verification by the ISO as may be appropriate that an outage was forced, (ii) capacity that is out of service for maintenance in accordance with an ISO maintenance schedule, or (iii) generating capacity that is not Bid in the Real-Time Market, because and to the extent it would have to use unauthorized natural gas to operate, subject to verification by the ISO as may be appropriate that operation would require the use of unauthorized natural gas. See Section 23.3.1.4.6.2.1.1 below.

23.3.1.1.3 A transmission facility shall be deemed physically withheld if it is not operated in accordance with ISO instructions and such failure to conform to ISO instructions causes or contributes to transmission congestion. A transmission facility shall not be deemed withheld if it is subject to a forced outage or is out of service for maintenance in accordance with an ISO maintenance schedule.

### **23.3.1.2 Thresholds for Identifying Economic Withholding**

23.3.1.2.1 The following thresholds shall be employed by the ISO to identify economic withholding that may warrant the mitigation of a Generator in an area that is not a Constrained Area, or in a Constrained Area during periods not subject to transmission constraints affecting the Constrained Area, and shall be determined with respect to a reference level determined as specified in Section 23.3.1.4:

23.3.1.2.1.1 Incremental Energy and Minimum Generation Bids: An increase exceeding 300 percent or \$100 per MWh, whichever is lower; provided, however,

that Incremental Energy or Minimum Generation Bids below \$25 per MWh shall be deemed not to constitute economic withholding when evaluating Bids to produce Energy.

23.3.1.2.1.1.1 Threshold for Bids to withdraw Incremental Energy: an increase exceeding 300 percent or \$100 per MWh, whichever is lower. However, the threshold for Bids to withdraw Incremental Energy that have an associated reference level that is between -\$25 and \$25 per MWh (inclusive) is, instead, \$75 per MWh.

23.3.1.2.1.1.2 Additional Thresholds used to assess Bids for Generators that the ISO evaluates as a price spread for purposes of scheduling and dispatch.

The following hourly and daily thresholds will be employed to evaluate the spread between the minimum and maximum dollar values included in a Withdrawal-Eligible Generator's multi-step incremental Energy Bid. The time periods over which the comparisons are performed are specified below.

(a) Hourly Threshold (applies to both the Day-Ahead and Real-Time Markets)—the Incremental Energy Bid spread is compared to the Incremental Energy reference level spread for the same market hour. The Bid spread is determined by subtracting the least Incremental Energy Bid price from the greatest Incremental Energy Bid price. This value is compared to the reference level spread, which is determined by subtracting the Incremental Energy reference level price that corresponds to the least Incremental Energy Bid price from the Incremental Energy reference level price that corresponds to the greatest Incremental Energy Bid price. A Bid spread that exceeds the reference level

spread by more than 300 percent or by more than \$100 per MWh, whichever is lower, exceeds the conduct threshold.

(b) Daily Threshold (only applies to the Day-Ahead Market)—the Incremental Energy Bid spread across the Day-Ahead market day is compared to the Incremental Energy reference level spread. The Bid spread is determined by subtracting the least Incremental Energy Bid price submitted for any hour of the Day-Ahead market day (“Hour X”) from the greatest Incremental Energy Bid price submitted for any hour of the same market-day (“Hour Y”). Hour X and Hour Y can be the same market hour. This value is compared to the reference level spread, which is determined by subtracting the Incremental Energy reference level price Bid that corresponds to the least Incremental Energy Bid price in Hour X from the Incremental Energy reference level price that corresponds to the greatest Incremental Energy Bid price in Hour Y. A Bid spread that exceeds the reference level spread by more than 300 percent or by more than \$100 per MWh, whichever is lower, exceeds the conduct threshold.

23.3.1.2.1.2 Operating Reserves and Regulation Service Bids:

23.3.1.2.1.2.1 Operating Reserves and Regulation Capacity Bids: A 300 percent increase or an increase of \$50 per MW, whichever is lower; provided, however, that such Bids below \$5 per MW shall be deemed not to constitute economic withholding.

23.3.1.2.1.2.2 Regulation Movement Bids: A 300 percent increase.

23.3.1.2.1.3 Start-Up Bids: A 200 percent increase.

23.3.1.2.1.4 Time-based Bid parameters: An increase of 3 hours, or an increase of 6 hours in total for multiple time-based Bid parameters. Time-based Bid

parameters include, but are not limited to, start-up times, minimum run times, minimum down times, and temporal minimum and maximum parameters related to the withdrawal and injection of Energy by Withdrawal-Eligible Generators.

23.3.1.2.1.5 Bid parameters expressed in units other than time or dollars, including the MW component of a Minimum Generation Bid (also referred to as the “minimum operating level”): A 100 percent increase for parameters that are minimum values, or a 50 percent decrease for parameters that are maximum values (including but not limited to ramp rates, maximum stops, and operating parameters related to the withdrawal and injection of Energy by Withdrawal-Eligible Generators).

23.3.1.2.2 The following thresholds shall be employed by the ISO to identify economic withholding that may warrant the mitigation of a Generator in an area that is a Constrained Area, and shall be determined with respect to a reference level determined as specified in Section 23.3.1.4:

23.3.1.2.2.1 For Energy and Minimum Generation Bids for the Real-Time Market: for intervals in which an interface or facility into the area in which a Generator is located has a Shadow Price greater than \$0.04/MWh, indicating an active constraint, the lower of the thresholds specified for areas that are not Constrained Areas or a threshold determined in accordance with the following formula:

$$\text{Threshold} = \frac{2\% * \text{Average Price} * 8760}{\text{Constrained Hours}}$$

where:

*Average Price* = the average price in the Real-Time Market in the Constrained Area over the past 12 months, adjusted for fuel price changes, and adjusted for Out-of-Merit Generation dispatch as feasible and appropriate; and



*Constrained Hours* = the total number of minutes over the prior 12 months, converted to hours (retaining fractions of hours), in which the real-time Shadow Price has been greater than \$0.04/MWh, indicating an active constraint, on any interface or facility leading into the Constrained Area in which the Generator is located. For the In-City area, “Constrained Hours” shall also include the number of minutes that a Storm Watch is in effect. Determination of the number of Constrained Hours shall be subject to adjustment by the ISO to account for significant changes in system conditions.

23.3.1.2.2.2 For so long as the In-City area is a Constrained Area, the thresholds specified in subsection 23.3.1.2.2.1 shall also apply: (a) in intervals in which the transmission capacity serving the In-City area is subject to Storm Watch limitations; (b) to an In-City Generator that is operating as Out-of-Merit Generation; and (c) to a Generator dispatched as a result of a Supplemental Resource Evaluation.

23.3.1.2.2.3 For Energy and Minimum Generation Bids for the Day-Ahead Market: for all Constrained Hours for the Generator being Bid, a threshold determined in accordance with the formula specified in subsection 23.3.1.2.2.1 above, but where Average Price shall mean the average price in the Day-Ahead Market in the Constrained Area over the past twelve months, adjusted for fuel price changes, and where Constrained Hours shall mean the total number of hours over the prior 12 months in which the Shadow Price in the Day-Ahead Market has been greater than \$0.04/MWh, indicating an active constraint, on any interface or facility leading into the Constrained Area in which the Generator is located. Determination of the number of Constrained Hours shall be subject to adjustment by the ISO to account for significant changes in system conditions.

23.3.1.2.2.4 For Start-Up Bids; a 50% increase.

23.3.1.2.2.5 The thresholds listed in Sections 23.3.1.2.1.2 and 23.3.1.2.1.4 through 23.3.1.2.1.5.

23.3.1.2.2.6 For intervals in which an interface or facility into the area in which a Generator is located has a Shadow Price greater than \$0.04/MWh, indicating an active constraint in the Day-Ahead Market or in the Real-Time Market, the additional thresholds used to assess Bids for Generators that the ISO evaluates as a price spread for purposes of scheduling and dispatch are set forth below. The evaluation method is described in Section 23.3.1.2.1.1.2 of these Mitigation Measures.

(a) Hourly Threshold (applies to both the Day-Ahead and Real-Time Markets)—the Incremental Energy Bid spread is compared to the Incremental Energy reference level spread for the same market hour. The Bid spread is determined by subtracting the least Incremental Energy Bid price from the greatest Incremental Energy Bid price. This value is compared to the reference level spread, which is determined by subtracting the Incremental Energy reference level price that corresponds to the least Incremental Energy Bid price from the Incremental Energy reference level price that corresponds to the greatest Incremental Energy Bid price. A Bid spread that exceeds the reference level spread by more than the lower of the threshold specified for areas that are not Constrained Areas, or a threshold determined in accordance with the formulae set forth in Section 23.3.1.2.2.1 (real-time) or Section 23.3.1.2.2.3 (Day-Ahead) of these Mitigation Measures, exceeds the conduct threshold.

(b) Daily Threshold (only applies to the Day-Ahead Market)—the Incremental Energy Bid spread across the Day-Ahead market day is compared to the Incremental Energy reference level spread. The Bid spread is determined by subtracting the least Incremental Energy Bid price submitted for any hour of the Day-Ahead market day (“Hour X”) from the greatest Incremental Energy Bid price submitted for any hour of the same market-day (“Hour Y”). Hour X and Hour Y can be the same market hour. This value is compared to the reference level spread, which is determined by subtracting the Incremental Energy reference level price Bid that corresponds to the least Incremental Energy Bid price in Hour X from the Incremental Energy reference level price that corresponds to the greatest Incremental Energy Bid price in Hour Y. A Bid spread that exceeds the reference level spread by more than the lower of the threshold specified for areas that are not Constrained Areas, or a threshold determined in accordance with the formula set forth in Section 23.3.1.2.2.3 (Day-Ahead) of these Mitigation Measures, exceeds the conduct threshold.

23.3.1.2.3 The following thresholds shall be employed by the ISO to identify economic withholding that requires the mitigation of a Generator that is committed outside the ISO’s economic evaluation process to protect NYCA or local area reliability in an area that is not a designated Constrained Area. Whether the thresholds specified in Sections 23.3.1.2.3.3(i) through 23.3.1.2.3.3(vi) below have been exceeded shall be determined with respect to a reference level determined as specified in Section 23.3.1.4 of these Mitigation Measures.

If provisions 23.3.1.2.3.1 and 23.3.1.2.3.2 below are met for a Generator in the New York Control Area that is not located in a designated Constrained Area, the ISO shall substitute a reference level for each Bid, or component of a Bid, for which the applicable threshold specified in provisions 23.3.1.2.3.3(i) through 23.3.1.2.3.3(vi) below is exceeded. Where mitigation is determined to be appropriate, the mitigated results will be used in all aspects of the NYISO's settlement process.

23.3.1.2.3.1 The Generator was committed outside the ISO's economic merit order selection process to protect or maintain New York Control Area or local system reliability as a Day-Ahead Reliability Unit ("DARU") or via a Supplemental Resource Evaluation ("SRE"), or was committed as a DARU or via SRE and was also dispatched Out-of-Merit above its minimum generation level to protect or maintain New York Control Area or local system reliability; and

23.3.1.2.3.2 One of the following three (i) – (iii) conditions in this Section 23.3.1.2.3.2 must be satisfied in order for mitigation to be applied:

- i the Market Party (including its Affiliates) that owns or offers the Generator is the only Market Party that could effectively solve the reliability need for which the Generator was committed or dispatched, or
- ii when evaluating an SRE that was issued to address a reliability need that multiple Market Parties' Generators are capable of solving, the NYISO only received Bids from one Market Party (including its Affiliates), or

- iii when evaluating a DARU, if the Market Party was notified of the need for the reliability commitment of its Generator prior to the close of the Day-Ahead Market.

23.3.1.2.3.3 The Bids or Bid components submitted for the Generator that were accepted outside the economic evaluation process to protect or maintain New York Control Area or local system reliability:

- i exceeded the Generator's Minimum Generation Bid reference level by the greater of 10% or \$10/MWh, or
- ii. exceeded the Generator's Incremental Energy Bid reference level by the greater of 10% or \$10/MWh, or
- iii. exceeded the Generator's Start-Up Bid reference level by 10%, or
- iv. exceeded the Generator's minimum run time, start-up time, and minimum down time reference levels by more than one hour in aggregate, or
- v. exceeded the Generator's minimum generation MW reference level by more than 10%, or
- vi. decreased the Generator's maximum number of stops per day below the Generator's reference level by more than one stop per day, or to one stop per day.

23.3.1.2.4 For In-City Generators committed in the Day-Ahead Market for local reliability, additional Mitigation Measures are specified in Section 23.5.2.1.

### **23.3.1.3 Thresholds for Identifying Uneconomic Production and Uneconomic Withdrawal of Energy**

23.3.1.3.1 The following thresholds will be employed by the ISO to identify uneconomic production that may warrant the imposition of a mitigation measure:

23.3.1.3.1.1 Energy scheduled at an LBMP that is less than the applicable reference level minus the greater of \$25 per MWh or 80% of the applicable reference level (*i.e.*,  $LBMP < (\text{Applicable Reference Level} - \max(\$25, 80\% \times \text{Applicable Reference Level}))$ ); provided, however, the ISO shall not evaluate Generators to identify uneconomic production when the applicable LBMP is greater than \$25 per MWh; or

23.3.1.3.1.2 Real-time output from a Generator or generation resulting in real-time operation at a higher output level than would have been expected had the Market Party's and the Affiliate's Generator or generation followed the ISO's dispatch instructions, if such failure to follow ISO dispatch instructions in real-time causes or contributes to transmission congestion, and it results in an output difference that exceeds (i) 15 minutes times a Generator's stated response rate per minute at the output level that would have been expected had the Generator followed the ISO's dispatch instructions, or (ii) 100 MW for a Generator, or (iii) 200 MW of the total capability of a Market Party and its Affiliates.

23.3.1.3.2 The following thresholds will be employed by the ISO to identify uneconomic withdrawals of Energy by Withdrawal-Eligible Generators that may warrant the imposition of a mitigation measure:

23.3.1.3.2.1 Energy withdrawn at an LBMP that is at least 300 percent or \$75/MWh, whichever is greater, more than the Withdrawal-Eligible Generator's applicable reference level; provided, however, that schedules to withdraw Energy that are determined by the ISO based on the economics of an offer to withdraw Energy, including the Incremental Energy Bid spread of a Withdrawal-Eligible Generator,

shall not be considered uneconomic withdrawals under this Section 23.3.1.3.2.1;

or

23.3.1.3.2.2 Real-time withdrawals by a Withdrawal-Eligible Generator resulting in different real-time operation than would have been expected had the Market Party's and the Affiliate's Generator or generation followed the ISO's dispatch instructions, if such failure to follow ISO dispatch instructions in real-time causes or contributes to transmission congestion, and it results in an output difference that exceeds (i) 15 minutes times a Generator's stated response rate per minute at the output level that would have been expected had the Generator followed the ISO's dispatch instructions, or (ii) 100 MW for a Generator, or (iii) 200 MW of the total capability of a Market Party and its Affiliates.

#### **23.3.1.4 Reference Levels**

23.3.1.4.1 Except as provided in Sections 23.3.1.4.3 – 23.3.1.4.6 below, a reference level for each component of a Generator's Bid to produce Energy shall be calculated on the basis of the following methods, listed in the order of preference subject to the existence of sufficient data.

A reference level for each component of a Withdrawal-Eligible Generator's Bid to produce or withdraw Energy shall be calculated consistent with Sections 23.3.1.4.1.3 or 23.3.1.4.2 below, subject to the existence of sufficient data.

23.3.1.4.1.1 The lower of the mean or the median of a Generator's accepted Bids or Bid components, in hour beginning 6 to hour beginning 21 but excluding weekend and designated holiday hours, in competitive periods over the most recent 90 day period for which the necessary input data are available to the ISO's

reference level calculation systems, adjusted for changes in fuel prices consistent with Section 23.3.1.4.6, below. To maintain appropriate reference levels (i) the ISO shall exclude all Incremental Energy and Minimum Generation Bids below \$15/MWh from its development of Bid-based reference levels, (ii) the ISO shall exclude Minimum Generation Bids submitted for a Generator that was committed on the day prior to the Dispatch Day for the hours during the Dispatch Day that the Generator needs to operate in order to complete the minimum run time specified in the Bid it submitted for the hour in which it was committed, and (iii) the ISO may exclude other Bids that would cause a reference level to deviate substantially from a Generator's marginal cost when developing Bid-based reference levels;

23.3.1.4.1.2 Calculate incremental energy and minimum generation reference levels for a Generator using the mean of the LBMP at the Generator's location during the lowest-priced 50 percent of the hours that the Generator was dispatched over the most recent 90 day period for which the necessary LBMP data are available to the ISO's reference level calculation systems, adjusted for changes in fuel prices consistent with Section 23.3.1.4.6, below. To maintain appropriate reference levels (i) the ISO shall exclude all LBMPs below \$15/MWh from its development of LBMP-based reference levels, (ii) the ISO shall exclude LBMPs during hours when a Generator was scheduled as a Day-Ahead Reliability Unit or via a Supplemental Resource Evaluation or was Out-of-Merit Generation, from its development of that Generator's LBMP-based reference levels, (iii) for a Generator that was committed on the day prior to the Dispatch Day, the ISO shall



exclude LBMPs for the hours during the Dispatch Day that the Generator needs to operate in order to complete the minimum run time specified in the Bid it submitted for the hour in which the Generator was committed from the ISO's development of that Generator's LBMP-based reference levels, and (iv) the ISO may exclude LBMPs that would cause a reference level to deviate substantially below a Generator's marginal cost when developing LBMP-based reference levels; or

23.3.1.4.1.3 A level determined in consultation with the Market Party submitting the Bid or Bids at issue, provided such consultation has occurred prior to the occurrence of the conduct being examined by the ISO, and provided the Market Party has provided data on a Generator's operating costs in accordance with specifications provided by the ISO.

The reference level for a Generator's Energy and Ancillary Service Bids are intended to reflect the Generator's marginal costs. The ISO's determination of a Generator's Energy marginal costs shall include an assessment of the Generator's incremental operating costs in accordance with the following formula:

$$\begin{aligned} & (\textit{heat rate} * \textit{fuel costs}) + (\textit{emissions rate} * \textit{emissions allowance price}) \\ & \quad + (\textit{other variable operating and maintenance costs}) \\ & \quad + \textit{opportunity costs} \end{aligned}$$

Opportunity cost is the cost, in dollars, representing (a) the total net revenue in the future time periods that is expected to be forgone by being dispatched by the ISO in the current time period, or (b) the total net cost in future time periods that is expected to be avoided by being dispatched by the ISO in the current time period.

Opportunity costs are limited to costs that the ISO reasonably determines to be appropriate based on such data as may be furnished by the Market Party or otherwise available to the ISO. Reference levels shall also include such other factors or adjustments as the ISO shall reasonably determine to be appropriate based on such data as may be furnished by the Market Party or otherwise available to the ISO.

23.3.1.4.2 If sufficient data do not exist to calculate a reference level on the basis of either of the first two methods, or if the ISO determines that none of the three methods are applicable to a particular type of Bid component, or an attempt to determine a reference level in consultation with a Market Party has not been successful, or if the reference level produced does not reasonably approximate a Generator's marginal cost, the ISO shall determine a reference level on the basis of:

23.3.1.4.2.1 the ISO's estimate of the costs or physical parameters of an Electric Facility, taking into account available operating costs data, appropriate input from the Market Party, and the best information available to the ISO; or

23.3.1.4.2.2 an appropriate average of competitive bids of one or more similar Electric Facilities.

23.3.1.4.3 Notwithstanding the foregoing provisions, the reference level for Incremental Energy Bids for New Capacity, excluding Energy Storage Resources, for the three year and six month period following the New Capacity's first production of Energy while synchronously interconnected to the New York State Transmission System shall be the higher of (i) the amount determined in

accordance with the provision of Section 23.3.1.4.1 or 23.3.1.4.2, or (ii) the average of the fuel price-adjusted peak LBMPs over the twelve months prior to the New Capacity's first production of Energy while synchronously interconnected to the New York State Transmission System of the New Capacity in the Load Zone in which the New Capacity is located during hours when Generators with operating characteristics similar to the New Capacity would be expected to run. For entities owning or otherwise controlling the output of capacity in the New York Control Area other than New Capacity, the provisions of this Section 23.3.1.4.3 shall apply only to net additions of capacity during the applicable three year and six month period.

23.3.1.4.4 Notwithstanding the foregoing provisions, a reference level for a Generator's start-up costs Bid shall be calculated on the basis of the following methods, listed in the order of preference subject to the existence of sufficient data:

23.3.1.4.4.1 If sufficient bidding histories under the applicable bidding rules for a given Generator's start-up costs Bids have been accumulated, the lower of the mean or the median of the Generator's accepted start-up costs Bids in competitive periods over the previous 90 days for similar down times, adjusted for changes in fuel prices consistent with Section 23.3.1.4.6 below. However, accepted Start-Up Bids that incorporate anticipated costs of operating on the day after the Dispatch Day in which the Generator is committed in order to permit the Generator to satisfy its minimum run time shall not be used to develop Bid-based start-up reference levels;

23.3.1.4.4.2 A level determined in consultation with the Market Party submitting the Bid or Bids at issue and intended to reflect the costs incurred for a Generator to achieve its specified minimum operating level from an offline state, provided such consultation has occurred prior to the occurrence of the conduct being examined by the ISO, and provided the Market Party has provided data on the Generator’s operating costs in accordance with specifications provided by the ISO; or

23.3.1.4.4.3 Generators committed in the Day-Ahead Market or via Supplemental Resource Evaluation that are not able to complete their minimum run time within the Dispatch Day in which they are committed are eligible to include in their Start-Up Bid expected net costs of operating on the day following the dispatch day at the minimum operating level (in MW) specified in the Generator’s Bid for the commitment hour, for the hours necessary to complete the Generator’s minimum run time. The NYISO will calculate a start-up reference level that incorporates the net costs the Generator is expected to incur on the day following the Dispatch Day as follows:

23.3.1.4.4.3.1 Calculation of a start-up reference level that includes expected net costs of operating on the day following the Dispatch Day

The NYISO will use the following calculation to develop a reference level that incorporates the costs that a Generator is expected to incur on the day following the Dispatch Day.

$$LateDayAdjusted_{g,i} = StrtUpRef_g + \max\left(0, MinGenRef_{g,i} * BidMinGen_{g,i} * \sum_{h=0}^{Z_{g,i}-1} SR_{g,h,i}\right)$$

Where:

$LateDayAdjusted_{g,i}$  = calculated start-up reference level for Generator g for hour i in \$ (reflects the applicable start-up reference level ( $StrtUpRef_g$ ), plus the expected net cost of operating on the day following the Dispatch Day)

$StrtUpRef_g$  = the start-up reference level for Generator g in \$ that is in effect at the time the calculation is performed (does not include the expected net cost of operating on the day following the Dispatch Day)

$MinGenRef_{g,i}$  = the minimum generation cost reference level for Generator g for hour i in \$/MW that is in effect at the time the calculation is performed

$BidMinGen_{g,i}$  = Generator g's Day-Ahead minimum operating level for hour i, in MW

$Z_{g,i}$  = the number of hours the Generator must operate during the day following the Dispatch Day in order to complete its minimum run time if it starts in hour i

$SR_{g,h,i}$  = shortfall ratio for Generator g that is bidding to start in hour i which must run during hour h in order to complete its minimum run time, calculated in accordance with Section 23.3.3.4.4.3.2, below

23.3.1.4.4.3.2 Calculation of the shortfall ratio for use in Section 23.3.1.4.4.3.1, above

$SR_{g,h,i}$  = the shortfall ratio calculated for Generator g that is bidding to start in hour i, and that must run during hour h to complete its minimum run time.

In all cases in which Generator g's Day-Ahead minimum operating level deviates from the average of the previous seven days' Day-Ahead minimum operating levels for the same hour by less than 5 MW (i.e., if  $|AvgBidMinGen_{g,h,i} - BidMinGen_{g,i}| < 5MW$ ) or by less than 10% (i.e., if both  $BidMinGen_{g,i} < 1.1 * AvgBidMinGen_{g,h,i}$  and  $BidMinGen_{g,i} > 0.9 * AvgBidMinGen_{g,h,i}$ ),

Where:

$AvgBidMinGen_{g,h,i}$  = The average minimum operating level submitted in the Day-Ahead Market for hour h on the seven days preceding the day containing hour i, in MW, excluding any days for which a minimum operating level was not submitted in the Day-Ahead Market for Generator g, for hour h; and

$BidMinGen_{g,i}$  = The minimum operating level submitted in the Day-Ahead Market for Generator g for hour i, in MW

and in all cases in which  $AvgBidMinGen_{g,h,i}$  cannot be calculated because minimum operating levels were not submitted for Generator  $g$  in the Day-Ahead Market for hour  $h$  on any of the seven days preceding the day containing hour  $i$ , the  $SR_{g,h,i}$  value will be calculated using the primary method. Otherwise, the  $SR_{g,h,i}$  value will be calculated using the alternative method.

***Primary Method of Calculating the Shortfall Ratio***

$$SR_{g,h,i} = 1 - \frac{1}{7} * \sum_{d=1}^7 \frac{LBMP_{g,h,i,d}}{MinGenRef_{g,h,i,d}}$$

Where:

$LBMP_{g,h,i,d}$  = Day ahead LBMP at the location of Generator  $g$  in hour  $h$  of the Day-Ahead Market for the Dispatch Day that precedes the day containing hour  $i$  by  $d$  days, and

$MinGenRef_{g,h,i,d}$  = minimum generation cost reference level for Generator  $g$  in hour  $h$  of the Day-Ahead Market for the Dispatch Day that precedes the day containing hour  $i$  by  $d$  days

***Alternative Method of Calculating the Shortfall Ratio***

$$SR_{g,h,i} = 1 - \frac{AvgLBMP_{g,h,i}}{\left( AvgRefRate_{g,h,i} * \frac{RefRate2_{g,i}}{RefRate1_{g,h,i}} \right)}$$

Where:

$AvgLBMP_{g,h,i}$  = The average of the Day-Ahead LBMPs at the location of Generator  $g$  for hour  $h$  on the seven days preceding the day containing hour  $i$ , in \$/MWh, excluding any days for which a minimum operating level was not submitted in the Day-Ahead Market for Generator  $g$  for hour  $h$

$AvgRefRate_{g,h,i}$  = The average of the minimum generation reference levels for Generator  $g$  in hour  $h$  on the seven days preceding the day containing hour  $i$ , in \$/MWh, excluding any days for which a minimum operating level was not submitted in the Day-Ahead Market for Generator  $g$  for hour  $h$

$RefRate1_{g,h,i}$  = The minimum generation cost reference level in \$/MWh for Generator  $g$  for hour  $i$ , calculated using the most current reference data, and assuming that the minimum operating level submitted in the Day-Ahead Market for Generator  $g$  in hour  $i$  corresponds to the MWs reflected in the  $AvgBidMinGen_{g,h,i}$

$RefRate2_{g,i}$  = The minimum generation cost reference level in \$/MWh for Generator  $g$  for hour  $i$ , calculated using the most current reference data, and incorporating the minimum operating level submitted in the Day-Ahead Market for Generator  $g$  in hour  $i$  that corresponds to the MWs reflected in the  $BidMinGen_{g,i}$

Notwithstanding the above, in all cases where the denominator of the equation for calculating  $SR_{g,h,i}$  is not greater than zero,  $SR_{g,h,i}$  shall be set to zero, under both the primary and alternative methods.

23.3.1.4.4.4 The methods specified in Section 23.3.1.4.2.

23.3.1.4.5 The ISO is not required to calculate real-time reference levels for the three

Operating Reserve products (Spinning Reserve, 10-Minute Non-Synchronized Reserves and 30-Minute Reserves) because Generators that are capable of providing these products and that are submitting Bids into the Real-Time Market are automatically assigned a real-time Operating Reserves Availability Bid of zero for the amount of Operating Reserves they are capable of providing.

The ISO shall calculate real-time reference levels for Regulation Capacity in accordance with Sections 23.3.1.4.1.1, 23.3.1.4.1.3 or 23.3.1.4.2 of these Mitigation Measures. The ISO shall calculate real-time reference levels for Regulation Movement in accordance with Sections 23.3.1.4.1.3 or 23.3.1.4.2.1 of these Mitigation Measures and shall not calculate real-time Reference levels for Regulation Movement in accordance with Section 23.3.1.4.1.1.

The ISO shall calculate Day-Ahead reference levels for the three Operating Reserves products in accordance with Sections 23.3.1.4.1.1, 23.3.1.4.1.3 or 23.3.1.4.2 of these Mitigation Measures. The ISO shall calculate Day-Ahead reference levels for Regulation Capacity in accordance with Sections 23.3.1.4.1.1, 23.3.1.4.1.3 or 23.3.1.4.2 of these Mitigation Measures. The ISO shall calculate

Day-Ahead reference levels for Regulation Movement in accordance with Sections 23.3.1.4.1.3 or 23.3.1.4.2.1 of these Mitigation Measures and shall not calculate Day-Ahead Reference levels for Regulation Movement in accordance with Section 23.3.1.4.1.1.

23.3.1.4.6 Reflecting Fuel Costs in Reference Levels. The ISO shall use the best fuel cost information available to it to adjust reference levels to reflect appropriate fuel costs.

23.3.1.4.6.1 ISO Reporting Obligation. If the ISO did not utilize the best fuel cost information available to it when it adjusted reference levels to reflect appropriate fuel costs, and the ISO's failure to utilize the best fuel cost information available to it affected market clearing prices or had an impact on guarantee payments that cannot be corrected, then the ISO shall report any market clearing price and uncorrected guarantee payment impacts to FERC staff and to its Market Participants. The ISO is not required to report, or to otherwise act, if no market impact is identified.

23.3.1.4.6.2 Market Parties shall monitor Generator reference levels and shall endeavor to timely (as that term is defined in Section 23.3.1.4.6.8 below) contact the ISO to request an adjustment to a Generator's reference level(s) when the Generator's fuel type or fuel price change.

23.3.1.4.6.2.1 Subject to the exceptions set forth in Section 23.3.1.4.6.2.1.2 below, the ISO shall not permit charges for unauthorized natural gas use to be included as a component in the development of a Generator's reference levels and Market



Parties shall not be eligible to recover costs associated with unauthorized natural gas use.

23.3.1.4.6.2.1.1 What constitutes “unauthorized” natural gas use is specified in each natural gas pipeline’s or local distribution company’s (“LDC’s”) applicable tariff, rate schedule or customer contract. Unauthorized natural gas use may result from, but is not limited to, the following circumstances: (i) consumption of natural gas in violation of the terms of an Operational Flow Order (“OFO”) issued by the relevant natural gas LDC or pipeline; (ii) violation of instructions issued by the relevant natural gas LDC or pipeline restricting consumption of natural gas or use of natural gas imbalance service, when such instructions are issued consistent with the LDC’s or pipeline’s authority under a tariff, rate schedule or contract; (iii) consumption of natural gas during a period of authorized interruption of service by the relevant natural gas LDC or pipeline, determined in accordance with the terms of the applicable tariff, rate schedule or contract; or (iv) use of natural gas balancing services that are explicitly identified in the relevant natural gas LDC’s or pipeline’s applicable tariff, rate schedule or contract as unauthorized use or penalty gas.

23.3.1.4.6.2.1.2 If and to the extent a Market Party has obtained specific authorization from the relevant natural gas LDC or pipeline to use gas that would otherwise be unauthorized, such use shall not be considered unauthorized use by the ISO. Market Parties shall make every effort to clearly document authorization they obtain from the LDC or pipeline. Documentation obtained after the fact will be considered.

23.3.1.4.6.3 Screening of fuel type and fuel price information. The ISO may use automated processes and/or require manual review of fuel type and fuel price information submitted by Market Parties to test the accuracy of the information submitted in order to prevent market clearing prices and guarantee payments from being incorrectly calculated.

23.3.1.4.6.4 Consistent with the rules specified in this Section 23.3.1.4.6 of the Mitigation Measures and the procedures that the ISO develops to implement these rules, Market Parties shall notify the ISO of changes in fuel type or fuel price by (i) submitting revised fuel type or fuel price information to the ISO's Market Information System along with the Generator's Bid(s), or (ii) by directly contacting the ISO to request a reference level update consistent with ISO procedures, or (iii) by utilizing both of the available notification methods. Revised fuel type or fuel price information that exceeds, or is rejected based upon, the thresholds that the ISO uses to automatically screen fuel type or fuel price information that is submitted to the ISO's Market Information System along with a Generator's Bid(s) shall be submitted by directly contacting the ISO to request a reference level update, consistent with ISO procedures.

23.3.1.4.6.4.1 Exception—changes in fuel price or fuel type that are offered to support Incremental Energy or Minimum Generation Bids that exceed \$1,000/MWh must be submitted in accordance with Section 23.7.3 (for a Generator) or Section 23.7.4 (for a Demand Side Resource) of these Mitigation Measures.

23.3.1.4.6.5 Following the completion of the ISO's automated and/or manual screening processes, the ISO shall use fuel type and fuel price information that Market

Parties or their representatives submit to develop Generator reference levels unless (i) the information submitted is inaccurate, or (ii) the information was not timely submitted, and the Market Party's failure to timely submit the information is not excused by the ISO in accordance with Section 23.3.1.4.6.8 below, or (iii) consistent with Section 23.3.1.4.6.9 below.

23.3.1.4.6.6 The ISO may not always have sufficient time to complete its screening of proposed fuel type or fuel price changes prior to the relevant Day-Ahead Market day or Real-Time Market hour. *If* fuel type or fuel price information (i) is timely submitted or, where untimely, the submission of fuel type or fuel price information is excused in accordance with Section 23.3.1.4.6.8 below, and (ii) the fuel type or fuel price information that the Market Party submitted is proven to have been accurate or to have understated the actual cost incurred for that component, and (iii) the Bid(s) were tested using reference levels that reflected outdated fuel type and/or fuel price information and the Bid(s) were mitigated or a sanction was imposed pursuant to Section 23.4.3 of these Mitigation Measures, *then* the ISO shall (a) re-perform any test(s) that resulted in a sanction being imposed pursuant to Section 23.4.3 of these Mitigation Measures, using the accurate fuel type and/or fuel price information and use the revised results to calculate the appropriate sanction (if any), and (b) determine if the Bids for the Generator would have failed the relevant conduct test(s) if accurate fuel type and/or fuel price information had been used to develop reference levels. The ISO shall then restore any original (as-submitted) Bid(s) that would not have failed the relevant conduct test(s) if accurate fuel type and/or fuel price information had

been used to develop the Generator's reference levels, and use the restored Bid(s) to determine a settlement. Otherwise the ISO shall use the Generator's correct or corrected reference level(s) to determine a settlement.

23.3.1.4.6.7 The ISO shall publicly post the thresholds it employs to automatically screen fuel type and fuel price information that is submitted to the ISO's Market Information System for potentially inaccurate fuel type and fuel price data inputs.

23.3.1.4.6.8 For purposes of this Section 23.3.1.4.6, "timely" notice or submission to the Real-Time Market shall mean the submission of fuel type and/or fuel price information using the methods specified in Section 23.3.1.4.6.4 of these Mitigation Measures prior to market close for the relevant Real-Time Market hour. For purposes of this Section 23.3.1.4.6, "timely" notice or submission to the Day-Ahead Market shall mean the submission of fuel type and/or fuel price information using the methods specified in Section 23.3.1.4.6.4 of these Mitigation Measures at least 15 minutes prior to the close of the Day-Ahead Market (*i.e.*, by 4:45 a.m.). Market Parties are not expected to submit invoices or other supporting data with their Day-Ahead Market or Real-Time Market fuel type and fuel price information, but are expected to retain invoices and other supporting data consistent with the data retention requirements set forth in the Plan, and to be able to produce such information within a reasonable timeframe when asked to do so by the ISO or by its Market Monitoring Unit.

It may not always be possible for a Market Party to timely update a Generator's fuel type or fuel price to reflect unexpected real-time changes or events in advance of the first affected market-hour. Upon a showing of extraordinary

circumstances, the ISO may retroactively reflect in Real-Time Market reference levels fuel type or fuel price information that was not timely submitted by a Market Party. While it should ordinarily be possible for a Market Party to timely submit updated fuel type and fuel price information for use in developing a Generator's Day-Ahead Market reference levels, the ISO may retroactively accept and utilize late-submitted Day-Ahead Market fuel type or fuel price information upon a showing of extraordinary circumstances.

23.3.1.4.6.8.1 Exception—changes in fuel price or fuel type that are offered to support Incremental Energy or Minimum Generation Bids that exceed \$1,000/MWh must be submitted in accordance with the submission deadlines specified in Section 23.7.3 (for a Generator) or Section 23.7.4 (for a Demand Side Resource) of these Mitigation Measures.

23.3.1.4.6.9 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 submitted inaccurate fuel type or fuel price information that was biased in the Market Party's favor, or (ii) if a Market Party is subject to a penalty or sanction under Section 23.4.3.3.3 of these Mitigation Measures for submitting inaccurate fuel price or fuel type information, *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 duration(s) set forth below, unless the Market Party demonstrates to the ISO that the questioned conduct is consistent with competitive behavior.

23.3.1.4.6.9.1 The first time the ISO ceases using the fuel type and fuel price information submitted to the ISO's Market Information System along with the Bid(s) for a Generator to develop Day-Ahead or real-time reference levels for that Generator, it shall do so for 30 days. The 30-day period shall start two business days after the date that the ISO provides written notice of its determination that the application of mitigation is required.

23.3.1.4.6.9.2 Subject to Section 23.3.1.4.6.9.3 below, the second time the ISO ceases using the fuel type and fuel price information submitted to the ISO's Market Information System along with the Bid(s) for a Generator to develop Day-Ahead or real-time reference levels for that Generator, it shall do so for 60 days. The 60-day period shall start two business days after the date that the ISO provides written notice of its determination that the application of mitigation is required.

Subject to Section 23.3.1.4.6.9.3 below, any subsequent time the ISO ceases using the fuel type and fuel price information submitted to the ISO's Market Information System along with the Bid(s) for a Generator to develop Day-Ahead or real-time reference levels for that Generator, it shall do so for 120 days. The 120-day period shall start two business days after the date that the ISO provides written notice of its determination that the application of mitigation is required.

23.3.1.4.6.9.3 If the bidders of a Generator that has previously been mitigated under this Section 23.3.1.4.6.9 becomes and remains continuously eligible to submit fuel type and fuel price information in the Day-Ahead or Real-Time Market (as appropriate) for a period of one year or more, then the ISO shall apply the

mitigation measure set forth in Section 23.3.1.4.6.9 of the Mitigation Measures as if the Generator had not previously been subject to the mitigation measure.

23.3.1.4.6.9.4 Market Parties that transfer, sell, assign, or grant to another Market Party the right or ability to Bid a Generator that is subject to the mitigation measure described in this Section 23.3.1.4.6.9 are required to inform the new Market Party that the Generator has been mitigated under this measure, and to inform the new Market Party of the expected duration of such mitigation.

23.3.1.4.6.9.5 For purposes of this Section 23.3.1.4.6.9, submitted fuel type information shall be considered biased in a Market Party's favor if (a) the Market Party submitted revised fuel type information for a Generator for at least 100 hours during the previous 90 days, and (b) for at least one hour the fuel type that a Market Party submits for the Generator is not the most economic fuel type available to the Generator, taking into consideration fuel availability, operating conditions, and relevant regulatory or reliability requirements, and (c) as a result of the change(s) in fuel type, the fuel prices that the ISO uses to develop reference levels for a Generator exceeded the fuel price that the ISO would have used to develop reference levels for that Generator by greater than the higher of 10% or \$0.50/MMBtu, on average, over the previous 90 days. For purposes of calculating the average, only hours in which the Market Party changed the Generator's fuel type to a more expensive fuel type will be considered. The Day-Ahead and Real-Time Markets shall be considered separately for purposes of this analysis.

23.3.1.4.6.9.6 For purposes of this Section 23.3.1.4.6.9, submitted fuel price information shall be considered biased in a Market Party's favor if (a) the Market Party submitted revised fuel price information for a Generator for at least 100 hours during the previous 90 days, and (b) the fuel price that the Market Party submitted to the ISO's Market Information System for use in developing reference levels for a Generator exceeded the greater of the actual fuel price (as substantiated by supplier quotes or invoices) or the ISO's indexed fuel price, by greater than the higher of 10% or \$0.50/MMBtu, on average, over the previous 90 days. For purposes of calculating the average, only hours in which the fuel price submitted exceeds the ISO's indexed fuel price will be considered. The Day-Ahead and Real-Time Markets shall be considered separately for purposes of this analysis.

23.3.1.4.6.9.7 The responsibilities of the Market Monitoring Unit that are addressed in Section 23.3.1.4.6.9 of the Mitigation Measures are also addressed in Section 30.4.6.2.3 of the Plan.

23.3.1.4.6.10 In order to adjust (i) Bid-based incremental energy, minimum generation and start-up reference levels, and (ii) LBMP-based incremental energy and minimum generation reference levels to more accurately reflect fuel costs, the ISO may calculate distinct Bid- and LBMP-based reference levels for each fuel type or blend of fuel types that a Generator is capable of burning, and shall fuel index each of the distinct Bid- or LBMP-based reference levels that it calculates for fuel types that are amenable to fuel indexing. Where a Generator can draw on multiple natural gas sources that each have distinct, posted, market clearing



prices, the ISO may calculate distinct Bid-Based or LBMP-based reference levels for each such available supply source.

23.3.1.4.7 Except as otherwise authorized in accordance with Section 23.3.1.4.6.8 above, Market Parties shall timely report significant changes to the cost components used to develop their Generator's reference levels to the ISO in order to permit the revised costs to be timely reflected in the Generator reference levels. However, if the ISO uses published index prices to fuel index a Generator's reference level when that Generator is burning a fuel type that is amenable to fuel indexing (which may include a blend of two indexed fuel types), the Market Party is not required to report fuel prices that are less than the published index price that the ISO relies on.

23.3.1.4.8 Reflecting opportunity costs in Reference Levels. The ISO shall use the information available to it to adjust reference levels to reflect appropriate opportunity costs.

23.3.1.4.8.1 Prohibition of duplicative and evasive cost submissions and Bids. Costs that are submitted or Bid as fuel costs shall not also be submitted or Bid as opportunity costs. A cost shall not be submitted or Bid in two parts, as both a fuel costs and an opportunity cost, in order to evade applicable screening thresholds. Fossil generators shall not submit or Bid fuel costs, including but not limited to balancing costs, as opportunity costs. Energy Storage Resources shall not submit or Bid the cost they expect to incur to withdraw Energy as a fuel cost.

If the ISO identifies a potentially duplicative or evasive Bid or cost submission that appears to violate this prohibition, it shall inform the Market Monitoring Unit of the potential Market Violation.

23.3.1.4.8.2 ISO Reporting Obligation. If the ISO did not adjust reference levels to reflect timely (as that term is defined in Section 23.3.1.4.8.9 below) submitted, appropriate opportunity costs, and the ISO's failure to adjust reference levels to reflect such opportunity costs affected market clearing prices or had an impact on guarantee payments that cannot be corrected, then the ISO shall report any market clearing price and uncorrected guarantee payment impacts to FERC staff and to its Market Participants. The ISO is not required to report, or to otherwise act, if no market impact is identified.

23.3.1.4.8.3 Market Parties shall monitor Generator reference levels and shall endeavor to timely (as that term is defined in Section 23.3.1.4.8.9 below) contact the ISO to request an adjustment to a Generator's reference level(s) when changes in opportunity costs are expected to impact the Generator's reference levels.

23.3.1.4.8.4 Screening of opportunity cost submissions. The ISO may use automated processes and/or require manual review of opportunity cost submissions by Market Parties in order to prevent market clearing prices and guarantee payments from being incorrectly calculated.

23.3.1.4.8.5 Consistent with the rules specified in this Section 23.3.1.4.8 of the Mitigation Measures and the procedures that the ISO develops to implement these rules, Market Parties shall notify the ISO of changes in opportunity costs by (i) submitting revised opportunity cost information to the ISO's Market

Information System along with the Generator's Bid(s), or (ii) by directly contacting the ISO to request a reference level update consistent with ISO procedures, or (iii) by utilizing both of the available notification methods.

Revised opportunity cost information that exceeds, or is rejected based upon, the thresholds that the ISO uses to automatically screen opportunity cost information that is submitted to the ISO's Market Information System along with a Generator's Bid(s) shall be submitted by directly contacting the ISO to request a reference level update, consistent with ISO procedures.

23.3.1.4.8.6 Following the completion of the ISO's automated and/or manual screening processes, the ISO shall use opportunity cost information that Market Parties or their representatives submit to develop Generator reference levels unless (i) the information submitted is inaccurate, or (ii) the information was not timely submitted, and the Market Party's failure to timely submit the information is not excused by the ISO in accordance with Section 23.3.1.4.8.9 below.

23.3.1.4.8.7 The ISO may not always have sufficient time to complete its screening of proposed opportunity cost changes prior to the relevant Day-Ahead Market day or Real-Time Market hour. *If* opportunity cost information (i) is timely submitted or, where untimely, the submission is excused in accordance with Section 23.3.1.4.8.9 below, and (ii) the opportunity cost information that the Market Party submitted is proven to have been accurate or to have understated the actual cost incurred for that component, and (iii) the Bid(s) were tested using reference levels that reflected outdated opportunity cost information and the Bid(s) were mitigated or a sanction was imposed pursuant to Section 23.4.3 of these Mitigation

Measures, *then* the ISO shall (a) re-perform any test(s) that resulted in a sanction being imposed pursuant to Section 23.4.3 of these Mitigation Measures, using the accurate opportunity cost information and use the revised results to calculate the appropriate sanction (if any), and (b) determine if the Bids for the Generator would have failed the relevant conduct test(s) if accurate opportunity cost information had been used to develop reference levels. The ISO shall then restore any original (as-submitted) Bid(s) that would not have failed the relevant conduct test(s) if accurate opportunity cost information had been used to develop the Generator's reference levels, and use the restored Bid(s) to determine a settlement. Otherwise the ISO shall use the Generator's correct or corrected reference level(s) to determine a settlement.

23.3.1.4.8.8 The ISO shall publicly post the thresholds it employs to automatically screen opportunity cost information that is submitted to the ISO's Market Information System for inputs that require manual review before they can be permitted to take effect.

23.3.1.4.8.9 For purposes of this Section 23.3.1.4.8, "timely" notice or submission to the Real-Time Market shall mean the submission of opportunity cost information using the methods specified in Section 23.3.1.4.8.5 of these Mitigation Measures prior to market close for the relevant Real-Time Market hour. For purposes of this Section 23.3.1.4.8, "timely" notice or submission to the Day-Ahead Market shall mean the submission of opportunity cost information using the methods specified in Section 23.3.1.4.8.5 of these Mitigation Measures prior to the close of the Day-Ahead Market. Market Parties are not expected to submit supporting

data with their Bids that include revised opportunity cost information, but are expected to retain a record of how the submitted opportunity cost was determined and other supporting data consistent with the data retention requirements set forth in the Plan, and to be able to produce such information within a reasonable timeframe when asked to do so by the ISO or by its Market Monitoring Unit.

It may not always be possible for a Market Party to timely update a Generator's opportunity cost to reflect unexpected real-time changes or events in advance of the first affected market-hour. Upon a showing of extraordinary circumstances, the ISO may retroactively reflect in Real-Time Market reference levels opportunity cost information that was not timely submitted by a Market Party. While it should ordinarily be possible for a Market Party to timely submit updated opportunity cost information for use in developing a Generator's Day-Ahead Market reference levels, the ISO may retroactively accept and utilize late-submitted Day-Ahead Market opportunity cost information upon a showing of extraordinary circumstances.

### **23.3.2 Material Price Effects or Changes in Guarantee Payments**

#### **23.3.2.1 Market Impact Thresholds**

In order to avoid unnecessary intervention in the ISO Administered Markets, Mitigation Measures shall not be imposed unless conduct identified as specified above (i) causes or contributes to a material change in one or more prices in an ISO Administered Market, or (ii) substantially increases guarantee payments to participants in the New York Electric Market. Initially, the thresholds to be used by the ISO to determine a material price effect or change in guarantee payments shall be:

- 23.3.2.1.1 an increase of 200 percent or \$100 per MWh, whichever is lower, in the hourly Day-Ahead or Real-Time Energy LBMP at any location, or of any other price in an ISO Administered Market; or
- 23.3.2.1.1.1 for uneconomic production or uneconomic withdrawal, a change (*i.e.*, the absolute value of the difference) of 200 percent or \$100 per MWh, whichever is lower, in the hourly Day-Ahead Energy LBMP, Real-Time Energy LBMP, or the Congestion Component of the Day-Ahead LBMP or the Real-Time LBMP at any location. Provided, however, the ISO shall not consider a price change of less than \$25 per MWh a material price effect for uneconomic production or uneconomic withdrawal; or
- 23.3.2.1.2 an increase of 200 percent, or 50 percent for Generators in a Constrained Area in Bid Production Cost guarantee payments to a Market Party for a Generator for a day; or
- 23.3.2.1.2.1 for uneconomic production or uneconomic withdrawal, an increase of 200 percent, or 50 percent for Generators in a Constrained Area, in Bid Production Cost guarantee payments or Day-Ahead Margin Assurance Payments to a Market Party or to an Affiliate for a Generator for a day; or
- 23.3.2.1.3 for a Constrained Area Generator subject to either a Real-Time Market or Day-Ahead Market conduct threshold, as specified above in Sections 23.3.1.1.1, 23.3.1.2.2.1, or 23.3.1.2.2.3: for all Constrained Hours (as defined in Section 23.3.1.2.2.1 for the Real-Time Market and in Section 23.3.1.2.2.3 for the Day-Ahead Market) for the unit being Bid, a threshold determined in accordance

with the formula specified in Section 23.3.1.2.2.1 for the Real-Time Market or Section 23.3.1.2.2.3 for the Day-Ahead Market.

### **23.3.2.2 Price Impact Analysis**

23.3.2.2.1 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. The responsibilities of the Market Monitoring Unit that are addressed in this section of the Mitigation Measures are also addressed in Section 30.4.6.2.4 of Attachment O.

23.3.2.2.2 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. The responsibilities of the Market Monitoring Unit that are addressed in this section of the Mitigation Measures are also addressed in Section 30.4.6.2.5 of Attachment O.

23.3.2.2.3 The ISO shall implement automated procedures within the SCUC for Constrained Areas, and within RTC for Constrained Areas. Such automated procedures will: (i) determine whether any Day-Ahead or Real-Time Energy Bids, including start-up costs Bids and Minimum Generation Bids but excluding Ancillary Services Bids and Bids that only violate the conduct thresholds

specified in Sections 23.3.1.2.1.1.2(b) or 23.3.1.2.2.6(b) of these Mitigation Measures, that have not been adequately justified to the ISO exceed the thresholds for economic withholding specified in Section 23.3.1.2 above; and, if so, (ii) determine whether such Bids would cause material price effects or changes in guarantee payments as specified in Section 23.3.2.1.

23.3.2.2.4 The ISO shall forgo performance of the additional SCUC and RTC passes necessary for automated mitigation of Bids in a given Day-Ahead Market or Real-Time Market if evaluation of unmitigated Bids results in prices at levels at which it is unlikely that the thresholds for Bid mitigation will be triggered.

### **23.3.2.3 Section 205 Filings**

The ISO shall make a filing under § 205 with the Commission seeking authorization to apply an appropriate mitigation measure to conduct that departs significantly from the conduct that would be expected under competitive market conditions but does not rise to the thresholds specified in Sections 23.3.1.1 through 23.3.1.3 above if that conduct has a significant effect on market prices or guarantee payments as specified below, unless the ISO determines, from information provided by the Market Party or Parties (which may include a Demand Side Resource participating in the Operating Reserves or Regulation Service Markets) that would be subject to mitigation, or from other information available to the ISO that the conduct and associated price or guarantee payment effect(s) are attributable to legitimate competitive market forces or incentives. For purposes of this section, conduct shall be deemed to have an effect on market prices or guarantee payments that is significant if it exceeds one of the following thresholds:



23.3.2.3.1 an increase of 100 percent in the hourly day-ahead or real-time energy

LBMP at any location, or of any other price in an ISO Administered Market; or

23.3.2.3.2 an increase of 100 percent in Bid Production Cost guarantee payments to a

Market Party for a Generator for a day, or an increase of 100 percent in any other

guarantee payment over the time period used by the ISO to calculate the

guarantee payment.

### **23.3.3 Consultation with a Market Party**

#### **23.3.3.1 Consultation Process**

23.3.3.1.1 *Consultation initiated by the ISO to determine if mitigation is appropriate:*

Applies to Market-Party-specific and/or Generator-specific mitigation, but not to mitigation that is applied pursuant to Sections 23.3.1.2.3, 23.3.2.2.3, or 23.5.2 of these mitigation measures. 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 these Mitigation Measures, contact the Market Party engaging in the identified conduct to request an explanation of the conduct.

23.3.3.1.2 *Consultation initiated by a Market Party when it anticipates that its Generator's marginal costs or other Bid parameters may exceed the Generator's reference level(s) by more than the relevant threshold(s).* 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 above 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.

23.3.3.1.3 *Results of consultation process addressing 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. A preliminary determination by the ISO shall be provided to the Market Monitoring Unit for its review and comment.

23.3.3.1.4 *Consultation initiated by a Market Party regarding reference levels.* 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 for that Market Party's Generator(s). If cost data or other information submitted by a Market Party's Generator(s) indicates to the satisfaction of the ISO that the reference levels for that Market Party 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 recommendations 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 the reference levels addressed pursuant to the terms of this Section 23.3.3.1.4 shall be implemented on a going-forward basis commencing no earlier than the date that the Market Party's consultation request is received. The responsibilities of the Market Monitoring Unit that are addressed in this section of the Mitigation Measures are also addressed in Section 30.4.6.2.6 of Attachment O.

23.3.3.1.5 *Information required to support consultation regarding Bids and reference levels.* 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 23.3.1.4.6.8, 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.

### **23.3.3.2 Consultation Requirements**

23.3.3.2.1 The ISO shall make a reasonable attempt to contact and consult with the relevant Market Party about the Market Party's reference level(s) before imposing conduct and impact mitigation, other than conduct and impact mitigation imposed through the automated procedures described in Section 23.3.2.2.3 of these Mitigation Measures. The ISO shall keep records documenting its efforts to contact and consult with the Market Party.

23.3.3.2.2 Consultation regarding both real-time guarantee payment mitigation and mitigation of Generators committed outside the economic evaluation process in the Day-Ahead or Real-Time Markets to protect or preserve system reliability in accordance with Section 23.3.1.2.3 of these Mitigation Measures is addressed in Section 23.3.3.3, below. Consultation regarding Day-Ahead guarantee payment mitigation of Generators, other than mitigation imposed through the automated procedures described in Section 23.3.2.2.3 of these Mitigation Measures, shall be

conducted in accordance with Sections 23.3.3.1 and 23.3.3.2 of these Mitigation Measures.

### **23.3.3.3 Consultation Rules for Real-Time Guarantee Payment Mitigation**

#### **23.3.3.3.1 Real-Time Guarantee Payment Consultation Process**

23.3.3.3.1.1 For real-time guarantee payment mitigation determined pursuant to Sections 23.3.1.2.1 or 23.3.1.2.2, and 23.3.2.1.2 of these Mitigation Measures, the ISO shall electronically post settlement results informing Market Parties of Bid(s) that failed the real-time guarantee payment impact test. The settlement results posting shall include the adjustment to the guarantee payment and the mitigated Bid(s). The initial posting of settlement results ordinarily occurs two days after the relevant real-time market day.

23.3.3.3.1.2 For real-time guarantee payment mitigation determined pursuant to Sections 23.3.1.2.1 or 23.3.1.2.2, and 23.3.2.1.2 of these Mitigation Measures, no more than two business days after new or revised real-time guarantee payment impact test settlement results are posted, the ISO will send an e-mail or other notification to all potentially impacted Market Parties that comply with Section 23.3.3.3.1.2.2 of these Mitigation Measures.

23.3.3.3.1.2.1 Although the ISO is authorized to take up to two business days to provide notification to all potentially impacted Market Parties that comply with Section 23.3.3.3.1.2.2 of these Mitigation Measures, the ISO shall undertake reasonable efforts to provide notification to such Market Parties within one business day after new or revised real-time guarantee payment impact test settlement results are posted.

23.3.3.3.1.2.2 A Market Party that desires to receive notification from the ISO must provide one e-mail address to the ISO for real-time guarantee payment mitigation notices. Each Market Party is responsible for maintaining and monitoring the e-mail address it provides, and informing the ISO of any change(s) to that e-mail address in order to continue to receive e-mail notification. E-mail will be the ISOs primary method of providing notice to Market Parties.

23.3.3.3.1.2.3 Regardless of whether a Market Party chooses to receive notification from the ISO, each Market Party is responsible for reviewing its posted real-time guarantee payment impact test settlement results and for contacting the ISO to request a consultation if and when appropriate.

23.3.3.3.1.3 The following notice rules apply to guarantee payment mitigation determined pursuant to Section 23.3.1.2.3 of these Mitigation Measures.

23.3.3.3.1.3.1 For mitigation of a Generator's Minimum Generation Bid, Start-Up Bid or Incremental Energy Bid resulting from its DARU or SRE commitment, the ISO shall send an e-mail or other notification to potentially impacted Market Parties that comply with Section 23.3.3.3.1.2.2 of these Mitigation Measures within ten business days after the relevant market day, and shall undertake reasonable efforts to provide notification to such Market Parties within two business days after the relevant market day. The e-mail shall identify the date of the proposed mitigation and the Bid(s) or Bid components that the NYISO proposes to mitigate for all or part of the relevant market day.

As soon as it is able to do so, the NYISO will commence electronically posting settlement results informing Market Parties of Bid(s) that failed the Section

23.3.1.2.3 test and sending an e-mail or other notification to potentially impacted Market Parties that comply with Section 23.3.3.3.1.2.2 of these Mitigation Measures. The settlement results posting shall include the mitigated bid(s). The posting of settlement results ordinarily occurs two days after the relevant real-time market day.

23.3.3.3.1.3.2 For mitigation of a Generator's Minimum Generation Bid, Start-Up Bid or Incremental Energy Bid resulting from an Out-of-Merit dispatch above the Generator's DARU or SRE commitment, the ISO shall send an e-mail or other notification to potentially impacted Market Parties that comply with Section 23.3.3.3.1.2.2 of these Mitigation Measures within 10 business days after the relevant market day. The e-mail shall identify the date of the proposed mitigation and the bid(s) or bid components that the NYISO proposes to mitigate for all or part of the relevant market day.

23.3.3.3.1.3.3 For mitigation based on a Generator's minimum run time, start-up time, minimum down time, minimum generation MWs, or maximum number of stops per day, or for mitigation based on temporal or operating parameters related to the withdrawal and injection of Energy by Withdrawal-Eligible Generators, the ISO shall send an e-mail or other notification to potentially impacted Market Parties that comply with Section 23.3.3.3.1.2.2 of these Mitigation Measures within 10 business days after the relevant market day. The e-mail shall identify the date of the proposed mitigation and the conduct failing Bid(s) or Bid components.

23.3.3.3.1.4 Market Parties that want to consult with the ISO regarding real-time guarantee payment impact test results, or regarding mitigation applied in accordance with Section 23.3.1.2.3 of these Mitigation Measures, for a particular market day must submit a written request to initiate the consultation process that specifies the market day and Bid(s) for which consultation is being requested (for purposes of this Section 23.3.3.3.1, a “Consultation Request”).

23.3.3.3.1.4.1 Consultation Requests must be received by the ISO’s customer relations department within 15 business days after the ISO (i) posts new or revised real-time guarantee payment impact test settlement results, or (ii) either posts new or revised real-time guarantee payment impact test settlement results or sends an e-mail informing a Market Party of the results of a test performed pursuant to Section 23.3.1.2.3 of these Mitigation Measures for the relevant market day. Consultation Requests received outside the 15 business day period shall be rejected by the ISO.

23.3.3.3.1.4.2 The ISO may send more than one notice informing a Market Party of the same instance of mitigation. Notices that identify real-time guarantee payment impact test or Section 23.3.1.2.3 mitigation settlement results that are not new (for which the Market Party has already received a notice from the ISO) and that do not reflect revised mitigation (for which the dollar impact of the real-time guarantee payment mitigation has not changed) shall not present an additional opportunity, or temporally extend the opportunity, for the Market Party to initiate consultation.

23.3.3.3.1.4.3 If consultation was timely requested and completed addressing a particular set of real-time guarantee payment impact test results, or addressing a particular instance of mitigation applied in accordance with Section 23.3.1.2.3 of these Mitigation Measures, a Market Party may not again request consultation regarding the same real-time guarantee payment impact test results, or the same application of Section 23.3.1.2.3 mitigation, unless revised settlement results, that are not due to the previously completed consultation and that change the dollar impact of the relevant instance of mitigation, are posted.

23.3.3.3.1.5 The Consultation Request may include: (i) an explanation of the reason(s) why the Market Party believes some or all of the reference levels used by the ISO for the market day(s) in question are inappropriate, or why some or all of the Market Party's Bids on the market day(s) in question were otherwise consistent with competitive behavior; and (ii) supporting documents, data and other relevant information (collectively, for purposes of this Section 23.3.3.3.1, "Data"), including proof of any cost(s) claimed.

23.3.3.3.1.5.1 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 23.3.1.4.6.8, 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. Except as set forth in Section 23.3.1.4.8.9, the ISO may not retroactively revise a reference level to reflect additional opportunity costs if a Market Party or its representative did not timely submit accurate opportunity cost information.



23.3.3.3.1.6 If the Market Party is not able to provide (i) an explanation of the reason(s) why the Market Party believes some or all of the reference levels used by the ISO for the market day(s) in question are inappropriate, or why some or all of the Market Party's Bids on the market day(s) in question were otherwise consistent with competitive behavior, or (ii) all supporting Data, at the time a Consultation Request is submitted, the Market Party should specifically identify any additional explanation or Data it intends to submit in support of its Consultation Request and provide an estimate of the date by which it will provide the additional explanation or Data to the ISO.

23.3.3.3.1.7 Following the submission of a Consultation Request that satisfies the timing and Bid identification requirements of Section 23.3.3.3.1.4, above, consultation shall be performed in accordance with Section 23.3.3.1 of these Mitigation Measures, as supplemented by the following rules:

23.3.3.3.1.7.1 The ISO shall consult with the Market Party to determine whether the information available to the ISO presents an appropriate basis for (i) modifying the reference levels used to perform real-time guarantee payment mitigation for the market day in question, or (ii) determining that the Market Party's Bid(s) on the market day in question were consistent with competitive behavior. The ISO shall only modify the reference levels used to perform mitigation, or determine that the Market Party's Bid(s) on the market day that is the subject of the Consultation Request were consistent with competitive behavior, if the ISO has in its possession Data that is sufficient to support such a decision.

23.3.3.3.1.7.2 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 in reaching its decision. The ISO shall inform the Market Party of its decision, in writing, as soon as reasonably practicable, but in no event later than (i) 50 business days after the new or revised real-time guarantee payment impact test settlement results for the relevant market day were posted, or (ii) 50 business days after the earlier of the posting of new or revised Section 23.3.1.2.3 mitigation settlement results for the relevant market day, or the issuance of an e-mail in accordance with Section 23.3.3.3.1.3, above. If the ISO does not affirmatively determine that it is appropriate to modify the Bid(s) that are the subject of the Consultation Request within 50 business days, the Bid(s) shall remain mitigated. The responsibilities of the Market Monitoring Unit that are addressed in this section of the Mitigation Measures are also addressed in Section 30.4.6.2.7 of Attachment O.

23.3.3.3.1.7.3 The ISO may, as soon as practicable, but at any time within the consultation period, request Data from the Market Party. The Market Party is expected to undertake all reasonable efforts to provide the requested Data as promptly as possible, to inform the ISO of the date by which it expects to provide requested Data, and to promptly inform the ISO if the Market Party does not intend to, or cannot, provide Data that has been requested by the ISO.

23.3.3.3.1.8 This Section 23.3.3.3.1 addresses Consultation Requests. It is not intended to limit, alter or modify a Market Party's ability to submit or proceed

with a billing dispute pursuant to Section 7.4 of the ISO Services Tariff or  
Section 2.7.4.1 of the ISO OATT.

**23.3.3.3.2 Revising Reference Levels of Certain Generators Committed Out-of-Merit or via Supplemental Resource Evaluation for Conducting Real-Time Guarantee Payment Conduct and Impact Tests and Applying Mitigation in Accordance with Section 23.3.1.2.3 of these Mitigation Measures**

23.3.3.3.2.1 Consistent with and subject to all of the requirements of Section 23.3.3.3.1 of these Mitigation Measures, Generators that (i) are committed Out-of-Merit or via a Supplemental Resource Evaluation after the DAM has posted, and (ii) for which the NYISO has posted real-time guarantee payment impact test settlement results, or identified possible mitigation under Section 23.3.1.2.3 of these Mitigation Measures may contact the ISO within 15 business days after new or revised impact test settlement results are posted, or possible mitigation under Section 23.3.1.2.3 of these Mitigation Measures is identified, to request that the reference levels used to perform the testing and mitigation be adjusted to include any of the following verifiable costs:

23.3.3.3.2.1.1 procuring fuel at prices that exceed the index prices used to calculate the Generator's reference level;

23.3.3.3.2.1.2 burning a type of fuel or blend of fuels that is not reflected in the Generator's reference level;

23.3.3.3.2.1.3 permitted gas balancing charges;

23.3.3.3.2.1.4 compliance with operational flow orders;

23.3.3.3.2.1.5 purchasing additional emissions allowances that are necessary to satisfy the Generator's Supplemental Resource Evaluation or Out-of-Merit schedule; and

23.3.3.3.2.1.6 demonstrated opportunity costs that differ from the opportunity cost used in calculating the Generator's reference level.

23.3.3.3.2.2 The six categories of verifiable costs specified above shall be used to modify the requesting Generator's reference level(s) subject to the following prerequisites:

23.3.3.3.2.2.1 the Generator must specifically and accurately identify and document the extraordinary costs it has incurred to operate during the hours of its Supplemental Resource Evaluation or Out-of-Merit commitment; and

23.3.3.3.2.2.2 the costs must not already be reflected in the Generator's reference levels or be recovered from the ISO through other means.

As soon as practicable after the Market Party demonstrates to the ISO's reasonable satisfaction that one or more of the five categories of extraordinary costs have been incurred, but in no event later than the deadline set forth in Section 23.3.3.3.1.7.2 of these Mitigation Measures, the ISO shall adjust the affected Generator's reference levels and re-perform the real-time guarantee payment conduct and impact tests, or the Section 23.3.1.2.3 test, as appropriate, for the affected day. Only the reference levels used to perform real-time guarantee payment mitigation and/or mitigation pursuant to Section 23.3.1.2.3 of these Mitigation Measures, will be adjusted.

23.3.3.3.2.3 If, at some point prior to the issuance of a Close-Out Settlement for the relevant service month, the ISO or the Commission determine that some or all of the costs claimed by the Market Party during the consultation process described above were not, in fact, incurred over the course of the Out-of-Merit or Supplemental Resource Evaluation commitment, or were recovered from the ISO

through other means, the ISO shall re-perform the appropriate test(s) using reference levels that reflect the verifiable costs that the Generator incurred and shall apply mitigation if the Generator's Bids fail conduct and impact, or the Section 23.3.1.2.3 test, at the corrected reference levels.

23.3.3.3.2.4 Generators may contact the ISO to request the inclusion of costs other than the six types identified above in their reference levels. The ISO shall consider such requests in accordance with Sections 23.3.1.4, or 23.3.3.3.1 of these Mitigation Measures, as appropriate.

## **23.4 Mitigation Measures**

### **23.4.1 Purpose and Terms**

If conduct is detected that meets the criteria specified in Section 23.3, the appropriate mitigation measure described in this Section shall be applied by the ISO. The conduct specified in Sections 23.3.1.1 to 23.3.1.3 shall be remedied by (1) the prospective application of a default bid measure, or (2) the application of a default bid to correct guarantee payments, as further described in Section 23.4.2.2.4, below, or (3) the application of the sanction described in Section 23.4.3 of these Mitigation Measures if (x) a Withdrawal-Eligible Generator located outside the Constrained Area engages in conduct that violates Section 23.3.1.2.1.1.2(a) of these Mitigation Measures that has an LBMP impact that exceeds the applicable threshold, or (y) a Withdrawal-Eligible Generator engages in conduct that violates Sections 23.3.1.2.1.1.2(b) or 23.3.1.2.2.6(b) of these Mitigation Measures that has an LBMP impact that exceeds the applicable threshold in the Day-Ahead Market. If a Market Party or its Affiliates (i) engage in physical withholding by providing the ISO false information regarding the derating or outage of an Electric Facility, or (ii) engage in uneconomic production or uneconomic withdrawal or do not operate a Generator in conformance with ISO dispatch instructions such that the prospective application of a default bid is not feasible, or (iii) if otherwise appropriate to deter physical or economic withholding or uneconomic production or uneconomic withdrawal, the ISO shall apply the sanction described in Section 23.4.3.

Terms with initial capitalization not defined in Section 23.4 shall have the meaning set forth in the Open Access Transmission Tariff.

## **23.4.2 Default Bid**

### **23.4.2.1 Purpose**

A default bid shall be designed to cause a Market Party to Bid as if it faced workable competition during a period when (i) the Market Party does not face workable competition, and (b) has responded to such condition by engaging in the physical or economic withholding of an Electric Facility. In designing and implementing default bids, the ISO shall seek to avoid causing an Electric Facility to Bid below its marginal cost.

### **23.4.2.2 Implementation**

23.4.2.2.1 If the criteria contained in Section 23.3 are met, the ISO may substitute a default bid or bid parameter for a Bid or bid parameter submitted for an Electric Facility, or require the Market Party to use the default bid or bid parameter in the Bids it submits for an Electric Facility. The default bid or bid parameter shall establish a maximum or minimum value for one or more components of the submitted Bid or Bid parameters, equal to a reference level for that component determined as specified in Section 23.3.1.4.

23.4.2.2.1.1 If the substitution of a default bid or bid parameter(s) for any portion of the Incremental Energy Bid curve submitted for an Energy Storage Resource would result in a mitigated energy curve that is not consistent with the Energy Storage Resource's Roundtrip Efficiency, then the default bid or bid parameter(s) to inject Energy will be adjusted to the minimum extent necessary to ensure the difference between bids to withdraw Energy and bids to inject Energy incorporate the Energy Storage Resource's Roundtrip Efficiency.

23.4.2.2.2 An Electric Facility subject to a default bid shall be paid the LBMP or other market clearing price applicable to the output from the facility.

Accordingly, a default bid shall not limit the price that a facility may receive unless the default bid determines the LBMP or other market clearing price applicable to that facility.

23.4.2.2.3 If an Electric Facility is mitigated using the automated mitigation procedures described in Section 23.3.2.2.3 of these mitigation measures to a default bid for an Incremental Energy Bid other than a default bid determined as specified in Section 23.3.1.4, the Electric Facility shall receive an additional payment for each interval in which such mitigation occurs equal to the product of:

- (i) the amount of Energy in that interval scheduled or dispatched to which the incorrect default bid was applied;
- (ii) the difference between (a) the lesser of the applicable unmitigated bid and a default bid determined in accordance with Section 23.3.1.4, and (b) the applicable LBMP or other relevant market price in each such interval, if (a) greater than (b), or zero otherwise; and
- (iii) the length of that interval.

If an Electric Facility is mitigated to a default bid for a Start-Up Bid or a Minimum Generation Bid other than a default bid determined as specified in Section 23.3.1.4 of these Mitigation Measures, or if an Electric Facility is mitigated to a default bid for an Incremental Energy Bid other than a default bid determined as specified in Section 23.3.1.4 of these Mitigation Measures based on mitigation procedures other than the automated mitigation procedures described in Section 23.3.2.2.3 of these Mitigation Measures, then the ISO shall determine



if the Bids would have failed the relevant conduct test(s) if correctly determined default bids had been used. The ISO shall then restore any original (as-submitted) Bid(s) that would not have failed the relevant conduct test(s) if correctly determined default bids had been used, and use the restored Bid(s) to determine a settlement. Otherwise, the ISO shall use the Generator's correct or corrected default bid(s) to determine a settlement.

23.4.2.2.4 Except as may be specifically authorized by the Commission:

23.4.2.2.4.1 The ISO shall not use a default bid to determine revised market clearing prices for periods prior to the imposition of the default bid.

23.4.2.2.4.2 The ISO shall only be permitted to apply default bids to determine revised real-time guarantee payments to a Market Party in accordance with the provisions of Section 23.3.3.3 of these Mitigation Measures.

23.4.2.2.5 Automated implementation of default bid mitigation measures shall be subject to the following requirements.

23.4.2.2.5.1 Automated mitigation measures shall not be applied if the price effects of the measures would cause the average day-ahead energy price in the mitigated locations or zones to rise over the entire day.

23.4.2.2.5.2 Automated mitigation measures as specified in Section 23.3.2.2.3 shall be applied to Minimum Generation Bids and start-up costs Bids meeting the applicable conduct and impact tests. When mitigation of Minimum Generation Bids is warranted, mitigation shall be imposed from the first hour in which the impact test is met to the last hour in which the impact test is met, or for the duration of the mitigated Generator's minimum run time, whichever is longer.

23.4.2.2.5.3 The posting of the Day-Ahead schedule may be delayed if necessary for the completion of automated mitigation procedures.

23.4.2.2.5.4 Bids not mitigated under automated procedures shall remain subject to mitigation by other procedures specified herein as may be appropriate.

23.4.2.2.5.5 The role of automated mitigation measures in the determination of Day-Ahead market clearing prices is described in Section 17.1.3 of Attachment B of the ISO Services Tariff.

23.4.2.2.6 A Real-Time automated mitigation measure shall remain in effect for the duration of any hour in which there is an RTC interval for which such mitigation is deemed warranted.

23.4.2.2.7 A default bid shall not be imposed on a Generator that is not in the New York Control Area and that is electrically interconnected with another Control Area.

### **23.4.3 Sanctions**

#### **23.4.3.1 Types of Sanctions**

The ISO may impose financial penalties on a Market Party in amounts determined as specified below.

#### **23.4.3.2 Imposition**

The ISO shall impose financial penalties as provided in this Section 23.4.3, if the ISO determines in accordance with the thresholds and other standards specified in this Attachment H that: (i) a Market Party has engaged in physical withholding, including providing the ISO false information regarding the derating or outage of an Electric Facility; or (ii) a Market Party or its

Affiliates have engaged in uneconomic production; or (iii) a Market Party or its Affiliates have engaged in uneconomic withdrawal; or (iv) a Market Party or its Affiliates have failed to follow the ISOs dispatch instructions in real-time, resulting in a different output level than would have been expected had the Market Party's or the Affiliate's generation followed the ISO's dispatch instructions, and such conduct has caused a material increase in one or more prices or guarantee payments in an ISO Administered Market; or (v) a Market Party has made unjustifiable changes to one or more operating parameters of a Generator that reduce its ability to provide Energy or Ancillary Services; or (vi) a Load Serving Entity has been subjected to a Penalty Level payment in accordance with Section 23.4.4 below; or (vii) a Market Party has submitted inaccurate fuel type or fuel price or opportunity cost information that is used by the ISO in the development of a Resource's reference level, where the inaccurate reference level that is developed, in turn, directly or indirectly impacts guarantee payments or market clearing prices paid to the Market Party; or (viii) a Market Party has submitted inaccurate information other than fuel type or fuel price information that is used by the ISO in the development of a Resource's reference level, where the inaccurate reference level that is developed, in turn, directly or indirectly impacts guarantee payments or market clearing prices paid to the Market Party; or (ix) the opportunity to submit Incremental Energy Bids into the real-time market that exceed Incremental Energy Bids made in the Day-Ahead Market or mitigated Day-Ahead Incremental Energy Bids where appropriate, has been revoked for a Market Party's Generator pursuant to Sections 23.4.7.2 and 23.4.7.3 of these Mitigation Measures; or (x) a Market Party has engaged in economic withholding in the Day-Ahead Market by submitting Incremental Energy Bids that violate the conduct thresholds specified in Sections 23.3.1.2.1.1.2(b) or 23.3.1.2.2.6(b) of these Mitigation Measures and cause an LBMP impact that exceeds the applicable threshold; or (xi) a Market

Party has engaged in economic withholding of a Withdrawal-Eligible Generator located outside the Constrained Area by submitting Incremental Energy Bids that violate the conduct threshold specified in Section 23.3.1.2.1.1.2(a) of these Mitigation Measures and cause an LBMP impact that exceeds the applicable threshold.

### **23.4.3.3 Base Penalty Amount**

23.4.3.3.1 Except for financial penalties determined pursuant to Sections 23.4.3.3.2, 23.4.3.3.3, and 23.4.3.3.4 below, financial penalties shall be determined by the product of the Base Penalty Amount, as specified below, times the appropriate multiplier specified in Section 23.4.3.4:

MW meeting the standards for mitigation during Mitigated Hours \* Penalty market-clearing price.

23.4.3.3.1.1 For purposes of determining a Base Penalty Amount, the term “Mitigated Hours” shall mean: (i) for a Day-Ahead Market, the hours in which MW were withheld; (ii) for a Real-Time Market, the hours in the calendar day in which MW were withheld; and (iii) for load Bids, the hours giving rise to Penalty Level payments.

23.4.3.3.1.1.1 For purposes of determining a Base Penalty Amount for economic withholding related to Bids that the ISO evaluates as a price spread for purposes of scheduling and dispatch, the term “Mitigated Hours” shall instead mean:

(i) for the Day-Ahead Market, for Withdrawal-Eligible Generators located outside the Constrained Area, all hours of the day in which an LBMP impact is determined after the NYISO replaces all Incremental Energy Bids that violate the

conduct thresholds specified in Sections 23.3.1.2.1.1.2(a) or 23.3.1.2.1.1.2(b) of these Mitigation Measures with reference levels; or

(ii) for the Day-Ahead Market, for Withdrawal-Eligible Generators located in the Constrained Area, all hours of the day in which an LBMP impact is determined after the NYISO replaces all Incremental Energy Bids that violate the conduct thresholds specified in Section 23.3.1.2.2.6(b) of these Mitigation Measures with reference levels; or

(iii) for the Real-Time Market, for Withdrawal-Eligible Generators located outside the Constrained Area, all hours of the day in which an LBMP impact is determined after the NYISO replaces all Incremental Energy Bids that violate the conduct thresholds specified in Sections 23.3.1.2.1.1.2(a) of these Mitigation Measures with reference levels.

In each of the above cases, the “MW meeting the standards for mitigation during Mitigated Hours” shall be all scheduled MW.

23.4.3.3.1.2 For purposes of determining a Base Penalty Amount, the term “Penalty market-clearing price” shall mean: (i) for a withholding seller, the LBMP or other market-clearing price at the generator bus of the withheld resource (or in the relevant Load Zone, if a clearing price is not calculated at the generator bus); and (ii) for a Load Serving Entity, its zonal LBMP.

23.4.3.3.1.2.1 For purposes of determining a Base Penalty Amount for economic withholding related to Bids that the ISO evaluates as a price spread for purposes of scheduling and dispatch, the “Penalty market-clearing price” shall instead mean the difference between the market clearing price that was set and the market

clearing price would instead be determined if reference levels are substituted for  
conduct-failing Incremental Energy Bids.

**23.4.3.3.2 Uneconomic Production, Uneconomic Withdrawal, and Failure to Follow ISO Dispatch Instructions**

23.4.3.3.2.1 The financial penalty for uneconomic production conduct that violates the thresholds set forth in 23.3.1.3.1.1 of these Mitigation Measures or uneconomic withdrawal conduct that violates the thresholds set forth in 23.3.1.3.2.1 of these Mitigation Measures, and is determined to have had impact in accordance with Section 23.3.2.1 of these Mitigation Measures, shall be:

- (i) One and a half times the product of (a) the absolute value of the Congestion Component of the Day-Ahead LBMP or Real-Time LBMP and (b) the MW meeting the standards for mitigation during the Mitigated Hour(s); or
- (ii) One and a half times the increase in Bid Production Cost guarantee payments or Day-Ahead Margin Assurance Payments earned by the Generator or by the Market Party and its Affiliates during the Mitigated Hour(s), or on the market day during which the Mitigated Hour(s) occurred if related to a daily payment.

For purposes of determining the financial penalty for uneconomic production or uneconomic withdrawal in this Section 23.4.3.3.2.1, the term “Mitigated Hour(s)” shall mean the hours in which uneconomic production or uneconomic withdrawal conduct occurred.

23.4.3.3.2.2 The financial penalty for failure to follow ISO’s dispatch instructions in real-time, resulting in real-time operation at a different output level than would have been expected had the Market Party’s or the Affiliate’s generation followed

the ISO's dispatch instructions, if the conduct violates the thresholds set forth in Sections 23.3.1.1.1.2, or 23.3.1.3.1.2 of these Mitigation Measures, and if a Market Party or its Affiliates, or at least one Generator, is determined to have had impact in accordance with Section 23.3.2.1 of these Mitigation Measures, shall be:

One and a half times the estimated additional real time LBMP and Ancillary Services revenues earned by the Generator, or Market Party and its Affiliates, meeting the standards for impact during intervals in which MW were not provided or were overproduced.

**23.4.3.3.3 Submission of Inaccurate Fuel Type, Fuel Price or Opportunity Cost Information**

If inaccurate fuel type, fuel price or opportunity cost information was submitted by or for a Market Party, and the reference level that the ISO developed based on that inaccurate information impacted guarantee payments or market clearing prices paid to the Market Party in a manner that violates the thresholds specified in this Section 23.4.3.3.3, then, following consultation with the Market Party regarding the appropriate fuel type, fuel price or opportunity cost, the ISO shall apply the penalty set forth below, unless: (i) the Market Party shows that the information was submitted in compliance with the requirements of Section 4.1.9 of the ISO Services Tariff (Cost Recovery for Units Responding to Local Reliability Rules Addressing Loss of Generator Gas Supply), or (ii) the total penalty calculated for a particular Day-Ahead or Real-Time Market day is less than \$5,000, in which case the ISO will not apply a penalty.

### **23.4.3.3.3.1 Inaccurate Fuel Type and/or Fuel Price Information Conduct and Market Impact Tests**

#### **23.4.3.3.3.1.1 Inaccurate Fuel Type and/or Fuel Price Information Conduct Test and Inaccurate Opportunity Cost Conduct Test**

Inaccurate Fuel Price/Type Conduct Test—using the higher of (a) a revised reference level calculated using the Generator’s actual fuel costs, or (b) the reference level that would have been in place for the Generator but for the submission of inaccurate fuel type and/or fuel price information, test the Bids to determine if they violate the relevant conduct threshold in accordance with the appropriate provision(s) of Section 23.3.1.2 of these Mitigation Measures.

Inaccurate Opportunity Cost Conduct Test—using the higher of (a) a revised reference level calculated using the Generator’s demonstrated opportunity cost, or (b) the reference level that would have been in place for the Generator but for the submission of inaccurate opportunity cost information, test the Bids to determine if they violate the relevant conduct threshold in accordance with the appropriate provision(s) of Section 23.3.1.2 of these Mitigation Measures.

#### **23.4.3.3.3.1.2 Inaccurate Fuel Type and/or Fuel Price Information Impact Test and Inaccurate Opportunity Cost Conduct Test**

Inaccurate Fuel Price/Type Impact Test—using the higher of (a) a revised reference level calculated using the Generator’s actual fuel costs, or (b) the reference level that would have been in place for the Generator but for the submission of inaccurate fuel type and/or fuel price information, test the Bids for both LBMP and guarantee payment impact in accordance with the appropriate provisions of Section 23.3.2.1 of these Mitigation measures.



Inaccurate Opportunity Cost Impact Test—using the higher of (a) a revised reference level calculated using the Generator’s demonstrated opportunity cost, or (b) the reference level that would have been in place for the Generator but for the submission of inaccurate opportunity cost information, test the Bids for both LBMP and guarantee payment impact in accordance with the appropriate provisions of Section 23.3.2.1 of these Mitigation measures.

23.4.3.3.3.1.2.1 The ISO shall perform the guarantee payment impact tests for Generators that are committed in the Day-Ahead Market for local reliability or in the Real-Time Market via an SRE, and that are not located in a Constrained Area, at the 50% increase Constrained Area threshold specified in Section 23.3.2.1.2 of these Mitigation Measures.

23.4.3.3.3.1.3 Day-Ahead Reliability Commitments in a Constrained Area

Consistent with Section 23.5.2 of these Mitigation Measures, the conduct and impact thresholds for In-City Generators committed in the Day-Ahead Market for local reliability shall each be zero.

**23.4.3.3.3.2 Inaccurate Fuel Type and/or Fuel Price and/or Opportunity Cost Information Penalty Calculation**

If the results of the impact test indicate that the Market Party’s Bid had either LBMP or guarantee payment impact then the ISO shall charge the Market Party a penalty, calculated separately for the Day-Ahead Market and the Real-Time Market for each penalized day, for each of its Generators, as follows:

Daily Penalty (for either the Day-Ahead Market or the Real-Time Market) =

$$\text{Multiplier} \times \max [\sum_g \blacktriangle \text{BPCG payment}_g +$$

$$\sum_h \sum_g (\text{Market Party MWh}_{gh} \times \blacktriangle \text{LBMP@PTID}_{gh}) +$$
$$\max (\sum_h \text{TCC Revenue Calc for Market Party}_h, 0), 0]$$

Where:

g = each of the Market Party's Generators.

h = (a) for the purpose of calculating Day-Ahead Market penalties for a given day, h is each hour of that day in which inaccurate fuel type or fuel price or opportunity cost information was supplied in the Day-Ahead Market for any of the Market Party's Generators, provided that one of the Day-Ahead Bids in that hour "h" for at least one of the Market Party's Generators failed an LBMP or guarantee payment impact test described in Section 23.4.3.3.3.1.2 of these Mitigation Measures, or (b) for the purpose of calculating Real-Time Market penalties for a given day, h is each hour of that day in which inaccurate fuel type or fuel price or opportunity cost information was supplied in the Real-Time Market for any of the Market Party's Generators, provided that one of the Real-Time Bids in that hour "h" for at least one of the Market Party's Generators failed an LBMP or guarantee payment impact test described in Section 23.4.3.3.3.1.2 of these Mitigation Measures.

Multiplier = a factor of 1.0 or 1.5. Determined as specified below.

For violations related to fuel price and/or fuel type submissions, the ISO shall use a 1.0 Multiplier if the Market Party has not been penalized for inaccurately reporting fuel type or fuel price information over the 6 months prior to the market-day for which the penalty is being calculated. In all other cases the ISO shall use a 1.5 Multiplier.

For violations related to opportunity cost submissions, the ISO shall use a 1.0 Multiplier if the Market Party has not been penalized for inaccurately reporting opportunity cost information over the 6 months prior to the market-day for which the penalty is being calculated. In all other cases the ISO shall use a 1.5 Multiplier.

▲  $BPCG_{payment_g} = (a)$  for the purpose of calculating Day-Ahead Market penalties for a given day, the change in the Day-Ahead Market guarantee payment for that day for Generator  $g$  determined when the ISO performs the guarantee payment impact test in accordance with Section 23.3.2.1.2 of these Mitigation Measures, or (b) for the purpose of calculating Real-Time Market penalties for a given day, the change in the Real-Time guarantee payment for that day for Generator  $g$  determined when the ISO performs the guarantee payment impact test in accordance with Section 23.3.2.1.2 of these Mitigation Measures.

Market Party  $MWh_{gh} = (a)$  for the purpose of calculating Day-Ahead Market penalties, the MWh of Energy scheduled in the Day-Ahead Market for Generator  $g$  in hour  $h$ ; or (b) for the purpose of calculating Real-Time Market penalties, the maximum of (1) the MWh of Energy that Generator  $g$  was scheduled to produce in the Day-Ahead Market in hour  $h$ , or (2) the MWh of Energy that Generator  $g$  was scheduled to produce in the Real-Time Market in hour  $h$ , or (3) the MWh of Energy produced by Generator  $g$  that was scheduled to produce energy in hour  $h$  in the Real-Time Market.

▲  $LBMP@PTID_{gh} = (a)$  for the purpose of calculating Day-Ahead Market penalties, the change in the Day-Ahead Market LBMP for hour  $h$  at the location

of Generator g, as determined when the ISO performs the relevant LBMP impact test in accordance with Section 23.3.2.1.1 or 23.3.2.1.3 of these Mitigation Measures, or (b) for the purpose of calculating Real-Time Market penalties, the change in the real-time LBMP for hour h at the location of Generator g, as determined when the ISO performs the relevant LBMP impact test in accordance with Section 23.3.2.1.1 or 23.3.2.1.3 of these Mitigation Measures.

TCC Revenue Calc for Market Party<sub>h</sub> = (a) for the purpose of calculating Day-Ahead Market penalties, the change in TCC Revenues that the Market Party receives for hour h, determined when the ISO performs the relevant Day-Ahead Market LBMP impact test, or (b) for the purpose of calculating Real-Time Market penalties, zero.

#### **23.4.3.3.4 Virtual Bidding Penalties**

23.4.3.3.4.1 If the opportunity to submit Incremental Energy Bids into the Real-Time Market that exceed Incremental Energy Bids made in the Day-Ahead Market or mitigated Day-Ahead Incremental Energy Bids where appropriate, has been revoked on a Market Party's Generator pursuant to Sections 23.4.7.2 and 23.4.7.3 of these Mitigation Measures, then the following virtual market penalty may be imposed on the Market Party:

Virtual market penalty = (Virtual Load MWs) \* (Amount by which the hourly integrated real-time LBMP exceeds the day-ahead LBMP applicable to the Virtual Load MWs)

WHERE:

Virtual Load MWs are the scheduled MWs of Virtual Load Bid by the Market Party in the hour for which an increased real-time Bid for the Market Party's Generator failed the test specified in Section 23.4.7.2 of these Mitigation Measures; and

LBMP is the LBMP at which the Virtual Load MWs settled in the Day-Ahead and real-time Markets.

23.4.3.3.4.2 If the opportunity to submit Incremental Energy Bids into the Real-Time Market that are less than the Incremental Energy Bids submitted in the Day-Ahead Market (or the mitigated Day-Ahead Incremental Energy Bids where appropriate), has been revoked on a Market Party's Generator pursuant to Sections 23.4.7.2 and 23.4.7.3 of these Mitigation Measures, then the following virtual market penalty may be imposed on the Market Party:

Virtual market penalty = (Virtual Supply MWs) \* (Amount by which the hourly integrated real-time LBMP is less than the day-ahead LBMP applicable to the Virtual Supply MWs)

WHERE:

Virtual Supply MWs are the scheduled MWs of Virtual Supply Bid by the Market Party in the hour for which a reduced real-time Bid for the Market Party's Generator failed the test specified in Section 23.4.7.2 of these Mitigation Measures; and

LBMP is the LBMP at which the Virtual Supply MWs settled in the Day-Ahead and real-time Markets.

#### **23.4.3.3.5 No Revisions to Real-Time LBMPs**

Real-Time LBMPs shall not be revised as a result of the imposition of a financial obligation as specified in this Section 23.4.3.3, except as may be specifically authorized by the Commission.

#### **23.4.3.4 Multipliers**

The Base Penalty Amount specified in Section 23.4.3.3.1 shall be subject to the following multipliers:

23.4.3.4.1 For the first instance of a type of conduct by a Market Party meeting the standards for mitigation, the multiplier shall be one (1).

23.4.3.4.2 For the second instance within the current or the two immediately previous capability periods of substantially similar conduct in the same market by a Market Party or its Affiliates, the multiplier shall be one (1),

23.4.3.4.3 For the third instance within the current or the two immediately previous capability periods of substantially similar conduct in the same market by a Market Party or its Affiliates, the multiplier shall be two (2),

23.4.3.4.4 For the fourth or any additional instance within the current or immediately previous capability period of substantially similar conduct in the same market by a Market Party or its Affiliates, the multiplier shall be three (3).

#### **23.4.3.5 Dispute Resolution**

23.4.3.5.1 Parties with of disputes arising from or relating to the imposition of a sanction under this Section 23.4.3 may utilize the dispute resolution provisions of the ISO Services Tariff. The scope of any such proceeding shall include resolution of any dispute as to legitimate justifications, under applicable legal,

regulatory or policy standards, for any conduct that is asserted to warrant a penalty. Any or all of the issues in any such proceeding may be resolved by agreement of the parties.

23.4.3.5.2 Payment of a financial penalty may be withheld pending conclusion of any arbitration or other alternate dispute resolution proceeding instituted pursuant to the preceding paragraph and any petition to FERC for review under the Federal Power Act of the determination in such dispute resolution proceeding; provided, however, that interest at the ISO's average cost of borrowing shall be payable on any part of the penalty that is withheld, and that is determined to be payable at the conclusion of the dispute resolution/FERC review process from the date of the infraction giving rise to the penalty to the date of payment. The exclusive remedy for the inappropriate imposition of a financial penalty, to the exclusion of any claim for damages or any other form of relief, shall be a determination that a penalty should not have been imposed, and a refund with interest of paid amounts of a penalty determined to have been improperly imposed, as may be determined in the applicable dispute resolution proceedings.

23.4.3.5.3 This Section 23.4.3 shall not be deemed to provide any right to damages or any other form of relief that would otherwise be barred by Section 30.11 of Attachment O or Section 23.6 of this Attachment H.

23.4.3.5.4 This Section 23.4.3 shall not restrict the right of any party to make such filing with the Commission as may otherwise be appropriate under the Federal Power Act.

### **23.4.3.6 Disposition of Penalty Funds**

Except as specified in Section 23.4.4.3.2, amounts collected as a result of the imposition of financial penalties shall be credited against costs collectable under Rate Schedule 1 of the ISO Services Tariff.

## **23.4.4 Load Bid Measure**

### **23.4.4.1 Purpose**

As initially implemented, the ISO market rules allow loads to choose to purchase power in either the Day-Ahead Market or in the Real-Time Market, but provide other Market Parties less flexibility in opting to sell their output in the Real-Time Market. As a result of this and other design features, certain bidding practices may cause Day-Ahead LBMPs not to achieve the degree of convergence with Real-Time LBMPs that would be expected in a workably competitive market. A temporary mitigation measure is specified below as an interim remedy if conditions warrant action by the ISO until such time as the ISO develops and implements an effective long-term remedy, if needed. These measures shall only be imposed if persistent unscheduled load causes operational problems, including but not limited to an inability to meet unscheduled load with available resources. The ISO shall post a description of any such operational problem on its web site.

### **23.4.4.2 Implementation**

23.4.4.2.1 Day-Ahead LBMPs and Real-Time LBMPs in each load zone shall be monitored to determine whether there is a persistent hourly deviation between them in any zone that would not be expected in a workably competitive market. Monitoring of Day-Ahead and real-time LBMPs shall include examination of the



following two metrics (along with any additional monitoring tools and procedures that the ISO determines to be appropriate to achieve the purpose of this Section 23.4.4):

(1) The ISO shall compute a rolling average of the hourly deviation of real-time zonal LBMPs from Day-Ahead zonal LBMPs. The hourly deviation shall be measured as:  $(\text{zonal LBMP}_{\text{real time}} - \text{zonal LBMP}_{\text{day ahead}})$ . Each observation of the rolling-average time series shall be a simple average of all the hourly deviations over the previous four weeks, or such other averaging period determined by the ISO to be appropriate to achieve the purpose of this Section 23.4.4.

(2) The ISO shall also compute the rolling average *percentage* deviation of real-time zonal LBMPs from Day-Ahead zonal LBMPs. This percentage deviation shall be calculated by dividing the rolling-average hourly deviation (defined in Section 23.4.4.2.1 (1) above) by the rolling-average level of Day-Ahead zonal LBMP over the same time period, using the averaging period(s) described in Section 23.4.4.2.1 (1), above.

23.4.4.2.2 The ISO shall also estimate and monitor the average percentage of each Load Serving Entity's load scheduled in the Day-Ahead Market, using a methodology intended to identify a sustained pattern of under-bidding as accurately as the ISO deems practicable. The average percentage will be computed over a specified time period determined by the ISO to be appropriate to achieve the purpose of this mitigation measure.

23.4.4.2.3 If the ISO determines that (i) the relationship between zonal LBMPs in a zone in the Day-Ahead Market and the Real-Time Market is not what would be

expected under conditions of workable competition, (ii) one or more Load Serving Entities have been meeting a substantial portion of their loads with purchases in the Real-Time Market, and (iii) that this practice has contributed to an unwarranted divergence of LBMP between the two markets, then the following mitigation measure may be imposed. Any such measure shall be rescinded upon a determination by the ISO that any one or more of the foregoing conditions is not met.

### **23.4.4.3 Description of the Measure**

23.4.4.3.1 The ISO may require a Load Serving Entity engaging in the purchasing practice described above to purchase or schedule all of its expected power requirements in the Day-Ahead Market. A Load Serving Entity subject to this requirement may purchase up to a specified portion of its actual load requirements (the "Allowance Level") in the Real-Time Market without penalty, as determined by the ISO to be appropriate in recognition of the uncertainty of load forecasting.

23.4.4.3.2 Effective with the imposition of the foregoing requirement, all purchases in the Real-Time Market in excess of this Allowance Level (the "Penalty Level") shall be settled at a specified premium over the applicable zone LBMP. Revenues from such premiums, if any, shall be rebated on a *pro rata* basis to the Market Parties that scheduled energy for delivery to load within New York in the Day-Ahead Market for the day in which the revenues were collected.

23.4.4.3.3 The Allowance Level and the Penalty Level shall be established by the ISO at levels deemed effective and appropriate to mitigate the market effects described in this Section 23.4.4. In addition, the Penalty Level payments shall be

waived in any hour in which the Allowance Level is exceeded because of  
unexpected system conditions.

### **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 (a) 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, or (b) it is Net Unforced Capacity of a Behind-the-Meter Net Generation Resource that is sold to its Host Load in a transaction that does not constitute physical withholding under the standards specified in Section 23.4.5.4.1(b).

23.4.5.4.1 (a) 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 or Generator with CRIS MW is electrically located (either of the foregoing being referred to as “External Sale of Capacity”) 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 mean the UCAP equivalent of the External Sale of Capacity if known, or otherwise the reasonably projected UCAP equivalent as determined by the ISO. External Sale UCAP shall be deemed to have been physically withheld on the basis of a comparison between the net revenues from UCAP sales that would have been earned by the sale of the External Sale UCAP in a Mitigated Capacity Zone and the net revenues earned from the External Sale of Capacity. The comparison shall be made for the period for which 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

External Sale of Capacity occurred. External Sale UCAP 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 timely meeting the requirements to be qualified as an Installed Capacity Supplier; (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; and (3) the Responsible Market Party for the External Sale UCAP is a Pivotal Supplier, or would otherwise have been deemed a Pivotal Supplier if the External Sale UCAP had been available to be offered in the Mitigated Capacity Zone for the Comparison Period.

(b) Any Mitigated UCAP that is Net Unforced Capacity of a Behind-the-Meter Net Generation Resource that is not offered into the ICAP Spot Market Auction in accordance with Section 23.4.5.2 may be subject to audit and review by the ISO, and shall be deemed to have been physically withheld unless (i) the Responsible Market Party has obtained a determination from the ISO pursuant to Section 23.4.5.4.3(b) that the sale to its Host Load would not constitute physical withholding, and (ii) the Mitigated UCAP that was the subject of the determination pursuant to Section 23.4.5.4.3(b) is actually sold to its Host Load.

23.4.5.4.2 If Mitigated UCAP or External Sale UCAP is not offered or sold as specified above, the Responsible Market Party for such Installed Capacity Supplier or Generator electrically located in a MCZ Import Constrained Locality 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 or External Sale UCAP and (B) the total of (1) the amount of Mitigated UCAP or External Sale 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 or External Sale UCAP. If the failure to offer was associated with the same period as an External Sale of Capacity, 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 Generator or UDR project electrically located in a MCZ Import Constrained Locality shall be required to pay to the ISO an amount equal to 1.5 times 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 External Sale of Capacity in those auctions, times the total of (1) the amount of External Sale 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 External Sale 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 (a) 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 the External Sale of Capacity that exceed the net revenues that would have been realized from sale of the External Sale UCAP 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(a) of Attachment O to this Services Tariff.

(b) At least fifteen business days in advance of the opening of the ICAP Spot Market Auction, a Behind-the-Meter Net Generation Resource can request

that the ISO make a determination that the sale of Net Unforced Capacity in a Mitigated Capacity Zone to its Host Load does not constitute physical withholding. The Responsible Market Party shall be exempt from a physical withholding penalty as specified in Section 23.4.5.4.2 if the ISO determines that the Behind-the-Meter Net Generation Resource has demonstrated that the Host Load's actual consumption is planned to exceed its Adjusted Host Load, and it has a documented transaction to provide Net Unforced Capacity to its Host Load. Prior to reaching its decision on a request by a Behind-the-Meter Net Generation Resource that its sale of Net Unforced Capacity to its Host Load would not constitute physical withholding, 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 30.4.6.2.8(b) 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, 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; 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 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.

#### **23.4.5.6.2 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.

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

Offers to supply Unforced Capacity from a Mitigated Capacity Zone Installed Capacity Supplier, unless from Excluded Facilities as defined in Section 23.2 or from facilities found to be exempt as specified below: (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,) (or Section 23.4.5.7.14.5 (i.e., after the revocation of Self Supply Exemption), the ISP UCAP MW, or when the Installed Capacity Supplier is an RMR Generator, the Offer Floor shall apply to offers for Unforced Capacity from the Installed Capacity Supplier 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. The same exemption determination or Offer Floor shall apply to the 2 MW or less that an existing Generator or UDR project with CRIS requests and receives under Section 30.3.2.6 (Attachment X) or Section 32.4.11.1 (Attachment Z) of the ISO OATT. Offer Floors shall cease to apply:

- (A) to that portion of an Examined Facility'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") in which the resource's MW were not ISP UCAP MW or MW of an RMR Generator: and
- (B) for the period an Installed Capacity Supplier is an Interim Service Provider if its generating unit(s) are required to remain in-service but only in the amount of its ISP UCAP MW, or an RMR Generator in which case the Installed Capacity Supplier's offers of UCAP shall be as set forth in Section 23.4.5.7.12. Offer

Floors shall be adjusted annually using the most recent inflation rate that is the twelve month percentage change in the index for the general component of the escalation factor (“Inflation Rate”) that is the most recent of (a) the Inflation Rate identified in the index accepted by the Commission after a periodic review in an ICAP Demand Curve Reset Filing Year, as of October 1 of the ICAP Demand Curve Reset Filing Year, and (b) the Inflation Rate in the Annual Update of the relevant effective ICAP Demand Curves published under Section 5.14.1.2.2.

- (C) if the unit meets the criteria to be considered an Excluded Facility as defined in Section 23.2.

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 Examined Facility in a Mitigated Capacity Zone for which the

Commission has accepted an ICAP Demand Curve shall be exempt from an Offer Floor if it has: (i) passed a Part A Exemption Test, as described in subsection (a) below for Offer Floor determinations issued by the ISO as part of any Class Year Study prior to the Class Year immediately following Class Year 2021; or (ii) passed a Part A Exemption Test pursuant to Section 23.4.5.7.3.1 below for the Class Year immediately following Class Year 2021 and subsequently commenced Class Year Studies and Additional SDU Studies, and Expedited Deliverability Studies that are commenced after August 1, 2022; or (iii) passed a Part B Exemption Test as described below in subsection (b); or (iv) otherwise qualifies for the exemptions referenced in subsections (c), (d), or (e) below:

(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 Starting Capability Period, is projected by the ISO, in accordance with Section 23.4.5.7.15, to be higher than (y) the numerical value equal to 75 percent of the Mitigation Net CONE that would be applicable 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 Mitigation Study Period is projected by the ISO, in accordance with Section 23.4.5.7.15, to be higher than the reasonably anticipated Unit Net CONE of the Examined Facility,

(c) it has been determined to be exempt pursuant to Section 23.4.5.7.9 (the “Competitive Entry Exemption”); or

(d) for an Examined Facility that participated in either a Class Year Study or an Additional SDU Study, 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, and determinations pursuant to Section 23.4.5.7.3.1 of the Services Tariff, the ISO shall identify Unit Net CONE and the projected ICAP Spot Market Auction prices in accordance with Section 23.4.5.7.15, for each Examined Facility promptly after it (i) has accepted its Project Cost Allocation (as defined below) 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 the completed Class Year Study, Additional SDU Study, or Expedited Deliverability Study”), and it shall do so concurrently for an Expected CRIS Transferee (as defined in 23.2.1). If an Examined Facility passes the Part A Exemption Test pursuant to Section 23.4.5.7.3.1 and also passes the Part B Exemption Test described above in (b), it will be awarded a Part B Exemption; however, for the sole purposes of evaluating other Examined Facilities under the Part A Exemption Test and Part B Exemption Test, the capacity associated with the Examined Facility will continue to be treated as having received a Part A Exemption in order to ensure that another Examined Facility will not receive a Part A Exemption for the capacity of the Examined Facility that was awarded the

Part B Exemption after having passed both the Part A and Part B Exemption Tests.

For purposes of Section 23.4.5.7 *et seq*, “Project Cost Allocation” shall mean the singular Project Cost Allocation or two Project Cost Allocations (*i.e.*, one for System Deliverability Upgrades (“SDUs”) and one for System Upgrade Facilities (“SUFs”), for the Project, , from the Final Decision Round.

The first year value of an Examined Facility’s Unit Net CONE calculated pursuant to Section 23.4.5.7 and Section 23.4.5.7.3.2, will be established in accordance with Section 23.4.5.7.3.7 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. A Unit Net CONE determination received pursuant to Sections 23.4.5.7.2, 23.4.5.7.6 or 23.4.5.7.7 shall only be final for the relevant Examined Facility, if the Project accepts its Project Cost Allocation or deliverable MW requested by the Project, and the Project remains a member of the completed Class Year Study, Additional SDU Study, or Expedited Deliverability Study on the date the ISO issues a notice to stakeholders that the Class Year Study, Additional SDU Study, Expedited Deliverability Study decisional process of which the Project is a member has been completed, and as specified in the ISO’s notice to the Project of the final exemption and Offer Floor determinations for the quantity of CRIS MW accepted by the applicable Examined Facility or Examined Facilities in such Class Year Study, Additional SDU Study, or Expedited Deliverability Study at the time of its completion (or transferred CRIS if an Expected CRIS Transferee).

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 has requested CRIS and remains a member of the completed Class Year Study, Additional SDU Study, or Expedited Deliverability Study, or was an Expected CRIS Transferee and could have been evaluated concurrently with a Class Year Study, 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 5.14.1.2.2.4.11. 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 ICAP 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.

23.4.5.7.2.3.1 The ISO shall compute the reasonably anticipated ICAP Spot Market Auction forecast in accordance with Section 23.4.5.7.15.

23.4.5.7.2.4 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 projects 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. However, if a NCZ Examined Project elects to pursue an Additional SDU Study or an Expedited Deliverability Study and that study is not completed prior to the completion of the current Class Year Study then the NCZ Examined Project shall not be included in the BSM Forecast for the current Class Year Study. If a NCZ Examined Project completes its Additional SDU Study after the completion of the Class Year Study that it originally entered but before the time the ISO completes a subsequent Class

Year's Annual Transmission Baseline Assessment study cases then that NCZ Examined Project shall have a separate decisional process utilizing the Mitigation Study Period from the most recently completed Class Year Study.

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 and/or Offer Floor exemption determinations or Indicative Buyer-Side Mitigation Exemption Determinations 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 30.4.6.2.13 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) or 23.4.5.7.3.1 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 that comprises a Project.

23.4.5.7.3.1 For Examined Facilities participating in the Class Year immediately following Class Year 2021, and any subsequent Class Year Study, Additional SDU Study, and Expedited Deliverability Study that are commenced after August 1, 2022, the ISO shall conduct the Part A Exemption Test for all Examined Facilities in the manner described below prior to making any other exemption determinations under Sections 23.4.5.7.2(b), (c), and (d). If an Examined Facility passes the Part A Exemption Test described below and also passes the Part B Exemption Test described above in 23.4.5.7.2(b), it will be awarded a Part B Exemption; however, for the sole purposes of evaluating other Examined Facilities under the Part A Exemption Test and Part B Exemption Test, the capacity associated with the Examined Facility will continue to be treated as having received a Part A Exemption in order to ensure that another Examined Facility will not receive a Part A Exemption for the capacity of the Examined Facility that was awarded the Part B Exemption after having passed both the Part A and Part B Exemption Tests.

23.4.5.7.3.1.1 The ISO shall begin the Part A Exemption Test by dividing the Examined Facilities into Part A Group 1 Examined Facilities and Part A Group 2 Examined Facilities based upon the factors listed below in Section 23.4.5.7.3.1.3 of this Services Tariff and on the ISO's projection of the time frame when each Examined Facility will come into service. The ISO will post a list of each group

of Examined Facilities on its website in accordance with Section 23.4.5.7.3.1.4 of this Services Tariff. The ISO will rank all Examined Facilities in the Part A Group 1 Examined Facilities based upon the ISO's determination of each Examined Facility's specific Net Cost of New Entry except that all Public Policy Resources included in the Part A Group 1 Examined Facilities will be evaluated before other Part A Group 1 Examined Facilities. The ISO will rank all Examined Facilities in the Part A Group 2 Examined Facilities based upon the ISO's determination of each Examined Facility's specific Net Cost of New Entry except that all Public Policy Resources included in the Part A Group 2 Examined Facilities will be evaluated before other Part A Group 2 Examined Facilities. Each of the Examined Facilities in the Part A Group 1 Examined Facilities will be evaluated for the Part A Exemption Test using the Part A Mitigation Study Period Years 1 through 3. Upon completion of that evaluation, each of the Examined Facilities in the Part A Group 2 Examined Facilities will then be evaluated for the Part A Exemption Test using the Part A Mitigation Study Period Years 4 through 6.

23.4.5.7.3.1.2 For each Capability Year in a Part A Mitigation Study Period Years 1 through 3, the ISO will determine whether, in accordance with Section 23.4.5.7.15, the average ICAP Spot Market Auction price for each Capability Year in the Part A Mitigation Study Period Years 1 through 3 is higher than 75 percent of the Mitigation Net CONE that would be applicable to the Examined Facility during that same Capability Year. For any Capability Year in which this threshold is met, the Examined Facility will qualify for a Part A Exemption for



that Capability Year and any subsequent Capability Years. The Examined Facility, however, will be subject to an Offer Floor for any prior Capability Years in which the threshold was not met unless it otherwise qualifies for an exemption provided in 23.4.5.7.2 (b), (c), (d), or as Cleared UCAP. The Part A Exemption Test will be performed for each Examined Facility sequentially by rank. In its evaluation of each Examined Facility located in the New York City Locality for each Capability Year, the ISO will conduct the Part A Exemption Test for the New York City Locality prior to its evaluation for the G-J Locality. Following completion of review of all three Capability Years in the Part A Mitigation Study Period Years 1 through 3, this process is then conducted for the Part A Group 2 Examined Facilities for each Capability Year in the Part A Mitigation Study Period Years 4 through 6. The ISO will determine if, in accordance with Section 23.4.5.7.15, the average ICAP Spot Market Auction price for each Capability Year in the Part A Mitigation Study Period Years 4 through 6 is higher than 75 percent of the Mitigation Net CONE that would be applicable to the Examined Facility during that same Capability Year. If this threshold is met, the Examined Facility will qualify for a Part A Exemption for that Capability Year and any subsequent Capability Years. The Examined Facility, however, will be subject to an Offer Floor for any prior Capability Years in which the threshold was not met unless it otherwise qualifies for an exemption provided in 23.4.5.7.2 (b), (c), (d), or as Cleared UCAP. The Part A Exemption Test will be performed for each Examined Facility sequentially by rank. In its evaluation of each Examined Facility located in the New York City Locality for each Capability Year, the ISO

will conduct the Part A Exemption Test for the New York City Locality prior to its evaluation for the G-J Locality.

23.4.5.7.3.1.3 An Examined Facility will be in Part A Group 2 Examined Facilities

unless: (i) it is already in-service; or (ii) the ISO has determined it (a) falls within a category of resources with a construction timeline of less than three years, including but not limited to small generators sized at or below 20 MW or updates to existing generators and (b) is reasonable to project the facility could be in-service prior to the start of the second Winter Capability Period that falls within the Part A Mitigation Study Period Years 1 through 3. Those Examined Facilities that meet either (i) or (ii) above will be in Part A Group 1 Examined Facilities.

23.4.5.7.3.1.4 The ISO will post which Examined Facilities comprise the Part A Group 1

Examined Facilities and Part A Group 2 Examined Facilities 120 days after the Annual Transmission Baseline Assessment lock down of any Class Year Study; and 30 days after the start of any applicable Expedited Deliverability Studies.

23.4.5.7.3.2 The ISO shall compute the reasonably anticipated ICAP Spot Market Auction forecast price for any Mitigated Capacity Zone in accordance with Section 23.4.5.7.15.

When the ISO is evaluating more than one Examined Facility concurrently in either a Class Year Study, Additional SDU Study or Expedited Deliverability Study, the ISO shall recognize in its computation of the anticipated ICAP Spot Market Auction forecast price that Generators or UDR projects 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. However, if an Examined Facility has accepted its determination from a Class Year Study, Additional SDU Study, or Expedited Deliverability Study, then the Examined Facility shall also be included in the BSM Forecast for any subsequently completed Class Year Study, Additional SDU Study or Expedited Deliverability Study that utilized the same Mitigation Study Period that was used to evaluate the Examined Facility. If an Examined Facility completes its Additional SDU Study after the completion of the Class Year Study that it originally entered but before the time the ISO completes a subsequent Class Year's Annual Transmission Baseline Assessment study cases then that Examined Facility shall have a separate decisional process utilizing the Mitigation Study Period from the most recently completed Class Year Study.

#### **23.4.5.7.3.3 [Intentionally Left Blank]**

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 Study, Additional SDU Study or Expedited Deliverability Study on the date the ISO issues a notice to stakeholders that the decisional period of which the Examined Facility is a member has been completed but that only has ERIS rights, 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 Study, Additional SDU Study, or Expedited Deliverability Study in which the Generator or UDR project requests CRIS. The ISO shall determine the

reasonably anticipated Unit Net CONE with the costs to be determined in the Project Cost Allocation, as applicable, prior to or contemporaneous with the commencement of the Initial Decision Period, and shall provide to the Examined Facility the ISO's initial determination of an exemption or the Offer Floor.

The ISO shall provide to each Examined Facility its price forecast and an initial determination (incorporating its revised Project Cost Allocation) prior to or contemporaneous with the commencement of the Initial Decision Period for the Class Year Study, Additional SDU Study, and the Expedited Deliverability Study and for each Subsequent Decision Period for the Class Year Study and Additional SDU Study no later than the ISO's issuance of a Revised Project Cost Allocation for the Class Year Study and Additional SDU Study.

If an Examined Facility remains a member of the completed Class Year Study, Additional SDU Study, or Expedited Deliverability Study, the ISO shall inform the Examined Facility of the final Offer Floor determination(s) or the Offer Floor exemption(s) that will apply to the Examined Facility as soon as practicable after the date the ISO issues a notice to stakeholders that the decisional period has been completed, in accordance with methods and procedures specified in ISO Procedures.

When evaluating Examined Facilities 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 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.

23.4.5.7.3.4 If a Generator or UDR Project that would be an Examined Facility under the criteria provided in (II) of the Examined Facility definition in Section 23.2.1

has not provided written notice to the ISO on or before the Class Year Start Date for the Class Year Study or the Expedited Deliverability Study Start Date for the expedited Delivery Study with which it was eligible to be examined, 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 provided in (I) of the Examined Facility definition in Section 23.2.1 and was not previously in a Class Year Study, Additional SDU Study, or Expedited Deliverability Study at the time of their completion and the Examined Facility either (a) enters a new Class Year and requests CRIS or (b) intends to receive transferred CRIS rights at the same location. An Expected CRIS Transferee that received CRIS will be bound by the determination rendered and will not be reevaluated. An Examined Facility under the criteria that had been set forth in Section 23.4.5.7.3 (III) prior to May 19, 2016, will not be reevaluated.

23.4.5.7.3.6 In order to become an Examined Facility in an Expedited Deliverability Study an eligible Project must (1) provide a written request to the ISO's Market Mitigation and Analysis Department; and (2) satisfy all of the applicable data requirements in accordance with ISO Procedures prior to the start of the

Expedited Deliverability Study. Once the data submission is deemed complete by the ISO the eligible Project will be notified by the ISO that it has satisfied the data requirements to enter an Expedited Deliverability Study.

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 same numerical value for the inflation index that was used in the final determination issued under Section 23.4.5.7.4 (*i.e.*, when the Examined Facility remains a member of the completed Class Year as identified in Section 23.4.5.7.4. 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 identified in 23.4.5.7.

#### **23.4.5.7.3.8 Net Energy and Ancillary Services Revenue Projections for UDR Projects**

For the purposes of making an exemption determination or Unit Net CONE determination pursuant to Section 23.4.5.7 for an Examined Facility that is a UDR project, the ISO will determine the likely projected net Energy and Ancillary Services revenues utilizing a methodology that reflects, as applicable, but is not limited to, the guiding principles set forth in Section 23.4.5.7.3.8.1. The ISO will implement this Section 23.4.5.7.3.8 in accordance with Section 23.4.5.7.3.8.2.

23.4.5.7.3.8.1 The methodology used for a specific UDR project shall reflect the following guiding principles, where applicable:

- (a) The design and characteristics of the UDR project as proposed in the Class Year, including whether it is proposed to be uni-directional or bi-directional.

- (b) The market structure, scheduling rules, price formation rules, and other relevant characteristics and rules of the Control Area at each terminus of the UDR project.
- (c) The reasonably projected effects of transactions utilizing the UDR project on NYCA and External Control Areas prices, including proxy bus prices.
- (d) The reasonably projected cost to purchase energy, capacity, and ancillary services that would be transmitted into, and if the UDR project is proposed in the Class Year to be bi-directional also from, the Mitigated Capacity Zone, utilizing the UDR project at the rate determined by: (i) market-based clearing price mechanisms to the extent that the External Control Area uses them, or ISO market prices if an internal UDR project; (ii) a reasonable substitute, in the ISO's judgment, to the extent that the External Control Area does not use market-based clearing price mechanisms to determine prices. The costs to purchase energy and capacity, and any other products associated therewith, shall not be based on advantages or sources of revenue that would not reflect arm's-length transactions, or that are not in ordinary course of business for a competitive energy market participant.
- (e) The reasonably anticipated fees for transmitting the ISO-projected energy, capacity, and ancillary services transactions utilizing the UDR project. These fees shall include any export fees, transmission services charges, ancillary services fees, scheduling fees, and other fees and costs.
- (f) The reasonably projected opportunity costs (including fees) of selling energy, capacity, and any other products associated with the sale of energy, into an

External Control Area in lieu of a sale transaction into the Mitigated Capacity Zone.

- (g) The reasonably projected revenues from the sale of energy and ancillary services that would be transmitted into, and if the UDR project is proposed in the Class Year Study or Additional SDU Study to be bi-directional also from, the Mitigated Capacity Zone, utilizing the UDR project at the rate determined by: (i) market-based clearing price mechanisms to the extent that the External Control Areas uses them, or ISO market prices if an internal UDR project; (ii) a reasonable substitute, in the ISO's judgment, to the extent that the External Control Area does not use market-based clearing price mechanisms to determine prices. The revenues from the sale of energy, capacity, and any other products associated with the sale thereof, into an External Control Area shall not be based on advantages or sources of revenue that do not reflect arm's-length transactions, or that are not in ordinary course of business for a competitive energy market participant.
- (h) The effect of scheduling uncertainty and imperfect arbitrage on the projected costs and revenues from the purchase and sale of energy and ancillary services that are reasonably projected to be transmitted into, and if the UDR project is proposed in the Class Year Study or Additional SDU Study to be bi-directional also from, the Mitigated Capacity Zone, utilizing the UDR project.

#### **23.4.5.7.3.8.2 Implementation**

- (a) The ISO shall seek comment from the Market Monitoring Unit on the methodology the ISO will use to project net Energy and Ancillary Services for each UDR project, and the inputs used to perform the calculation. The



responsibilities of the Market Monitoring Unit that are addressed in this section are also addressed in Section 30.4.6.2.13 of Attachment O.

- (b) The ISO shall post on its website a description of the methodology used for each UDR project, subject to any restrictions on the disclosure of Confidential Information or Critical Energy Infrastructure Information.
- (c) If a Project withdraws from a Class Year Study or Additional SDU Study and then enters another Class Year (regardless of whether it has the same or a different interconnection queue position,) the ISO may utilize a different methodology than it previously used, provided it reflects, where applicable, the guiding principles set forth in Section 23.4.5.7.3.8.1 and implemented in accordance with Section 23.4.5.7.3.8.2(a) and (b).

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 the Unit Net CONE projected for a Mitigation Study Period using: the most recent inflation index. For purposes of Section 23.4.5.7.4, the inflation index shall mean the average of the most recently published median Headline Consumer Price Index (CPI) and Headline Personal Consumption Expenditures (PCE) long-term annual averages for inflation over the ten years that includes the last year of the Mitigation Study Period, as reported by the Survey of Professional Forecasters, unless this index is eliminated, replaced or otherwise terminated by the publisher thereof. In such circumstance, the ISO shall utilize the replacement or successor index established by the publisher, if any, or, in the absence of a replacement or successor index, shall select as a replacement a substantially similar index.

#### **23.4.5.7.5 Excluded Facility Certification**

Certifications and Acknowledgments found in this section must be made on behalf of an Excluded Facility that asserts the project or Resource complies with the criteria specified in (i), (ii) and/or (iii) of the Excluded Facilities definition in Section 23.2 of the Services Tariff. Such an Excluded Facility shall be legally bound by the following Certification and Acknowledgement executed by a duly authorized officer:

## **CERTIFICATION AND ACKNOWLEDGMENT OF EXCLUDED FACILITY STATUS OF RESOURCE OR UDR PROJECT**

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

1. I am an officer whose responsibilities include the [development, ownership, or operational control] of [NAME OF RESOURCE/PROJECT], New York Independent System Operator, Inc.'s ("NYISO") [Interconnection queue position/PTID Number (INSERT NUMBER)].
2. I am duly authorized to make representations concerning [NAME OF RESOURCE/PROJECT] for [NAME OF DEVELOPER/OWNER/OPERATOR], including each of the certifications and acknowledgements that I have made in this document.
3. I hereby certify to the Excluded Facility Status of [NAME OF RESOURCE/PROJECT] as meeting the following criteria as provided in Section 23.2 of the Services Tariff in accordance with ISO Procedures and consistent with the documents provided in Schedule 1 of this Certification [select all that apply: i) the Resource technology type is specifically identified by the CLCPA or is publicly identified by New York State as supporting the goals of the CLCPA; (ii) the Resource or UDR project has a contract with the State of New York in order to achieve the goals of the CLCPA (such as a Tier 1 or Tier 4 contract with NYSERDA); or (iii) the Resource or UDR project is eligible to receive a contract authorized by New York State that is supporting the goals of the CLCPA (such as a Tier 1 or Tier 4 contract with NYSERDA)].
4. I have reviewed and understand the requirements established under the NYISO Market Administration and Control Area Services Tariff ("Services Tariff") related to its Buyer Side Mitigation provisions described in Sections 23.2 and 23.4.5.7, *et seq* of the Services Tariff ("BSM Rules").
5. I have personal knowledge of the facts and circumstances supporting [NAME OF RESOURCE/PROJECT]'s status as an Excluded Facility pursuant to the NYISO's BSM Rules.

6. [Developer/Owner/Operator] shall provide any information or cooperation requested by the NYISO in connection with this Certification and Acknowledgement of Excluded Facility Status.

I hereby acknowledge on behalf of myself, [NAME OF RESOURCE/PROJECT], and [NAME OF DEVELOPER/OWNER/OPERATOR] 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 this Certification and Acknowledgement, shall constitute a violation of Section 4.1.7 of the Services Tariff, and may be subject to the Commission's review, a violation of the Commission's regulations and Section 316A of the Federal Power Act.
- b. If false, misleading, or inaccurate information is submitted, or requested information is not provided, including but not limited to information contained or submitted in this Certification and Acknowledgement, Excluded Facility status shall not be recognized for [NAME OF RESOURCE/PROJECT] which may potentially be subject to an Offer Floor in accordance with the BSM Rules unless it is 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.

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[PRINT NAME]

[DATE]

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

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Notary Public

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

**[PROJECT NAME] SCHEDULE 1 CERTIFICATION AND ACKNOWLEDGEMENT  
LIST AND ATTACHMENT OF PERTINENT  
DOCUMENTS AND AGREEMENTS  
[DATE]**

**Source of Document/Parties to Agreement:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date Issued/Executed:** \_\_\_\_\_

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

The executed Certification and Acknowledgement form required by Section 23.4.5.7.5 shall be submitted concurrent with a request to be considered an Excluded Facility. The ISO may request additional information or updated certifications at any time prior to the date that the Class Year decisional process of which the Examined Facility is a member has been completed. Requests for Resources or UDR projects to be considered an Excluded Facility in Class Years and Requests for Resources to be considered an Excluded Facility 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 (i) that for members of the ongoing Class Year 2021 Study that must certify to their Excluded Facility Status, certification shall be submitted to the NYISO with the request to be considered as an Excluded Facility within twenty-one calendar days from [ ], the effective date of this tariff section and (ii) as noted in 23.4.5.7.5.1.1 below.

The ISO shall determine, in consultation with the Market Monitoring Unit, whether a Resource or UDR project is an Excluded Facility, subject to any required further submissions of information, 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.

**23.4.5.7.5.1.1** Existing Resources or UDR projects with an Offer Floor that was applied prior to the ongoing Class Year 2021 Study may request at any time to be an Excluded Facility, consistent with ISO Procedures. The ISO may request additional information at any time and updated certifications at any time for these requests prior to the issuance of a determination.



#### **23.4.5.7.5.2 Notifications**

The ISO shall post on its website a list of each Examined Facility that requests to be an Excluded Facility 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 also post on its website a list of all Examined Facilities that it determines to be Excluded Facilities at the conclusion of the associated Class Year Study, Additional SDU Study, or Expedited Deliverability Study. The ISO shall update the list to reflect any changes.

#### **23.4.5.7.5.3 False, Misleading, or Inaccurate Information**

The submission of false, misleading, or inaccurate information, or the failure to submit requested information and cooperate in connection with a certification of Excluded Facilities status 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).

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

All requests for Additional CRIS MW for an Examined Facility located in a Mitigated Capacity Zone, in a Class Year Study, Additional SDU Study, Expedited Deliverability Study or through a transfer, shall be evaluated for a buyer-side mitigation exemption or Offer Floor in accordance with this Section 23.4.5.7.6 and with respect to requests for Competitive Entry Exemption in accordance with Section 23.4.5.7.9.6 and the applicable provisions of Section 23.4.5.7.9. Additional CRIS MW obtained in a Class Year Study, Additional SDU Study, Expedited Deliverability Study 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 Starting Capability Period is projected by the ISO, in accordance with Section 23.4.5.7.15, 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 Mitigation Study Period is projected by the ISO, in accordance with Section 23.4.5.7.15, 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 that

comprise all or part of the same request for Additional CRIS MW in a given Class Year Study, Additional SDU Study and Expedited Deliverability Study (except that Self Supply Exemptions are not available for projects evaluated as part of the Expedited Deliverability Study).

23.4.5.7.6.1 For Additional CRIS MW requested by an Examined Facility, when an exemption or Offer Floor is 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 prior final determination(s) concluded that the Installed 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 for the Examined Facility, 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 Section 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 most recent inflation rate determined pursuant to Section 5.14.1.2.2.4.11 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. 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  
30.4.6.2.13 of Attachment O to this Services Tariff.

23.4.5.7.6.9 For Additional CRIS MW requested by an Examined Facility, the ISO  
may consider any shared costs when determining the methodology for calculating  
the Unit Net CONE for Additional CRIS MW in accordance with Section  
23.4.5.7.6.1 above.

23.4.5.7.7 An Installed Capacity Supplier or UDR project that is an Excluded

Facility shall not be subject to an Offer Floor. An In-City Installed Capacity Supplier that was an existing facility on or before March 7, 2008 shall be exempt from an Offer Floor with respect to the MW of CRIS that it had as of that date unless the CRIS subsequently expired under Section 25.9.3.1 of the ISO OATT. 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 unless the CRIS subsequently expired under Section 25.9.3.1 of the ISO OATT. If the Generator or UDR project subsequently received CRIS either (I) after the expiration of its CRIS (under Section 25.9.3.1 of the ISO OATT) to which the exemption under this Section 23.4.5.7.7 applied or (II) 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 is not an Excluded Facility and 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 an Excluded Facility and 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 30.4.6.2.13 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**

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.

23.4.5.7.9.1.1 An 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 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 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 “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 Examined Facility; (b) is for the energy or capacity produced by or delivered from or by the Examined Facility, including an agreement for rights to schedule or use a UDR; or (c) provides services, financial support, or tangible goods to 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 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 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 (ix) of this Section a non-qualifying contractual relationship.

23.4.5.7.9.1.4 The ISO shall determine whether an 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.

23.4.5.7.9.2.1 An 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 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.
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 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) – (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 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) – (ix) of the Services Tariff, (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 on Schedule 2 to this certification 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 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 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:

- 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 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.

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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, (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 Examined Facility project's Entry Date.

23.4.5.7.9.2.5 The Developer or Owner of the Examined Facility must notify the ISO if information in a certification ceases to be true, within two (2) business days after the earlier of the date that it learned that the information 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 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 the ISO's request, such refusal 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 fifteen (15) 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 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, cooperation, or any other failure to provide information or cooperation by the deadline will (a) make the Examined Facility requesting a Competitive Entry Exemption 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 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 Examined Facility that is granted a Competitive Entry 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 or Section 23.4.5.7.9.6.5, as applicable of the Services Tariff, updated when required by or upon request from the ISO pursuant to Section 23.4.5.7.9.2.4, 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 Self Supply Exemption. An 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 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 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 Examined Facility that withdraws its 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 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 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 Examined Facility (or if no longer an Examined 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 Examined Facility (such notice to the extent practicable,) the ISO may revoke the Competitive Entry Exemption. 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 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, 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 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.

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[PRINT NAME]

[DATE]

Subscribed and sworn to before me

this [ ] day of [MONTH] [YEAR].

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Notary Public

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

**[NAME OF OWNER OF THE EXAMINED FACILITY REQUESTING**

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

**SCHEDULE 1 CERTIFICATION AND ACKNOWLEDGEMENT**

**[DATE]**

<b><u>Parties to agreement</u></b>	<b><u>Date Executed</u></b>	<b><u>Effective Date</u></b>	<b><u>Date Performance</u></b>
<b><u>Commences</u></b>			

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."
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 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 Acknowledgement, 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  
COMPETITIVE AND NON-DISCRIMINATORY HEDGING CONTRACT  
STATUS [NAME]**

**SCHEDULE 1 CERTIFICATION AND ACKNOWLEDGEMENT**

**[DATE]**

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

23.4.5.7.10 The ISO shall post on its website the identity of the Examined Facility 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 30.4.6.2.13 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, except as set forth in 23.4.5.7.12.

23.4.5.7.12 An Interim Service Provider that is required to keep its generating unit(s) in-service and that has UCAP subject to an Offer Floor shall offer all ISP UCAP MW in each ICAP Spot Market Auction at \$0.00/kW-month. For an RMR Generator that has UCAP subject to an Offer Floor, the UCAP subject to the Offer Floor shall be offered at \$0.00/kW-month.

**23.4.5.7.13 [Reserved for Future Use]**



## **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 the Examined

Facility must be a member of a Class Year Study, or Additional SDU Study, cannot participate in an Expedited Deliverability Study, and 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) A Developer or Owner of an Examined Facility, NCZ Examined Project, or Additional CRIS MW, (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. The ISO will evaluate the request if the SSE Applicant is a member of a Class Year after Class Year 2019 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 currently obligated to provide to the Self Supply LSE (or LSEs if more than one Self Supply LSE,) for a minimum of 10 years at the time it requests the Self Supply Exemption, 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 23.4.5.7.14.3),
- (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, no later than the deadline by which the SSE Applicant must notify the ISO of its election to enter the Class Year Study, such date as set forth in Section 25.5.9 of OATT Attachment S, or 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 Study. 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 30.4.6.2.13 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 Acknowledgment 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, NCZ EXAMINED PROJECT or ADDITIONAL CRIS MW], 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.

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[PRINT NAME]  
[DATE]

Subscribed and sworn to before me

this [ ] day of [MONTH] [YEAR].

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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, NCZ EXAMINED PROJECT, or ADDITIONAL CRIS MW], 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.

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[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, NCZ EXAMINED PROJECT, or ADDITIONAL CRIS MW], 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.

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[PRINT NAME]

[DATE]

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

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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 amount of ICAP MW reasonably projected by the ISO that reflects the expected obligations of the Self Supply LSE, and all its Affiliates, to satisfy the ICAP Requirements of its long term customers. This amount will equal the sum of the total amounts projected by the ISO that will be required to be purchased in each Locality and the NYCA for its long term customers. 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 ten most recently completed Capability Years preceding the Class Year Start Date and any incremental long term customers that have entered contracts with the Self Supply LSE or its Affiliates with a term of 10 years or more prior to the Class Year Study's Initial Decision Period. 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 ten 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 recently 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 Generator or UDR project identified in Excluded Capacity pursuant to Section 23.4.5.7.15. 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,

which shall include 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 obligation 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 a Generator or UDR project identified in Excluded Capacity pursuant to Section 23.4.5.7.15.

### **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” when accounting for the nested structure of the Self Supply LSE’s ICAP Requirements.

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;

minus

“Previously Included Capacity Exposed to Market Prices without Entry,” which  
shall be determined as follows: When calculating “Capacity Exposed to Market  
Prices Without Entry” for the New York City or Long Island Localities,  
“Previously Included Capacity Exposed to Market Prices without Entry” shall be  
zero. When calculating “Capacity Exposed to Market Prices without Entry” for  
the G-J Locality, “Previously Included Capacity Exposed to Market Prices  
without Entry” shall be set equal to “Capacity Exposed to Market Prices without  
Entry” calculated for the New York City Locality. When calculating “Capacity  
Exposed to Market Prices without Entry” for the NYCA, “Previously Included  
Capacity Exposed to Market Prices without Entry” shall be set equal to the sum of  
“Capacity Exposed to Market Prices without Entry” calculated for the G-J, New  
York City, and Long Island Localities.

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;

minus

“Previously Included Capacity Exposed to Market Prices with Entry,” which shall be determined as follows: When calculating “Capacity Exposed to Market Prices With Entry” for the New York City or Long Island Localities, “Previously Included Capacity Exposed to Market Prices with Entry” shall be zero. When calculating “Capacity Exposed to Market Prices with Entry” for the G-J Locality, “Previously Included Capacity Exposed to Market Prices with Entry” shall be set equal to “Capacity Exposed to Market Prices with Entry” calculated for the New York City Locality. When calculating “Capacity Exposed to Market Prices with Entry” for the NYCA, “Previously Included Capacity Exposed to Market Prices with Entry” shall be set equal to the sum of “Capacity Exposed to Market Prices with Entry” calculated for the G-J, New York City, and Long Island Localities.

### **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 NYISO 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 30.4.6.2.13 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 30.4.6.2.13 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 the ISO in writing within 3 business days of the event or basis for the failure to meet the requirements for a Self Supply Exemption. Within 10 business days of its receipt of this notification, the ISO shall provide written notice of its intent to revoke the Self Supply Exemption that specifies its findings. The ISO will provide an opportunity for the SSE Applicant of Self Supply LSE to schedule a joint meeting with the ISO within 20 business days from the date of its notice of intent to revoke the Self Supply Exemption. The purpose of the meeting will be to allow the submittal of additional documentation and other facts that could rebut the findings of the ISO that were identified in its notice of intent to revoke the Self Supply Exemption. The ISO shall determine within 10 business days of this joint meeting whether the revocation of the Self Supply Exemption shall be finalized and then shall post on its website its determination to revoke the Self Supply Exemption. If the ISO revokes the Self Supply Exemption, the Generator will be subject to 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 or the Owner/Operator of the Generator or UDR, and the Self Supply LSE that the Self Supply Exemption may be revoked in writing. The written notice shall provide to the Self Supply Applicant, or the Owner/Operator of the Generator or UDR, and the Self Supply LSE an opportunity to submit documentation to the ISO and meet jointly with the ISO to rebut the ISO's findings within 30 days from the date of the ISO's written notice. The ISO shall determine within 10 business days of this meeting whether the revocation of the Self Supply Exemption shall be finalized and post on its website its determination to revoke the Self Supply Exemption. Where the ISO revokes the Self Supply Exemption the Generator or UDR shall be subject to 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.

### **23.4.5.7.15 Forecasts Under the Buyer Side Market Power Mitigation Measures**

The rules set forth in this Section 23.4.5.7.15 apply to (i) the ISO's determinations pursuant to Section 23.4.5.7, *et seq.* of ICAP Spot Market Auction forecast prices ("BSM ICAP Forecast") and (ii) Energy and Ancillary Services revenues when determining Unit Net CONE under Sections 23.4.5.7, *et seq.* (collectively for purposes of this Section, a "BSM Forecast"). The rule for Excluded Capacity set forth in Section 23.4.5.7.15.7.3 shall apply to Self Supply Capacity and Additional Self Supply Capacity under Section 23.4.5.7.14.3. The ISO shall post on its website the BSM Forecast inputs determined in accordance with this Section 23.4.5.7.15, subject to any restrictions on the disclosure of Confidential Information or Critical Energy Infrastructure Information, on or before the commencement of the Initial Decision Periods for the Class Year Study, Additional SDU Study and the Expedited Deliverability Study. This posting will include sources of or references for publicly available information "demonstrating with reasonable certainty," as defined in Section 23.4.5.7.15.2, used to develop the BSM Forecast.

23.4.5.7.15.1 For the purposes of Section 23.4.5.7.15, a "positive indicator" that a Generator or UDR project will repair and return to service includes indications that a return to service is, in the ISO's judgment, likely and imminent, such as visible site activity, executed labor or fuel supply arrangements, or unit testing.

23.4.5.7.15.2 For the purposes of Section 23.4.5.7.15, publicly available information "demonstrating with reasonable certainty" shall be limited to information that has been released, authorized, capitulated, or endorsed by an individual or entity having the authority or right to take specific, definitive, actions; and – if such



information is contested, to take unilateral actions regarding the operational status of the facility.

23.4.5.7.15.3 When establishing a BSM Forecast, the ISO shall incorporate the parameters and inputs identified in the following subsections. The ISO shall make assumptions necessary to account for any other value or input not expressly addressed in the following subsections in accordance with ISO Procedures.

23.4.5.7.15.3.1 When establishing a BSM Forecast, the ISO shall include Existing Units and Additional Units, as defined in Sections 23.4.5.7.15.4 and .5, less Omitted Units, as defined in Section 23.4.5.7.15.6.

23.4.5.7.15.3.2 When establishing a BSM Forecast, the ISO shall utilize the Load forecast as set forth in the most recently published Load and Capacity Data (Gold Book), or as most recently posted to the ISO's public website and in accordance with ISO Procedures.

23.4.5.7.15.3.3 When determining a BSM ICAP Forecast, the ISO shall reflect Special Case Resource enrollment at a level consistent with average enrollment over the 3 prior Capability Years.

23.4.5.7.15.3.4 When determining a BSM ICAP Forecast, the ISO shall identify the projected ICAP Demand Curve by applying the "inflation index" as defined in Section 23.4.5.7.4. When determining a BSM ICAP Forecast for an Indicative Buyer-Side Mitigation Exemption Determination under Sections 23.4.5.7.2.2 and 23.4.5.7.2.4 when the Commission has not yet accepted the first ICAP Demand Curve to apply specifically to the Mitigated Capacity Zone in which the NCZ

Examined Project is located, such inflation rate shall be applied to the ICAP

Demand Curve the ISO filed pursuant to Services Tariff Section 5.14.1.2.2.4.11.

#### **23.4.5.7.15.4 Existing Units**

Except for the Generators and UDR projects that are excluded without limitation under an exception set forth in Section 23.4.5.7.15.7, the ISO shall identify “Existing Units” as the set of Generators and UDR projects identified in the ISO’s most-recently published Gold Book that have CRIS, and are operating at the time that the ISO determines the forecast; including but not limited to Generators in Forced Outage or Inactive Reserve status.

#### **23.4.5.7.15.5 Additional Units**

Subject to the exceptions set forth in Section 23.4.5.7.15.7, the ISO shall identify “Additional Units” as each Generator and UDR project that has been found to be exempt from an Offer Floor as described in Section 23.4.5.7.15.5.2 or (i) has previously offered to supply UCAP, (ii) has CRIS, (iii) is not in Existing Units, and (iv) if a Generator, is in an ICAP Ineligible Forced Outage, Mothball Outage, or Retired; if either: (a) the ISO concludes in its sole judgment that there are sufficient positive indicators that the Generator or UDR project will repair and return to service, or (b) the ISO determines that a return to service of the Generator or UDR project would have a positive Net Present Value as set forth in Section 23.4.5.7.15.8.

23.4.5.7.15.5.1           When establishing a BSM Forecast, the inclusion of Generators and UDR projects identified pursuant to Section 23.4.5.7.15.5 (b) as Additional Units shall reflect the persistence of their operation as being contingent on the projected recovery of their forecasted Going Forward Costs.

23.4.5.7.15.5.2           When the ISO establishes a BSM Forecast to complete the BSM determinations for a Class Year Study, Additional SDU Study or Expedited

Deliverability Study, the ISO shall not double-count exemptions. The ISO, in consultation with the Market Monitoring Unit, shall include for each set of decision round determinations: (i) all Examined Facilities that the ISO has previously exempted from an Offer Floor as a Public Policy Resource under Section 23.4.5.7.3.1 in a Class Year Study, or Additional SDU Study or Expedited Deliverability Study in the first Capability Year in which the Examined Facility was granted such exemption, provided, however, for any exemption granted to an Examined Facility as a Public Policy Resource under Section 23.4.5.7.3.1 prior to the most recently completed Class Year Study, the ISO shall exclude the Examined Facility if it has determined it is reasonable to project the Examined Facility will not enter the market, and (ii) all Examined Facilities that the ISO determines will receive a Part A Exemption in the currently ongoing Class Year Study, Additional SDU Study or Expedited Deliverability Study until and unless an Examined Facility rejects its cost allocation or otherwise drops out of such Class Year Study, Additional SDU Study or Expedited Deliverability Study. Any Examined Facility that was granted an exemption by the ISO in a previously completed Class Year Study, Additional SDU Study, or Expedited Deliverability Study pursuant to Section 23.4.5.7.2(a) if issued prior to the start of Class Year 2019, Section 23.4.5.7.2(b), Section 23.4.5.7.2(c) or Section 23.4.5.7.2(d) shall also be included in the BSM Forecast for each set of decision round determinations for such Class Year Study, Additional SDU Study or Expedited Deliverability Study if the ISO has determined that 5% or more of its respective total project's costs have been spent.

#### **23.4.5.7.15.6 Omitted Units**

Subject to the exceptions set forth in Section 23.4.5.7.15.7, the ISO shall identify “Omitted Units” as the set of Generators and UDR projects that meet the criteria in the following subsections.

23.4.5.7.15.6.1 Generators and UDR projects (i) that have transferred CRIS; (ii) for which the CRIS has expired; (iii) that have CRIS for which a request has been received by the ISO for an evaluation of a CRIS transfer from another location in the Class Year Facilities Study commencing in a calendar year in or preceding the Mitigation Study Period; or (iv) that are an expected transferor of transferred CRIS at the same location. For any CRIS transfer described in (iii) or (iv) of this Section, the transferor or the transferee must have notified the ISO of the transfer pursuant to OATT Attachment S Section 25.9.4 and the transfer must be reasonably expected to be effective on a date within the Mitigation Study Period.

23.4.5.7.15.6.2 Generators in ICAP Ineligible Forced Outages (even if resulting from Catastrophic Failures), Mothball Outages, or that are Retired; provided they are not identified under Section 23.4.5.7.15.5 as an Additional Unit or an exception under Section 23.4.5.7.15.7.

23.4.5.7.15.6.3 Generators that have submitted a Generation Deactivation Notice, beginning with the proposed deactivation date identified in such notice, provided that: (i) the ISO does not identify sufficient positive indicators that the Generator will repair and return to service and (ii) the ISO determines that a return to service or continued operation of the Generator does not have a positive Net Present Value as set forth in Section 23.4.5.7.15.8.

### **23.4.5.7.15.7 Exceptions**

The rules set forth in the following subsections take precedence over the rules described elsewhere in Section 23.4.5.7.15 under the facts and circumstances defined therein.

23.4.5.7.15.7.1 Generators that have submitted a Generation Deactivation Notice, for which the ISO has not yet completed its Short-Term Assessment of Reliability or Generation Deactivation Assessment, shall not be identified by the ISO as Omitted Units, unless there is publicly available information demonstrating with reasonable certainty that the Generator or UDR project will indefinitely cease operation.

23.4.5.7.15.7.2 Initiating Generators with an associated Generator Deactivation Reliability Need for which a Short-Term Reliability Process Solution has not yet been identified, RMR Generators, and Interim Service Providers that are required to keep their generating unit(s) in-service, shall be included in Existing Units for the expected duration of such Generator Deactivation Reliability Need with which they are associated. Such Generators shall also be included in Existing Units beyond the expected duration of the Generator Deactivation Reliability Need if either: (a) the ISO determines, in its sole judgment, that a return to service or continued operation of the Generator has a positive Net Present Value as set forth in Section 23.4.5.7.15.8, or (b) there is publicly available information demonstrating with reasonable certainty that the Generator will continue operation.

23.4.5.7.15.7.3 Except for those included in Existing Units pursuant to Section 23.4.5.7.15.7.2, Generators and UDR projects for which there is publicly available information demonstrating with reasonable certainty that they will

indefinitely cease operation, shall be identified as Excluded Capacity beginning with the date determined by the ISO to be consistent with the expected cessation of operations.

23.4.5.7.15.7.4 Generators and UDR projects for which there is publicly available information demonstrating with reasonable certainty that (a) they will return to service shall be included in Additional Units beginning with the date determined by the ISO to be consistent with its expected return to service, or (b) they will continue operations shall be included in Additional Units until the date determined by the ISO to be consistent with its expected continuation of operations.

23.4.5.7.15.7.5 Where determined by the ISO in its sole judgment to be reasonable, the additional capability associated with the repair of a Generator or UDR project that has been operating under a long term partial derate (such as due to the delay or deferral of repairs) may be treated as if it were in and of itself a separate Generator or UDR project in an ICAP Ineligible Forced Outage for the purposes of Section 23.4.5.7.15. In such instances, the net present value of the investment required to for the Generator or UDR facility to return to its original capability or capability prior to the long term partial derate shall be evaluated in place of the cost of returning to service.

23.4.5.7.15.7.6 The ISO shall not be required pursuant to Section 23.4.5.7.15 to determine whether a return to service or continued operation would have a positive Net Present Value as set forth in Section 23.4.5.7.15.8 for: (i) Generators in ICAP Ineligible Forced Outages that the ISO determined to have resulted from

a Catastrophic Failure; and (ii) Generators that are Retired, provided that in the case of (ii), in the ISO's sole judgment, (a) the Generator was subject to actions that rendered it permanently inoperable, (b) the reversal of such actions would be a nontrivial undertaking, and (c) the ISO has received confirmation from it that it has permanently ceased operations.

23.4.5.7.15.7.7 The production and sale of energy from Generators and UDR projects that only have ERIS and no CRIS, or that will have ERIS only after a transfer of CRIS, for which the ISO has received notice or made a determination in the Class Year as described in the next sentence, shall be modeled in the BSM Forecasts, but such units shall be excluded from the BSM ICAP Forecast. In accordance with Attachment S of the OATT, the ISO must have received notice that the transaction is final if a transfer of CRIS at the same location, or have determined the facility receiving the transfer is deliverable and such transferee is either in the Class Year being examined, or remained in a prior Class Year at the time of its completion, if a transfer of CRIS from a different location.

#### **23.4.5.7.15.8 Net Present Value Analysis**

Where required by Section 23.4.5.7.15, the ISO shall determine if a Generator or UDR project that potentially could return to service or continue in operation would have a positive net present value under ISO-predicted market conditions and recognizing the entry of projects in the current Class Year and those that remained in prior Class Years at the time of their completion, in accordance with ISO Procedures. If the ISO-estimated net present value is greater than zero, then the criterion of this Section will be considered to have been met.

23.4.5.7.15.8.1 The ISO's net present value analysis shall consider, at a minimum:

(a) the ISO-estimated costs and opportunity costs associated with returning a Generator or UDR project to service if the unit is not currently operating, and of continued operation through the end of the Mitigation Study Period, or the end of the investment horizon as reasonably determined by the ISO, whichever is of greater length (including, if applicable, the expected lost revenues of the rest of the portfolio of the Installed Capacity Supplier attributable to reductions in ICAP Spot Market Auction prices caused by the Generator or UDR project's return to service); (b) the ISO-estimated revenues, over the same time period, from the production and sale of Energy, Ancillary Services, and capacity, and (c) the effect that additional risk associated with the age, condition, and location of the Generator or UDR project may have on the required return on investment.

23.4.5.7.15.8.2 The ISO's net present value analysis shall be for a period beginning after the reasonably anticipated commencement of the Initial Decision Period but before the starting Capability Period of the Mitigation Study Period, through the end of Mitigation Study Period, or until the investment horizon as reasonably assumed by the ISO, whichever is of greater length.

23.4.5.7.15.8.3 The ISO shall consider data received from the Generator and UDR project for which it is performing a net present value analysis pursuant to this Section 23.4.5.7.15.8, and information received pursuant to Section 30.25 of the OATT, along with any new, updated, or relevant information that the ISO, in its sole judgment and in accordance with ISO Procedures, has verified is reasonable and accurate. If the ISO has not timely received sufficient information from the



owner or representative of a Generator or UDR project, or if the ISO has received information but determined it is not suitable or reliable to be used for the purposes of a net present value analysis pursuant to Section 23.4.5.7.8, the ISO can substitute suitable estimated data, or identify the Generator or UDR project as Omitted Units.

### **23.4.5.8 RMR Agreement Capacity Price and Offer Requirements**

23.4.5.8.1 All ISP UCAP MW shall be offered in each ICAP Spot Market Auction.

All UCAP from an RMR Generator shall be offered in each ICAP Spot Market Auction, except if and only to the extent expressly authorized in an RMR Agreement due to the existence of a commitment under a bilateral agreement that (a) was effective at the time the RMR Agreement became effective and (b) is effective and executory, requiring the provision of UCAP, for the Obligation Procurement Period.

23.4.5.8.2 Except as provided in Section 23.4.5.7.12, all UCAP offered by an RMR Generator shall be offered at \$0.00/kW-month.

## **23.4.6 Virtual Bidding Measures**

### **23.4.6.1 Purpose**

The provisions of this Section 23.4.6 specify the market monitoring and mitigation measures applicable to “Virtual Bids.” “Virtual Bids” are bids to purchase or supply energy that are not backed by physical load or generation that are submitted in the ISO Day-Ahead Market in accordance with the procedures and requirements specified in the ISO Services Tariff.

To implement the mitigation measures set forth in this Section 23.4.6, the ISO shall monitor and assess the impact of Virtual Bidding on the ISO Administered Markets.

### **23.4.6.2 Implementation**

23.4.6.2.1 Day-Ahead LBMPs and Real-Time LBMPs in each load zone shall be monitored to determine whether there is a persistent hourly deviation between them in any zone that would not be expected in a workably competitive market. Monitoring of Day-Ahead and real-time LBMPs shall include examination of the following two metrics (along with any additional monitoring tools and procedures that the ISO determines to be appropriate to achieve the purpose of this Section 23.4.6):

(1) The ISO shall compute a rolling average of the hourly deviation of real-time zonal LBMPs from Day-Ahead zonal LBMPs. The hourly deviation shall be measured as:  $(\text{zonal LBMP}_{\text{real time}} - \text{zonal LBMP}_{\text{day ahead}})$ . Each observation of the rolling-average time series shall be a simple average of all the hourly deviations over the previous four weeks, or such other averaging period determined by the ISO to be appropriate to achieve the purpose of this Section 23.4.6.

(2) The ISO shall also compute the rolling average *percentage* deviation of real-time zonal LBMPs from Day-Ahead zonal LBMPs. This percentage deviation shall be calculated by dividing the rolling-average hourly deviation (defined in Section 23.4.6.2.1 (1) above) by the rolling-average level of Day-Ahead zonal LBMP over the same time period, using the averaging period(s) described in Section 23.4.6.2.1 (1), above.

23.4.6.2.2 If the ISO determines that (i) the relationship between zonal LBMPs in a zone in the Day-Ahead Market and the Real-Time Market is not what would be expected under conditions of workable competition, and that (ii) the Virtual Bidding practices of one or more Market Participants has contributed to an unwarranted divergence of LBMPs between the two markets, then the following mitigation measure may be imposed. Any such measure shall be rescinded upon a determination by the ISO that the foregoing conditions are not met.

### **23.4.6.3 Description of the Measure**

23.4.6.3.1 If the ISO determines that the conditions specified in Section 23.4.6.2 exist, the ISO may limit the hourly quantities of Virtual Bids for supply or load that may be offered in a zone by a Market Participant whose Virtual Bidding practices have been determined to contribute to an unwarranted divergence of LBMPs between the Day-Ahead and Real-Time Markets. Any such limitation shall be set at such level that, and shall remain in place for such period as, in the best judgment of the ISO, would be sufficient to prevent any unwarranted divergence between Day-Ahead and Real-Time LBMPs.

23.4.6.3.2 As part of the foregoing determination, the ISO shall request explanations of the relevant Virtual Bidding practices from any Market Participant submitting such Bids. Prior to imposing a Virtual Bidding quantity limitation as specified above, the ISO shall notify the affected Market Participant of the limitation.

#### **23.4.6.4 Limitation of Virtual Bidding**

If the ISO determines that such action is necessary to avoid substantial deviations of LBMPs between the Day-Ahead and Real-Time Markets, the ISO may impose limits on the quantities of Virtual Bids that may be offered by all Market Participants. Any such restriction shall limit the quantity of Virtual Bids for supply or load that may be offered by each Market Participant by hour and by zone. Any such limit shall remain in place for the minimum period necessary to avoid substantial deviations of LBMPs between the Day-Ahead and Real-Time Markets, or to maintain the reliability of the New York Control Area.

#### **23.4.7 Increasing Bids in Real-Time for Day-Ahead Scheduled Incremental Energy Injections or Decreasing Bids in Real-Time for Day-Ahead Scheduled Incremental Energy Withdrawals**

##### **23.4.7.1 Purpose**

This Section 23.4.7 specifies the monitoring applicable and the mitigation measures that may be applicable to a Market Party with submitted Incremental Energy Bids in the real-time market that exceed the Incremental Energy Bids made in the Day-Ahead Market (or mitigated Day-Ahead Incremental Energy Bids where appropriate), for a portion of the Capacity of one or more of its Generators that has been scheduled in the Day-Ahead Market.

This Section 23.4.7 also specifies the monitoring applicable and the mitigation measures that may be applicable to a Market Party with submitted Bids in the real-time market that are less

than the Incremental Energy Bids made in the Day-Ahead Market (or mitigated Day-Ahead Incremental Energy Bids where appropriate), for one or more of its Generators that has been scheduled in the Day-Ahead Market to withdraw Energy.

The purpose of the Services Tariff rules authorizing the submission of Incremental Energy Bids in the real-time market that exceed the Incremental Energy Bids made in the Day-Ahead Market (or mitigated Day-Ahead Incremental Energy Bids where appropriate), of the portion of the Capacity of a Market Party's Generator that was scheduled in the Day-Ahead Market is to permit the inclusion of additional costs of providing incremental Energy in real-time Incremental Energy Bids for Generators scheduled in the Day-Ahead Market, where the additional costs of providing incremental Energy were not known prior to the close of the Day-Ahead Market.

The purpose of the Services Tariff rules authorizing the submission of Incremental Energy Bids in the real-time market less than the Incremental Energy Bids made in the Day-Ahead Market (or mitigated Day-Ahead Incremental Energy Bids where appropriate), of the portion of the Capacity of a Market Party's Generator that was scheduled to withdraw energy in the Day-Ahead Market is to permit changes in opportunity costs to be reflected in real-time Incremental Energy Bids for Generators scheduled to withdraw energy in the Day-Ahead Market, where the opportunity costs of withdrawing incremental Energy has changed relative to the opportunity costs expected prior to the close of the Day-Ahead Market.

#### **23.4.7.2 Monitoring and Implementation**

23.4.7.2.1 The ISO will monitor Market Parties for unjustified interactions between a Market Party's virtual bidding and the submission of real-time Incremental Energy Bids that exceed the Incremental Energy Bids submitted in the Day-Ahead Market (or mitigated Day-

Ahead Incremental Energy Bids where appropriate), for the portion of a Generator's Capacity that was scheduled in the Day-Ahead Market.

If the Market Party has a scheduled Virtual Load Bid for the same hour of the Dispatch Day as the hour for which submitted real-time Incremental Energy Bids exceeded the Incremental Energy Bids submitted in the Day-Ahead Market (or mitigated Day-Ahead Incremental Energy Bids where appropriate), for a portion of its Generator's Capacity that was scheduled in the Day-Ahead Market, and any such real-time Incremental Energy Bids exceed the reference level for those Bids that can be justified after-the-fact by more than:

- (i) the lower of \$100/MWh or 300%; or
- (ii) if the Market Party's Generator is located in a Constrained Area for intervals in which an interface or facility into the area in which the Generator or generation is located has a Shadow Price greater than zero, then a threshold calculated in accordance with Sections 23.3.1.2.2.1 and 23.3.1.2.2.2 of these Mitigation Measures;

and a calculation of a virtual market penalty pursuant to the formula set forth in Section 23.4.3.3.4 of these Mitigation Measures for the Market Party would produce a penalty in excess of \$1000, then the mitigation measure specified below in Section 23.4.7.3.1 shall be imposed for the Market Party's Generator, along with a penalty calculated in accordance with Section 23.4.3.3.4 of these Mitigation Measures. The application of a penalty under Section 23.4.3.3.4 of these Mitigation Measures shall not preclude the simultaneous application of a penalty pursuant to Section 23.4.3.3.3 of these Mitigation Measures.

23.4.7.2.2 The ISO will monitor Market Parties for unjustified interactions between a Market Party's virtual bidding and the submission of real-time Incremental Energy Bids that are

less than the Incremental Energy Bids made in the Day-Ahead Market (or mitigated Day-Ahead Incremental Energy Bids where appropriate), for one or more of its Generators that has been scheduled in the Day-Ahead Market to withdraw Energy.

If the Market Party has a scheduled Virtual Supply Bid for the same hour of the Dispatch Day as the hour for which submitted real-time Incremental Energy Bids at a price that is lower than the Incremental Energy Bids submitted in the Day-Ahead Market (or mitigated Day-Ahead Incremental Energy Bids where appropriate), for one or more of its Generators that has been scheduled in the Day-Ahead Market to withdraw Energy, and any such real-time Incremental Energy Bids is less than the reference level for those Bids that can be justified after-the-fact by more than:

- (i) the lower of \$100/MWh or 300%; provided however, that Bids to withdraw Incremental Energy that have an associated reference level that is between -\$25 and \$25 per MWh (inclusive) shall instead be subject to a threshold of \$75/MWh; or
- (ii) if the Market Party's Generator is located in a Constrained Area for intervals in which an interface or facility into the area in which the Generator or generation is located has a Shadow Price greater than zero, then a threshold calculated in accordance with Sections 23.3.1.2.2.1 and 23.3.1.2.2.2 of these Mitigation Measures;

and a calculation of a virtual market penalty pursuant to the formula set forth in Section 23.4.3.3.4 of these Mitigation Measures for the Market Party would produce a penalty in excess of \$1000, then the mitigation measure specified below in Section 23.4.7.3.1 shall be imposed for the Market Party's Generator, along with a penalty calculated in accordance with Section



23.4.3.3.4 of these Mitigation Measures. The application of a penalty under Section 23.4.3.3.4 of these Mitigation Measures shall not preclude the simultaneous application of a penalty pursuant to Section 23.4.3.3.3 of these Mitigation Measures.

### **23.4.7.3 Mitigation Measure**

23.4.7.3.1 If the ISO determines that the conditions specified in Section 23.4.7.2.1 exist the ISO shall revoke the opportunity for any bidder of that Generator to submit Incremental Energy Bids in the real-time market that exceed the Incremental Energy Bids submitted in the Day-Ahead Market (or mitigated Day-Ahead Incremental Energy Bids where appropriate), for portions of that Generator's Capacity that were scheduled Day-Ahead.

If the ISO determines that the conditions specified in Section 23.4.7.2.2 exist the ISO shall revoke the opportunity for the Market Party and its Affiliates to submit Virtual Bids in the Load Zone(s) where the Withdrawal-Eligible Generator(s) that has been scheduled in the Day-Ahead Market to withdraw Energy, and for which the Market Party submitted real-time Incremental Energy Bids that were less than the Incremental Energy Bids made in the Day-Ahead Market, are located.

23.4.7.3.1.1 The first time the ISO revokes the opportunity for bidders of a Generator to submit Incremental Energy Bids in the Real-Time Market that exceed the Incremental Energy Bids submitted in the Day-Ahead Market (or mitigated Day-Ahead Incremental Energy Bids where appropriate), for portions of that Generator's Capacity that were scheduled Day-Ahead, mitigation shall be imposed for 90 days. The 90 day period shall start two business days after the

date that the ISO provides written notice of its determination that the application of mitigation is required.

The first time the ISO revokes the opportunity for the Market Party and its Affiliates to submit Virtual Bids in the Load Zone(s) where the Generator(s) that has been scheduled in the Day-Ahead Market to withdraw Energy, and for which the Market Party submitted real-time Incremental Energy Bids that were less than the Incremental Energy Bids made in the Day-Ahead Market, are located, mitigation shall be imposed for 90 days. The 90 day period shall start two business days after the date that the ISO provides written notice of its determination that the application of mitigation is required.

23.4.7.3.1.2 Any subsequent time the ISO revoked the opportunity for bidders of a Generator to submit Incremental Energy Bids in the Real-Time Market that exceed the Incremental Energy Bids submitted in the Day-Ahead Market or mitigated Day-Ahead Incremental Energy Bids where appropriate, for portions of that Generator's Capacity that were scheduled Day-Ahead, mitigation shall be imposed for 180 days. The 180 day period shall start two business days after the date that the ISO provides written notice of its determination that the application of mitigation is required.

Any subsequent time the ISO revokes the opportunity for the Market Party and its Affiliates to submit Virtual Bids in the Load Zone(s) where the Generator(s) that has been scheduled in the Day-Ahead Market to withdraw Energy, and for which the Market Party submitted real-time Incremental Energy Bids that were less than the Incremental Energy Bids made in the Day-Ahead

Market, are located, mitigation shall be imposed for 180 days. The 180 day period shall start two business days after the date that the ISO provides written notice of its determination that the application of mitigation is required.

23.4.7.3.1.3 If bidders of a Generator that has previously been mitigated under this Section 23.4.7.3 become and remain continuously eligible to submit Incremental Energy Bids in the Real-Time Market that exceed the Incremental Energy Bids submitted in the Day-Ahead Market or mitigated Day-Ahead Incremental Energy Bids where appropriate, for portions of that Generator's Capacity that were scheduled Day-Ahead, for a period of one year or more, then the ISO shall apply the mitigation measure set forth in Section 23.4.7.3 of the Mitigation Measures as if the Generator had not previously been subject to this mitigation measure.

23.4.7.3.1.4 Market Parties that transfer, sell, assign, or grant to another Market Party the right or ability to Bid a Generator that is subject to the mitigation measure in this Section 23.4.7.3 are required to inform the new Market Party that the Generator is subject to mitigation under this measure, and to inform the new Market Party of the expected duration of such mitigation.

#### **23.4.8 Duration of Mitigation Measures**

Except as specified in Section 23.4.5 of this Attachment H, any mitigation measure imposed as specified above shall expire not later than six months after the occurrence of the conduct giving rise to the measure, or at such earlier time as may be specified by the ISO.

## **23.5 Other Mitigation Measures**

### **23.5.1 Facilitation of Real-Time Mitigation in Constrained Areas**

To facilitate the application of the Real-Time mitigation measures specified in this Attachment H for Constrained Areas, all Generators located in a Constrained Area that are capable of doing so shall respond to RTD Base Point Signals, unless such a Generator is subject to contractual obligations in existence prior to June 1, 2002 that would preclude such operation.

### **23.5.2 Market Power Mitigation Measures Applicable to In-City Unit Commitments for Local Reliability**

23.5.2.1 If an In-City Generator is scheduled in any hour in the Day-Ahead Market to meet the reliability needs of a local system, the ISO will set the In-City Generator's Start-Up Bid to the lower of the Bid or the applicable reference level, which may include a Start-Up reference level calculated in accordance with Section 23.3.1.4.4.3 of these Mitigation Measures. In each hour an In-City Generator is scheduled in the Day-Ahead Market to meet the reliability needs of a local system, the ISO will set the In-City Generator's Minimum Generation Bid to the lower of the Bid or the applicable reference level.

### **23.5.3 Market Power Mitigation Measures Applicable to Sales of Spinning Reserves**

23.5.3.1 Local reliability rules require that specified amounts of Spinning Reserves be provided by In-City Generators. The Spinning Reserve-capable portion of each Generator located in New York City must be made available to the ISO for purposes of meeting the New York City Spinning Reserve requirement.

23.5.3.2        The market power mitigation measures applicable to Spinning Reserves will be implemented when the ISO's least-cost dispatch requires that one or more of the Generators located in New York City be committed to meet the In-City Spinning Reserve requirement. For any day that an In-City Generator is committed to meet the In-City Spinning Reserve requirement under circumstances where the Generator would not otherwise have been committed under the ISO's least-cost dispatch, the market power mitigation measures applicable to unit commitments, as described in Section 23.5.2, would apply.

#### **23.5.4        FERC-Ordered Measures**

In addition to any mitigation measures specified above, the ISO shall administer, and apply when appropriate in accordance with their terms, such other mitigation measures as it may be directed to implement by order of the FERC.

## **23.6 RMR Generator and Interim Service Provider Energy and Ancillary Service Market Participation Rules**

The rules in this Section 23.6 that address Interim Service Providers apply to Interim Service Providers that are required to keep generating unit(s) in service.

Interim Service Providers that are only required to keep their step-up transformer(s) and/or other system protection equipment in service are not subject to the bidding, reference level development, or mitigation provisions of this Section 23.6, but may be evaluated by the ISO for possible physical withholding and may be assessed a financial penalty for physical withholding in accordance with these Market Mitigation Measures if the Market Party fails to keep the step-up transformer(s) and/or other system protection equipment that the ISO designates in service.

### **23.6.1 Submission of Bids for RMR Generators and Interim Service Providers**

23.6.1.1 A Market Party shall Bid into the Day-Ahead and Real-Time Markets all of the Energy, Operating Reserves and Regulation each RMR Generator or Interim Service Provider is capable of providing by submitting ISO-committed flexible Bids at or below (equally restrictive to or less restrictive than for non-dollar parameters) the Generator's reference levels.

23.6.1.1.1 The ISO develops reference levels for Bids and Bid parameters, including Bid parameters that are not denominated in dollars. *See, e.g.,* Sections 23.3.1.2 and 23.3.1.2.3.3 of these Mitigation Measures. A Market Party must submit Bids for RMR Generators and Interim Service Providers that are consistent with *all* reference levels determined by the ISO, including all non-dollar Bid parameters that have been set as reference levels by the ISO.

23.6.1.1.2 If an RMR Generator or Interim Service Provider is not able to operate to a reference level that has been set by the ISO, the Market Party must timely contact the ISO in accordance with ISO Procedures to request a change and explain the need there for.

23.6.1.1.3 If an RMR Generator is not capable of providing all or a portion of its capability flexibly, the ISO and Generator Owner (as defined in Section 38.1 of the OATT) shall specify the restriction in the RMR Agreement. If a new operating constraint arises during the term of an RMR Agreement that prevents the Market Party from offering all or a portion of a RMR Generator's capability via an ISO-committed flexible Bid, then the Market Party must obtain written permission from the ISO to change how it offers the RMR Generator into the ISO Administered Markets. If a new operating constraint arises while a Generator is an Interim Service Provider that prevents the Market Party from offering all or a portion of the Generator's capability via an ISO-committed flexible Bid, the Market Party shall promptly inform the ISO of the change, shall provide all documentation requested by the ISO or by the Market Monitoring Unit, and shall permit the ISO and/or the Market Monitoring Unit to inspect the affected Generator (including all requested plant records) on five days prior notice.

23.6.1.1.4 Market Parties are not required to submit hourly Bids in the Real-Time Market for an RMR Generator or Interim Service Provider that is not capable of being committed by RTC if the RMR Generator or Interim Service Provider was not committed Day-Ahead. If such an RMR Generator or Interim Service Provider was committed Day-Ahead, then the Generator shall be Bid in real-time

for the hours of its Day-Ahead schedule and for additional real-time hours consistent with the Generator's operating capabilities.

23.6.1.1.5 Market Parties shall timely respond to a Supplemental Resource Evaluation ("SRE") or an Out-of-Merit ("OOM") commitment request issued by the ISO or by a Transmission Owner for an RMR Generator or Interim Service Provider.

23.6.1.1.6 If and to the extent a RMR Generator or Interim Service Provider is not available, or is not fully available, the Market Party shall timely notify the ISO of the outage or derate in accordance with ISO Procedures and accurately reflect each RMR Generator's or Interim Service Provider's availability in its Bids.

23.6.1.1.7 The ISO shall monitor Bids that are submitted at prices below an RMR Generator's or Interim Service Provider's reference levels for possible uneconomic overproduction. *See* Section 23.3.1.3. RMR Generators and Interim Service Providers are compensated at the lesser of their Bid or the appropriate Reference Level in accordance with Rate Schedule 8 to the Services Tariff.

23.6.1.2 RMR Generators and Interim Service Providers that are not Installed Capacity Suppliers, or that have not sold all of their Unforced Capacity, are still required to offer all of the Energy, Operating Reserves and Regulation each Generator is capable of providing into each Day-Ahead Market.

23.6.1.3 RMR Generators that provide Voltage Support Services or Restoration Services shall do so in compliance with the relevant provisions of the ISO Tariffs and their RMR Agreement. Interim Service Providers shall provide Voltage Support Services and/or Restoration Services if they provided the service at any



point during the 365 days prior to submitting a Generator Deactivation Notice and are physically capable of providing the service.

23.6.1.4 Market Parties shall not schedule Bilateral Transactions for an RMR Generator's output, unless the Bilateral Transaction is expressly permitted under the relevant RMR Agreement. Market Parties shall not schedule Bilateral Transactions for an Interim Service Provider's output unless they were under an ongoing contractual obligation to do so at the time the Generator Deactivation Notice was submitted.

23.6.1.5 Market Parties may only self-schedule an RMR Generator or Interim Service Provider if they are authorized to do so by the ISO.

23.6.1.6 The responsibilities of the Market Monitoring Unit that are specified in Section 23.6.1 of the Mitigation Measures are also addressed in Section 30.4.6.2.14 of Attachment O.

## **23.6.2 RMR Generator and Interim Service Provider Energy and Ancillary Service Reference Levels**

23.6.2.1 RMR Generator reference levels shall be developed in accordance with the rules specified in these Mitigation Measures, including the provisions of this Section 23.6.2.

23.6.2.2 Interim Service Provider reference levels shall be developed in accordance with the reference level development rules specified in these Mitigation Measures, including the additional rules and authority that are *expressly* applied to Interim Service Providers in this Section 23.6.2. The ISO, in consultation with the Market Monitoring Unit, may review and update an Interim Service Provider's reference levels. The Generator Owner may propose updates to its

Interim Service Provider's reference levels. The ISO shall make the ultimate determination with regard to each reference level.

23.6.2.3 In advance of the execution of an RMR Agreement, the ISO, in consultation with the Market Monitoring Unit and Generator Owner, shall review and update the reference levels for each such Generator. The ISO shall make the ultimate determination with regard to each reference level.

23.6.2.3.1 If a possible RMR Generator or Interim Service Provider faces operational constraints the ISO, in consultation with the Market Monitoring Unit and Generator Owner, will develop reference levels that will permit the Generator to operate consistent with the identified constraints, while ensuring that the Generator will be available (a) to resolve the Short-Term Reliability Process Need the Generator is being retained to address, and (b) for economic commitment when appropriate.

23.6.2.4 If an RMR Agreement is executed after the reference level review and update process described above is completed, then during the term of the RMR Agreement, the ISO's authority to change the RMR Generator's reference levels will be limited to the following circumstances:

23.6.2.4.1 Reference levels may be adjusted based on season, the RMR Generator's remaining availability or other factors, to address operational constraints;

23.6.2.4.2 The costs used to develop a reference level (*e.g.*, fuel, emissions, variable operation and maintenance expenses) may be revised whenever the ISO obtains updated or more accurate cost information;

- 23.6.2.4.3 Opportunity costs may be updated based on actual operating experience during the term of the RMR Agreement;
- 23.6.2.4.4 If a physical change to the RMR Generator occurs that alters the RMR Generator's capabilities (*e.g.*, damage to the RMR Generator or Capital Expenditures that alter an RMR Generator's capabilities), then the ISO shall determine revised reference levels in consultation with the Market Monitoring Unit and Generator Owner; and
- 23.6.2.4.5 The ISO and Generator Owner, in consultation with the Market Monitoring Unit, may mutually agree to a reference level change that they expect will better reflect an RMR Generator's actual operating characteristics or variable costs.
- 23.6.2.5 The Market Party shall timely submit fuel price updates and fuel type updates to the ISO so that they can be incorporated to develop accurate reference levels for each RMR Generator or Interim Service Provider.
- 23.6.2.5.1 If a Market Party fails to timely submit fuel price updates and fuel type updates for an RMR Generator or Interim Service Provider, then the compensation paid for the RMR Generator's operation may be limited by the reference levels that were in place.
- 23.6.2.5.2 If a Market Party fails to timely update an RMR Generator's or Interim Service Provider's reference levels to reflect cost reductions that are not *de minimis*, and that are required to be reflected, then the ISO may recalculate the Generator's reference levels and true-up the Variable Costs paid to the Generator under Rate Schedule 8 to the Services Tariff consistent with the Generator's

demonstrated costs. The ISO shall inform the Market Monitoring Unit if it performs such a true-up.

23.6.2.6 The responsibilities of the Market Monitoring Unit that are specified in Section 23.6.2 of the Mitigation Measures are also addressed in Section 30.4.6.2.14 of Attachment O.

### **23.6.3 Mitigation of RMR Generators and Interim Service Providers**

23.6.3.1 RMR Generators and Interim Service Providers are required to Bid at or below their reference levels. The ISO shall mitigate all dollar-denominated Bids that exceed a RMR Generator's or Interim Service Provider's currently effective reference levels.

23.6.3.2 If a Market Party submits unit commitment data or non-dollar Bid parameters for an RMR Generator or Interim Service Provider that is/are not consistent with the Generator's reference levels without first requesting an adjustment to the Generator's reference levels from the ISO, then the ISO shall inform the Market Monitoring Unit of the Market Party's behavior and apply all Tariff-authorized mitigation measures, which may include the application of financial penalties in accordance with Section 23.4.3 of these Mitigation Measures.

23.6.3.3 The ISO shall apply all other Tariff-authorized mitigation measures to RMR Generators and Interim Service Providers consistent with the Mitigation Measures.

#### **23.6.4 Other Energy and Ancillary Service Market Rules**

- 23.6.4.1 On and after the execution of an RMR Agreement, and for the duration of its term, a Market Party shall not enter into any new agreement or extend any other agreement that impairs or otherwise diminishes an RMR Generator's ability to comply with obligation under an RMR Agreement, or that limits the ability of an RMR Generator to provide Energy or Ancillary Services directly to the ISO Administered Markets.
- 23.6.4.2 A Market Party shall not enter into any new agreement or extend any other agreement that impairs, diminishes or limits the ability of an Interim Service Provider to provide Energy or Ancillary Services directly to the ISO Administered Markets.
- 23.6.4.3 Market Parties shall not enter into, renew or extend bilateral agreements for Energy or Ancillary Services from an RMR Generator during the term of an RMR Agreement.
- 23.6.4.4 Market Parties shall not enter into, renew or extend bilateral agreements for Energy or Ancillary Services from an Interim Service Provider.
- 23.6.4.5 RMR Generators and Interim Service Providers are not eligible to receive Energy, Operating Reserves, Regulation or ICAP market revenues. Instead, RMR Generators and Interim Service Providers are compensated in accordance with Rate Schedule 8 to the Services Tariff and associated Tariff Rules for their participation in the ISO Administered Markets.

### **23.6.5 ISO Authority to Terminate RMR Agreement with Under-Performing RMR Generator and Cease Reimbursing Capital Expenditures**

23.6.5.1 The ISO may terminate an RMR Agreement, or may terminate an RMR Agreement with regard to one of the RMR Generators that is subject to an RMR Agreement if any of the following conditions occur:

- (a) Owner (as defined in the *Form of Reliability Must Run Agreement* set forth in Appendix C of Attachment FF to the ISO OATT) defaults under the RMR Agreement and fails to timely cure its default;
- (b) The RMR Generator fails to meet one or more of the Minimum Operating Standards set forth in the RMR Agreement (the Minimum Availability Standard, or the Minimum Performance Standard, or the Operation to Address the Reliability Need Standard); or
- (c) The RMR Generator fails to operate as requested when it is called upon by the ISO or by a Transmission Owner to address the Short-Term Reliability Process Need that it was retained to address on three or more occasions over the term of an RMR Agreement.

23.6.5.2 If the ISO terminates an RMR Agreement for one of the reasons specified in Section 23.6.5.1 above, then it shall cease repaying the cost of any Capital Expenditures that were incurred at or for the terminated RMR Generator(s) unless the ISO is otherwise instructed by the Commission.

23.6.5.3 Rules for concluding the obligations of an Interim Service Provider early are set forth in Section 38.13 of the OATT.

## **23.7 Bid Restrictions for Incremental Energy Bids and Minimum Generation Bids for NYCA Resources**

### **23.7.1**

The rules set forth in this Section 23.7 are necessary to implement the Bid Restrictions set forth in Section 21 of the ISO Services Tariff. These rules apply to Day-Ahead and real-time Incremental Energy Bids and Minimum Generation Bids submitted for NYCA Resources that exceed \$1,000/MWh. The rules in Section 23.7 apply in addition to, *not* in lieu of, any other market power mitigation measure, requirement, obligation, penalty or sanction set forth in the ISO's Tariffs.

### **23.7.2 Cost Comparison**

If an Incremental Energy Bid or Minimum Generation Bid submitted on behalf of a NYCA Resource exceeds \$1,000/MWh and complies with the requirements of Sections 23.7.3 (for Generators) or 23.7.4 (for Demand Side Resources) below, then the ISO shall compare the Bid to a cost-based reference level developed in accordance with Sections 23.3.1.4.1.3 and/or 23.3.1.4.2.1, and 23.3.1.4.6 of these Mitigation Measures for Generators, or in accordance with Section 23.7.4 for Demand Side Resources, to determine if it must apply a Bid Restriction.

23.7.2.1 If any component of an Incremental Energy Bid exceeds \$1,000/MWh or if a Minimum Generation Bid exceeds \$1,000/MWh, then the ISO shall use cost-based reference levels to determine if a Bid Restriction should be applied, and to test all components of the Incremental Energy Bid or the Minimum Generation Bid for possible mitigation in accordance with these Mitigation Measures.

23.7.2.1.1 The ISO does not ordinarily include adders above cost in cost-based reference levels. *See* Section 23.3.1.4.1.3 of these Mitigation Measures. If the

ISO ever decides to allow adders above cost to be included in the cost-based based reference levels it uses to determine if a Bid Restriction should be applied, then the combined impact of all of the adders above cost included in the reference level(s) shall be limited to no more than \$100/MWh.

23.7.2.2 If the cost-based reference level the ISO uses to perform the comparison is less than or equal to \$1,000/MWh, then the ISO shall restrict the Incremental Energy Bid or Minimum Generation Bid that exceeds \$1,000/MWh to \$1,000/MWh. Some components of an Incremental Energy Bid curve might exceed \$1,000/MWh while other components of the Bid curve might be less than \$1,000/MWh. If so, the Bid Restriction will apply to the components of the Incremental Energy Bid curve that exceed \$1,000/MWh, for which the associated cost-based reference level is less than or equal to \$1,000/MWh.

23.7.2.2.1 The NYISO shall test all Incremental Energy Bids and Minimum Generation Bids that have been restricted to \$1,000/MWh for possible mitigation in accordance with the rules set forth in these Mitigation Measures.

23.7.2.3 If the cost-based reference level the ISO uses to perform the comparison is greater than \$1,000/MWh but not more than \$2,000/MWh, then the ISO shall use the Incremental Energy Bids and Minimum Generation Bids that are less than or equal to that cost-based reference level in its Day-Ahead Market or Real-Time Market (as appropriate). Bids that exceed the cost-based reference level that the NYISO uses to perform the comparison shall be reduced to equal the cost-based reference level. This process may result in some components of an Incremental Energy Bid curve being reduced, but not others.



23.7.2.4 If the cost-based reference level the ISO uses to perform the comparison is greater than \$2,000/MWh, then the ISO shall use the Incremental Energy Bids and Minimum Generation Bids that are less than or equal to \$2,000/MWh in its Day-Ahead Market or Real-Time Market (as appropriate). Incremental Energy Bids and Minimum Generation Bids that exceed \$2,000/MWh shall be recorded by the ISO but the Bids shall be restricted to a maximum of \$2,000/MWh for use in the ISO's Day-Ahead Market or Real-Time Market (as appropriate).

23.7.2.4.1 Verified Bid costs that exceed \$2,000/MWh may be recovered through a Bid Production Cost Guarantee payment in accordance with Section 18 of the ISO Services Tariff.

23.7.2.5 An Energy Storage Resource that submits an Incremental Energy Bid that exceeds \$1,000/MWh may be subject to the alternative Bid Restriction specified below if its submitted Incremental Energy Bid curve extends from a Lower Operating Limit that is less than zero MW to an Upper Operating Limit that exceeds zero MW.

Under the circumstances specified above an Energy Storage Resource's Bid(s) to withdraw energy will be restricted to the lower of (a) a value calculated in accordance with the other provisions of this Sections 23.7.2, or (b) the maximum value that will ensure the difference between Bids to withdraw Energy and Bids to inject Energy incorporate the Energy Storage Resource's Roundtrip Efficiency.

23.7.2.6 Cost components of Incremental Energy Bids and Minimum Generation Bids above \$1,000/MWh that are not included in the reference level that the ISO

uses to perform the cost comparison in this Section 23.7.2 may be eligible for recovery through a Bid Production Cost Guarantee payment following an after-the-fact review, in accordance with Sections 23.7.3.3 and 23.7.4.6 below.

**23.7.3 Submission and verification of Incremental Energy Bids and Minimum Generation Bids above \$1,000/MWh, and updates to Generators' cost-based reference levels.**

23.7.3.1 All NYCA Generators that submit Incremental Energy or Minimum Generation Bids that exceed \$1,000/MWh are required to submit revised fuel type or fuel price information to the NYISO's Market Information System along with their Day-Ahead and real-time Bids in order to facilitate NYISO's review and validation of the Bids that exceed \$1,000/MWh. ISO Procedures shall specify the revised fuel type or fuel price information that must be submitted to the NYISO's Market Information System along with the Incremental Energy and Minimum Generation Bids. Failure to submit required fuel type or fuel price information to the NYISO's Market Information System along with an Incremental Energy and/or Minimum Generation Bid that exceeds \$1,000/MWh will result in the Bids being automatically rejected by the ISO.

Real-Time Market Bids that include revised fuel type or fuel price information must be submitted prior to market close for the relevant Real-Time Market hour in order to be evaluated. Day-Ahead Market Bids that include revised fuel type or fuel price information must be submitted at least 15 minutes prior to the close of the Day-Ahead Market (*i.e.*, by 4:45 a.m.) in order to be evaluated.

23.7.3.2 Submission of cost information to support Incremental Energy Bids and

Minimum Generation Bids that exceed \$1,000/MWh. In order for an Incremental Energy Bid or a Minimum Generation Bid that exceeds \$1,000/MWh to be considered verified, cost information sufficient to justify the Bids must be submitted to the ISO and included by the ISO in the Generator's cost-based reference level for the relevant Day-Ahead or Real-Time Market hour.

23.7.3.3 A Market Party shall only be eligible to recover risk adders that were included in the cost-based Incremental Energy or Minimum Generation reference levels that the ISO used to perform the cost comparison described in Section 23.7.2 above for the relevant Day-Ahead or Real-Time Market hour. Other costs that were Bid, but that were not included in the cost-based Incremental Energy or Minimum Generation reference levels that the ISO used to perform the cost comparison described in Section 23.7.2 above, are eligible for recovery through a Bid Production Cost Guarantee payment in accordance with Section 18 of the ISO Services Tariff if the Market Party demonstrates that they were incurred in an after-the-fact review.

**23.7.4 Development of Cost Based Reference Levels and Submission of Incremental Energy and Minimum Generation Bids that Exceed \$1,000/MWh by eligible Demand Side Resources.**

23.7.4.1 These rules apply to Incremental Energy Bids (including incremental Curtailment Bids) and Minimum Generation Bids (including minimum Curtailment initiation Bids) submitted for Demand Side Resources participating in the Day-Ahead Demand Response Program or the Demand Side Ancillary Service Program. No other Demand Side Resources are eligible to submit Incremental Energy Bids or Minimum Generation Bids that exceed \$1,000/MWh.

23.7.4.2 Reference Level Development. Market Parties that submit Incremental Energy Bids or Minimum Generation Bids on behalf of Demand Side Resources that want to be able to submit Incremental Energy Bids or Minimum Generation Bids that exceed \$1,000/MWh when such Bids are consistent with a Demand-Side Resource's costs must complete the following procedures to develop cost based Incremental Energy and Minimum Generation reference levels for their Demand Side Resource.

At least 30 days prior to the start of the Capability Period for which the Market Party wants to have cost based reference levels in place for an existing Demand Side Resource, or prior to the completion of the ISO's registration process for Demand Side Resources that are entering the NYISO markets for the first time, the Market Party must develop and provide to the ISO a detailed estimate of the Demand Side Resource's incremental costs of providing load reduction and participate in a reference level development consultation with the ISO. *See* Section 23.3.3.1.4 of these Mitigation Measures.

Once a reference level has been developed for a Demand Side Resource, the Market Party is responsible for informing the ISO of substantial changes to its Demand Side Resource's incremental costs of providing load reduction, and must submit updated cost information to the ISO at least annually.

If the ISO does not have an up-to-date cost based reference level in place for a Demand Side Resource, then the Market Party will not be permitted to submit Incremental Energy Bids or Minimum Generation Bids that exceed \$1000/MWh for that Demand Side Resource.

#### 23.7.4.3 Process for Submitting Incremental Energy and Minimum Generation

Bids that exceed \$1,000/MWh. A Market Party that timely developed cost based Incremental Energy and/or Minimum Generation reference levels for its Demand Side Resource in accordance with Section 23.7.4.2 and that determines its Demand Side Resource's incremental cost of providing load reduction is expected to exceed \$1,000/MWh for an upcoming Day-Ahead or Real-Time Market day must develop and submit to the ISO an updated, detailed estimate of the Demand Side Resource's incremental costs of providing load reduction and contact the ISO to schedule a reference level consultation by no later than 9:00 a.m. on the day before the close of the relevant Day-Ahead Market or Real-Time Market hour.

23.7.4.4 If the Market Party does not timely submit the information required in Section 23.7.4.3, then the ISO shall restrict an Incremental Energy Bid or Minimum Generation Bid that exceeds \$1,000/MWh to \$1,000/MWh.

23.7.4.5 Demand Side Resources participating in the Demand Side Ancillary Service Program are not eligible to recover costs associated with providing Incremental Energy or Minimum Generation.

23.7.4.6 Demand Side Resources participating in the Day-Ahead Demand Response Program that complied with the requirements of Section 23.7.4.3 shall only be eligible to recover risk adders that were included in the cost-based Incremental Energy or Minimum Generation reference levels that the ISO used to perform the cost comparison described in Section 23.7.2 above for the relevant Day-Ahead Market hour. Other costs that were Bid, but that were not included in

the cost-based Incremental Energy or Minimum Generation reference levels that the ISO used to perform the cost comparison described in Section 23.7.2 above, are eligible for recovery through a Bid Production Cost Guarantee payment in accordance with Section 18 of the ISO Services Tariff if the Market Party demonstrates that they were incurred in an after-the-fact review.

### **23.7.5 Information Requests**

If the ISO requests additional information about an Incremental Energy Bid or Minimum Generation Bid that exceed \$1,000/MWh or about information supporting such a Bid or supporting a proposed change to the associated reference level, the Market Party shall respond promptly to the ISO's request. Failure to promptly respond may prevent the ISO from verifying a cost and including it in a Generator's or a Demand Response Resource's cost based Incremental Energy or Minimum Generation reference level.

### **23.7.6 Penalties for Submitting Inaccurate Cost Information**

Submission of inaccurate cost information to the ISO in support of Incremental Energy or Minimum Generation Bids that exceed \$1,000/MWh. A Market Party that submits inaccurate cost information to the ISO for a Generator or Demand Side Resource that causes a market clearing price impact or a guarantee payment impact shall be subject to financial penalties in accordance with Section 23.4.3 of these Mitigation Measures. Submission of inaccurate information that causes a market clearing price or a guarantee payment impact shall be penalized for withholding in accordance with Sections 23.4.3.3.1, 23.4.3.3.1.1 and 23.4.3.3.1.2 of these Mitigation Measures, unless a different method of calculating a penalty applies to the behavior.



### **23.8 Dispute Resolution**

If a Market Party has reasonable grounds to believe that it has been adversely affected because a Mitigation Measure has been improperly applied or withheld, it may utilize the dispute resolution provisions of the ISO Services Tariff to determine whether, under the standards and procedures specified above and in the Plan, the imposition of a Mitigation Measure was or would have been appropriate. In no event, however, shall the ISO be liable to a Market Party or any other person or entity for money damages or any other remedy or relief except and to the extent specified in the Plan.



### **23.9 Effective Date**

These Mitigation Measures shall be effective as of the date they are approved by the  
FERC.