

## 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, 32, or 40 (OATT Attachments S, X, Z, or HH), 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, in prior Cluster Studies through a prior Cluster Study Process, or through a transfer completed in accordance with OATT Sections 25 or 40 (OATT Attachment S or HH); 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 or Section 40.5.6.6 of Attachment HH to the OATT.

“**Additional SDU Study**” shall mean a deliverability study that an Interconnection Customer may elect to pursue as that term is defined in, as applicable, OATT Section 25 or 40 (OATT Attachment S or HH).

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 Attachments S, X, Z, or HH to the ISO OATT 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.

**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.

**Cluster Baseline Assessment** means an assessment conducted by the ISO as defined, as applicable, in OATT Section 25 or 40 (OATT Attachment S or HH). Cluster Baseline Assessment shall include the term “Annual Transmission Baseline Assessment” as that term is defined in Section 25 of the ISO OATT (Attachment S).

“**Cluster Study**” means a Cluster Study as that term is defined in OATT Section 40 (OATT Attachment HH).

“Cluster Study Phase I Start Date” shall mean the Phase 1 Study Start Date as that term defined in Section 40.1 to the ISO OATT.

“**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 Interconnection Customer 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 Interconnection Customer, 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 ISO’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, 32, or 40 (OATT Attachments S, X, Z, or HH).

“**Electric Facility**” shall mean a Generator, an Aggregation 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.

“**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 or Cluster 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 Study or Cluster Study commencing in the calendar year in which the Class Year 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, as applicable, Section 25.9.4 of Attachment S or Section 40.18.3 of Attachment HH to the ISO OATT 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. The term “Generator” includes each Generator that plans to participate in a DER Aggregation. In the case of a Project that is comprised of Co-located Storage Resources or a Project that is a Hybrid Storage Resource, each participating Generator or component facility shall be treated as a separate Examined Facility unless the Developer of the Project certifies that all of the Project’s participating Generators or component facilities qualify as an Excluded Facility, as defined in this Services Tariff, and it is determined to meet the criteria provided in that definition.

“**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 Interconnection Customer may elect to pursue as that term is defined in OATT Section 40 (OATT Attachment HH) that may determine the extent to which an existing or proposed facility satisfies the NYISO 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 Attachment HH.

**“Final Decision Round”** shall have the meaning specified, as applicable, in Section 25 or 40 (Attachment S or HH) 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 Round**” shall have the meaning specified in Section 40 (Attachment HH) of the ISO OATT. Initial Decision Round shall include the term Initial Decision Period as that term is defined in Section 25 of the ISO OATT (Attachment S).

“**Interconnection Customer**” shall have the meaning specified in Section 40 (Attachment HH) of the ISO’s Open Access Transmission Tariff. Interconnection Customer shall include the term Developer as that term is defined in Section 25 or 30 of the ISO OATT (Attachment S or X).

“**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, Cluster 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 or Cluster Study 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, Cluster 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, Cluster 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, Cluster 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, Cluster 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, Cluster 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 first Capability Year that will commence two years from the Cluster Study Phase I Start Date.

**“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, Cluster 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 first Capability Year immediately following the Part A Mitigation Study Period Years 1 through 3.

**“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, Cluster 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, as applicable, in Section 25 or 40 (Attachment S or HH) 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, Cluster 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, Cluster 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, as applicable Section 30.1 or 40.1 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, as applicable, Section 25 or 40 (Attachment S or HH) 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 Cluster Study Phase I Start Date and shall be the start of the Mitigation Study Period for any Examined Facility in a Cluster Study, as well as any Additional SDU Studies and Expedited Deliverability Studies that are completed while the Cluster Study is ongoing. If no Cluster 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 Cluster Study.

“**Subsequent Decision Round**” shall have the meaning specified in Section 40 (Attachment HH) of the ISO OATT. Subsequent Decision Round shall include the term Subsequent Decision Period as that term is defined in Section 25 of the ISO OATT (Attachment S).

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, 32, or 40 (OATT Attachments S, X, Z, or HH).

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 or an Aggregation that reduces a Resource's ability to provide Energy or Ancillary Services or (iv) operating a Generator or an Aggregation in real-time at a lower output level than the Generator or Aggregation would have been expected to provide had the Generator or Aggregation followed the ISO's dispatch instructions, in a manner that is not attributable to the Generator's or

Aggregation'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.

## **23.4.5 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 (except for a Distributed Energy Resource and DER Aggregations) 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 (except as specified in 23.4.5.6.1.1) from a Mitigated Capacity Zone Unforced Capacity market, or to de-rate the amount of Installed Capacity available from such supplier, may be subject to audit and review by the ISO if the ISO determines that such action could reasonably be expected to affect Market-Clearing Prices in one or more ICAP Spot Market Auctions for a Mitigated Capacity Zone in which the Resource(s) that is the subject of the proposal or decision is located, subsequent to such action; provided, however, no audit and review shall be necessary if the Installed Capacity Supplier is a Generator that is being retired or removed from a Mitigated Capacity Zone as the result of a Forced Outage that began on or after May 1, 2015 that was determined by the ISO to be a Catastrophic Failure.

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

expectation that a Market Participant's decision to retire or otherwise remove an Installed Capacity Supplier from a Mitigated Capacity Zone, or to de-rate the amount of Installed Capacity available from such supplier, accounts for the information available to that Market Participant at (or before) the time its decision is made on the "decision date" (see, e.g., Sections 23.4.5.6.4.2.1 and 23.4.5.6.4.2.2.1 below) specified by the Market Participant or the CRIS Transfer Confirmation Date for CRIS Transfers described below in Section 23.4.5.6.5. A Market Participant may offer publicly available information and other information available to the Market Participant to support its proposal or decision.

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

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

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

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

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

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

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

Measures are also addressed in Section 30.4.6.2.10 of Attachment O to this Services Tariff.

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

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

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

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

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

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

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

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

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

If the ISO determines that either: i) pursuant to Section 23.4.5.6.1, the proposal or decision by a Market Participant to retire or otherwise remove an Installed Capacity Supplier from a Mitigated Capacity Zone, or to de-rate the amount of Installed Capacity available from such supplier, or ii) pursuant to Section 23.4.5.6.2, the ISO determines that the reclassification of an Installed Capacity Supplier that is a Generator from a Forced Outage to an ICAP Ineligible Forced Outage constitutes physical withholding, and would increase the Market-Clearing Price in one or more ICAP Spot Market Auctions for a Mitigated Capacity Zone by five percent or more, provided such increase is at least \$.50/kilowatt-month, for each such violation of the above

requirements the Market Participant shall be assessed an amount equal to the product of (A) 1.5 times the difference between the Market Clearing Price for the Mitigated Capacity Zone in the ICAP Spot Market Auctions with and without the inclusion of the withheld UCAP in those auctions, and (B) the total of (1) the number of megawatts withheld in the month and (2) all other megawatts of Installed Capacity in the Mitigated Capacity Zone under common Control with such withheld megawatts in the month. The requirement to pay such amounts shall continue until the Market Participant demonstrates that the removal from service, retirement, or de-rate, as described in Section 23.4.5.6.1, or reclassification as described in Section 23.4.5.6.2 is justified by economic considerations other than the effect of such action on Market-Clearing Prices in the ICAP Spot Market Auctions for the Mitigated Capacity Zone. The ISO will distribute any amount recovered in accordance with the foregoing provisions among the LSEs serving Loads in the Mitigated Capacity Zone(s) wherein the Market-Clearing Price was affected for the month corresponding to the penalty accordance with ISO Procedures.

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

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

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

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

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

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

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

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

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

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

The responsibilities of the Market Monitoring Unit that are addressed in this section of the Mitigation Measures are also addressed in Section 30.4.6.2.12 of Attachment O to this Services Tariff.

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

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

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

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

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

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

The rules in this Section 23.4.5.6.5 apply to a Market Participant or Generator Owner that initiate a transfer of deliverability rights request as set forth in Attachment HH 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 40.18.3 and 40.18.4 of

Attachment HH to the ISO OATT. Nothing in Attachment HH 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 40.18.3 and 40.18.4 of Attachment HH 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 HH 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 HH 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. ISO 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 HH to the ISO OATT) is subject to a Buyer Side Mitigation Examination (as set forth in Sections 40.18.3 and 40.18.4 of Attachment HH 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 40.18.3 and 40.18.4 of Attachment HH 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 HH to the ISO OATT.

### **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.