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: (zonal $LBMP_{real\ time}$ - zonal $LBMP_{day\ ahead}$). 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.