

## **23.4 Mitigation Measures**

### **23.4.1 Purpose and Terms**

If conduct is detected that meets the criteria specified in Section 23.3, the appropriate mitigation measure described in this Section shall be applied by the ISO. The conduct specified in Sections 23.3.1.1 to 23.3.1.3 shall be remedied by (1) the prospective application of a default bid measure, or (2) the application of a default bid to correct guarantee payments, as further described in Section 23.4.2.2.4, below. If a Market Party or its Affiliates engage in physical withholding by providing the ISO false information regarding the derating or outage of an Electric Facility or does not operate a Generator in conformance with ISO dispatch instructions such that the prospective application of a default bid is not feasible, or if otherwise appropriate to deter either physical or economic withholding, the ISO shall apply the sanction described in Section 23.4.3.

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

### **23.4.2 Default Bid**

#### **23.4.2.1 Purpose**

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

#### **23.4.2.2 Implementation**

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

23.4.2.2.2 An Electric Facility subject to a default bid shall be paid the LBMP or other market clearing price applicable to the output from the facility. Accordingly, a default bid shall not limit the price that a facility may receive unless the default bid determines the LBMP or other market clearing price applicable to that facility.

23.4.2.2.3 If an Electric Facility is mitigated using the automated mitigation procedures described in Section 23.3.2.2.3 of these mitigation measures to a default bid for an Incremental Energy Bid other than a default bid determined as specified in Section 23.3.1.4, the Electric Facility shall receive an additional payment for each interval in which such mitigation occurs equal to the product of: (i) the amount of Energy in that interval scheduled or dispatched to which the incorrect default bid was applied; (ii) the difference between (a) the lesser of the applicable unmitigated bid and a default bid determined in accordance with Section 23.3.1.4, and (b) the applicable LBMP or other relevant market price in each such interval, if (a) greater than (b), or zero otherwise; and (iii) the length of that interval.

If an Electric Facility is mitigated to a default bid for a Start-Up Bid or a Minimum Generation Bid other than a default bid determined as specified in Section 23.3.1.4 of these Mitigation Measures, or if an Electric Facility is mitigated to a default bid for an Incremental Energy Bid other than a default bid determined as specified in Section 23.3.1.4 of these Mitigation Measures based on mitigation procedures other than the automated mitigation procedures described in Section 23.3.2.2.3 of these Mitigation Measures, then the ISO shall determine if the Bids would have failed the relevant conduct test(s) if correctly determined default bids had been used. The ISO shall then restore any original (as-submitted) Bid(s) that would not have failed the relevant conduct test(s) if correctly determined default bids had been used, and use the restored Bid(s) to determine a settlement. Otherwise, the ISO shall use the Generator's correct or corrected default bid(s) to determine a settlement.

23.4.2.2.4 Except as may be specifically authorized by the Commission:

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

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

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

- 23.4.2.2.5.1 Automated mitigation measures shall not be applied if the price effects of the measures would cause the average day-ahead energy price in the mitigated locations or zones to rise over the entire day.
- 23.4.2.2.5.2 Automated mitigation measures as specified in Section 23.3.2.2.3 shall be applied to Minimum Generation Bids and start-up costs Bids meeting the applicable conduct and impact tests. When mitigation of Minimum Generation Bids is warranted, mitigation shall be imposed from the first hour in which the impact test is met to the last hour in which the impact test is met, or for the duration of the mitigated Generator's minimum run time, whichever is longer.
- 23.4.2.2.5.3 The posting of the Day-Ahead schedule may be delayed if necessary for the completion of automated mitigation procedures.
- 23.4.2.2.5.4 Bids not mitigated under automated procedures shall remain subject to mitigation by other procedures specified herein as may be appropriate.
- 23.4.2.2.5.5 The role of automated mitigation measures in the determination of Day-Ahead market clearing prices is described in Section 17.1.3 of Attachment B of the ISO Services Tariff.
- 23.4.2.2.6 A Real-Time automated mitigation measure shall remain in effect for the duration of any hour in which there is an RTC interval for which such mitigation is deemed warranted.
- 23.4.2.2.7 A default bid shall not be imposed on a Generator that is not in the New York Control Area and that is electrically interconnected with another Control Area.

### **23.4.3 Sanctions**

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

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

#### **23.4.3.2 Imposition**

The ISO shall impose financial penalties as provided in this Section 23.4.3, if the ISO determines in accordance with the thresholds and other standards specified in this Attachment H that: (i) a Market Party has engaged in physical withholding, including providing the ISO false information regarding the derating or outage of an Electric Facility; or (ii) a Market Party or its Affiliates have failed to follow the ISO's dispatch instructions in real-time, resulting in a different output level than would have been expected had the Market Party's or the Affiliate's generation followed the ISO's dispatch instructions, and such conduct has caused a material increase in one or more prices or guarantee payments in an ISO Administered Market; or (iii) a Market Party has made unjustifiable changes to one or more operating parameters of a Generator that reduce its ability to provide Energy or Ancillary Services; or (iv) a Load Serving Entity has been subjected to a Penalty Level payment in accordance with Section 23.4.4 below; or (v) a Market Party has submitted inaccurate fuel type or fuel price information that is used by the ISO in the development of a Generator's reference level, where the inaccurate reference level that is developed, in turn, directly or indirectly impacts guarantee payments or market clearing prices paid to the Market Party; or (vi) the opportunity to submit Incremental Energy Bids into the real-time market that exceed Incremental Energy Bids made in the Day-Ahead Market or mitigated Day-Ahead Incremental Energy Bids where appropriate, has been revoked for a Market Party's Generator pursuant to Sections 23.4.7.2 and 23.4.7.3 of these Mitigation Measures.

### **23.4.3.3 Base Penalty Amount**

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

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

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

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

23.4.3.3.2 The financial penalty for failure to follow ISOs dispatch instructions in real-time, resulting in real-time operation at a different output level than would have been expected had the Market Party’s or the Affiliate’s generation followed the ISO’s dispatch instructions, if the conduct violates the thresholds set forth in Sections 23.3.1.1.1.2, or 23.3.1.3.1.2 of these Mitigation Measures, and if a Market Party or its Affiliates, or at least one Generator, is determined to have had

impact in accordance with Section 23.3.2.1 of these Mitigation Measures, shall be:

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

23.4.3.3.3 If inaccurate fuel type and/or fuel price information was submitted by or for a Market Party, and the reference level that the ISO developed based on that inaccurate information impacted guarantee payments or market clearing prices paid to the Market Party in a manner that violates the thresholds specified in this Section 23.4.3.3.3, then, following consultation with the Market Party regarding the appropriate fuel type and/or fuel price, the ISO shall apply the penalty set forth below, unless: (i) the Market Party shows that the information was submitted in compliance with the requirements of Section 4.1.9 of the ISO Services Tariff (Incremental Cost Recovery for Units Responding to Local Reliability Rule I-R3 or I-R5), or (ii) the total penalty calculated for a particular Day-Ahead or Real-Time Market day is less than \$5,000, in which case the ISO will not apply a penalty.

23.4.3.3.3.1 Day-Ahead Conduct and Market Impact Tests

23.4.3.3.3.1.1 Day-Ahead Conduct Test

Using the higher of (a) a revised reference level calculated using the Generator's actual fuel costs, or (b) the reference level that would have been in place for the Generator but for the submission of inaccurate fuel type and/or fuel

price information, test the Bids to determine if they violate the relevant conduct threshold in accordance with the appropriate provision(s) of Section 23.3.1.2 of these Mitigation Measures.

#### 23.4.3.3.1.2 Day-Ahead Impact Test

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

#### 23.4.3.3.2 Real-Time Conduct and Market Impact Tests

##### 23.4.3.3.2.1 Real-Time Conduct Test

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

##### 23.4.3.3.2.2 Real-Time LBMP Impact Test

The Market Party's Bids for a Generator will be treated as having a Real-Time Market LBMP impact if the higher of (a) a revised reference level calculated using the Generator's actual fuel costs, or (b) the reference level that would have been in place for the Generator but for a Market Party's submission of inaccurate

fuel type and/or fuel price information, is less than or equal to the real-time LBMP at the PTID that represents the Generator's location, and the Generator's reference level that was actually used to test the Bid for LBMP impact in the Real-Time Market for that hour was greater than or equal to the LBMP at the Generator's location.

#### 23.4.3.3.2.3 Real-Time Guarantee Payment Impact Test

Using the greater of (a) a revised reference level calculated using the Generator's actual fuel costs, or (b) the reference level that would have been in place for the Generator but for the submission of inaccurate fuel type and/or fuel price information, test the Bids for guarantee payment impact in accordance with the appropriate provisions of Section 23.3.2.1 of these Mitigation Measures.

#### 23.4.3.3.3 Day-Ahead Market Penalty Calculation

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

$$\text{Daily Penalty} = \max \left[ (\text{Multiplier} * [\sum_g \blacktriangle \text{Day-Ahead BPCG payment}_g] + (\text{Multiplier}) \sum_h \sum_g ([\text{Market Party MWh}_{gh}] \times [\blacktriangle \text{Day Ahead LBMP@PTID}_{gh}]) + \max [\sum_h \text{TCC Revenue Calc for Market Party}_h, 0]), 0 \right]$$

Where:

g = an index running across all the Market Party's Generators

h = for purposes of this Section 23.4.3.3.3, h is an index running across all hours of the day

Multiplier = a factor of 1.0 or 1.5. The ISO shall use a 1.0 Multiplier if the Market Party has not been penalized for inaccurately reporting fuel type or fuel price information in the Day-Ahead Market over the 6 months prior to the market-day for which the penalty is being calculated. In all other cases the ISO shall use a 1.5 Multiplier.

▲ Day-Ahead BPCG payment<sub>g</sub> = the change in the Day-Ahead Market guarantee payment that the Market Party receives for Generator g determined when the ISO performs the Day Ahead Market guarantee payment impact test in accordance with Section 23.3.2.1.2 of these Mitigation Measures

Market Party MWh<sub>gh</sub> = the MWh of Energy scheduled in the Day-Ahead Market for Generator g in hour h

▲ Day Ahead LBMP@PTID<sub>gh</sub> = the change in the Day-Ahead Market LBMP for hour h at the location of Generator g, as determined when the ISO performs the relevant Day Ahead Market LBMP impact test in accordance with Section 23.3.2.1.1 or 23.3.2.1.3 of these Mitigation Measures

TCC Revenue Calc for Market Party<sub>h</sub> = the change in TCC Revenues that the Market Party receives for hour h, determined when the ISO performs the relevant Day Ahead Market LBMP impact test

#### 23.4.3.3.3.4 Real-Time Market Penalty Calculation

If the results of either of the Real-Time Market impact tests indicate that the Incremental Energy Bid submitted for a Market Party's Generator had either LBMP or guarantee payment impact then the ISO shall charge the Market Party a

penalty, calculated for each penalized day, for each of its Generators, for each hour of the day, as follows:

$$\text{Daily Penalty} = \text{Max} [(\text{Multiplier} * \sum_g [\text{▲ simplified guarantee payment}_g]) + \sum_h \sum_g (\text{Multiplier} * [\text{original reference level}_{gh} - \text{updated reference level}_{gh}]) * \text{max} [\text{MWh DAM}_{gh}, \text{MWh RT}_{gh}, \text{Market Party MWh}_{gh}, 0], 0]$$

Where

g = an index running across all the Market Party's Generators

h = an index running across all hours of the day in which inaccurate fuel type or fuel price information was supplied for any of the Market Party's Generators; provided that one of the Bids in that hour "h" for at least one of the Market Party's Generators must have had a Real Time Market LBMP or guarantee payment impact in accordance with Sections 23.4.3.3.3.2.2 or 23.4.3.3.3.2.3 of these Mitigation Measures

Multiplier = a factor of 1.0 or 1.5. The ISO shall use a 1.0 Multiplier if the Market Party has not been penalized for inaccurately reporting fuel type or fuel price information in the Real-Time Market over the 6 months prior to the market-day for which the penalty is being calculated. In all other cases the ISO shall use a 1.5 Multiplier.

Updated reference level<sub>gh</sub> = greater of a revised reference level calculated using the actual fuel costs of Generator g in hour h, or the reference level that would have been in place for the Generator in hour h, but for the Market Party's submission of inaccurate fuel type and/or fuel price information

Original reference level<sub>gh</sub> = the reference level for Generator g in hour h actually used in the Real-Time Market to perform conduct and impact testing of the Market Party's Bids

MWh DAM<sub>gh</sub> = the MWh that Generator g was scheduled to produce in the Day-Ahead Market in hour h

MWh RT<sub>gh</sub> = the MWh that Generator g was scheduled to produce in the Real-Time Market in hour h

Market Party MWh<sub>gh</sub> = MWh produced by Market Party's Generator g that was scheduled to produce energy in hour h in the Real-Time Market

▲ simplified guarantee payment<sub>g</sub> = the change in the Real-Time Market guarantee payment that the Market Party receives for Generator g, determined when the ISO performs a simplified Bid Production Cost guarantee payment impact test using the threshold specified in Section 23.3.2.1.2 of these Mitigation Measures. The simplified guarantee payment shall be based upon actual Real-Time Bids, actual Real-Time Generator LBMPs, and reference levels that are the greater of (a) a revised reference level calculated using the Generator's actual fuel costs, or (b) the reference level that would have been in place for the Generator but for the submission of inaccurate fuel type and/or fuel price information

23.4.3.3.4 If the opportunity to submit Incremental Energy Bids into the real-time market that exceed Incremental Energy Bids made in the Day-Ahead Market or mitigated Day-Ahead Incremental Energy Bids where appropriate, has been revoked on a Market Party's Generator pursuant to Sections 23.4.7.2 and 23.4.7.3

of these Mitigation Measures, then the following virtual market penalty may be imposed on the Market Party:

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

WHERE:

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

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

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

#### **23.4.3.4 Multipliers**

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

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

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

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

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

#### **23.4.3.5 Dispute Resolution**

23.4.3.5.1 Parties with of disputes arising from or relating to the imposition of a sanction under this Section 23.4.3 may utilize the dispute resolution provisions of the ISO Services Tariff. The scope of any such proceeding shall include resolution of any dispute as to legitimate justifications, under applicable legal, regulatory or policy standards, for any conduct that is asserted to warrant a penalty. Any or all of the issues in any such proceeding may be resolved by agreement of the parties.

23.4.3.5.2 Payment of a financial penalty may be withheld pending conclusion of any arbitration or other alternate dispute resolution proceeding instituted pursuant to the preceding paragraph and any petition to FERC for review under the Federal Power Act of the determination in such dispute resolution proceeding; provided, however, that interest at the ISO's average cost of borrowing shall be payable on any part of the penalty that is withheld, and that is determined to be payable at the conclusion of the dispute resolution/FERC review process from the date of the infraction giving rise to the penalty to the date of payment. The exclusive remedy for the inappropriate imposition of a financial penalty, to the exclusion of any

claim for damages or any other form of relief, shall be a determination that a penalty should not have been imposed, and a refund with interest of paid amounts of a penalty determined to have been improperly imposed, as may be determined in the applicable dispute resolution proceedings.

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

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

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

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

### **23.4.4 Load Bid Measure**

#### **23.4.4.1 Purpose**

As initially implemented, the ISO market rules allow loads to choose to purchase power in either the Day-Ahead Market or in the Real-Time Market, but provide other Market Parties less flexibility in opting to sell their output in the Real-Time Market. As a result of this and other design features, certain bidding practices may cause Day-Ahead LBMPs not to achieve the degree of convergence with Real-Time LBMPs that would be expected in a workably competitive market. A temporary mitigation measure is specified below as an interim remedy if conditions warrant action by the ISO until such time as the ISO develops and implements an

effective long-term remedy, if needed. These measures shall only be imposed if persistent unscheduled load causes operational problems, including but not limited to an inability to meet unscheduled load with available resources. The ISO shall post a description of any such operational problem on its web site.

#### **23.4.4.2 Implementation**

23.4.4.2.1 Day-Ahead LBMPs and Real-Time LBMPs in each load zone shall be monitored to determine whether there is a persistent hourly deviation between them in any zone that would not be expected in a workably competitive market. Monitoring of Day-Ahead and real-time LBMPs shall include examination of the following two metrics (along with any additional monitoring tools and procedures that the ISO determines to be appropriate to achieve the purpose of this Section 23.4.4):

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

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

LBMP over the same time period, using the averaging period(s) described in Section 23.4.4.2.1 (1), above.

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

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

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

23.4.4.3.1 The ISO may require a Load Serving Entity engaging in the purchasing practice described above to purchase or schedule all of its expected power requirements in the Day-Ahead Market. A Load Serving Entity subject to this requirement may purchase up to a specified portion of its actual load requirements

(the “Allowance Level”) in the Real-Time Market without penalty, as determined by the ISO to be appropriate in recognition of the uncertainty of load forecasting.

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

23.4.4.3.3 The Allowance Level and the Penalty Level shall be established by the ISO at levels deemed effective and appropriate to mitigate the market effects described in this Section 23.4.4. In addition, the Penalty Level payments shall be waived in any hour in which the Allowance Level is exceeded because of unexpected system conditions.

#### **23.4.5 Installed Capacity Market Mitigation Measures**

23.4.5.1 If and to the extent that sufficient installed capacity is not under a contractual obligation to be available to serve load in New York and if physical or economic withholding of installed capacity would be likely to result in a material change in the price for installed capacity in all or some portion of New York, the ISO, in consideration of the comments of the Market Parties and other interested parties, shall amend this Attachment H, in accordance with the procedures and requirements for amending the Plan, to implement appropriate mitigation measures for installed capacity markets.

23.4.5.2 Offers to sell Mitigated UCAP in an ICAP Spot Market Auction shall not be higher than the higher of (a) the UCAP Offer Reference Level for the applicable ICAP Spot Market Auction, or (b) the Going-Forward Costs of the Installed Capacity Supplier supplying the Mitigated UCAP. Where an Installed Capacity Supplier is a Pivotal Supplier in some, but not all, Mitigated Capacity Zones in which it has Resources, such Installed Capacity Supplier's offer to sell Mitigated UCAP in any ICAP Spot Market Auction for any Resource for which it is a Pivotal Supplier shall not be higher than the higher of (a) the lowest of the UCAP Offer Reference Levels for each Mitigated Capacity Zone in which such Installed Capacity Supplier has Resources; or (b) if an Offer for a Resource has an applicable Going-Forward Cost, such Going-Forward Cost.

23.4.5.3 An Installed Capacity Supplier's Going-Forward Costs for an ICAP Spot Market Auction shall be determined upon the request of the Responsible Market Party for that Installed Capacity Supplier. The Going-Forward Costs shall be determined by the ISO after consultation with the Responsible Market Party, provided such consultation is requested by the Responsible Market Party not later than 50 business days prior to the deadline for offers to sell Unforced Capacity in such auction, and provided such request is supported by a submission showing the Installed Capacity Supplier's relevant costs in accordance with specifications provided by the ISO. Such submission shall show (1) the nature, amount and determination of any claimed Going-Forward Cost, and (2) that the cost would be avoided if the Installed Capacity Supplier is taken out of service or retired, as applicable. If the foregoing requirements are met, the ISO shall determine the

level of the Installed Capacity Supplier's Going-Forward Costs and shall seasonally adjust such costs not later than 7 days prior to the deadline for submitting offers to sell Unforced Capacity in such auction. A Responsible Market Party shall request an updated determination of an Installed Capacity Supplier's Going-Forward Costs not less often than annually, in the absence of which request the Installed Capacity Supplier's offer cap shall revert to the UCAP Offer Reference Level. An updated determination of Going-Forward Costs may be undertaken by the ISO at any time on its own initiative after consulting with the Responsible Market Party. Any redetermination of an Installed Capacity Supplier's Going-Forward Costs shall conform to the consultation and determination schedule specified in this paragraph. The costs that an Installed Capacity Supplier would avoid as a result of retiring should only be included in its Going-Forward Costs if the owner or operator of that Installed Capacity Supplier actually plans to mothball or retire it if the Installed Capacity revenues it receives are not sufficient to cover those costs.

23.4.5.4 Mitigated UCAP shall be offered in each ICAP Spot Market Auction in accordance with Section 5.14.1.1 of the ISO Services Tariff and applicable ISO procedures, unless 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.

23.4.5.4.1 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 is a Pivotal Supplier is located of Mitigated UCAP (either of the foregoing being referred to as “External Sale UCAP”) 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 be deemed to have been physically withheld on the basis of a comparison of the net revenues from UCAP sales that would have been earned by the sale in a Mitigated Capacity Zone of External Sale UCAP. The comparison shall be made for the period for which Installed 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 Mitigated UCAP was exported or sold. External Sale ICAP 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 (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.

- 23.4.5.4.2 If Mitigated UCAP is not offered or sold as specified above, the Responsible Market Party for such Installed Capacity Supplier 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 and (B) the total of (1) the amount of Mitigated 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. If the failure to offer was associated with the same period as the sale of External Sale UCAP, 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 \$2.500/kilowatt-month, the Responsible Market Party for such Installed Capacity Supplier shall be required to pay to the ISO an amount equal to 1.5 times the lesser of (A) 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 inclusion of the External Sale UCAP in those auctions, or (B) the difference between such average price and the clearing price in the External Reconfiguration Market for the relevant Comparison Period, times the total of (1) the amount of Mitigated 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. 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 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 External UCAP Sales that would exceed the net revenues that would have been realized from sale of the External UCAP Sales capacity 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 of Attachment O.

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. The presumption of Control from ownership can be rebutted by either: (1) the sale of Unforced Capacity from the Installed Capacity

Supplier in a Capability Period Auction or a Monthly Auction, or (2) demonstrating to the reasonable satisfaction of the ISO; provided, however, that 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.

23.4.5.6 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 any facility that is an Exiting Capacity Facility associated with a Repowering Examined Facility or Replacement Examined Facility, 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 the Mitigated Capacity Zone in which the Resource(s) that is the subject of the proposal or decision is located, subsequent to such action. Such an audit or review shall assess whether the proposal or decision

has a legitimate economic justification or is based on an effort to withhold Installed Capacity physically in order to affect prices. The ISO shall provide the preliminary results of its audit or review to the Market Monitoring Unit for its review and comment. If the ISO determines that the proposal or decision constitutes physical withholding, and would increase Market-Clearing Prices 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 each month and (2) all other megawatts of Installed Capacity in the Mitigated Capacity Zone under common Control with such withheld megawatts. The requirement to pay such amounts shall continue until the Market Party demonstrates that the removal from service, retirement or de-rate 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 regions affected by the withholding in accordance with ISO Procedures. 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.

23.4.5.7 Unless exempt as specified below, offers to supply Unforced Capacity from a Mitigated Capacity Zone Installed Capacity Supplier: (i) shall equal or exceed the applicable Offer Floor; and (ii) can only be offered in the ICAP Spot Market Auctions. Except for Offer Floors applied pursuant to Section 23.4.5.7.8.5.3.1 (after the revocation of a Competitive Entry Exemption), ~~the~~ Offer Floor shall apply to offers for Unforced Capacity from the Installed Capacity Supplier, if it is not a Special Case Resource, starting with the Capability Period for which the Installed Capacity Supplier first offers to supply UCAP. Offer Floors applied pursuant to Section 23.4.5.7.8.5.3.1 shall apply to offers for Unforced Capacity from an Installed Capacity Supplier starting with all ICAP auction activity subsequent to the date of the revocation. Offer Floors shall cease to apply to; provided, however, that portion of a resource's UCAP (rounded down to the nearest tenth of a MW) that has cleared for any twelve, not-necessarily-consecutive, months ~~shall cease to be subject to the Offer Floor requirement (such cleared amount, "Cleared UCAP")~~. Offer Floors shall be adjusted annually using the inflation rate component of the escalation factor of the relevant effective ICAP Demand Curves that have been accepted by the Commission.

23.4.5.7.1 Unforced Capacity from an Installed Capacity Supplier that is subject to an Offer Floor may not be used to satisfy any LSE Unforced Capacity Obligation for Mitigated Capacity Zone Load unless such Unforced Capacity is obtained through participation in an ICAP Spot Market Auction.

23.4.5.7.2 An Installed Capacity Supplier, in a Mitigated Capacity Zone for which the Commission has accepted an ICAP Demand Curve, shall be exempt from an Offer Floor if: (a) the price that is equal to the (x) average of the ICAP Spot Market Auction price for each month in the two Capability Periods, beginning with the Summer Capability Period commencing three years from the start of the year of the Class Year (the “Starting Capability Period”) is projected by the ISO to be higher, with the inclusion of the Installed Capacity Supplier, than (y) ~~the highest Offer Floor based on the numerical value equal to seventy-five percent of~~ the Mitigation Net CONE that would be applicable to such supplier in the same two (2) Capability Periods (utilized to compute (x)), or (b) the price that is equal to the average of the ICAP Spot Market Auction prices in the six Capability Periods beginning with the Starting Capability Period is projected by the ISO to be higher, with the inclusion of the Installed Capacity Supplier, than the reasonably anticipated Unit Net CONE of the Installed Capacity Supplier, or (c) it has been determined to be exempt pursuant to Section 23.4.5.7.2 (the Repowering Examined Facility exemption), or (d) it has been approved for treatment as a Replacement Examined Facility pursuant to Section 23.4.5.7.3 and has met the requirements of subpart (a) or (b) of this section or (e) it has been determined to be exempt pursuant to Section 23.4.5.7.8 (the “Competitive Entry Exemption”). For purposes of the determinations pursuant to (a) and (b) of this section, the ISO shall identify Unit Net CONE and the price on the ICAP Demand Curve projected for a future Mitigation Study Period consistent with Section 23.4.5.7.4. The ISO will make a Unit Net CONE final determination, pursuant to

(b) in this Section escalated pursuant to Sections 23.4.5.7.2.4 or 23.4.5.7.3.2, as appropriate, for each Examined Facility promptly after it (i) has accepted its SDU Project Cost Allocation and deliverable MW, if any, from the Final Decision Round and (ii) along with all other remaining members, has posted any associated security pursuant to OATT Section 25 (OATT Attachment S) (for purposes of Section 23.4, a project that “remains a member of a completed Class Year”). The first year value of an Examined Facility’s Unit Net CONE will be calculated pursuant to Section 23.4.5.7, Section 23.4.5.7.2.4, or 23.4.5.7.3.2, will be established at the time such Examined Facility first offers UCAP, and will be used by the ISO in subsequent mitigation exemption or Offer Floor determinations for Additional CRIS MW. Any determination received pursuant to this Section 23.4.5.7.2, Section 23.4.5.7.6. or 23.4.5.7.7 shall not become final for the relevant Examined Facility unless the Examined Facility accepts its SDU Project Cost Allocation and deliverable MW, if any, from the Final Decision Round, and posted any associated security pursuant to OATT Section 25 (OATT Attachment S), and remains a member of the completed Class Year. The Unit Net CONE or exemption determination pursuant to this Section shall be final on the date the ISO issues a notice to stakeholders that the Class Year decisional process has been completed. Notwithstanding the foregoing, if the Class Year 2011 Examined Facility remains a member of a completed Class Year, and if the date the ISO issues a notice to stakeholders that the Class Year 2011 decisional process pursuant to OATT Section 25 (OATT Attachment S) has been completed is prior to both the Commission’s issuance of an order, and the effective date of

the Commission's order, accepting the inclusion in the Services Tariff of the specific provisions necessary to administer the Repowering Examined Facility exemption or Replacement Examined Facility treatment in Section 23.4.5.7.7, provided both such dates occur before December 2, 2013 and the specific provisions accepted by the Commission are exactly as proposed by the ISO, any exemption or Offer Floor determination made pursuant to Section 23.4.5.7.2, for any Class Year 2011 project requesting a Repowering Examined Facility exemption and/or Replacement Examined Facility treatment, shall not be final until, and shall be final on, the date on which the determinations pursuant to Section 23.4.5.7.7 and the evaluations pursuant to Section 23.4.5.7.2(a) and (b) have been completed.

23.4.5.7.2.1 Promptly after Commission acceptance of the first ICAP Demand Curve to apply to a Mitigated Capacity Zone, the ISO shall make an exemption and Offer Floor determination for any NCZ Examined Project that is in a completed Class Year and has received CRIS.

23.4.5.7.2.2 The ISO shall make an "Indicative BSM Determination" for any NCZ Examined Project that is in a Class Year that has not been completed prior to Commission acceptance of the first ICAP Demand Curve to apply specifically to the Mitigated Capacity Zone in which the NCZ Examined Project is located, provided the ISO has filed an ICAP Demand Curve pursuant to Services Tariff Section 5.14.1.2.11. The Indicative BSM Determination shall be computed using such ICAP Demand Curve for the Mitigated Capacity Zone concurrent with the determinations the ISO makes for Examined Facilities pursuant to Sections

23.4.5.7.3.2 and 23.4.5.7.3.3. The ISO shall recompute the Indicative BSM Determination promptly after Commission acceptance of the first ICAP Demand Curve for the applicable Locality provided that such NCZ Examined Project (i) received CRIS if the Class Year completed at the time the Commission accepts the Demand Curve, or (ii) has not been removed from the Class Year Deliverability Study if the Class Year is not completed. The Indicative BSM Determination is for informational purposes only. The exemption or Offer Floor for an NCZ Examined Project to which this Section applies shall be determined for such projects receiving CRIS using the Commission-accepted Locality Demand Curve.

23.4.5.7.2.3 Any NCZ Examined Project not exempt pursuant to 23.4.5.7.~~7~~10 shall provide data and information requested by the ISO by the date specified by the ISO, in accordance with the ISO Procedures.

The ISO shall compute the reasonably anticipated ICAP Spot Market Auction forecast price based on Expected Retirements (as defined in subsection 23.4.5.7.2.3.1), plus each NCZ Examined Project.

23.4.5.7.2.3.1 Expected Retirements shall be determined based on any Generator that provided written notice to the New York State Public Service Commission that it intends to retire, plus any UDR facilities, or any Generator 2 MW or less that provided written notice to the ISO that it intends to retire.

23.4.5.7.2.3.2 The Load forecast shall be based on data used to develop the Indicative Locational Minimum Installed Capacity Requirement, and Special Case Resources based on data for the Mitigated Capacity Zone that is part of the

Special Case Resource data set forth in the most-recently published Load and Capacity Data (Gold Book).

23.4.5.7.2.4 The ISO shall post on its website the inputs of the reasonably anticipated ICAP Spot Market Auction forecast prices determined in accordance with 23.4.5.7.2.3 (except for the posting of an input which would disclose Confidential Information), the Expected Retirements, and the NCZ Examined Projects, before the exemption or Offer Floor determination under this Section.

When the ISO is evaluating more than one NCZ Examined Project concurrently, the ISO shall recognize in its computation of the anticipated ICAP Spot Market Auction forecast price that Generators or UDR facilities will clear from lowest to highest, using for each NCZ Examined Project the lower of (i) the first year value of its Unit Net CONE, or (ii) the numerical value equal to 75 percent of the Mitigation Net Cone, then escalated in accordance with 23.4.5.7 for each of the year two and year three of the Mitigation Study Period.

23.4.5.7.2.5 When evaluating NCZ Examined Projects pursuant to Sections 23.4.5.7.2.1 or 23.4.5.7.2.2, the ISO shall seek comment from the Market Monitoring Unit on matters relating to the determination of price projections and cost calculations. The ISO shall inform the NCZ Examined Project of the Offer Floor or Offer Floor exemption determination or Indicative BSM Determination promptly. The responsibilities of the Market Monitoring Unit that are addressed in this Section 23.4.5.7.2.5 are also addressed in Section 30.4.6.2.11 of Attachment O.

23.4.5.7.2.6 If an NCZ Examined Project under the criteria in 23.4.5.7.2.1 or

23.4.5.7.2.2 does not provide all of the requested data by the date specified by the ISO, the MW of CRIS received at that time by the project shall be subject to the Mitigation Net CONE Offer Floor for the period determined by the ISO in accordance with Section 23.4.5.7.

23.4.5.7.2.7 An NCZ Examined Project or Examined Facility located in more than one

Mitigated Capacity Zone shall be evaluated pursuant to the tests in Section 23.4.5.7.2(a) and (b) or 23.4.5.7.3 (as applicable), calculating Mitigation Net CONE for the smallest Mitigated Capacity Zone that contains the Load Zone in which such NCZ Examined Project or Examined Facility is electrically located.

23.4.5.7.3 The ISO shall make such exemption and Unit Net CONE determination

for each “Examined Facility” (collectively “Examined Facilities”) which term shall mean (I) each proposed new Generator and proposed new UDR project, and each existing Generator that has ERIIS only and no CRIS, that is a member of the Class Year that requested CRIS, or that requested an evaluation of the transfer of CRIS rights from another location, in the Class Year Facilities Study commencing in the calendar year in which the Class Year Facility Study determination is being made (the Capability Periods of expected entry as further described below in this Section, the “Mitigation Study Period”), (II) each (i) existing Generator that did not have CRIS rights, and (ii) proposed new Generator and proposed new UDR project, that is an expected recipient of transferred CRIS rights at the same location regarding which the ISO has been notified by the transferor or the transferee of a transfer pursuant to OATT Attachment S Section ~~23.5~~9.4 that will

be effective on a date within the Mitigation Study Period, (III) each proposed new Generator that (a) is either (i) in the ISO Interconnection Queue, in a Class Year prior to 2009/10, and has not commenced commercial operation or been canceled, and for which the ISO has not made an exemption or Unit Net CONE determination, or (ii) not subject to a deliverability requirement (and therefore, is not in a Class Year) and (b) provides specific written notification to the ISO no later than the date identified by the ISO, that it plans to commence commercial operation and offer UCAP in a month that coincides with a Capability Period of the Mitigation Study Period. The term “Examined Facilities” does not include any facility exempt from an Offer Floor pursuant to the provisions of Section 23.4.5.7.710.

23.4.5.7.3.1 The commercial operation date to be used by the ISO solely for purposes of identifying the Examined Facilities will be determined by the ISO at the time of the Class Year Study as the date most-recently (A) identified by the project to the ISO in the Interconnection Facilities Study process or (B) reflected in the Interconnection Queue, or if neither of the foregoing is applicable, then the date identified by the project to the Transmission Owner to which it has proposed interconnecting.

23.4.5.7.3.2 The ISO shall compute the reasonably anticipated ICAP Spot Market Auction forecast price based on Expected Retirements (as defined in this subsection 23.4.5.7.3.2), plus the MW of Capacity of each Exiting Capacity Facility associated with the proposed Repowering Examined Facility determined to be exempt pursuant to Section 23.4.5.7.7.2 if the Exiting Capacity Facility is an

Expected Retirement, plus each Examined Facility in 23.4.5.7.3 (I), (II), and (III), minus an Examined Facility's quantity of CRIS MW that has been determined to be exempt pursuant to Section 23.4.5.7.7.2.

Expected Retirements determined based on any Generator that provided written notice to the New York State Public Service Commission that it intends to retire, plus any UDR facility or Generator 2 MW or less that provided written notice to the ISO that it intends to retire.

The load forecast and Special Case Resources as set forth in the most-recently published Load and Capacity Data (Gold Book).

Sixty days after the ISO receives a request for a Repowering Examined Facility exemption and/or Replacement Examined Facility treatment by an Examined Facility after Class Year 2012, and promptly after the ISO receives a request from a Class Year 2011 or Class Year 2012 project in accordance with 23.4.5.7.7.1, the ISO will post on its website the projects that have requested to be evaluated for a Repowering Examined Facility exemption and/or Replacement Examined Facility treatment, including the CRIS MW of each Exiting Capacity Facility included in the plan submitted pursuant to Section 23.4.5.7.7, subject to any restrictions on the disclosure of Confidential Information or Critical Energy Infrastructure Information.

Before the commencement of the Initial Decision Period for the Class Year, the ISO shall post on its website the inputs of the reasonably anticipated ICAP Spot Market Auction forecast prices determined in accordance with 23.4.5.7.3.2, the Expected Retirements, and the Examined Facilities, before the Initial Project Cost

Allocation, subject to any restrictions on the disclosure of Confidential Information or Critical Energy Infrastructure Information.

When the ISO is evaluating more than one Examined Facility concurrently, the ISO shall recognize in its computation of the anticipated ICAP Spot Market Auction forecast price that Generators or UDR facilities will clear from lowest to highest, using for each Examined Facility the lower of (i) the first year value of its Unit Net CONE, or (ii) the numerical value equal to 75 percent of the Mitigation Net Cone, then escalated in accordance with 23.4.5.7 for each of the year two and year three of the Mitigation Study Period.↔

23.4.5.7.3.3 All developers, Interconnection Customers, and Installed Capacity

Suppliers for any Examined Facility that do not request CRIS shall provide data and information requested by the ISO by the date specified by the ISO, in accordance with the ISO Procedures. For any such Examined Facility that is in a Class Year but that only has ERIS rights after the Project Cost Allocation process is complete, the ISO shall utilize the data first provided in its analysis of the Unit Net CONE in its review of the project in any future Class Year in which the Generator or UDR facility requests CRIS. The ISO shall determine the reasonably anticipated Unit Net CONE less the costs to be determined in the Project Cost Allocation or Revised Project Cost Allocation, as applicable, prior to the commencement of the Initial Decision Period Class Year, and shall provide to the Examined Facility the ISO's initial determination of an exemption or the Offer Floor. On or before the three (3) days prior to the ISO's issuance of the Revised Project Cost Allocation, the ISO will revise its forecast of ICAP Spot Market

Auction prices for the Capability Periods in the Mitigation Study Period based on the Examined Facilities that remain in the Class Year for CRIS and the Examined Facilities that meet 23.4.5.7.3 (II) or (III). When evaluating Examined Capacity pursuant to this Section 23.4.5.7, the ISO shall seek comment from the Market Monitoring Unit on matters relating to the determination of price projections and cost calculations. The ISO shall provide to each project its revised price forecast and a revised initial determination for a Subsequent Decision Period no later than the ISO's issuance of a Revised Project Cost Allocation. If a project remains a member of a completed Class Year, ~~the~~ the ISO shall inform the project of the final determination of the Offer Floor or whether the Offer Floor exemption specified above in this Section is applicable as soon as practicable after the date the ISO issues a notice to stakeholders that the Class Year decisional process has been completed~~completion of the relevant Project Cost Allocation or Revised Project Cost Allocation,~~ in accordance with methods and procedures specified in ISO Procedures. The responsibilities of the Market Monitoring Unit that are addressed in this section of the Mitigation Measures are also addressed in Section 30.4.6.2.11 of Attachment O.

23.4.5.7.3.4 If an Examined Facility under the criteria in 23.4.5.7.3 (II) or (III) has not provided written notice to the ISO on or before the date specified by the ISO, or any Examined Facility required to be reviewed does not provide all of the requested data by the date specified by the ISO, the proposed Capacity shall be subject to the Mitigation Net CONE Offer Floor for the period determined by the ISO in accordance with Section 23.4.5.7.

23.4.5.7.3.5 Except as specified in Section 23.4.5.7.6 with respect to Additional CRIS

MW. An Examined Facility for which an exemption or Offer Floor determination has been rendered may only be reevaluated for an exemption or Offer Floor determination if it meets the criteria in Section 23.4.5.7.3 (I) and either (a) enters a new Class Year for CRIS or (b) intends to receive transferred CRIS rights at the same location. An Examined Facility under the criteria in 23.4.5.7.3 (II) that did receive CRIS rights will be bound by the determination rendered and will not be reevaluated, and an Examined Facility under the criteria in 23.4.5.7.3 (III) will not be reevaluated.

23.4.5.7.3.6 If an Installed Capacity Supplier demonstrates to the reasonable satisfaction of the ISO that the value equal to the first of the three year values that comprise its Unit Net CONE is less than any Offer Floor that would otherwise be applicable to the Installed Capacity Supplier, then its Offer Floor shall be reduced to a numerical value equal to the first year of its Unit Net CONE. If the Installed Capacity Supplier first offers UCAP prior to the first Capability Year of the Mitigation Study Period for which it was evaluated, its Offer Floor shall be reduced using the inflation rate component identified in Section 23.4.5.7. If the Installed Capacity Supplier first offers UCAP after the first Capability Year of the Mitigation Study Period for which it was evaluated, its Offer Floor shall be increased using the inflation rate component identified in 23.4.5.7.

23.4.5.7.4 For purposes of Sections 23.4.5.7.2(b) and 23.4.5.7.6(b), the ISO shall identify the Unit Net CONE and the price on the ICAP Demand Curve projected for a future Mitigation Study Period using: (i) the escalation factor of the relevant

ICAP Demand Curves for any year for which there are accepted ICAP Demand Curves; or (ii) the inflation rate component of the escalation factor of the relevant ICAP Demand Curve for any year for which the accepted ICAP Demand Curves do not apply. For purposes of Section 23.4.5.7.2(a), the ISO shall use the escalation factor of the relevant ICAP Demand Curves.

23.4.5.7.5 A Mitigated Capacity Zone Installed Capacity Supplier that is a Special Case Resource shall be subject to an Offer Floor beginning with the month of its initial offer to supply Installed Capacity, and until its offers of Installed Capacity have been accepted in the ICAP Spot Market Auction at a price at or above its Offer Floor for a total of twelve, not necessarily consecutive, months. A Special Case Resource shall be exempt from the Offer Floor if (a) it is located in a Mitigated Capacity Zone except New York City and is enrolled as a Special Case Resource with the ISO for any month within the Capability Year that includes March 31 in an ICAP Demand Curve Reset Filing Year in which the ISO proposes a New Capacity Zone that includes the location of the Special Case Resource, or (b) the ISO projects that the ICAP Spot Market Auction price will exceed the Special Case Resource's Offer Floor for the first twelve months that the Special Case Resource reasonably anticipated to offer to supply UCAP. If a Responsible Interface Party fails to provide Special Case Resource data that the ISO needs to conduct the calculations described in the two preceding sentences by the deadline established in ISO Procedures, the Special Case Resource will cease to be eligible to offer or sell Installed Capacity. The Offer Floor for a Special Case Resource shall be equal to the minimum monthly payment for providing

Installed Capacity payable by its Responsible Interface Party, plus the monthly value of any payments or other benefits the Special Case Resource receives from a third party for providing Installed Capacity, or that is received by the Responsible Interface Party for the provision of Installed Capacity by the Special Case Resource. The Offer Floor calculation shall include any payment or the value of other benefits that are awarded for offering or supplying Mitigated Capacity Zone Capacity, except for payments or the value of other benefits provided under programs administered or approved by New York State or a government instrumentality of New York State. Offers by a Responsible Interface Party at a PTID shall be not lower than the highest Offer Floor applicable to a Special Case Resource providing Installed Capacity at that PTID. Such offers may comprise a set of points for which prices may vary with the quantity offered. If this set includes megawatts from a Special Case Resource(s) with an Offer Floor, then at least the quantity of megawatts in the offer associated with each Special Case Resource must be offered at or above the Special Case Resource's Offer Floor. Offers by a Responsible Interface Party shall be subject to audit to determine whether they conformed to the foregoing Offer Floor requirements. If a Responsible Interface Party together with its Affiliated Entities submits one or more offers below the applicable Offer Floor, and such offer or offers cause or contribute to a decrease in UCAP prices in the Mitigated Capacity Zone of 5 percent or more, provided such decrease is at least \$.50/kilowatt-month, the Responsible Interface Party shall be required to pay to the ISO an amount equal to 1.5 times the difference between the Market-Clearing

Price for the Mitigated Capacity Zone in the ICAP Spot Auction for which the offers below the Offer Floor were submitted with and without such offers being set to the Offer Floor, times the total amount of UCAP sold by the Responsible Interface Party and its Affiliated Entities in such ICAP Spot Auction. If an offer is submitted below the applicable Offer Floor, the ISO will notify the Responsible Market Party and the notification will identify the offer, the Special Case Resource, the price impact, and the penalty amount. The ISO will provide the notice reasonably in advance of imposing such penalty. The ISO shall distribute any amounts recovered in accordance with the foregoing provisions among the entities, other than the entity subject to the foregoing payment requirement, supplying Installed Capacity in regions affected by one or more offers below an applicable Offer Floor in accordance with ISO Procedures.

**23.4.5.7.6 Exemptions for Additional CRIS MW:** Additional CRIS MW received in a Class Year, through a transfer of CRIS rights from another location, or through a transfer at the same location shall be exempt from an Offer Floor (a) if the price that is equal to (x) the average of the ICAP Spot Market Auction price for each month in the two Capability Periods, beginning with the Summer Capability Period commencing three years from the start of the Class Year (the “Starting Capability Period”) is projected by the ISO, with the inclusion of the Additional CRIS MW, to be higher than (y) the highest Offer Floor based on the Mitigation Net CONE that would be applicable to such Additional CRIS MW in the same two (2) Capability Periods (utilized to compute (x)); or (b) if the price that is equal to the average of the ICAP Spot Market Auction prices in the six

Capability Periods beginning with the Starting Capability Period is projected by the ISO, with the inclusion of the Installed Capacity Supplier's Additional CRIS MW, to be higher than the reasonably anticipated Unit Net CONE computed in accordance with (i) and (ii) of Section 23.4.5.7.6.1 for the Installed Capacity Supplier's Additional CRIS MW.

23.4.5.7.6.1 For Additional CRIS MW that have an exemption or Offer Floor determined pursuant to this Section 23.4.5.7.6, the ISO shall compute Unit Net CONE as follows:

(i) Unit Net CONE for the Additional CRIS MW shall be based on the Additional CRIS MW and the costs and revenues of and associated with the Additional CRIS MW if:

(a) the most recent prior determination concluded that the Capacity for which the Examined Facility requested CRIS was exempt from the Offer Floor pursuant to Section 23.4.5.7.2(b), 23.4.5.7.6(b), or 23.4.5.7.9; or

(b) at the time of an Examined Facility's request for Additional CRIS MW: (1) it has accepted CRIS MW equal to, or greater than, 90 percent of the greater of (A) the Examined Facility's ERIS MW through prior Interconnection Requests or (B) the Examined Facility's nameplate MW in the Interconnection Request, and (2) the amount of Cleared UCAP is greater than the amount of UCAP calculated pursuant to Section 23.4.5.7.6.3; or

(c) the Examined Facility's Total Evaluated CRIS MW includes exempted CRIS MW for which the Examined Facility did not receive a Unit Net CONE determination and thus did not provide data to the ISO because the determination for the exempt CRIS MW received was not based on Unit Net CONE and was made prior to November 27, 2010.

(ii) or in all other cases, Unit Net CONE, shall be the greater of two values, one based on the Total Evaluated CRIS MW, and the costs and revenues of the Total Evaluated CRIS MW, and one based on the Additional CRIS MW, and the costs and revenues of the Additional CRIS MW.

23.4.5.7.6.2 When calculating the Unit Net CONE of the Total Evaluated CRIS MW for an Examined Facility, the ISO shall utilize the Examined Facility's first year Unit Net CONE determined pursuant to Section 23.4.5.7 and Sections 23.4.5.7.2.4 or 23.4.5.7.3.2, adjusted to the year's dollars at the time of an Examined Facility's request for Additional CRIS MW using: (i) the relevant value from the price index for non-farm business output published in the Survey of Current Business by the Department of Commerce's Bureau of Economic Analysis ("BEA Non-Farm Price Index"), or its successor; or (ii) the inflation rate component of the escalation factor of the most currently accepted ICAP Demand Curves for any future year which is beyond the published BEA Non-Farm Price Index, or its successor.

23.4.5.7.6.3 For purposes of making the determination pursuant to Section 23.4.5.7.6.1(i)(b)(2), the amount of Cleared UCAP shall be compared to an amount of UCAP calculated as the product of the CRIS MW held by the Examined Facility immediately prior to its request for Additional CRIS MW and (1-EFORd). Except as specified in the next paragraph, for purposes of this calculation, if the Examined Facility is a Generator, its EFORd shall be derived using the data in the 5-year average NERC-GADS Generating Availability Report, or its successor, for the main class of the unit (hereinafter the “Class Average EFORd”) that is current at the time of the request for Additional CRIS MW, when available. If the Examined Facility is an Intermittent Power Resource or Limited Control Run-of-River Hydro Resource, the ISO shall apply a 5-year average derating factor based on ISO data to establish the EFORd to be utilized in the calculation pursuant to this paragraph. In all other cases, the ISO will apply the 5-year average derating factor from the ICAP/UCAP translation, for the smallest Mitigated Capacity Zone in which the resource is located at the time of the request. The EFORd applied by the ISO at the time that the Examined Facility first offers or certifies UCAP in an Installed Capacity auction (“Initial Entry EFORd”) shall be used instead of Class Average EFORd when it is higher (i.e., a greater outage rate) than the Class Average EFORd calculated at the time of the Examined Facility’s request for Additional CRIS MW.

23.4.5.7.6.4 Additional CRIS MW shall be subject to the Mitigation Net CONE Offer Floor for the period specified in Section 23.4.5.7, for any Examined Facility whose Total Evaluated CRIS MW includes CRIS MW that are or have ever been subject to the Mitigation Net CONE Offer Floor, pursuant to Section 23.4.5.7.3.4.

23.4.5.7.6.5 The Offer Floor for Additional CRIS MW shall be equal to the lesser of: (a) the Unit Net CONE for the Additional CRIS MW; or (b) a numerical value equal to 75 percent of the Mitigation Net CONE translated into a seasonally adjusted monthly UCAP value for the Additional CRIS MW.

23.4.5.7.6.6 The results of this exemption determination shall apply only to the Additional CRIS MW and shall not alter or affect any prior exemption or Offer Floor determination for the Examined Facility. The Additional CRIS MW for which CRIS is received shall be bound by the determination rendered and will not be reevaluated unless the Examined Facility enters a new Class Year for the Additional CRIS MW.

23.4.5.7.6.7 When the ISO makes a mitigation exemption or Offer Floor determination for an Examined Facility's Additional CRIS MW for an Installed Capacity Supplier other than that to which the Unit Net CONE determination for the Examined Facility was rendered, the ISO shall provide such Installed Capacity Supplier with the Examined Facility's first year Unit Net CONE value if the Installed Capacity Supplier (a) requests that information, and (b) represents that it: (i) will use that information

solely for purposes of considering a request for Additional CRIS MW for the Examined Facility, and (ii) will not share that information with or make it available to any other person except those that are assisting it in considering a request for Additional CRIS MW.

23.4.5.7.6.8 The ISO shall post on its website the determination of whether the project is exempt or non-exempt from an Offer Floor as soon as the determination is final. Concurrent with the ISO's posting, the Market Monitoring Unit shall publish a report on the ISO's determination, as further specified in Sections 30.4.6.2.11 and 30.10.4 of Attachment O to this Services Tariff.

#### **23.4.5.7.7 Repowering Examined Facility Exemption and Replacement Examined Facility Treatment**

##### **23.4.5.7.7.1 General Requirements**

**23.4.5.7.7.1.1 Criteria:** In order for a Generator's or UDR project's CRIS MW to be eligible to be evaluated for a Repowering Examined Facility exemption or Replacement Examined Facility treatment, the Generator or UDR project must be in Class Year 2011 or later and meet all of the following criteria: (a) have submitted a new Interconnection Request pursuant to OATT Section 30 or 32 (OATT Attachment X or Z) and provided a request for a Repowering Examined Facility exemption and/or request for Replacement Examined Facility treatment that contains all information required by the ISO in accordance with ISO Procedures, except, if applicable, as provided in Section 23.4.5.7.7.1.2 below; (b) take the place of one or more Exiting Capacity Facility(ies) to meet its total proposed CRIS MW that no other Generator or UDR project has used as the basis

for obtaining a Repowering Examined Facility exemption or Replacement Examined Facility treatment; (c) be physically located in the same smallest Mitigated Capacity Zone as the Exiting Capacity Facility(ies); and (d) have submitted to the ISO a detailed written plan describing how and when the Generator or UDR project will take the place of the Exiting Capacity Facility(ies). Additionally, if the request is for a Repowering Examined Facility Exemption, the plan submitted pursuant to (d) above shall include a demonstration that the Exiting Capacity Facility(ies) meet the Proximity Test requirements in Section 23.4.5.7.7.2.1 and a certification by a company officer that the Repowering Examined Facility meets the Proximity Test.

A Repowering Examined Facility or Replacement Examined Facility shall obtain CRIS through the applicable OATT Section 25 (OATT Attachment S) process. Notwithstanding Section 25.9.3.1 of OATT Attachment S, each Exiting Capacity Facility associated with a Repowering Examined Facility or Replacement Examined Facility must release any CRIS not transferred to the Repowering Examined Facility or Replacement Examined Facility at the earlier of (i) its exit from the ISO-Administered Markets (*i.e.*, in accordance with ISO Technical Bulletin No. 185, or its successor, as verified by the ISO) and (ii) the Permanent Exit Date.

**23.4.5.7.7.1.2 Transition Mechanism:** With respect to the criteria established in Section 23.4.5.7.7.1.1(a), for any Generator or UDR project that has submitted the required Interconnection Request prior to the effective date of the Commission's order accepting the inclusion in the Services Tariff of the Repowering Examined

Formatted: alpha para, Tab stops: 2", Left

Facility exemption or Replacement Examined Facility treatment, the request for a Repowering Examined Facility exemption and/or Replacement Examined Facility treatment shall be made by completing the form posted to the ISOs website and providing it and the required information to the ISO in accordance with ISO Procedures by the following deadlines: (a) if after Class Year 2012, within 90 days of the effective date of the Commission's order accepting the inclusion in the Services Tariff of the Repowering Examined Facility exemption or Replacement Examined Facility treatment for which the respective project is requesting to be evaluated, for any Generator or UDR project that submitted its Interconnection Request prior to such effective date; (b) if in Class Year 2012, within 60 days of the effective date of the Commission's order accepting the inclusion in the Services Tariff of the Repowering Examined Facility exemption or Replacement Examined Facility treatment for which the respective project is requesting to be evaluated; and (c) if in Class Year 2011, within 5 days of the earlier of the Commission's issuance of an order, and the effective date of the Commission's order, accepting the inclusion in the Services Tariff of the specific provisions necessary to administer the Repowering Examined Facility exemption or Replacement Examined Facility treatment for which the respective project is requesting to be evaluated; provided such earlier date is on or before December 2, 2013 and the specific provisions accepted by the Commission are exactly as proposed by the ISO. If such date is after December 2, 2013, a Class Year 2011 project is not eligible to request or be evaluated or be considered for Repowering Examined Facility exemption or Replacement Examined Facility treatment.

**23.4.5.7.7.1.3 Use of Equipment:** The prime mover (*i.e.*, the machine that drives an electric generator or any device that converts energy to electricity or the equipment associated with a UDR facility that directly controls the power flow from an Exiting Capacity Facility), and associated turbine generator set, if applicable, may be used after the Exiting Capacity Facility's Permanent Exit Date (a) in (i) any facility (existing or as proposed) that does not participate in any ISO Administered Market in a Mitigated Capacity Zone, or (ii) a different existing facility that participates in any ISO-Administered Market in a Mitigated Capacity Zone, provided that the use of the prime mover (and associated turbine generator set, if applicable) is not be associated with an increase the MW of CRIS or the energy output of the different existing facility, and (b) subject to compliance with OATT Attachment S Section 25.9.3.1; Attachment X Sections 30.3.3.1 and 30.4.4, and Appendix 1; and Attachment Z Section 32.1.4 and Appendix 2, as applicable.

**23.4.5.7.7.1.4 Exiting Capacity Facility Limited Exception:** The Exiting Capacity Facility is not required to exit the ISO Administered Markets while it is required to operate pursuant to a reliability service agreement that has an express purpose of addressing a reliability need that is recognized by the ISO, and such agreement is accepted or approved by the Commission, the NYPSC, or other governmental entity with jurisdictional authority. If the Exiting Capacity Facility is required to operate under such an agreement, it may not participate in the Installed Capacity Market in the same months that the Repowering Examined Facility or the Replacement Examined Facility is participating in the Installed Capacity Market.

Formatted: Highlight

**23.4.5.7.7.2 Repowering Examined Facility Exemption:** A Repowering Examined

Facility shall be exempt from Offer Floor mitigation under Section 23.4.5.7.2 up to a level of CRIS MW equal to the lesser of (i) the exempt CRIS MW of the Exiting Capacity Facility(ies) or (ii) the Repowering Examined Facility's requested CRIS MW, if: (a) the Repowering Examined Facility satisfies the Proximity Test in Section 23.4.5.7.7.2.1; (b) the CRIS MW of Exiting Capacity Facility(ies) satisfies the Economic Viability Test in Section 23.4.5.7.7.2.2; and (c) the Exiting Capacity Facility(ies) states in writing to the ISO that it will cease to participate in the ISO Administered Markets on the Permanent Exit Date.

---

Where a Repowering Examined Facility has Excess Repowering MW and/or CRIS MW that were determined to not be exempt pursuant to Section 23.4.5.7.7.2.2, the Repowering Examined Facility shall be evaluated pursuant to Section 23.4.5.7.2(a) and (b). If such a Repowering Examined Facility is not determined to be exempt pursuant to Section 23.4.5.7.2(a) or (b), its Excess Repowering MW shall be subject to the Offer Floor but its CRIS MW equal to the number of exempt CRIS MW of the relevant Exiting Capacity Facility(ies) shall be exempt. For purposes of the calculation in Section 23.4.5.7.2 (a) and (b), such a Repowering Examined Facility's Unit Net CONE shall be calculated using its total CRIS MW.

---

The ISO shall post on its website the determination of whether the project requesting a Repowering Examined Facility exemption is exempt or non-exempt or partially exempt, and if partially exempt the number of exempt MW, from an Offer Floor, and the Market Monitoring Unit's conclusion on the EVT

Consultant's findings and the ISO's determinations regarding those findings, as soon as the determination is final. Concurrent with the ISO's posting, the Market Monitoring Unit shall publish a report on the ISO's determinations, as further specified in Sections 30.4.6.2.11 and 30.10.4 of Attachment O to this Services Tariff.

**23.4.5.7.7.2.1 Proximity Test:** A Repowering Examined Facility shall pass the Proximity Test if it meets both the Site and CRIS Rights requirements set forth in 23.5.7.7.2.1.1. If a Repowering Examined Facility does not pass the Proximity Test, the ISO will not conduct the Economic Viability Test.

**23.4.5.7.7.2.1.1 Site Requirement:** A Repowering Examined Facility must be located on the same Site, or within any portion of the same Site perimeter as each Exiting Capacity Facility. A Repowering Examined Facility shall be considered to be located within the same Site perimeter as an Exiting Capacity Facility if any portion of the perimeter of the Site within which the Repowering Examined Facility is located is within five hundred feet of any portion of the perimeter of the Site within which the Exiting Capacity Facility is located.

**23.4.5.7.7.2.1.2 CRIS Rights:** Each Exiting Capacity Facility associated with a Repowering Examined Facility that is determined by the ISO to be exempt must either transfer to the Repowering Examined Facility, or release, the amount of its CRIS MW specified in a plan described in Section 23.4.5.7.7.1.1. Such

release or transfer must occur at the earlier of (i) its exit from the ISO Administered Markets (i.e., in accordance with ISO Technical Bulletin No. 185, or its successor, as verified by the ISO) and (ii) the Permanent Exit Date.

**23.4.5.7.7.2 Economic Viability Test:** An Exiting Capacity Facility shall satisfy the Economic Viability Test (“EVT”) if its “avoidable costs” (as defined below) are determined by the ISO to be less than the Exiting Capacity Facility’s net Energy and Ancillary Services revenues and forecasted ICAP Spot Market revenues over the twelve Capability Periods beginning with the start of the Class Year (“EVT Test Period”). The ISO shall conduct the EVT prior to posting the ICAP Spot Market Auction forecast and identifying the Examined Facilities, prior to each round of the Class Year Project Cost Allocation Process. If there are multiple Exiting Capacity Facilities associated with a Repowering Examined Facility, the ISO will perform the EVT for each Exiting Capacity Facility. A Repowering Examined Facility may be eligible for an exemption even if not all Exiting Capacity Facilities included in the Repowering Examined Facility’s Section 23.4.5.7.7.1.1 plan satisfy the EVT. A Repowering Examined Facility may be determined exempt up to the total amount of CRIS MW held by the Exiting Capacity Facilities’ included in such Repowering Examined Facility’s Section 23.4.5.7.7.1.1 plan that satisfy the

EVT. The requested CRIS MW greater than the CRIS MW determined exempt pursuant to this Section 23.4.5.7.2.2 shall be evaluated pursuant to the tests in subsections (a) and (b) of Section 23.4.5.7.2.

23.4.5.7.2.2.1 For purposes of the EVT, “avoidable costs” shall be the expenditures necessary to maintain the Exiting Capacity Facility in operable condition in accordance with Good Utility Practice for the duration of the EVT Test Period, as if the Exiting Capacity Facility was not exiting the market at the end of the EVT Test Period. Annual expenditures will be recorded as such and capital expenditures will be annualized using a capital recovery factor calculated as follows:

$$\frac{CRF = r(1+r)^n}{(1+r)^{n-1}}$$

where  $r$  is the weighted average cost of capital (WACC) used as the discount rate in the annuity calculation and  $n$  is equal to the least of: (a) the length of the maintenance cycle; (b) the life of the equipment being replaced; or (c) the greater of: (i) forty years minus the current age of the Exiting Capacity Facility, or (ii) six years. The capital recovery factor will be used to annualize expenses over the remaining useful life of the asset taking into account the cost of capital. Each capital expenditure will be multiplied by a capital recovery factor. The specific inputs and

Formatted: alpha para, Indent: Left: 2"

Formatted: Indent: Left: 3"

Formatted: Superscript

assumptions used in the EVT will be applied according to ISO Procedures. The EVT may include an inspection of the Exiting Capacity Facility.

23.4.5.7.7.2.2 The ISO shall select an independent consultant, to assist in performing the EVT (“EVT Consultant”). The ISO may accept, reject, or modify the EVT Consultant’s findings, as the ISO deems appropriate. The ISO shall provide the EVT Consultant’s findings to the Market Monitoring Unit promptly after receiving the EVT Consultant’s findings. The ISO shall seek input from the Market Monitoring Unit prior to making the determination to accept, reject or modify the EVT Consultant findings.

23.4.5.7.7.2.3 The Capacity revenue and net Energy and Ancillary Services revenue forecasts prepared by the ISO for use in the EVT under Section 23.4.5.7.7.2.2 will be based on Expected Retirements as defined in Section 23.4.5.7.2.3.1, plus each Examined Facility in 23.4.5.7.3 (I), (II), and (III), but shall exclude the requested CRIS MW of the associated project requesting a Repowering Examined Facility exemption.

23.4.5.7.7.2.4 The Exiting Capacity Facility will be tested under the EVT in each round of the Class Year Study process until the Repowering Examined Facility: (a) provides written notice to the ISO that it is withdrawing its request for a Repowering Examined Facility exemption or (b) rejects its Class Year Project Cost

Allocation and/or is removed from the Class Year Study process.  
The ISO's determination of whether the Generator or UDR project  
is exempt under this provision shall be final only if it remains a  
member of a completed Class Year, and as of the date the ISO  
issues a notice to stakeholders that the Class Year decisional  
process is complete.

**23.4.5.7.7.3 Replacement Examined Facility Treatment:** A Generator or UDR  
project that satisfies the criteria set forth in Section 23.4.5.7.7.1.1 may request  
Replacement Examined Facility treatment no later than the deadline established in  
23.4.5.7.7.1.1. or 23.4.5.7.7.1.2, as appropriate, and in accordance with the ISO  
Procedures. The ISO will evaluate such an Examined Facility for Replacement  
Examined Facility treatment if it has not received a Repowering Examined  
Facility exemption in the same round of the Class Year Study. When a Generator  
or UDR project submits a request for Replacement Examined Facility treatment,  
the ISO shall remove the Exiting Capacity Facility(ies) for the purpose of  
calculating the Energy, Ancillary Services and Capacity revenues for that  
Generator or UDR project only. The forecast for the Class Year Study will not  
change from that used when conducting the Offer Floor exemption test under  
Section 23.4.5.7.2(a) and (b).

---

The ISO shall evaluate a Replacement Examined Facility for each round  
of the Class Year Project Cost Allocation Process until it either: (a) provides  
written notice to the ISO it is withdrawing its request for Replacement Examined  
Facility treatment or (b) rejects its Class Year Project Cost Allocation and/or is

removed from the Class Year Study process. The ISO's determination of whether the Generator or UDR project is exempt under this provision shall be final only if it remains a member of a completed Class Year and as of the date the ISO issues a notice to stakeholders that the Class Year decisional process is complete.

---

If a Replacement Examined Facility has accepted its SDU Project Cost Allocation and remains a member of a completed Class Year and is determined by the ISO to be exempt under Section 23.4.5.7.2(a) or (b), with the relevant Exiting Capacity Facility(ies) removed from the Replacement Examined Facility's forecast, then the Replacement Examined Facility's CRIS MW shall be exempt from an Offer Floor.

---

The ISO shall post on its website the determination of whether the project requesting Replacement Examined Facility treatment is exempt or non-exempt from an Offer Floor as soon as the determination is final. Concurrent with the ISO's posting, the Market Monitoring Unit shall publish a report on the ISO's determinations, as further specified in Sections 30.4.6.2.11 and 30.10.4 of Attachment O to this Services Tariff.

#### **23.4.5.7.8 Competitive Entry Exemption**

##### **23.4.5.7.8.1 Eligibility**

---

23.4.5.7.8.1.1 A proposed new Generator or UDR project may request to be evaluated for a "Competitive Entry Exemption" for its CRIS MW and shall qualify for such exemption if the ISO determines that the proposed Generator or UDR project: (a) does not have, and at no time before the Generator first produces or the UDR project first transmits energy (for purposes of this Section 23.4.5.7.8,

the “Entry Date”) shall not have, a direct or indirect “non-qualifying contractual relationship,” as defined in Section 23.4.5.7.8.1.2, with a Transmission Owner, a Public Power Entity, or any other entity with a Transmission District in the NYCA or an agency or instrumentality of New York State or a political subdivision thereof, (collectively “Non-Qualifying Entry Sponsors”); or (b) is not itself, and is not an Affiliate of, a Non-Qualifying Entity Sponsor.

23.4.5.7.8.1.2 For purposes of this Section 23.4.5.7.8, a direct or indirect “non-qualifying contractual relationship” shall include but not be limited to any contract agreement, arrangement, or relationship (for the purposes of this Section 23.4.5.7.8, a “contract”) that: (a) directly relates to the siting, or construction of the Generator or UDR project that is the subject of the request for the Competitive Entry Exemption; (b) is for the energy or capacity produced by or delivered from or by the Generator or UDR project, including an agreement for rights to schedule or use a UDR; or (c) provides physical or financial support to a Generator or UDR project that the ISO, after consultation with the MMU, determines constitutes non-competitive entry.

23.4.5.7.8.1.3 A contract with a Non-Qualifying Entry Sponsor shall not constitute a “non-qualifying contractual relationship” if it is (i) an Interconnection Agreement; (ii) an agreement for the construction or use of interconnection facilities or transmission or distribution facilities, or directly connected joint use transmission or distribution facilities (including contracts required for compliance with Articles VII or X of the New York State Public Service Law or orders issued pursuant to Articles VII or X); (iii) a grant of permission by any department, agency,

instrumentality, or political subdivision of New York State to bury, lay, erect or construct wires, cables or other conductors, with the necessary poles, pipes or other fixtures in, on, over or under public property; (iv) a contract for the sale or lease of real property to or from a Non-Qualifying Entry Sponsor at or above fair market value as of the date of the agreement was executed, such value demonstrated by an independent appraisal at the time of execution prepared by an accountant or appraiser with specific experience in such valuations; (v) an easement or license to use real property; (vi) a contract, with any department, agency, instrumentality, or political subdivision of New York State providing for a payment-in-lieu of taxes (*i.e.*, a “PILOT” agreement) or industrial siting incentives, such as tax abatements or financing incentives, provided the PILOT agreement or incentives are generally available to industrial entities; (vii) contracts that provide for payments to prevent or delay the mothballing or retirement of a Generator or UDR project to address a reliability need recognized by the NYISO, other than the Generator or UDR project seeking the exemption, as long as the value of such reliability payments will not increase because of the new Generator or UDR project; (viii) a service agreement entered into under a tariff accepted by a regulatory body with jurisdiction over that service at a regulated rate for gas (excluding gas transportation agreements subject to subsection (ix), below), electric **Station Power**, or steam service, excluding an agreement for a rate that is a negotiated rate pursuant to any such regulated gas, electric, or steam tariff; (ix) gas transportation agreements and pipeline capacity agreements provided that the contract terms were binding at least three years prior

Formatted: Not Highlight

Formatted: Not Highlight

Formatted: Highlight

Formatted: Not Highlight

to the submission of the Competitive Entry Exemption request and have not been modified in the three years prior to each certification pursuant to Section 23.4.5.7.8.2; (xi) short term financial hedges of less than one year in duration with a Non-Qualifying Entry Sponsor, as long as there is no provision for renewal or extension in the financial hedge. Notwithstanding the foregoing, a contract with a Non-Qualifying Entry Sponsor that includes a provisions that is a non-qualifying contractual relationship will render the entire contract described in (i) through (x) of this Section a non-qualifying contractual relationship.

Formatted: Not Highlight

Formatted: Not Highlight

23.4.5.7.8.1.4 In addition, a All contracts described in 23.4.5.7.8.1.2 and not otherwise than those excluded pursuant to described in sections (i) – (x) above shall be deemed not to be non-qualifying contractual relationships to the extent that their total value, defined as the greater of the total payment to the Generator or UDR project or the fair market value of the contract, collectively, does not exceed five percent of the total levelized cost of all capital and fixed operation and maintenance costs of the proposed new Generator or UDR project, as of the date of the Competitive Entry Exemption request and through the date of each certification pursuant to Section 23.4.5.7.8.2 until the date Generator's or UDR project's Entry Date .

Formatted: Highlight

Formatted: Highlight

Formatted: Highlight

Formatted: Not Highlight

23.4.5.7.8.1.45 The ISO shall determine whether a Generator or UDR project is eligible for a Competitive Entry Exemption based on its review of the certifications required by Section 23.4.5.7.8.2, below, and any other supporting data requested by the ISO. When evaluating eligibility for a Competitive Entry Exemption the ISO shall consult with the Market Monitoring Unit. The responsibilities of the

Formatted: Highlight

Market Monitoring Unit that are addressed in this section of the Mitigation Measures are also addressed in Section 30.4.6.2.11 of Attachment O.

#### 23.4.5.7.8.2 Certifications

Formatted: Font color: Red

##### 23.4.5.7.8.2.1 A Generator or UDR Project requesting a Competitive Entry Exemption

shall submit to the ISO in accordance with ISO Procedures a certification from a duly authorized officer that such Generator or UDR project, each investor financing or sponsoring the development of the project, and each holder of a debt or equity interest in such Generator or UDR project: (a) has not entered, and at no time before the Generator first synchronizes to the grid and produces or UDR project first transmits energy shall not, enter, either directly or indirectly a “non-qualifying contractual relationship,” as defined in Section 23.4.5.7.8.1.2, with a Non-Qualifying Entry Sponsor; (b) is not itself, and is not an Affiliate of a Non-Qualifying Entry Sponsor or a Large LSE; (c) acknowledges and consents that it would be subject to civil penalties under Section 316A of the Federal Power Act (or its successor) if it were to submit false, misleading, or inaccurate information to the ISO, and (d) shall provide any information or cooperation requested by the ISO.

Formatted: Highlight

Formatted: Highlight

Formatted: Font color: Red

Formatted: Highlight

Formatted: Highlight

23.4.5.7.8.2.2 A duly authorized officer of the Generator or UDR project’s parent company, and each parent thereof, shall also submit a certification acknowledging that such parent or Affiliate shall provide any information or cooperation requested by the ISO.

23.4.5.7.8.2.3 The certifying officers must have knowledge of the facts and circumstances supporting the request for a Generator's or UDR project's Competitive Entry Exemption.

23.4.5.7.8.2.4 Such certifications shall be submitted concurrent with the request for a Competitive Entry Exemption and each time the ISO requests a resubmittal of a certification, until the Generator's or UDR project's Entry Date.

23.4.5.7.8.2.5 Failure to provide, without prior notification, information or cooperation consistent with any certification shall be considered a false, misleading, or inaccurate submission for purposes of Section 23.4.5.7.8.5.

23.4.5.7.8.2.6 Where a notification is provided to the ISO, within 2 business days of receipt of a request from the ISO for information or cooperation, that the information or cooperation requested will not be provided, such refusal will not be considered a false, misleading, or inaccurate submission for purposes of Section 23.4.5.7.8.5 as long as the information is provided by the earlier of a mutually agreed upon deadline or thirty (30) calendar days. A refusal to provide information or any other failure to provide information by that deadline will make the Generator or UDR project requesting a Competitive Entry Exemption ineligible for such exemption, and such Generator or UDR project shall be subject to the Mitigation Net CONE Offer Floor.

**23.4.5.7.8.3 Timing for Requests, Required Submittals, and Withdrawals**

23.4.5.7.8.3.1 The certification required by Section 23.4.5.7.8.2 shall be submitted concurrent with a request for a Competitive Entry Exemption. The ISO may request additional information or certifications at any time prior to a

Generator's or UDR project's Entry Date. A Generator or UDR project that is granted an exemption pursuant to this Section 23.4.5.7.8, shall be required to resubmit the Section 23.4.5.7.8.2 certifications, updated as appropriate, upon its Entry Date.

23.4.5.7.8.3.2 Requests for Competitive Entry Exemptions for Generators or

UDR projects in Class Years subsequent to Class Year 2012 must be received by the ISO no later than the Class Year Start Date, as defined in OATT Attachment S. Requests for Competitive Entry Exemptions for Generators or UDR projects in Class Year 2012 must be received by the ISO no later than thirty (30) calendar days after the ISO files tariff revisions with the Commission to include the Competitive Entry Exemption in the Services Tariff. The ISO shall determine whether a Generator or UDR project is exempt, subject to any required further submissions of information, or not exempt under the Competitive Entry Exemption, prior to such Generator's or UDR project's Project Cost Allocation, as defined in OATT Attachment S.

23.4.5.7.8.3.3 A Generator or UDR project that submits a request for a

Competitive Entry Exemption, including the required certification, responses to information requests, and resubmittal, but enters into a "non-qualifying contractual relationship" may withdraw such request, provided it notifies the ISO that it has entered into such "non-qualifying contractual relationship" within 2 business days of doing so. A Generator or UDR project seeking to withdraw its request pursuant to this section

Formatted: Highlight

Formatted: Highlight

23.4.5.7.8.3 shall be subject to the Mitigation Net CONE Offer Floor,  
but will not be subject to the provisions of Section 23.4.5.7.8.5.

#### **23.4.5.7.8.4 Notifications**

23.4.5.7.8.4.1 The ISO shall post on its website a list of Generator or UDR  
projects requesting a Competitive Entry Exemption promptly after  
receiving a request, and shall update the list as necessary. The ISO shall  
also post on its website whether a request for a Competitive Entry  
Exemption was denied or granted as soon as its determination is final.

23.4.5.7.8.4.2 Concurrent with the ISO's posting of its final determination, the  
Market Monitoring Unit shall publish a report on the ISO's determination  
in accordance with Sections 30.4.6.2.11 and 30.10.4 of Attachment O to  
this Services Tariff.

#### **23.4.5.7.8.5 Penalties and Violations**

23.4.5.7.8.5.1 The submission of false, misleading, or inaccurate information, or  
the failure to submit requested information, except to the extent permitted  
in Section 23.4.5.7.8.2.6 in connection with a request for a Competitive  
Entry Exemption shall constitute a violation of this Tariff. Such violation  
shall be reported, by the ISO, to the Market Monitoring Unit and to the  
Commission's Office of Enforcement (or any successor to its  
responsibilities). The entity requesting a Competitive Entry Exemption  
must acknowledge and consent in the certification required by Section  
23.4.5.7.8.2 that it would be subject to civil penalties under Section 316A  
of the Federal Power Act (or its successor) if it were to submit false,

Formatted: Highlight

Formatted: Highlight

misleading, or inaccurate information to the ISO. That entity must also obtain verified written statements from each entity required to make certifications under Section 23.4.5.7.8.2.1 confirming that each entity acknowledges and consents that it would be subject to civil penalties under Section 316A of the Federal Power Act (or its successor) if it were to submit false, misleading, or inaccurate information to the ISO in connection with a request for a Competitive Entry Exemption.

Formatted: Highlight

Formatted: Font: 12 pt, Highlight

23.4.5.7.8.5.2 Where the ISO reasonably believes that a request for a Competitive Entry Exemption was granted based on false, misleading, or inaccurate information, the ISO shall notify the Generator or UDR project that its Competitive Entry Exemption may be revoked. To the extent practicable, the ISO shall provide the Generator or UDR project an opportunity to explain any statement, information, or action prior to the ISO submitting a report to the Market Monitoring Unit and the Commission's Office of Enforcement (or any successor to its responsibilities).

23.4.5.7.8.5.3 An Installed Capacity Supplier that had or has registered a Generator or UDR project with the ISO that is determined by the ISO or the Commission to have submitted false, misleading, or inaccurate information, or that has failed to submit requested information without prior notification shall:

23.4.5.7.8.5.3.1 have its Competitive Entry Exemption revoked

unless the ISO determines that it would have granted the Competitive Entry Exemption if complete and accurate

Formatted: Font: Not Italic, Highlight

information had been submitted. Upon revocation, the Generator or UDR project shall be subject to an Offer Floor set at the Mitigation Net CONE Offer Floor as of the date of the revocation.

Formatted: Font: Italic

23.4.5.7.8.5.3.2 be assessed a penalty equal to the absolute value of

product of (a) 1.5 and (b) the MW of UCAP certified by the ICAP supplier for the Generator or for transmission using a UDR project or offered in an ICAP Spot Market Auction and (c) the slope of the ICAP Demand Curve for the smallest Locality that contains the Load Zone in which Generator or UDR project is electrically located, for each ICAP Spot Market Auction associated with the

Formatted: Not Highlight

month in which it offered or certified UCAP and (d) the MW of

Formatted: Highlight

UCAP certified by the ICAP supplier for the Generator or for

Formatted: Highlight

transmission using a UDR project or offered in an ICAP Spot Market Auction. The ISO shall consult with the Market Monitoring Unit regarding the imposition of a penalty pursuant to this section.

The ISO shall not impose a penalty under this section if it

Formatted: Highlight

determines that the Competitive Entry Exemption would have been

Formatted: Font: Not Italic, Highlight

granted if complete and accurate information had been submitted.

Formatted: Highlight

23.4.5.7.8.5.3.3 be subject to additional penalties determined to be appropriate by the Commission. The ISO, after consultation with the Market Monitoring Unit, may propose additional penalties to be submitted to the Commission.

23.4.5.7.8.5.4 The monies collected by the ISO shall be refunded to any Installed Capacity Supplier that, at time the monies are collected by the ISO, is an Installed Capacity Supplier in the same Mitigated Capacity Zone(s) as the Generator or UDR facility during the relevant time period. The monies shall be paid proportionally to such Installed Capacity Supplier's sold or certified MW for each month in each ICAP Spot Market Auction in which it sold or certified MW.

23.4.5.7.69 (a) An In-City Installed Capacity Supplier that is not a Special Case

Resource shall be exempt from an Offer Floor if it was an existing facility on or before March 7, 2008. (b) A Generator or UDR project that was an existing facility on or before June 29, 2012, which: (i) is in a Mitigated Capacity Zone except New York City, and (ii) was grandfathered from the deliverability requirement at a certain quantity of MW of CRIS pursuant to Section 25.9.3.1 of OATT Attachment S ("Deliverability Grandfathering Process") shall be exempt from an Offer Floor for the MW quantity of CRIS that was provided through the Deliverability Grandfathering Process plus an additional 2 MW obtained through Section 30.3.2.6 of Attachment X to the OATT. If the Generator or UDR project subsequently received CRIS above the quantity established through the Deliverability Grandfathering Process, this exemption shall not apply to any such increase above the 2 MW allowed in Section 30.3.2.6 of Attachment X to the OATT.

23.4.5.7.710 For any Mitigated Capacity Zone except New York City:

(I) Any existing or proposed Generator or UDR project that has the characteristics specified in this Section 23.4.5.7. ~~710~~ (I) shall be exempt from an Offer Floor with respect to the MW of CRIS that it received at the time, or for which it satisfied the specific CRIS transfer requirements stated in this Section. To be eligible for an exemption under this Section: (a) the existing or proposed Generator or UDR project's location must be included in the ISO's March 31 Filing in the ICAP Demand Curve Reset Filing Year in which a Mitigated Capacity Zone is first applied to such location; (b) prior to that March 31 Filing the existing or proposed Generator or UDR project must have both: (i) Commenced Construction and (ii) either (1) received the MW of CRIS in a Class Year that was completed or (2) submitted to the ISO a request for an Interconnection Agreement that specifically states that the Generator or UDR project will be requesting or has requested a transfer of a specific MW quantity of CRIS at the same location in accordance with Section 25.9.4 of OATT Attachment S (provided that the transfer is ultimately approved by the ISO and consummated); and (c) the existing or proposed Generator or UDR project must demonstrate to the ISO no later than the deadline established by the ISO that it satisfies the requirements of (b) (i) and (ii) above; and

(II) An existing or proposed Generator or UDR project that is not subject to a deliverability requirement (and therefore, is not in a Class Year and does not receive CRIS MW) shall be exempt from an Offer Floor if it meets the following requirements prior to the ISO's March 31 Filing in an ICAP Demand Curve Reset Filing Year in which a Mitigated Capacity Zone is first applied to such location:

(a) has Commenced Construction, (b) has an effective Small Generator Interconnection Agreement pursuant to OATT [Section 32 \(OATT Attachment Z\)](#), and (c) provides specific written notification to the ISO that it meets requirements (a) and (b) of this subsection 23.4.5.7.~~710~~(II) no later than the deadline established by the ISO.

The ISO shall consult with the Market Monitoring Unit prior to determining whether an existing or proposed Generator or UDR project has Commenced Construction. Prior to the ISO making its determination, the Market Monitoring Unit shall provide the ISO a written opinion and recommendation regarding whether an existing or proposed Generator or UDR project Commenced Construction. The responsibilities of the Market Monitoring Unit that are addressed in this section of the Mitigation Measures are also addressed in Section 30.4.6.2.11 of Attachment O. The ISO shall only make a determination pursuant to this Section for an existing or proposed Generator or UDR project for the Mitigated Capacity Zone's first application to the location of the project. The Market Monitoring Unit shall also provide a public report on its assessment of an ISO determination that an existing or proposed Generator or UDR project is exempt from an Offer Floor pursuant to this Section 23.4.5.7.~~710~~.

23.4.5.7.~~118~~ The ISO shall post on its website the identity of the project in a Mitigated Capacity Zone and the determination of either exempt or non-exempt as soon as the determination is final. Concurrent with the ISO's posting, the Market Monitoring Unit shall publish a report on the ISO's determinations, as further

specified in Sections 30.4.6.2.11 and 30.10.4 of Attachment O to this Services Tariff.

23.4.5.7. ~~129~~ Mitigated UCAP that is subject to an Offer Floor shall remain subject to the requirements of Section 23.4.5.4, and if the Offer Floor is higher than the applicable offer cap shall submit offers not lower than the applicable Offer Floor.

## **23.4.6 Virtual Bidding Measures**

### **23.4.6.1 Purpose**

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

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

### **23.4.6.2 Implementation**

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

(1) The ISO shall compute a rolling average of the hourly deviation of real-time zonal LBMPs from Day-Ahead zonal LBMPs. The hourly deviation shall be

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

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

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

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

23.4.6.3.1 If the ISO determines that the conditions specified in Section 23.4.6.2 exist, the ISO may limit the hourly quantities of Virtual Bids for supply or load that may be offered in a zone by a Market Participant whose Virtual Bidding practices have been determined to contribute to an unwarranted divergence of LBMPs between the Day-Ahead and Real-Time Markets. Any such limitation

shall be set at such level that, and shall remain in place for such period as, in the best judgment of the ISO, would be sufficient to prevent any unwarranted divergence between Day-Ahead and Real-Time LBMPs.

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

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

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

### **23.4.7 Increasing Bids in Real-Time for Day-Ahead Scheduled Incremental Energy**

#### **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 appropriated, for a portion of the Capacity of one or more of its Generators that has been scheduled in the Day-Ahead Market.

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.

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

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%
- (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 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.

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.

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.

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.