ATTACHMENT H

ISO Market Power Mitigation Measures

1. PURPOSE AND OBJECTIVES

a) These ISO market power mitigation measures ("Mitigation Measures") are intended to provide the means for the ISO to mitigate the market effects of any conduct that would substantially distort competitive outcomes in the ISO Administered Markets, while avoiding unnecessary interference with competitive price signals. Consistent with the provisions of the ISO's market monitoring plan *("*Plan*")*, these Mitigation Measures are intended to minimize interference with open and competitive markets, and thus to permit, to the maximum extent practicable, price levels to be determined by competitive forces under the prevailing market conditions. To that end, the Mitigation Measures authorize the mitigation only of specific conduct that exceeds well-defined thresholds specified below.

b) In addition, the ISO shall monitor the markets it administers for conduct that it determines constitutes an abuse of market power but does not trigger the thresholds specified below for the imposition of mitigation measures by the ISO. If the ISO identifies any such conduct, and in particular conduct exceeding the thresholds for presumptive market effects specified in Section 3.2.3 below, it shall make a filing under § 205 of the Federal Power Act, 16 U.S.C. § 824d (1999) ("§ 205") with the Commission requesting authorization to apply appropriate mitigation measures. Any such filing shall identify the particular conduct the ISO believes warrants mitigation, shall propose a specific mitigation measure for the conduct, and shall set forth the ISO's justification for imposing that mitigation measure.

2. CONDUCT WARRANTING MITIGATION

2.1 Definitions

The following definitions are applicable to this Attachment H:

"Constrained Area" shall mean: (a) the In-City area, including any areas subject to transmission constraints within the In-City area that give rise to significant locational market power; and (b) any other area in the New York Control Area that has been identified by the ISO as subject to transmission constraints that give rise to significant locational market power, and that has been approved by the Commission for designation as a Constrained Area.

"Electric Facility" shall mean a Generator or an electric transmission facility.

"Market Party" shall mean any person or entity that is a buyer or a seller in, or that makes bids or offers to buy or sell in, or that schedules or seeks to schedule Transactions with the ISO in or affecting any of the ISO Administered Markets, or any combination of the foregoing.

"New Capacity" shall mean a new Generator, a substantial addition to the capacity of an existing Generator, or the reactivation of all or a portion of a Generator that has been out of service for five years or more that commences commercial service after the effective date of this definition.

2.2 Conduct Subject to Mitigation

Mitigation Measures may be applied: (i) to the bidding, scheduling or operation of an "Electric Facility"; or (ii) as specified in § 2.4(b).

2.3 Conditions for the Imposition of Mitigation Measures

a) To achieve the foregoing purpose and objectives, Mitigation Measures should only be imposed to remedy conduct that would substantially distort or impair the competitiveness of any of the ISO Administered Markets. Accordingly, the ISO shall seek to impose Mitigation Measures only to remedy conduct that:

(1) is significantly inconsistent with competitive conduct; and

(2) would result in a material change in one or more prices in an ISO Administered Market or production cost guarantee payments ("guarantee payments") to a Market Party.

b) In general, the ISO shall consider a Market Party's conduct to be inconsistent with competitive conduct if the conduct would not be in the economic interest of the Market Party in the absence of market power. The categories of conduct that are inconsistent with competitive conduct include, but may not be limited to, the three categories of conduct specified in Section 2.4 below.

2.4 Categories of Conduct that May Warrant Mitigation

a) The following categories of conduct, whether by a single firm or by multiple firms acting in concert, may cause a material effect on prices or guarantee payments in an ISO Administered Market if exercised from a position of market power. Accordingly, the ISO shall monitor the ISO Administered Markets for the following categories of conduct, and shall impose appropriate Mitigation Measures if such conduct is detected and the other applicable conditions for the imposition of Mitigation Measures are met:

(1) *Physical withholding of an Electric Facility*, that is, not offering to sell or schedule the output of or services provided by an Electric Facility capable of serving an ISO Administered Market. Such withholding may include, but not be limited to, (i) falsely declaring that an Electric Facility has been forced out of service or otherwise become unavailable, (ii) refusing to

offer bids or schedules for an Electric Facility, or marking an unjustifiable change to one or more operating parameters of a Generator that reduces its ability to provide Energy or Ancillary Services, when it would be in the economic interest, absent market power, of the withholding entity to do so, or (iii) operating a Generator in real-time to produce an output level that is less than the ISO's dispatch instruction. For purposes of this section and section 4.3.2, the term "unjustifiable change" shall mean a change in an Electric Facility's operating parameters that is: (a) not attributable to the Electric Facility's verifiable physical operating requirements, and (b) is not a rational competitive response to economic factors other than market power.

(2) *Economic withholding of an Electric Facility*, that is, submitting bids for an Electric Facility that are unjustifiably high so that (i) the Electric Facility is not or will not be dispatched or scheduled, or (ii) the bids will set a market clearing price.

(3) *Uneconomic production from an Electric Facility*, that is, increasing the output of an Electric Facility to levels that would otherwise be uneconomic in order to cause, and obtain benefits from, a transmission constraint.

b) Mitigation Measures may also be imposed to mitigate the market effects of a rule, standard, procedure or design feature of an ISO Administered Market that allows a Market Party to manipulate market prices or otherwise impair the efficient operation of that market, pending the revision of such rule, standard, procedure or design feature to preclude such manipulation of prices or impairment of efficiency.

c) Taking advantage of opportunities to sell at a higher price or buy at a lower price in a market other than an ISO Administered Market shall not be deemed a form of withholding or otherwise inconsistent with competitive conduct.

d) The ISO shall monitor the ISO Administered Markets for other categories of conduct, whether by a single firm or by multiple firms acting in concert, that have material effects on prices or guarantee payments in an ISO Administered Market. The ISO shall: (i) seek to amend the foregoing list as may be appropriate, in accordance with the procedures and requirements for amending the Plan, to include any such conduct that would substantially distort or impair the competitiveness of any of the ISO Administered Markets; and (ii) seek such other authorization to mitigate the effects of such conduct from the FERC as may be appropriate.

3. CRITERIA FOR IMPOSING MITIGATION MEASURES

3.1 Identification of Conduct Inconsistent with Competition

Conduct that may potentially warrant the imposition of a mitigation measure includes the categories described in Section 2.4 above, which shall be detected through the use of indices and screens developed, adopted and made available as specified in the Plan. The thresholds listed in sections 3.1.1 to 3.1.3 below shall be used to identify substantial departures from competitive conduct indicative of an absence of workable competition.

3.1.1 Thresholds for Identifying Physical Withholding

a) Except as specified in subsection (d) below, the following initial thresholds will be employed by the ISO to identify physical withholding of a Generator:

(1) Withholding that exceeds the lower of 10 percent or 100 MW of a Generator's capability, or the lower of 5 percent or 200 MW of a bidding entity's total capability; or

(2) Operating a Generator in real-time at an output level that is less than 90 percent of the ISO's dispatch level for the Generator (i.e., basepoint);

b) The amounts of generating capacity considered withheld for purposes of applying the foregoing thresholds shall include unjustified deratings, and the portions of a Generator's output that is not bid or subject to economic withholding. The amounts deemed withheld shall not include generating output that is subject to a forced outage or capacity that is out of service for maintenance in accordance with an ISO maintenance schedule, subject to verification by the ISO as may be appropriate that an outage was forced.

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

d) Minimum quantity thresholds shall not be applicable to the identification of physical withholding by an Electric Facility in a Constrained Area.

3.1.2. Thresholds for Identifying Economic Withholding

a) The following thresholds shall be employed by the ISO to identify economic withholding that may warrant the mitigation of a Generator in an area that is not a Constrained Area, or in a Constrained Area during periods not subject to transmission constraints affecting the Constrained Area, and shall be determined with respect to a reference level determined as specified in Section 3.1.4:

(1) Energy and Minimum Generation Bids: A 300 percent increase or an increase of $100 per MWh, whichever is lower; provided, however, that Energy or Minimum Generation Bids below $25 per MWh shall be deemed not to constitute economic withholding.

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

(3) Start-up costs Bids: A 200 percent increase.

(4) Time-based bid parameters: An increase of 3 hours, or an increase of 6 hours in total for multiple time-based bid parameters. Time-based bid parameters include, but are not limited to, start-up times, minimum run times and minimum down times.

(5) Bid parameters expressed in units other than time or dollars: A 100 percent increase for parameters that are minimum values, or a 50 percent decrease for parameters that are maximum values (including but not limited to ramp rates and maximum stops).

b) The following thresholds shall be employed by the ISO to identify economic withholding that may warrant the mitigation of a Generator in an area that is a Constrained Area, and shall be determined with respect to a reference level determined as specified in Section 3.1.4:

(1) For Energy and Minimum Generation Bids for the Real-Time Market: for intervals in which an interface into the area in which a Generator is located has a Shadow Price greater than zero, the lower of the thresholds specified for areas that are not Constrained Areas or a threshold determined in accordance with the following formula:

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

where:

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

Constrained Hours = the total number of hours over the prior 12 months in which the real-time Shadow Price has been greater than zero in any interval on any Interface or facility leading into the Constrained Area in which the Generator is located. For the In-City area, "Constrained Hours" shall also include the number of hours that a Storm Watch is in effect. Determination of the number of Constrained Hours shall be subject to adjustment by the ISO to account for significant changes in system conditions.

(2) For so long as the In-City area is a Constrained Area, the thresholds specified in subsection (1) shall also apply: (a) in intervals in which the transmission capacity serving the In-City area is subject to Storm Watch limitations; (b) to an In-City Generator that is operating as Out-of-Merit Generation; and (c) to a Generator dispatched as a result of a Supplemental Resource Evaluation.

(3) For Energy and Minimum Generation Bids for the Day-Ahead Market: for all Constrained Hours for the Generator being bid, a threshold determined in accordance with the formula specified in subsection (1) above, but where Average Price shall mean the average price in the Day-Ahead Market in the Constrained Area over the past twelve months, adjusted for fuel price changes, and where Constrained Hours shall mean the total number of hours over the prior 12 months in which the Shadow Price in the Day-Ahead Market has been greater than zero on any Interface or facility leading into the Constrained Area in which the Generator is located. Determination of the number of Constrained Hours shall be subject to adjustment by the ISO to account for significant changes in system conditions.

(4) For Start-up costs Bids; a 50% increase.

(5) The thresholds listed in Sections 3.1.2(a)(2) and 3.1.2(a)(4) through (a)(5).

3.1.3. Thresholds for Identifying Uneconomic Production

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

(1) Energy scheduled at an LBMP that is less than 20 percent of the applicable reference level and causes or contributes to transmission congestion; or

(2) Real-time output from a Generator that exceeds 110 percent of the ISO's real-time dispatch instruction (i.e., basepoint), and causes or contributes to transmission congestion.

3.1.4. Reference Levels

a) Except as provided in Sections 3.1(c) - (e) below, a reference level for each component of a Generator's Bid shall be calculated on the basis of the following methods, listed in the order of preference subject to the existence of sufficient data:

(1) The lower of the mean or the median of a Generator's accepted Bids or Bid components in competitive periods over the previous 90 days for similar hours or load levels, adjusted for changes in fuel prices;

(2) The mean of the LBMP at the Generator's location during the lowest-priced 25 percent of the hours that the Generator was dispatched over the previous 90 days for similar hours or Load levels, adjusted for changes in fuel prices; or

(3) A level determined in consultation with the Market Party submitting the Bid or Bids at issue, provided such consultation has occurred prior to the occurrence of the conduct being examined by the ISO, and provided the Market Party has provided data on a Generator's operating costs in accordance with specifications provided by the ISO. The reference level for a Generator's Energy Bid is intended to reflect the Generator's marginal costs. The ISO's determination of a Generator's marginal costs shall include an assessment of the Generator's incremental operating costs in accordance with the

following formula, and such other factors or adjustments as the ISO shall reasonably determine to be appropriate based on such data as may be furnished by the Market Party or otherwise available to the ISO:

((heat rate * fuel costs) + (emissions rate * emissions allowance price) + other variable operating and maintenance costs)).

b) If sufficient data do not exist to calculate a reference level on the basis of either of the first two methods, or if the ISO determines that none of the three methods are applicable to a particular type of Bid component, or an attempt to determine a reference level in consultation with a Market Party has not been successful, the ISO shall determine a reference level on the basis of:

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

(2) an appropriate average of competitive bids of one or more similar Electric Facilities.

c) Notwithstanding the foregoing provisions, the reference level for Energy Bids for New Capacity for the three year period following commencement of its commercial operation shall be the higher of (i) the amount determined in accordance with the provision of § 3.1.4(a) or (b), or (ii) the average of the peak LBMPs over the twelve months prior to the commencement of operation of the New Capacity in the zone in which the New Capacity is located during hours when Generators with operating characteristics similar to the New Capacity would be expected to run. For entities owning or otherwise controlling the output of capacity in the New York Control Area other than New Capacity, the provisions of this paragraph shall apply only to net additions of capacity during the applicable three year period.

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

(1) If sufficient bidding histories under the applicable bidding rules for a given Generator's start-up costs Bids have been accumulated, the lower of the mean or the median of the Generator's accepted start-up costs Bids in competitive periods over the previous 90 days for similar start times, adjusted for changes in fuel prices;

(2) A level determined in consultation with the Market Party submitting the Bid or Bids at issue and intended to reflect the costs incurred by the bidding Generator to achieve its specified minimum operating level from an offline state, including, where appropriate, costs incurred to meet minimum run time and minimum downtime requirements, provided such consultation has occurred prior to the occurrence of the conduct being examined by the ISO, and provided the Market Party has provided data on a Generator's operating costs in accordance with specifications provided by the ISO; or

(3) The methods specified in Section 3.1.4(b).

e) Notwithstanding the foregoing provisions, the reference level for 10-Minute Non-Synchronized reserves shall be the lower of (1) the amount determined in accordance with the provisions of § 3.1.4(a)(1), or (ii) $2.52.

3.2. Material Price Effects or Changes in Guarantee Payments

3.2.1. Market Impact Thresholds

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

(1) an increase of 200 percent of $100 per MWh, whichever is lower, in the hourly Day-Ahead or Real-Time Energy LBMP at any location, or of any other price in an ISO Administered Market; or

(2) an increase of 200 percent, or 50 percent for Generators in a Constrained Area in guarantee payments to a Market Party for a day; or

(3) for a Constrained Area Generator subject to either a Real-Time Market or Day-Ahead Market conduct threshold, as specified above in § § 3.1.2(b)(1) or 3.1.2(b)(3): for all Constrained Hours (as defined in those subsections) for the unit being bid, a threshold determined in accordance with the formula specified in § 3.1.2(b)(1) or (3) respectively above.

3.2.2. Price Impact Analysis

a) When it has the capability to do so, the ISO's Market Monitoring Unit, in consultation with the Market Advisor, shall determine the effect on prices or guarantee payments of questioned conduct through the use of sensitivity analyses performed using the ISO's SCUC, RTC and RTD computer models, and such other computer modeling or analytic methods as the Market Monitoring Unit or the Market Advisor shall deem appropriate.

b) Pending development of the capability to use automated market models, the Market Monitoring Unit, in consultation with the Market Advisor, shall determine the effect on prices or guarantee payments of questioned conduct using the best available data and such models and methods as they shall deem appropriate.

c) The ISO shall implement automated procedures within the SCUC, and within RTC for Constrained Areas, and may implement automated procedures for areas that are not Constrained Areas in RTC for Generators meeting the requirements of Section 3.2.2(d). Such automated procedures will: (i) determine whether any Day-Ahead or Real-Time Energy Bids, including start-up costs Bids and Minimum Generation Bids but excluding Ancillary Services Bids, that have not been adequately justified to the Market Monitoring Unit and the Market Advisor exceed the thresholds for economic withholding specified in Section 3.1.2; and if so, (ii) determine whether such bids would cause material price effects or changes in guarantee payments as specified in Section 3.2.1.

d) The ISO may implement automated mitigation procedures in RTC for a Generator that is not in a Constrained Area if a bid has been submitted for that Generator that (i) exceeds the applicable threshold for economic withholding specified in Section 3.1.2 and (ii) results in a market impact that exceeds the applicable threshold specified in Section 3.2.1 and (iii) the ISO, in consultation with the Market Advisor, determines that the bid is inconsistent with competitive conduct. Automated mitigation procedures may be used for a Generator that is not in a Constrained Area for a period not longer than six months from the submission of such a bid.

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

3.2.3. Section 205 Filings

In addition, the ISO shall make a filing under §205 with the Commission seeking authorization to apply an appropriate mitigation measure to conduct that departs significantly from the conduct that would be expected under competitive market conditions but does not rise to the thresholds specified in sections 3.1.1 through 3.1.3 above if that conduct has a significant effect on market prices or guarantee payments as specified below, unless the ISO determines, from information provided by the Market Party or Parties that would be subject to mitigation or other information available to the ISO that the conduct and associated price or guarantee payments are attributable to legitimate competitive market forces or incentives. For purposes of this section, conduct shall be deemed to have an effect on market prices or guarantee payments that is significant if it exceeds one of the following thresholds:

(1) an increase of 100 percent in the hourly day-ahead or real-time energy LBMP at any location, or of any other price in an ISO Administered Market; or

(2) an increase of 100 percent in guarantee payments to a Market Party for a day.

3.3 Consultation with a Market Party

If through the application of an appropriate index or screen or other monitoring of market conditions, conduct is identified that (i) exceeds an applicable threshold, and (ii) has a material effect, as specified above, on one or more prices or guarantee payments in an ISO Administered Market, the Market Monitoring Unit shall, as and to the extent specified in the Plan, contact the Market Party engaging in the identified conduct to request an explanation of the conduct. If a Market Party anticipates submitting bids in a market administered by the ISO that will exceed the thresholds specified in Section 3.1 above for

identifying conduct inconsistent with competition, the Market Party may contact the ISO to provide an explanation of any legitimate basis for any such changes in the Market Party's bids. If a Market Party's explanation of the reasons for its bidding indicates to the satisfaction of the NYISO*ISO*, in consultation with the Market Advisor, that the questioned conduct is consistent with competitive behavior, no further action will be taken. Upon request, the ISO shall also consult with a Market Party with respect to the information and analysis used to determine reference levels under § 3.1.4 for that Market Party. If cost data or other information submitted by a Market Party indicates to the satisfaction of the ISO, in consultation with the Market Advisor, that the reference levels for that Market Party should be changed, revised reference levels shall be determined, communicated to the Market Party, and implemented, as soon as practicable.

4. MITIGATION MEASURES

4.1. Purpose

If conduct is detected that meets the criteria specified in Section 3, the appropriate mitigation measure described in this Section shall be applied by the ISO. The conduct specified in Sections 3.1.1 to 3.1.3 shall be remedied by the prospective application of a default bid measure as described in Section 4.2. If a bidding entity engages 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 4.3.

4.2. Default Bid

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.

4.2.2. Implementation

a) If the criteria contained in Section 3 are met, the ISO may substitute a default bid for a bid submitted for an Electric Facility. The default bid shall establish a maximum or minimum value for one or more components of the submitted bid, equal to a reference level for that component determined as specified in Section 3.1.4.

b) 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.

c) If an Electric Facility is mitigated to a default bid other than a default bid determined as specified in §3.1.4, the Electric Facility shall receive an additional payment for each interval in which such mitigation occurs to the product of: (i) the number of MW per interval scheduled or dispatched to which the incorrect default bid was applied, and (ii) the difference between (a) the lesser of the applicable unmitigated bid and a default bid determined in accordance with § 3.1.4, and (b) the applicable LBMP or other relevant market price in each such interval.

d) The ISO shall not use a default bid to determine revised market clearing prices for periods prior to the imposition of the default bid, except as may be specifically authorized by the Commission.

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

(1) Automated mitigation procedures shall not be applied to hydroelectric resources or External Generators. In addition, except as specified below the following shall not be mitigated on an automated basis: (i) bids by a Market Party or its Affiliates that together have bidding control over 50 MW or less of capacity; or (ii) bids by a Market Party or its Affiliates that together have bidding control over 50 MW or more of capacity if the bids by such entities that meet the applicable conduct test for mitigation are for an amount of capacity that totals 50 MW or less. The foregoing exemptions shall be reduced or discontinued for any Market Party or its Affiliates determined by the ISO, after consulting with the bidding entity as specified in Section 3.3, to be submitting bids that constitute economic withholding that has a significant effect on prices or guarantee payments. The foregoing exemptions shall not apply to mitigation imposed pursuant to 3.1.2(b) and 3.2.1(3) of this Attachment H.

(2) 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.

(3) Automated mitigation measures 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.

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

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

(6) The role of automated mitigation measures in the determination of market clearing prices are described in Section I.A.I.e of Attachment B of the ISO Services Tariff and Section I.A.I.e of the ISO OATT.

f) 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.

g) 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.

4.3. Sanctions

4.3.1. Types of Sanctions

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

4.3.2. Imposition

The ISO shall impose financial penalties as provided in this section 4.3, if the ISO determines in accordance with the thresholds and other standards specified in this Addendum A 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 has failed to operate a Generator in conformance with ISO 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 4.4 below.

4.3.3. Base Penalty Amount

a) Financial penalties shall be determined by the product of the Base Penalty Amount, as specified below, times the appropriate multiplier specified in Section 4.3.4:

MW meeting the standards for mitigation during Mitigated Hours * Penalty LBMP.

b) 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.

c) For purposes of determining a Base Penalty Amount, the term "Penalty LBMP" shall mean: (i) for a seller, the LBMP at the generator bus of the withheld resource; and (ii) for a Load Serving Entity, its zonal LBMP.

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

4.3.4. Multipliers

The Base Penalty Amount specified in Section 4.3.3 shall be subject to the following multipliers:

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

b) 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),

c) 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),

d) 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).

4.3.5. Dispute Resolution

a) The exclusive means for the resolution of disputes arising from or relating to the imposition of a sanction under this Section 4.3 shall be the dispute resolution provisions of the Plan and this Attachment H. 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.

b) 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 the amount of any unpaid penalty from the date of the infraction giving rise to the penalty to the date of payment. The exclusive remedy for the 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.

c) This Section 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 12 of the Plan or Section 6 of this Attachment H.

d) This Section 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.

4.3.6. Disposition of Penalty Funds

Except as specified in Section 4.4.3(b), 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.

4.4. Load Bid Measure

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.

4.4.2. Implementation

a) 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.

b) The ISO shall compute the average hourly deviation between day-ahead and real-time zone prices, measured as: $(\text{Zone Price}_{\text{real time}} / \text{Zone Price}_{\text{day ahead}}) - 1$. The average hourly deviation shall be computed over a rolling eight week period or such other period determined by the ISO to be appropriate to achieve the purpose of this mitigation measure.

c) 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.

d) 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.

4.4.3 Description of the Measure

a) 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 it 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.

b) 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.

c) 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 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.

4.5 Installed Capability Market Mitigation Measures

a) If and to the extent that sufficient installed capability is not under a contractual obligation to be available to serve load in New York and if physical or economic withholding of installed capability would be likely to result in a material change in the price for installed capability 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 Addendum, in accordance with the procedures and requirements for amending the Plan, to implement appropriate mitigation measures for installed capability markets.

b) Sales or resales of Unforced Capacity from the In-City Generators specified below shall be at prices not higher than $112.95 per kW-year, the translated equivalent value of the $105 per kW-year price cap for Installed Capacity for the specified Generators approved by the Commission. *Consolidated Edison Company of New York, Inc.*, 84 FERC ¶ 61,287 (1998). The specified Generators are: Arthur Kill Units 2 and 3, the Arthur Kill Gas Turbine, the Astoria Gas Turbines, Ravenswood Units 1, 2 and 3, the Ravenswood Gas Turbines, Astoria Units 3, 4 and 5, the Gowanus Gas Turbines, the Narrows Gas Turbines, the East River Generating Station, and the Waterside Generating Station.

c) In the event an In-City mitigated Generator, as specified above, fails to comply with the Unforced Capacity auction offer requirements in section 5.13.1 of the Services Tariff, the mitigated Generator will be required to pay to the ISO an amount equal to the ISO Capacity Deficiency Charge for such period times its rated capacity at the time of the divestiture. The ISO will distribute this deficiency charge among the proper In-City LSEs under procedures determined by the ISO and stakeholders.

4.6. Virtual Bidding Measures

4.6.1. Purpose

The provisions of this section 4.5 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.

4.6.2. Implementation

a) 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.

b) The ISO shall compute the average hourly deviation between day-ahead and real-time zone prices, measured as: $(\text{Zone Price}_{\text{real time}} / \text{Zone Price}_{\text{day ahead}}) - 1$. The average hourly deviation shall be computed over a rolling four week period or such other period determined by the ISO to be appropriate to achieve the purpose of this mitigation measure.

c) 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.

4.6.3. Description of the Measure

a) If the ISO determines that the conditions specified in § 4.5.2 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.

b) 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.

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.

4.6.5. Monitoring and Analysis of Virtual Bidding Market Design and Rules

The Market Monitoring Unit, in consultation with the Market Advisor, shall monitor and assess the impact of Virtual Bidding on the competitive structure and performance of, and the economic efficiency of, the ISO Administered Markets. Such monitoring and assessment shall include the effects, if any, of Virtual Bidding on any automated mitigation procedures, or any mitigation measures specified in Section 5 of these Market Mitigation Measures, administered by the ISO. The New York ISO Market Advisor together with the Market Monitoring Unit shall prepare and submit to the Board, the Market Participants, the New York Public Service Commission, and FERC a report on the results of such monitoring and assessment not later than 45 days after the end of each of the first four Capability Periods following the commencement of Virtual Bidding. Such report shall include any recommendations of the Market Advisor or the Market Monitoring Unit for the improvement of the ISO Administered Markets, or of the monitoring, reporting and other functions undertaken pursuant to this Plan, to accommodate Virtual Bidding. Following the submission of the last of the reports specified above, an assessment of the market impacts of Virtual Bidding shall be included in the annual reports required by Section 10.1 of the NYISO Market Monitoring Plan.

4.7 Duration of Mitigation Measures

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.

5. OTHER MITIGATION MEASURES

5.1 Facilitation of Real-Time Mitigation in Constrained Areas

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

5.2 Market Power Mitigation Measures Applicable to In-City Unit Commitments for Local Reliability

a) These mitigation measures will be implemented when the NYISO's Day-Ahead unit commitment requires an In-City Generator to be committed to meet local reliability requirements, under circumstances in which the In-City Generator would not otherwise have been committed under the NYISO's least-cost dispatch. Mitigation measures will not be implemented under circumstances where local reliability criteria require an In-City Generator to be committed, but such Generator would have been committed under the NYISO's least-cost dispatch.

b) When the NYISO's Day-Ahead unit commitment identifies an In-City Generator that was required to be committed due to second contingency constraints, that Generator's start-up costs Bids and Minimum Generation Bids will be set at the lower of the bid of the applicable reference level. For any day that an In-City Generator's start-up costs Bids and Minimum Generation Bids are replaced, bids at the applicable reference level shall apply in all hours of such day.

5.3 Market Power Mitigation Measures Applicable to Sales of Spinning Reserves

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

b) The market power mitigation measures applicable to Spinning Reserves will be implemented when the ISO's least-cost dispatch requires that one or more of the Generators located in New York City be committed to meet the In-City Spinning Reserve requirement. For any day that an In-City Generator is committed to meet the In-City Spinning Reserve requirement under circumstances where the Generator would not otherwise have been committed under the ISO's least-cost dispatch, the market power mitigation measures applicable to unit commitments, as described in Section 5.2, would apply.

c) In addition, In-City generators must bid zero ($0) for the availability portion of Day-Ahead Spinning Reserves Bids. The implementation of this mitigation measure will have no effect on the ability of a Generator located in New York City to recover the market-clearing price established by the ISO for the sale of Spinning Reserves.

5.4 FERC-Ordered Measures

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

5.5 Redetermination of 10-Minute Non-Synchronized Reserves Prices

The following provisions shall be in effect for a period of twelve months from July 8, 2003: (i) if any 10-Minute Non-Synchronized Reserves prices are determined by the ISO, with the concurrence of the ISO Market Advisor, to reflect a significant abuse of market power, the ISO shall so notify the Market Parties within 24 hours of the initial posting of such prices (such prices being hereinafter referred to as "flagged prices"); (ii) the ISO shall determine, with the concurrence of the Market Advisor, within five business days of such notification whether a filing seeking the reimposition of a bid cap or some other market power mitigation measure for 10-Minute Non-Synchronized Reserves is warranted, and if such a filing is not warranted the ISO shall notify the Market Parties that the flagged prices are final, subject to price correction procedures for other reasons if applicable; and (iii) if the ISO determines, with the concurrence of the Market Advisor, that a filing seeking reimposition of a bid cap or some other market power mitigation measure for 10-Minute Non-Synchronized Reserves is appropriate, such filing will request authorization from the Commission to redetermine the flagged prices in accordance with such bid cap or other mitigation measure as may be approved by the Commission.

6. DISPUTE RESOLUTION

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

7. EFFECTIVE DATE

These Mitigation Measures shall be effective as of the date they are approved by the FERC, or as specified in any Temporary Extraordinary Procedures approved by FERC for implementation coincident with the initiation of the ISO Administered Markets administered by the ISO.