

ATTACHMENT H

ISO Market Power Mitigation Measures

**DRAFT TARIFF REVISIONS PREPARED AND PROPOSED TO
RESOLVE OUTSTANDING DISAGREEMENTS REGARDING THE
APPROPRIATE INTERPRETATION AND APPLICATION OF THE
NYISO'S MARKET MITIGATION MEASURES AND TO COMPLY WITH
ORDERING PARAGRAPH (C) OF FERC'S NOVEMBER 3, 2006 ORDER
IN DOCKET NO. ER06-185-002**

DRAFT--FOR DISCUSSION PURPOSES ONLY

3.3 Consultation with a Market Party

3.3.1 Consultation Process

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 or in § 3.3.2 of these Mitigation Measures, 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

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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 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.

3.3.2 Consultation Requirement

The ISO shall make a reasonable attempt to contact and consult with the relevant Market Party about the Market Party's reference level(s) before imposing conduct and impact mitigation, other than conduct and impact mitigation imposed through the automated procedures described in § 3.2.2(c) of these Mitigation Measures. The ISO shall keep records documenting its efforts to contact and consult with the Market Party. **Consultation regarding Real-Time guarantee payment mitigation is addressed in § 3.3.3, below.**

3.3.3 Consultation Rules for Real-Time Guarantee Payment Mitigation

3.3.3.1 Real-Time Guarantee Payment Consultation Process

a) The ISO shall post to its Decision Support System ("DSS") data warehouse (or any successor thereto) data informing Market Parties of Bid(s) that failed the Real-Time guarantee payment impact test. The data posted to DSS shall include the adjustment to the guarantee payment and the mitigated Bid(s).

b) No more than two business days after new or revised Real-Time guarantee payment impact test results are posted to the ISO's DSS data warehouse (or any successor thereto), the ISO will send an e-mail notification to all potentially impacted Market Parties that comply with § 3.3.3.1(b)(i) of these MMM, informing them of the results of the Real-Time guarantee payment impact test.

i) A Market Party that desires to receive e-mail notification from the ISO must provide one e-mail address to the ISO for Real-Time guarantee payment mitigation notices. Each Market Party is responsible for maintaining and monitoring the e-mail address it provides, and informing the NYISO of any change(s) to that e-mail address in order to continue to receive e-mail notifications.

ii) Regardless of whether a Market Party chooses to receive e-mail notification from the ISO, each Market Party is responsible for reviewing Real-Time

guarantee payment impact test results that have been posted to DSS and for contacting the ISO to request a consultation if and when appropriate.

c) Market Parties shall have up to 20 business days after the ISO posts Real-Time guarantee payment mitigation results to DSS to identify in a written communication that is received by the NYISO's customer relations department: (1) the market day or days for which the Market Party desires to request consultation, and (2) an explanation of the reasons why the Market Party believes some or all of the reference levels used by the ISO to determine the Real-Time guarantee payment impact test results for the market day(s) in question are inappropriate, or why some or all of the Market Party's bids on the market day(s) in question were otherwise consistent with competitive behavior.

i) A generic request to reserve a day or an hour for consultation shall not be sufficient to initiate the consultation process. The written request must identify specific substantive or procedural issues and shall include all then-available supporting documents and other relevant information. If it is not possible to provide all necessary information at the time the request for consultation is submitted, the Market Party shall have up to 10 additional business days to submit additional information. The ISO may request information from the Market Party at any point in the review process.

ii) Requests for consultation submitted outside the 20 business day period, or for which sufficient information is not provided within 30 business days (as determined by the ISO), shall be rejected by the ISO. This provision shall not bar the ISO from correcting guarantee payment mitigation that has not been determined in accordance with the requirements of these Mitigation Measures.

iii) Once initiated, consultation shall be performed in accordance with § 3.3.1 of these Mitigation Measures.

iv) The ISO, in consultation with its Market Advisor, shall consult with the Market Party as needed, reach a decision regarding the subject of the consultation and inform the Market Party that requested consultation of its decision within 30 business days of the ISO's receipt of the Market Party's timely and complete request for consultation and submission of all supporting information.

d) Day-Ahead guarantee payment mitigation of Generators located in Constrained Areas is performed pursuant to the automated procedures described in § 3.2.2(c) of these Mitigation Measures and is not subject to the provisions of this § 3.3.3. Consultation regarding Day-Ahead guarantee payment mitigation of generators that are not located in a Constrained Areas shall be conducted in accordance with §§ 3.3.1 and 3.3.2 of these Mitigation Measures.

3.3.3.2 Revising Reference Levels of Certain Generators Committed Out-of-Merit or via Supplemental Resource Evaluation for Conducting Real-Time Guarantee Payment Conduct and Impact Tests

a) Generators that (i) are committed Out-of-Merit or via a Supplemental Resource Evaluation after the DAM has posted, and (ii) for which the NYISO has posted Real-Time guarantee payment mitigation test impact results to DSS, may contact the ISO to request that the

reference levels used to perform the conduct and impact tests for Real-Time guarantee payment mitigation be adjusted to include any of the following verifiable, extraordinary costs:

- (1) procuring fuel at prices that exceed the index prices used to calculate the Generator's reference level;
- (2) burning a type of fuel or blend of fuels that is not reflected in the Generator's reference level;
- (3) gas balancing penalties;
- (4) compliance with operational flow orders; and
- (5) purchasing additional emissions allowances that are necessary to satisfy the Generator's SRE or OOM schedule.

The five categories of verifiable, extraordinary costs identified above shall be used to modify the requesting Generator's reference level(s) subject to the following prerequisites:

- (i) the Generator must specifically and accurately identify and document the extraordinary costs it has incurred to operate during the hours of its Supplemental Resource Evaluation or Out-of-Merit commitment; and
- (ii) the costs must not already be, directly or indirectly, reflected in the Generator's reference levels or be recovered, or subject to recovery, from the ISO through other means.

As soon as practicable after the Market Party demonstrates to the ISO's reasonable satisfaction that one or more of the five categories of extraordinary costs have been incurred, the ISO shall adjust the affected Generator's reference levels and re-perform the Real-Time guarantee payment conduct and impact tests for the affected day. Only the reference levels used to perform Real-Time guarantee payment mitigation will be adjusted.

b) If the ISO or the Commission later determines that some or all of the costs claimed by the Market Party during the consultation process described above were not, in fact, incurred over the course of the Out-of-Merit or Supplemental Resource Evaluation commitment or were recovered from the ISO through other means, the ISO shall re-perform the conduct and impact tests using reference levels that reflect the verifiable costs that the Generator incurred and will apply Real-Time guarantee payment mitigation if the Generator's Bids fail conduct and impact at the corrected reference levels.

c) Generators may contact the ISO to request the inclusion of extraordinary, verifiable costs other than the five types identified above in their reference levels. The ISO in consultation with the Market Advisor shall consider such requests in accordance with §§ 3.1.4, 3.3.1 or 3.3.3.1 of these Mitigation Measures, as appropriate.

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 (1) the prospective application of a default bid measure, or (2) the application of a default bid to correct guarantee payments as described in Sections 4.2.2(d), 4.2.2(d)(1) and 4.2.2(d)(2), below. 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.

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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.

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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 for an Incremental Energy 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 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 § 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.

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.

(1) The ISO may apply default bids to determine revised Real-Time guarantee payments to a Market Party in accordance with the provisions of § 3.3.3 of these Mitigation Measures, or as may be otherwise specifically authorized by the Commission.

(2) The ISO may use default bids to determine revised Day-Ahead guarantee payments (other than Day-Ahead guarantee payment mitigation conducted pursuant to § 3.2.2(c) of these Mitigation Measures) to a Market Party subject to the following:

(i) Within 10 business days of the date on which the relevant Day-Ahead Market was posted to DSS, the ISO shall undertake reasonable efforts to notify an affected Market Party of potential Day-Ahead guarantee payment mitigation and invite the Market Party to initiate consultation. The notice shall include a preliminary calculation of the guarantee payment impact test results for the relevant day;

(ii) No later than 20 business days after the date on which the relevant Day-Ahead Market was posted to DSS, the ISO shall notify an affected Market Party of potential Day-Ahead guarantee payment mitigation and invite the Market Party to initiate consultation. The notice shall include a preliminary calculation of the guarantee payment impact test results for the relevant day.

(3) Except as set forth in § 4.2.2(d)(2), the ISO may only use default bids to revise Day-Ahead guarantee payments to a Market Party 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.

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- (3) Automated mitigation measures as specified in § 3.2.2(c) 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.