

## **23.3 Criteria for Imposing Mitigation Measures**

### **23.3.1 Identification of Conduct Inconsistent with Competition**

Conduct that may potentially warrant the imposition of a mitigation measure includes the categories described in Section 23.2.4 above, which shall be detected through the use of indices and screens developed, adopted and made available as specified in Attachment O. The thresholds listed in Sections 23.3.1.1 to 23.3.1.3 below shall be used to identify substantial departures from competitive conduct indicative of an absence of workable competition.

#### **23.3.1.1 Thresholds for Identifying Physical Withholding**

23.3.1.1.1 The following initial thresholds will be employed by the ISO to identify physical withholding of a Generator or generation by a Market Party and its Affiliates:

23.3.1.1.1.1 Except for conduct addressed in Section 23.3.1.1.1.2: Withholding that exceeds (i) 10 percent of a Generator's capability, or (ii) 100 MW of a Generator's capability, or (iii) 5 percent of the total capability of a Market Party and its Affiliates, or (iv) 200 MW of the total capability of a Market Party and its Affiliates.

For a Generator or a Market Party 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 \$0.04/MWh, indicating an active constraint, withholding that exceeds (i) 10 percent of a Generator's capability, or (ii) 50 MW of a Generator's capability, or (iii) 5 percent of the total capability of a Market

Party and its Affiliates, or (iv) 100 MW of the total capability of a Market Party and its Affiliates.

23.3.1.1.1.2 Operating a Generator or generation in real-time at a lower output level than would have been expected had the Market Party's and its Affiliate's Generator or generation followed the ISO's dispatch instructions, resulting in a difference in output that exceeds (i) 15 minutes times a Generator's stated response rate per minute at the output level that would have been expected had the Generator followed the ISO's dispatch instructions, or (ii) 100 MW for a Generator, or (iii) 200 MW of the total capability of a Market Party and its Affiliates. For a Generator or a Market Party in a Constrained Area for intervals in which an interface or facility into the area in which the generation is located has a Shadow Price greater than \$0.04/MWh, indicating an active constraint, operating a Generator or generation in real-time at a lower output level than would have been expected had the Market Party's and its Affiliate's Generator or generation followed the ISO's dispatch instructions, resulting in a difference in output that exceeds (i) 15 minutes times a Generator's stated response rate per minute at the output level that would have been expected had the Generator followed the ISO's dispatch instructions, or (ii) 50 MW of a Generator's capability, or (iii) 100 MW of the total capability of a Market Party and its Affiliates.

23.3.1.1.2 The amounts of generating capacity considered withheld for purposes of applying the thresholds in this Section 23.3.1.1 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.

23.3.1.1.3 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 an ISO maintenance schedule.

#### **23.3.1.2 Thresholds for Identifying Economic Withholding**

23.3.1.2.1 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 23.3.1.4:

23.3.1.2.1.1 Incremental Energy and Minimum Generation Bids: An increase exceeding 300 percent or \$100 per MWh, whichever is lower; provided, however, that Incremental Energy or Minimum Generation Bids below \$25 per MWh shall be deemed not to constitute economic withholding.

23.3.1.2.1.2 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.

23.3.1.2.1.3 Start-Up Bids: A 200 percent increase.

23.3.1.2.1.4 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.

23.3.1.2.1.5 Bid parameters expressed in units other than time or dollars, including the MW component of a Minimum Generation Bid (also referred to as the “minimum operating level”): 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).

23.3.1.2.2 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 23.3.1.4:

23.3.1.2.2.1 For Energy and Minimum Generation Bids for the Real-Time Market: for intervals in which an interface or facility into the area in which a Generator is located has a Shadow Price greater than \$0.04/MWh, indicating an active constraint, the lower of the thresholds specified for areas that are not Constrained Areas or a threshold determined in accordance with the following formula:

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

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 minutes over the prior 12 months, converted to hours (retaining fractions of hours), in which the real-time Shadow Price has been greater than \$0.04/MWh, indicating an active constraint, 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 minutes 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.

23.3.1.2.2.2 For so long as the In-City area is a Constrained Area, the thresholds specified in subsection 23.3.1.2.2.1 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.

23.3.1.2.2.3 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 23.3.1.2.2.1 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 \$0.04/MWh, indicating an active constraint, 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.

23.3.1.2.2.4 For Start-Up Bids; a 50% increase.

23.3.1.2.2.5 The thresholds listed in Sections 23.3.1.2.1.2 and 23.3.1.2.1.4 through 23.3.1.2.1.5.

23.3.1.2.3 The following thresholds shall be employed by the ISO to identify economic withholding that requires the mitigation of a Generator that is committed outside the ISO's economic evaluation process to protect NYCA or local area reliability in an area that is not a designated Constrained Area. Whether the thresholds specified in Sections 23.3.1.2.3.3(i) through 23.3.1.2.3.3(v) below have been exceeded shall be determined with respect to a reference level determined as specified in Section 23.3.1.4 of these Mitigation Measures.

If provisions 23.3.1.2.3.1 and 23.3.1.2.3.2 below are met for a Generator in the New York Control Area that is not located in a designated Constrained Area, the ISO shall substitute a reference level for each Bid, or component of a Bid, for which the applicable threshold specified in provisions 23.3.1.2.3.3(i) through 23.3.1.2.3.3(vi) below is exceeded. Where mitigation is determined to be appropriate, the mitigated results will be used in all aspects of the NYISO's settlement process.

23.3.1.2.3.1 The Generator was committed outside the ISO's economic merit order selection process to protect or maintain New York Control Area or local system reliability as a Day-Ahead Reliability Unit ("DARU") or via a Supplemental Resource Evaluation ("SRE"), or was committed as a DARU or via SRE and was

also dispatched Out-of-Merit above its minimum generation level to protect or maintain New York Control Area or local system reliability; and

23.3.1.2.3.2 One of the following three (i) – (iii) conditions in this Section 23.3.1.2.3.2 must be satisfied in order for mitigation to be applied:

- i the Market Party (including its Affiliates) that owns or offers the Generator is the only Market Party that could effectively solve the reliability need for which the Generator was committed or dispatched, or
- ii when evaluating an SRE that was issued to address a reliability need that multiple Market Parties' Generators are capable of solving, the NYISO only received Bids from one Market Party (including its Affiliates), or
- iii when evaluating a DARU, if the Market Party was notified of the need for the reliability commitment of its Generator prior to the close of the Day-Ahead Market.

23.3.1.2.3.3 The Bids or Bid components submitted for the Generator that were accepted outside the economic evaluation process to protect or maintain New York Control Area or local system reliability:

- i exceeded the Generator's Minimum Generation Bid reference level by the greater of 10% or \$10/MWh, or
- ii. exceeded the Generator's Incremental Energy Bid reference level by the greater of 10% or \$10/MWh, or
- iii. exceeded the Generator's Start-Up Bid reference level by 10%, or
- iv. exceeded the Generator's minimum run time, start-up time, and minimum down time reference levels by more than one hour in aggregate, or

- v. exceeded the Generator's minimum generation MW reference level by more than 10%, or
- vi. decreased the Generator's maximum number of stops per day below the Generator's reference level by more than one stop per day, or to one stop per day.

### **23.3.1.3 Thresholds for Identifying Uneconomic Production**

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

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

23.3.1.3.1.2 Real-time output from a Generator or generation resulting in real-time operation at a higher output level than would have been expected had the Market Party's and the Affiliate's Generator or generation followed the ISO's dispatch instructions, if such failure to follow ISO dispatch instructions in real-time causes or contributes to transmission congestion, and it results in an output difference that exceeds (i) 15 minutes times a Generator's stated response rate per minute at the output level that would have been expected had the Generator followed the ISO's dispatch instructions, or (ii) 100 MW for a Generator, or (iii) 200 MW of the total capability of a Market Party and its Affiliates.

### **23.3.1.4 Reference Levels**

23.3.1.4.1 Except as provided in Sections 23.3.1.4.3 – 23.3.1.4.6 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:



23.3.1.4.1.1 The lower of the mean or the median of a Generator's accepted Bids or Bid components, in hour beginning 6 to hour beginning 21 but excluding weekend and designated holiday hours, in competitive periods over the most recent 90 day period for which the necessary input data are available to the ISO's reference level calculation systems, adjusted for changes in fuel prices consistent with Section 23.3.1.4.7, below. To maintain appropriate reference levels (i) the ISO shall exclude all Incremental Energy and Minimum Generation Bids below \$15/MWh from its development of Bid-based reference levels, (ii) the ISO shall exclude Minimum Generation Bids submitted for a Generator that was committed on the day prior to the Dispatch Day for the hours during the Dispatch Day that the Generator needs to operate in order to complete the minimum run time specified in the Bid it submitted for the hour in which it was committed, and (iii) the ISO may exclude other Bids that would cause a reference level to deviate substantially from a Generator's marginal cost when developing Bid-based reference levels;

23.3.1.4.1.2 Calculate incremental energy and minimum generation reference levels for a Generator using the mean of the LBMP at the Generator's location during the lowest-priced 250 percent of the hours that the Generator was dispatched over the most recent 90 day period for which the necessary LBMP data are available to the ISO's reference level calculation systems, adjusted for changes in fuel prices consistent with Section 23.3.1.4.7, below. To maintain appropriate reference levels (i) the ISO shall exclude all LBMPs below \$15/MWh from its development of LBMP-based reference levels, (ii) the ISO shall exclude LBMPs during hours

when a Generator was scheduled as a Day-Ahead Reliability Unit or via a Supplemental Resource Evaluation or was Out-of-Merit Generation, from its development of that Generator's LBMP-based reference levels, (iii) for a Generator that was committed on the day prior to the Dispatch Day, the ISO shall exclude LBMPs for the hours during the Dispatch Day that the Generator needs to operate in order to complete the minimum run time specified in the Bid it submitted for the hour in which the Generator was committed from the ISO's development of that Generator's LBMP-based reference levels, and (iv) the ISO may exclude LBMPs that would cause a reference level to deviate substantially below a Generator's marginal cost when developing LBMP-based reference levels; or

23.3.1.4.1.3 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:

$$((\text{heat rate} * \text{fuel costs}) + (\text{emissions rate} * \text{emissions allowance price}) + \text{other variable operating and maintenance costs})).$$

23.3.1.4.2 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, or if the reference level produced does not reasonably approximate a Generator's marginal cost, the ISO shall determine a reference level on the basis of:

23.3.1.4.2.1 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

23.3.1.4.2.2 an appropriate average of competitive bids of one or more similar Electric Facilities.

23.3.1.4.3 Notwithstanding the foregoing provisions, the reference level for

Incremental Energy Bids for New Capacity for the three year and six month period following ~~commencement of its commercial operation~~the New Capacity's first production of Energy while synchronously interconnected to the New York State Transmission System shall be the higher of (i) the amount determined in accordance with the provision of Section 23.3.1.4.1 or 23.3.1.4.2, or (ii) the average of the fuel price-adjusted peak LBMPs over the twelve months prior to the ~~commencement of operation~~New Capacity's first production of Energy while synchronously interconnected to the New York State Transmission System of the New Capacity in the Load 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 Section 23.3.1.4.3 shall apply only to net additions of capacity during the applicable three year [and six month](#) period.

23.3.1.4.4 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:

23.3.1.4.4.1 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 down times, adjusted for changes in fuel prices consistent with Section 23.3.1.4.7 below. However, accepted Start-Up Bids that incorporate anticipated costs of operating on the day after the Dispatch Day in which the Generator is committed in order to permit the Generator to satisfy its minimum run time shall not be used to develop Bid-based start-up reference levels;

23.3.1.4.4.2 A level determined in consultation with the Market Party submitting the Bid or Bids at issue and intended to reflect the costs incurred for a Generator to achieve its specified minimum operating level from an offline state, 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 the Generator's operating costs in accordance with specifications provided by the ISO; or

#### 23.3.1.4.4.3 Generators committed in the Day-Ahead Market or via Supplemental

Resource Evaluation that are not able to complete their minimum run time within the Dispatch Day in which they are committed are eligible to include in their Start-Up Bid expected net costs of operating on the day following the dispatch day at the minimum operating level (in MW) specified in the Generator's Bid for the commitment hour, for the hours necessary to complete the Generator's minimum run time. The NYISO will calculate a start-up reference level that incorporates the net costs the Generator is expected to incur on the day following the Dispatch Day as follows:

##### 23.3.1.4.4.3.1 Calculation of a start-up reference level that includes expected net costs of operating on the day following the Dispatch Day

The NYISO will use the following calculation to develop a reference level that incorporates the costs that a Generator is expected to incur on the day following the Dispatch Day.

$$LateDayAdjusted_{g,i} = StrtUpRef_g + \max\left(0, MinGenRef_{g,i} \cdot BidMinGen_{g,i} \cdot \sum_{h=0}^{Z_{g,i}-1} SR_{g,h,i}\right),$$

Where:

$LateDayAdjusted_{g,i}$  = calculated start-up reference level for Generator g for hour i in \$ (reflects the applicable start-up reference level ( $StrtUpRef_g$ ), plus the expected net cost of operating on the day following the Dispatch Day)

$StrtUpRef_g$  = the start-up reference level for Generator g in \$ that is in effect at the time the calculation is performed (does not include the expected net cost of operating on the day following the Dispatch Day)

$MinGenRef_{g,i}$  = the minimum generation cost reference level for Generator g for hour i in \$/MW that is in effect at the time the calculation is performed

$BidMinGen_{g,i}$  = Generator g's Day-Ahead minimum operating level for hour i, in MW

$Z_{g,i}$  = the number of hours the Generator must operate during the day following the Dispatch Day in order to complete its minimum run time if it starts in hour  $i$

$SR_{g,h,i}$  = shortfall ratio for Generator  $g$  that is bidding to start in hour  $i$  which must run during hour  $h$  in order to complete its minimum run time, calculated in accordance with Section 23.3.3.4.4.3.2, below

23.3.1.4.4.3.2 Calculation of the shortfall ratio for use in Section 23.3.1.4.4.3.1, above

$SR_{g,h,i}$  = the shortfall ratio calculated for Generator  $g$  that is bidding to start in hour  $i$ , and that must run during hour  $h$  to complete its minimum run time.

In all cases in which Generator  $g$ 's Day-Ahead minimum operating level deviates from the average of the previous seven days' Day-Ahead minimum operating levels for the same hour by less than 5 MW (*i.e.*, if  $|AvgBidMinGen_{g,h,i} - BidMinGen_{g,i}| < 5 \text{ MW}$ ) or by less than 10% (*i.e.*, if both  $BidMinGen_{g,i} < 1.1 \times AvgBidMinGen_{g,h,i}$  and  $BidMinGen_{g,i} > 0.9 \times AvgBidMinGen_{g,h,i}$ ),

Where:

$AvgBidMinGen_{g,h,i}$  = The average minimum operating level submitted in the Day-Ahead Market for hour  $h$  on the seven days preceding the day containing hour  $i$ , in MW, excluding any days for which a minimum operating level was not submitted in the Day-Ahead Market for Generator  $g$ , for hour  $h$ ; and

$BidMinGen_{g,i}$  = The minimum operating level submitted in the Day-Ahead Market for Generator  $g$  for hour  $i$ , in MW

and in all cases in which  $AvgBidMinGen_{g,h,i}$  cannot be calculated because minimum operating levels were not submitted for Generator  $g$  in the Day-Ahead Market for hour  $h$  on any of the seven days preceding the day containing hour  $i$ , the  $SR_{g,h,i}$  value will be calculated using the primary method. Otherwise, the  $SR_{g,h,i}$  value will be calculated using the alternative method.

*Primary Method of Calculating the Shortfall Ratio*

$$SR_{g,h,i} = 1 - \frac{1}{7} \cdot \sum_{d=1}^7 \frac{LBMP_{g,h,i,d}}{MinGenRef_{g,h,i,d}},$$

Where:

$LBMP_{g,h,i,d}$  = Day ahead LBMP at the location of Generator g in hour h of the Day-Ahead Market for the Dispatch Day that precedes the day containing hour i by d days, and

$MinGenRef_{g,h,i,d}$  = minimum generation cost reference level for Generator g in hour h of the Day-Ahead Market for the Dispatch Day that precedes the day containing hour i by d days

*Alternative Method of Calculating the Shortfall Ratio*

$$SR_{g,h,i} = 1 - \frac{AvgLBMP_{g,h,i}}{\left( AvgRefRate_{g,h,i} \cdot \frac{RefRate2_{g,i}}{RefRate1_{g,h,i}} \right)}$$

Where:

$AvgLBMP_{g,h,i}$  = The average of the Day-Ahead LBMPs at the location of Generator g for hour h on the seven days preceding the day containing hour i, in \$/MWh, excluding any days for which a minimum operating level was not submitted in the Day-Ahead Market for Generator g for hour h

$AvgRefRate_{g,h,i}$  = The average of the minimum generation reference levels for Generator g in hour h on the seven days preceding the day containing hour i, in \$/MWh, excluding any days for which a minimum operating level was not submitted in the Day-Ahead Market for Generator g for hour h

$RefRate1_{g,h,i}$  = The minimum generation cost reference level in \$/MWh for Generator g for hour i, calculated using the most current reference data, and assuming that the minimum operating level submitted in the Day-Ahead Market for Generator g in hour i corresponds to the MWs reflected in the  $AvgBidMinGen_{g,h,i}$

$RefRate2_{g,i}$  = The minimum generation cost reference level in \$/MWh for Generator g for hour i, calculated using the most current reference data, and incorporating the minimum operating level submitted in the Day-Ahead Market for Generator g in hour i that corresponds to the MWs reflected in the  $BidMinGen_{g,i}$

Notwithstanding the above, in all cases where the denominator of the equation for

calculating  $SR_{g,h,i}$  is not greater than zero,  $SR_{g,h,i}$  shall be set to zero, under both the primary and alternative methods.

23.3.1.4.4.4 The methods specified in Section 23.3.1.4.2.

23.3.1.4.5 Notwithstanding the foregoing provisions, the reference level for 10-Minute Non-Synchronized reserves shall be the lower of (i) the amount determined in accordance with the provisions of Section 23.3.1.4.1.1, or (ii) \$2.52.

23.3.1.4.6 The ISO is not required to calculate real-time reference levels for the three Operating Reserve products (Spinning Reserve, 10-Minute Non-Synchronized Reserves and 30-Minute Reserves) because Generators that are capable of providing these products and that are submitting Bids into the Real-Time Market are automatically assigned a real-time Operating Reserves Availability Bid of zero for the amount of Operating Reserves they are capable of providing. The ISO shall calculate Day-Ahead reference levels for the three Operating Reserves products in accordance with Sections 23.3.1.4.1.1, 23.3.1.4.1.3 or 23.3.1.4.2 of these Mitigation Measures.

23.3.1.4.7 The ISO shall use the best information available to it to adjust reference levels to reflect appropriate fuel costs.

23.3.1.4.7.1 Market Parties shall monitor Generator reference levels and shall endeavor to timely (as that term is defined in Section 23.3.1.4.7.7 below) contact the ISO to request an adjustment to a Generator's reference level(s) when the Generator's fuel type or fuel price change.

23.3.1.4.7.2 Screening of fuel type and fuel price information. The ISO may use automated processes and/or require manual review of fuel type and fuel price information submitted by Market Parties to test the accuracy of the information



submitted in order to prevent market clearing prices and guarantee payments from being incorrectly calculated.

23.3.1.4.7.3 Consistent with the rules specified in this Section 23.3.1.4.7 of the Mitigation Measures and the procedures that the ISO develops to implement these rules, Market Parties shall notify the ISO of changes in fuel type or fuel price by (i) submitting revised fuel type or fuel price information to the ISO's Market Information System along with the Generator's Bid(s), or (ii) by directly contacting the ISO to request a reference level update consistent with ISO procedures, or (iii) by utilizing both of the available notification methods. Revised fuel type or fuel price information that exceeds, or is rejected based upon, the thresholds that the ISO uses to automatically screen fuel type or fuel price information that is submitted to the ISO's Market Information System along with a Generator's Bid(s) shall be submitted by directly contacting the ISO to request a reference level update, consistent with ISO procedures.

23.3.1.4.7.4 Following the completion of the ISO's automated and/or manual screening processes, the ISO shall use fuel type and fuel price information that Market Parties or their representatives submit to develop Generator reference levels unless (i) the information submitted is inaccurate, or (ii) the information was not timely submitted, and the Market Party's failure to timely submit the information is not excused by the ISO in accordance with Section 23.3.1.4.7.7 below, or (iii) consistent with Section 23.3.1.4.7.8 below.

23.3.1.4.7.5 The ISO may not always have sufficient time to complete its screening of proposed fuel type or fuel price changes prior to the relevant Day-Ahead Market

day or Real-Time Market hour. *If* fuel type or fuel price information (i) is timely submitted or, where untimely, the submission of fuel type or fuel price information is excused in accordance with Section 23.3.1.4.7.7 below, and (ii) the fuel type or fuel price information that the Market Party submitted is proven to have been accurate or to have understated the actual cost incurred for that component, and (iii) the Bid(s) were tested using reference levels that reflected outdated fuel type and/or fuel price information and the Bid(s) were mitigated or a sanction was imposed pursuant to Section 23.4.3 of these Mitigation Measures, *then* the ISO shall (a) re-perform any test(s) that resulted in a sanction being imposed pursuant to Section 23.4.3 of these Mitigation Measures, using the accurate fuel type and/or fuel price information and use the revised results to calculate the appropriate sanction (if any), and (b) determine if the Bids for the Generator would have failed the relevant conduct test(s) if accurate fuel type and/or fuel price information had been used to develop reference levels. The ISO shall then restore any original (as-submitted) Bid(s) that would not have failed the relevant conduct test(s) if accurate fuel type and/or fuel price information had been used to develop the Generator's reference levels, and use the restored Bid(s) to determine a settlement. Otherwise the ISO shall use the Generator's correct or corrected reference level(s) to determine a settlement.

23.3.1.4.7.6 The ISO shall publicly post the thresholds it employs to automatically screen fuel type and fuel price information that is submitted to the ISO's Market Information System for potentially inaccurate fuel type and fuel price data inputs.

23.3.1.4.7.7 For purposes of this Section 23.3.1.4.7, “timely” notice or submission to the Real-Time Market shall mean the submission of fuel type and/or fuel price information using the methods specified in Section 23.3.1.4.7.3 of these Mitigation Measures prior to market close for the relevant Real-Time Market hour. For purposes of this Section 23.3.1.4.7, “timely” notice or submission to the Day-Ahead Market shall mean the submission of fuel type and/or fuel price information using the methods specified in Section 23.3.1.4.7.3 of these Mitigation Measures prior to the close of the Day-Ahead Market. Market Parties are not expected to submit invoices or other supporting data with their Day-Ahead Market or Real-Time Market fuel type and fuel price information, but are expected to retain invoices and other supporting data consistent with the data retention requirements set forth in the Plan, and to be able to produce such information within a reasonable timeframe when asked to do so by the ISO or by its Market Monitoring Unit.

It may not always be possible for a Market Party to timely update a Generator’s fuel type or fuel price to reflect unexpected real-time changes or events in advance of the first affected market-hour. Upon a showing of extraordinary circumstances, the ISO may retroactively reflect in Real-Time Market reference levels fuel type or fuel price information that was not timely submitted by a Market Party. While it should ordinarily be possible for a Market Party to timely submit updated fuel type and fuel price information for use in developing a Generator’s Day-Ahead Market reference levels, the ISO may retroactively accept

and utilize late-submitted Day-Ahead Market fuel type or fuel price information upon a showing of extraordinary circumstances.

23.3.1.4.7.8 If (i) the ISO determines, following consultation with the Market Party and review by the Market Monitoring Unit, that the Market Party or its representative has, over a time period of at least one week, submitted inaccurate fuel type or fuel price information that was biased in the Market Party's favor, or (ii) if a Market Party is subject to a penalty or sanction under Section 23.4.3.3.3 of these Mitigation Measures for submitting inaccurate fuel price or fuel type information, *then* the ISO shall cease using the fuel type and fuel price information submitted to the ISO's Market Information System along with the Generator's Bid(s) to develop reference levels for the affected Generator(s) in the relevant (Day-Ahead or real-time) market for the duration(s) set forth below.

23.3.1.4.7.8.1 The first time the ISO ceases using the fuel type and fuel price information submitted to the ISO's Market Information System along with the Bid(s) for a Generator to develop Day-Ahead or real-time reference levels for that Generator, it shall do so for 60 days. The 60 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.

23.3.1.4.7.8.2 Any subsequent time the ISO ceases using the fuel type and fuel price information submitted to the ISO's Market Information System along with the Bid(s) for a Generator to develop Day-Ahead or real-time reference levels for that Generator, it shall do so 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.

23.3.1.4.7.8.3 If the bidders of a Generator that has previously been mitigated under this Section 23.3.1.4.7.8 becomes and remains continuously eligible to submit fuel type and fuel price information in the Day-Ahead or Real-Time Market (as appropriate) for a period of one year or more, then the ISO shall apply the mitigation measure set forth in Section 23.3.1.4.7.8 of the Mitigation Measures as if the Generator had not previously been subject to the mitigation measure.

23.3.1.4.7.8.4 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 described in this Section 23.3.1.4.7.8 are required to inform the new Market Party that the Generator has been mitigated under this measure, and to inform the new Market Party of the expected duration of such mitigation.

23.3.1.4.7.8.5 For purposes of this Section 23.3.1.4.7.8, submitted fuel type information shall be considered biased in a Market Party's favor if (a) the fuel type that a Market Party submits for a Generator is not the most economic fuel type available to the Generator, taking into consideration fuel availability, operating conditions, and relevant regulatory or reliability requirements, and (b) as a result of the change(s) in fuel type, the fuel prices that the ISO uses to develop reference levels for a Generator exceeded the fuel price that the ISO would have used to develop reference levels for that Generator by greater than 10%, on average, over a seven-day period. For purposes of calculating the seven day average, only hours in which the Market Party changed the Generator's fuel type to a more expensive

fuel type will be considered. The Day-Ahead and Real-Time Markets shall be considered separately for purposes of this analysis.

23.3.1.4.7.8.6 For purposes of this Section 23.3.1.4.7.8, submitted fuel price information shall be considered biased in a Market Party's favor if the fuel price that the Market Party submitted to the ISO's Market Information System for use in developing reference levels for a Generator exceeded the greater of the actual fuel price (as substantiated by supplier quotes or invoices) or the ISO's indexed fuel price, by greater than 10%, on average, over a seven-day period. For purposes of calculating the seven-day average, only hours in which the fuel price submitted exceeds the ISO's indexed fuel price will be considered. The Day-Ahead and Real-Time Markets shall be considered separately for purposes of this analysis.

23.3.1.4.7.8.7 The responsibilities of the Market Monitoring Unit that are addressed in Section 23.3.1.4.7.8 of the Mitigation Measures are also addressed in Section 30.4.6.2.3 of the Plan.

23.3.1.4.7.9 In order to adjust (i) Bid-based incremental energy, minimum generation and start-up reference levels, and (ii) LBMP-based incremental energy and minimum generation reference levels to more accurately reflect fuel costs, the ISO may calculate distinct Bid- and LBMP-based reference levels for each fuel type or blend of fuel types that a Generator is capable of burning, and shall fuel index each of the distinct Bid- or LBMP-based reference levels that it calculates for fuel types that are amenable to fuel indexing. Where a Generator can draw on multiple natural gas sources that each have distinct, posted, market clearing

prices, the ISO may calculate distinct Bid-Based or LBMP-based reference levels for each such available supply source.

23.3.1.4.8 Except as otherwise authorized in accordance with Section 23.3.1.4.7.7 above, Market Parties shall timely report significant changes to the cost components used to develop their Generator's reference levels to the ISO in order to permit the revised costs to be timely reflected in the Generator reference levels. However, if the ISO uses published index prices to fuel index a Generator's reference level when that Generator is burning a fuel type that is amenable to fuel indexing (which may include a blend of two indexed fuel types), the Market Party is not required to report fuel prices that are less than the published index price that the ISO relies on.

## **23.3.2 Material Price Effects or Changes in Guarantee Payments**

### **23.3.2.1 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:

23.3.2.1.1 an increase of 200 percent or \$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

23.3.2.1.2 an increase of 200 percent, or 50 percent for Generators in a Constrained Area in Bid Production Cost guarantee payments to a Market Party for a Generator for a day; or

23.3.2.1.3 for a Constrained Area Generator subject to either a Real-Time Market or Day-Ahead Market conduct threshold, as specified above in Sections 23.3.1.1.1, 23.3.1.2.2.1, or 23.3.1.2.2.3: for all Constrained Hours (as defined in Section 23.3.1.2.2.1 for the Real-Time Market and in Section 23.3.1.2.2.3 for the Day-Ahead Market) for the unit being Bid, a threshold determined in accordance with the formula specified in Section 23.3.1.2.2.1 for the Real-Time Market or Section 23.3.1.2.2.3 for the Day-Ahead Market.

#### **23.3.2.2 Price Impact Analysis**

23.3.2.2.1 When it has the capability to do so, the ISO 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 ISO shall deem appropriate following consultation with its Market Monitoring Unit. The responsibilities of the Market Monitoring Unit that are addressed in this section of the Mitigation Measures are also addressed in Section 30.4.6.2.4 of Attachment O.

23.3.2.2.2 Pending development of the capability to use automated market models, the ISO, following consultation with its Market Monitoring Unit, 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. The



responsibilities of the Market Monitoring Unit that are addressed in this section of the Mitigation Measures are also addressed in Section 30.4.6.2.5 of Attachment O.

23.3.2.2.3 The ISO shall implement automated procedures within the SCUC for Constrained Areas, and within RTC for Constrained Areas. 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 ISO exceed the thresholds for economic withholding specified in Section 23.3.1.2 above; and, if so, (ii) determine whether such Bids would cause material price effects or changes in guarantee payments as specified in Section 23.3.2.1.

23.3.2.2.4 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.

### **23.3.2.3 Section 205 Filings**

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 23.3.1.1 through 23.3.1.3 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 (which may include a Demand Side Resource participating in the Operating Reserves or Regulation Service Markets) that would be

subject to mitigation, or from other information available to the ISO that the conduct and associated price or guarantee payment effect(s) 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:

23.3.2.3.1 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

23.3.2.3.2 an increase of 100 percent in Bid Production Cost guarantee payments to a

Market Party for a Generator for a day, or an increase of 100 percent in any other

guarantee payment over the time period used by the ISO to calculate the

guarantee payment.

### **23.3.3 Consultation with a Market Party**

#### **23.3.3.1 Consultation Process**

23.3.3.1.1 *Consultation initiated by the ISO to determine if mitigation is appropriate:*

Applies to Market-Party-specific and/or Generator-specific mitigation, but not to mitigation that is applied pursuant to Sections 23.3.1.2.3, 23.3.2.2.3, or 23.5.2 of these mitigation measures. 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 ISO shall, as and to the extent specified in Attachment O or in Section 23.3.3.2 of these Mitigation Measures, contact the Market Party engaging in the identified conduct to request an explanation of the conduct.

23.3.3.1.2      *Consultation initiated by a Market Party when it anticipates that its Generator's marginal costs or other Bid parameters may exceed the Generator's reference level(s) by more than the relevant threshold(s).* If a Market Party anticipates submitting Bids in a market administered by the ISO that will exceed the thresholds specified in Section 23.3.1 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.

23.3.3.1.3      *Results of consultation process addressing Bids.* If a Market Party's explanation of the reasons for its bidding indicates to the satisfaction of the ISO that the questioned conduct is consistent with competitive behavior, no further action will be taken. A preliminary determination by the ISO shall be provided to the Market Monitoring Unit for its review and comment.

23.3.3.1.4      *Consultation initiated by a Market Party regarding reference levels.* Upon request, the ISO shall consult with a Market Party or its representative with respect to the information and analysis used to determine reference levels under Section 23.3.1.4 for that Market Party's Generator(s). If cost data or other information submitted by a Market Party's Generator(s) indicates to the satisfaction of the ISO that the reference levels for that Market Party should be changed, revised reference levels shall be proposed by the ISO, communicated to the Market Monitoring Unit for its review and comment and, following the ISO's consideration of any recommendations that the Market Monitoring Unit is able to timely provide, communicated to the Market Party, and implemented by the ISO as soon as practicable. Changes to the reference levels addressed pursuant to the terms of this Section 23.3.3.1.4 shall be implemented on a going-forward basis commencing no earlier than the date that the Market

Party's consultation request is received. The responsibilities of the Market Monitoring Unit that are addressed in this section of the Mitigation Measures are also addressed in Section 30.4.6.2.6 of Attachment O.

**23.3.3.1.5**     *Information required to support consultation regarding Bids and reference levels.* Market Parties shall ensure that the information they submit to the ISO, including but not limited to fuel price and fuel type information, is accurate. Except as set forth in Section 23.3.1.4.7.7, the ISO may not retroactively revise a reference level to reflect additional fuel costs if a Market Party or its representative did not timely submit accurate fuel cost information. Unsupported speculation by a Market Party does not present a valid basis for the ISO to determine that Bids that a Market Party submitted are consistent with competitive behavior, or to determine that submitted costs are appropriate for inclusion in the ISO's development of reference levels. Consistent with Sections 30.6.2.2 and 30.6.3.2 of the Plan, the Market Party shall retain the documents and information supporting its Bids and the costs it proposes to include in reference levels.

### **23.3.3.2     Consultation Requirements**

**23.3.3.2.1**     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 Section 23.3.2.2.3 of these Mitigation Measures. The ISO shall keep records documenting its efforts to contact and consult with the Market Party.

**23.3.3.2.2**     Consultation regarding both real-time guarantee payment mitigation and mitigation of Generators committed outside the economic evaluation process in

the Day-Ahead or Real-Time Markets to protect or preserve system reliability in accordance with Section 23.3.1.2.3 of these Mitigation Measures is addressed in Section 23.3.3.3, below. Consultation regarding Day-Ahead guarantee payment mitigation of Generators, other than mitigation imposed through the automated procedures described in Section 23.3.2.2.3 of these Mitigation Measures, shall be conducted in accordance with Sections 23.3.3.1 and 23.3.3.2 of these Mitigation Measures.

### **23.3.3.3 Consultation Rules for Real-Time Guarantee Payment Mitigation**

#### **23.3.3.3.1 Real-Time Guarantee Payment Consultation Process**

23.3.3.3.1.1 For real-time guarantee payment mitigation determined pursuant to Sections 23.3.1.2.1 or 23.3.1.2.2, and 23.3.2.1.2 of these Mitigation Measures, the ISO shall electronically post settlement results informing Market Parties of Bid(s) that failed the real-time guarantee payment impact test. The settlement results posting shall include the adjustment to the guarantee payment and the mitigated Bid(s). The initial posting of settlement results ordinarily occurs two days after the relevant real-time market day.

23.3.3.3.1.2 For real-time guarantee payment mitigation determined pursuant to Sections 23.3.1.2.1 or 23.3.1.2.2, and 23.3.2.1.2 of these Mitigation Measures, no more than two business days after new or revised real-time guarantee payment impact test settlement results are posted, the ISO will send an e-mail or other notification to all potentially impacted Market Parties that comply with Section 23.3.3.3.1.2.2 of these Mitigation Measures.

23.3.3.3.1.2.1 Although the ISO is authorized to take up to two business days to provide notification to all potentially impacted Market Parties that comply with Section 23.3.3.3.1.2.2 of these Mitigation Measures, the ISO shall undertake reasonable efforts to provide notification to such Market Parties within one business day after new or revised real-time guarantee payment impact test settlement results are posted.

23.3.3.3.1.2.2 A Market Party that desires to receive 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 ISO of any change(s) to that e-mail address in order to continue to receive e-mail notification. E-mail will be the ISOs primary method of providing notice to Market Parties.

23.3.3.3.1.2.3 Regardless of whether a Market Party chooses to receive notification from the ISO, each Market Party is responsible for reviewing its posted real-time guarantee payment impact test settlement results and for contacting the ISO to request a consultation if and when appropriate.

23.3.3.3.1.3 The following notice rules apply to guarantee payment mitigation determined pursuant to Section 23.3.1.2.3 of these Mitigation Measures.

23.3.3.3.1.3.1 For mitigation of a Generator's Minimum Generation Bid, Start-Up Bid or Incremental Energy Bid resulting from its DARU or SRE commitment, the ISO shall send an e-mail or other notification to potentially impacted Market Parties that comply with Section 23.3.3.3.1.2.2 of these Mitigation Measures within ten business days after the relevant market day, and shall undertake

reasonable efforts to provide notification to such Market Parties within two business days after the relevant market day. The e-mail shall identify the date of the proposed mitigation and the Bid(s) or Bid components that the NYISO proposes to mitigate for all or part of the relevant market day.

As soon as it is able to do so, the NYISO will commence electronically posting settlement results informing Market Parties of Bid(s) that failed the Section 23.3.1.2.3 test and sending an e-mail or other notification to potentially impacted Market Parties that comply with Section 23.3.3.3.1.2.2 of these Mitigation Measures. The settlement results posting shall include the mitigated bid(s). The posting of settlement results ordinarily occurs two days after the relevant real-time market day.

23.3.3.3.1.3.2 For mitigation of a Generator's Minimum Generation Bid, Start-Up Bid or Incremental Energy Bid resulting from an Out-of-Merit dispatch above the Generator's DARU or SRE commitment, the ISO shall send an e-mail or other notification to potentially impacted Market Parties that comply with Section 23.3.3.3.1.2.2 of these Mitigation Measures within 10 business days after the relevant market day. The e-mail shall identify the date of the proposed mitigation and the bid(s) or bid components that the NYISO proposes to mitigate for all or part of the relevant market day.

23.3.3.3.1.3.3 For mitigation based on a Generator's minimum run time, start-up time, minimum down time, minimum generation MWs, or maximum number of stops per day, the ISO shall send an e-mail or other notification to potentially impacted Market Parties that comply with Section 23.3.3.3.1.2.2 of these

Mitigation Measures within 10 business days after the relevant market day. The e-mail shall identify the date of the proposed mitigation and the conduct failing Bid(s) or Bid components.

23.3.3.3.1.4 Market Parties that want to consult with the ISO regarding real-time guarantee payment impact test results, or regarding mitigation applied in accordance with Section 23.3.1.2.3 of these Mitigation Measures, for a particular market day must submit a written request to initiate the consultation process that specifies the market day and Bid(s) for which consultation is being requested (for purposes of this Section 23.3.3.3.1, a “Consultation Request”).

23.3.3.3.1.4.1 Consultation Requests must be received by the ISO’s customer relations department within 15 business days after the ISO (i) posts new or revised real-time guarantee payment impact test settlement results, or (ii) either posts new or revised real-time guarantee payment impact test settlement results or sends an e-mail informing a Market Party of the results of a test performed pursuant to Section 23.3.1.2.3 of these Mitigation Measures for the relevant market day. Consultation Requests received outside the 15 business day period shall be rejected by the ISO.

23.3.3.3.1.4.2 The ISO may send more than one notice informing a Market Party of the same instance of mitigation. Notices that identify real-time guarantee payment impact test or Section 23.3.1.2.3 mitigation settlement results that are not new (for which the Market Party has already received a notice from the ISO) and that do not reflect revised mitigation (for which the dollar impact of the real-time guarantee payment mitigation has not changed) shall not present an additional



opportunity, or temporally extend the opportunity, for the Market Party to initiate consultation.

23.3.3.3.1.4.3 If consultation was timely requested and completed addressing a particular set of real-time guarantee payment impact test results, or addressing a particular instance of mitigation applied in accordance with Section 23.3.1.2.3 of these Mitigation Measures, a Market Party may not again request consultation regarding the same real-time guarantee payment impact test results, or the same application of Section 23.3.1.2.3 mitigation, unless revised settlement results, that are not due to the previously completed consultation and that change the dollar impact of the relevant instance of mitigation, are posted.

23.3.3.3.1.5 The Consultation Request may include: (i) an explanation of the reason(s) why the Market Party believes some or all of the reference levels used by the ISO 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; and (ii) supporting documents, data and other relevant information (collectively, for purposes of this Section 23.3.3.3.1, "Data"), including proof of any cost(s) claimed.

23.3.3.3.1.5.1 Market Parties shall ensure that the information they submit to the ISO, including but not limited to fuel price and fuel type information, is accurate. Except as set forth in Section 23.3.1.4.7.7, the ISO may not retroactively revise a reference level to reflect additional fuel costs if a Market Party or its representative did not timely submit accurate fuel cost information.

23.3.3.3.1.6 If the Market Party is not able to provide (i) an explanation of the reason(s) why the Market Party believes some or all of the reference levels used by the ISO 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, or (ii) all supporting Data, at the time a Consultation Request is submitted, the Market Party should specifically identify any additional explanation or Data it intends to submit in support of its Consultation Request and provide an estimate of the date by which it will provide the additional explanation or Data to the ISO.

23.3.3.3.1.7 Following the submission of a Consultation Request that satisfies the timing and Bid identification requirements of Section 23.3.3.3.1.4, above, consultation shall be performed in accordance with Section 23.3.3.1 of these Mitigation Measures, as supplemented by the following rules:

23.3.3.3.1.7.1 The ISO shall consult with the Market Party to determine whether the information available to the ISO presents an appropriate basis for (i) modifying the reference levels used to perform real-time guarantee payment mitigation for the market day in question, or (ii) determining that the Market Party's Bid(s) on the market day in question were consistent with competitive behavior. The ISO shall only modify the reference levels used to perform mitigation, or determine that the Market Party's Bid(s) on the market day that is the subject of the Consultation Request were consistent with competitive behavior, if the ISO has in its possession Data that is sufficient to support such a decision.

23.3.3.3.1.7.2 A preliminary determination by the ISO shall be provided to the Market Monitoring Unit for its review and comment, and the ISO shall consider the Market Monitoring Unit's recommendations in reaching its decision. The ISO shall inform the Market Party of its decision, in writing, as soon as reasonably practicable, but in no event later than (i) 50 business days after the new or revised real-time guarantee payment impact test settlement results for the relevant market day were posted, or (ii) 50 business days after the earlier of the posting of new or revised Section 23.3.1.2.3 mitigation settlement results for the relevant market day, or the issuance of an e-mail in accordance with Section 23.3.3.3.1.3, above. If the ISO does not affirmatively determine that it is appropriate to modify the Bid(s) that are the subject of the Consultation Request within 50 business days, the Bid(s) shall remain mitigated. The responsibilities of the Market Monitoring Unit that are addressed in this section of the Mitigation Measures are also addressed in Section 30.4.6.2.7 of Attachment O.

23.3.3.3.1.7.3 The ISO may, as soon as practicable, but at any time within the consultation period, request Data from the Market Party. The Market Party is expected to undertake all reasonable efforts to provide the requested Data as promptly as possible, to inform the ISO of the date by which it expects to provide requested Data, and to promptly inform the ISO if the Market Party does not intend to, or cannot, provide Data that has been requested by the ISO.

23.3.3.3.1.8 This Section 23.3.3.3.1 addresses Consultation Requests. It is not intended to limit, alter or modify a Market Party's ability to submit or proceed

with a billing dispute pursuant to Section 7.4 of the ISO Services Tariff or  
Section 2.7.4.1 of the ISO OATT.

**23.3.3.3.2 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 and Applying Mitigation in Accordance with Section 23.3.1.2.3 of these Mitigation Measures**

23.3.3.3.2.1 Consistent with and subject to all of the requirements of Section 23.3.3.3.1

of these Mitigation Measures, 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 impact test settlement results, or identified possible mitigation under Section 23.3.1.2.3 of these Mitigation Measures may contact the ISO within 15 business days after new or revised impact test settlement results are posted, or possible mitigation under Section 23.3.1.2.3 of these Mitigation Measures is identified, to request that the reference levels used to perform the testing and mitigation be adjusted to include any of the following verifiable costs:

23.3.3.3.2.1.1 procuring fuel at prices that exceed the index prices used to calculate the Generator's reference level;

23.3.3.3.2.1.2 burning a type of fuel or blend of fuels that is not reflected in the Generator's reference level;

23.3.3.3.2.1.3 gas balancing penalties;

23.3.3.3.2.1.4 compliance with operational flow orders; and

23.3.3.3.2.1.5 purchasing additional emissions allowances that are necessary to satisfy the Generator's Supplemental Resource Evaluation or Out-of-Merit schedule.

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

23.3.3.3.2.2.1 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

23.3.3.3.2.2.2 the costs must not already be reflected in the Generator's reference levels or be recovered 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, but in no event later than the deadline set forth in Section 23.3.3.3.1.7.2 of these Mitigation Measures, the ISO shall adjust the affected Generator's reference levels and re-perform the real-time guarantee payment conduct and impact tests, or the Section 23.3.1.2.3 test, as appropriate, for the affected day. Only the reference levels used to perform real-time guarantee payment mitigation and/or mitigation pursuant to Section 23.3.1.2.3 of these Mitigation Measures, will be adjusted.

23.3.3.3.2.3 If, at some point prior to the issuance of a Close-Out Settlement for the relevant service month, the ISO or the Commission determine 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 appropriate test(s) using reference levels that reflect the verifiable costs that the Generator incurred and

shall apply mitigation if the Generator's Bids fail conduct and impact, or the Section 23.3.1.2.3 test, at the corrected reference levels.

23.3.3.3.2.4 Generators may contact the ISO to request the inclusion of costs other than the five types identified above in their reference levels. The ISO shall consider such requests in accordance with Sections 23.3.1.4, or 23.3.3.3.1 of these Mitigation Measures, as appropriate.