Attachment II

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 (i) generating output that is subject to a forced outage, subject to verification by the ISO as may

be appropriate that an outage was forced, ~~or~~ (ii) capacity that is out of service for maintenance in accordance with an ISO maintenance schedule, or (iii) generating capacity that is not Bid in the Real-Time Market, because and to the extent it would have to use unauthorized natural gas to operate ~~subject to verification by the ISO as may be appropriate that an outage was forced~~. *See* Section 23.3.1.4.6.2.1.1 below.

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:

23.3.1.2.1.2.1 Operating Reserves and Regulation Capacity 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.

23.3.1.2.1.2.2 Regulation Movement Bids: A 300 percent increase.

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:

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

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 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.

23.3.1.2.4   For In-City Generators committed in the Day-Ahead Market for local

reliability, additional Mitigation Measures are specified in Section 23.5.2.1.

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 23.3.1.4.6, 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 50 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 23.3.1.4.6, 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 and Ancillary Service Bids are intended to reflect the Generator's marginal costs. The ISO's determination of a

Generator's Energy marginal costs shall include an assessment of the Generator's incremental operating costs in accordance with the following formula:

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

Reference levels shall also include 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.

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 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 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 23.3.1.4.6 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.

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

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 $|AvgBidMinGen_{g,h,i} - BidMinGen_{g,i}| < 5MW$) or by less than 10% (*i.e.*, if both $BidMinGen_{g,i} < 1.1 * AvgBidMinGen_{g,h,i}$ and $BidMinGen_{g,i} > 0.9 * AvgBidMinGen_{g,h,i}$),

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

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

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

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

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   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 real-time reference levels for Regulation Capacity 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. The ISO shall calculate real-time reference levels for Regulation Movement in accordance with Sections 23.3.1.4.1.3 or 23.3.1.4.2.1 of these Mitigation Measures and shall not calculate real-time Reference levels for Regulation Movement in accordance with Section 23.3.1.4.1.1. 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. The ISO shall calculate Day-Ahead reference levels for Regulation Capacity 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. The ISO shall calculate Day-Ahead reference levels for Regulation Movement in accordance with Sections 23.3.1.4.1.3 or 23.3.1.4.2.1 of these Mitigation Measures and shall not

calculate Day-Ahead Reference levels for Regulation Movement in accordance with Section 23.3.1.4.1.1.

23.3.1.4.6   Reflecting Fuel Costs in Reference Levels. The ISO shall use the best fuel cost information available to it to adjust reference levels to reflect appropriate fuel costs.

23.3.1.4.6.1   ISO Reporting Obligation. If the ISO did not utilize the best fuel cost information available to it when it adjusted reference levels to reflect appropriate fuel costs, and the ISO's failure to utilize the best fuel cost information available to it affected market clearing prices or had an impact on guarantee payments that cannot be corrected, then the ISO shall report any market clearing price and uncorrected guarantee payment impacts to FERC staff and to its Market Participants. The ISO is not required to report, or to otherwise act, if no market impact is identified.

23.3.1.4.6.~~1~~2   Market Parties shall monitor Generator reference levels and shall endeavor to timely (as that term is defined in Section 23.3.1.4.6.8~~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.

23.3.1.4.6.2.1 Subject to the exceptions set forth in Section 23.3.1.4.6.2.1.2 below, the ISO shall not permit charges for unauthorized natural gas use to be included as a component in the development of a Generator's reference levels and Market Parties shall not be eligible to recover costs associated with unauthorized natural gas use.

23.3.1.4.6.2.1.1   What constitutes "unauthorized" natural gas use is specified in each natural gas pipeline's or local distribution company's ("LDC's") applicable tariff, rate schedule or customer contract. Unauthorized natural gas use may result from, but is not limited to, the following circumstances: (i) consumption of natural gas in violation of the terms of an Operational Flow Order ("OFO") issued by the relevant natural gas LDC or pipeline; (ii) violation of instructions issued by the relevant natural gas LDC or pipeline restricting consumption of natural gas or use of natural gas imbalance service, when such instructions are issued consistent with the LDC's or pipeline's authority under a tariff, rate schedule or contract; (iii) consumption of natural gas during a period of authorized interruption of service by the relevant natural gas LDC or pipeline, determined in accordance with the terms of the applicable tariff, rate schedule or contract; or (iv) use of natural gas balancing services that are explicitly identified in the relevant natural gas LDC's or pipeline's applicable tariff, rate schedule or contract as unauthorized use or penalty gas.

23.3.1.4.6.2.1.2   If and to the extent a Market Party has obtained specific authorization from the relevant natural gas LDC or pipeline to use gas that would otherwise be unauthorized, such use shall not be considered unauthorized use by the ISO. Market Parties shall make every effort to clearly document authorization they obtain from the LDC or pipeline. Documentation obtained after the fact will be considered.

23.3.1.4.6.23   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.

23.3.1.4.6.34 Consistent with the rules specified in this Section 23.3.1.4.6 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.

23.3.1.4.6.45 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 23.3.1.4.6.87 below, or (iii) consistent with Section 23.3.1.4.6.98 below.

23.3.1.4.6.56   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 23.3.1.4.6.87 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.

23.3.1.4.6.6 7   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.

23.3.1.4.6.7 8   For purposes of this Section 23.3.1.4.6, "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 23.3.1.4.6.4 3 of these Mitigation Measures prior to market close for the relevant Real-Time Market hour. For purposes of this Section 23.3.1.4.6, "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 23.3.1.4.6.4 3 of these Mitigation Measures at least 15 minutes prior to the close of the Day-Ahead Market (*i.e.*, by 4:45 a.m.). 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.

23.3.1.4.6.89 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.

23.3.1.4.6.89.1   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.

23.3.1.4.6.89.2   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.

23.3.1.4.6.~~8~~9.3   If the bidders of a Generator that has previously been mitigated

under this Section 23.3.1.4.6.9~~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 23.3.1.4.6.9~~8~~ of the Mitigation

Measures as if the Generator had not previously been subject to the mitigation

measure.

23.3.1.4.6.~~8~~9.4   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 23.3.1.4.6.9~~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.

23.3.1.4.6.~~8~~9.5   For purposes of this Section 23.3.1.4.6.9~~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.

23.3.1.4.6.89.6   For purposes of this Section 23.3.1.4.6.98, 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.

23.3.1.4.6.89.7   The responsibilities of the Market Monitoring Unit that are

addressed in Section 23.3.1.4.6.98 of the Mitigation Measures are also addressed

in Section 30.4.6.2.3 of the Plan.

23.3.1.4.6.910 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.

23.3.1.4.7   Except as otherwise authorized in accordance with Section 23.3.1.4.6.87

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 23.3.1.4.6.87, 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 23.3.1.4.6.87, 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 permitted gas balancing chargespenalties;

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.

23.4   **Mitigation Measures**

23.4.1   **Purpose and Terms**

If conduct is detected that meets the criteria specified in Section 23.3, the appropriate

mitigation measure described in this Section shall be applied by the ISO. The conduct specified

in Sections 23.3.1.1 to 23.3.1.3 shall be remedied by (1) the prospective application of a default

bid measure, or (2) the application of a default bid to correct guarantee payments, as further

described in Section 23.4.2.2.4, below. If a Market Party or its Affiliates engage in physical

withholding by providing the ISO false information regarding the derating or outage of an

Electric Facility or does not operate a Generator in conformance with ISO dispatch instructions

such that the prospective application of a default bid is not feasible, or if otherwise appropriate to

deter either physical or economic withholding, the ISO shall apply the sanction described in

Section 23.4.3.

Terms with initial capitalization not defined in Section 23.4 shall have the meaning set

forth in the Open Access Transmission Tariff.

23.4.2   **Default Bid**

23.4.2.1   **Purpose**

A default bid shall be designed to cause a Market Party to Bid as if it faced workable

competition during a period when (i) the Market Party does not face workable competition, and

(b) has responded to such condition by engaging in the physical or economic withholding of an

Electric Facility. In designing and implementing default bids, the ISO shall seek to avoid

causing an Electric Facility to Bid below its marginal cost.

23.4.2.2   Implementation

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

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

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

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

23.4.2.2.4   Except as may be specifically authorized by the Commission:

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

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

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

23.4.2.2.5.1   Automated mitigation measures shall not be applied if the price effects of the measures would cause the average day-ahead energy price in the mitigated locations or zones to rise over the entire day.

23.4.2.2.5.2   Automated mitigation measures as specified in Section 23.3.2.2.3 shall be applied to Minimum Generation Bids and start-up costs Bids meeting the applicable conduct and impact tests. When mitigation of Minimum Generation Bids is warranted, mitigation shall be imposed from the first hour in which the impact test is met to the last hour in which the impact test is met, or for the duration of the mitigated Generator's minimum run time, whichever is longer.

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

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

23.4.2.2.5.5   The role of automated mitigation measures in the determination of Day-Ahead market clearing prices is described in Section 17.1.3 of Attachment B of the ISO Services Tariff.

23.4.2.2.6   A Real-Time automated mitigation measure shall remain in effect for the duration of any hour in which there is an RTC interval for which such mitigation is deemed warranted.

23.4.2.2.7   A default bid shall not be imposed on a Generator that is not in the New York Control Area and that is electrically interconnected with another Control Area.

23.4.3   Sanctions

23.4.3.1   Types of Sanctions

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

23.4.3.2   Imposition

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

23.4.3.3   Base Penalty Amount

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

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

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

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

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

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

be:

One and a half times the estimated additional real time LBMP and Ancillary

Services revenues earned by the Generator, or Market Party and its Affiliates,

meeting the standards for impact during intervals in which MW were not provided

or were overproduced.

23.4.3.3.3   If inaccurate fuel type and/or fuel price information was submitted by or

for a Market Party, and the reference level that the ISO developed based on that

inaccurate information impacted guarantee payments or market clearing prices

paid to the Market Party in a manner that violates the thresholds specified in this

Section 23.4.3.3.3, then, following consultation with the Market Party regarding

the appropriate fuel type and/or fuel price, the ISO shall apply the penalty set

forth below, unless: (i) the Market Party shows that the information was

submitted in compliance with the requirements of Section 4.1.9 of the ISO

Services Tariff (Incremental Cost Recovery for Units Responding to Local

Reliability Rule I-R3 or I-R5), or (ii) the total penalty calculated for a particular

Day-Ahead or Real-Time Market day is less than $5,000, in which case the ISO

will not apply a penalty.

23.4.3.3.3.1   Day-Ahead Conduct and Market Impact Tests

23.4.3.3.3.1.1   Day-Ahead Conduct Test

———Using the higher of (a) a revised reference level calculated using the

Generator's actual fuel costs, or (b) the reference level that would have been in

place for the Generator but for the submission of inaccurate fuel type and/or fuel

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

23.4.3.3.3.1.2 Day-Ahead Impact Test

Using the higher of (a) a revised reference level calculated using the Generator's actual fuel costs, or (b) the reference level that would have been in place for the Generator but for the submission of inaccurate fuel type and/or fuel price information, test the Bids for both LBMP and guarantee payment impact in accordance with the appropriate provisions of Section 23.3.2.1 of these Mitigation measures. However, the ISO shall perform the Day-Ahead guarantee payment impact test for Generators that are committed in the Day-Ahead Market for local reliability, and that are not located in a Constrained Area, at the 50% increase Constrained Area threshold specified in Section 23.3.2.1.2 of these Mitigation Measures.

23.4.3.3.3.1.3 Day-Ahead Reliability Commitments in a Constrained Area Consistent with Section 23.5.2 of these Mitigation Measures, the conduct and impact thresholds for In-City Generators committed in the Day-Ahead Market for local reliability shall each be zero.

23.4.3.3.3.2   Real-Time Conduct and Market Impact Tests

23.4.3.3.3.2.1 Real-Time Conduct Test

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

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

23.4.3.3.3.2.2 Real-Time LBMP Impact Test

Each of Tthe Market Party's Bids for a Generator will be treated as having a Real-Time Market LBMP impact if (1) the higher of (a) a revised reference level calculated using the Generator's actual fuel costs, or (b) the reference level that would have been in place for the Generator but for a Market Party's submission of inaccurate fuel type and/or fuel price information, is less than or equal to the real-time LBMP at the PTID that represents the Generator's location, and (2) the lesser of (x) the Generator's Bid, or (y) the reference level that was actually used to test the Bid for LBMP impact in the Real-Time Market for that hour, is was greater than or equal to the real-time LBMP at the PTID that represents the Generator's location.

23.4.3.3.3.2.3 Real-Time Guarantee Payment Impact Test

Using the greater of (a) a revised reference level calculated using the Generator's actual fuel costs, or (b) the reference level that would have been in place for the Generator but for the submission of inaccurate fuel type and/or fuel price information, test the Bids for guarantee payment impact in accordance with the appropriate provisions of Section 23.3.2.1 of these Mitigation Measures. However, the ISO shall perform the real-time guarantee payment impact test for Generators that are committed outside the ISO's economic merit order selection process via a SRE, and that are not located in a Constrained Area, at the 50%

increase Constrained Area threshold specified in Section 23.3.2.1.2 of these Mitigation Measures.

23.4.3.3.3.3 Day-Ahead Market Penalty Calculation

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

Daily Penalty = max [(Multiplier * [$\Sigma_g \blacktriangle$ Day-Ahead BPCG payment$_g$] + (Multiplier) $\Sigma_h \Sigma_g$ ([Market Party MWh$_{gh}$] x [$\blacktriangle$ Day Ahead LBMP@PTID$_{gh}$]) + max [Σ_h TCC Revenue Calc for Market Party$_h$, 0]), 0]

Where:

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

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

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

$\blacktriangle$ Day-Ahead BPCG payment$_g$ = the change in the Day-Ahead Market guarantee payment that the Market Party receives for Generator g determined when the ISO performs the Day Ahead Market guarantee payment impact test in accordance with Section 23.3.2.1.2 of these Mitigation Measures

Market Party MWh$_{gh}$ = the MWh of Energy scheduled in the Day-Ahead Market for Generator g in hour h

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

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

23.4.3.3.3.4   Real-Time Market Penalty Calculation

If the results of either of the Real-Time Market impact tests indicate that the Minimum Generation Bid or Incremental Energy Bid submitted for a Market Party's Generator had either LBMP or guarantee payment impact then the ISO shall charge the Market Party a penalty, calculated for each penalized day, for each of its Generators, for each hour of the day, as follows:

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

Where

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

h = an index running across all hours of the day in which inaccurate fuel type or fuel price information was supplied for any of the Market Party's Generators; provided that one of the Bids in that hour "h" for at least one of the Market

Party's Generators must have had a Real Time Market LBMP or guarantee payment impact in accordance with Sections 23.4.3.3.3.2.2 or 23.4.3.3.3.2.3 of these Mitigation Measures

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

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

Original reference level$_{gh}$ = the lesser of the Market Party's Bids or the reference level for Generator g in hour h actually used in the Real-Time Market to perform conduct and impact testing of the Market Party's Bids

MWh DAM$_{gh}$ = the MWh that Generator g was scheduled to produce in the Day-Ahead Market in hour h

MWh RT$_{gh}$ = the MWh that Generator g was scheduled to produce in the Real-Time Market in hour h

Market Party MWh$_{gh}$ = MWh produced by Market Party's Generator g that was scheduled to produce energy in hour h in the Real-Time Market

▲ simplified guarantee payment$_g$ = the change in the Real-Time Market guarantee payment that the Market Party receives for Generator g, determined

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

23.4.3.3.4   If the opportunity to submit Incremental Energy Bids into the real-time market that exceed Incremental Energy Bids made in the Day-Ahead Market or mitigated Day-Ahead Incremental Energy Bids where appropriate, has been revoked on a Market Party's Generator pursuant to Sections 23.4.7.2 and 23.4.7.3 of these Mitigation Measures, then the following virtual market penalty may be imposed on the Market Party:

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

WHERE:

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

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

23.4.3.3.5   Real-Time LBMPs shall not be revised as a result of the imposition of a

financial obligation as specified in this Section 23.4.3.3, except as may be

specifically authorized by the Commission.

23.4.3.4   Multipliers

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

multipliers:

23.4.3.4.1   For the first instance of a type of conduct by a Market Party meeting the

standards for mitigation, the multiplier shall be one (1).

23.4.3.4.2   For the second instance within the current or the two immediately

previous capability periods of substantially similar conduct in the same market by

a Market Party or its Affiliates, the multiplier shall be one (1),

23.4.3.4.3   For the third instance within the current or the two immediately previous

capability periods of substantially similar conduct in the same market by a Market

Party or its Affiliates, the multiplier shall be two (2),

23.4.3.4.4   For the fourth or any additional instance within the current or immediately

previous capability period of substantially similar conduct in the same market by

a Market Party or its Affiliates, the multiplier shall be three (3).

23.4.3.5   Dispute Resolution

23.4.3.5.1   Parties with of disputes arising from or relating to the imposition of a

sanction under this Section 23.4.3 may utilize the dispute resolution provisions of

the ISO Services Tariff. The scope of any such proceeding shall include

resolution of any dispute as to legitimate justifications, under applicable legal,

regulatory or policy standards, for any conduct that is asserted to warrant a

penalty. Any or all of the issues in any such proceeding may be resolved by agreement of the parties.

23.4.3.5.2   Payment of a financial penalty may be withheld pending conclusion of any arbitration or other alternate dispute resolution proceeding instituted pursuant to the preceding paragraph and any petition to FERC for review under the Federal Power Act of the determination in such dispute resolution proceeding; provided, however, that interest at the ISO's average cost of borrowing shall be payable on any part of the penalty that is withheld, and that is determined to be payable at the conclusion of the dispute resolution/FERC review process from the date of the infraction giving rise to the penalty to the date of payment. The exclusive remedy for the inappropriate imposition of a financial penalty, to the exclusion of any claim for damages or any other form of relief, shall be a determination that a penalty should not have been imposed, and a refund with interest of paid amounts of a penalty determined to have been improperly imposed, as may be determined in the applicable dispute resolution proceedings.

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

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

23.4.3.6   Disposition of Penalty Funds

Except as specified in Section 23.4.4.3.2, amounts collected as a result of the imposition

of financial penalties shall be credited against costs collectable under Rate Schedule 1 of the ISO

Services Tariff.

23.4.4   Load Bid Measure

23.4.4.1   Purpose

As initially implemented, the ISO market rules allow loads to choose to purchase power

in either the Day-Ahead Market or in the Real-Time Market, but provide other Market Parties

less flexibility in opting to sell their output in the Real-Time Market. As a result of this and

other design features, certain bidding practices may cause Day-Ahead LBMPs not to achieve the

degree of convergence with Real-Time LBMPs that would be expected in a workably

competitive market. A temporary mitigation measure is specified below as an interim remedy if

conditions warrant action by the ISO until such time as the ISO develops and implements an

effective long-term remedy, if needed. These measures shall only be imposed if persistent

unscheduled load causes operational problems, including but not limited to an inability to meet

unscheduled load with available resources. The ISO shall post a description of any such

operational problem on its web site.

23.4.4.2   Implementation

23.4.4.2.1   Day-Ahead LBMPs and Real-Time LBMPs in each load zone shall be

monitored to determine whether there is a persistent hourly deviation between

them in any zone that would not be expected in a workably competitive market.

Monitoring of Day-Ahead and real-time LBMPs shall include examination of the

following two metrics (along with any additional monitoring tools and procedures

that the ISO determines to be appropriate to achieve the purpose of this Section

23.4.4):

(1) The ISO shall compute a rolling average of the hourly deviation of real-time

zonal LBMPs from Day-Ahead zonal LBMPs. The hourly deviation shall be

measured as: (zonal $LBMP_{real\ time}$ - zonal $LBMP_{day\ ahead}$). Each observation of the

rolling-average time series shall be a simple average of all the hourly deviations

over the previous four weeks, or such other averaging period determined by the

ISO to be appropriate to achieve the purpose of this Section 23.4.4.

(2) The ISO shall also compute the rolling average *percentage* deviation of real-

time zonal LBMPs from Day-Ahead zonal LBMPs. This percentage deviation

shall be calculated by dividing the rolling-average hourly deviation (defined in

Section 23.4.4.2.1 (1) above) by the rolling-average level of Day-Ahead zonal

LBMP over the same time period, using the averaging period(s) described in

Section 23.4.4.2.1 (1), above.

23.4.4.2.2   The ISO shall also estimate and monitor the average percentage of each

Load Serving Entity's load scheduled in the Day-Ahead Market, using a

methodology intended to identify a sustained pattern of under-bidding as

accurately as the ISO deems practicable. The average percentage will be

computed over a specified time period determined by the ISO to be appropriate to

achieve the purpose of this mitigation measure.

23.4.4.2.3   If the ISO determines that (i) the relationship between zonal LBMPs in a

zone in the Day-Ahead Market and the Real-Time Market is not what would be

expected under conditions of workable competition, (ii) one or more Load

Serving Entities have been meeting a substantial portion of their loads with purchases in the Real-Time Market, and (iii) that this practice has contributed to an unwarranted divergence of LBMP between the two markets, then the following mitigation measure may be imposed. Any such measure shall be rescinded upon a determination by the ISO that any one or more of the foregoing conditions is not met.

23.4.4.3   Description of the Measure

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

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

23.4.4.3.3   The Allowance Level and the Penalty Level shall be established by the ISO at levels deemed effective and appropriate to mitigate the market effects described in this Section 23.4.4. In addition, the Penalty Level payments shall be

waived in any hour in which the Allowance Level is exceeded because of

unexpected system conditions.