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 into the area in which the Generator or generation is located has a Shadow

Price greater than zero, 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 into the area in which the generation is located has a Shadow Price greater than zero, operating a Generator or generation in real-time at a lower output level than would have been expected had the Market Party's and its Affiliate's Generator or generation followed the ISO's dispatch instructions, resulting in a difference in output that exceeds (i) 15 minutes times a Generator's stated response rate per minute at the output level that would have been expected had the Generator followed the ISO's dispatch instructions, or (ii) 50 MW of a Generator's capability, or (iii) 100 MW of the total capability of a Market Party and its Affiliates.

23.3.1.1.2   The amounts of generating capacity considered withheld for purposes of applying the thresholds in this Section 23.3.1.1 shall include unjustified deratings, and the portions of a Generator's output that is not bid or subject to economic withholding. The amounts deemed withheld shall not include generating output that is subject to a forced outage or capacity that is out of service for maintenance in accordance with an ISO maintenance schedule, subject to verification by the ISO as may be appropriate that an outage was forced.

23.3.1.1.3   A transmission facility shall be deemed physically withheld if it is not operated in accordance with ISO instructions and such failure to conform to ISO instructions causes

or contributes to transmission congestion. A transmission facility shall not be deemed

withheld if it is subject to a forced outage or is out of service for maintenance in

accordance with a 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   Energy and Minimum Generation Bids: A 300 percent increase or an increase of

$100 per MWh, whichever is lower; provided, however, that Energy or Minimum

Generation Bids below $25 per MWh shall be deemed not to constitute economic

withholding.

23.3.1.2.1.2   Operating Reserves and Regulation Service Bids: A 300 percent increase or an

increase of $50 per MW, whichever is lower; provided, however, that such bids below

$5 per MW shall be deemed not to constitute economic withholding.

23.3.1.2.1.3   Start-up costs 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: 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 into the area in which a Generator is located has a Shadow Price greater than zero, the lower of the thresholds specified for areas that are not Constrained Areas or a threshold determined in accordance with the following formula:

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

where:

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

Constrained Hours =   the total number of minutes over the prior 12 months, converted to hours (retaining fractions of hours), in which the real-time Shadow Price has been greater than zero 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 zero on any Interface or facility leading

into the Constrained Area in which the Generator is located. Determination of the

number of Constrained Hours shall be subject to adjustment by the ISO to account for

significant changes in system conditions.

23.3.1.2.2.4   For Start-up costs 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.

23.3.1.3   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 – 23.3.1.4.5 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 previous 90 days, adjusted for

changes in fuel prices. 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   The mean of the LBMP at the Generator's location during the lowest-priced 25 percent of the hours that the Generator was dispatched over the previous 90 days, adjusted for changes in fuel prices. 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 via 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 (iiiiv) the ISO may exclude LBMPs that would cause a reference level to deviate substantially below a Generator's marginal cost when developing LBMP-based reference levels; or

23.3.1.4.1.3   A level determined in consultation with the Market Party submitting the Bid or Bids at issue, provided such consultation has occurred prior to the occurrence of the conduct being examined by the ISO, and provided the Market Party has provided data on a Generator's operating costs in accordance with specifications provided by the ISO.

The reference level for a Generator's Energy Bid is intended to reflect the Generator's marginal costs. The ISO's determination of a Generator's marginal costs shall include an assessment of the Generator's incremental operating costs in accordance with the following formula, and such other factors or adjustments as the ISO shall reasonably determine to be appropriate based on such data as may be furnished by the Market Party or otherwise available to the ISO:

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

23.3.1.4.2   If sufficient data do not exist to calculate a reference level on the basis of either of the first two methods, or if the ISO determines that none of the three methods are applicable to a particular type of Bid component, or an attempt to determine a reference level in consultation with a Market Party has not been successful, 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 Energy Bids for New Capacity for the three year period following commencement of its commercial operation shall be the higher of (i) the amount determined in accordance with the provision of Section 23.3.1.4.1 or 23.3.1.4.2, or (ii) the average of the peak LBMPs over the twelve months prior to the commencement of operation of the New Capacity in the

zone in which the New Capacity is located during hours when Generators with operating characteristics similar to the New Capacity would be expected to run. For entities owning or otherwise controlling the output of capacity in the New York Control Area other than New Capacity, the provisions of this paragraph shall apply only to net additions of capacity during the applicable three year period.

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 ~~start~~down times, adjusted for changes in fuel prices. 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 ~~by the bidding~~for a Generator to achieve its specified minimum operating level from an offline state, ~~including, where appropriate, costs incurred to meet minimum run time and minimum downtime requirements,~~ provided such consultation has occurred prior to the occurrence of the conduct being examined by the ISO, and provided the Market Party has provided data

on a̶the Generator's operating costs in accordance with specifications provided by the ISO; or

23.3.3.4.4.3   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:

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

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

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

Where:

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

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

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

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

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

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

23.3.3.4.4.3.2   Calculation of the shortfall ratio for use in Section 23.3.3.4.4.3.1, above

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

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

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

Where:

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

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

*Alternative Method **of Calculating the Shortfall Ratio***

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

Where:

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

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

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

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

Formatted: Body para

23.3.1.4.4.43   The methods specified in Section 23.3.1.4.2.

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

23.3.2   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 guarantee payments to a Market Party 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 30.4.6.2.3 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 30.4.6.2.4 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, including a Demand Side Resource participating in the Operating Reserves or Regulation

Service Markets, that would be subject to mitigation or other information available to the ISO that the

conduct and associated price or guarantee payments are attributable to legitimate competitive market

forces or incentives. For purposes of this section, conduct shall be deemed to have an effect on market

prices or guarantee payments that is significant if it exceeds one of the following thresholds:

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 guarantee payments to a Market Party for a day.

23.3.3   Consultation with a Market Party

23.3.3.1   Consultation Process

If through the application of an appropriate index or screen or other monitoring of market conditions, conduct is identified that (i) exceeds an applicable threshold, and (ii) has a material effect, as specified above, on one or more prices or guarantee payments in an ISO Administered Market, the 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. 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.   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. Upon request, the ISO shall also consult with a Market Party with respect to the information and analysis used to determine reference levels under Section 23.3.1.4 for that Market Party. If cost data or other information submitted by a Market Party indicates to the satisfaction of the ISO that the reference levels for that Market Party should be changed, revised reference levels shall be determined by the ISO, reviewed by the Market Monitoring Unit and, following the ISO's consideration of the Market Monitoring Unit's recommendation, communicated to the Market Party, and implemented by the ISO as soon as practicable. 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.

23.3.3.2   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 real-time guarantee payment mitigation 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   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   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   Market Parties that want to consult with the ISO regarding real-time guarantee

payment impact test results 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").

23.3.3.3.1.3.1 Consultation Requests must be received by the ISO's customer relations department within 15 business days after the ISO posts new or revised real-time guarantee payment impact test settlement results for the relevant market day. Consultation Requests received outside the 15 business day period shall be rejected by the ISO.

23.3.3.3.1.3.2 The ISO may send more than one notice informing a Market Party of the same instance of real-time guarantee payment mitigation. Notices that identify real-time guarantee payment impact test 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.

23.3.3.3.1.3.3 If consultation was timely requested and completed addressing a particular set of real-time guarantee payment impact test results, a Market Party may not again request consultation regarding the same real-time guarantee payment impact test results unless revised real-time guarantee payment impact test settlement results, that are not due to the previously completed consultation and that change the dollar impact of real-time guarantee payment mitigation, are posted.

23.3.3.3.1.4 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 to determine the real-time guarantee payment impact test results for the market day(s) in question are inappropriate, or why some or all of the Market Party's bids on the market day(s) in question were otherwise consistent with competitive behavior; 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   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 to determine the real-time guarantee payment impact test results for the market day(s) in question are inappropriate, or why some or all of the Market Party's bids on the market day(s) in question were otherwise consistent with competitive behavior, 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.

23.3.3.3.1.6   Following the submission of a Consultation Request that satisfies the timing and bid identification requirements of Section 23.3.3.3.1.3, above, consultation shall be performed in accordance with Section 23.3.3.1 of these Mitigation Measures, as supplemented by the following rules:

23.3.3.3.1.6.1   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 real-time guarantee payment 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.

23.3.3.3.1.6.2   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 50 business days after the new or revised real-time guarantee payment impact test settlement results for the relevant market day were posted. 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 after the new or revised real-time guarantee payment impact test settlement results for the relevant market day were posted, 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 30.4.6.2.6 of Attachment O.

23.3.3.3.1.6.3   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.

23.3.3.3.1.7   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 Test**

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, may contact the ISO within 15 business days after new or revised impact test settlement results are posted to request that the reference levels used to perform the conduct and impact tests for real-time guarantee payment mitigation be adjusted to include any of the following verifiable costs:

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

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

23.3.3.3.2.1.3   gas balancing penalties;

23.3.3.3.2.1.4   compliance with operational flow orders; and

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

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

23.3.3.3.2.2.1   the Generator must specifically and accurately identify and document the

extraordinary costs it has incurred to operate during the hours of its Supplemental

Resource Evaluation or Out-of-Merit commitment; and

23.3.3.3.2.2.2   the costs must not already be reflected in the Generator's reference levels or be

recovered from the ISO through other means.

As soon as practicable after the Market Party demonstrates to the ISO's reasonable satisfaction

that one or more of the five categories of extraordinary costs have been incurred, but in no event later

than the deadline set forth in Section 23.3.3.3.1.6.2 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 for the affected day. Only the reference levels used to perform real-time guarantee

payment mitigation 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 conduct and impact tests using reference levels that reflect the

verifiable costs that the Generator incurred and shall apply real-time guarantee

payment mitigation if the Generator's bids fail conduct and impact 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.