

## **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 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 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:

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

where:

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

Constrained Hours = the total number of minutes over the prior 12 months, converted to hours (retaining fractions of hours), in which the real-time Shadow

Price has been greater than 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.

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

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

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

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

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

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

- i exceeded the Generator's Minimum Generation Bid reference level by the greater of 10% or \$10/MWh, or
- ii. exceeded the Generator's Incremental Energy Bid reference level by the greater of 10% or \$10/MWh, or
- iii. exceeded the Generator's Start-Up Bid reference level by 10%, or
- iv. exceeded the Generator's minimum run time, start-up time, and minimum down time reference levels by more than one hour in aggregate, or
- v. exceeded the Generator's minimum generation MW reference level by more than 10%, or
- vi. decreased the Generator's maximum number of stops per day below the Generator's reference level by more than one stop per day, or to one stop per day.

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

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

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

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

### **23.3.1.4 Reference Levels**

23.3.1.4.1 Except as provided in Sections 23.3.1.4.3 – 23.3.1.4.6 below, a reference level for each component of a Generator's Bid shall be calculated on the basis of the following methods, listed in the order of preference subject to the existence of sufficient data:

23.3.1.4.1.1 The lower of the mean or the median of a Generator's accepted Bids or Bid components, in hour beginning 6 to hour beginning 21 but excluding weekend and designated holiday hours, in competitive periods over the previous 90 days, adjusted for changes in fuel prices consistent with Section 23.3.1.4.7,



below. To maintain appropriate reference levels (i) the ISO shall exclude all Incremental Energy and Minimum Generation Bids below \$15/MWh from its development of Bid-based reference levels, (ii) the ISO shall exclude Minimum Generation Bids submitted for a Generator that was committed on the day prior to the Dispatch Day for the hours during the Dispatch Day that the Generator needs to operate in order to complete the minimum run time specified in the Bid it submitted for the hour in which it was committed, and (iii) the ISO may exclude other Bids that would cause a reference level to deviate substantially from a Generator's marginal cost when developing Bid-based reference levels;

23.3.1.4.1.2 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 consistent with Section 23.3.1.4.7, below. To maintain appropriate reference levels (i) the ISO shall exclude all LBMPs below \$15/MWh from its development of LBMP-based reference levels, (ii) the ISO shall exclude LBMPs during hours when a Generator was scheduled 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 (iv) the ISO may exclude LBMPs that would cause a reference level to deviate substantially

below a Generator's marginal cost when developing LBMP-based reference levels; or

23.3.1.4.1.3 A level determined in consultation with the Market Party submitting the Bid or Bids at issue, provided such consultation has occurred prior to the occurrence of the conduct being examined by the ISO, and provided the Market Party has provided data on a Generator's operating costs in accordance with specifications provided by the ISO. The reference level for a Generator's Energy Bid is intended to reflect the Generator's marginal costs. The ISO's determination of a Generator's marginal costs shall include an assessment of the Generator's incremental operating costs in accordance with the following formula, and such other factors or adjustments as the ISO shall reasonably determine to be appropriate based on such data as may be furnished by the Market Party or otherwise available to the ISO:

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

23.3.1.4.2 If sufficient data do not exist to calculate a reference level on the basis of either of the first two methods, or if the ISO determines that none of the three methods are applicable to a particular type of Bid component, or an attempt to determine a reference level in consultation with a Market Party has not been successful, 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 down times, adjusted for changes in fuel prices consistent with Section 23.3.1.4.7 below. However, accepted Start-Up Bids that incorporate anticipated costs of operating on the day after the Dispatch

Day in which the Generator is committed in order to permit the Generator to satisfy its minimum run time shall not be used to develop Bid-based start-up reference levels;

23.3.1.4.4.2 A level determined in consultation with the Market Party submitting the Bid or Bids at issue and intended to reflect the costs incurred for a Generator to achieve its specified minimum operating level from an offline state, provided such consultation has occurred prior to the occurrence of the conduct being examined by the ISO, and provided the Market Party has provided data on the Generator's operating costs in accordance with specifications provided by the ISO; or

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

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

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

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

Where:

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

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

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

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

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

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

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

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

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

Where:

$AvgBidMinGen_{g,h,i}$  = The average minimum operating level submitted in the Day-Ahead Market for hour h on the seven days preceding the day containing hour i, in MW,

excluding any days for which a minimum operating level was not submitted in the Day-Ahead Market for Generator g, for hour h; and

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

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

*Primary Method of Calculating the Shortfall Ratio*

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

Where:

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

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

*Alternative Method of Calculating the Shortfall Ratio*

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

Where:

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

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

$\text{RefRate1}_{g,h,i}$  = 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  $\text{AvgBidMinGen}_{g,h,i}$

$\text{RefRate2}_{g,i}$  = 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  $\text{BidMinGen}_{g,i}$

Notwithstanding the above, in all cases where the denominator of the equation for calculating  $\text{SR}_{g,h,i}$  is not greater than zero,  $\text{SR}_{g,h,i}$  shall be set to zero, under both the primary and alternative methods.

23.3.1.4.4.4 The methods specified in Section 23.3.1.4.2.

23.3.1.4.5 Notwithstanding the foregoing provisions, the reference level for 10-

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

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

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

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

23.3.1.4.7.2 Screening of fuel type and fuel price information. The ISO may use automated processes and/or require manual review of fuel type and fuel price information submitted by Market Parties to test the accuracy of the information submitted in order to prevent market clearing prices and guarantee payments from being incorrectly calculated.

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

23.3.1.4.7.4 Following the completion of the ISO's automated and/or manual screening processes, the ISO shall use fuel type and fuel price information that Market



Parties or their representatives submit to develop Generator reference levels unless (i) the information submitted is inaccurate, or (ii) the information was not timely submitted, and the Market Party's failure to timely submit the information is not excused by the ISO in accordance with Section 23.3.1.4.7.7 below, or (iii) consistent with Section 23.3.1.4.7.8 below.

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

been used to develop the Generator's reference levels, and use the restored Bid(s) to determine a settlement. Otherwise the ISO shall use the Generator's correct or corrected reference level(s) to determine a settlement.

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

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

It may not always be possible for a Market Party to timely update a Generator's fuel type or fuel price to reflect unexpected real-time changes or events in advance of the first affected market-hour. Upon a showing of extraordinary

circumstances, the ISO may retroactively reflect in Real-Time Market reference levels fuel type or fuel price information that was not timely submitted by a Market Party. While it should ordinarily be possible for a Market Party to timely submit updated fuel type and fuel price information for use in developing a Generator's Day-Ahead Market reference levels, the ISO may retroactively accept and utilize late-submitted Day-Ahead Market fuel type or fuel price information upon a showing of extraordinary circumstances.

23.3.1.4.7.8 If (i) the ISO determines, following consultation with the Market Party and review by the Market Monitoring Unit, that the Market Party or its representative has, over a time period of at least one week, submitted inaccurate fuel type or fuel price information that was ~~taken as a whole,~~ 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 ~~may~~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~~for a period of up to six months following the first identified occurrence, and for a period of up to one year following each subsequent occurrence. The six month or one year period shall be calculated from the date of the most recent instance in which inaccurate fuel type or fuel price information was submitted to the ISO.~~

23.3.1.4.7.8.1 The first time the ISO ceases using the fuel type and fuel price information submitted to the ISO's Market Information System along with the Bid(s) for a Generator to develop Day-Ahead or real-time reference levels for that Generator, it shall do so for 60 days. The 60 day period shall start two business days after the date that the ISO provides written notice of its determination that the application of mitigation is required.

23.3.1.4.7.8.2 Any subsequent time the ISO ceases using the fuel type and fuel price information submitted to the ISO's Market Information System along with the Bid(s) for a Generator to develop Day-Ahead or real-time reference levels for that Generator, it shall do so for 180 days. The 180 day period shall start two business days after the date that the ISO provides written notice of its determination that the application of mitigation is required.

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

23.3.1.4.7.8.4 Market Parties that transfer, sell, assign, or grant to another Market Party the right or ability to Bid a Generator that is subject to the mitigation measure described in this Section 23.3.1.4.7.8 are required to inform the new Market Party that the Generator has been mitigated under this measure, and to inform the new Market Party of the expected duration of such mitigation.

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

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

23.3.1.4.7.8.7 –The responsibilities of the Market Monitoring Unit that are addressed in

~~this s~~Section 23.3.1.4.7.8 of the Mitigation Measures are also addressed in Section 30.4.6.2.3 of the Plan.

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

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

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

### **23.3.2.1 Market Impact Thresholds**

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

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

23.3.2.1.2 an increase of 200 percent, or 50 percent for Generators in a Constrained Area in 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 30.4.6.2.4 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, 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. Market Parties shall ensure that the information they submit to the ISO, including but not limited to fuel price and fuel type information, is accurate. Except as set forth in Section 23.3.1.4.7.7, the ISO may not retroactively revise a reference level to reflect additional fuel costs if a Market Party or its representative did not timely submit accurate fuel cost information. Unsupported speculation by a Market Party does not present a valid basis for the ISO to determine that Bids that a Market Party submitted are consistent with competitive behavior, or to determine that submitted costs are appropriate for inclusion in the ISO's development of reference levels. Consistent with Sections 30.6.2.2 and 30.6.3.2 of the Plan, the Market Party shall retain the documents and information supporting its Bids and the costs it proposes to include in reference levels. 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 30.4.6.2.6 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 both real-time guarantee payment mitigation and mitigation of Generators committed outside the economic evaluation process in the Day-Ahead or Real-Time Markets to protect or preserve system reliability in accordance with Section 23.3.1.2.3 of these Mitigation Measures is addressed in Section 23.3.3.3, below. Consultation regarding Day-Ahead guarantee payment mitigation of Generators, other than mitigation imposed through the automated procedures described in Section 23.3.2.2.3 of these Mitigation Measures, shall be conducted in accordance with Sections 23.3.3.1 and 23.3.3.2 of these Mitigation Measures.

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

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

23.3.3.3.1.1 For real-time guarantee payment mitigation determined pursuant to

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

23.3.3.3.1.2 For real-time guarantee payment mitigation determined pursuant to

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

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

23.3.3.3.1.2.2 A Market Party that desires to receive notification from the ISO must provide one e-mail address to the ISO for real-time guarantee payment

mitigation notices. Each Market Party is responsible for maintaining and monitoring the e-mail address it provides, and informing the ISO of any change(s) to that e-mail address in order to continue to receive e-mail notification. E-mail will be the ISOs primary method of providing notice to Market Parties.

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

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

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

As soon as it is able to do so, the NYISO will commence electronically posting settlement results informing Market Parties of Bid(s) that failed the Section 23.3.1.2.3 test and sending an e-mail or other notification to potentially impacted Market Parties that comply with Section 23.3.3.3.1.2.2 of these Mitigation

Measures. The settlement results posting shall include the mitigated bid(s). The posting of settlement results ordinarily occurs two days after the relevant real-time market day.

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

23.3.3.3.1.3.3 For mitigation based on a Generator's minimum run time, start-up time, minimum down time, minimum generation MWs, or maximum number of stops per day, the ISO shall send an e-mail or other notification to potentially impacted Market Parties that comply with Section 23.3.3.3.1.2.2 of these Mitigation Measures within 10 business days after the relevant market day. The e-mail shall identify the date of the proposed mitigation and the conduct failing Bid(s) or Bid components.

23.3.3.3.1.4 Market Parties that want to consult with the ISO regarding real-time guarantee payment impact test results, or regarding mitigation applied in accordance with Section 23.3.1.2.3 of these Mitigation Measures, for a particular market day must submit a written request to initiate the consultation process that

specifies the market day and bid(s) for which consultation is being requested (for purposes of this Section 23.3.3.3.1, a “Consultation Request”).

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

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

23.3.3.3.1.4.3 If consultation was timely requested and completed addressing a particular set of real-time guarantee payment impact test results, or addressing a particular instance of mitigation applied in accordance with Section 23.3.1.2.3 of these Mitigation Measures, a Market Party may not again request consultation regarding the same real-time guarantee payment impact test results, or the same

application of Section 23.3.1.2.3 mitigation, unless revised settlement results, that are not due to the previously completed consultation and that change the dollar impact of the relevant instance of mitigation, are posted.

23.3.3.3.1.5 The Consultation Request may include: (i) an explanation of the reason(s) why the Market Party believes some or all of the reference levels used by the ISO for the market day(s) in question are inappropriate, or why some or all of the Market Party's bids on the market day(s) in question were otherwise consistent with competitive behavior; and (ii) supporting documents, data and other relevant information (collectively, for purposes of this Section 23.3.3.3.1, "Data"), including proof of any cost(s) claimed.

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

23.3.3.3.1.6 If the Market Party is not able to provide (i) an explanation of the reason(s) why the Market Party believes some or all of the reference levels used by the ISO for the market day(s) in question are inappropriate, or why some or all of the Market Party's bids on the market day(s) in question were otherwise consistent with competitive behavior, or (ii) all supporting Data, at the time a Consultation Request is submitted, the Market Party should specifically identify any additional explanation or Data it intends to submit in support of its



Consultation Request and provide an estimate of the date by which it will provide the additional explanation or Data to the ISO.

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

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

23.3.3.3.1.7.2 A preliminary determination by the ISO shall be provided to the Market Monitoring Unit for its review and comment, and the ISO shall consider the Market Monitoring Unit's recommendations in reaching its decision. The ISO shall inform the Market Party of its decision, in writing, as soon as reasonably practicable, but in no event later than (i) 50 business days after the new or revised real-time guarantee payment impact test settlement results for the relevant market day were posted, or (ii) 50 business days after the earlier of the posting of new or revised Section 23.3.1.2.3 mitigation settlement results for the relevant market

day, or the issuance of an e-mail in accordance with Section 23.3.3.3.1.3, above.

If the ISO does not affirmatively determine that it is appropriate to modify the bid(s) that are the subject of the Consultation Request within 50 business days, the bid(s) shall remain mitigated. The responsibilities of the Market Monitoring Unit that are addressed in this section of the Mitigation Measures are also addressed in Section 30.4.6.2.7 of Attachment O.

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

23.3.3.3.1.8 This Section 23.3.3.3.1 addresses Consultation Requests. It is not intended to limit, alter or modify a Market Party's ability to submit or proceed with a billing dispute pursuant to Section 7.4 of the ISO Services Tariff or Section 2.7.4.1 of the ISO OATT.

**23.3.3.3.2 Revising Reference Levels of Certain Generators Committed Out-of-Merit or via Supplemental Resource Evaluation for Conducting Real-Time Guarantee Payment Conduct and Impact Tests and Applying Mitigation in Accordance with Section 23.3.1.2.3 of these Mitigation Measures**

23.3.3.3.2.1 Consistent with and subject to all of the requirements of Section 23.3.3.3.1 of these Mitigation Measures, Generators that (i) are committed Out-of-Merit or via a Supplemental Resource Evaluation after the DAM has posted, and (ii) for which the NYISO has posted real-time guarantee payment impact test settlement

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

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

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

23.3.3.3.2.1.3 gas balancing penalties;

23.3.3.3.2.1.4 compliance with operational flow orders; and

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

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

23.3.3.3.2.2.1 the Generator must specifically and accurately identify and document the extraordinary costs it has incurred to operate during the hours of its Supplemental Resource Evaluation or Out-of-Merit commitment; and

23.3.3.3.2.2.2 the costs must not already be reflected in the Generator's reference levels or be recovered from the ISO through other means.

As soon as practicable after the Market Party demonstrates to the ISO's reasonable satisfaction that one or more of the five categories of extraordinary costs have been incurred, but in no event later than the deadline set forth in Section 23.3.3.3.1.7.2 of these Mitigation Measures, the ISO shall adjust the affected Generator's reference levels and re-perform the real-time guarantee payment conduct and impact tests, or the Section 23.3.1.2.3 test, as appropriate, for the affected day. Only the reference levels used to perform real-time guarantee payment mitigation and/or mitigation pursuant to Section 23.3.1.2.3 of these Mitigation Measures, will be adjusted.

23.3.3.3.2.3 If, at some point prior to the issuance of a Close-Out Settlement for the relevant service month, the ISO or the Commission determine that some or all of the costs claimed by the Market Party during the consultation process described above were not, in fact, incurred over the course of the Out-of-Merit or Supplemental Resource Evaluation commitment, or were recovered from the ISO through other means, the ISO shall re-perform the appropriate test(s) using reference levels that reflect the verifiable costs that the Generator incurred and shall apply mitigation if the Generator's bids fail conduct and impact, or the Section 23.3.1.2.3 test, at the corrected reference levels.

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

## **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 for a bid submitted for an Electric Facility. The default bid shall establish a maximum or minimum value for one or more components of the submitted bid, equal to a reference level for that component determined as specified in Section 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 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.

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 procedures shall not be applied to hydroelectric resources or External Generators. In addition, except as specified below the following shall not be mitigated on an automated basis: (i) bids by a Market Party or its Affiliates that together have bidding control over 50 MW or less of capacity; or (ii) bids by a Market Party or its Affiliates that together have bidding control over 50 MW or more of capacity if the bids by such entities that meet the applicable conduct test for mitigation are for an amount of capacity that totals 50 MW or less. The foregoing exemptions shall be reduced or discontinued for any Market Party or its Affiliates determined by the ISO, after consulting with the Market Party as specified in Section 23.3.3, to be submitting bids that constitute economic withholding that has a significant effect on prices or guarantee payments. The foregoing exemptions shall not apply to mitigation imposed pursuant to Sections 23.3.1.2.2 and 23.3.2.1.3 of this Attachment H.

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

23.4.2.2.5.3 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.

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

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

23.4.2.2.5.6 The role of automated mitigation measures in the determination of market clearing prices are described in Section 17.1.1.5 of Attachment B of the ISO Services Tariff and Section 16.1.1.5 of Attachment J of the ISO OATT.

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  
LBMP.

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 LBMP” shall mean: (i) for a seller, the LBMP at the generator bus of the withheld resource; and (ii) for a Load Serving Entity, its zonal LBMP.

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, ~~to the satisfaction of the ISO,~~  
~~with review and comment by the Market Monitoring Unit, that its actions were~~

~~consistent with competitive conduct (in which case no penalty is appropriate) 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 \$105,000, (in which case the ISO may elect to will not apply a penalty calculated in the manner specified below). The responsibilities of the Market Monitoring Unit that are addressed in this section of the Mitigation Measures are also addressed in Section 30.4.6.2.8 of the Plan.~~

#### 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.

#### 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

The Market Party's Bids for a Generator will be treated as having a Real-Time Market LBMP impact if 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 the Generator's reference level that was actually used to test the Bid for LBMP impact in the Real-Time Market for that hour was greater than or equal to the LBMP at 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.

#### 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, ~~and the Market Party is not able to show that its submission of inaccurate fuel price information was consistent with competitive conduct,~~ 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:

$$\text{Daily Penalty} = \max \left[ \left( \text{Multiplier} * \left[ \sum_g \blacktriangle \text{Day-Ahead BPCG payment}_g \right] + \left( \text{Multiplier} \right) \sum_h \sum_g \left( \left[ \text{Market Party MWh}_{gh} \right] \times \left[ \blacktriangle \text{Day Ahead LBMP@PTID}_{gh} \right] \right) + \max \left[ \sum_h \text{TCC Revenue Calc for Market Party}_h, 0 \right] \right), 0 \right]$$

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 ~~that may range between of 1.0 and or~~ 1.5. The ISO shall ~~consider the facts and circumstances presented by the Market Party when determining the appropriate multiplier to 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.

$\blacktriangle \text{Day-Ahead BPCG payment}_g$  = 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 Incremental Energy Bid submitted for a Market Party's Generator had either LBMP or guarantee payment impact, ~~and the Market Party is not able to show that its submission of inaccurate fuel price information was consistent with competitive conduct~~, 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:

$$\text{Daily Penalty} = \text{Max} [(\text{Multiplier} * \sum_g [\text{▲ simplified guarantee payment}_g]) + \sum_h \sum_g (\text{Multiplier} * [\text{updated reference level}_{gh} - \text{original reference level}_{gh}]) * \text{max} [MWh \text{ DAM}_{gh}, MWh \text{ RT}_{gh}, \text{Market Party } MWh_{gh}, 0], 0]$$

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 23.4.3.3.2.2 or 23.4.3.3.2.3 of these Mitigation Measures

Multiplier = a factor ~~that may range between of 1.0 or and~~ 1.5. The ISO shall ~~consider the facts and circumstances presented by the Market Party when determining the appropriate multiplier to 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<sub>gh</sub> = 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<sub>gh</sub> = 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<sub>gh</sub> = the MWh that Generator g was scheduled to produce in the Day-Ahead Market in hour h

MWh RT<sub>gh</sub> = the MWh that Generator g was scheduled to produce in the Real-Time Market in hour h

Market Party MWh<sub>gh</sub> = 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<sub>g</sub> = 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 The exclusive means for the resolution of disputes arising from or relating to the imposition of a sanction under this Section 23.4.3 shall be the dispute resolution provisions of Attachment O and this Attachment H. The scope of any such proceeding shall include resolution of any dispute as to legitimate justifications, under applicable legal, regulatory or policy standards, for any

conduct that is asserted to warrant a penalty. Any or all of the issues in any such proceeding may be resolved by agreement of the parties.

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 the amount of any unpaid penalty from the date of the infraction giving rise to the penalty to the date of payment. The exclusive remedy for the imposition of a financial penalty, to the exclusion of any claim for damages or any other form of relief, shall be a determination that a penalty should not have been imposed, and a refund with interest of paid amounts of a penalty determined to have been improperly imposed, as may be determined in the applicable dispute resolution proceedings.

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.

23.4.4.2.2 The ISO shall compute the average hourly deviation between day-ahead and real-time zone prices, measured as:  $(\text{Zone Price}_{\text{real time}} / \text{Zone Price}_{\text{day ahead}}) - 1$ .

1. The average hourly deviation shall be computed over a rolling eight week period or such other period determined by the ISO to be appropriate to achieve the purpose of this mitigation measure.

23.4.4.2.3 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.

23.4.4.2.4 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 its 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.

#### **23.4.5 Installed Capacity Market Mitigation Measures**

23.4.5.1 If and to the extent that sufficient installed capacity is not under a contractual obligation to be available to serve load in New York and if physical or economic withholding of installed capacity would be likely to result in a material change in the price for installed capacity in all or some portion of New York, the ISO, in consideration of the comments of the Market Parties and other interested parties, shall amend this Attachment H, in accordance with the procedures and requirements for amending the Plan, to implement appropriate mitigation measures for installed capacity markets.

23.4.5.2 Offers to sell Mitigated UCAP in an ICAP Spot Market Auction shall not be higher than the higher of (a) the UCAP Offer Reference Level for the applicable ICAP Spot Market Auction, or (b) the Going-Forward Costs of the Installed Capacity Supplier supplying the Mitigated UCAP.

23.4.5.3 An Installed Capacity Supplier's Going-Forward Costs for an ICAP Spot Market Auction shall be determined upon the request of the Responsible Market Party for that Installed Capacity Supplier. The Going-Forward Costs shall be determined by the ISO after consultation with the Responsible Market Party,

provided such consultation is requested by the Responsible Market Party not later than 50 business days prior to the deadline for offers to sell Unforced Capacity in such auction, and provided such request is supported by a submission showing the Installed Capacity Supplier's relevant costs in accordance with specifications provided by the ISO. Such submission shall show (1) the nature, amount and determination of any claimed Going-Forward Cost, and (2) that the cost would be avoided if the Installed Capacity Supplier is taken out of service or retired, as applicable. If the foregoing requirements are met, the ISO shall determine the level of the Installed Capacity Supplier's Going-Forward Costs and shall seasonally adjust such costs not later than 7 days prior to the deadline for submitting offers to sell Unforced Capacity in such auction. A Responsible Market Party shall request an updated determination of an Installed Capacity Supplier's Going-Forward Costs not less often than annually, in the absence of which request the Installed Capacity Supplier's offer cap shall revert to the UCAP Offer Reference Level. An updated determination of Going-Forward Costs may be undertaken by the ISO at any time on its own initiative after consulting with the Responsible Market Party. Any redetermination of an Installed Capacity Supplier's Going-Forward Costs shall conform to the consultation and determination schedule specified in this paragraph. The costs that an Installed Capacity Supplier would avoid as a result of retiring should only be included in its Going-Forward Costs if the owner or operator of that Installed Capacity Supplier actually plans to mothball or retire it if the Installed Capacity revenues it receives are not sufficient to cover those costs.

23.4.5.4 Mitigated UCAP shall be offered in each ICAP Spot Market Auction in accordance with Section 5.14.1.1 of the ISO Services Tariff and applicable ISO

procedures, unless it has been exported to an External Control Area or sold to meet Installed Capacity requirements outside the New York City Locality in a transaction that does not constitute physical withholding under the standards specified below.

23.4.5.4.1 An export to an External Control Area or sale to meet an Installed Capacity requirement outside the New York City Locality of Mitigated UCAP (either of the foregoing being referred to as “External Sale UCAP”) may be subject to audit and review by the ISO to assess whether such action constituted physical withholding of UCAP from the New York City Locality. External Sale UCAP shall be deemed to have been physically withheld on the basis of a comparison of the net revenues from UCAP sales that would have been earned by the sale in the New York City Locality of External Sale UCAP. The comparison shall be made for the period for which Installed Capacity is committed (the “Comparison Period”) in each of the shortest term organized capacity markets (the “External Reconfiguration Markets”) for the area and during the period in which the Mitigated UCAP was exported or sold. External Sale ICAP shall be deemed to have been withheld from the New York City Locality if: (1) the Responsible Market Party for the External Sale UCAP could have made all or a portion of the External Sale UCAP available to be offered in the New York City Locality by buying out of its external capacity obligation through participation in an External Reconfiguration Market; and (2) the net revenues over the Comparison Period from sale in the New York City Locality of the External Sale UCAP that could have been made available for sale in that Locality would have been greater by 15% or more, provided that the net revenues were at least

\$2.00/kilowatt-month more than the net UCAP revenues from that portion of the External Sale UCAP over the Comparison Period.

23.4.5.4.2 If Mitigated UCAP is not offered or sold as specified above, the Responsible Market Party for such Installed Capacity Supplier shall pay the ISO an amount equal to the product of (A) 1.5 times the difference between the Market-Clearing Price for the New York City Locality in the ICAP Spot Market Auction with and without the inclusion of the Mitigated UCAP and (B) the total of (1) the amount of Mitigated UCAP not offered or sold as specified above, and (2) all other megawatts of Unforced Capacity in the New York City Locality under common Control with such Mitigated UCAP. If the failure to offer was associated with the same period as the sale of External Sale UCAP, and the failure caused or contributed to an increase in UCAP prices in the New York City Locality of 15 percent or more, provided such increase is at least \$2.500/kilowatt-month, the Responsible Market Party for such Installed Capacity Supplier shall be required to pay to the ISO an amount equal to 1.5 times the lesser of (A) the difference between the average Market-Clearing Price for the New York City Locality in the ICAP Spot Market Auctions for the relevant Comparison Period with and without the inclusion of the External Sale UCAP in those auctions, or (B) the difference between such average price and the clearing price in the External Reconfiguration Market for the relevant Comparison Period, times the total of (1) the amount of Mitigated UCAP not offered or sold as specified above, and (2) all other megawatts of Unforced Capacity in the New York City Locality under common Control with such Mitigated UCAP. The ISO will distribute any amounts recovered in accordance with the foregoing provisions among the LSEs



serving Loads in regions affected by the withholding in accordance with ISO Procedures.

23.4.5.4.3 Reasonably in advance of the deadline for submitting offers in an External Reconfiguration Market the Responsible Market Party for External Sale UCAP may request the ISO to provide a projection of ICAP Spot Auction clearing prices for the New York City Locality over the Comparison Period for the External Reconfiguration Market. Such requests, and the ISO's response, shall be made in accordance with the deadlines specified in ISO Procedures. Prior to completing its projection of ICAP Spot Auction clearing prices for the New York City Locality over the Comparison Period for the External Reconfiguration Market, the ISO shall consult with the Market Monitoring Unit regarding such price projection. The Responsible Market Party shall be exempt from a physical withholding penalty as specified in Section 23.4.5.4.2, below, if at the time of the deadline for submitting offers in an External Reconfiguration Market its offers, if accepted, would reasonably be expected to produce net revenues from External UCAP Sales that would exceed the net revenues that would have been realized from sale of the External UCAP Sales capacity in the New York City Locality at the ICAP Spot Auction prices projected by the ISO. 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. ~~108~~ of Attachment O.

23.4.5.5 Control of Unforced Capacity shall be rebuttably presumed from (i) ownership of an Installed Capacity Supplier, or (ii) status as the Responsible Market Party for an Installed Capacity Supplier, but may also be determined on the basis of other evidence. The presumption of Control from ownership can be rebutted by either: (1) the sale of Unforced Capacity from the Installed Capacity

Supplier in a Capability Period Auction or a Monthly Auction, or (2) demonstrating to the reasonable satisfaction of the ISO; provided, however, that if the presumption has not been rebutted, and if two or more Market Parties each have rights or obligations with respect to Unforced Capacity from an Installed Capacity Supplier that could reasonably be anticipated to affect the quantity or price of Unforced Capacity transactions in an ICAP Spot Market Auction, the ISO may attribute Control of the affected MW of Unforced Capacity from the Installed Capacity Supplier to each such Market Party. Prior to reaching its decision regarding whether the presumption of control of Unforced Capacity has been rebutted, the ISO shall provide its preliminary determination to the Market Monitoring Unit for review and comment. The responsibilities of the Market Monitoring Unit that are addressed in this section of the Mitigation Measures are also addressed in Section 30.4.6.2.149 of Attachment O.

23.4.5.6 Any proposal or decision by a Market Participant to retire or otherwise remove an Installed Capacity Supplier from the In-City Unforced Capacity market, or to de-rate the amount of Installed Capacity available from such supplier, may be subject to audit and review by the ISO if the ISO determines that such action could reasonably be expected to affect Market-Clearing Prices in one or more ICAP Spot Market Auctions for the New York City Locality subsequent to such action. Such an audit or review shall assess whether the proposal or decision has a legitimate economic justification or is based on an effort to withhold Installed Capacity physically in order to affect prices. The ISO shall provide the preliminary results of its audit or review to the Market Monitoring Unit for its review and comment. If the ISO determines that the proposal or decision constitutes physical withholding, and would increase Market-Clearing

Prices in one or more ICAP Spot Market Auctions for the New York City Locality by five percent or more, provided such increase is at least \$.50/kilowatt-month, for each such violation of the above requirements the Market Participant shall be assessed an amount equal to the product of (A) 1.5 times the difference between the Market Clearing Price for the New York City Locality in the ICAP Spot Market Auctions with and without the inclusion of the withheld UCAP in those auctions, and (B) the total of (1) the number of megawatts withheld in each month and (2) all other megawatts of Installed Capacity in the New York City Locality under common Control with such withheld megawatts. The requirement to pay such amounts shall continue until the Market Party demonstrates that the removal from service, retirement or de-rate is justified by economic considerations other than the effect of such action on Market-Clearing Prices in the ICAP Spot Market Auctions for the New York City Locality. The ISO will distribute any amount recovered in accordance with the foregoing provisions among the LSEs serving Loads in regions affected by the withholding in accordance with ISO Procedures. 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. ~~42~~10 of Attachment O.

23.4.5.7 Unless exempt as specified below, offers to supply Unforced Capacity in an ICAP Spot Market Auction from an In-City Installed Capacity Supplier shall equal or exceed the applicable Offer Floor. The Offer Floors shall apply to offers for Unforced Capacity from the Installed Capacity Supplier, if it is not a Special Case Resource, for a minimum of each of the six Capability Periods starting with the Capability Period for which the Installed Capacity Supplier first offers to supply UCAP (“Initial Capability Period”), or lesser of the number of Capability

Periods if a positive number greater than six (6) that is determined in the following three ways: (a) the number determined by (1) the initial DMNC value of the Installed Capacity Supplier plus the amount of Surplus Capacity at the time the Installed Capacity Supplier first offers to supply UCAP, divided by (2) the forecast average annual growth in MW for the New York City Locality over the six Capability Periods beginning with the Initial Capability Period with such forecast growth as identified in the Load and Capacity Data (Gold Book), (b) thirty (30) Capability Periods (including the Initial Capability Period), and (c) the final Capability Period determined as the Capability Period in which the Total Cleared UCAP is greater than the Total Nominal UCAP, with Total Nominal UCAP determined using the MW value utilized in the Interconnection Facilities Study, or if an Interconnection Facilities Study is not required, the MW value the proposed Generator identified to the Transmission Owner to which it proposed to interconnect, multiplied by one minus the NERC class average Equivalent Demand Forced Outage Rate, to determine the initial nominal UCAP value for the Generator (“Nominal UCAP”), and then computing the product of twelve (12) and the Nominal UCAP, and Total Cleared UCAP equal to the cumulative amount of the Installed Capacity Supplier’s Cleared UCAP, with Cleared UCAP equal to the Installed Capacity Supplier’s offers of UCAP that are accepted in a New York City ICAP Spot Market Auction (in whole MW, rounded down), provided that each such amount is equal to or greater than fifty percent (50%) of the initial DMNC value of the Installed Capacity Supplier. If the foregoing calculation extends mitigation to part of a Capability Period, the entire Capability Period shall be subject an Offer

Floor. The initial DMNC value of the Installed Capacity Supplier shall be determined as specified in the ISO's tariffs and ISO Procedures.

23.4.5.7.1      Unforced Capacity from an Installed Capacity Supplier that is subject to an Offer Floor may not be used to satisfy any LSE Unforced Capacity Obligation for In-City Load unless such Unforced Capacity is obtained through participation in an ICAP Spot Market Auction.

23.4.5.7.2      An Installed Capacity Supplier shall be exempt from an Offer Floor if: (a) the price that is equal to the (x) average of the ICAP Spot Market Auction price for each month in the two Capability Periods, beginning with the Summer Capability Period commencing three years from the start of the year of the Class Year (the "Starting Capability Period") is projected by the ISO to be higher, with the inclusion of the Installed Capacity Supplier, than (y) the highest Offer Floor based on the Mitigation Net CONE that would be applicable to such supplier in the same two (2) Capability Periods (utilized to compute (x)), or (b) the price that is equal to the average of the ICAP Spot Market Auction prices in the six Capability Periods beginning with the Starting Capability Period is projected by the ISO to be higher, with the inclusion of the Installed Capacity Supplier, than the reasonably anticipated Unit Net CONE of the Installed Capacity Supplier.

23.4.5.7.3      The ISO shall make such exemption and Unit Net CONE determination for each "Examined Facility" (collectively "Examined Facilities") which term shall mean (I) each proposed new Generator and proposed new UDR project, and each existing Generator that has ERIS only and no CRIS, that is a member of the Class Year that requested CRIS, or that requested an evaluation of the transfer of CRIS rights from another location, in the Class Year Facilities Study commencing in the calendar year in which the Class Year Facility Study determination is being

made (the Capability Periods of expected entry as further described below in this Section, the “Mitigation Study Period”), (II) (a) each (i) existing Generator that did not have CRIS rights, and (ii) proposed new Generator and proposed new UDR project, that (a) is an expected recipient of transferred CRIS rights at the same location regarding which the ISO has been notified by the transferor or the transferee of a transfer pursuant to OATT Attachment S Section 23.9.4 that will be effective on a date within the Mitigation Study Period, (III) each proposed new Generator that (a) is either (i) in the ISO Interconnection Queue, in a Class Year prior to 2009/10, and has not commenced commercial operation or been canceled, and for which the ISO has not made an exemption or Unit Net CONE determination, or (ii) not subject to a deliverability requirement (and therefore, is not in a Class Year) and (b) provides specific written notification to the ISO no later than the date identified by the ISO, that it plans to commence commercial operation and offer UCAP in a month that coincides with a Capability Period of the Mitigation Study Period.

23.4.5.7.3.1 The commercial operation date to be used by the ISO solely for purposes of identifying the Examined Facilities will be determined by the ISO at the time of the Class Year Study as the date most-recently (A) identified by the project to the ISO in the Interconnection Facilities Study process or (B) reflected in the Interconnection Queue, or if neither of the foregoing is applicable, then the date identified by the project to the Transmission Owner to which it has proposed interconnecting.

23.4.5.7.3.2 The ISO shall compute the reasonably anticipated ICAP Spot Market Auction forecast price based on Expected Retirements (as defined in this

subsection 23.4.5.7.3.2), plus each Examined Facility in 23.4.5.7.3 (I), (II), and (III).

Expected Retirements determined based on any Generator that provided written notice to the New York State Public Service Commission that it intends to retire, plus any UDR facility or Generator 2 MW or less that provided written notice to the ISO that it intends to retire.

The load forecast and Special Case Resources as set forth in the most-recently published Load and Capacity Data (Gold Book).

Before the commencement of the Initial Decision Period for the Class Year, the ISO shall post on its website the inputs of the reasonably anticipated ICAP Spot Market Auction forecast prices determined in accordance with 23.4.5.7.3.2, the Expected Retirements, and the Examined Facilities, before the Initial Project Cost Allocation.

When the ISO is evaluating more than one Examined Facility concurrently, the ISO shall recognize in its computation of the anticipated ICAP Spot Market Auction forecast price that Generators or UDR facilities will clear from lowest to highest, using for each Examined Facility the lower of (i) its Unit Net CONE or (ii) the numerical value equal to 75% of the Mitigation Net CONE.

#### 23.4.5.7.3.3 All developers, Interconnection Customers, and Installed Capacity

Suppliers for any Examined Facility that does not request CRIS shall provide data and information requested by the ISO by the date specified by the ISO. For any such Examined Facility that is in a Class Year but that only has ERIS rights after the Project Cost Allocation process is complete, the ISO shall utilize the data first provided in its analysis of the Unit Net CONE in its review of the project in any future Class Year in which the Generator or UDR facility requests CRIS. The

ISO shall determine the reasonably anticipated Unit Net CONE less the costs to be determined in the Project Cost Allocation or Revised Project Cost Allocation, as applicable, prior to the commencement of the Initial Decision Period Class Year, and shall provide to the Examined Facility the ISO's determination of an exemption or the Offer Floor. On or before the three (3) days prior to the ISO's issuance of the Revised Project Cost Allocation, the ISO will revise its forecast of ICAP Spot Market Auction prices for the Capability Periods in the Mitigation Study Period based on the Examined Facilities that remain in the Class Year for CRIS and the Examined Facilities that meet 23.4.5.7.3 (II) or (III). When evaluating Examined Capacity pursuant to this Section 23.4.5.7, the ISO shall seek comment from the Market Monitoring Unit on matters relating to the determination of price projections and cost calculations. The ISO shall provide to each project its revised price forecast for a Subsequent Decision Period no later than the ISO's issuance of a Revised Project Cost Allocation. The ISO shall inform the project whether the Offer Floor exemption specified above in this Section is applicable as soon as practicable after completion of the relevant Project Cost Allocation or Revised Project Cost Allocation, in accordance with methods and procedures specified in ISO Procedures. 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.~~43~~11 of Attachment O.

23.4.5.7.3.4 If an Examined Facility under the criteria in 23.4.5.7.3 (II) or (III) has not provided written notice to the ISO on or before the date specified by the ISO, or any Examined Facility required to be reviewed does not provide all of the requested data by the date specified by the ISO, the proposed Capacity shall be



subject to the Net CONE Offer Floor for the period determined by the ISO in accordance with Section 23.4.5.7.

23.4.5.7.3.5 An Examined Facility for which an exemption or Offer Floor determination has been rendered may only be reevaluated for an exemption or Offer Floor determination if it meets the criteria in Section 23.4.5.7.3 (I) and either (a) enters a new Class Year for CRIS or (b) intends to receive transferred CRIS rights at the same location. An Examined Facility under the criteria in 23.4.5.7.3 (II) that did receive CRIS rights will be bound by the determination rendered and will not be reevaluated, and an Examined Facility under the criteria in 23.4.5.7.3 (III) will not be reevaluated.

23.4.5.7.3.6 If an Installed Capacity Supplier demonstrates to the reasonable satisfaction of the ISO that its Unit Net CONE is less than any Offer Floor that would otherwise be applicable to the Installed Capacity Supplier, then its Offer Floor shall be reduced to a numerical value equal to its Unit Net CONE.

23.4.5.7.4 Mitigation Net CONE for the each year after the last year covered by the most recent Demand Curves approved by the Commission shall be increased by the escalation factor approved by the Commission for such Demand Curves.

23.4.5.7.5 An In-City Installed Capacity Supplier that is a Special Case Resource shall be subject to an Offer Floor beginning with the month of its initial offer to supply Installed Capacity, and until its offers of Installed Capacity have been accepted in the ICAP Spot Market Auction at a price at or above its Offer Floor for a total of twelve, not necessarily consecutive, months. Special Case Resources shall be exempt from the Offer Floor if the ISO projects that the ICAP Spot Market Auction price will exceed the Special Case Resource's Offer Floor for the first twelve months that the Special Case Resource reasonably anticipated

to offer to supply UCAP. If a Responsible Interface Party fails to provide Special Case Resource data that the ISO needs to conduct the calculations described in the two preceding sentences by the deadline established in ISO Procedures, the Special Case Resource will cease to be eligible to offer or sell Installed Capacity. The Offer Floor for a Special Case Resource shall be equal to the minimum monthly payment for providing Installed Capacity payable by its Responsible Interface Party, plus the monthly value of any payments or other benefits the Special Case Resource receives from a third party for providing Installed Capacity, or that is received by the Responsible Interface Party for the provision of Installed Capacity by the Special Case Resource. The Offer Floor calculation shall include any payment or the value of other benefits that are awarded for offering or supplying In-City Capacity, except for payments or the value of other benefits provided under programs administered or approved by New York State or a government instrumentality of New York State. Offers by a Responsible Interface Party at a PTID shall be not lower than the highest Offer Floor applicable to a Special Case Resource providing Installed Capacity at that PTID. Such offers may comprise a set of points for which prices may vary with the quantity offered. If this set includes megawatts from a Special Case Resource(s) with an Offer Floor, then at least the quantity of megawatts in the offer associated with each Special Case Resource must be offered at or above the Special Case Resource's Offer Floor. Offers by a Responsible Interface Party shall be subject to audit to determine whether they conformed to the foregoing Offer Floor requirements. If a Responsible Interface Party together with its Affiliated Entities submits one or more offers below the applicable Offer Floor, and such offer or offers cause or contribute to a decrease in UCAP prices in the New York City

Locality of 5 percent or more, provided such decrease is at least \$.50/kilowatt-month, the Responsible Interface Party shall be required to pay to the ISO an amount equal to 1.5 times the difference between the Market-Clearing Price for the New York City Locality in the ICAP Spot Auction for which the offers below the Offer Floor were submitted with and without such offers being set to the Offer Floor, times the total amount of UCAP sold by the Responsible Interface Party and its Affiliated Entities in such ICAP Spot Auction. If an offer is submitted below the applicable Offer Floor, the ISO will notify the Responsible Market Party and the notification will identify the offer, the Special Case Resource, the price impact, and the penalty amount. The ISO will provide the notice reasonably in advance of imposing such penalty. The ISO shall distribute any amounts recovered in accordance with the foregoing provisions among the entities, other than the entity subject to the foregoing payment requirement, supplying Installed Capacity in regions affected by one or more offers below an applicable Offer Floor in accordance with ISO Procedures.

23.4.5.7.6 An In-City Installed Capacity Supplier that is not a Special Case Resource shall be exempt from an Offer Floor if it was an existing facility on or before March 7, 2008.

23.4.5.7.7 Mitigated UCAP that is subject to an Offer Floor shall remain subject to the requirements of Section 23.4.5.4, and if the Offer Floor is higher than the applicable offer cap shall submit offers not lower than the applicable Offer Floor.

## **23.4.6 Virtual Bidding Measures**

### **23.4.6.1 Purpose**

The provisions of this Section 23.4.6 specify the market monitoring and mitigation measures applicable to “Virtual Bids.” “Virtual Bids” are bids to purchase or supply energy that are not backed by physical load or generation that are submitted in the ISO Day-Ahead Market in accordance with the procedures and requirements specified in the ISO Services Tariff.

To implement the mitigation measures set forth in this Section 23.4.6, the ISO shall monitor and assess the impact of Virtual Bidding on the ISO Administered Markets.

### **23.4.6.2 Implementation**

23.4.6.2.1 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.

23.4.6.2.2 The ISO shall compute the average hourly deviation between day-ahead and real-time zone prices, measured as:  $(\text{Zone Price}_{\text{real time}} / \text{Zone Price}_{\text{day ahead}}) -$

1. The average hourly deviation shall be computed over a rolling four week period or such other period determined by the ISO to be appropriate to achieve the purpose of this mitigation measure.

23.4.6.2.3 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, and that (ii) the Virtual Bidding practices of one or more Market Participants has contributed to an unwarranted divergence of LBMPs between the two markets, then the following mitigation measure may be imposed. Any such measure shall be rescinded upon a determination by the ISO that the foregoing conditions are not met.

### **23.4.6.3 Description of the Measure**

#### **23.4.6.3.1** If the ISO determines that the conditions specified in Section 23.4.6.2

exist, the ISO may limit the hourly quantities of Virtual Bids for supply or load that may be offered in a zone by a Market Participant whose Virtual Bidding practices have been determined to contribute to an unwarranted divergence of LBMPs between the Day-Ahead and Real-Time Markets. Any such limitation shall be set at such level that, and shall remain in place for such period as, in the best judgment of the ISO, would be sufficient to prevent any unwarranted divergence between Day-Ahead and Real-Time LBMPs.

#### **23.4.6.3.2** As part of the foregoing determination, the ISO shall request explanations

of the relevant Virtual Bidding practices from any Market Participant submitting such bids. Prior to imposing a Virtual Bidding quantity limitation as specified above, the ISO shall notify the affected Market Participant of the limitation.

### **23.4.6.4 Limitation of Virtual Bidding**

If the ISO determines that such action is necessary to avoid substantial deviations of LBMPs between the Day-Ahead and Real-Time Markets, the ISO may impose limits on the quantities of Virtual Bids that may be offered by all Market Participants. Any such restriction shall limit the quantity of Virtual Bids for supply or load that may be offered by each Market Participant by hour and by zone. Any such limit shall remain in place for the minimum period necessary to avoid substantial deviations of LBMPs between the Day-Ahead and Real-Time Markets, or to maintain the reliability of the New York Control Area.

### **23.4.7 Increasing Bids in Real-Time for Day-Ahead Scheduled Incremental Energy**

#### **23.4.7.1 Purpose**

This Section 23.4.7 specifies the monitoring applicable and the mitigation measures that may be applicable to a Market Party with submitted Incremental Energy Bids in the real-time market that exceed the Incremental Energy Bids made in the Day-Ahead Market or mitigated Day-Ahead Incremental Energy Bids where appropriated, for a portion of the Capacity of one or more of its Generators that has been scheduled in the Day-Ahead Market.

The purpose of the Services Tariff rules authorizing the submission of Incremental Energy Bids in the real-time market that exceed the Incremental Energy Bids made in the Day-Ahead Market or mitigated Day-Ahead Incremental Energy Bids where appropriate, of the portion of the Capacity of a Market Party's Generator that was scheduled in the Day-Ahead Market is to permit the inclusion of additional costs of providing incremental Energy in real-time Incremental Energy Bids for Generators scheduled in the Day-Ahead Market, where the additional costs of providing incremental Energy were not known prior to the close of the Day-Ahead Market.

#### **23.4.7.2 Monitoring and Implementation**

The ISO will monitor Market Parties for unjustified interactions between a Market Party's virtual bidding and the submission of real-time Incremental Energy Bids that exceed the Incremental Energy Bids submitted in the Day-Ahead Market or mitigated Day-Ahead Incremental Energy Bids where appropriate, for the portion of a Generator's Capacity that was scheduled in the Day-Ahead Market.

If the Market Party has a scheduled Virtual Load Bid for the same hour of the Dispatch Day as the hour for which submitted real-time Incremental Energy Bids exceeded the Incremental Energy Bids submitted in the Day-Ahead Market or mitigated Day-Ahead

Incremental Energy Bids where appropriate, for a portion of its Generator's Capacity that was scheduled in the Day-Ahead Market, and any such real-time Incremental Energy Bids exceed the reference level for those Bids that can be justified after-the-fact by more than:

- (i) the lower of \$100/MWh or 300%
- (ii) If the Market Party's Generator is located 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 zero, then a threshold calculated in accordance with Sections 23.3.1.2.2.1 and 23.3.1.2.2.2 of these Mitigation Measures;

and a calculation of a virtual market penalty pursuant to the formula set forth in Section

23.4.3.3.4 of these Mitigation Measures for the Market Party would produce a **positive number penalty in excess of \$1000**, then the **ISO will ask the Market Party to demonstrate that the real-time Incremental Energy Bid(s) for that hour were submitted for reasons that are consistent with competitive behavior. If the Market Party is unable to show to the satisfaction of the ISO (with review and comment by the Market Monitoring Unit) that the submitted real-time Incremental Energy Bid(s) were consistent with competitive behavior then the** mitigation

measure specified below in Section 23.4.7.3.1 shall be imposed for the Market Party's Generator, along with a penalty calculated in accordance with Section 23.4.3.3.4 of these Mitigation

Measures **which may be imposed**. The application of a penalty under Section 23.4.3.3.4 of these

Mitigation Measures shall not preclude the simultaneous application of a penalty pursuant to

Section 23.4.3.3.3 of these Mitigation Measures. **The responsibilities of the Market Monitoring Unit that are addressed in this section of the Mitigation Measures are also addressed in Section 30.4.6.2.9 of the Plan.**

### 23.4.7.3 Mitigation Measure

#### 23.4.7.3.1 If the ISO determines that the conditions specified in Section 23.4.7.2

exist, ~~and the Market Party is unable to demonstrate that the real-time Incremental Energy Bid was consistent with competitive behavior,~~ the ISO shall revoke the opportunity for any bidder of that Generator to submit Incremental Energy Bids in the real-time market that exceed the Incremental Energy Bids submitted in the Day-Ahead Market or mitigated Day-Ahead Incremental Energy Bids where appropriate, for portions of that Generator's Capacity that were scheduled Day-Ahead.

23.4.7.3.1.1 The first time the ISO revokes the opportunity for bidders of a Generator to submit Incremental Energy Bids in the Real-Time Market that exceed the Incremental Energy Bids submitted in the Day-Ahead Market or mitigated Day-Ahead Incremental Energy Bids where appropriate, for portions of that Generator's Capacity that were scheduled Day-Ahead, mitigation shall be imposed for 90 days. The 90 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.

23.4.7.3.1.2 Any subsequent time the ISO revoked the opportunity for bidders of a Generator to submit Incremental Energy Bids in the Real-Time Market that exceed the Incremental Energy Bids submitted in the Day-Ahead Market or mitigated Day-Ahead Incremental Energy Bids where appropriate, for portions of that Generator's Capacity that were scheduled Day-Ahead, mitigation shall be imposed 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.



23.4.7.3.1.3 If bidders of a Generator that has previously been mitigated under this Section 23.4.7.3 become and remain continuously eligible to submit Incremental Energy Bids in the Real-Time Market that exceed the Incremental Energy Bids submitted in the Day-Ahead Market or mitigated Day-Ahead Incremental Energy Bids where appropriate, for portions of that Generator's Capacity that were scheduled Day-Ahead, for a period of one year or more, then the ISO shall apply the mitigation measure set forth in Section 23.4.7.3 of the Mitigation Measures as if the Generator had not previously been subject to this mitigation measure.

23.4.7.3.1.4 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 in this Section 23.4.7.3 are required to inform the new Market Party that the Generator is subject to mitigation under this measure, and to inform the new Market Party of the expected duration of such mitigation.

~~23.4.7.3.2 In addition to the restrictions imposed under Section 23.4.7.3.1, the ISO may impose penalties on the Market Party calculated in accordance with Section 23.4.3.3.4 of these Mitigation Measures.~~

#### **23.4.8 Duration of Mitigation Measures**

Except as specified in Section 23.4.5 of this Attachment H, any mitigation measure imposed as specified above shall expire not later than six months after the occurrence of the conduct giving rise to the measure, or at such earlier time as may be specified by the ISO.

## **30.4 Market Monitoring Unit**

### **30.4.1 Mission of the Market Monitoring Unit**

The Market Monitoring Unit's goals are (1) to ensure that the markets administered by the ISO function efficiently and appropriately, and (2) to protect both consumers and participants in the markets administered by the ISO by identifying and reporting Market Violations, market design flaws and market power abuses to the Commission in accordance with Sections 30.4.5.3 and 30.4.5.4 below.

### **30.4.2 Retention and Oversight of the Market Monitoring Unit**

The Board shall retain a consulting or other professional services firm, or other similar entity, to advise it on the matters encompassed by Attachment O and to carry out the responsibilities that are assigned to the Market Monitoring Unit in Attachment O. The Market Monitoring Unit selected by the Board shall have experience and expertise appropriate to the analysis of competitive conditions in markets for electric capacity, energy and ancillary services, and financial instruments such as TCCs, and to such other responsibilities as are assigned to the Market Monitoring Unit under Attachment O, and must also have sufficient resources and personnel to be able to perform the Core Functions and other assigned functions.

The Market Monitoring Unit shall be accountable to the non-management members of the Board, and shall serve at the pleasure of the non-management members of the Board.

### **30.4.3 Market Monitoring Unit Ethics Standards**

The Market Monitoring Unit, including all persons employed thereby, shall comply at all times with the ethics standards set forth below. The Market Monitoring Unit ethics standards set forth below shall apply in place of the standards set forth in the ISO's OATT Attachment F Code

of Conduct, and/or the more general policies and standards that apply to consultants retained by the ISO.

30.4.3.1 The Market Monitoring Unit and its employees must have no material affiliation with any Market Party or Affiliate of any Market Party.

30.4.3.2 The Market Monitoring Unit and its employees must not serve as an officer, employee, or partner of a Market Party.

30.4.3.3 The Market Monitoring Unit and its employees must have no material financial interest in any Market Party or Affiliate of a Market Party. Ownership of mutual funds by Market Monitoring Units and their employees that contain investments in Market Parties or their Affiliates is permitted so long as: (a) the fund is publicly traded; (b) the fund's prospectus does not indicate the objective or practice of concentrating its investment in Market Parties or their Affiliates; and (c) the Market Monitoring Unit/Market Monitoring Unit employee does not exercise or have the ability to exercise control over the financial interests held by the fund.

30.4.3.4 The Market Monitoring Unit and its employees are prohibited from engaging in transactions in the markets administered by the ISO, other than in the performance of duties under the ISO's Tariffs. This provision shall not, however, prevent the Market Monitoring Unit, or its employees, from purchasing electricity, power and Energy as retail customers for their own account and consumption.

30.4.3.5 The Market Monitoring Unit and its employees must not be compensated, other than by the ISO, for any expert witness testimony or other commercial

services, in connection with any legal or regulatory proceeding or commercial transaction relating to the ISO or to the markets that the ISO administers.

30.4.3.6 The Market Monitoring Unit and its employees may not accept anything that is of more than *de minimis* value from a Market Party.

30.4.3.7 The Market Monitoring Unit and its employees must advise the Board in the event they seek employment with a Market Party, and must disqualify themselves from participating in any matter that could have an effect on the financial interests of that Market Party until the outcome of the matter is determined.

30.4.3.8 If the Market Monitoring Unit or any of its employees provide services to entities other than the ISO, the Market Monitoring Unit shall provide to the ISO's Board, and shall regularly update, a list of such entities and services. When the Market Monitoring Unit issues an opinion, report or recommendation to, for or addressing the ISO or the markets it administers that relates to, or could reasonably be expected to affect, an entity (other than the ISO) to which the Market Monitoring Unit or its employees provide services, the Market Monitoring Unit shall inform the ISO's Board of the opinion, report or recommendation it has issued, and that its opinion, report or recommendation relates to, or could reasonably be expected to affect, an entity to which the Market Monitoring Unit or its employees provide services.

#### **30.4.4 Duties of the Market Monitoring Unit**

The Market Monitoring Unit shall advise the Board, shall perform the Core Functions specified in Section 30.4.5 of Attachment O, and shall have such other duties and responsibilities

as are specified in Attachment O. The Market Monitoring Unit may, at any time, bring any matter to the attention of the Board that the Market Monitoring Unit may deem necessary or appropriate for achieving the purposes, objectives and effective implementation of Attachment O.

The Market Monitoring Unit shall not participate in the administration of the ISO's Tariffs, except for performing its duties under Attachment O. The Market Monitoring Unit shall not be responsible for performing purely administrative duties, such as enforcement of late fees or Market Party reporting obligations, that are not specified in Attachment O. The Market Monitoring Unit may (i) provide, or assist the ISO's efforts to develop, the inputs required to conduct mitigation, and (ii) assist the ISO's efforts to conduct "retrospective" mitigation (*see* Order 719 at PP. 369, 375) that does not change bids or offers (including physical bid or offer parameters) at or before the time such bids or offers (including physical bid or offer parameters) are considered in the ISO's market solution.

#### **30.4.5 Core Market Monitoring Functions**

The Market Monitoring Unit shall be responsible for performing the following Core Functions:

30.4.5.1 Evaluate existing and proposed market rules, tariff provisions and market design elements and recommend proposed rule and tariff changes to the ISO, to the Commission's Office of Energy Market Regulation staff, and to other interested entities, including the New York Public Service Commission, and participants in the ISO's stakeholder governance process. Provided that:

30.4.5.1.1 The Market Monitoring Unit is not responsible for systematic review of every tariff and market rule; its role is monitoring, not audit.

30.4.5.1.2 The Market Monitoring Unit is not to effectuate its proposed market design itself.

30.4.5.1.3 The Market Monitoring Unit's role in recommending proposed rule and Tariff changes is advisory in nature, unless a Tariff provision specifically concerns actions to be undertaken by the Market Monitoring Unit itself.

30.4.5.1.4 The Market Monitoring Unit must limit distribution of issues or concerns it identifies, and its recommendations to the ISO and to Commission staff in the event it believes broader dissemination could lead to exploitation. Limited distributions should include an explanation of why further dissemination should be avoided at that time.

30.4.5.2 Review and report on the performance of the wholesale markets to the ISO, the Commission, and other interested entities such as the New York Public Service Commission and participants in its stakeholder governance process on at least a quarterly basis, and issue a more comprehensive annual state of the market report. The Market Monitoring Unit may issue additional reports as necessary.

30.4.5.2.1 In order to perform the Core Functions, the Market Monitoring Unit shall perform daily monitoring of the markets that the ISO administers. The Market Monitoring Unit's daily monitoring shall include monitoring of virtual bidding.

30.4.5.2.2 The Market Monitoring Unit shall submit drafts of each of its reports to the ISO for review and comment sufficiently in advance of the report's issuance to provide an effective opportunity for review and comment by the ISO. The Market Monitoring Unit may disregard any suggestions with which it disagrees.

The ISO may not alter the reports prepared by the Market Monitoring Unit, nor dictate the Market Monitoring Unit's conclusions.

30.4.5.3 Identify and notify the Commission staff of instances in which a Market Party's or the ISO's behavior may require investigation, including, but not limited to, suspected Market Violations.

30.4.5.3.1 Except as provided in Section 30.4.5.3.2 below, in compliance with § 35.28(g)(3)(iv) of the Commission's regulations (or any successor provisions thereto) the Market Monitoring Unit shall submit a non-public referral to the Commission in all instances where it has obtained sufficient credible information to believe a Market Violation has occurred. Once the Market Monitoring Unit has obtained sufficient credible information to warrant referral to the Commission, the Market Monitoring Unit shall immediately refer the matter to the Commission and desist from further investigation of independent action related to the alleged Market Violation, except at the express direction of the Commission or Commission staff. The Market Monitoring Unit may continue to monitor for repeated instances of the reported activity by the same or other entities and shall respond to requests from the Commission for additional information in connection with the alleged Market Violation it has referred.

30.4.5.3.2 The Market Monitoring Unit is not required to refer the actions (or failures to act) listed in this Section 30.4.5.3.2 to the Commission as Market Violations, because they have: (i) already been reported by the ISO as a Market Problem under Article 3.5.1 of the ISO Services Tariff; and/or (ii) because they pertain to actions or failures that: (a) are expressly set forth in the ISO's Tariffs;

(b) involve objectively identifiable behavior; and (c) trigger a sanction or other consequence that is expressly set forth in the ISO Tariffs and that is ultimately appealable to the Commission. The actions (or failures to act) that are exempt from mandatory referral to the Commission are:

- 30.4.5.3.2.1 failure to meet a Contract or Non-Contract CRIS MW Commitment pursuant to Sections 25.7.11.1.1 and 25.7.11.1.2 of Attachment S to the ISO OATT that results in a charge or other a sanction under Section 25.7.11.1.3 of Attachment S of the ISO OATT;
- 30.4.5.3.2.2 Black Start performance that results in reduction or forfeitures of payments under Rate Schedule 5 to the ISO Services Tariff;
- 30.4.5.3.2.3 any failure by the ISO to meet the deadlines for completing System Impact Studies, or any failure by a Transmission Owner to meet the deadlines for completing Facilities Studies, under Sections 3.7 and 4.5 of the ISO OATT that results in the filing of a notice and/or the imposition of sanctions under those provisions;
- 30.4.5.3.2.4 failure of a Market Party to comply with the ISO's creditworthiness requirements set forth in Attachment K of the ISO Services tariff, or other action, that triggers sanctions under Section 7.5 of the ISO Services Tariff or Section 2.7.5 of the ISO OATT, specifically: (i) failure of a Market Party to make timely payment under Section 7.2.2 of the ISO Services Tariff or Section 2.7.3.2 of the ISO OATT that triggers a sanction under Sections 7.5.3(i) or 7.5.3(iv) of the ISO Services Tariff, or Sections 2.7.5.3(i), 2.7.5.3(iv), or 2.7.5.4 of the ISO OATT; (ii) failure of a Market Party to comply with a demand for additional credit support



under Article 26.5 of Attachment K of the ISO Services Tariff that triggers a sanction under Section 7.5.3(i) of the ISO Services Tariff or Section 2.7.5.3(i) of the ISO OATT; (iii) failure of a Market Party to cure a default in another ISO/RTO market under Sections 7.5.3(iii) of the ISO Services Tariff, or Section 2.7.5.3(iii) of the ISO OATT that triggers a sanction under either of those tariff provisions; (iv) failure of a Market Party that has entered into a Prepayment Agreement with the ISO under Appendix K-1 to Attachment K to the ISO Services Tariff to make payment in accordance with the terms of the Prepayment Agreement that triggers a sanction under the Prepayment Agreement or 7.5.3(i) of the ISO Services Tariff; and (v) failure of a Market Party to make timely payment on two occasions within a rolling twelve month period under Section 7.5.3(iv) of the ISO Services Tariff, or Section 2.7.5.3(iv) of the ISO OATT that triggers a sanction under either of those provisions.

30.4.5.3.2.5 bidding in a manner that results in a penalty under Section 23.4.3.3.4 of the Market Mitigation Measures.

30.4.5.3.2.6 submission of inaccurate fuel type information into the Day-Ahead Market that results in a penalty under Section 23.4.3.3.3.3 of the Market Mitigation Measures.

30.4.5.3.2.7 submission of inaccurate fuel type and/or fuel price information into the Real-Time Market that results in a penalty under Section 23.4.3.3.3.4 of the Market Mitigation Measures.

To the extent the above list enumerates specific Tariff provisions, the exclusions specified above shall also apply to re-numbered and/or successor provisions thereto. The Market

Monitoring Unit is not precluded from referring any of the activities listed above to the Commission.

30.4.5.4 Identify and notify the Commission staff of perceived market design flaws that could be effectively remedied by rule or tariff changes.

30.4.5.4.1 In compliance with § 35.28(g)(3)(v) of the Commission's regulations (or any successor provisions thereto) the Market Monitoring Unit shall submit a referral to the Commission when the Market Monitoring Unit has reason to believe that a market design flaw exists, that the Market Monitoring Unit believes could effectively be remedied by rule or tariff changes.

30.4.5.4.1.1 If the Market Monitoring Unit believes broader dissemination of the possible market design flaw, and its recommendation could lead to exploitation, the Market Monitoring Unit shall limit distribution of its referral to the ISO and to the Commission. The referral shall explain why further dissemination should be avoided.

30.4.5.4.1.2 Following referral of a possible market design flaw, the Market Monitoring Unit shall continue to provide to the Commission additional information regarding the perceived market design flaw, its effects on the market, any additional or modified observations concerning the Market Monitoring Unit's proposed market rule or tariff change, any recommendations made by the Market Monitoring Unit to the ISO, its stakeholders, Market Parties or state public service commissions regarding the perceived market design flaw, and any actions taken by the ISO regarding the perceived market design flaw.

### **30.4.6 Market Monitoring Unit Responsibilities Set Forth Elsewhere in the ISO's Tariffs**

#### **30.4.6.1 Supremacy of (Attachment O)**

Provisions addressing the Market Monitoring Unit, its responsibilities and its authority, have been centralized in Attachment O. However, provisions that address the Market Monitoring Unit can also be found in the Market Mitigation Measures that are set forth in Attachment H to the ISO Services Tariff, and elsewhere in the ISO's Tariffs. In the event of any inconsistency between the provisions of Attachment O and any other provision of the ISO OATT, the ISO Services Tariff, or any of their attachments and schedules, with regard to the Market Monitoring Unit, its responsibilities and its authority, the provisions of Attachment O shall control.

#### **30.4.6.2 Market Monitoring Unit responsibilities set forth in the Market Mitigation Measures**

30.4.6.2.1 The ISO and its Market Monitoring Unit shall monitor the markets the ISO administers for conduct that the ISO or the Market Monitoring Unit determine constitutes an abuse of market power but that does not trigger the thresholds specified in the Market Mitigation Measures for the imposition of mitigation measures by the ISO. If the ISO identifies or is made aware of any such conduct, and in particular conduct exceeding the thresholds for presumptive market effects specified in Section 23.3.2.3 of the Market Mitigation Measures, it shall make a filing under § 205 of the Federal Power Act, 16 U.S.C. § 824d (1999) ("§ 205") with the Commission requesting authorization to apply appropriate mitigation measures. Any such filing shall identify the particular conduct the ISO believes warrants mitigation, shall propose a specific mitigation

measure for the conduct, shall incorporate or address the recommendation of its Market Monitoring Unit, and shall set forth the ISO's justification for imposing that mitigation measure. The Market Monitoring Unit's reporting obligations are specified in Sections 30.4.5.3 and 30.4.5.4 of Attachment O. *See* Market Mitigation Measures Section 23.1.2.

30.4.6.2.2 The ISO and the Market Monitoring Unit shall monitor the ISO Administered Markets for other categories of conduct, whether by a single firm or by multiple firms acting in concert, that have material effects on prices or guarantee payments in an ISO Administered Market. *See* Market Mitigation Measures Section 23.2.4.4.

30.4.6.2.3 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, taken as a whole, biased in the Market Party's favor, *then* the ISO ~~may~~ 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 durations specified in Sections 23.1.4.7.8.1, 23.3.1.4.7.8.2, and 23.3.1.4.7.8.3 of the Mitigation Measures. ~~for a period of up to six months following the first identified occurrence, and for a period of up to one year following each subsequent occurrence. The six month or one year period shall be calculated from the date of the most recent instance in which inaccurate fuel type or fuel price information~~

~~was submitted to the ISO~~ See Section 23.3.1.4.7.8 of the Market Mitigation Measures

- 30.4.6.2.4 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. See Market Mitigation Measures Section 23.3.2.2.1.
- 30.4.6.2.5 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. See Market Mitigation Measures Section 23.3.2.2.2.
- 30.4.6.2.6 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 the Market 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 of the Market Mitigation Measures 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. Market Parties shall ensure that the information they submit to the ISO, including but not limited to fuel price and fuel type information, is accurate. Except as set forth in Section 23.3.1.4.7.7 of the Market Mitigation Measures, 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. A preliminary determination by the ISO shall be provided to the Market Monitoring Unit for its review and the ISO shall consider the Market Monitoring Unit's recommendations in reaching its decision. 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 of the Market Mitigation Measures 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. *See* Market Mitigation Measures Section 23.3.3.1.

30.4.6.2.7 With regard to a Market Party's request for consultation that satisfies the requirements of Sections 23.3.3.3.1.4 and 23.3.3.3.1.7 of the Market Mitigation Measures, and consistent with the duties assigned to the ISO in Section 23.3.3.3.1.7.1 of the Market Mitigation Measures, a preliminary determination by the ISO regarding the Market Party's consultation request shall be provided to the Market Monitoring Unit for its review and the ISO shall consider the Market Monitoring Unit's recommendations in reaching its decision. *See* Market Mitigation Measures Section 23.3.3.3.1.7.1 and 23.3.3.3.1.7.2.

~~30.4.6.2.8 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 the Market Mitigation Measures, then, following consultation with the Market Party regarding the appropriate fuel type and/or fuel price, the ISO shall apply the penalty set forth in the Market Mitigation Measures, unless: (i) the Market Party shows, to the satisfaction of the ISO, with review and comment by the Market Monitoring Unit, that its actions were consistent with competitive conduct (in which case no penalty is appropriate), or (ii) the total penalty calculated for a particular Day Ahead or Real Time Market day is less than \$10,000 (in which~~

case the ISO may elect to apply a penalty calculated in the manner specified in the Market Mitigation Measures). See Section 23.4.3.3.3 of the Market Mitigation Measures.

30.4.6.2.9 — If a Market Party has a scheduled Virtual Load Bid for the same hour of the Dispatch Day as the hour for which submitted real-time Incremental Energy Bids exceeded the Incremental Energy Bids submitted in the Day Ahead Market or mitigated Day Ahead Incremental Energy Bids where appropriate, for a portion of its Generator's Capacity that was scheduled in the Day Ahead Market, and any such real-time Incremental Energy Bids exceed the reference level for those Bids that can be justified after the fact by more than:

(i) the lower of \$100/MWh or 300%

(ii) If the Market Party's Generator is located 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 zero, then a threshold calculated in accordance with Sections 23.3.1.2.2.1 and 23.3.1.2.2.2 of the Market Mitigation Measures;

and a calculation of a virtual market penalty pursuant to the formula set forth in Section 23.4.3.3.4 of the Market Mitigation Measures for the Market Party would produce a positive number, then the ISO will ask the Market Party to demonstrate that the real-time Incremental Energy Bid(s) for that hour were submitted for reasons that are consistent with competitive behavior. If the Market Party is unable to show to the satisfaction of the ISO (with review and comment by the Market Monitoring Unit) that the submitted real-time Incremental Energy Bid(s)



were consistent with competitive behavior then the mitigation measure specified below in Section 23.4.7.3.1 of the Market Mitigation Measures shall be imposed for the Market Party's Generator, along with a penalty calculated in accordance with Section 23.4.3.3.4 of the Market Mitigation Measures which may be imposed. The application of a penalty under Section 23.4.3.3.4 of the Market Mitigation Measures shall not preclude the simultaneous application of a penalty pursuant to Section 23.4.3.3.3 of the Market Mitigation Measures. The responsibilities of the Market Monitoring Unit that are addressed in this section of the Plan are also addressed in Section 23.4.7.2 of the Market Mitigation Measures.

30.4.6.2.~~810~~ Reasonably in advance of the deadline for submitting offers in an External Reconfiguration Market and in accordance with the deadlines specified in ISO Procedures, the Responsible Market Party for External Sale UCAP may request the ISO to provide a projection of ICAP Spot Auction clearing prices for the New York City Locality over the Comparison Period for the External Reconfiguration Market. Prior to completing its projection of ICAP Spot Auction clearing prices for the New York City Locality over the Comparison Period for the External Reconfiguration Market, the ISO shall consult with the Market Monitoring Unit regarding such price projection. *See* Market Mitigation Measures Section 23.4.5.4.3.

30.4.6.2.~~911~~ Prior to reaching its decision regarding whether the presumption of control of Unforced Capacity has been rebutted, the ISO shall provide its preliminary

determination to the Market Monitoring Unit for review and comment. *See* Market Mitigation Measures Section 23.4.5.5.

30.4.6.2.~~1042~~ Any proposal or decision by a Market Participant to retire or otherwise remove an Installed Capacity Supplier from the In-City Unforced Capacity market, or to de-rate the amount of Installed Capacity available from such supplier, may be subject to audit and review by the ISO if the ISO determines that such action could reasonably be expected to affect Market-Clearing Prices in one or more ICAP Spot Market Auctions for the New York City Locality subsequent to such action. Such an audit or review shall assess whether the proposal or decision has a legitimate economic justification or is based on an effort to withhold Installed Capacity physically in order to affect prices. The ISO shall provide the preliminary results of its audit or review to the Market Monitoring Unit for its review and comment. *See* Market Mitigation Measures Section 23.4.5.6.

30.4.6.2.~~1143~~ When evaluating a request by a Developer or Interconnection Customer pursuant to Section 23.4.5.7 of the Market Mitigation Measures, the ISO shall seek comment from the Market Monitoring Unit on matters relating to the determination of price projections and cost calculations. *See* Market Mitigation Measures Section 23.4.5.7.

### **30.4.6.3 Market Monitoring Unit responsibilities set forth in the ISO Services Tariff**

30.4.6.3.1 The ICAP Demand Curve periodic review schedule and procedures shall provide an opportunity for the Market Monitoring Unit to review and comment on

the draft request for proposals, the independent consultant's report, and the ISO's proposed ICAP Demand Curves. *See* ISO Services Tariff Section 5.14.1.2.5.

**30.4.6.4 Market Monitoring Unit responsibilities set forth in the Rate Schedules to the ISO Services Tariff.**

**30.4.6.4.1 Responsibilities related to the Regulation Service Demand Curve**

In order to respond to operational or reliability problems that arise in real-time, the ISO may procure Regulation Service at a quantity and/or price point different than those specified in Section 15.3.7 of Rate Schedule 3 to the ISO Services Tariff. The ISO shall post a notice of any such purchase as soon as reasonably possible and shall report on the reasons for such purchases at the next meeting of its Business Issues Committee. The ISO shall also immediately initiate an investigation to determine whether it is necessary to modify the quantity and price points specified above to avoid future operational or reliability problems. The ISO will consult with its Market Monitoring Unit when it conducts this investigation.

If the ISO determines that it is necessary to modify the quantity and/or price points specified above in order to avoid future operational or reliability problems it may temporarily modify them for a period of up to 90 days. If circumstances reasonably allow, the ISO will consult with its Market Monitoring Unit, the Business Issues Committee, the Commission, and the PSC before implementing any such modification. In all circumstances, the ISO will consult with those entities as soon as reasonably possible after implementing a temporary modification.

After the first year the Regulation Service Demand Curve is in place, the ISO shall perform periodic reviews, subject to the scope requirement specified in Section 15.3.7 of Rate Schedule 3 to the ISO Services Tariff, and the Market Monitoring Unit shall be given the

opportunity to review and comment on the ISO's periodic reviews of the Regulation Service Demand Curve. *See* Section 15.3.7 of Rate Schedule 3 to the ISO Services Tariff.

#### **30.4.6.4.2 Responsibilities related to the Operating Reserves Demand Curves**

In order to respond to operational or reliability problems that arise in real-time, the ISO may procure any Operating Reserve product at a quantity and/or price point different than those specified in Section 15.4.7 of Rate Schedule 4 to the ISO Services Tariff. The ISO shall post a notice of any such purchase as soon as reasonably possible and shall report on the reasons for such purchases at the next meeting of its Business Issues Committee. The ISO shall also immediately initiate an investigation to determine whether it is necessary to modify the quantity and price points specified above to avoid future operational or reliability problems. The ISO will consult with its Market Monitoring Unit when it conducts this investigation.

If the ISO determines that it is necessary to modify the quantity and/or price points specified in Section 15.4.7 of Rate Schedule 4 to the ISO Services Tariff in order to avoid future operational or reliability problems it may temporarily modify them for a period of up to 90 days. If circumstances reasonably allow, the ISO will consult with its Market Monitoring Unit, the Business Issues Committee, the Commission, and the PSC before implementing any such modification. In all circumstances, the ISO will consult with those entities as soon as reasonably possible after implementing a temporary modification.

After the first year the Operating Reserves Demand Curves are in place, the ISO shall perform periodic reviews, subject to the scope requirement specified in Section 15.4.7 of Rate Schedule 4 to the ISO Services Tariff, and the Market Monitoring Unit shall be given the opportunity to review and comment on the ISO's periodic reviews of the Operating Reserve Demand Curves. *See* Section 15.4.7 of Rate Schedule 4 to the ISO Services Tariff.

**30.4.6.5 Market Monitoring Unit responsibilities set forth in the Attachments to the ISO Services Tariff (other than the Market Mitigation Measures).**

**30.4.6.5.1 Responsibilities related to Transmission Shortage Cost**

The ISO may periodically evaluate the Transmission Shortage Cost to determine whether it is necessary to modify the Transmission Shortage Cost to avoid future operational or reliability problems. The ISO will consult with its Market Monitoring Unit after it conducts this evaluation.

If the ISO determines that it is necessary to modify the Transmission Shortage Cost in order to avoid future operational or reliability problems the resolution of which would otherwise require recurring operator intervention outside normal market scheduling procedures, in order to avoid among other reliability issues, a violation of NERC Interconnection Reliability Operating Limits or System Operating Limits, it may temporarily modify it for a period of up to 90 days, provided however the ISO shall file such change with the Commission pursuant to § 205 of the Federal Power Act within 45 days of such modification. If circumstances reasonably allow, the ISO will consult with its Market Monitoring Unit, the Business Issues Committee, the Commission, and the PSC before implementing any such modification. In all circumstances, the ISO will consult with those entities as soon as reasonably possible after implementing a temporary modification and shall explain the reasons for the change. *See* Section 17.1.4 of Attachment B to the ISO Services Tariff.

**30.4.6.5.2 Responsibilities under Appendix 4 to the Operating Protocol for the Implementation of Commission Opinion No. 476 (the “Operating Protocol”)**

The ISO and PJM and their Market Monitoring Units shall, to the extent compatible with their respective tariffs and with any other market monitoring procedures that they have filed with the Commission:

30.4.6.5.2.1 Conduct such investigations as may be necessary to ensure that gaming, abuse of market power, or similar activities do not take place with regard to power transfers under the 600/400 MW contracts;

30.4.6.5.2.2 Conduct investigations that go into the region of the other ISO jointly with the ISO, PJM and both Market Monitoring Units;

30.4.6.5.2.3 Inform each other of any such investigations; and

30.4.6.5.2.4 Share information related to such investigations, as necessary to conduct joint investigations, subject to the requirements of Section C of Appendix 4 to the Operating Protocol and Section 30.6.6 of Attachment O.

*See* Section A of Appendix 4 to Attachment M-1 to the ISO Services Tariff.

**30.4.6.6 Market Monitoring Unit responsibilities set forth in the ISO OATT**

**30.4.6.7 Market Monitoring Unit responsibilities set forth in the Rate Schedules to the ISO OATT**

**30.4.6.8 Market Monitoring Unit responsibilities set forth in the Attachments to the ISO OATT**

**30.4.6.8.1 Responsibilities related to Transmission Shortage Cost**

The ISO may periodically evaluate the Transmission Shortage Cost to determine whether it is necessary to modify the Transmission Shortage Cost to avoid future operational or reliability

problems. The ISO will consult with its Market Monitoring Unit after it conducts this evaluation.

If the ISO determines that it is necessary to modify the Transmission Shortage Cost in order to avoid future operational or reliability problems the resolution of which would otherwise require recurring operator intervention outside normal market scheduling procedures, in order to avoid among other reliability issues, a violation of NERC Interconnection Reliability Operating Limits or System Operating Limits, it may temporarily modify it for a period of up to 90 days, provided however the ISO shall file such change with the Commission pursuant to §205 of the Federal Power Act within 45 days of such modification. If circumstances reasonably allow, the ISO will consult with its Market Monitoring Unit, the Business Issues Committee, the Commission, and the PSC before implementing any such modification. In all circumstances, the ISO will consult with those entities as soon as reasonably possible after implementing a temporary modification and shall explain the reasons for the change. *See* Section 16.1.4 of Attachment J to the ISO OATT.

30.4.6.8.2 Following the Management Committee vote, the draft Reliability Needs Assessment (RNA), with working group, Operating Committee, and Management Committee input, will be forwarded to the ISO Board for review and action. Concurrently, the draft RNA will be provided to the Market Monitoring Unit for its review and consideration of whether market rules changes are necessary to address an identified failure, if any, in one of the ISO's competitive markets. *See* Section 31.2.3.2 of Attachment Y to the ISO OATT.

30.4.6.8.3 Following the Management Committee vote, the draft Comprehensive Reliability Plan (CRP), with working group, Operating Committee, and

Management Committee input, will be forwarded to the ISO Board for review and action. Concurrently, the draft CRP will also be provided to the Market Monitoring Unit for its review and consideration of whether market rule changes are necessary to address an identified failure, if any, in one of the ISO's competitive markets. *See* Section 31.2.6.2 of Attachment Y to the ISO OATT.

30.4.6.8.4 Following the Management Committee vote, the draft Congestion Analysis and Resource Integration Study (CARIS), with Business Issues Committee and Management Committee input, will be forwarded to the ISO Board for review and action. Concurrently, the draft CARIS will be provided to the Market Monitoring Unit for its review and consideration. *See* Section 31.3.2.2 of Attachment Y to the ISO OATT.

30.4.6.9 Market Monitoring Unit responsibilities set forth in other documents that have been formally filed with the Commission.

### **30.4.7 Availability of Data and Resources to Market Monitoring Unit**

30.4.7.1 The ISO shall ensure that the Market Monitoring Unit has sufficient access to ISO resources, personnel and market data to enable the Market Monitoring Unit to carry out its functions under Attachment O. Consistent with Section 30.6.1 of Attachment O, the Market Monitoring Unit shall have complete access to the ISO's databases of market information.

30.4.7.2 Any data created by the Market Monitoring Unit, including but not limited to reconfiguration of the ISO's data, will be kept within the exclusive control of the Market Monitoring Unit. The Market Monitoring Unit may share the data it creates, subject to the limitations on distribution of and obligation to protect the



confidentiality of Protected Information that are contained in Attachment O, the ISO Services Tariff, and the ISO's Code of Conduct.

30.4.7.3       Where data outside the ISO's geographic footprint would be helpful to the Market Monitoring Unit in carrying out its duties, the Market Monitoring Unit should seek out that data (with assistance from the ISO, where appropriate).