

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

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

23.3.1.4.6.2 Market Parties shall monitor Generator reference levels and shall endeavor to timely (as that term is defined in Section 23.3.1.4.6.8 below) contact the ISO to request an adjustment to a Generator's reference level(s) when the Generator's fuel type or fuel price change.

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

23.3.1.4.6.2.1.1 What constitutes "unauthorized" natural gas use is specified in each natural gas pipeline's or local distribution company's ("LDC's") applicable tariff, rate schedule or customer contract. Unauthorized natural gas use may

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

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

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

23.3.1.4.6.4 Consistent with the rules specified in this Section 23.3.1.4.6 of the Mitigation Measures and the procedures that the ISO develops to implement these rules, Market Parties shall notify the ISO of changes in fuel type or fuel price by (i) submitting revised fuel type or fuel price information to the ISO's Market Information System along with the Generator's Bid(s), or (ii) by directly contacting the ISO to request a reference level update consistent with ISO procedures, or (iii) by utilizing both of the available notification methods. Revised fuel type or fuel price information that exceeds, or is rejected based upon, the thresholds that the ISO uses to automatically screen fuel type or fuel price information that is submitted to the ISO's Market Information System along with a Generator's Bid(s) shall be submitted by directly contacting the ISO to request a reference level update, consistent with ISO procedures.

23.3.1.4.6.5 Following the completion of the ISO's automated and/or manual screening processes, the ISO shall use fuel type and fuel price information that Market Parties or their representatives submit to develop Generator reference levels unless (i) the information submitted is inaccurate, or (ii) the information was not timely submitted, and the Market Party's failure to timely submit the information is not excused by the ISO in accordance with Section 23.3.1.4.6.8 below, or (iii) consistent with Section 23.3.1.4.6.9 below.

23.3.1.4.6.6 The ISO may not always have sufficient time to complete its screening of proposed fuel type or fuel price changes prior to the relevant Day-Ahead Market day or Real-Time Market hour. *If* fuel type or fuel price information (i) is timely submitted or, where untimely, the submission of fuel type or fuel price

information is excused in accordance with Section 23.3.1.4.6.8 below, and (ii) the fuel type or fuel price information that the Market Party submitted is proven to have been accurate or to have understated the actual cost incurred for that component, and (iii) the Bid(s) were tested using reference levels that reflected outdated fuel type and/or fuel price information and the Bid(s) were mitigated or a sanction was imposed pursuant to Section 23.4.3 of these Mitigation Measures, *then* the ISO shall (a) re-perform any test(s) that resulted in a sanction being imposed pursuant to Section 23.4.3 of these Mitigation Measures, using the accurate fuel type and/or fuel price information and use the revised results to calculate the appropriate sanction (if any), and (b) determine if the Bids for the Generator would have failed the relevant conduct test(s) if accurate fuel type and/or fuel price information had been used to develop reference levels. The ISO shall then restore any original (as-submitted) Bid(s) that would not have failed the relevant conduct test(s) if accurate fuel type and/or fuel price information had been used to develop the Generator's reference levels, and use the restored Bid(s) to determine a settlement. Otherwise the ISO shall use the Generator's correct or corrected reference level(s) to determine a settlement.

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

23.3.1.4.6.8 For purposes of this Section 23.3.1.4.6, "timely" notice or submission to the Real-Time Market shall mean the submission of fuel type and/or fuel price information using the methods specified in Section 23.3.1.4.6.4 of these

Mitigation Measures prior to market close for the relevant Real-Time Market hour. For purposes of this Section 23.3.1.4.6, “timely” notice or submission to the Day-Ahead Market shall mean the submission of fuel type and/or fuel price information using the methods specified in Section 23.3.1.4.6.4 of these Mitigation Measures at least 15 minutes prior to the close of the Day-Ahead Market (*i.e.*, by 4:45 a.m.). Market Parties are not expected to submit invoices or other supporting data with their Day-Ahead Market or Real-Time Market fuel type and fuel price information, but are expected to retain invoices and other supporting data consistent with the data retention requirements set forth in the Plan, and to be able to produce such information within a reasonable timeframe when asked to do so by the ISO or by its Market Monitoring Unit.

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

23.3.1.4.6.9 If (i) the ISO determines, following consultation with the Market Party and review by the Market Monitoring Unit, that the Market Party or its

representative has; ~~over a time period of at least one week,~~ submitted inaccurate fuel type or fuel price information that was biased in the Market Party's favor, or

(ii) if a Market Party is subject to a penalty or sanction under Section 23.4.3.3.3 of these Mitigation Measures for submitting inaccurate fuel price or fuel type information, *then* the ISO shall cease using the fuel type and fuel price information submitted to the ISO's Market Information System along with the Generator's Bid(s) to develop reference levels for the affected Generator(s) in the relevant (Day-Ahead or real-time) market for the duration(s) set forth below, unless the Market Party demonstrates to the ISO that the questioned conduct is consistent with competitive behavior.

23.3.1.4.6.9.1 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 ~~630~~ days. The ~~630~~ day period shall start two business days after the date that the ISO provides written notice of its determination that the application of mitigation is required.

23.3.1.4.6.9.2 The second 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. 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 ~~120~~¹⁸⁰ days.

The ~~120~~¹⁸⁰ day period shall start two business days after the date that the ISO provides written notice of its determination that the application of mitigation is required.

23.3.1.4.6.9.3 If the bidders of a Generator that has previously been mitigated under this Section 23.3.1.4.6.9 becomes and remains continuously eligible to submit fuel type and fuel price information in the Day-Ahead or Real-Time Market (as appropriate) for a period of one year or more, then the ISO shall apply the mitigation measure set forth in Section 23.3.1.4.6.9 of the Mitigation Measures as if the Generator had not previously been subject to the mitigation measure.

23.3.1.4.6.9.4 Market Parties that transfer, sell, assign, or grant to another Market Party the right or ability to Bid a Generator that is subject to the mitigation measure described in this Section 23.3.1.4.6.9 are required to inform the new Market Party that the Generator has been mitigated under this measure, and to inform the new Market Party of the expected duration of such mitigation.

23.3.1.4.6.9.5 For purposes of this Section 23.3.1.4.6.9, 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 the higher of 10% or \$0.50/MMBtu, on average, over the previous 90 days~~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 and the Market Party must have submitted revised fuel type or fuel price information for that Generator for at least 100 hours during the previous 90 days. The Day-Ahead and Real-Time Markets shall be considered separately for purposes of this analysis.

23.3.1.4.6.9.6 For purposes of this Section 23.3.1.4.6.9, 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 the higher of 10% or \$0.50/MMBtu, on average, over the previous 90 days~~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 and the Market Party must have submitted revised fuel type or fuel price information for that Generator for at least 100 hours during the previous 90 days. The Day-Ahead and Real-Time Markets shall be considered separately for purposes of this analysis.

23.3.1.4.6.9.7 The responsibilities of the Market Monitoring Unit that are addressed in Section 23.3.1.4.6.9 of the Mitigation Measures are also addressed in Section 30.4.6.2.3 of the Plan.

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

23.3.1.4.7 Except as otherwise authorized in accordance with Section 23.3.1.4.6.8 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.