

Proposed Tariff Language for Recovery of NERC and State Penalty Assessments

Services Tariff

5.1a Customer Compliance with Reliability Standards; Penalties

(a) Customer Compliance with Reliability Standards

In accordance with applicable requirements in this Tariff and the ISO Procedures, all Customers shall conform to all applicable reliability criteria, policies, standards, rules, regulations and other requirements of NERC, NPCC, NYSRC, any applicable regional council, or their successors, the ISO's specific reliability requirements and ISO Procedures, and operating guidelines and all applicable requirements of federal and state regulatory authorities. Failure to conform to these requirements may subject a Customer to direct assignment of penalties assessed against the ISO by FERC, NERC, NPCC or any other federal or state regulatory authority as a result of such Customer's failure to conform.

(b) Direct Assignment of Penalty Costs

The ISO's compliance with applicable reliability criteria, policies, standards, rules, regulations and other requirements is sometimes dependent on timely, accurate and adequate information and/or action on the part of a Customer. If the ISO is found to be non-compliant with respect to any applicable reliability criteria, policies, standards, rules, regulations and other requirements as a result of a Customer's actions or failure to act in violation of an obligation imposed by the ISO Tariffs or ISO Related Agreements, the ISO may seek to directly assign to the Customer the cost of a penalty imposed on the ISO as a consequence of its non-compliance. If the Customer is found to be non-compliant with respect to any applicable reliability criteria, policies, standards, rules, regulations and other requirements as a result of the ISO's actions or failure to act in violation of an obligation imposed by the ISO Tariffs or ISO Related Agreements, the Customer may seek to directly assign to the ISO the cost of a penalty imposed on the Customer as a consequence of the ISO's non-compliance. Any direct assignment of penalty costs must first be approved by FERC, as provided in Schedule 11 of the OATT.

(c) ISO's Recovery of Penalty Costs Through Schedule 11

If direct assignment to a particular Customer is not possible or if the ISO is directly responsible for a violation because of its own action or inaction, the ISO may recover such penalty costs in Schedule 11 of the ISO OATT. Any inclusion of penalty

costs in Schedule 11 must first be approved by FERC on a case-by-case basis, as provided in Schedule 11 of the ISO OATT. Prior to seeking FERC authorization for recovery of a penalty in Schedule 11 of the ISO OATT, the ISO shall notify the Management Committee and the Budget and Priorities Working Group, or its successor, regarding the recovery and allocation of such penalty before filing at FERC.

12.4 Indemnification

For the purpose of this Section, the terms Market Participant(s) and Customer(s) shall not include a Transmission Owner with respect to acts or omissions related in any way to the Transmission Owner's ownership or operation of its transmission facilities when such acts or omissions are either (1) pursuant to or consistent with ISO Procedures or direction or (2) in any way related to the Transmission Owner's or the ISO's performance under this Tariff.

Subject to the ISO's obligations to the Transmission Owners under the ISO/TO Agreement and the ISO Agreement, each Customer and Market Participant shall indemnify, save harmless and defend the ISO, the Transmission Owners and the NYSRC including their directors, members, managers, officers, employees, trustees, committee members and agents, or each of them (individually the "Indemnatee" or collectively the "Indemnitees") from and against all claims, demands, losses, liabilities, judgments, damages, and related costs and expenses (including, without limitation, reasonable attorney and expert fees, and disbursements incurred by the Indemnitees in any actions or proceedings between the Indemnitees and a third party, the Customer or Market Participant or any other party) arising out of or related to the Indemnatee's or the Customer's acts or omissions related in any way to performance under the ISO Services Tariff, a Service Agreement, ~~or an ISO Related Agreement,~~ or ISO Procedure, except to the extent that the Indemnitees are found liable for gross negligence or intentional misconduct.

The ISO will procure insurance or other alternative risk financing arrangements sufficient to cover the risks associated with the carrying out of its responsibilities under this Tariff. The proceeds from such insurance shall be used prior to the invocation by the ISO of its right to indemnification under this Section through the Rate Schedule 1 charge. Except to the extent that indemnification of the ISO is required from a particular Market Participant or Customer because of the acts or omissions of that Market Participant or Customer, indemnification of or by the ISO shall be effected through the Rate Schedule 1 charge of the ISO OATT.

Nothing in this section shall preclude the ISO from seeking indemnification of penalty costs against Customers and Market Participants as provided in Schedule 11 of the ISO OATT.

OATT Provisions

10.2 Indemnification:

The Transmission Customer shall at all times indemnify, defend, and save the ISO and each Transmission Owner harmless from, any and all damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, demands, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the ISO's or the Transmission Owner's performance of its obligations under this Tariff on behalf of the Transmission Customer, except in cases of gross negligence or intentional wrongdoing by the ISO and except in the case of gross negligence or negligence consistent with the limitation of liability standards in Section 10.3(a), or intentional wrongdoing by the Transmission Owner. The ISO will procure insurance or other alternative risk financing arrangements sufficient to cover the risks associated with the carrying out of its responsibilities under this Tariff. The proceeds from such insurance shall be used prior to the invocation by the ISO of its right to indemnification under this Section, through the Rate Schedule 1 charge. Except to the extent that indemnification of the ISO is required from a particular Transmission Customer because of the acts or omissions of the Transmission Customer, indemnification of or by the ISO shall be effected through the Rate Schedule 1 charge.

Nothing in this section shall preclude the ISO from seeking indemnification of penalty costs against Customers and Market Participants as provided in Schedule 11 of this Tariff.

10.6 Reliability Compliance and Penalty Cost Recovery

(a) Customer Compliance with Reliability Standards

In accordance with applicable requirements in this Tariff and the ISO Procedures, all Customers shall conform to all applicable reliability criteria, policies, standards, rules, regulations and other requirements of NERC, NPCC, NYSRC, or any applicable regional council, or their successors, the ISO's specific reliability requirements and ISO Procedures, and operating guidelines and all applicable requirements of federal and state regulatory authorities. Failure to conform to these requirements may subject a Customer to direct assignment of penalties assessed against the ISO by FERC, NERC, NPCC or any other federal or state regulatory authority as a result of such Customer's failure to conform.

(b) Direct Assignment of Penalty Costs

The ISO's compliance with applicable reliability criteria, policies, standards, rules, regulations and other requirements is sometimes dependent on timely, accurate and adequate information and/or action on the part of a Customer. If the ISO is found to be non-compliant with respect to any applicable reliability criteria, policies, standards, rules, regulations and other requirements as a result of a Customer's actions or failure to act in violation of an obligation imposed by the ISO Tariffs or ISO Related Agreements, the ISO may seek to directly assign to the Customer the cost of a penalty imposed on the ISO as a consequence of the Customer's non-compliance. If the Customer is found to be non-compliant with respect to any applicable reliability criteria, policies, standards, rules, regulations and other requirements as a result of the ISO's actions or failure to act in violation of an obligation imposed by the ISO Tariffs or ISO Related Agreements, the Customer may seek to directly assign to the ISO the cost of a penalty imposed on the Customer as a consequence of the ISO's non-compliance. Any direct assignment of penalty costs must first be approved by FERC, as provided in Schedule 11 of this Tariff.

(c) ISO's Recovery of Penalty Costs Through Schedule 11

If direct assignment to a particular Customer is not possible or if the ISO is directly responsible for a violation because of its own action or inaction, the ISO may recover such penalty costs in Schedule 11 of this Tariff. Any inclusion of penalty costs in Schedule 11 must first be approved by FERC on a case-by-case basis, as provided in Schedule 11. Prior to seeking FERC authorization for recovery of a penalty in Schedule 11 of this Tariff, the ISO shall notify the Management Committee and the Budget and Priorities Working Group, or its successor, regarding the recovery and allocation of such penalty before filing at FERC.

[Proposed New] OATT SCHEDULE 11

1.0 DIRECT ALLOCATION OF COSTS ASSOCIATED WITH NERC PENALTY ASSESSMENTS

1.1 Purpose and Objectives. Under the NERC Functional Model and the NERC Rules of Procedure, Registered Entities within a specific function may be assessed penalties by FERC, NERC, and/or NPCC for violations of NERC Reliability Standards. Pursuant to the terms and conditions of the Tariff and the ISO Procedures, certain tasks associated with Reliability Standards compliance may be performed either by the ISO and/or the Customers even when they are not the Registered Entity. This Schedule furnishes a mechanism by which either the ISO or a Customer may directly allocate, with FERC approval, monetary penalties imposed by FERC, NERC and/or NPCC on the Registered Entity to the entity or entities whose conduct is determined by NERC or the Regional Entity to have led to a Reliability Standard violation. The purpose of this schedule is to allow for cost allocation; nothing in this schedule is intended to affect the obligations of Registered Entities for compliance with NERC Reliability Standards. Penalties that are assessed against the ISO on or after the effective date of this Section shall be recoverable as provided in this Section regardless of the date of the violation(s) for which the penalty is assessed. Notwithstanding any provisions of the ISO's Tariffs or ISO Related Agreements, including those provisions requiring stakeholder approval for Section 205 filings in certain instances, the ISO has the independent authority to make Section 205 filings in accordance with the provisions of this Schedule 11.

1.2 Definitions: All defined terms in this Schedule shall have the meaning given to them in the Tariff and the ISO Procedures unless otherwise stated below.

Compliance Monitoring and Enforcement Program (CMEP)- The program to be used by the NERC and the Regional Entities to monitor, assess and enforce compliance with the NERC Reliability Standards. As part of a Compliance Monitoring and Enforcement Program, NERC and the Regional Entities may, among other things, conduct investigations, determine fault and assess monetary penalties.

NERC Functional Model - Defines the set of functions that must be performed to ensure the reliability of the bulk power system. The NERC Reliability Standards establish the requirements of the responsible entities that perform the functions defined in the Functional Model.

NERC Reliability Standards - Those standards that have been developed by NERC and approved by FERC to ensure the reliability of the bulk power system.

NERC Rules of Procedure - The rules and procedures developed by NERC and approved by the FERC. These rules include the process by which a responsible entity, which is to perform a set of functions to ensure the reliability of the bulk power system, must register as the Registered Entity.

Registered Entity - The entity registered under the NERC Functional Model and NERC Rules of Procedures for the purpose of compliance with NERC Reliability Standards and responsible for carrying out the tasks within a NERC function without regard to whether a task or tasks are performed by another entity pursuant to the terms of the ISO's Tariffs and ISO Related Agreements.

Regional Entity - An entity to whom NERC has delegated Electric Reliability Organization (ERO) functions in a particular geographic region. For the ISO region, the applicable Regional Entity is the Northeast Power Coordinating Council (NPCC).

1.3 Allocation of Costs When the ISO is the Registered Entity

(a) If FERC, NERC and/or NPCC assesses a monetary penalty against the ISO as the Registered Entity for a violation of a NERC Reliability Standard(s), and the conduct of a Customer or Customers contributed to the Reliability Standard violation(s) at issue, then the ISO may directly allocate such penalty costs or a portion thereof to the Customer or Customers whose conduct contributed to the Reliability Standards violation(s), provided that all of the following conditions have been satisfied:

- (1) Pursuant to the CMEP, the Customer or Customers received notice and an opportunity to fully participate in the underlying CMEP proceeding;
- (2) This CMEP proceeding produced a root cause finding, subsequently filed with FERC, that the Customer contributed, either in whole or in part, to the NERC Reliability Standards violation(s); and
- (3) A NERC filing of the root cause finding identifying the Customer's or Customers' conduct as causing or contributing to the Reliability Standards violation charged against the ISO as the Registered Entity is made at FERC.

- (b) The ISO will notify the Customer or Customers found to have contributed to a violation, either in whole or in part, in the CMEP proceedings. Such notification shall set forth in writing the ISO's intent to invoke this Section 1.3 and directly assign the costs associated with a monetary penalty to the Customer or Customers. Such notification shall state that the ISO believes the criteria for direct assignment and allocation of costs under this Schedule have been satisfied.
- (c) A failure by a Customer or Customers to participate in the CMEP proceedings will not prevent the ISO from directly assigning the costs associated with a monetary penalty to the responsible Customer or Customers provided all other conditions set forth herein have been satisfied.
- (d) Where the Regional Entity's and/or NERC's root cause analysis finds that more than one party's conduct contributed to the Reliability Standards violation(s), the ISO shall inform all involved Customers and shall make an initial apportionment for purposes of the cost allocation on a basis reasonably proportional to the parties' relative fault consistent with NERC's root cause analysis.
- (e) If the ISO and the involved Customer(s) agree on the proportion of penalty cost allocation, such agreement shall be submitted to the FERC pursuant to Section 205 of the Federal Power Act for approval.
- (f) Should the Customer(s) disagree with the ISO's initial apportionment of the penalty based on each party's relative fault, then the parties shall meet in an attempt to informally resolve the penalty allocation. If the parties cannot agree informally, the matter shall be submitted to the FERC pursuant to Section 205 of the Federal Power Act. In either case, the proceeding shall be limited to a determination of how the costs associated with the monetary penalty should be allocated.
- (g) Once there is a final order by FERC regarding the ISO's ability to directly assign the penalty amounts, the ISO shall include such amounts in the appropriate Customer's or Customers' next monthly invoice. Such payment amount shall be due with interest calculated at the FERC authorized refund rate from the date of payment of the

penalty by the ISO, provided however, nothing precludes the Customer or Customers from paying such penalty when it becomes due for the ISO to avoid paying interest costs.

1.4 Allocation of Costs When a Customer is the Registered Entity

- (a) If FERC, NERC and/or NPCC assesses a monetary penalty against a Customer as the Registered Entity for a violation of a NERC Reliability Standard(s), and the conduct of the ISO contributed to the Reliability Standard violation(s) at issue, then such Customer may directly allocate such penalty costs or portion thereof to the ISO to the extent the ISO's conduct contributed to the Reliability Standards violation(s), provided that the following conditions have been satisfied:

 - (1) Pursuant to the CMEP, the ISO received notice and an opportunity to fully participate in the underlying CMEP proceeding;
 - (2) This CMEP proceeding produced a root cause finding, subsequently filed with FERC, that the ISO contributed, either in whole or in part, to the NERC Reliability Standards violation(s); and
 - (3) A NERC filing of the root cause finding identifying the Customer's or Customers' conduct as causing or contributing to the Reliability Standards violation charged against the ISO as the Registered Entity is made at FERC.
- (b) The Customer shall notify the ISO if the ISO is found to have contributed to a violation, either in whole or in part in the CMEP proceedings. Such notification shall set forth in writing the Customer's intent to invoke this Section 1.4 and directly assign the costs associated with a monetary penalty to the ISO. Such notification shall state that the Customer or Customers believe the criteria for direct assignment and allocation of costs under this Schedule have been satisfied.
- (c) A failure by the ISO to participate in the CMEP proceedings will not prevent the Customer from directly assigning the costs associated with a monetary penalty to the ISO provided all other conditions set forth herein have been satisfied.

- (d) Where the Regional Entity's and/or NERC's root cause analysis finds that the ISO's conduct contributed to the Reliability Standards violation(s), the Customer shall inform the ISO and shall make an initial apportionment for purposes of the cost allocation on a basis reasonably proportional to the parties' relative fault consistent with NERC's root cause analysis.
- (e) If the ISO and the involved Customer agree on a proportion of penalty cost allocation, such agreement shall be submitted to the FERC pursuant to Section 205 of the Federal Power Act.
- (f) Should the ISO disagree with the Customer's initial apportionment of the penalty based on each party's relative fault, then the parties shall meet in an attempt to informally resolve the penalty allocation. If the parties cannot agree informally, the matter shall be submitted to the FERC pursuant to Section 205 of the Federal Power Act. In either case, the proceeding shall be limited to a determination of how the costs associated with the monetary penalty should be allocated.
- (g) Once there is a final order by FERC regarding the customer's direct assignment of costs to the ISO, the ISO shall pay such amount with interest calculated at the FERC authorized refund rate from the date of payment of the penalty by the Registered Entity, provided however, nothing precludes the ISO from paying such penalty when it becomes due for the Registered Entity to avoid paying interest costs. The ISO shall thereafter pursue the recovery of such costs in accordance with Section 3.0 of this Schedule 11.

2.0 ALLOCATION OF COSTS ASSOCIATED WITH OTHER RELIABILITY PENALTY ASSESSMENTS

2.1 Purpose and Objectives. Under applicable requirements of the New York State Reliability Council (NYSRC) and the New York State Public Service Commission (NYPSC), the ISO is responsible for performing specific functions under the applicable state regulatory requirements and may be assessed penalties by the NYPSC for violations of applicable state regulatory requirements. Section 3.0 of this Schedule furnishes a mechanism by which the ISO may recover monetary penalties imposed by state regulatory authorities. Penalties that are assessed against the ISO on or after the effective date of this Section shall be recoverable as provided in this Section regardless of the date of the violation(s) for which the penalty is assessed. Notwithstanding any provisions of the ISO's

Tariffs or ISO Related Agreements, including those provisions requiring stakeholder approval for Section 205 filings in certain instances, the ISO has the independent authority to make Section 205 filings in accordance with the provisions of this Schedule 11.

3.0 ALLOCATION OF COSTS ASSOCIATED WITH PENALTY ASSESSMENTS

3.1 Where a particular Customer or Customers cannot be identified as the root cause of a penalty assessment against the ISO or if the ISO is assessed a penalty because of its own action or inaction that resulted in a reliability standard violation or a violation of applicable state or federal regulatory requirements, or if the ISO is allocated a penalty under Section 1.4 of this Schedule 11, the ISO may recover such penalty costs in accordance with this Schedule 11. Any inclusion of penalty assessments in this Schedule 11 must first be approved by FERC on a case-by-case basis, as provided in *Reliability Standard Compliance and Enforcement in Regions with Regional Transmission Organizations or Independent System Operators*, Docket No. AD07-12-000, 122 FERC ¶ 61,247 (2008), or any successor policy. Notwithstanding any provisions of the ISO's Tariffs or ISO Related Agreements, including those provisions requiring stakeholder approval for Section 205 filings in certain instances, the ISO has the independent authority to make Section 205 filings in accordance with the provisions of this Schedule 11.

3.2 Any and all costs associated with the imposition of NERC Reliability Standards penalties or penalties assessed by state regulatory authorities that may be assessed against the ISO either directly by NERC, a state regulatory authority or allocated by a Customer or Customers under this Schedule shall be (i) paid by the ISO notwithstanding the limitation of liability provisions in this Tariff or the Services Tariff; and (ii) recovered as set forth in this Schedule 11, or as otherwise approved by the FERC.

3.3 Penalties that are assessed against the ISO on or after the effective date of this Section shall be recoverable as provided in this Section regardless of the date of the violation(s) for which the penalty is assessed.

3.4 Invoicing and Billing Units

(a) Invoicing. Any penalties that are permitted recovery under Section 3.0 of this Schedule 11 shall be allocated 50% to all injection billing units and 50% to all withdrawal billing units. Once there is a final order by FERC regarding

the ISO's ability to recover penalty amounts, the ISO shall include such amounts in the next monthly invoice utilizing the billing units, as described in Section 3.4(b) of this Schedule 11, for the most recent month contained on the invoice, with provision for the correction of that month's billing units in subsequent invoices. The rate to be applied to injection and withdrawal billing units in each month shall be the quotient of the amount of these costs to be included in the month, divided by the sum of the total injection and withdrawal billing units for the month. This rate shall then be multiplied by each Transmission Customer's aggregate injection and withdrawal billing units for the month.

(b) Billing Units. For all charges calculated under Section 3.0 of this Rate Schedule, the Transmission Customer's injection billing units shall be based on Actual Energy Injections (for all internal injections) or Scheduled Energy Injections (for all Import Energy injections) in the New York Control Area, including injections for wheelthroughs. The Transmission Customer's withdrawal billing units shall be based on its Actual Energy Withdrawals for all Transmission Service to supply Load in the NYCA, and hourly Energy schedules for all Wheels Through and Exports.