

Penalties and Public Disclosure  
For Conduct That Results In  
The Application of Market Mitigation

Materials for the April 18, 2001  
Management Committee Meeting

The Consumer Protection Board proposes the following proposals for Penalties and Public Disclosure be adopted. The Business Issues Committee approved these proposals on April 16, 2001.

# PENALTIES FOR CONDUCT THAT RESULTS IN THE APPLICATION OF MARKET MITIGATION

Proposal of NYS Consumer Protection Board

April 18, 2001 Management Committee

## Background

The market mitigation authority held by the New York Independent System Operator (NYISO) is applicable on a prospective basis only. If the NYISO determines that a market participant has engaged in conduct that warrants market mitigation~~is exercising market power~~, it can take actions to prevent only the future reoccurrence of that ~~market power~~conduct. The NYISO does not have the power to retroactively correct prices that were impacted by the conduct that results in the application of market mitigation or to assess financial penalties on the ~~offending~~ market participant to take away the gains that it made from ~~the exercise of market powers~~such conduct.<sup>1</sup>

Because of this gap in the NYISO's mitigating authority, a market participant ~~with market power capability~~ knows that it can engage in conduct that warrants mitigation~~exercise that capability~~ and receive the full financial benefit of doing so until its behavior is detected and mitigated. There appears to be no deterrent to engaging in such conduct~~the use of market power~~. The goal of the penalty provisions described herein is to provide such a deterrent. Please note, however, that the goal of these measures is not to provide compensation to the buying side of the market for the

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<sup>1</sup> With regard to ~~the exercise of market power via~~ physical withholding or overproduction, the NYISO does have a mitigation measure that enables it to impose a financial obligation on the offending market party (Section 4.3 of the April 18, 2000 ISO Compliance Filing, Docket Nos. ER97-1523-020...et al.).

inflated prices that were paid as a result of the ~~exercise of market power~~conduct resulting in market mitigation. Revenues from penalties will go to offset NYISO Schedule 1 charges. Furthermore, these measures do not involve any correction or changes to prices.

### Applicability

Initially, these penalty provisions are designed to apply only to the NYISO energy markets and would not cover the ancillary services markets. They cover both the day-ahead market and the real-time market. If experience demonstrates that it is necessary to design public disclosure and penalty provisions for ancillary services markets, then the market participants can consider them at a later time. ~~Market power exercised through~~ Physical withholding (other than for reliability or safety requirements) or overproduction is currently mitigated through the imposition of a financial obligation (Section 4.3 of the NYISO's April 18, 2004 compliance filing on market mitigation measures). The portion of Section 4.3 related to the formula for calculating the financial obligation for physical withholding of generation would be eliminated and be replaced by the provisions described here.

### Penalties

Penalties will gradually increase in severity, with a lesser penalty for the first time a market participant is mitigated by the NYISO, and larger penalties for the second time, third time, and so on.

The penalty for the first mitigation action during mitigated hours is as follows:

$$\text{1st Penalty} = (\# \text{ of MW mitigated during mitigated hours}) \times (\text{LBMP at the mitigated generator's bus}) \times 2$$

MW mitigated by the NYISO is based on the MW amount of the firm's generation capacity that exhibited the behavior that was found by the NYISO to ~~be objectionable and which necessitated~~ warrant mitigation. The MW value is converted into a MWh value by applying it to the number of hours in which the ~~objectionable behavior~~ conduct occurred, subject to the limitations described in the section below on the duration of market activities encompassed by the penalty.

LBMP is the hourly NYISO locational-based marginal price at each generating unit's bus for each mitigated hour.

The NYISO would have the discretion to reduce or waive the penalty for the first mitigation action if it determines that the imposition of the penalty would be either onerous or unnecessary to deter such conduct.

The penalty for a second mitigation action within 24 months of the first mitigation action by the same generation owner is as follows:

$$\text{2nd Penalty} = (\# \text{ of MW mitigated during mitigated hours}) \\ \times (\text{LBMP at the mitigated generator's bus}) \times 3$$

The second penalty is larger than the first penalty in that the multiplier is 3 rather than 2. For purposes of these penalty provisions, a second (or third or fourth, etc) mitigation action means a second time in which the NYISO implemented mitigation that was applied to the same entity as the initial mitigation, or to an affiliate, parent, etc. It does not matter if the second mitigation is in a different market. Public disclosure would also apply for the second mitigation action. At the discretion of the NYISO, public disclosure could be deferred to the third mitigation action.

The penalty for a third mitigation action within 24 months of the second mitigation action by the same generation owner is as follows:

$$\text{3rd Penalty} = (\# \text{ of MW mitigated during mitigated hours}) \\ \times (\text{LBMP at the mitigated generator's bus}) \times 4$$

The third time a generation firm is mitigated by the NYISO, the bids of all of its generators would be constrained to its reference bid curve for a six-month period. It will also be levied a penalty equal to the 2nd penalty amount except that a multiplier of 4 rather than 3 would be used. Public disclosure occurs without the discretion of the NYISO. Additional mitigation actions beyond the third mitigation action that occur within 24 months of the previous mitigation action will be treated in the same way as the third mitigation action for the purposes of the calculation of penalties.

#### Trigger for Penalties

The imposition of a penalty will be triggered by an action by the NYISO to mitigate the behavior of a market participant. The market participant will have the right to appeal the NYISO action and take it to the NYISO Alternative Dispute Resolution (ADR) process for arbitration. The ADR process will decide whether the NYISO properly applied mitigation under its market monitoring authority. The penalty will not be implemented until the ADR process is complete. If the market participant is not satisfied with the outcome of the ADR process it can take the matter to FERC for ~~final~~ resolution. If the market participant does not appeal the NYISO action to mitigate, the penalty will be automatically imposed.

~~These penalties shall not apply~~ ~~An exception is made~~ for mitigation that occurs through the use of the NYISO's Automatic Mitigation Process (AMP) and the localized market power mitigation measures applicable to sales of capacity, energy, and certain ancillary services from specified generating units in New York City approved by FERC

### Duration of Market Activities Encompassed by the Penalty

Once a penalty is triggered, it is applicable to all previous market activities by the offending market party that: (1) are deemed to be of the same type as the activity that was mitigated; and (2) occurred prior to the implementation of mitigation by the NYISO, but not more than 14 days prior to the implementation of mitigation by the NYISO for physical withholding and not more than 5 days prior to the implementation of mitigation by the NYISO for all other mitigation actions.

DISCLOSURE OF ENTITIES THAT  
ENGAGE IN CONDUCT THAT RESULTS  
IN THE APPLICATION OF MARKET MITIGATION

Proposal of NYS Consumer Protection Board

April 18, 2001

Background

To protect consumers from ~~conduct that results in market mitigation~~~~the exercise of market power~~, it is important to provide a deterrent to entities that ~~have market power and~~ may be considering ~~the exercise of such conduct.~~~~its exercise~~. One component of a deterrent is created by publicly disclosing the identity of any entity that ~~exercises~~~~engages in conduct that results in~~ market ~~mitigation~~~~power~~, and is found by the NYISO to have done so.

Procedure

1. The first time that an entity is mitigated by the NYISO, the entity will not be named.
2. If an entity is mitigated by the NYISO within 24 months of the first mitigation action, then it will be named. This second mitigation action applies to the same entity as the initial mitigation, or to an affiliate, parent, etc. It does not matter if the second mitigation is in a different market. For example, if entity A ~~engages in conduct that results in~~~~exercises~~ market ~~mitigation~~~~power~~ and is mitigated in the day-ahead ten-minute non-spin reserve market, then later entity A ~~exerts market power and~~ is mitigated in the real-time energy market, this constitutes a second ~~mitigation action~~~~violation~~ for entity A. Entity A is named and is revealed to be the party involved in both the first and

the second ~~violation~~ mitigation action. If the entity ~~committing~~ mitigated in the second mitigation action ~~violation~~ is entity B, and entity B is an affiliate of entity A, then both entity A and entity B are named, as well as the holding company that governs entity A and entity B. At the discretion of the NYISO, public disclosure could be deferred to the third mitigation action.

3. The entity will be named after all subsequent mitigation actions, whenever those actions occur within 24 months of the previous action.

4. No confidential information, such as bid prices, quantities, etc., will be revealed as part of the process by which the entity is named.

5. The NYISO will maintain a list of all mitigation actions ~~violations~~ on its website showing the dates and, where applicable, the names of the entities involved.

6. Mitigation that occurs through the use of the NYISO's Automatic Mitigation Process (AMP) and the localized Market Power Mitigation Measures applicable to sales of capacity, energy and certain ancillary services from specified generating units in NYC approved by FERC would ~~does~~ not be subject to ~~constitute a violation for the purposes of~~ this public disclosure mechanism.

7. Public disclosure will be delayed until an appealing party's appeal has completed the NYISO's dispute resolution process and any subsequent appeal to the FERC.