

**NYISO Strawman Proposal
for a
Balanced Sanctions Program**

This strawman proposal reflects the findings of the NYISO Board of Directors with regard to the Appeals of the MC's action concerning the Consumer Protection Board Motion on Penalties and Disclosure. The proposal also reflects comments made by Board members and members of the MC Liaison Committee at an open meeting held on May 15, 2001.

This proposal is intended to balance a number of relevant considerations. These include the need to deter deliberate actions that may distort market-clearing prices, the need to attract capacity investments and energy transactions to the New York markets, the need to ensure reliable electric service, and the need for fair and proportionate enforcement actions. For that reason, the proposal incorporates additional financial penalties that are not linked with NYISO market mitigation measures.

The proposal also recognizes that load-serving entities or entities which control transmission facilities may also engage in actions with significant adverse effects on facilities or markets in New York. The NYISO notes in this connection that its existing market mitigation measures now include financial penalties related to load bidding activity.

This proposal will require a tariff filing with FERC, which the NYISO plans to make as soon as practicable after approval of the AMP. The NYISO Staff will seek the consultation, and ultimately the concurrence of the Management Committee in such a filing.

Financial Penalties

The following actions not linked to market mitigation measures should be subject to financial penalties. A market participant may seek review of the imposition of such a financial penalty through the NYISO's ADR process. Payment of the penalty amount will not be required until the conclusion of that process, but interest will be assessed at an appropriate rate against any unpaid penalty amount, beginning on the date of the infraction.

(a) Action: *During emergency operations, failure to follow the instructions of NYISO dispatcher.* Penalty: *\$100,000 per instruction for transmission owner. The higher of \$50,000 per instruction or \$5,000 per MW/hr or fraction of a MW/hr for supplier or load-serving entity.*

(b) Action: *Failure of a supplier to meet its obligations to provide operating reserves when called upon.* Penalty: *The NYISO will charge the supplier 1.5 times the LBMP at the generator's bus times the MWs not provided during the reserve pick-up period.*

(c) Action: *Failure of a supplier or a transmission owner to provide documentation in support of a claimed derating or outage when requested to do so by the NYISO.* Penalty: *\$10,000 per event.*

(d) Action: *Failure to maintain, or to timely provide, records relating to the ability of the NYISO to (i.) properly settle a monthly bill; (ii.) analyze reliability related events; or (iii.) evaluate potential market power activities.* Penalty: *For actions related to (i.), \$5,000 per event. For actions related to (ii.) and (iii.), \$10,000 per event.*

The NYISO proposes the following financial penalties for suppliers that are subject to market power mitigation measures. The proposal assumes that the NYISO will be able to implement a FERC-approved Automatic Mitigation Procedures (“AMP”) by June 15, 2001.

Financial penalties will be imposed for conduct resulting in mitigation in the day-ahead and real-time energy and ancillary services markets, unless the mitigation occurs through the AMP or the In-City Mitigation Measures. A market participant may seek review of the imposition of a penalty through the NYISO’s ADR process. Payment of a penalty amount will not be required until the conclusion of that process, but interest at an appropriate rate will be charged against any unpaid penalty amount beginning on the day of the mitigation.

Financial penalties will increase in severity, with increasing penalties for repeat offenses. Repeat offenses will be determined on the basis of occurrences of substantially similar conduct by a market party or its subsidiaries or affiliates during the current and immediately preceding capability period.

First penalty = (Penalty MW) x (the Penalty LBMP)

Second penalty = (Penalty MW) x (the Penalty LBMP) x 2

Third penalty = (Penalty MW) x (the Penalty LBMP) x 3

Fourth and subsequent penalties = (Penalty MW) x (the Penalty LBMP) x 4

In addition, upon the occurrence of a fourth offense the NYISO will evaluate whether it is appropriate to seek action by the FERC against the penalized entity, and file with FERC seeking an appropriate remedy.

The “Penalty MW” shall be the MW of capacity withheld or of output deviation, for which mitigation measures have been determined to be warranted in accordance with the standards specified in the Market Mitigation Measures.

The “Penalty LMBP” shall be the highest LBMP resulting from the conduct to be penalized.

DISCLOSURE – FOR DISCUSSION

Dated: May 22, 2001

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