

August 1, 2005

The Honorable Magalie R. Salas
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

**Re: California Independent System Operator Corporation
Compliance Filing
Docket Nos. ER03-1102-___**

Dear Secretary Salas:

The California Independent System Operator Corporation ("ISO")¹ respectfully submits six copies of the present filing in compliance with the Commission's July 1, 2005 order, 112 FERC ¶ 61,001 ("July 1 Order"), issued in the captioned docket.

The Administrator of the Enforcement Protocol

In the July 1 Order, the Commission directed the ISO to modify Enforcement Protocol ("EP") 1.10 and EP 8 to indicate that the ISO's Market Monitoring Unit ("MMU") will administer the EP, except for EP 7 (prohibiting market manipulation). July 1 Order at P 9. The ISO has changed the defined term "Market Monitoring Staff" to "Market Monitoring Unit" throughout the EP (and has revised the definition of the term in EP 1.4(d)) and has modified EP 1.10 and EP 8 to comply with this directive. The ISO has also modified EP 1.10, EP 8.1, and EP 8.2 to state that the MMU will administer the Rules of Conduct under the EP, except for EP 7 (which will be administered by the Commission) and except as provided in EP 2.5 and EP 4.4. EP 2.5 provides in relevant part that a Market Participant will not be required to pay an enhanced (*i.e.*, tripled) penalty amount in excess of \$10,000 per day for a failure to comply with operating orders until the Commission approves such an enhancement, and EP

¹ Capitalized terms not otherwise defined herein are defined in the Master Definitions Supplement, Appendix A to the ISO Tariff, and in the Enforcement Protocol.

4.4 provides in relevant part that a Market Participant will not be required to pay an enhanced (tripled) penalty amount for a failure to comply with availability reporting requirements until the Commission renders a decision on a Market Participant's appeal of such an enhancement. The ISO does not propose any changes to either of these sections of the EP.

Because the July 1 Order directed the ISO to modify the EP to provide that the MMU will administer it, the ISO has also modified EP 9, concerning the administration of Sanctions under the EP. The ISO has modified EP 9.1 to provide that a Sanction specified in the EP may be modified by the Commission when it determines that such adjustment is just and reasonable, and that the ISO may make a recommendation to the Commission to modify a Sanction. The ISO has modified EP 9.3(a) to add EP 9.1 to the set of EP provisions pursuant to which the ISO will specify whether a penalty is modified.

Process for Investigation and Administration Under the Enforcement Protocol

In the July 1 Order, the Commission directed the ISO to modify EP 8 "to set forth the process for investigation and administration of the Enforcement Protocol that will be followed by the MMU," taking into account the Commission's previous determinations in this proceeding. July 1 Order at P 9. To comply with this directive, the ISO has provided in EP 8 the MMU's investigation and enforcement process. The provisions in EP 8 are largely based on the investigation and enforcement process that the ISO had proposed in the version of EP 3 included in the original ISO Tariff amendment filing that initiated this proceeding.²

EP 8.1 states the purpose and scope of the MMU's process for investigation and enforcement. It explains that EP 8 sets forth the procedures by which the MMU will independently investigate potential violations of the Rules of Conduct and administer enforcement activities.

² See Amendment No. 55 to the ISO Tariff, Docket No. ER03-1102-000 (July 22, 2003), at Attachment B, Original Sheet Nos. 867-869. The Commission did not reach the merits of the version of EP 3 included in that filing. Instead, the Commission directed the ISO to re-file EP 3 to reflect the reporting relationship established in an earlier Commission order issued in another proceeding. *California Independent System Operator Corporation*, 106 FERC ¶ 61,179, at P 109 (2004) ("February 20 Order"). The ISO, in its filing to comply with the February 20 Order, explained that in light of the fact that the Commission had retained sole authority to administer and to charge penalties under the EP, the ISO proposed to delete former EP 3 and to revise EP 8 to provide the investigation and enforcement provisions that would apply while the Commission had sole authority to administer and charge penalties under the EP. Transmittal Letter for Compliance Filing, Docket No. ER03-1102-003 (May 20, 2004), at 19. The Commission accepted revised EP 8. *California Independent System Operator Corporation*, 109 FERC ¶ 61,087 at P 86 (2004). In the July 9 Order (at P 9), the Commission directed that the MMU to administer the EP as described in the text above.

EP 8.2 requires the MMU to refer to the Commission and its staff all matters in which it has formed a reasonable belief that a violation of EP 7 may have occurred. EP 8.2 also states that, although EP 2 through EP 6 will generally be enforced by the MMU, the MMU will refer to the Commission any matter for which the particular circumstances preclude the objective determination of a Rules of Conduct violation, and will refer to the Commission any Sanction that the MMU believes should be modified in accordance with EP 2.5, EP 4.4, or EP 9.1. In addition, EP 8.2 specifies that the time limitation contained in EP 10.1 to assess a Sanction under the EP will be determined as of the date that a Sanction is initially assessed by the ISO, excluding the time required for the Commission to investigate a potential Rule of Conduct violation and/or determine a Sanction in accordance with EP 2.5, EP 4.4, EP 8.2, or EP 9.1.

EP 8.3 requires the MMU to conduct a reasonable investigation seeking available facts, data, and other information relevant to the potential Rules of Conduct violation.

EP 8.4 requires the MMU to provide notice of the investigation to the relevant Scheduling Coordinator in sufficient detail to allow for a meaningful response, and, as limited by the provisions of the section, requires the MMU to provide notice to all Market Participants the Scheduling Coordinator represents that are the subject(s) of the investigation. The MMU is required to contact the Market Participant(s) that may be involved, so long as the ISO has sufficient objective information to identify and verify the role of the Market Participant(s) in the potential Rules of Conduct violation.³ EP 8.4 notes that such Market Participant(s) will likely have an existing contractual relationship with the ISO.

EP 8.5 requires the MMU to provide an opportunity to the Market Participant(s) that are the subject(s) of the investigation to present any issues of fact or other information relevant to the potential Rules of Conduct violation being investigated. EP 8.5 also requires the MMU to consider all such information or data presented.

EP 8.6 requires the MMU to notify the Market Participant(s) that are the subject(s) of the investigation of the results of the investigation. EP 8.6 provides the Market Participant(s) 30 days to respond to the findings before the MMU makes a determination of whether a Sanction is required by the EP.⁴

³ In the February 20 Order, the Commission required the MMU to “notify both the Scheduling Coordinator and the market participant it represents of alleged violations.” February 20 Order at P 109.

⁴ In the February 20 Order, the Commission required the “[MMU] to continue to include in EP 3 a process for market participants to respond to allegations against them before the [MMU] makes a decision.” February 20 Order at P 109. In a subsequent order in this proceeding, the

EP 8.7 provides that, where the investigation results in a Sanction, the MMU must state its findings and conclusions in writing, and must make such writing available to the Scheduling Coordinator and, as provided in EP 8.4, to the Market Participant(s) that are the subject(s) of the investigation.

EP 8.8 provides that, where an investigation results in a Sanction by the MMU, the MMU must direct its notice of such a result to a responsible representative of the Scheduling Coordinator and, as provided in EP 8.4, to the Market Participant(s) that are the subject(s) of the investigation at the officer level.

EP 8.9 provides that, where an investigation results in a Sanction, the MMU must maintain a record of the investigation until its decision has been finally reviewed, if review is sought, or until the period for seeking review has expired.

EP 8.10 states that a Market Participant that receives a Sanction may obtain immediate review of the MMU's determination by directly appealing to the Commission, in accordance with the Commission's rules and procedures.⁵ In such a case, the applicable Scheduling Coordinator must also dispute the Preliminary Settlement Statement containing the financial penalty, in accordance with Section 11 of the ISO Tariff. The Preliminary Settlement Statement dispute and appeal to the Commission must be made in accordance with the timeline for raising disputes specified in Section 11.7.2 of the ISO Tariff. The penalty will be tolled until the Commission renders its decision on the appeal. The disposition by the Commission of such appeal will be final, and no separate dispute of such Sanction may be initiated under Section 13 of the ISO Tariff, except as provided in EP 9.3(d) (concerning the right of a Market Participant to dispute sanctions determined by the Commission). EP 8.10 also specifies that, for the purpose of applying the time limitations set forth in EP 10.1, a sanction will be considered assessed when it is included on a Preliminary Settlement Statement, whether or not the ISO accepts a Scheduling Coordinator's dispute of the Preliminary Settlement Statement pending resolution of an appeal to the Commission in accordance with EP 8.10 or EP 9.3(c). In addition, the ISO has modified EP 9.3(b) to add EP 8.10 to the set of EP provisions under which a Scheduling

Commission directed the ISO to modify the EP "to indicate that a market participant will not be required to pay any assessed penalty . . . until the market participant has had an opportunity to respond to the allegations against it and the MMU has made a decision." *California Independent System Operator Corporation*, 107 FERC ¶ 61,118, at P 47 (2004) ("May 6 Order").

⁵ In the February 20 Order, the Commission directed that "[a]fter a decision has been made by the [MMU], the process proposed under EP 3 must allow for appeal to the Commission." February 20 Order at P 109. In the May 6 Order, the Commission directed the ISO to modify EP 3 to provide that "any market participant may appeal the MMU's determinations to the Commission . . ." May 6 Order at P 48.

The Honorable Magalie R. Salas
August 1, 2005
Page 5

Coordinator will not be obligated to pay all penalty amounts reflected on Preliminary and Final Settlement Statements to the ISO pursuant to the ISO's Settlement process.

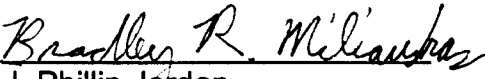
Materials Included with the Present Filing

The tariff revisions described above are shown in the revised sheets provided in Attachment A to the present filing, and are shown in black-line format in Attachment B. Additionally, the ISO submits, in Attachment C, a form notice of filing suitable for publication in the Federal Register. This filing has been served upon all parties on the official service list for the captioned docket. Further, the ISO has posted this filing on the ISO Home Page.

Two additional copies of this filing are enclosed to be date-stamped and returned to our messenger. If there are questions concerning this filing, please contact the undersigned.

Respectfully submitted,

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ATTACHMENT A

EP 5	PROVIDE FACTUALLY ACCURATE INFORMATION	867
EP 5.1	Accurate Information Generally	867
EP 5.2	Inaccurate Meter Data	868
EP 6	PROVIDE INFORMATION REQUIRED BY ISO TARIFF	868
EP 6.1	Required Information Generally	868
EP 6.2	Investigation Information	869
EP 6.3	Audit Materials	869
EP 6.4	Review by FERC	870
EP 7	NO MARKET MANIPULATION	870
EP 7.1	Market Manipulation Generally	870
EP 7.2	Wash Trades	870
EP 7.3	False Information	871
EP 7.4	Artificial Congestion	871
EP 7.5	Collusion	871
EP 8	PROCESS FOR INVESTIGATION AND ENFORCEMENT	871
EP 8.1	Purpose; Scope	871
EP 8.2	Referrals to FERC	871
EP 8.3	Investigation	871A
EP 8.4	Notice	871A
EP 8.5	Opportunity to Present Evidence	871A
EP 8.6	Results of Investigation	871A
EP 8.7	Statement of Findings and Conclusions	871B
EP 8.8	Officer Representative	871B
EP 8.9	Record of Investigation	871B
EP 8.10	Review of Determination	871B
EP 9	ADMINISTRATION OF SANCTIONS	872
EP 9.1	Assessment; Waivers and Adjustments	872
EP 9.2	Excuse	872
EP 9.3	Settlement	873
EP 9.4	Disposition of Proceeds	874

CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
FERC ELECTRIC TARIFF
FIRST REPLACEMENT VOLUME NO. II

Original Sheet No. 859B

EP 10	MISCELLANEOUS	874
EP 10.1	Time Limitation	874
EP 10.2	No Limitation on Other Rights	875
EP 10.3	Amendments	875

- (b) **“Market Behavior Rules”** mean those rules established by FERC under Docket No. EL01-118.
- (c) **“Market Manipulation”** has the meaning set forth in EP 7.
- (d) **“Market Monitoring Unit”** means the component of the ISO organization (currently the “Department of Market Monitoring”) that is assigned responsibility in the first instance for the functions of a Market Monitoring Unit, as that term is used in Docket No. EL01-118.
- (e) **“Rules of Conduct”** refers to the rules set forth in EP 2 through EP 7.
- (f) **“Sanction”** is a consequence specified in this EP for the violation of a Rule of Conduct, which may include a) a warning letter notifying the Market Participant of the violation and future consequences specified under this EP if the behavior is not corrected, or b) financial penalties. Neither referral to FERC nor rescission of payment for service not provided shall constitute a Sanction.

EP 1.5 Rules of Interpretation

Unless the context otherwise requires, if the provisions of this Protocol and the ISO Tariff conflict, the ISO Tariff will prevail to the extent of the inconsistency. Provisions of the ISO Tariff have been summarized or repeated in this Protocol only to aid understanding.

A reference in this Protocol to a given agreement, ISO Protocol, or instrument shall be a reference to that agreement or instrument as modified, amended, supplemented, or restated through the date as of which such reference is made. This EP does not modify the terms of any ISO agreements or the relationship of those agreements to the ISO Tariff.

The captions and headings in this EP are inserted solely to facilitate reference and shall have no bearing upon the interpretation of any of the terms and conditions of this Protocol.

EP 1.6 Scope

The EP applies to:

- (a) Scheduling Coordinators;
- (b) Utility Distribution Companies (UDCs);
- (c) Metered Subsystems (MSSs);

- (d) Participating Transmission Owners (PTOs);
- (e) Participating Generators;
- (f) Control Area Operators, to the extent the agreement between the Control Area Operator and the ISO so provides;
- (g) Operators;
- (h) Other Market Participants;
- (i) The ISO; and
- (j) FERC

EP 1.7 Liability of ISO

Any liability of the ISO arising out of or in relation to this Protocol shall be subject to Section 14 of the ISO Tariff as if references to the ISO Tariff were references to this Protocol.

EP 1.8 Application of Other Remedies

The activities and remedies authorized under this Protocol are in addition to any other actions or relief that may be available to the ISO elsewhere in the ISO Tariff or under law, regulation or order. Nothing in this Protocol limits or should be construed to limit the right of the ISO to take action or seek relief otherwise available to it, and such action or relief may be pursued in lieu of or in addition to the action or relief specified in this Protocol.

EP 1.9 FERC Authority

In addition to any authority afforded the Market Monitoring Unit in this Protocol, FERC shall have the authority to assess the sanctions, and otherwise to enforce the rules as set forth and described in this Protocol. FERC shall have authority to remedy a violation under this Protocol from the date of the violation. Nothing in this Protocol shall be deemed to be a limitation or condition on the authority of FERC or other entities under current law or regulation.

EP 1.10 Administration of the EP

The Market Monitoring Unit will administer the Rules of Conduct specified herein, except for EP 7, which shall be administered by FERC, and except as provided in EP 2.5 and EP 4.4. Nothing in this Protocol limits or should be construed to limit the ability of components of the ISO organization other than the Market Monitoring Unit to analyze data and refer matters to the Market Monitoring Unit for enforcement.

Issued by: Charles F. Robinson, Vice President and General Counsel

Issued on: August 1, 2005

Effective: Upon Commission Approval

EP 7.3 False Information

- (a) **Expected Conduct.** A Market Participant shall not engage in transactions predicated on submitting false information to transmission providers or other entities responsible for operation of the transmission grid (such as inaccurate load or generation data; or scheduling non-firm service or products sold as firm), unless the Market Participant exercised due diligence to prevent such occurrences.
- (b) **Sanctions.** Violations or potential violations of this rule shall be referred to FERC for appropriate sanction.

EP 7.4 Artificial Congestion

- (a) **Expected Conduct.** A Market Participant shall not engage in transactions in which it first creates artificial congestion and then purports to relieve such artificial congestion (unless the Market Participant exercised due diligence to prevent such an occurrence).
- (b) **Sanctions.** Violations or potential violations of this rule shall be referred to FERC for appropriate sanction.

EP 7.5 Collusion

- (a) **Expected Conduct.** Market Participants shall not engage in collusion with another party for the purpose of manipulating market prices, market conditions, or market rules for electric energy or electricity products.
- (b) **Sanctions.** Violations or potential violations of this rule shall be referred to FERC for appropriate sanction.

EP 8 PROCESS FOR INVESTIGATION AND ENFORCEMENT

EP 8.1 Purpose; Scope

The provisions of this EP 8 set forth the procedures by which the Market Monitoring Unit will independently investigate potential violations of the Rules of Conduct and administer enforcement activities. Except as hereinafter provided, and except as provided in EP 2.5 and EP 4.4, the provisions of this section apply to the Rules of Conduct set forth in EP 2 through EP 7.

EP 8.2 Referrals to FERC

EP 7 shall be enforced by FERC, in accordance with FERC's rules and procedures. The Market Monitoring Unit shall refer to FERC and its staff all matters in which it has formed a reasonable belief that a violation of EP 7 may have occurred. Although EP 2 through EP 6 will generally be enforced by the Market Monitoring Unit, the Market Monitoring Unit shall refer to FERC any matter for which the particular circumstances preclude the objective

determination of a Rules of Conduct violation, and shall refer to FERC any Sanction that it believes should be modified in accordance with EP 2.5, EP 4.4, or EP 9.1. The time limitation contained in EP 10.1 to assess a Sanction under this Protocol shall be determined as of the date that a Sanction is initially assessed by the ISO, excluding the time required for FERC to investigate a potential Rules of Conduct violation and/or determine a Sanction in accordance with this section, EP 2.5, EP 4.4, or EP 9.1.

EP 8.3 Investigation

The Market Monitoring Unit shall conduct a reasonable investigation seeking available facts, data, and other information relevant to the potential Rules of Conduct violation.

EP 8.4 Notice

The Market Monitoring Unit shall provide notice of the investigation in sufficient detail to allow for a meaningful response to the Scheduling Coordinator and, as limited below, to all Market Participants the Scheduling Coordinator represents that are the subject(s) of the investigation. The Market Monitoring Unit shall contact the Market Participant(s) that may be involved, so long as the ISO has sufficient objective information to identify and verify the role of the Market Participant(s) in the potential Rules of Conduct violation. Such Market Participant(s) will likely have an existing contractual relationship with the ISO (e.g., UDC, MSS, ISO Metered Entity, Participating Transmission Owner, Participating Generator, or Participating Load).

EP 8.5 Opportunity to Present Evidence

The Market Monitoring Unit shall provide an opportunity to the Market Participant(s) that are the subject(s) of the investigation to present any issues of fact or other information relevant to the potential Rules of Conduct violation being investigated. The Market Monitoring Unit shall consider all such information or data presented.

EP 8.6 Results of Investigation

The Market Monitoring Unit shall notify the Market Participant(s) that are the subject(s) of the investigation of the results of the investigation. The Market Participant(s) shall have 30 days to respond to the findings of the Market Monitoring Unit before the Market Monitoring Unit makes a determination of whether a Sanction is required by this EP.

EP 8.7 Statement of Findings and Conclusions

Where the investigation results in a Sanction, the Market Monitoring Unit shall state its findings and conclusions in writing, and will make such writing available to the Scheduling Coordinator and, as provided in EP 8.4, to the Market Participant(s) that are the subject(s) of the investigation.

EP 8.8 Officer Representative

Where an investigation results in a Sanction by the Market Monitoring Unit, the Market Monitoring Unit shall direct its notice of such result to a responsible representative of the Scheduling Coordinator and, as provided in EP 8.4, to the Market Participant(s) that are the subject(s) of the investigation at the officer level.

EP 8.9 Record of Investigation

Where an investigation results in a Sanction, the Market Monitoring Unit will maintain a record of the investigation until its decision has been finally reviewed, if review is sought, or until the period for seeking review has expired.

EP 8.10 Review of Determination

A Market Participant that receives a Sanction may obtain immediate review of the Market Monitoring Unit's determination by directly appealing to FERC, in accordance with FERC's rules and procedures. In such case, the applicable Scheduling Coordinator shall also dispute the Preliminary Settlement Statement containing the financial penalty, in accordance with Section 11 of the ISO Tariff. The Preliminary Settlement Statement dispute and appeal to FERC must be made in accordance with the timeline for raising disputes specified in Section 11.7.2 of the ISO Tariff. The penalty will be tolled until FERC renders its decision on the appeal. The disposition by FERC of such appeal shall be final, and no separate dispute of such Sanction may be initiated under Section 13 of the ISO Tariff, except as provided in EP 9.3(d). For the purpose of applying the time limitations set forth in EP 10.1, a sanction will be considered assessed when it is included on a Preliminary Settlement Statement, whether or not the ISO accepts a Scheduling Coordinator's dispute of such Preliminary Settlement Statement pending resolution of an appeal to FERC in accordance with this section or EP 9.3(c).

EP 9 ADMINISTRATION OF SANCTIONS

EP 9.1 Assessment; Waivers and Adjustments

Penalty amounts for violation of these Rules of Conduct shall be calculated as specified in EP 2 through 7. A Sanction specified in this EP may be modified by FERC when it determines that such adjustment is just and reasonable. The ISO may make a recommendation to FERC to modify a Sanction. An adjustment generally shall be deemed appropriate if the prescribed Sanction appears to be insufficient to deter the prohibited behavior, or if the circumstances suggest that the violation was inadvertent, unintentional, or some other mitigating circumstances exist.

EP 9.2 Excuse

The following circumstances shall excuse a violation of a Rule of Conduct under the terms of this Protocol:

- (a) **Uncontrollable Force.** No failure by a Market Participant to satisfy the Rules of Conduct shall be subject to penalty to the extent and for the period that the Market Participant's inability to satisfy the Rules of Conduct is caused by an event or condition of Uncontrollable Force affecting the Market Participant; provided that the Market Participant gives notice to the ISO of the event or condition of Uncontrollable Force as promptly as possible after it knows of the event or condition and makes all reasonable efforts to cure, mitigate, or remedy the effects of the event or condition.
- (b) **Safety, Licensing, or Other Requirements.** Failure by a Market Participant to perform its obligations shall not be subject to penalty if the Market Participant is able to demonstrate that it was acting in accordance with Section 2.3.1.2.1 of the ISO Tariff.
- (c) **Emergencies.** Failure by a Market Participant to perform its obligations may not be subject to penalty if the Market Participant is able to demonstrate that it was acting in good faith and consistent with Good Utility Practice to preserve System Reliability in a System Emergency, unless contrary to an ISO operating order.
- (d) **Conflicting Directives.** To the extent that any action or omission by a Market Participant is specifically required by a FERC Order or ISO operating order, the Market Participant may not be subject to penalty for that act or omission.

EP 9.3 Settlement

- (a) **Settlement Statements.** The ISO will administer any penalties issued under this Enforcement Protocol through Preliminary Settlement Statements, and Final Settlement Statements issued to the responsible Scheduling Coordinator by the ISO. Before invoicing a financial penalty through the Settlement process, the ISO will provide a description of the penalty to the responsible Scheduling Coordinator and all Market Participants the Scheduling Coordinator represents that are liable for the penalty, when the ISO has sufficient objective information to identify and verify responsibility of such Market Participants. The ISO shall specify whether such penalty is modified pursuant to EP 2.5, EP 4.4, or EP 9.1. The description shall include the identity of the Market Participant that committed the violation and the amount of the penalty. Where FERC has determined the Sanction, the ISO will provide such of the above information as is provided to it by FERC. The ISO also may publish this information under the ISO Home Page after Final Settlement Statements are issued.
- (b) **Payment.** Except as provided in EP 2.5, EP 4.4, EP 8.10, or EP 9.3(c) below, the Scheduling Coordinator shall be obligated to pay all penalty amounts reflected on the Preliminary and Final Settlement Statements to the ISO pursuant to the ISO's Settlement process, as set forth in Section 11 of the ISO Tariff.
- (c) **Other Responsible Party.** Where a party or parties other than the Scheduling Coordinator is responsible for the conduct giving rise to a penalty reflected on a Preliminary or Final Settlement Statement, and where the Scheduling Coordinator bears no responsibility for the conduct, such other party or parties ultimately shall be liable for the penalty. Under such circumstances, the Scheduling Coordinator shall use reasonable efforts to obtain payment of the penalty from the responsible party(ies) and to remit such payment to the ISO in the ordinary course of the settlement process. In the event that the responsible party(ies) wish to dispute the penalty, or the Scheduling Coordinator otherwise is unable to obtain payment from the responsible parties, the Scheduling Coordinator shall notify the ISO and dispute the Preliminary Settlement Statement. The ISO promptly shall notify FERC. If the ISO finds that a Market Participant separate from the Scheduling Coordinator that is unable to obtain payment from the responsible party(ies) is solely responsible for a violation, the Scheduling Coordinator that is unable to obtain payment may net its payment of its Invoice amount by the amount of the penalty in question. The ISO may refuse to offer further service to any responsible party that fails to pay a penalty, unless excused under the terms of the Tariff or this Enforcement Protocol, by providing notice of such refusal to the Scheduling Coordinator. Following such notice, the Scheduling Coordinator shall be liable for any subsequent penalties assessed on account of such responsible party.

ATTACHMENT B

ISO ENFORCEMENT PROTOCOL

Table of Contents

EP 1	OBJECTIVES, DEFINITIONS, AND SCOPE	860
EP 1.1	Purpose	860
EP 1.2	Objectives	860
EP 1.3	Master Definitions Supplement	860
EP 1.4	Special Terms for This Protocol	860
EP 1.5	Rules of Interpretation	861
EP 1.6	Scope	861
EP 1.7	Liability of ISO	862
EP 1.8	Application of Other Remedies	862
EP 1.9	FERC Authority	862
EP 1.10	Administration of the EP	862
EP 2	COMPLY WITH OPERATING ORDERS	863
EP 2.1	Compliance with Orders Generally	863
EP 2.2	Failure to Curtail Load	863
EP 2.3	Operations & Maintenance Practices	863
EP 2.4	Must-Offer Denials/Revocations	864
EP 2.5	Enhancements and Exceptions	864
EP 2.6	Per-Day Limitation on Amount of Sanctions	864
EP 3	SUBMIT FEASIBLE ENERGY AND ANCILLARY SERVICE BIDS AND SCHEDULES	864
EP 3.1	Bidding Generally	864
EP 3.2	Exceptions	866
EP 4	COMPLY WITH AVAILABILITY REPORTING REQUIREMENTS	866
EP 4.1	Reporting Availability	866
EP 4.2	Scheduling and Final Approval of Outages	866
EP 4.3	Explanation of Forced Outages	867
EP 4.4	Enhancements and Exceptions	867
EP 5	PROVIDE FACTUALLY ACCURATE INFORMATION	867
EP 5.1	Accurate Information Generally	867

EP 5.2	Inaccurate Meter Data	868
EP 6	PROVIDE INFORMATION REQUIRED BY ISO TARIFF	868
EP 6.1	Required Information Generally	868
EP 6.2	Investigation Information	869
EP 6.3	Audit Materials	869
EP 6.4	Review by FERC	870
EP 7	NO MARKET MANIPULATION	870
EP 7.1	Market Manipulation Generally	870
EP 7.2	Wash Trades	870
EP 7.3	False Information	871
EP 7.4	Artificial Congestion	871
EP 7.5	Collusion	871
EP 8	PROCESS FOR INVESTIGATION AND ENFORCEMENT	871
EP 8.1	Purpose; Scope	871
EP 8.2	Referrals to FERC	871
EP 8.3	Investigation	871A
EP 8.4	Notice	871A
EP 8.5	Opportunity to Present Evidence	871A
EP 8.6	Results of Investigation	871A
EP 8.7	Statement of Findings and Conclusions	871B
EP 8.8	Officer Representative	871B
EP 8.9	Record of Investigation	871B
EP 8.10	Review of Determination	871B
EP 9	ADMINISTRATION OF SANCTIONS	872
EP 9.1	Assessment; Waivers and Adjustments	872
EP 9.2	Excuse	872
EP 9.3	Settlement	873
EP 9.4	Disposition of Proceeds	874
EP 10	MISCELLANEOUS	874
EP 10.1	Time Limitation	874
EP 10.2	No Limitation on Other Rights	875
EP 10.3	Amendments	875

EP 1.4

Special Terms for This Protocol

In this Protocol, the following words and expressions shall have the meanings set opposite them:

- (a) **"FERC"** means the Federal Energy Regulatory Commission.
- (b) **"Market Behavior Rules"** mean those rules established by FERC under Docket No. EL01-118.
- (c) **"Market Manipulation"** has the meaning set forth in EP 7.
- (d) **"Market Monitoring Staff Unit"** means ~~these component employees at the of the ISO organization (currently the "Department of Market Monitoring") that is, generally within the Market Analysis and Compliance Departments,~~ assigned responsibility in the first instance for the functions of a Market Monitoring Unit, as that term is used in Docket No. EL01-118.
- (e) **"Rules of Conduct"** refers to the rules set forth in EP 2 through EP 7.
- (f) **"Sanction"** is a consequence specified in this EP for the violation of a Rule of Conduct, which may include a) a warning letter notifying the Market Participant of the violation and future consequences specified under this EP if the behavior is not corrected, or b) financial penalties. Neither referral to FERC nor rescission of payment for service not provided shall constitute a Sanction.

The captions and headings in this EP are inserted solely to facilitate reference and shall have no bearing upon the interpretation of any of the terms and conditions of this Protocol.

EP 1.9

FERC Authority

In addition to any authority afforded the Market Monitoring Staff Unit in this Protocol, FERC shall have the authority to assess the sanctions, and otherwise to enforce the rules as set forth and described in this Protocol. FERC shall have authority to remedy a violation under this Protocol from the date of the violation. Nothing in this Protocol shall be deemed to be a limitation or condition on the authority of FERC or other entities under current law or regulation.

EP 1.10

Administration of the EP

~~Pursuant to the FERC Orders dated February 20, 2004 and October 28, 2004 in Docket No. ER03-1102, until a subsequent filing by the ISO and further order of FERC, The Market Monitoring Unit will administer the Rules of Conduct specified herein, shall be except for EP 7, which shall be administered by FERC, and except as provided in EP 2.5 and EP 4.4. enforced by FERC, and no Sanctions may be assessed by Market Monitoring Staff without prior FERC approval. Nothing in this Protocol limits or should be construed to limit the ability of~~

components of the ISO organization other than the Market Monitoring Unit to analyze data and refer matters to the Market Monitoring Unit for enforcement.

EP 8 PROCESS FOR INVESTIGATION AND ENFORCEMENT

EP 8.1 Purpose; Scope

The provisions of this EP 8 set forth the procedures by which the Market Monitoring Unit will independently investigate potential violations of the Rules of Conduct and administer enforcement activities. Except as hereinafter provided, and except as provided in EP 2.5 and EP 4.4, the provisions of this section apply to the Rules of Conduct set forth in EP 2 through EP 7.

EP 8.2 Referrals to FERC

Until further order of FERC (see EP 1.10 above, "Administration of the EP"), the Rules of Conduct specified herein EP 7 shall be enforced by FERC, in accordance with the Commission FERC's standard rules and procedures. The ISO and its Market Monitoring Staff Market Monitoring Unit will shall refer to FERC and its staff all matters in which it has formed a reasonable belief that a violation of these rules EP 7 may have occurred. Although EP 2 through EP 6 will generally be enforced by the Market Monitoring Unit, the Market Monitoring Unit shall refer to FERC any matter for which the particular circumstances preclude the objective determination of a Rules of Conduct violation, and shall refer to FERC any Sanction that it believes should be modified in accordance with EP 2.5, EP 4.4, or EP 9.1. The time limitation contained in EP 10.1 to assess a Sanction under this Protocol shall be determined as of the date that a Sanction is initially assessed by the ISO, excluding the time required for FERC to investigate a potential Rules of Conduct violation and/or determine a Sanction in accordance with this section, EP 2.5, EP 4.4, or EP 9.1.

EP 8.3 Investigation

The Market Monitoring Unit shall conduct a reasonable investigation seeking available facts, data, and other information relevant to the potential Rules of Conduct violation.

EP 8.4 Notice

The Market Monitoring Unit shall provide notice of the investigation in sufficient detail to allow for a meaningful response to the Scheduling Coordinator and, as limited below, to all Market Participants the Scheduling Coordinator represents that are the subject(s) of the investigation. The Market Monitoring Unit shall contact the Market Participant(s) that may be involved, so long as the ISO has sufficient objective information to identify and verify the role of the Market Participant(s) in the potential Rules of Conduct violation. Such Market Participant(s) will likely have an existing contractual relationship with the ISO (e.g., UDC, MSS, ISO Metered Entity, Participating Transmission Owner, Participating Generator, or Participating Load).

EP 8.5 Opportunity to Present Evidence

The Market Monitoring Unit shall provide an opportunity to the Market Participant(s) that are the subject(s) of the investigation to present any issues of fact or other information relevant to the potential Rules of Conduct violation being investigated. The Market Monitoring Unit shall consider all such information or data presented.

EP 8.6 Results of Investigation

The Market Monitoring Unit shall notify the Market Participant(s) that are the subject(s) of the investigation of the results of the investigation. The Market Participant(s) shall have 30 days to respond to the findings of the Market Monitoring Unit before the Market Monitoring Unit makes a determination of whether a Sanction is required by this EP.

EP 8.7 Statement of Findings and Conclusions

Where the investigation results in a Sanction, the Market Monitoring Unit shall state its findings and conclusions in writing, and will make such writing available to the Scheduling Coordinator and, as provided in EP 8.4, to the Market Participant(s) that are the subject(s) of the investigation.

EP 8.8 Officer Representative

Where an investigation results in a Sanction by the Market Monitoring Unit, the Market Monitoring Unit shall direct its notice of such result to a responsible representative of the Scheduling Coordinator and, as provided in EP 8.4, to the Market Participant(s) that are the subject(s) of the investigation at the officer level.

EP 8.9 Record of Investigation

Where an investigation results in a Sanction, the Market Monitoring Unit will maintain a record of the investigation until its decision has been finally reviewed, if review is sought, or until the period for seeking review has expired.

EP 8.10 Review of Determination

A Market Participant that receives a Sanction may obtain immediate review of the Market Monitoring Unit's determination by directly appealing to FERC, in accordance with the Commission's rules and procedures. In such case, the applicable Scheduling Coordinator shall also dispute the Preliminary Settlement Statement containing the financial penalty, in accordance with Section 11 of the ISO Tariff. The Preliminary Settlement Statement dispute and appeal to FERC must be made in accordance with the timeline for raising disputes specified in Section 11.7.2 of the ISO Tariff. The penalty will be tolled until FERC renders its decision on the appeal. The disposition by FERC of such appeal shall be final, and no separate dispute of such Sanction may be initiated under Section 13 of the ISO Tariff, except as provided in EP 9.3(d). For the purpose of applying the time limitations set forth in EP 10.1, a sanction will be considered assessed when

it is included on a Preliminary Settlement Statement, whether or not the ISO accepts a Scheduling Coordinator's dispute of such Preliminary Settlement Statement pending resolution of an appeal to FERC in accordance with this section or EP 9.3(c).

EP 9.1 **Assessment; Waivers and Adjustments**

Penalty amounts for violation of these Rules of Conduct shall be calculated as specified in EP 2 through 7. ~~FERC shall have the authority to waive, reduce or increase a Sanction.~~ A Sanction specified in this EP may be modified by FERC when it determines that such adjustment is just and reasonable. The ISO may make a recommendation to FERC to modify a Sanction. An adjustment generally shall be deemed appropriate if the prescribed Sanction appears to be insufficient to deter the prohibited behavior, or if the circumstances suggest that the violation was inadvertent, unintentional, or some other mitigating circumstances exist.

EP 9.3 **Settlement**

- (a) **Settlement Statements.** The ISO will administer any penalties issued under this Enforcement Protocol through Preliminary Settlement Statements, and Final Settlement Statements issued to the responsible Scheduling Coordinator by the ISO. Before invoicing a financial penalty through the Settlement process, the ISO will provide a description of the penalty to the responsible Scheduling Coordinator and all Market Participants the Scheduling Coordinator represents that are liable for the penalty, when the ISO has sufficient objective information to identify and verify responsibility of such Market Participants. The ISO shall specify whether such penalty is ~~enhanced~~ modified pursuant to EP 2.5, ~~or EP 4.4,~~ or EP 9.1. The description shall include the identity of the Market Participant that committed the violation and the amount of the penalty. Where FERC has determined the Sanction, the ISO will provide such of the above information as is provided to it by FERC. The ISO also may publish this information under the ISO Home Page after Final Settlement Statements are issued.
- (b) **Payment.** Except as provided in EP 2.5, EP 4.4, EP 8.10, or EP 9.3(c) below, the Scheduling Coordinator shall be obligated to pay all penalty amounts reflected on the Preliminary and Final Settlement Statements to the ISO pursuant to the ISO's Settlement process, as set forth in Section 11 of the ISO Tariff.
- (c) **Other Responsible Party.** Where a party or parties other than the Scheduling Coordinator is responsible for the conduct giving rise to a penalty reflected on a Preliminary or Final Settlement Statement, and where the Scheduling Coordinator bears no responsibility for the conduct, such other party or parties ultimately shall be liable for the penalty. Under such circumstances, the Scheduling Coordinator shall use reasonable

efforts to obtain payment of the penalty from the responsible party(ies) and to remit such payment to the ISO in the ordinary course of the settlement process. In the event that the responsible party(ies) wish to dispute the penalty, or the Scheduling Coordinator otherwise is unable to obtain payment from the responsible parties, the Scheduling Coordinator shall notify the ISO and dispute the Preliminary Settlement Statement. The ISO promptly shall notify FERC. If the ISO finds that a Market Participant separate from the Scheduling Coordinator that is unable to obtain payment from the responsible party(ies) is solely responsible for a violation, the Scheduling Coordinator that is unable to obtain payment may net its payment of its Invoice amount by the amount of the penalty in question. The ISO may refuse to offer further service to any responsible party that fails to pay a penalty, unless excused under the terms of the Tariff or this Enforcement Protocol, by providing notice of such refusal to the Scheduling Coordinator. Following such notice, the Scheduling Coordinator shall be liable for any subsequent penalties assessed on account of such responsible party.

- (d) **Dispute of FERC Sanctions.** The right that a Market Participant may otherwise have under the Tariff or this Enforcement Protocol to dispute a penalty that has been determined by FERC shall be limited to a claim that the ISO failed properly to implement the penalty or other Sanction ordered by FERC, except as provided by EP 2.5 and EP 4.4.

ATTACHMENT C

