ISO Enforcement Protocol

ISO ENFORCEMENT PROTOCOL

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ISO ENFORCEMENT PROTOCOL ("EP")

EP 1 OBJECTIVES, DEFINITIONS, AND SCOPE

EP 1.1 Purpose

This Protocol sets forth the rules pursuant to which the ISO will vigilantly monitor markets operated by the ISO and vigorously enforce clearly specified Rules of Conduct in order to (a) ensure to the extent possible reliable operation of the transmission grid, (b) promote dependable, effectively functioning, efficient, fair and competitive markets, (c) operate markets that produce just and reasonable prices for consumers, and (d) deter behavior by Market Participants that is inconsistent with these goals.

EP 1.2 Objectives

The objectives of this Protocol are to provide:

(a) Clear Rules of Conduct specifying inappropriate behavior by Market Participants;

(b) A deterrent to Market Participants from engaging in Detrimental Practices, Market Manipulation, and other activities that are inappropriate and inconsistent with the Rules of Conduct;

(c) A process for specifying by market notice or Formal Warning additional activities that violate certain Rules of Conduct;

(d) Appropriate penalties for Rule of Conduct violations;

(e) An appropriate process for the ISO to monitor and investigate activities that might violate the Rules of Conduct;

(f) An appropriate process for referrals to Oversight and Enforcement Agencies; and

(g) An appropriate process for levying applicable penalties for violations, including reasonable accommodation for circumstances or events beyond a Market Participant's control.

EP 1.3 Master Definitions Supplement

Unless the context otherwise requires, any word or expression defined in the Master Definitions Supplement to the ISO Tariff shall have the same meaning where used in this Protocol. References to a Section or Appendix are to a section of or an appendix to the ISO Tariff. References to EP are to this Protocol or to the stated section or paragraph of, or appendix to, this Protocol.

EP 1.4 Special Terms for This Protocol

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

(a) **"Detrimental Practices"** has the meaning set forth in EP 2.9(a).

(b) **"FERC"** means the Federal Energy Regulatory Commission.

(c) **"Final Market Notice"** has the meaning set forth in EP 4.6.

(d) **"Formal Warning"** has the meaning set forth in EP 4.4.

(e) **"Market Manipulation"** has the meaning set forth in EP 2.10(a).

(f) "**Net Excess Load"** has the meaning set forth in EP 2.7(c).

(g) **"New Behavior"** has the meaning set forth in EP 4.2.

(h) **"Oversight and Enforcement Agency"** means any of the following: FERC, the United States Department of Justice or any of its subsidiaries, the California Department of Justice or any of its subsidiaries, the California Public Utilities Commission, or the California Electricity Oversight Board.

(i) **"Participant Benefits"** has the meaning set forth in Appendix A to this Protocol.

(j) **"Preliminary Market Notice"** has the meaning set forth in EP 4.3.

(k) **"Rules of Conduct"** has the meaning set forth in EP 2.

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.

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.

This Protocol shall be effective as of the date specified by FERC.

EP 1.6 Scope

The EP governs:

(a) All Market Participants; and

(b) The ISO.

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 the ISO, FERC shall have the authority to assess the penalties specified herein, and otherwise to enforce the rules set forth in this Protocol, independently or by referral or complaint of another entity, and additionally shall have the authority to impose penalties equal to the market impact of a violation under this Protocol. In undertaking such action, FERC shall not be bound by the notice procedures and other processes set forth in EP 3 and EP 4. Specifically, 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 2 RULES OF CONDUCT

EP 2.1 Purpose

These Rules of Conduct are designed to serve as guiding principles as to the standard of behavior that is expected of Market Participants and to provide a summary of types of activities for which a Market Participant might be subject to enforcement action. The ISO will enforce these Rules of Conduct through the provisions specified in EP 2.2 through EP 2.10. Events that may constitute violations shall be treated according to the standards and evaluation factors set forth in EP 3 and EP 4.

EP 2.2 Comply with Operating Orders

(a) **General Rule.** Market Participants must comply with operating orders issued by the ISO.

(b) **Standard Penalty.** Unless otherwise provided below, a violation of this rule is subject to a maximum penalty of $10,000 per event **and** allocation of any WECC RMS penalty incurred by the ISO due to such event (pursuant to Section 2.5.26.5 of the ISO Tariff) **and** an amount equal to the Market Clearing Price multiplied by any quantity of energy called for in the operating order that was not provided.

Examples of events that may constitute a violation of the general rule and that are subject to the standard penalty include (but are not limited to) the following:

- Failure of a Market Participant to comply with any operating order issued by the ISO pursuant to Section 2.3.1.2.1 of the ISO Tariff, unless excused for reasons of public health or safety, or other reasons set forth in this Protocol (but see EP 2.2(d)).

- Failure of a Generating Unit, System Unit, or System Resource owned or controlled by a Participating Generator without a bid for available Generation to comply with an order to start-up, increment, or decrement output pursuant to Section 5.6.1 of the ISO Tariff.

- Failure by a Must-Offer Generator to operate a Generating Unit on-line and at minimum load so that it is capable of providing all of its available capacity in compliance with the must-offer obligation, as set forth in Sections 5.11 *et seq.* of the ISO Tariff, unless such a unit has been granted a waiver or exception pursuant to Section 5.11.6 of the ISO Tariff.

(c) **Special Penalties.**

(i) Failure of a UDC to implement an order issued by the ISO to curtail Load in order to manage a System Emergency, pursuant to Section 4.5.3 and Section 2.3.1.2.1 of the ISO Tariff, is subject to a maximum penalty of $110,000 per event **and** an amount equal to $1,000 per megawatt-hour of firm load not curtailed).

(ii) Any failure to comply with an operating order that contributes to or prolongs an outage as described in Section 2.3.2.9.3 of the ISO Tariff is subject to a maximum penalty of $110,000 per event **and** allocation of any WECC RMS penalties incurred by the ISO due to such event (pursuant to Section 2.5.26.5 of the ISO Tariff).

(d) **Exception.** Violations of this rule that are subject to the Uninstructed Deviation Penalty under Section 11.2.4.1.2 of the ISO Tariff are subject to penalty under this rule only to the extent that the ISO has issued a separate and distinct non-automated Dispatch Instruction to the Market Participant.

EP 2.3 Submit Feasible Energy and Ancillary Service Bids and Schedules

(a) **General Rule.** Market Participants must bid and schedule Energy and Ancillary Services from resources that are available and capable of performing at the levels specified in the bid and/or schedule.

(b) **Standard Penalty.** Subject to the exceptions below, a violation of this rule is subject to a maximum penalty of $10,000 per event.

(c) **Exceptions.** Violations of this rule for which an Uninstructed Deviation Penalty under Section 11.2.4.1.2 of the ISO Tariff has been assessed or for which payments under Section 2.5.26 of the ISO Tariff have been eliminated are not subject to penalty under this section.

EP 2.4 No Physical Withholding

(a) **General Rule.** Market Participants may not engage in physical withholding of the output of a Generating Unit, in whole or in part. "Physical withholding" for purposes of this rule means a failure to offer to sell or to schedule into the ISO Market the output of or services of a Generating Unit capable of serving an ISO market, in a manner consistent with the ISO Tariff.

(b) **Standard Penalty.** Subject to the exception below, a violation of this rule is subject to a maximum penalty of $25,000 per event **and** an amount equal to twice the Participant Benefits received by the offending party as a result of such behavior.

(c) **Exception.** Behavior otherwise falling within this rule that is the particular focus of another provision in the ISO Tariff specifically designed to address such behavior (e.g., Appendix A to the MMIP) is not subject to penalty under this section.

EP 2.5 No Economic Withholding

(a) **General Rule.** Market Participants may not engage in economic withholding of the output of a Generating Unit. "Economic withholding" for purposes of this rule means:

- submitting a bid for a Generating Unit that is not consistent with the bid caps or thresholds specified in the ISO Tariff or any applicable agreement; **or**

- submitting a bid for a Generating Unit that is unjustifiably high (relative to known operational characteristics and/or the known operating cost of the resource) and the Generating Unit is not or will not be dispatched or scheduled, or the bid (which is unjustifiably high) will set a Market Clearing Price.

(b) **Standard Penalty.** Subject to the exception below, a violation of this rule is subject to a maximum penalty of $25,000 per event **and** an amount equal to twice the Participant Benefits received by the offending party as a result of such behavior.

(c) **Exception.** Behavior otherwise falling within this rule that is the particular focus of another provision in the ISO Tariff specifically designed to address such behavior (e.g., the Automated Mitigation Procedure set forth in Appendix A to the MMIP) is not subject to penalty under this section.

EP 2.6 Comply With Availability Reporting Requirements

(a) **General Rule.** Market Participants must comply with all reporting requirements governing the availability and maintenance of a Generating Unit or transmission facility, including proper Outage scheduling requirements. The responsible entity (Scheduling Coordinator or Participating Transmission Owner) must immediately notify the ISO when capacity changes or resource limitations occur that affect the availability of the unit or facility or the ability to comply with Dispatch Instructions.

(b) **Standard Penalty.** Subject to the exception below, a violation of this rule is subject to a maximum penalty of $10,000 per event.

(c) **Exception.** Violations of this rule for which an Uninstructed Deviation Penalty under Section 11.2.4.1.2 of the ISO Tariff has been assessed are not subject to penalty under this section.

EP 2.7 Provide Factually Accurate Information

(a) **General Rule.** All applications, Schedules, reports, and other communications by a Market Participant or agent of a Market Participant to the ISO, including maintenance and outage data, bid data, transaction information, and load and resource information, must be submitted by a responsible company official who is knowledgeable of the facts submitted. All such information submitted must be true, complete, and consistent with the operational plans of the company to the best knowledge of the person submitting the information.

(b) **Standard Penalty.** Unless otherwise provided below, a violation of this rule is subject to a maximum penalty of $10,000 per event.

(c) **Special Penalties.**

(i) Submitting Load Schedules that are substantially in excess of metered Load served by a Scheduling Coordinator is subject to a maximum penalty equal to the Net Excess Load multiplied by the applicable Market Clearing Price. For purposes of this section, Net Excess Load means the amount by which scheduled Load exceeds actual load plus a reasonable tolerance band established by the ISO from time to time and posted under the ISO Home Page.

(ii) Failing to provide complete and accurate Settlement Quality Meter Data, as provided in Section 10 of the ISO Tariff and Section 4.1 of the Meter Service Agreement, that results in an error that is discovered after issuance of Final Settlement Statements is subject to penalties described in Appendix A to the EP.

(iii) Engaging in a Circular Schedule is subject to the rescission of the Usage Charge in accordance with Section 7.3.1.5.3 of the ISO Tariff **and** an additional maximum penalty equal to the value of the Usage Charge so rescinded.

EP 2.8 Provide Information Required by ISO Tariff

(a) **General Rule.** All information that is required to be submitted to the ISO under the ISO Tariff, its protocols, or jurisdictional contracts must be submitted in a complete, accurate, and timely manner. Market Participants must comply with requests for information or data by the ISO that are consistent with the ISO Tariff, including timelines specified in the ISO Tariff for submitting Schedules and other information.

(b) **Standard Penalty.** Except as otherwise provided below, a violation of this rule is subject to a maximum penalty of $500 for each day that the required information is late.

(c) **Special Penalties.** Failure to provide timely information in response to written requests by the ISO for information reasonably necessary to conduct an investigation, or in response to an audit authorized by the ISO Tariff, subject to a maximum special penalty of $1,000 per day that the requested information is late (first violation); $2,500 per day (second violation by the same Market Participant within a rolling three-year period); $5,000 per day (subsequent violations by the same Market Participant within a rolling three-year period).

EP 2.9 No Detrimental Practices

(a) **General Rule**. Market Participants shall not engage in Detrimental Practices as defined in this rule. “Detrimental Practices” for purposes of this rule shall mean behavior that meets both of the following requirements:

- Such behavior takes unfair advantage of the rules and procedures set forth in or pursuant to the ISO Tariff to the detriment of System Reliability, other Market Participants, or the efficiency of the ISO Market; **and**

- Such behavior or behavior substantially similar to it has been proscribed in a Final Market Notice in accordance with the procedures outlined in EP 4.6.

(b) **Standard Penalty.** A violation of this rule is subject to a maximum penalty of $25,000 per event **and** an amount equal to twice the Participant Benefits received by the offending party as a result of such behavior.

(c) **Limitation.** No penalty may be assessed by the ISO under this rule until such behavior or behavior substantially similar to it has been proscribed in a Final Market Notice in accordance with the procedures outlined in EP 4.6.

EP 2.10 No Market Manipulation

(a) **General Rule.** Market Participants shall not engage in Market Manipulation, which is behavior that meets both of the following requirements:

- Such behavior is fraudulent, deceptive, or manipulative and is intended to create artificial or distorted market prices or outcomes, including prices or outcomes that do not reflect or are not consistent with supply and demand conditions; **and**

- Such behavior or behavior substantially similar to it has been proscribed in a Final Market Notice in accordance with the procedures outlined in EP 4.6.

(b) **Standard Penalty.** A violation of this rule is subject to a maximum penalty of $25,000 per event **and** an amount equal to twice the Participant Benefits received by the offending party as a result of such behavior.

(c) **Limitation.** No penalty may be assessed by the ISO under this rule until such behavior or behavior substantially similar to it has been proscribed in a Final Market Notice in accordance with the procedures outlined in EP 4.6.

EP 3 PROCESS FOR INVESTIGATION AND ENFORCEMENT GENERALLY

EP 3.1 Purpose; Scope

The provisions of this EP 3 set forth the procedures by which the ISO will formally investigate potential violations of the Rules of Conduct set forth in EP 2, and by which it will conclude its investigations. Except as hereinafter provided, the provisions of this section apply to all of the Rules of Conduct set forth above (EP 2.2 through EP 2.10), and apply to action undertaken by the ISO only. The ISO may adopt alternate or additional procedures for undertaking preliminary or initial review of potential violations of Rules of Conduct. However, the ISO shall comply with the provisions of this section before seeking to assess penalties against a Market Participant for a violation or potential violation of the Rules of Conduct set forth in EP 2. Notwithstanding the foregoing, the provisions of this EP 3 will not apply to violations for which the ISO has developed automated algorithms to detect such violations and to assess monetary consequences, provided that such violations are subject to review under the ISO's current Settlement and dispute resolution processes.

EP 3.2 Investigation

The ISO will conduct a reasonable investigation seeking available facts, data, and other information relevant to the suspected violation.

EP 3.3 Notice

The ISO will provide notice of the investigation to the Market Participant(s) that are the subject(s) of the investigation in sufficient detail to allow for a meaningful response.

EP 3.4 Opportunity to Present Evidence

The ISO will provide an opportunity to the Market Participant(s) that are the subject(s) of the investigation to present data, information, and/or written comment relevant to the event or behavior being investigated. The ISO will consider all such information or data presented.

EP 3.5 Results of Investigation

The ISO will notify the Market Participant(s) that are the subject(s) of the investigation of the results of the investigation.

EP 3.6 Statement of Findings and Conclusions

Where the investigation results in a penalty or sanction, the ISO will state its findings and conclusions in writing, and will make such writing available to the Market Participant(s) that are the subject(s) of the investigation.

EP 3.7 Referral to Oversight and Enforcement Agencies

The ISO may refer any matter under investigation to an Oversight and Enforcement Agency. Where the ISO makes such a referral, it will notify the Market Participant(s) that are the subject(s) of the investigation of the referral and will make available to such Market Participants the data and other information provided to the Oversight and Enforcement Agency. The foregoing is subject to the limitations set forth in Section 20.3 of the ISO Tariff.

EP 3.8 Officer Representative

Where an investigation results in a penalty or other sanction by the ISO, or a referral requesting action of another authority, the ISO shall direct its notice of such result to a responsible representative of the Market Participant that is the subject of the investigation at the officer level.

EP 3.9 Record of Investigation

Where an investigation results in a sanction or referral, the ISO 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 3.10 Review of Determination

A Market Participant that is the subject of an investigation may obtain review of a determination resulting in the assessment of a penalty by the ISO, using the dispute resolution procedures outlined in Section 13 of the ISO Tariff.

EP 4 PROCESS FOR PROHIBITING DETRIMENTAL PRACTICES AND MARKET MANIPULATION

EP 4.1 Scope

The provisions of this EP 4 set forth the procedures by which the ISO will provide additional notice to Market Participants of behavior potentially subject to penalties or other action under EP 2.9 and EP 2.10. The provisions of this section apply only to EP 2.9 and EP 2.10, and further apply only to action undertaken by the ISO. The ISO shall comply with the provisions of this section, in addition to the provisions of EP 3 above, before assessing penalties or taking other action against a Market Participant for a violation or potential violation of EP 2.9 and EP 2.10.

EP 4.2 General Process

The process by which the ISO will identify specific behavior that is subject to the provisions of EP 2.9 and EP 2.10, prior to assessing penalties or taking other adverse action against a Market Participant for a violation of those provisions, generally will consist of the following steps:

(a) On determining that a New Behavior may warrant action under EP 2.9 and/or EP 2.10, the ISO will issue a Preliminary Market Notice to all Market Participants and file such notice with FERC, on the terms specified in EP 4.3, unless such a general market notice potentially will cause harm to the ISO Market, in which case the ISO will issue a Formal Warning to the affected Market Participant(s) and file such warning with FERC, on the terms specified in EP 4.4. For purposes of this section, New Behavior means conduct that is neither the subject of a prior market notice under this section, nor substantially similar to conduct addressed in a prior market notice under this section.

(b) The Preliminary Market Notice or Formal Warning may direct Market Participant(s) to cease and desist from engaging in the behavior at issue, on terms specified in EP 4.5, pending conclusion of an investigation.

(c) Following the issuance of a Preliminary Market Notice or Formal Warning, the ISO will undertake an investigation to determine whether the behavior at issue warrants proscription under EP 2.9 or EP 2.10. In conducting its investigation, the ISO will comply with the provisions of EP 3 above, and will consider the factors set forth in EP 4.7.

(d) At the conclusion of the investigation, the ISO will issue a Final Market Notice to all Market Participants and to FERC, on the terms specified in EP 4.6.

EP 4.3 Preliminary Market Notice

A Preliminary Market Notice issued under this section shall specify the New Behavior under investigation, provide an example of the behavior, and identify the Rules of Conduct potentially violated by the behavior (EP 2.9 and/or EP 2.10). A Preliminary Market Notice also may contain a directive to Market Participants to cease and desist from engaging in the suspected behavior, on the terms specified in EP 4.5. A Preliminary Market Notice shall be posted under the ISO Home Page and further shall be e-mailed to all Market Participants included on the ISO's e-mail distribution list. The notice shall be effective as of the time that it is posted under the ISO Home Page. Additionally, the Preliminary Market Notice shall be filed with FERC within forty-eight (48) hours after issuance (or, if the FERC office is not open for business at that time, by 10:00 EST on the next business day thereafter).

EP 4.4 Formal Warning

A Formal Warning issued under this section shall specify the New Behavior under investigation, provide an example of the behavior, and identify the Rules of Conduct potentially violated by the behavior (EP 2.9 and/or EP 2.10). A Formal Warning also may contain a directive to Market Participants to cease and desist from engaging in the suspected behavior, on the terms specified in EP 4.5. A Formal Warning shall be transmitted to the affected Market Participant(s) by e-mail at the address listed in the ISO's e-mail distribution list, and also by overnight mail. The warning shall become effective for a Market Participant as of the time the e-mail is transmitted to that Market Participant. Additionally, the Formal Warning shall be filed with FERC within forty-eight (48) hours after issuance (or, if the FERC office is not open for business at that time, by 10:00 EST on the next business day thereafter). A Formal Warning may be filed with FERC under seal.

EP 4.5 Cease and Desist Directive

A Preliminary Market Notice or Formal Warning may contain a directive to Market Participant(s) to cease and desist from engaging in the suspected behavior, pending conclusion of an investigation. In the event that a Market Participant does not comply with the directive, **and** the suspected behavior subsequently is prohibited, the ISO may refer such noncompliance to FERC or other authority for corrective action. The ISO shall not be authorized directly to assess penalties for such noncompliance except as provided in EP 4.6.

EP 4.6 Final Market Notice

All suspected violations of EP 2.9 and/or EP 2.10, for which a Preliminary Market Notice or Formal Warning has been issued, will be concluded with the issuance of a Final Market Notice. The Final Market Notice shall specify the suspected behavior that was investigated, provide an example of the behavior, and identify the Rules of Conduct potentially violated by the behavior EP 2.9 and/or EP 2.10). The Final Market Notice further shall contain a concise statement of the ISO's findings and conclusions, including a statement concerning whether the suspected behavior thereafter will be deemed to be a violation of EP 2.9 and/or EP 2.10. Where the behavior is found to violate a Rule of Conduct, the Final Market Notice will state the possible consequences of such violation, including applicable penalties. A Final Market Notice may not be issued until at least forty-eight (48) hours after issuance of a Preliminary Market Notice or Formal Warning. The Final Market Notice shall be posted under the ISO Home Page and further shall be e-mailed to all Market Participants included on the ISO's e-mail distribution list. The notice shall be effective as of the time that it is posted under the ISO Home Page. A Final Market Notice prohibiting the suspected conduct shall be deemed to cover the behavior described therein, and conduct substantially similar to such behavior. The Final Market Notice shall be filed with FERC within twenty-four (24) hours after issuance (or, if the FERC office is not open for business at that time, by 10:00 EST on the next business day thereafter).

EP 4.7 Criteria for Making Determination

The ISO shall consider the following factors, among others, in determining whether a behavior should be deemed a violation of EP 2.9 and/or EP 2.10:

(a) Whether the specific behavior meets the definition of Detrimental Practices and/or Market Manipulation stated in EP 2.9 and/or EP 2.10.

(b) The impact of the specific type of behavior on market efficiency.

(c) Whether the specific type of behavior adversely impacts market prices in ways that are inconsistent with market supply and demand conditions.

(d) Whether the specific type of behavior tends to make prices in comparable markets converge, as in the case of most forms of arbitrage, or tends to make prices diverge from levels consistent with supply and demand in different markets.

(e) Whether the specific type of behavior is sustainable, and the extent to which other Market Participants can replicate the behavior.

(f) Whether other Market Participants are able to protect themselves from the specific type of behavior.

(g) Whether the specific type of behavior negatively impacts System Reliability, considering the transparency of the specific type of behavior to the system operator, the impact of the specific type of behavior on prediction of real-time system performance, and the impact of the specific type of behavior on transmission availability.

(h) Whether the specific type of behavior conflicts with legal or regulatory requirements.

EP 4.8 Penalties; Other Actions

The ISO shall not be authorized to assess penalties under EP 2.9 and/or EP 2.10 for New Behavior until twenty-four (24) hours after filing a Final Market Notice meeting the requirements of EP 4.6 with FERC. Thereafter, the ISO may assess penalties for violations occurring from the time of the issuance of the Final Market Notice, going forward. Nothing in this section, however, shall preclude the ISO from referring earlier behavior to FERC or other authority for action.

EP 5 ADMINISTRATION OF PENALTIES

EP 5.1 Assessment; Factors to be Considered

The ISO will determine the penalty amount for a violation of Rules of Conduct by first calculating the maximum amount of the penalty as set forth in EP 2.2 through 2.10, as may be enhanced by EP 5.3. The ISO will then determine the specific penalty amount to be assessed, up to the maximum amount, by considering the following factors:

(a) The degree to which the violation may have affected System Reliability or market integrity;

(b) Whether the violation occurred during a System Emergency, warning, or alert;

(c) The degree to which the Market Participant benefited from the violation;

(d) The degree to which the violation affected overall market prices for Energy, Ancillary Services, and/or Congestion, or otherwise affected the integrity of the markets for Energy, Ancillary Services, and/or Congestion;

(e) Whether other entities were harmed and the extent of this harm;

(f) Whether the violation was inadvertent and unintentional, or willful, or grossly negligent;

(g) The frequency of the violation;

(h) The duration of the violation;

(i) Whether the Market Participant was acting alone or in concert with others;

(j) The Market Participant's attempts to self-identify and promptly correct the violation or provide restitution;

(k) The Market Participant's history of prior misconduct;

(l) The appropriateness of the penalty to the magnitude of the Market Participant's business;

(m) The deterrent effect the penalty is likely to have on similar conduct by other Market Participants;

(n) Any cumulative effect of multiple penalties applying to a single event;

(o) The extent to which the Market Participant failed to act on opportunities or information allowing the Market Participant to make efforts to rectify or ameliorate the violation;

(p) For penalties imposed based on inaccurate meter data, the ISO will consider whether or not the errors have a root cause, scope, duration, and magnitude consistent with Good Utility Practice, and for ISO polled meter data, the ISO will consider its own contribution, if any, to the magnitude of the inaccuracy of the meter data based on the activities the ISO performs under the Metering Protocol;

(q) Resource performance and availability are subject to, among other factors, climatic variations and emissions, license, and other limitations. A Market Participant that has made a good faith effort to describe in a bid or schedule the technical abilities of equipment in expected operating conditions as a result of variations in actual operating conditions or capabilities may have an applicable penalty mitigated, so long as all obligations to report relevant de-rates or outages that affect the ability of the Market Participant to meet its scheduled or bid performance characteristics are fulfilled;

(r) A penalty imposed on a Market Participant for failure to deliver accurate information may be mitigated if the Market Participant has made a good faith effort to supply accurate, responsive information. Inadvertent errors or omissions may be considered as mitigating factors; and

(s) In assessing a failure to schedule load accurately in accordance with EP 2.7(c)(i), the ISO will specifically consider reasonable sources of load forecast error.

EP 5.2 Excuse

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

(a) **Uncontrollable Force.** The ISO will consider Uncontrollable Force, as provided in Section 15 of the ISO Tariff, in determining whether a Rule of Conduct violation should be penalized.

(b) **Safety, Licensing, or Other Requirements.** 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 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 5.3 Enhancement

The ISO may triple the maximum amount of any fixed penalty stated for a violation of EP 2.2 to EP 2.10 in the following circumstances:

(a) If the violation occurred during a System Emergency; or

(b) If the ISO determines that the violation is part of a continuing pattern of the same violation for which one or more monetary penalties have previously been imposed upon the Market Participant.

Penalties under EP 2.2(c) shall not be subject to such enhancement.

EP 5.4 Settlement

Penalties assessed under this Protocol will be administered through Preliminary and Final Settlement Statements issued to the responsible Scheduling Coordinator by the ISO. Except for penalties assessed through automated algorithms, the ISO will provide a description of the penalty to the responsible Scheduling Coordinator before invoicing the amount of that penalty through the Settlement process. The description will include the identity of the Market Participant that committed the violation, a description of the violation, the amount of the penalty and a description of any application of mitigating factors. The ISO also may publish this information under the ISO Home Page after Final Settlement Statements are issued.

The Scheduling Coordinator shall pay the amount of the penalty to the ISO pursuant to the ISO's Settlement process, as set forth in Section 11 of the ISO Tariff. In all cases, a Market Participant may dispute the ISO's imposition of a penalty through its Scheduling Coordinator as set forth in the ISO Tariff.

EP 5.5 Disposition of Proceeds

Penalty proceeds received by the ISO shall be allocated as described in SABP 3.1.2.

EP 5.6 Time Limitation

No penalties may be assessed by the ISO under this Protocol more than three years after discovery by the ISO of the underlying violation.

EP 5.7 Other Sanctions

In addition to imposing penalties under this Protocol, the ISO may also refer the actions of a Market Participant to the Oversight and Enforcement Agencies, and recommend that those agencies impose additional sanctions upon the Market Participant on a going forward basis. The ISO may recommend sanctions including but not limited to conditioning of the Market Participant's market-based rate authority by placing specific limitation and/or affirmative requirements on the Market Participant's future market behavior. The ISO shall recommend sanctions specifically designed to deter the behavior of the individual Market Participant(s) and/or mitigate the detrimental impacts of their behavior on System Reliability, market efficiency, and other Market Participants, while avoiding the necessity of placing additional restrictions on all Market Participants.

EP 6 NO LIMITATIONS ON OTHER RIGHTS OF THE ISO

Nothing contained in this Protocol shall limit the ability of the ISO to collect information from Market Participants or to institute new provisions pursuant to Section 19 of the ISO Tariff.

EP 7 AMENDMENTS

If the ISO determines that an amendment to this Protocol is needed, the ISO will follow the ISO Protocol amendment process set forth in Section 16 of the ISO Tariff.

APPENDIX A

1. Method for Calculating Inaccurate Meter Data Penalty (EP 2.7(c)(ii))

There is no penalty for inaccuracies in meter data used for Preliminary Settlement Statements. However, an error discovered after issuance of Final Settlement Statements is a Rule of Conduct violation. Penalties are sized depending on whether the Scheduling Coordinator or the ISO identified the error. An increased penalty will apply for errors that are discovered by the ISO.

Table A1 below shows how the size of the charge depends on whether or not the Scheduling Coordinator finds the error, whether or not the Scheduling Coordinator owes the market, and whether or not the ISO reruns settlement of the market. If the ISO reruns the market, then settlement to all Scheduling Coordinators is recalculated, and the impact of such reruns on charges assessed will be considered. A charge equal to 30% of the estimated value of the Energy error will apply if the Scheduling Coordinator discovers the error, or 75% of the estimated value of the Energy error if the ISO discovers the error. The ISO will not issue a penalty unless it is greater than $1,000 for at least one Trading Day during the period the incomplete or inaccurate meter data event existed.

Table A1 – Calculation of Inaccurate Meter Data Penalty

Case	Does SC Owe Market?	Does ISO Re-Run Settlement of the Market?
Case 1: SC Identifies Inaccurate Meter Data	Yes	No: Charge = (MW x Hourly Ex Post Price[1]) x 1.30 Yes: Charge = (MW x Hourly Ex Post Price[1]) x 0.30
Case 1: SC Identifies Inaccurate Meter Data	No	No: Charge = Market Settlement x 1.00 [2] Yes: Charge = (MW x Hourly Ex Post Price[1]) x 0.30
Case 2: ISO Identifies Inaccurate Meter Data	Yes	No: Charge = (MW x Hourly Ex Post Price[1]) x 1.75 Yes: Charge = (MW x Hourly Ex Post Price[1]) x 0.75
Case 2: ISO Identifies Inaccurate Meter Data	No	No: Charge = Market Settlement x 1.00 [2] Yes: Charge = (MW x Hourly Ex Post Price[1]) x 0.75

Notes to Table A1:

1 The ISO will use the greater of the Hourly Ex Post Price or $10. The Hourly Ex Post Price used will be the value posted under the ISO Home Page for each Trading Hour of the applicable Trading Day.

2 If the market owes the Scheduling Coordinator but the amount is too small to justify re-running the market, the ISO will not take steps to adjust the implicit charge.

The ISO will only issue a penalty that is greater than $1,000 for at least one Trading Day during the period the incomplete or inaccurate meter data event existed.

If the error is to the detriment of the responsible Scheduling Coordinator (e.g., under-reported generation or over-reported load), and the ISO does not rerun the market, then no correction will be made, representing an implicit penalty of 100% of the value of the Energy. If the market is rerun after the error is corrected, then the Scheduling Coordinator will be given credit for the additional Energy through the normal Settlement process. If the Scheduling Coordinator is paid for an error due to a market rerun, then the ISO will impose a charge to assure that market reruns do not diminish the incentive to correct such errors. This charge would be 30% of the Energy value of the error if the Scheduling Coordinator discovers the error, or 75% estimated value of the error if the ISO discovers the error.

If the error is to the detriment of the market, then a charge equal to 30% or 75% of the estimated value of the error, as appropriate, will be added to the charge for the Energy. If there is no market rerun, then the cost of Energy supplied by the ISO (and inappropriately charged to the market as Unaccounted for Energy) must be recovered as well, and the charge will be equal to 130% or 175% of the estimated value of the error, as appropriate.

2 Method for Calculating Participant Benefits (EP 2.4, 2.5, 2.9, and 2.10)

The ISO will calculate the base (or minimum) penalty for physical withholding, economic withholding, Detrimental Practices, or Market Manipulation based on one of the two alternative general equations described below, depending on the circumstances of the violation:

a) Option 1

In circumstances other than those in which Option 2 is employed as described below, the following equation will be used to quantify Participant Benefits:

Quantity x (Price – Marginal Cost)

Where:

<u>Quantity</u> represents the volume of Energy, capacity, or other transaction type by the Market Participant that is involved in or affected by the Rule of Conduct violation.

<u>Price</u> represents the price received by the Market Participant for these transactions.

<u>Marginal Cost</u> represents the approximate short-term marginal costs, if any, incurred to provide the Energy for the transaction involved in the

Rule of Conduct violation. For Energy transactions associated with thermal Generating Units, marginal costs shall be based on incremental heat rates previously filed with the ISO, monthly spot market gas prices, and a rate of $6/MWh for other variable costs.

For non-thermal Generating Units, imports or transactions based on resource portfolios (rather than specific thermal Generating Units), marginal costs shall be based on a proxy gas-fired Generating Unit with a heat rate 9,000 MBtu/MWh and monthly spot market gas prices.

Marginal costs shall be calculated only for the hours in which the Rule of Conduct violation occurred, and shall not include start-up or other costs incurred during other hours.

For transactions for capacity, Congestion relief, or other non-Energy transactions, no direct or indirect opportunity costs shall be included in the calculation.

b) Option 2

In cases where the conduct of a Market Participant is likely to have had a significant impact on market prices, the following equation may be used to quantify Participant Benefits:

Quantity x (Price – Estimated Price without Conduct)

Where:

Quantity represents the volume of Energy, capacity, or other transaction type by the Market Participant that is involved in or affected by the Rules of Conduct violation.

Price represents the price received by the Market Participant for these transactions.

Estimated Price without Conduct represents the estimated price that would have been received by the Market Participant for these transactions if the conduct had not occurred. These prices may be estimated by the ISO based on re-calculation of the approximate prices that would result if the conduct had not occurred.