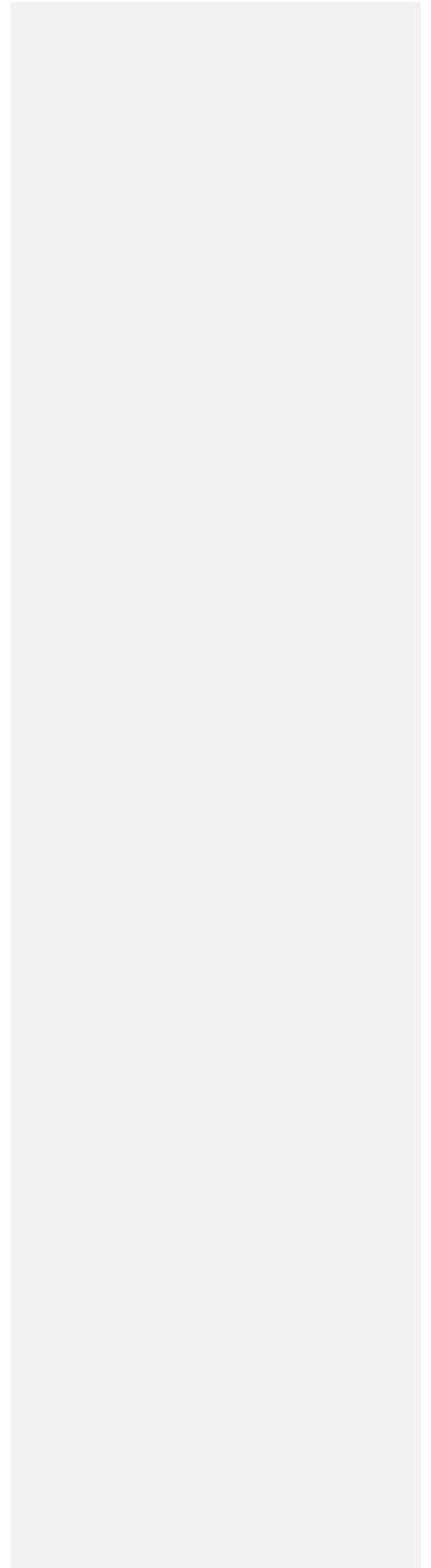


**California Independent System Operator Corporation**  
**Fifth Replacement FERC Electric Tariff**  
**Penalty Allocation Amendment Draft Tariff Language**  
**November 9, 2011**



**14. Force Majeure, Indemnification And Limitations On Liabilities, and Penalties**

**14.1 Uncontrollable Forces**

Neither the CAISO nor a Market Participant will be considered in default of any obligation under this CAISO Tariff if prevented from fulfilling that obligation due to the occurrence of an Uncontrollable Force.

**14.2 Responsibilities Of Affected Entity**

In the event of the occurrence of an Uncontrollable Force, which prevents the CAISO or a Market Participant from performing any of its obligations under this CAISO Tariff, the affected entity shall (i) if it is the CAISO, immediately notify the Market Participants in writing of the occurrence of such Uncontrollable Force and, if it is a Market Participant, immediately notify the CAISO in writing of the occurrence of such Uncontrollable Force, (ii) not be entitled to suspend performance of its obligations under this CAISO Tariff in any greater scope or for any longer duration than is required by the Uncontrollable Force, (iii) use its best efforts to mitigate the effects of such Uncontrollable Force, remedy its inability to perform and resume full performance of its obligations hereunder, (iv) in the case of the CAISO, keep the Market Participants apprised of such efforts, and in the case of the Market Participants, keep the CAISO apprised of such efforts, in each case on a continual basis and (v) provide written notice of the resumption of its performance of its obligations hereunder.

**14.3 Strikes, Lockouts Or Labor Disputes**

Notwithstanding any of the foregoing, the settlement of any strike, lockout or labor dispute constituting an Uncontrollable Force shall be within the sole discretion of the entity involved in such strike, lockout or labor dispute and the requirement that an entity must use its best efforts to mitigate the effects of the Uncontrollable Force and/or remedy its inability to perform and resume full performance of its obligations hereunder shall not apply to strikes, lockouts, or labor disputes.

**14.4 Market Participant's Indemnity**

Each Market Participant, to the extent permitted by law, shall indemnify the CAISO and hold it harmless against all losses, damages, claims, liabilities, costs or expenses (including legal expenses) arising from any act or omission of the Market Participant except to the extent that they result from the CAISO's default under this CAISO Tariff or gross negligence or intentional wrongdoing on the part of the CAISO or of its officers, directors or employees.

**14.5 Limitation On Liability**

**14.5.1 Liability For Damages**

Except as provided for in Section 13.3.14, the CAISO shall not be liable in damages to any Market Participant for any losses, damages, claims, liability, costs or expenses (including legal expenses) arising from the performance or non-performance of its obligations under this CAISO Tariff, including but not limited to any adjustments made by the CAISO in Inter-SC Trades, except to the extent that they result from gross negligence or intentional wrongdoing on the part of the CAISO.

**14.5.2 Exclusion Of Certain Types Of Loss**

The CAISO shall not be liable to any Market Participant under any circumstances for any consequential or indirect financial loss including but not limited to loss of profit, loss of earnings or revenue, loss of use, loss of contract or loss of goodwill except to the extent that it results from the gross negligence or intentional wrongdoing on the part of the CAISO.

**14.6 Potomac Economics, Ltd. Limitation Of Liability**

Potomac Economics, Ltd. shall not be liable in damages to any Market Participant for any losses, damages, claims, liability, costs or expenses (including legal expenses) arising from its calculation of reference levels under its Consultant Agreement with the CAISO dated as of September 3, 2002, except to the extent that they result from gross negligence or intentional wrongdoing of Potomac Economics, Ltd.

**14.7 Allocation Of Costs Associated With Penalties**

**14.7.1 Overview Of Process**

Under the NERC Functional Model and the NERC Rules of Procedure, Registered Entities for a specific function, including the CAISO, may be assessed monetary penalties by FERC, NERC, and/or WECC for violations of one or more NERC Reliability Standards applicable to that function. This Section 14.7 sets forth the procedure through which the CAISO may seek, with FERC approval, to directly allocate, in whole or in part, the cost of any such penalties assessed upon the CAISO to an entity or entities whose conduct or omission(s) NERC, WECC and/or FERC has determined contributed, in whole or in part, to the violation that gave rise to the penalty. This Section 14.7 also sets forth procedures through which the CAISO may seek, with FERC approval, to recover, in whole or in part, from Market Participants the cost associated with (a) a monetary penalty for a NERC Reliability Standards violation(s) that is not subject to

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direct allocation, (b) a WECC imposed penalty, or (c) the cost associated with other monetary penalties that may be imposed by FERC or another regulatory body authority. Penalties that are assessed upon the CAISO and become final on or after the effective date of this Section 14.7 shall be subject to the procedures set forth herein regardless of the date of the underlying violation(s) for which the penalty is assessed.

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## **14.7.2 Direct Allocation Of Reliability Standards Penalties**

### **14.7.2.1 Conditions For Direct Allocation**

If FERC, NERC, and/or WECC assess(es) one or more monetary penalties against the CAISO as the Registered Entity for the violation of one or more NERC Reliability Standards, and the conduct or omission(s) absence of required response(s) of a particular Market Participant or Market Participants contributed, in whole or in part, to the violation(s) at issue, then the CAISO may seek to directly allocate, in whole or in part, such penalty costs to the Market Participant(s) whose conduct or omission(s) contributed to the violation(s), provided that each of the following conditions are met:

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- (1) The Market Participant(s) subject to potential direct allocation receive notice of, and an opportunity to fully participate in, the underlying CMEP proceeding before NERC and/or WECC, or, the FERC proceeding in the case of an enforcement proceeding directly instituted by FERC without a prior NERC or WECC proceeding, the FERC proceeding;
- (2) The CMEP proceeding, or enforcement proceeding directly instituted by FERC, results in a finding that the conduct or absence of required response(s) omission(s) of the Market Participant(s) subject to potential direct allocation contributed, either in whole or in part, to the Reliability Standards violation(s) at issue; and
- (3) Any findings issued by NERC and/or WECC, that the conduct or absence of required response(s) of the Market Participant(s) contributed, either in whole or in part, to the Reliability Standards violation(s) at issue, concerning the cause of the Reliability Standards violation(s) at issue are filed with FERC.

### **14.7.2.2 Notice To Affected Market Participant**

The CAISO will notify the Market Participant(s) it believes contributed to the Reliability Standards violation(s) during the CMEP proceeding or, if applicable, during the enforcement proceeding directly instituted by FERC. This notification shall be in writing and shall: (i) inform the Market Participant(s) that the CAISO intends to invoke the direct allocation provisions of this Section 14.7.2; (ii) describe the underlying factual basis for the CAISO's position; and (iii) inform the Market Participant(s) that it may seek to participate in the CMEP proceeding or, if applicable, the enforcement proceeding directly instituted by FERC.

#### **14.7.2.3 Failure To Participate**

A failure by the notified Market Participant(s) to participate in the CMEP proceeding or, if applicable, in the enforcement proceeding directly instituted by FERC, will not prevent the CAISO from directly allocating the cost associated with a monetary penalty to the Market Participant(s) provided all other conditions in Section 14.7.2 are satisfied.

#### **14.7.2.4 Proposed Initial Allocation**

Where NERC and/or WECC, or FERC, as may be applicable in an enforcement proceeding directly instituted by FERC, determines that the conduct or absence of required response(s) or emission(s) of the Market Participant(s) identified by the CAISO contributed, in whole or in part, to the NERC Reliability Standard(s) violation(s) at issue, the CAISO shall inform the involved Market Participant(s) in writing and shall initially propose an initial apportionment allocation of the penalty cost on a basis reasonably proportional to the parties' relative fault, consistent with the applicable regulator's analysis. Regardless of whether the Market Participant(s) and the CAISO agree or disagree over the apportionment, the reasonability of such an apportionment shall be determined by FERC through submission of the matter to FERC pursuant to Section 205 of the Federal Power Act.

#### **14.7.2.5 Agreed Upon Allocation**

If the CAISO and the involved Market Participant(s) agree on the proportion of the penalty cost allocation, such agreement shall be submitted to FERC for approval pursuant to Section 205 of the Federal Power Act.

#### **14.7.2.6 Allocation Request In Absence Of Agreement**

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~~If the CAISO and the involved Market Participant(s) are unable to agree on a penalty cost allocation, the CAISO shall submit the matter to FERC for resolution pursuant to Section 205 of the Federal Power Act.~~

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#### **14.7.2.7 Payment Of Allocated Amount**

~~After FERC issues a final order regarding the CAISO's ability to directly allocate the penalty cost, the CAISO shall include any FERC approved allocated amounts in the invoice for the appropriate Market Participant(s) for the next billing period, or as soon as practicable. The amount to be paid by the Market Participant(s) shall include the allocated portion of the penalty, as established by FERC, together with interest calculated at the FERC authorized refund rate for the period of time, if any, between the CAISO's payment of the penalty and the Market Participant(s) payment of its allocated portion of the penalty.~~

#### **14.7.3 Allocation Of Penalty Costs Not Subject To Direct Allocation**

##### **14.7.3.1 Procedure For Allocation**

~~Where the conduct or omission(s) of a particular Market Participant or Market Participants has not been identified by NERC, WECC, or FERC, as a contributing cause for a monetary penalty assessed against the CAISO for a NERC Reliability Standards violation, or where the CAISO is assessed a monetary penalty by FERC or another regulatory body for the CAISO's own actions conduct or absence of required response(s) inaction in violation the CAISO Tariff, FERC rules, or rules or regulations established by other regulatory bodies, the CAISO will:~~

- ~~a. If the penalty issuer is under FERC jurisdiction, file a request with FERC for to waiver of the penalty if the issuer of the penalty is under FERC jurisdiction.~~
- ~~b. If the penalty issuer is not under FERC jurisdiction, seek a waiver with the penalty issuer and seeking FERC support for at the waiver from the penalty issuer if the issuer of the penalty is not under FERC jurisdiction.~~
- ~~c. may mMake a filingFile a request with FERC, under Section 205 of the Federal Power Act, seeking approval to recover the penalty cost of such penalties from all Market Participants, only after the CAISO has sought and failed to secure a waiver executed at least as specified in 14.7.3.1.a or 14.7.3.1.b. and failed to get a waiver of penalty in either case. The CAISO's Section 205 filing may include a proposed methodology for allocating the penalty across the various types of Market Participants.~~

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**14.7.3.2 Case-By-Case FERC Review**

Any allocation of penalties pursuant to Section 14.7.3 must be determined by FERC on a case-by-case basis. Absent FERC approval, the CAISO may will not allocate a penalty under Section 14.7.3 to Market Participants.

**14.7.3.3 Payment of Allocated Amount**

After FERC issues a final order regarding allocation of the monetary penalty, the CAISO shall include any FERC approved allocated amounts in the invoices for the appropriate Market Participants for the next billing period, or as soon as practicable.

\* \* \*

**Appendix A**

**Master Definitions Supplement**

\* \* \*

**Compliance Monitoring and Enforcement Program (CMEP)**

The program used by NERC and the Regional Entities to monitor, assess and enforce compliance with the NERC Reliability Standards. As part of this program, NERC and the Regional Entities may, among other functions, conduct investigations, determine fault and assess monetary penalties.

\* \* \*

**- NERC Functional Model**

The model used by NERC to define and establish the set of functions that must be performed to ensure the reliability of the bulk power system.

\* \* \*

**- NERC Rules of Procedure**

A set of rules and procedures developed by NERC and approved by FERC that establish processes that NERC, NERC members, and Regional Entities must follow. The NERC Rules of Procedure include the process through which a responsible entity that is to perform a set of functions to ensure reliability of the bulk power system must register with NERC as a Registered Entity.

\* \* \*

**- NERC Reliability Standards**

The standards that have been developed by NERC and/or a Regional Entity, and have been approved by FERC, to ensure the reliability of the bulk power system. The NERC Reliability Standards set forth the specific requirements that responsible entities must perform with respect to the functions defined in NERC's Functional Model.

\* \* \*

**- Regional Entity**

An entity to whom NERC has delegated certain of its electric reliability organization functions for a particular geographic region. WECC is the applicable Regional Entity for the region encompassing the CAISO.

\* \* \*

**- Registered Entity**

An entity registered with NERC under the NERC Functional Model and the NERC Rules of Procedure as responsible for compliance with a designated set of requirements established by the NERC Reliability Standards.

\* \* \*