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**Overview of Proposed Tariff Amendment**

**Regarding Procedures For Penalty Allocation Requests To FERC**

**November 9, 2011**

**Overview of Proposed Amendment**

1. **Background**

The California Independent System Operator (ISO) is proposing tariff amendments, consistent with FERC’s Guidance Order[[1]](#footnote-1), that detail the process through which it may seek authority from FERC, on a case-by-case basis, to allocate any monetary penalties that may be imposed on it by FERC or other regulatory bodies, including NERC and WECC.[[2]](#footnote-2)

In Order No. 672, which implemented various requirements of the Energy Policy Act of 2005 (EPAct 2005), FERC considered the issue of how the penalty provisions of the statute should apply to RTOs and ISOs that operate on a non-profit basis and may lack the ability to pay monetary penalties without a means of recovering the cost. FERC denied requests to exempt non-profit RTOs and ISOs from such penalties or to give such entities blanket authority to recover such costs from their market participants, and instead concluded that it would consider such penalty allocation requests on a case-by-case basis.[[3]](#footnote-3) More recently, FERC issued its Guidance Order on penalty allocation, which identifies a process that ISOs and RTOs may follow to obtain FERC’s case-specific review of a proposed penalty allocation.

In response to FERC’s Guidance Order, ISOs and RTOs have been updating their tariffs to include provisions detailing the procedures that they will follow in seeking FERC’s case-by-case review. To date, the New York Independent System Operator (NYISO), the Midwest Independent Transmission System Operator (MISO), the Southwest Power Pool (SPP), and the PJM Interconnection (PJM), have each filed, and received FERC’s approval for, such tariff amendments.[[4]](#footnote-4) The California ISO’s proposed tariff amendments, which are similar to the revisions adopted by these other ISOs and RTOs, set forth the process the ISO proposes to follow for seeking FERC approval of any proposed penalty allocation, consistent with the process set forth in the Guidance Order.

1. **Summary of Proposed Amendment**

A complete draft of the ISO’s proposed revisions to the Tariff is being posted on the ISO’s website along with this overview document.

Consistent with FERC’s input in the Guidance Order, the ISO’s proposal addresses two scenarios: (1) a request to FERC for authority to directly allocate the cost of a penalty to a particular market participant or market participants whose conduct may have contributed to the penalty; and (2) a request to FERC to allocate the cost to market participants in general for a penalty that is not subject to direct allocation to specific market participants.

The process for seeking approval for “direct allocation” is set forth primarily in proposed section 14.7.2 of the Tariff. Consistent with the dictates of the Guidance Order, this section addresses the ISO’s obligation to provide early notice to the affected market participant(s) of the ISO’s intent to seek such an allocation, as well as a full opportunity to participate in any underlying proceeding before WECC, NERC, or FERC that may address the root cause or causes for the violation at issue. This section also sets forth the process for FERC review and determination of any proposed direct allocation, pursuant to Section 205 of the Federal Power Act.

The process for seeking approval of an “indirect allocation” to the ISO marketplace is set forth primarily in proposed section 14.7.3 of the Tariff. Once again consistent with the Guidance Order, this section requires a case-specific filing with FERC for approval of the allocation, pursuant to Section 205 of the Federal Power Act.

The Tariff revision also includes definitions of various terms used in the new section 14.7. The ISO plans to add these definitions to Appendix A of the Tariff, which is the Master Definitions Supplement.

1. **Next Steps**

As set forth in the accompanying market notice, the ISO has scheduled a stakeholder conference call for November 18, 2011 to discuss the Tariff amendment. The ISO plans to submit the amendment for approval by the ISO Board of Governors at the Board’s meeting on December 15-16.

1. Order Providing Guidance on Recovery of Reliability Penalty Costs by Regional Transmission Organizations and Independent System Operators (“Guidance Order”), 122 FERC ¶ 61,247 (2008). [↑](#footnote-ref-1)
2. NERC and WECC each hold certain enforcement responsibilities with respect to the Reliability Standards adopted by NERC and approved by FERC for reliable operation of the bulk power system.

 [↑](#footnote-ref-2)
3. Order No. 672, 114 FERC ¶ 61,104, at P 634-35 (2006), *on reh’g* Order No. 672-A, 114 FERC ¶ 61,328, at P 58 (2006). [↑](#footnote-ref-3)
4. *See*, *e.g.*,128 FERC ¶ 61,229 (MISO); 127 FERC ¶ 61,196 (2009) (NYISO); 126 FERC ¶ 61,061 (2009) (SPP); 124 FERC ¶ 61,260 (2008) (PJM). [↑](#footnote-ref-4)