

## **6.11 Schedule 11 - Penalty Cost Recovery**

### **6.11.1 Direct Allocation of Costs Associated With NERC Penalty Assessments**

#### **6.11.1.1 Purpose and Objectives**

Under the NERC Functional Model and the NERC Rules of Procedure, Registered Entities within a specific function may be assessed penalties by FERC, NERC, and/or NPCC for violations of NERC Reliability Standards. Pursuant to the terms and conditions of the Tariff and the ISO Procedures, certain tasks associated with Reliability Standards compliance may be performed either by the ISO and/or the Customers even when they are not the Registered Entity. This Schedule furnishes a mechanism by which either the ISO or a Customer may directly allocate, with FERC approval, monetary penalties imposed by FERC, NERC and/or NPCC on the Registered Entity to entity or entities whose conduct is determined by NERC or the Regional Entity to have led to a Reliability Standard violation. For purposes of this rate schedule, the terms “Customer” and “Market Participant” shall include Transmission Owners. The purpose of this schedule is to allow for cost allocation; nothing in this schedule is intended to affect the obligations of Registered Entities for compliance with NERC Reliability Standards. Penalties that are assessed against the ISO on or after the effective date of this Section shall be recoverable as provided in this Section regardless of the date of the violation(s) for which the penalty is assessed. Notwithstanding any provisions of the ISO’s Tariffs or ISO Related Agreements, including those provisions requiring stakeholder approval for Section 205 filings in certain instances, the ISO has the independent authority to make Section 205 filings in accordance with the provisions of this Schedule 11 after consultation with the Management Committee as provided in Section 5.1.1(c) of the Services Tariff or Section 2.11.6(c) of the ISO OATT.

### **6.11.1.2 Definitions**

All defined terms in this Schedule shall have the meaning given to them in the Tariff and the ISO Procedures unless otherwise stated below.

**Compliance Monitoring and Enforcement Program (CMEP)** - The program to be used by the NERC and the Regional Entities to monitor, assess and enforce compliance with the NERC Reliability Standards. As part of a Compliance Monitoring and Enforcement Program, NERC and the Regional Entities may, among other things, conduct investigations, determine fault and assess monetary penalties.

**NERC Functional Model** - Defines the set of functions that must be performed to ensure the reliability of the bulk power system. The NERC Reliability Standards establish the requirements of the responsible entities that perform the functions defined in the Functional Model.

**NERC Reliability Standards** - Those standards that have been developed by NERC and approved by FERC to ensure the reliability of the bulk power system.

**NERC Rules of Procedure** - The rules and procedures developed by NERC and approved by the FERC. These rules include the process by which a responsible entity, which is to perform a set of functions to ensure the reliability of the bulk power system, must register as the Registered Entity.

**Registered Entity** - The entity registered under the NERC Functional Model and NERC Rules of Procedures for the purpose of compliance with NERC Reliability Standards and responsible for carrying out the tasks within a NERC function without regard to whether a task or tasks are performed by another entity pursuant to the terms of the ISO's Tariffs and ISO Related Agreements.

**Regional Entity** - An entity to whom NERC has delegated Electric Reliability Organization (ERO) functions in a particular geographic region. For the ISO region, the applicable Regional Entity is the Northeast Power Coordinating Council (NPCC).

### **6.11.1.3 Allocation of Costs When the ISO is the Registered Entity**

6.11.1.3.1 If FERC, NERC and/or NPCC assesses a monetary penalty against the ISO as the Registered Entity for a violation of a NERC Reliability Standard(s), and the conduct of a Customer or Customers contributed to the Reliability Standard violation(s) at issue, then the ISO may directly allocate such penalty costs or a portion thereof to the Customer or Customers whose conduct

contributed to the Reliability Standards violation(s), provided that all of the following conditions have been satisfied:

- (1) Pursuant to the CMEP, the Customer or Customers received notice and an opportunity to fully participate in the underlying CMEP proceeding;
- (2) This CMEP proceeding produced a root cause finding, subsequently filed with FERC, that the Customer contributed, either in whole or in part, to the NERC Reliability Standards violation(s); and
- (3) A NERC filing of the root cause finding identifying the Customer's or Customers' conduct as causing or contributing to the Reliability Standards violation charged against the ISO as the Registered Entity is made at FERC.

6.11.1.3.2 The ISO will notify the Customer or Customers found to have contributed to a violation, either in whole or in part, in the CMEP proceedings. Such notification shall set forth in writing the ISO's intent to invoke this Section 6.11.1.3 and directly assign the costs associated with a monetary penalty to the Customer or Customers. Such notification shall (i) state that the ISO believes the criteria for direct assignment and allocation of costs under this Schedule have been satisfied; and (ii) describe the underlying factual basis supporting a penalty cost assignment, including a description of the conduct contributing to the violation and the nature of the violation of the ISO Tariffs or ISO Related Agreement requirements.

6.11.1.3.3 A failure by a Customer or Customers to participate in the CMEP proceedings will not prevent the ISO from directly assigning the costs associated

with a monetary penalty to the responsible Customer or Customers provided all other conditions set forth herein have been satisfied.

6.11.1.3.4 Where the Regional Entity's and/or NERC's root cause analysis finds that more than one party's conduct contributed to the Reliability Standards violation(s), the ISO shall inform all involved Customers and shall make an initial apportionment for purposes of the cost allocation on a basis reasonably proportional to the parties' relative fault consistent with NERC's root cause analysis.

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

6.11.1.3.6 Should the Customer(s) disagree with the ISO's initial apportionment of the penalty based on each party's relative fault, then the parties shall meet in an attempt to informally resolve the penalty allocation. If the parties cannot agree informally, the matter shall be submitted to the FERC pursuant to Section 205 of the Federal Power Act.

6.11.1.3.7 Once there is a final order by FERC regarding the ISO's ability to directly assign the penalty amounts, the ISO shall include such amounts in the appropriate Customer's or Customers' ~~next monthly~~ invoice for the next Billing Period. Such payment amount shall be due with interest calculated at the FERC authorized refund rate from the date of payment of the penalty by the ISO, provided however, nothing precludes the Customer or Customers from paying such penalty when it becomes due for the ISO to avoid paying interest costs. If the Customer

pays such penalty under protest when it becomes due and prior to a final order by FERC and such Customer is thereafter found not liable, the Customer is entitled to a refund of the penalty amount from the ISO, with interest calculated at the FERC authorized refund rate from the date the Customer pays the penalty.

#### **6.11.1.4 Allocation of Costs When a Customer is the Registered Entity**

6.11.1.4.1 If FERC, NERC and/or NPCC assesses a monetary penalty against a Customer as the Registered Entity for a violation of a NERC Reliability Standard(s), and the conduct of the ISO contributed to the Reliability Standard violation(s) at issue, then such Customer may directly allocate such penalty costs or portion thereof to the ISO to the extent the ISO's conduct contributed to the Reliability Standards violation(s), provided that the following conditions have been satisfied:

6.11.1.4.1.1 Pursuant to the CMEP, the ISO received notice and an opportunity to fully participate in the underlying CMEP proceeding;

6.11.1.4.1.2 This CMEP proceeding produced a root cause finding, subsequently filed with FERC, that the ISO contributed, either in whole or in part, to the NERC Reliability Standards violation(s); and

6.11.1.4.1.3 A NERC filing of the root cause finding identifying the ISO's conduct as causing or contributing to the Reliability Standards violation charged against the Customer as the Registered Entity is made at FERC.

6.11.1.4.2 The Customer shall notify the ISO if the ISO is found to have contributed to a violation, either in whole or in part in the CMEP proceedings. Such notification shall set forth in writing the Customer's intent to invoke this

Section 6.11.1.4 and directly assign the costs associated with a monetary penalty to the ISO. Such notification shall (i) state that the Customer believes the criteria for direct assignment and allocation of costs under this Schedule have been satisfied; and (ii) describe the underlying factual basis supporting a penalty cost assignment, including a description of the conduct contributing to the violation and, where applicable, the nature of the violation of the ISO Tariffs or ISO Related Agreement requirements.

6.11.1.4.3 A failure by the ISO to participate in the CMEP proceedings will not prevent the Customer from directly assigning the costs associated with a monetary penalty to the ISO provided all other conditions set forth herein have been satisfied.

6.11.1.4.4 Where the Regional Entity's and/or NERC's root cause analysis finds that the ISO's conduct contributed to the Reliability Standards violation(s), the Customer shall inform the ISO and shall make an initial apportionment for purposes of the cost allocation on a basis reasonably proportional to the parties' relative fault consistent with NERC's root cause analysis.

6.11.1.4.5 If the ISO and the involved Customer agree on a proportion of penalty cost allocation, such agreement shall be submitted to the FERC pursuant to Section 205 of the Federal Power Act.

6.11.1.4.6 Should the ISO disagree with the Customer's initial apportionment of the penalty based on each party's relative fault, then the parties shall meet in an attempt to informally resolve the penalty allocation. If the parties cannot agree

informally, the matter shall be submitted to the FERC pursuant to Section 205 of the Federal Power Act.

6.11.1.4.7 Once there is a final order by FERC regarding the Customer's direct assignment of costs to the ISO, the ISO shall pay such amount with interest calculated at the FERC authorized refund rate from the date of payment of the penalty by the Registered Entity. The ISO shall thereafter pursue the recovery of such costs in accordance with Section 6.11.3 of this Schedule 11. Nothing precludes the ISO from paying such penalty when it becomes due for the Registered Entity to avoid paying interest costs. If the ISO pays such penalty under protest when it becomes due and prior to a final order by FERC and the ISO thereafter is found not liable, the ISO is entitled to a refund of the penalty amount from the Customer with interest calculated at the FERC authorized refund rate from the date of payment of the penalty by the ISO. The ISO shall thereafter refund any amounts that were collected from all Customers pursuant to Section 6.11.3 of this Schedule 11.

## **6.11.2 Allocation of Costs Associated With Other Reliability **Penalty Assessments****

### **6.11.2.1 Purpose and Objectives**

The ISO is responsible for performing specific functions under other applicable state and federal regulatory requirements and may be assessed penalties by other regulatory bodies for violations of applicable regulatory requirements. Section 6.11.3 of this Schedule furnishes a mechanism by which the ISO may seek to recover monetary penalties imposed by such regulatory authorities. Penalties that are assessed against the ISO on or after the effective date of this Section shall be recoverable as provided in this Section regardless of the date of the

violation(s) for which the penalty is assessed. Notwithstanding any provisions of the ISO's Tariffs or ISO Related Agreements, including those provisions requiring stakeholder approval for Section 205 filings in certain instances, the ISO has the independent authority to make Section 205 filings in accordance with the provisions of this Schedule 11 after consultation with the Management Committee as provided in Section 5.1.1(c) of the Services Tariff and in Section 2.11.6(c) of the ISO OATT.

### **6.11.3 Allocation of Costs Associated With Penalty Assessments**

#### **6.11.3.1**

Where a particular Customer or Customers cannot be identified as the root cause of a penalty assessment against the ISO or if the ISO is assessed a penalty because of its own action or inaction that resulted in a reliability standard violation or a violation of applicable state or federal regulatory requirements, or if the ISO is allocated a penalty under Section 6.11.1.4 of this Schedule 11, the ISO may seek to recover such penalty costs in accordance with this Schedule 11. Any inclusion of penalty assessments in this Schedule 11 must first be approved by FERC on a case-by-case basis, as provided in *Reliability Standard Compliance and Enforcement in Regions with Regional Transmission Organizations or Independent System Operators*, Docket No. AD07-12-000, 122 FERC ¶ 61,247 (2008), or any successor policy. Notwithstanding any provisions of the ISO's Tariffs or ISO Related Agreements, including those provisions requiring stakeholder approval for Section 205 filings in certain instances, the ISO has the independent authority to make Section 205 filings in accordance with the provisions of this Schedule 11 after consultation with the Management Committee as provided in Section 5.1.1(c) of the Services Tariff or Section 2.11.6(c) of the ISO OATT.



### **6.11.3.2**

Any and all costs associated with the imposition of NERC Reliability Standards penalties or penalties assessed by other regulatory authorities that may be assessed against the ISO either directly by NERC, other regulatory authority or allocated by a Customer or Customers under this Schedule shall be (i) paid by the ISO notwithstanding the limitation of liability provisions in this Tariff or the Services Tariff; and (ii) recovered as set forth in this Schedule 11, after consultation with the Management Committee as provided in Section 5.1.1(c) of the Services Tariff or Section 2.11.6(c) of the ISO OATT, or as otherwise approved by the FERC.

### **6.11.3.3**

Penalties that are assessed against the ISO on or after the effective date of this section shall be recoverable as provided in this section regardless of the date of the violation(s) for which the penalty is assessed.

### **6.11.3.4 Allocation Basis and Invoicing**

6.11.3.4.1 Allocation Basis. Any penalties that are permitted recovery under Section 6.11.3.0 of this Schedule 11 shall be allocated 50% to all Injection Billing Units and 50% to all Withdrawal Billing Units in the following manner. The rate to be applied to Injection Billing Units shall be the quotient of (i) 50% of (ii) the penalty costs to be recovered in the ~~month~~Billing Period divided by the total Injection Billing Units for the ~~month~~Billing Period. The rate to be applied to the Withdrawal Billing Units shall be the quotient of (i) 50% of (ii) the penalty costs to be recovered in the ~~month~~Billing Period divided by the total Withdrawal Billing Units for that ~~month~~Billing Period. The Injection Billing Unit rate shall then be multiplied by each Transmission Customer's aggregate Injection Billing

Units for the ~~month~~Billing Period, and the Withdrawal Billing Unit rate shall be multiplied by each Transmission Customer's aggregate Withdrawal Billing Units for the ~~month~~Billing Period.

6.11.3.4.2 Invoicing. Once there is a final order by FERC regarding the ISO's ability to recover penalty amounts, the ISO shall include such amounts in the ~~next monthly~~ invoice for the next Billing Period utilizing the billing units for the ~~month~~Billing Period of infraction. For purposes of this calculation, the "~~month~~Billing Period of infraction" shall be the ~~service month~~Billing Period in which the violation occurred. Should the penalty be assessed for a violation occurring over multiple ~~service months~~Billing Periods, the penalty to be recovered for each ~~service month~~Billing Period shall be the total penalty to be recovered through Section 6.11.3 of this Schedule divided by the number of ~~months~~Billing Periods over which the violation occurred. Whenever practicable, the ISO shall recover this Rate Schedule 11 charge in the invoice issued in the ~~month~~Billing Period following the ~~month~~Billing Period in which the NYISO incurs the penalty charge. The ISO may recover penalty charges over several ~~months~~Billing Periods if, in its discretion, the ISO determines such method of recovery to be a prudent course of action. In the event that one or more entities who otherwise would have been apportioned a share of the penalty are no longer Customers, the ISO shall adjust the remaining Customers' shares of the penalty costs, on a proportional basis, if necessary to fully recover the penalty charge.