

SCHEDULE 34 Allocation of Costs Associated with Compliance Penalty Assessments

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Allocation of Costs Associated with Reliability Compliance Penalty Assessments

Under the current regulatory schema administered by the FERC and/or delegated to the North American Electric Reliability Corporation (“NERC”) and applicable to the Transmission Provider, the Transmission Provider may be assessed monetary penalties for violations of approved FERC regulatory requirements, *e.g.*, Electric Reliability Standards (“Reliability Standards”), (“Compliance Penalties”). This Schedule provides: (1) notice to all Tariff Customers and Members that they may potentially be responsible for Compliance Penalties assessed against the Transmission Provider; (2) the mechanism through which the Transmission Provider achieves recovery of Compliance Penalties assessed against the Transmission Provider; and (3) the right of participation by a Tariff Customer or Member in the Compliance Penalty assessment process with the Transmission Provider if the Tariff Customer or Member is alleged to have been involved in the event causing the potential Compliance Penalty.

Definitions:

All defined terms in this Schedule are used as defined in the NERC Glossary of Terms and/or Module A, Section 1 of the MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff (“Tariff”) unless otherwise stated below:

Calendar Year – The period from January 1 through December 31 of each year.

Compliance Monitoring and Enforcement Program (“CMEP”) – The program used by NERC and the Regional Entities to monitor, assess, and enforce compliance with Reliability Standards within the United States.

Compliance Penalty – Any amount approved by the FERC by order or operation of law that is assessed against the Transmission Provider as a result of a Confirmed Finding. This term may also be referred to as “Compliance Penalties” in the plural form.

Confirmed Finding – One of the following: (1) a finding as a result of the hearing procedures set forth in the CMEP, or as a result of a FERC hearing, that the Transmission Provider has violated one or more Reliability Standards; or (2) an allegation, reflected in a settlement agreement executed by the Transmission Provider, and which has been approved by the FERC by order or by operation of law, that the Transmission Provider has violated one or more Reliability Standards.

FERC Rules of Practice and Procedure – The rules of practice and procedure in 18 C.F.R. Part 385, or any successor rules thereto.

NERC Compliance Registry – The registry maintained by NERC that records which Registered Entity is responsible for performing the set of functions required to ensure compliance with each Reliability Standard, as defined in the NERC Reliability Functional Model.

Reliability Standards – Standards developed by a Regional Entity or NERC and approved by the FERC to ensure reliability of the bulk power system, violation of which may result in the imposition of mitigation programs or monetary penalties.

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 electric system, must register as a Registered Entity.

Notice of Alleged Violation – Shall have the same meaning set forth in the CMEP.

Notice of Possible Violation – Shall have the same meaning set forth in the CMEP.

Registered Entity – The entity registered under the NERC Reliability Functional Model and NERC Rules of Procedure for the purpose of compliance with Reliability Standards and responsible for carrying out the tasks within a NERC function without regard to whether a task(s) is performed by another entity pursuant to the terms of its governing documents. As defined by the NERC website, the NERC Reliability Functional Model “...defines the set of functions that must be performed to ensure the reliability of the bulk electric system. It also explains the relationship between and among the entities responsible for performing the tasks within each function. The Model provides the foundation and framework upon which NERC develops and maintains its reliability standards. NERC’s reliability standards establish the requirements of the responsible entities that perform the functions defined in this model.”

1. General

Under this Schedule, the Transmission Provider may recover Compliance Penalties assessed to it through two (2) mechanisms: (1) allocation of the Compliance Penalties among all Tariff Customers/Members pursuant to the methodology provided herein for any Compliance Penalty, or portion thereof, that cannot be directly assigned to one or more Tariff Customers or Members; or (2) direct assignment of the Compliance Penalties to one or more Tariff Customers or Members where the direct assignment of the Compliance Penalty is appropriate.

Tariff Customers or Members may be directly assigned Compliance Penalties or a portion thereof as set forth in Section 2 below if it is determined that they are responsible for or have directly contributed to the Confirmed Findings at issue. In circumstances where direct assignment is not appropriate, Tariff Customers/Members will be allocated a portion of a Compliance Penalty as set forth in Section 3 below.

2. Direct Assignment of Compliance Penalties Where Violation Can Be Directly Assigned

A. General

Where a Tariff Customer's or Member's conduct or omission contributed to the violation(s) for which a Compliance Penalty was assessed to the Transmission Provider, the Transmission Provider may directly assign responsibility for all or a portion of the Compliance Penalty to the Tariff Customer or Member whose conduct or omission was identified as contributing to the violation for which the Compliance Penalty was assessed ("Contributing Tariff Customer/Member").

The Transmission Provider shall notify, in writing, any potential Contributing Tariff Customer(s)/Member(s) that might be subject to a direct assignment of Compliance Penalties of an alleged violation as soon as possible after the issuance of: (1) a Notice of Possible Violation, or (where no Notice of Possible Violation is issued), a Notice of Alleged Violation by FERC, NERC, or a Regional Entity, or (2) an order to show cause by the FERC. In addition, the potential Contributing Tariff Customer(s)/Member(s) shall have the right to participate in all discussions and/or proceedings under the FERC Rules of Practice and Procedure or the NERC Rules of Procedure.

B. Direct Assignment of Compliance Penalty for Violation to Tariff Customer(s) or Member(s)

If there is: (1) an assessment of a Compliance Penalty against the Transmission Provider for a violation of one or more Reliability Standards; and (2) as a result of proceedings under the NERC Rules of Procedure or the FERC Rules of Practice and Procedure, it is determined that one or more potential Contributing Tariff Customers/Members are deemed to be Contributing Tariff Customers/Members, or otherwise are found to have been a “root cause(s)” of, such alleged or confirmed violation(s), such Contributing Tariff Customer(s)/Members may be assessed a portion of or all of the Compliance Penalty; provided that all of the following conditions have been satisfied:

(1) If, during the course of an investigation by NERC, a Regional Entity, or the FERC, the possibility of an alleged violation of a Reliability Standard is identified against the Transmission Provider and the Transmission Provider believes that a Tariff Customer or Member may have contributed to the alleged violation, the Transmission Provider will provide to the potential Contributing Tariff Customer(s)/Member(s):

(a) Reasonable prior written notice that the Transmission Provider believes that a Tariff Customer(s)/Member(s) is a potential Contributing Tariff Customer/Member and that it intends to hold the potential Contributing Tariff Customer(s)/Member(s) responsible for a portion of or all of any Compliance Penalties that result; and

(b) The opportunity to participate in all discussions and/or proceedings under the NERC Rules of Procedure or the FERC Rules of Practice and Procedure to the extent provided in the FERC Rules of Practice and Procedure and/or the NERC

Rules of Procedure after such notice has been provided pursuant to sub-Section

(a) above.

(c) Written notice that conforms to the requirements set forth in Appendix 4C, Section 5.11 of the NERC Rules of Procedure shall be considered reasonable prior notice under this Schedule.

(2) The Transmission Provider will also provide notice to NERC, the Regional Entity, and/or FERC of its belief that there is a potential Contributing Tariff Customer(s)/Member(s) that it intends to hold responsible for a portion of or all of the Compliance Penalties that result from the proceeding so as to ensure that the proceeding includes a determination regarding the extent to which the potential Contributing Tariff Customer(s)/Member(s) is a Contributing Tariff Customer(s)/Members(s) or is otherwise found to have been a “root cause(s)” of, such alleged or confirmed violation(s). Written notice that conforms to the requirements set forth in Appendix 4C, Section 5.11 of the NERC Rules of Procedure shall be considered reasonable notice to NERC and/or the Regional Entity under this Schedule.

If, as a result of proceedings under the NERC Rules of Procedure or the FERC Rules of Practice and Procedure, it is determined that the potential Contributing Tariff Customer(s)/Member(s) identified by the Transmission Provider is a Contributing Tariff Customer/Member, the Transmission Provider will:

(a) Make an initial apportionment for purposes of the cost allocation of the Compliance Penalty on a basis reasonably proportional to the parties’ relative fault and consistent with: (1) the findings of FERC, NERC, or the Regional Entity through the

process defined in or allowed by the NERC Rules of Procedures or the FERC Rules of Practice and Procedure; or (2) NERC or the Regional Entity's root cause analysis; and

(b) Hold the Contributing Tariff Customer(s)/Member(s) responsible for that initial apportionment of the Compliance Penalty assessed as a result of the alleged or confirmed violation directly attributable to the Contributing Tariff Customer(s)/Member(s) by either: (1) reaching an agreement with the Contributing Tariff Customer(s)/Member(s) and filing such agreement with FERC under Section 205 of the Federal Power Act for approval; or (2) making a filing with the FERC under Section 205 of the Federal Power Act to assign that initial apportionment of the Compliance Penalty directly to the Contributing Tariff Customer(s)/Member(s).

Prior to making a filing with the FERC under Section 205 of the Federal Power Act to assign the initial apportionment of the Compliance Penalty directly to the Contributing Tariff Customer(s)/Member(s), the Transmission Provider and the Contributing Tariff Customer(s)/Member(s) shall meet in an attempt to informally resolve the penalty allocation. If the Transmission Provider and the Contributing Tariff Customer(s)/Member(s) have engaged in good faith negotiations to resolve initial apportionment of the Compliance Penalty and cannot agree informally regarding the apportionment of the Compliance Penalty, the matter shall then be submitted to the FERC by filing a request to assign that initial apportionment of the Compliance Penalty directly to the Contributing Tariff Customer(s)/Member(s) pursuant to Section 205 of the Federal Power Act.

Once the FERC accepts or approves a Section 205 filing regarding direct assignment of a Compliance Penalty, the Contributing Tariff Customer(s)/Member(s) shall be responsible for its

portion of the Compliance Penalty as determined by the FERC's order on the Section 205 filing. A failure by the Contributing Tariff Customer(s)/Member(s) to participate in proceedings under the NERC Rules of Procedure, the FERC Rules of Practice and Procedure, or any other applicable proceedings, after notice and an opportunity to participate has been provided, will not prevent the Transmission Provider from directly assigning a Compliance Penalty associated therewith to the Contributing Tariff Customer(s)/Member(s) provided all other conditions set forth herein have been satisfied.

3. Allocation of Compliance Penalties Where Violation Cannot Be Directly Assigned

A. General

When a Compliance Penalty has been assessed to the Transmission Provider that cannot be directly assigned to one or more Tariff Customer(s) or Members, the Transmission Provider may recover the amount of the Compliance Penalty by providing notice to all Tariff Customers and/or Members that they may potentially be responsible for Compliance Penalties assessed to the Transmission Provider that cannot be directly assigned under Section 2 of this Schedule.

All or a portion of such Compliance Penalties may be allocated among all Tariff Customers and/or Members where the Transmission Provider itself is responsible for an alleged or confirmed violation of one or more Reliability Standards; or where the Transmission Provider is assessed a Compliance Penalty because of its status as: (1) a Transmission Provider or (2) a Registered Entity for a given Reliability Standard where: (a) direct assignment under Section 2 is unavailable or (b) any other Contributing Tariff Customer/Member potentially responsible for the violation cannot be assessed a penalty by NERC, a Regional Entity, or the FERC because the entity is not on the NERC Compliance Registry or subject to FERC jurisdiction.

The Transmission Provider shall notify, in writing, all of its Tariff Customer(s) and/or Member(s) of a confirmed violation as soon as possible after FERC approval, by order or by operation of law, of a Compliance Penalty assessment against the Transmission Provider that cannot be directly assigned under Section 2 of this Schedule. If there is an assessment of a Compliance Penalty against the Transmission Provider for a Confirmed Finding, the Transmission Provider may file a request under Section 205 of the Federal Power Act to assess all Tariff Customers and/or Members a portion of the Compliance Penalty pursuant to the methodology set forth in Section 4 below under the following conditions:

- (1) The Compliance Penalty is a result of the Transmission Provider's own conduct or omission;
- (2) The results of the NERC Regional Entity or FERC investigation do not identify a Contributing Tariff Customer(s)/Member(s); or
- (3) The Compliance Penalty is a result of a violation by another entity, but:
 - a. The entity is not a Registered Entity or otherwise subject to FERC jurisdiction;
 - b. The entity cannot be directly assessed a penalty by NERC, a Regional Entity, or the FERC; or
 - c. Direct assignment to that entity under Section 2 is otherwise unavailable.

To achieve financial and administrative benefits for its Tariff Customers and Members and ensure efficient, timely payment of Compliance Penalties, the Transmission Provider has enhanced authority and approval to allocate and collect the monies necessary for payment of Compliance Penalties of \$80,000 or less that cannot be directly assigned to one or more Tariff

Customer(s)/Member(s) pursuant to the criteria and restrictions set forth in Section 3.B below.

The Transmission Provider may recover the monies necessary for payment of any Compliance Penalty for which initial recovery is not available under Section 3.B in accordance with Section 3.C below.

B. Allocation and Collection of Compliance Penalties Up to \$80,000

The Transmission Provider is permitted to initially allocate and collect monies necessary for payment of any Compliance Penalty less than or equal to \$80,000 per Calendar Year that cannot be directly assigned to one or more Tariff Customer(s) or Member(s) prior to filing under Section 205 of the Federal Power Act, provided, however, that the aggregate Compliance Penalties that may be recovered in a Calendar Year prior to filing under Section 205 of the Federal Power Act may not exceed \$80,000. Specifically, in December of each Calendar Year or once Compliance Penalties assessed against the Transmission Provider reach the threshold of \$80,000 in aggregate, the Transmission Provider will file, under Section 205 of the Federal Power Act, a statement with the FERC describing how the initially recovered Compliance Penalties meet the guidelines and requirements set forth by the FERC in its order entitled *Reliability Standard Compliance and Enforcement in Regions with Regional Transmission Organizations or Independent System Operators*, 122 FERC ¶ 61,247 (2008) and requesting the Commission's approval of its initial allocation/recovery of the Compliance Penalty(ies).

C. Section 205 Filing

For Compliance Penalties that cannot be directly assigned to one or more Tariff Customer(s)/Member(s) and that exceed \$80,000, or that would result in aggregate Compliance Penalties for a Calendar Year in excess of \$80,000, the Transmission Provider must submit a

filing under Section 205 of the Federal Power Act requesting recovery of such Compliance Penalties. To the extent allowed under a settlement or an order assessing a Compliance Penalty, the Transmission Provider may combine Compliance Penalties for more than one Confirmed Finding into a single filing under Section 205 of the Federal Power Act.

4. Compliance Penalty Recovery Methodology

Compliance Penalties that are spread across Tariff Customers/Members pursuant to Section 3 of this Schedule 34 shall be recovered from Tariff Customers/Members as follows:

A. Where Identification of Operating Days is Feasible

In circumstances where it is feasible to identify the Operating Day(s) on which an alleged or confirmed violation associated with a Compliance Penalty occurred, the Transmission Provider shall allocate such Compliance Penalty on a *pro rata* basis based upon the Tariff Customer's or Member's participation under Schedule 17 of the Tariff on the Operating Day(s) of the alleged or confirmed violation. This allocation shall be computed as follows.

For the relevant days, MISO will add the aggregate, applicable billing determinants under Schedule 17; these are: (1) all MWh injected into the Transmission System by all Market Participants including deliveries to the Transmission System from generation located both within the Transmission System and outside of the Transmission System; (2) all MWh extracted from the Transmission System by all Market Participants including MWh delivered to loads located both within the Transmission System and outside of the Transmission System (including all out and through transactions using the Transmission System); and (3) all Bids or Offers for Energy that settle in the Day-Ahead Energy and Operating Reserve Markets, but do not actually inject MWh into or extract MWh from the Transmission System in the Real-Time Energy and

Operating Reserve Markets, expressed in MWh, (collectively “Aggregate Billing Determinants”). MISO will then add each Tariff Customer’s or Member’s total MWh injected into and extracted from the Transmission System pursuant to Schedule 17, and total Bids or Offers for Energy that settle in the Day-Ahead Energy and Operating Reserve Markets pursuant to Schedule 17, but do not actually inject MWh into or extract MWh from the Transmission System in the Real-Time Energy and Operating Reserve Markets, expressed in MWh, (collectively “Tariff Customer’s Billing Determinants”). Finally, MISO will divide each Tariff Customer’s Billing Determinants by the Aggregate Billing Determinants to arrive at the share of the Compliance Penalty to be borne by each Tariff Customer/Member.

The Transmission Provider shall recover the Compliance Penalty amounts in the next practicable settlement period after FERC approval, by order or by operation of law, of a Compliance Penalty assessment against the Transmission Provider that cannot be directly assigned under Section 2 of this Schedule and where recovery of the Compliance Penalty is implemented pursuant to Section 3.B above; or after receiving a FERC order accepting or approving its Compliance Penalty filing where recovery of the Compliance Penalty is implemented pursuant to Section 3.C above. When necessary, the Transmission Provider may recover Compliance Penalty amounts over more than one settlement period.

B. Where Identification of Operating Days is Infeasible

In certain circumstances, it may be infeasible to identify the Operating Day(s) on which an alleged or confirmed violation associated with a Compliance Penalty occurred. In circumstances where it is infeasible to identify the Operating Day(s) on which an alleged or confirmed violation associated with all or part of a Compliance Penalty occurred or the

Compliance Penalty resolves multiple alleged or confirmed violations, the Transmission Provider shall allocate that Compliance Penalty *pro rata* based upon the Tariff Customer's/Member's participation under Schedule 17 of the Tariff during the last calendar month in which the alleged or confirmed violation occurred. This allocation shall be computed as follows.

For the relevant month, MISO will add the aggregate, applicable billing determinants under Schedule 17; these are: (1) all MWh injected into the Transmission System by all Market Participants including deliveries to the Transmission System from generation located both within the Transmission System and outside of the Transmission System; (2) all MWh extracted from the Transmission System by all Market Participants including MWh delivered to loads located both within the Transmission System and outside of the Transmission System (including all out and through transactions using the Transmission System); and (3) all Bids or Offers for Energy that settle in the Day-Ahead Energy and Operating Reserve Markets, but do not actually inject MWh into or extract MWh from the Transmission System in the Real-Time Energy and Operating Reserve Markets, expressed in MWh, (collectively "Aggregate Billing Determinants"). MISO will then add each Tariff Customer's/Member's total MWh injected into and extracted from the Transmission System pursuant to Schedule 17, and total Bids or Offers for Energy that settle in the Day-Ahead Energy and Operating Reserve Markets pursuant to Schedule 17, but do not actually inject MWh into or extract MWh from the Transmission System in the Real-Time Energy and Operating Reserve Markets, expressed in MWh, (collectively "Tariff Customer's Billing Determinants"). Finally, MISO will divide each Tariff Customer's

Billing Determinants by the Aggregate Billing Determinants to arrive at the share of the Compliance Penalty to be borne by each Tariff Customer/Member.

The Transmission Provider shall recover the Compliance Penalty amounts in the next practicable settlement period after the month in which FERC approves, by order or by operation of law, a Compliance Penalty assessment against the Transmission Provider that cannot be directly assigned under Section 2 of this Schedule and where recovery of the Compliance Penalty is implemented pursuant to Section 3.B above; or after receiving a FERC order accepting or approving its Compliance Penalty filing where recovery of the Compliance Penalty is implemented pursuant to Section 3.C above. When necessary, the Transmission Provider may recover Compliance Penalty amounts over more than one settlement period.

5. Effective Period

Compliance Penalties that are assessed against the Transmission Provider on or after the effective date of this Section shall be recoverable as provided in Sections 2, 3, and 4 of this Schedule regardless of the date of the violation(s) for which the Compliance Penalty is assessed.