

Order 719 Compliance Filing
4th Replacement CAISO Tariff (MRTU)
April 9, 2009

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20.2 Confidential Information.

The following information provided to the CAISO shall be treated by the CAISO as confidential:

- (a) individual Bids;
- (b) CRR bids and other CRR Allocation nomination information;
- (c) transactions between Scheduling Coordinators, including Inter-SC Trades;
- (d) individual Generator Outage programs unless a Generator makes a change to its Generator Outage program which causes Congestion in the short term (i.e. one month or less), in which case, the CAISO may publish the identity of that Generator; and
- (e) The following information related to the resource adequacy program in accordance with Section 40:
 - (i) Annual and monthly Resource Adequacy Plans and Supply Plans;
 - (ii) Demand Forecasts; and
 - (iii) Information on existing import contracts.
- (f) The following information related to the Transmission Planning Process in accordance with Section 24:
 - (1) Information received under Sections 24.2.3.2 and 24.2.3.3 to the extent such information has been designated as confidential in accordance with the Business Practice Manual;
 - (2) Information, deemed confidential by DMM, per Section 8.6 of Appendix P~~the release of which may harm competitive markets, as determined by the CAISO's Department of Market Monitoring;~~
 - (3) Information received by the CAISO pursuant to agreements and contracts, executed prior to December 21, 2007, that preclude the release of the information;

- (4) Information that involves proprietary analytical tools, computer codes, or any other material that is protected by intellectual property rights held by the CAISO, Project Sponsor, Market Participant or other third-party; and
- (5) Critical Energy Infrastructure Information.

However, composite documents, data, and other information that may be developed based on confidential information under this Section shall not be deemed confidential if the composite documents, data, and other information do not disclose any confidential information of any individual Scheduling Coordinator, Market Participant, or other third-party or Critical Energy Infrastructure Information.

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20.4 Disclosure.

Notwithstanding anything in this Section 20 to the contrary,

- (a) The CAISO: (i) shall publish individual Bids, ~~provided that such data are published no sooner than six~~ within three (63) months after the Trading Day with respect to which the Bid was submitted and in a manner that does not reveal the specific resource or the name of the Scheduling Coordinator submitting the Bid, but that allows the bidding behavior of individual, unidentified resources and Scheduling Coordinators to be tracked over time; and (ii) may publish data sets analyzed in any public report issued by the CAISO or by the ~~Market Surveillance Committee~~, provided that such data sets shall be published no sooner than six (6) months after the latest Trading Day to which data in the data set apply, and in a manner that does not reveal any specific resource or the name of any Scheduling Coordinator submitting Bids included in such data sets.
- (b) If the CAISO is required by applicable laws or regulations, or in the course of administrative or judicial proceedings, to disclose information that is otherwise required to be maintained in confidence pursuant to this Section 20, the CAISO may disclose such information; provided, however, that as soon as the CAISO learns of the disclosure requirement and prior to making such disclosure, the

CAISO shall notify any affected Market Participant of the requirement and the terms thereof. The Market Participant may, at its sole discretion and own cost, direct any challenge to or defense against the disclosure requirement and the CAISO shall cooperate with such affected Market Participant to the maximum extent practicable to minimize the disclosure of the information consistent with applicable law. The CAISO shall cooperate with the affected Market Participant to obtain proprietary or confidential treatment of confidential information by the person to whom such information is disclosed prior to any such disclosure.

- (c) The CAISO may disclose confidential or commercially sensitive information, without notice to an affected Market Participant, in the following circumstances:
- (i) If the FERC, or its staff, during the course of an investigation or otherwise, requests information that is confidential or commercially sensitive. In providing the information to FERC or its staff, the CAISO shall take action consistent with 18 C.F.R. §§ 1b.20 and 388.112, and request that the information be treated as confidential and non-public by the FERC and its staff and that the information be withheld from public disclosure. The CAISO shall provide the requested information to the FERC or its staff within the time provided for in the request for information. The CAISO shall notify an affected Market Participant within a reasonable time after the CAISO is notified by FERC or its staff that a request for disclosure of, or decision to disclose, the confidential or commercially sensitive information has been received, at which time the CAISO and the affected Market Participant may respond before such information would be made public; or
 - (ii) In order to maintain reliable operation of the CAISO Balancing Authority Area, the CAISO may share critical operating information, system models, and planning data with the WECC Reliability Coordinator that has executed the Western Electricity Coordinating Council Confidentiality

- Agreement for Electric System Data, or is subject to similar confidentiality requirements; or
- (iii) In order to maintain reliable operation of the CAISO Balancing Authority Area, the CAISO may share individual Generating Unit Outage information with the operations engineering and the outage coordination division(s) of other Balancing Authorities, Participating TOs, MSS Operators and other transmission system operators engaged in the operation and maintenance of the electric supply system whose system is significantly affected by the Generating Unit and who have executed the Western Electricity Coordinating Council Confidentiality Agreement for Electric System Data.
 - (d) Notwithstanding the provisions of Section 20.2(e), information submitted through Resource Adequacy Plans and Supply Plans in accordance with Section 40 may be provided to:
 - (i) the Scheduling Coordinator(s) and/or Market Participant(s) involved in a dispute or discrepancy as to whether a resource is properly identified in a Resource Adequacy Plan or a Supply Plan only to the limited extent necessary to identify the disputed transaction and the relevant counterparty or counterparties.
 - (ii) the regulatory entity, whether the CPUC, other Local Regulatory Authority, or federal agency, with jurisdiction over a Load Serving Entity involved in a dispute or discrepancy as to whether a resource is properly identified in a Resource Adequacy Plan or the Supply Plan, or otherwise identified by the CAISO as exhibiting a potential deficiency in demonstrating compliance with resource adequacy requirements adopted by the CPUC, other Local Regulatory Authority, or federal agency, as applicable. The information provided shall be limited to the particular dispute, discrepancy, or deficiency.

- (iii) the California Energy Commission with respect to Demand Forecast information provided to the CAISO under Sections 40.2.2.3 and 40.2.3.3(b) to the extent the CAISO seeks, and the California Energy Commission grants, confidential treatment of such information pursuant to California Public Resources Code Section 25322 and related regulations.

- (e) Notwithstanding the provisions of Section 20.2(f), information submitted through the Transmission Planning Process may be disclosed as follows:
 - (i) Critical Energy Infrastructure Information may be provided to a requestor where such person is employed or designated to receive CEII by: (a) a Market Participant; (b) an electric utility regulatory agency within California; (c) an Interconnection Customer that has submitted an Interconnection Request to the CAISO under the CAISO's Large Generator Interconnection Procedure or Small Generator Interconnection Procedure (LGIP or SGIP); (d) a developer having a pending or potential proposal for development of a Generating Facility or transmission addition, upgrade or facility and that is performing studies in contemplation of filing an Interconnection Request or submitting a transmission infrastructure project through the ISO Transmission Planning Process; or (e) a not-for-profit organization representing consumer regulatory or environmental interests before Local Regulatory Authority or federal regulatory agency. To obtain Critical Energy Infrastructure Information, the requestor must submit a statement as to the need for the CEII, and must execute and return to the CAISO the form of the non-disclosure agreement and non-disclosure statement included as part of the Business Practice Manual. The CAISO may, at its sole discretion, reject a request for CEII and upon such rejection, the

requestor will be directed to utilize the FERC procedures for access to the requested CEII.

- (ii) Information that is confidential under Section 20.2(f)(i) or 20.2.(f)(ii) may be disclosed to any individual designated by a Market Participant, electric utility regulatory agency within California, or other stakeholder that signs and returns to the CAISO the form of the non-disclosure agreement, nondisclosure statement and certification that the individual is a non-Market Participant, which is any person or entity not involved in a marketing, sales, or brokering function as market, sales, or brokering are defined in FERC's Standards of Conduct for Transmission Providers (18 C.F.R. § 358 et seq.), included as part of the Business Practice Manual; provided, however, that information obtained pursuant to 20.2(f)(ii) will be provided only in composite form so that information related to individual Load Serving Entities or Scheduling Coordinators will not be disclosed; and
- (iii) Data base and other transmission planning information obtained from the WECC, or its successor, may be disclosed to individuals designated by a Market Participant, electric utility regulatory agency within California, or other stakeholder in accordance with the procedures set forth in the Business Practice Manual.

Nothing in this Section 20 shall limit the ability of the CAISO to aggregate data for public release about the adequacy of supply.

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37.1.4 FERC Authority.

In addition to any authority afforded ~~Market Monitoring Unit~~ in this Section 37, FERC shall have the authority to assess the sanctions, and otherwise to enforce the rules as set forth and described in this Section 37. FERC shall have authority to remedy a violation under this Section 37 from the date of the

violation. Nothing in this Section 37 shall be deemed to be a limitation or condition on the authority of FERC or other entities under current law or regulation.

37.1.5 Administration.

The ~~Marketing Monitoring Unit~~CAISO will administer the Rules of Conduct specified herein, except for Section 37.7, which shall be administered by FERC, and except as provided in Section 37.2.5 and Section 37.4.4. ~~Nothing in this CAISO Tariff limits or should be construed to limit the ability of components of the CAISO organization other than the Market Monitoring Unit to analyze data and refer matters to the Market Monitoring Unit for enforcement.~~

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37.8.1 Purpose; Scope.

The provisions of this Section 37.8 set forth the procedures by which the ~~Market Monitoring Unit~~CAISO will independently investigate potential violations of the Rules of Conduct and administer enforcement activities. Except as hereinafter provided, and except as provided in Section 37.2.5 and Section 37.4.4, the provisions of this section apply to the Rules of Conduct set forth in Sections 37.2 through 37.7.

37.8.2 Referrals to FERC.

Section 37.7 shall be enforced by FERC, in accordance with FERC's rules and procedures. Pursuant to Appendix P, DMM shall refer suspected violations of Section 37.7 to FERC~~The Market Monitoring Unit shall refer to FERC and its staff all matters in which it has formed a reasonable belief that a violation of Section 37.7 may have occurred.~~ Although Sections 37.2 through 37.6 will generally be enforced by the ~~Market Monitoring Unit~~CAISO, the ~~Market Monitoring Unit~~CAISO shall refer to FERC any matter for which the particular circumstances preclude the objective determination of a Rules of Conduct violation, and shall refer to FERC any Sanction that it believes should be modified in accordance with Sections 37.2.5, 37.4.4, or 37.9.1. The time limitation contained in Section 37.10.1 to assess a Sanction under this Section 37 shall be determined as of the date that a Sanction is initially assessed by the CAISO, excluding the time required for FERC to investigate a potential Rules of Conduct violation and/or determine a Sanction in accordance with this section, Sections 37.2.5, 37.4.4, or 37.9.1.

37.8.3 Investigation.

The ~~Market Monitoring Unit~~CAISO shall conduct a reasonable investigation seeking available facts, data, and other information relevant to the potential Rules of Conduct violation.

37.8.4 Notice.

The ~~Market Monitoring Unit~~CAISO shall provide notice of the investigation in sufficient detail to allow for a meaningful response to the Scheduling Coordinator and, as limited below, to all Market Participants the Scheduling Coordinator represents that are the subject(s) of the investigation. The ~~Market Monitoring Unit~~CAISO shall contact the Market Participant(s) that may be involved, so long as the CAISO has sufficient objective information to identify and verify the role of the Market Participant(s) in the potential Rules of Conduct violation. Such Market Participant(s) will likely have an existing contractual relationship with the CAISO (e.g., UDC, MSS, CAISO Metered Entity, Participating Transmission Owner, Participating Generator, or Participating Load).

37.8.5 Opportunity to Present Evidence.

The ~~Market Monitoring Unit~~CAISO shall provide an opportunity to the Market Participant(s) that are the subject(s) of the investigation to present any issues of fact or other information relevant to the potential Rules of Conduct violation being investigated. The ~~Market Monitoring Unit~~CAISO shall consider all such information or data presented.

37.8.6 Results of Investigation.

The ~~Market Monitoring Unit~~CAISO shall notify the Market Participant(s) that are the subject(s) of the investigation of the results of the investigation. The Market Participant(s) shall have thirty (30) days to respond to the findings of the ~~Market Monitoring Unit~~CAISO before the ~~Market Monitoring Unit~~CAISO makes a determination of whether a Sanction is required by this CAISO Tariff.

37.8.7 Statement of Findings and Conclusions.

Where the investigation results in a Sanction, the ~~Market Monitoring Unit~~CAISO shall state its findings and conclusions in writing, and will make such writing available to the Scheduling Coordinator and, as provided in Section 37.8.4, to the Market Participant(s) that are the subject(s) of the investigation.

37.8.8 Officer Representative.

Where an investigation results in a Sanction by the ~~Market Monitoring Unit~~CAISO, the ~~Market Monitoring Unit~~CAISO shall direct its notice of such result to a responsible representative of the Scheduling Coordinator and, as provided in Section 37.8.4, to the Market Participant(s) that are the subject(s) of the investigation at the officer level.

37.8.9 Record of Investigation.

Where an investigation results in a Sanction, the ~~Market Monitoring Unit~~CAISO 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.

37.8.10 Review of Determination.

A Market Participant that receives a Sanction may obtain immediate review of the ~~Market Monitoring Unit~~CAISO's determination by directly appealing to FERC, in accordance with FERC's rules and procedures. In such case, the applicable Scheduling Coordinator shall also dispute the Initial Settlement Statement T + 38 BD containing the financial penalty, in accordance with Section 11. The Initial Settlement Statement T + 38 BD dispute and appeal to FERC must be made in accordance with the timeline for raising disputes specified in Section 11.29.8.2. The penalty will be tolled until FERC renders its decision on the appeal. The disposition by FERC of such appeal shall be final, and no separate dispute of such Sanction may be initiated under Section 13, except as provided in Section 37.9.3.4. For the purpose of applying the time limitations set forth in Section 37.10.1, a sanction will be considered assessed when it is included on an Initial Settlement Statement T + 38 BD, whether or not the CAISO accepts a Scheduling Coordinator's dispute of such Initial Settlement Statement T + 38 BD pending resolution of an appeal to FERC in accordance with this section or Section 37.9.3.3.

* * *

38 Market Monitoring.

To comply with Commission Order No. 719, ¶ 392, Section 38 has been consolidated with, and moved to, Appendix O (for the MSC) and Appendix P (for DMM). Where a provision in Appendix O or Appendix P is cross-referenced in another section or appendix of this Tariff, the language in Appendix O or Appendix P shall govern in the event of any conflict.

38.1 — Objectives and Scope.

~~This Section 38 sets forth the framework under which the CAISO Department of Market Monitoring and CAISO Market Surveillance Committee will monitor the CAISO Markets to identify abuses of market power, to ensure to the extent possible the efficient working of the CAISO Markets immediately upon commencement of their operation, and to provide for their protection from abuses of market power in both the short term and the long term, and from other abuses that have the potential to undermine their effective functioning or overall efficiency in accordance with Section 38.1.1. Such monitoring activities will be carried out by, among other CAISO departments, the CAISO Department of Market Monitoring and the CAISO Market Surveillance Committee to be established and to operate under the terms of this CAISO Tariff, as set forth below. This Section provides a general framework for the operation of the Department of Market Monitoring and the Market Surveillance Committee and are not intended to limit the activities or remedies available to these entities or to the CAISO as a whole elsewhere in the CAISO Tariff or otherwise under law.~~

38.1.1 — Market Surveillance: Changes to Operating Rules and Procedures.

~~The CAISO shall keep the operation of the markets that it administers under review to determine whether changes in its operating rules, Business Practice Manuals, or CAISO Tariff would improve the efficiency of those markets or prevent the exercise of market power by any Market Participant; and it shall institute necessary changes in accordance with this Section 38.~~

38.1.2 — Reporting Requirements.

~~This Section 38 sets forth the information dissemination, publication and reporting activities and other means of providing information that the CAISO generally undertakes to meet its reporting requirements to regulatory agencies, Market Participants and others. The goal of the reporting provisions is to adequately inform regulatory agencies, law enforcement agencies, policymakers, Market Participants and others of the state of the CAISO Markets, especially their competitiveness and efficiency. This function is designed to facilitate efficient corrective actions to be taken by the appropriate body or bodies when required.~~

38.2 — Practices Subject to Scrutiny – General.

~~The Department of Market Monitoring shall monitor the activities of Market Participants that affect the operation of the CAISO Markets and that provide indications of the phenomena set forth below in this Section 38.2 and will monitor for violations of the market behavior rules specified in Section 37 and any FERC orders establishing market behavior rules for Market Participants. Any corrective actions taken in response to potential violations of market behavior rules shall be made consistent with Section 37 and the applicable FERC orders. Where appropriate, it will take such further action as it considers necessary under Section 38.4.~~

~~**38.2.1 Abuse of Reliability Must-Run Unit Status.**~~

~~Where Generating Units are determined by the CAISO to be Reliability Must-Run Units, circumstances that indicate that such Generating Units are being operated in a manner that will adversely affect the competitive nature and efficient workings of the CAISO Markets.~~

~~**38.2.2 CAISO and Other Market Design Flaws.**~~

~~The Department of Market Monitoring shall monitor design flaws and inefficiencies in the CAISO Tariff, Business Practices Manuals, and Operating Procedures, including the potential for problems between the CAISO and other independent power markets or exchanges insofar as they affect the CAISO Markets.~~

~~**38.2.3 Market Structure Flaws.**~~

~~With respect to flaws in the overall structure of the California Energy markets that may reveal undue concentrations of market power in Generation or other structural flaws, the Department of Market Monitoring shall provide such information or evidence of such flaws and such analysis as it may conduct to the CAISO CEO and/or to the CAISO Governing Board, subject to due protections of confidential or commercially sensitive information. After due internal consultation, if instructed by any of such CAISO institutions or persons, the Department of Market Monitoring shall also provide such information or evidence to the Market Surveillance Committee, the appropriate regulatory and antitrust enforcement agency or agencies, subject to due protections of confidential or commercially sensitive information. The Department of Market Monitoring shall, at the direction of the CAISO CEO and/or the CAISO Governing Board, or their designee, provide such other evidence, views, analyses or testimony as may be~~

~~appropriate or required and as it is reasonably capable of providing to assist the investigations of such agencies.~~

~~38.3~~ ~~Scrutiny of Market Participant Changes Potentially Affecting Market Structure.~~

~~The Department of Market Monitoring may undertake the following measures to monitor the special circumstances that may affect the operation of the CAISO Markets due to corporate reorganizations including bankruptcies or changes in Affiliate relationships and may recommend corrective actions as provided in Section 38.4.~~

~~38.3.1~~ ~~Exercises of Horizontal Market Power.~~

~~The Department of Market Monitoring may analyze the impact of changes in market structure on the ability of Market Participants to exercise short term horizontal market power.~~

~~38.4~~ ~~Response Action by CAISO.~~

~~38.4.1~~ ~~Corrective Actions.~~

~~Where the monitoring activities or any consequent investigations carried out by the Department of Market Monitoring pursuant to Section 38.2 and Appendix P.1 reveal a significant possibility of the presence of or potential for exercises of market power that would adversely affect the operation of the CAISO Markets, or other markets interconnected or interdependent on the CAISO Markets, the Department of Market Monitoring shall take the appropriate measures under this section and under Appendix P to institute the corrective action most effective and appropriate for the situation or, in the case of markets interconnected to or interdependent on the CAISO Markets, the Department of Market Monitoring may recommend corrective actions to the appropriate regulatory agencies.~~

~~38.4.2~~ ~~Further Actions.~~

~~Where the monitoring activities of or any consequent investigations carried out by the Department of Market Monitoring pursuant to Sections 38.2 and 38.3 reveal that activities or behavior of Market Participants in the CAISO Markets have the effect of, or potential for, undermining the efficiency, workability or reliability of the CAISO Markets to give or to serve such Market Participants an unfair competitive advantage over other Market Participants, the Department of Market Monitoring shall fully investigate and analyze the effect of such activities or behavior and make recommendations to the~~

~~CAISO CEO and the CAISO Governing Board for further action by the CAISO or, where necessary, by other entities. The Department of Market Monitoring may, where appropriate, make specific recommendations to the CAISO CEO and to the CAISO Governing Board for amendment to rules and protocols under its control, or for changes to the structure of the CAISO Markets, and the Department of Market Monitoring may recommend actions, including fines or suspensions, against specific entities in order to deter such activities or behavior.~~

~~38.4.3 Adverse Effects of Transition Mechanisms.~~

~~Should the monitoring and analysis conducted reveal significant adverse effects of transition mechanisms on competition in or the efficient operation of the CAISO Markets, the Department of Market Monitoring shall examine and fully assess the efficacy of all possible measures that may be taken by the CAISO, in order to prevent or to mitigate such adverse effects. The Department of Market Monitoring shall make such recommendations to the CAISO CEO and to the CAISO Governing Board as it considers appropriate for action by the CAISO and/or for referral to regulatory or law enforcement agencies. Such proposed measures may include, but shall not be limited to the following:~~

- ~~(a) the use of direct Bid caps as a mechanism to prevent or mitigate artificially high Market Clearing Prices caused by abuses of market power;~~
- ~~(b) the use of contracts for differences for eliminating the incentive for Generators to bid CAISO prices to artificially high levels enabled by the presence of market power;~~
- ~~(c) calling upon Reliability Must-Run Units to operate; and to modify Reliability Must-Run Contracts;~~
- ~~(d) Bid floors to prevent or mitigate the possible exercise of below-cost bidding or predatory pricing.~~

~~In the event that the CAISO Governing Board adopts, and where necessary obtains regulatory approval for, any measure proposed pursuant to this Section 38.4.3, the Department of Market Monitoring shall monitor the implementation and effect of such measure on the state of the CAISO Markets and shall periodically report on them to the CAISO CEO and the CAISO Governing Board.~~

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CAISO Tariff Appendix A

Master Definitions Supplement

Department of Market Monitoring (DMM)

The department of the CAISO established under Section 1 of Appendix P.4.

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Market Violation

A violation of a market behavior rule promulgated by the Commission or a violation of a provision of this Tariff other than those provisions that carry a sanction specifically enumerated under Section 37 of this Tariff.

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CAISO TARIFF APPENDIX O

CAISO Market Surveillance Committee

[NOT USED]

[Ten Sheet Numbers Reserved for Future Filings.]

1. Introduction and Purpose

P2.2.1-1.1 Establishment There shall be established a Market Surveillance Committee (MSC), whose role it shall be to provide independent external expertise on the CAISO market monitoring process and, in particular, to provide independent expert advice and recommendations to the CAISO CEO and Governing Board. ~~Members of the Committee shall not be, and shall not be understood to be, employees or agents of the CAISO.~~ [Moved from P2.2.1 of Appendix P]

2. Definitions

2.1 This section intentionally left blank.

3. Independence and Oversight

3.1 This section intentionally left blank.

4. Structure

P2.2.2-14.1 Qualifications The MSC shall comprise a body of three or more independent and recognized experts whose combined professional expertise and experience shall encompass the following: (a) — economics, with emphasis on antitrust, competition, and market power issues in the electricity industry; (b) — experience in operational aspects of Generation and transmission in electricity markets; (c) — experience in antitrust or competition law in regulated industries; and (d) financial expertise relevant to energy or other commodity trading. [Moved from P2.2.2.1 of Appendix P]

P2.2.44.2 Compensation and Reimbursements Members of the MSC shall be compensated on such basis as the CAISO Governing Board shall from time to time determine. Members of the MSC shall receive prompt reimbursement for all expenses reasonably incurred in the execution of their responsibilities under this Appendix ~~P2, Section P2.2.0.~~ [Moved from P2.2.4 of Appendix P]

4.3 Members of the ~~Committee~~ MSC shall not be, and shall not be understood to be, employees or agents of the CAISO. [Moved from P2.2.1 of Appendix P]

P2.2.34.4 Appointments to the MSC For each position on the MSC, the CAISO CEO shall conduct a thorough search and requisite due diligence to develop a nomination to the CAISO Governing Board, which nomination shall be consistent with meeting the combined professional expertise and experience of the MSC set forth in ~~Appendix P2, Section P2.2.2.1~~ Section 4.1 of this Appendix O and with the criteria for independence set forth in ~~Appendix P2, Section P2.2.2.2~~ Section 9 of this Appendix O. The CAISO Governing Board shall expeditiously consider such nominations. If the nomination is approved, the CAISO CEO shall appoint the candidate so nominated to the MSC. If the nomination is rejected, the CAISO CEO shall expeditiously proceed to develop another nomination. [Moved from P2.2.3 of Appendix P]

P2.2.54.5 Liability for Damages ~~As provided in Section 14 of the CAISO Tariff, the Department of Market Monitoring, No member of the~~ the MSC, ~~the CAISO CEO and other CAISO staff, and the CAISO~~

~~Governing Board shall not be liable to any Market Participant under any circumstances whatsoever for any matter described in these sections, including but not limited to any financial loss or loss of economic advantage resulting from the performance or non-performance by such CAISO entities of their the MSC of its functions under this CAISO Tariff. [Moved from P2.2.5 of Appendix P]~~

5. Duties of Market Monitor

~~**P2.2.6.25.1 Evaluation of Information** The MSC may, upon request of the Department of Market Monitoring DMM, the CAISO management or the CAISO Governing Board, or on its own volition initiative, evaluate such information or data, including as may be collected by the Department of Market Monitoring DMM on the basis of the evaluation criteria developed by the Department of Market Monitoring DMM or on such further articulated evaluation criteria developed by the MSC. [Moved from P2.2.6.2 of Appendix P]~~

~~**P2.2.7.15.2 Plan and Rules of Conduct Changes** The MSC may, upon request of DMM Following a recommendation of the MSC, the CAISO management of the CAISO Governing Board, or on its own initiative, recommend may make such changes as it believes are appropriate to the CAISO Tariff, any CAISO Business Practice Manual or Agreement, any CAISO agreement or any Rules of Conduct applicable in accordance with Section 22.11 of this CAISO Tariff. **P2.2.7.2 Tariff Changes** Upon recommendation of the MSC, the CAISO Governing Board shall consider and may adopt proposed CAISO Tariff changes in accordance with Section 22.11 of this CAISO Tariff. [Moved from P2.2.7.2 and P2.2.7.1 of Appendix P]~~

~~**P2.2.6.45.3 Publication of Reports and Recommendations** Upon request of the MSC, the CAISO shall publish reports and recommendations of the MSC or incorporate them, if consistent, into the CAISO's own reports or recommendations. [Moved from P2.2.6.4 of Appendix P]~~

~~**P2.2.7.35.4 Sanctions and Penalties** The MSC may on its own initiative recommend that the CAISO impose sanctions and penalties for violations of the CAISO Tariff and related protocols. Upon recommendation of the MSC, the CAISO may impose such sanctions or penalties as it believes necessary and as are permitted under the CAISO Tariff and related protocols approved by FERC; Section 37.9 or it may make any such referral to such regulatory or antitrust agency as it sees fit to recommend the imposition of sanctions and penalties. [Moved from P2.2.7.3 of Appendix P]~~

~~**P2.2.6.3.2 5.5 Additional Reports** The MSC may make such additional reports and recommendations as it sees fit relating to the monitoring program referred to in this CAISO Tariff, the analysis of information, the evaluation criteria or any corrective or enforcement actions proposed by the Department of Market Monitoring DMM or proposed on its own volition initiative. [Moved from P2.2.6.3.2 of Appendix P]~~

~~**5.6** The MSC may review in draft form, and provide pre-publication comment on, all quarterly and annual reports DMM produces pursuant to Section 5.2 of Appendix P.~~

~~**5.7** The MSC may review in draft form, and provide pre-submission comment on, all referrals to FERC pursuant to section Sections 11 and 12 of Appendix P.~~

~~**5.8** The MSC may not participate in the administration of CAISO's tariff or conduct prospective market mitigation.~~

6. Duties of the CAISO.

~~**6.1** CAISO responsibilities not expressly assigned to the MSC, DMM, or any specific individual or entity in this Appendix O remain with the CAISO.~~

7. Data Access, Collection, and Retention

P2.2.6.17.1 Information Gathering and Evaluation Criteria The MSC shall review the initial catalogs of information and data and of evaluation criteria developed by ~~the Department of Market Monitoring~~ DMM pursuant to ~~Appendix P1, Section P1.1 Sections 7.4 and 7.5 of Appendix P~~ and shall propose such changes, additions or deletions to such catalogs or items therein as it sees fit. In so doing, the MSC shall have full discretion to specify database items or evaluation criteria for inclusion in the pertinent catalog. **[Moved from P2.2.6.1 of Appendix P]**

8 Information Sharing

P2.2.6.3.18.1 Required Reports All evaluations carried out by the MSC pursuant to ~~Appendix P2, Section P2.2.6.2 Section 5.1 of this Appendix O~~, and any recommendations emanating from such evaluations, shall be embodied by the MSC in written reports to the CAISO CEO and CAISO Governing Board and shall be made publicly available subject to due restrictions on dissemination of confidential or commercially sensitive information. The MSC may submit any MSC report to FERC, subject to due restrictions on dissemination of confidential or commercially sensitive information. **[Moved from P2.2.6.3.1 of Appendix P]**

9. Ethics

9.1 Members of the MSC shall have no material affiliation with any market participant or affiliate.

9.2 Members of the MSC shall not serve as officers, employees, or partners of a market participant.

9.3 Members of the MSC shall have no material financial interest in any market participant or affiliate, with the exception of mutual funds and non-directed investments.

9.4 Members of the MSC shall not engage in any market transactions other than in the performance of their duties under the tariff.

9.5 Members of the MSC shall not be compensated, other than by CAISO, for any expert witness testimony or other commercial services in connection with any legal or regulatory proceeding or commercial transaction relating to the CAISO.

9.6 Members of the MSC shall not accept anything of value from a market participant in excess of a de minimus amount.

9.7 Members of the MSC shall advise the CAISO Governing Board in the event they seek employment with a market participant, and must disqualify themselves from participating in any matter that would have an effect on the financial interest of the market participant.

9.7.1 For the purposes of this provision, the term “seeking employment” shall have the same meaning it does in 5 CFR § 2635.603, or its successor provision.

10. CAISO-Specific Provisions

10.1 This section intentionally left blank.

11 Protocol on Referrals of Investigations to the Office of Enforcement

11.1 This section intentionally left blank.

12. Protocol on Referrals of Perceived Market Design Flaws and Recommended Tariff Changes to the Office of Energy Market Regulation

12.1 This section intentionally left blank.

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CAISO TARIFF APPENDIX P

CAISO Department of Market Monitoring ~~and Market Surveillance Committee~~

1 ~~CAISO DEPARTMENT OF MARKET MONITORING~~ Introduction and Purpose

1.1 Establishment

There shall be established within the CAISO a Department of Market Monitoring (DMM) ~~that shall be responsible for the ongoing development, implementation, and execution of the CAISO Market monitoring and information scheme described in this CAISO Tariff and the adherence to its objectives, as set forth in Section 38.~~

~~1.2~~ Composition

~~The Department of Market Monitoring shall be adequately staffed by the CAISO with full-time CAISO staff with the experience and qualifications necessary to fulfill the functions referred to in this CAISO Tariff. Such qualifications may include professional training pertinent to and experience in the operation of markets analogous to CAISO Markets, in the electric power industry, and in the field of competition and antitrust law, economics and policy. The Department of Market Monitoring shall be under the general management of the CAISO CEO, provided that the CAISO CEO may designate another CAISO officer for day-to-day oversight of the Department. [Moved to Section 4 and 4.1 of Appendix P]~~

1.2 Mission Statement

To provide independent oversight and analysis of the ISO markets for the protection of consumers and market participants by the identification and reporting of market design flaws, potential market rule violations, and market power abuses.

2 Definitions

2.1 This section intentionally left blank.

~~1.3~~ Accountability and Responsibilities Independence and Oversight

1.3.1 Department of Market Monitoring

DMM shall report to the CAISO Governing Board on all matters pertaining to the core monitoring duties specified under Section 5 of this Appendix P, and shall have direct access to the individual Governing Board Members at any time. DMM shall report to the CAISO CEO or his or her designee for administrative purposes, including matters relating to the internal administration of DMM. DMM shall advise the CAISO about DMM's independent analysis of the CAISO's markets and its independent identification of market design flaws and market power abuses. The Department of Market Monitoring shall report to and be accountable to the CAISO CEO and his or her designee on all matters pertaining to policy and other matters that may affect the effectiveness and integrity of the monitoring function, including matters pertaining to market monitoring, information development and dissemination and pertaining to generic or entity specific investigations, corrective actions or enforcement.

~~1.3.2~~ CAISO CEO and MSC

~~The CAISO CEO and the MSC shall each have the independent authority to refer any of the matters referred to in Section 1.3.1 of this Appendix to the CAISO Governing Board for approval of recommended actions.~~

~~1.3.3~~ CAISO Chief Executive Officer (CAISO CEO)

~~1.3.3.1 The Department of Market Monitoring shall report to and be accountable to the CAISO CEO and his or her designee on all matters relating to administration of the Department and the internal resources and organization of the CAISO in accordance with Appendix P, Section 1.3.3.2.~~

~~1.3.3.2 The CAISO, through the CAISO CEO and Governing Board, shall determine that the Department of Market Monitoring has adequate resources and full access to data and the full cooperation of all parts of the CAISO organization in developing the database necessary for the effective functioning of the Department of Market Monitoring and the fulfillment of its monitoring function.~~

~~1.3.4 Regulatory and Antitrust Enforcement Agencies~~ [Moved to Section 11.1.1 of Appendix P]

~~Where considered necessary and appropriate, or where so ordered by the regulatory or antitrust agency with jurisdiction over the matter in question, or by a court of competent jurisdiction, the CAISO shall refer a matter to the regulatory or antitrust enforcement agency concerned, e.g., in cases of serious abuse requiring expeditious investigation or action by the agency. In all such cases of direct referral, the CAISO CEO shall promptly inform the CAISO Governing Board and the MSC of the fact of and the content of the referral.~~

~~3.2 The CAISO may not alter any reports generated by DMM or dictate the conclusions reached by DMM. The CAISO may, however, comment upon drafts of DMM reports where such right is otherwise conferred by this Tariff.~~

~~3.3 The Director of DMM shall not be terminated without the approval of the CAISO Governing Board.~~

1.24 Composition Structure

~~4.1 The Department of Market Monitoring shall be adequately staffed by the CAISO with full-time CAISO staff with the experience and qualifications necessary to fulfill the functions referred to in this CAISO Tariff. Such qualifications may include professional training pertinent to and experience in the operation of markets analogous to CAISO Markets, in the electric power industry, and in the field of competition and antitrust law, economics and policy. The Department of Market Monitoring shall be under the general management of the CAISO CEO, provided that the CAISO CEO may designate another CAISO officer for day-to-day oversight of the Department. Subject to the oversight responsibilities as defined in this Tariff of the CAISO Governing Board and the CAISO CEO, responsibility for overseeing the conduct and operations of DMM shall be conferred upon the Director of DMM. [Moved from Section 1.2 of Appendix P]~~

~~**P1.1.74.2 Liability for Damages** As provided in Section 14 of the CAISO Tariff, Neither DMM nor any DMM employee the Department of Market Monitoring, the MSC, the CAISO CEO and other CAISO staff, and the CAISO Governing Board shall not be liable to any Market Participant under any circumstances whatsoever for any matter described in these sections, including but not limited to any financial loss or loss of economic advantage resulting from the performance or non-performance by such CAISO entities of their DMM of its functions under this CAISO Tariff. [Moved from P1 1.7 of Appendix P]~~

~~4.3 CAISO shall provide DMM access to the resources, personnel, and consulting assistance (internal and external) sufficient to enable DMM to carry out its duties independently as defined under this Appendix P. The CAISO shall ensure DMM personnel meet the general employment requirements applicable to CAISO employees.~~

5 Duties of Market Monitor

5.1 Review of Market Rules

DMM shall review existing and proposed market rules, tariff provisions, and market design elements and recommend proposed rule and tariff changes to the CAISO, the CAISO Governing Board, Commission staff, the California Public Utilities Commission, market participants, and other interested entities.

5.1.1 DMM's review shall include, but is not limited to, identification of flaws in the overall structure of the CAISO markets that may reveal undue concentrations of market power or other structural flaws
DMM's review shall include, but is not limited to, identification of flaws in the overall structure of the CAISO markets that may reveal undue concentrations of market power or other structural flaws. [Merged with a portion of Section 38.2.3]

5.1.2 DMM's responsibility to propose market design changes shall not extend to effectuating its proposed market design itself.

5.1.3 DMM must limit distribution of its identifications and recommendations to CAISO, the CAISO Governing Board, and Commission staff in the event that DMM believes broader dissemination of its identifications and recommendations could lead to exploitation of the identified market rule or design flaw. Where DMM so limits the distribution, it shall explain to Commission staff why further dissemination should be avoided.

5.1.4 Section 5.1 of this Appendix P shall not be understood to impose upon DMM the obligation to conduct an independent evaluation of every existing market rule, tariff provision, and market design element. DMM need only report on market rule, tariff, or market design elements it otherwise believes merit evaluation and scrutiny.

5.1.5 Per a request from the CAISO, or on its own initiative, DMM may provide a draft version of any report DMM prepares under Section 5.1 of this Appendix P to the CAISO. DMM may, but shall not be required to, amend its report in light of such comment.

5.1.6 Any report DMM makes under Section 5.1 of this Appendix P is advisory in nature and does not obligate the CAISO to effectuate the recommended market rule, tariff, or market design change.

5.1.7 Where the CAISO disagrees with DMM's recommendation pursuant to Section 5.1 of this Appendix P or DMM disagrees with a proposed market rule, tariff, or market design change, CAISO shall notify the Commission of such disagreement. Such notification shall be made in writing to the Commission's Director of the Office of Energy Market Regulation as part of a referral under Section 12 of this Appendix P.

5.2 Review of Market Trends and Performance

DMM shall review and report on market trends and the performance of the wholesale markets to the CAISO, the CAISO Governing Board, Commission staff, the California Public Utilities Commission, market participants, and other interested entities, on at least a quarterly basis and submit a more comprehensive annual state of the market report. Unless urgency requires otherwise, all annual and quarterly reports shall first be submitted to the MSC for review.

5.2.1 In conjunction with the annual and quarterly reports issued under Section 5.2 of this Appendix P, DMM shall hold conference calls with Commission staff, staff of the California Public Utilities Commission, market participants, and other interested entities to discuss market trends and the performance of the wholesale markets.

5.3 DMM shall identify and notify the Commission's Office of Enforcement staff of instances in which a market participant's behavior or the behavior of the CAISO itself is suspected to constitute a Market Violation.

1.3.5—Complaints5.4 DMM shall consider any information or complaint a Market Participant may make Any Market Participant, or any other interested entity, may at any time submit information to or make a

~~complaint to the Department of Market Monitoring~~ concerning any matter that it believes may be relevant to ~~DMM's the Department of Market Monitoring's~~ monitoring responsibilities. Such submissions or complaints may be made on a confidential basis in which case ~~the Department of Market Monitoring~~ DMM shall preserve the confidentiality thereof. ~~The Department of Market Monitoring~~ DMM, at its discretion, may request further information from such entity and carry out any investigation that it considers appropriate as to the concern raised. ~~The Department of Market Monitoring~~ DMM shall periodically make reports to the CAISO CEO and CAISO Governing Board on complaints received. **[Moved from Section 1.3.5 of Appendix P]**

5.5 Prohibition on Tariff Administration and Market Mitigation – DMM shall not participate in the administration of CAISO's tariff or conduct prospective market mitigation.

5.5.1 For the purposes of Section 5.5 of this Appendix P, the term "prospective market mitigation" shall have the same meaning as provided in Commission Order No. 719, ¶ 375.

5.5.2 DMM may conduct retrospective mitigation to the extent it is otherwise permitted to do so under this Tariff.

5.5.3 DMM may provide the inputs required for CAISO to conduct any prospective mitigation that is otherwise permitted under this Tariff. Such inputs may include, but are not limited to, Default Energy Bids, identification of competitive transmission constraints, and cost calculations.

6 Duties of the CAISO

6.1 CAISO responsibilities not expressly assigned to the MSC, DMM, or any specific individual or entity in this Appendix P remain with the CAISO.

7. Data Access, Collection, and Retention

7.1 The CAISO shall provide DMM access to the CAISO's databases of market information and any other market data necessary to enable DMM to carry out its duties as defined under this Appendix P.

7.2 Any data created by DMM, including, but not limited to, reconfiguring of the CAISO's data, will be kept within the exclusive control of DMM. This requires that the CAISO must ensure that DMM has control over which parties have access to the data, as well as control over the format and configuration of such data.

~~P1.1.1.17.3 Information System~~ DMM ~~The Department of Market Monitoring~~ shall be responsible for developing an information system and criteria for evaluation that will permit it to effectively monitor the CAISO Markets to identify and investigate abuses of that market, whether caused by exercises of market power or by other actions or inactions. **[Moved from Section P1.1.1.1 of Appendix P1]**

~~P1.1.1.27.4 Data Categories~~ To develop the information system set forth in Section 7.36 of this Appendix P ~~P1.1.1.1, the Department of Market Monitoring~~ DMM shall initially develop, and shall refine on the basis of experience, a detailed catalog of all the categories of data it will have the means of acquiring, and the procedures it will use (including procedures for protecting confidential data) to handle such data. **[Moved from Section P1.1.1.2 of Appendix P1]**

~~P1.1.1.37.5 Catalog of Market Monitoring Indices~~ The Department of Market Monitoring DMM shall initially develop, and shall refine on the basis of experience, a catalog of the CAISO Market monitoring indices that it will use to evaluate the data so collected. **[Moved from Section P1.1.1.3 of Appendix P1]**

~~P1.1.2.17.6 Ongoing Evaluation~~ The Department of Market Monitoring DMM shall evaluate and reevaluate on an ongoing basis the data categories and market monitoring indices that it has developed under Sections 7.4 and 7.5 of this Appendix P, ~~Sections P1.1.1.2 and P1.1.1.3~~, and the information it collects and receives from various other sources, including and in particular the CAISO's operation of the

CAISO Markets. Such ongoing evaluations shall provide the basis for its reporting and publication responsibilities as set forth in this ~~CAISO~~-Tariff, for recommendations on proposed changes to ~~the this~~ ~~CAISO~~-Tariff and CAISO Business Practice Manuals and other potential rules affecting the CAISO Markets, and for the development of criteria or standards for the initiation of proposed corrective or enforcement actions. In evaluating such information, the ~~Department of Market Monitoring~~DMM may consult the MSC or such external bodies as may be appropriate. **[Moved from Section P1.1.2.1 of Appendix P1]**

8. Information Sharing

8.1 CPUC Requests for Information or Data – DMM shall consider requests from the CPUC for specifically identified information or data concerning general market trends and the performance of the wholesale markets. DMM may deny a request when it determines, in its sole discretion, that complying with a request would be unduly burdensome. For the avoidance of doubt, this Section 8.1 of Appendix P shall not apply to subpoenas, court orders, or any other form of compulsory process issued by, or on behalf of, the CPUC.

8.1.1 DMM may agree to provide information about general market trends or performance. If DMM determines, in its sole discretion, that this information either is market sensitive or identifies an individual market participant, then the information may be shared only if the CPUC agrees in writing that the information shared will be covered under the terms of the agreement included as Attachment A to this Appendix P, or its successor agreement.

8.1.2 DMM may agree to release to the CPUC raw CAISO data, but only after the information is redacted to satisfy any concerns that DMM may have about the need to maintain confidentiality.

8.1.2.1 If DMM agrees to provide the CPUC with raw data that pertains to a specific market participant, DMM shall notify the affected market participant and give it the opportunity to contest the accuracy of the data. The affected market participant may provide to DMM a written statement providing context to the data. So long as the process of providing such a written statement does not unduly delay release of the data to the CPUC, DMM shall provide an unedited copy of such written statement to the CPUC concurrently with DMM's submission of the data to the CPUC.

8.1.2.2. If the affected market participant asserts that the data to be provided is commercially sensitive, DMM shall share such sensitive information or data only if the CPUC agrees in writing that the information shared will be covered under the terms of the agreement included as Attachment A to this Appendix P, or its successor agreement.

8.1.3 DMM shall not provide any requested information or data that is designed to aid an enforcement action by an instrumentality or political subdivision of the State of California against a specific party.

8.1.4 DMM shall not provide any requested information or data that would impinge on the Commission's confidentiality rules regarding referrals to the Commission pursuant to Sections 11 or 12 of this Appendix P.

P1.1.4.28.2 Regulatory Agencies~~As required in the CAISO Tariff or by the CAISO CEO and CAISO Governing Board, or as required by the regulatory agency with jurisdiction over the matters in question, the Department of Market Monitoring shall prepare reports to the FERC and other regulatory agencies, which shall be reviewed and approved by the CAISO CEO or his or her designee and then submitted as required.~~When publicly available reports are made to one regulatory agency with competent jurisdiction, such as the FERC, ~~the Department of Market Monitoring~~DMM may simultaneously make such reports available to other regulatory agencies with legitimate interests in their contents, such as ~~the Electricity Oversight Board~~, the California Public Utilities Commission, the California Energy Commission and/or the California Attorney General. **[Moved from Section P1.1.4.2 of Appendix P1]**

~~**P1.1.2.28.3 Submission of Evaluation Results**~~ The final results of ~~the Department of Market Monitoring~~DMM's ongoing evaluations under ~~Appendix P1, Section P1.1.2.1~~ Section 7.6 of this Appendix P shall routinely and promptly be submitted ~~to the CAISO CEO and~~ to the MSC for comment. **[Moved from Section P1.1.2.2 of Appendix P1]**

~~**P2.2.8.1 8.4 Market Monitoring Data and Indices**~~ The CAISO Department of Market Monitoring shall, pursuant to Appendix P1, Section P1.1.1, develop a catalog of data and indices. Upon approval of the CAISO CEO, ~~such~~ The catalogs of data and indices developed pursuant to Sections 7.4 and 7.5 of this Appendix P shall be duly published on the CAISO Website and disseminated to all Market Participants. **[Moved from Section P2.2.8.1 of Appendix P1]**

8.5 Collection and Dissemination of Market Participant – Specific to that Market Participant

~~**P1.1.5.18.5.1 Collection of Data**~~ The Department of Market Monitoring DMM may request that Market Participants or other entities whose activities may affect the operation of the CAISO Markets submit any information or data determined by ~~the Department of Market Monitoring~~DMM to be potentially relevant. This data will be subject to due safeguards to protect confidential and commercially sensitive data. Failures by Market Participants to provide such data shall be treated under Section 37. In the event of failures by other entities to provide such data, the CAISO may take whatever action is available to it and appropriate for it to take, including reporting the failure to the pertinent regulatory agency, after providing such entity the opportunity to respond in writing as to the reason for the alleged failure and may include possible exclusion from the CAISO Markets or termination of any relevant CAISO agreements or certifications. Before any such action is taken, the CAISO Market Participant shall be provided the opportunity to respond in writing as to the reason for the alleged failure. **[Moved from Section P1.1.5.1 of Appendix P1]**

~~**P1.1.5.28.5.2 Dissemination of Data**~~ Any Market Participant may request that the CAISO provide data, ~~including data that DMM has collected under Section 8.3.1 of this Appendix P,~~ that the CAISO has collected concerning that Market Participant; ~~and, such data may, s~~ Subject to constraints on the CAISO's resources, ~~subject to Section 7.2 of this Appendix P,~~ and at the CAISO's sole discretion, ~~such data may~~ be provided by the CAISO subject to due safeguards to protect confidential and commercially sensitive data. Where such activity imposes a significant burden or expense on the CAISO, the data may be provided on the condition that a reasonable contribution to the cost incurred by the CAISO is made to the CAISO by the requesting party. **[Moved from Section P1.1.5.2 of Appendix P1]**

8.6 Information related to the Transmission Planning Process in accordance with Section 24 the release of which DMM determines may harm competitive markets shall be deemed confidential.

9. Ethics.

9.1 DMM employees shall have no material affiliation with any market participant or affiliate.

9.2 DMM employees shall not serve as officers, employees, or partners of a market participant.

9.3 DMM employees shall have no material financial interest in any market participant or affiliate, with the exception of mutual funds and non-directed investments.

9.4 DMM employees shall not engage in any market transactions other than in the performance of their duties under the Tariff.

9.5 DMM employees shall not be compensated, other than by CAISO, for any expert witness testimony or other commercial services in connection with any legal or regulatory proceeding or commercial transaction relating to the CAISO.

9.6 DMM employees shall not accept anything of value from a market participant in excess of a de minimus amount.

9.7 DMM employees shall advise a supervisor (or in the case of the Director of DMM, the CAISO CEO) in the event they seek employment with a market participant, and must disqualify themselves from participating in any matter that would have an effect on the financial interest of the market participant.

9.7.1 For the purposes of this provision, the term “seeking employment” shall have the same meaning it does in 5 CFR § 2635.603, or its successor provision.

9.8 DMM employees shall comply with the CAISO Employee Code of Conduct, as amended from time to time.

10. CAISO-Specific Provisions.

10.1 This section intentionally left blank.

11. Protocol on Referrals of Investigations to the Office of Enforcement.

11.1 DMM shall make a non-public referral to the Commission in all instances where DMM has reason to believe that a Market Violation has occurred. DMM’s non-public referral shall provide sufficient credible information to warrant further investigation by the Commission. Once DMM has obtained sufficient credible information to warrant referral to the Commission, DMM shall immediately refer the matter to the Commission and desist from independent action related to the alleged Market Violation. DMM may, however, continue to monitor for any repeated instances of the activity by the same or other entities, which would constitute new Market Violations. DMM shall respond to requests from the Commission for any additional information in connection with the alleged Market Violation it has referred.

1.3.411.1.1 Regulatory and Antitrust Enforcement Agencies Where considered necessary and appropriate, or where so ordered by the regulatory or antitrust agency with jurisdiction over the matter in question, or by a court of competent jurisdiction, the CAISO shall refer a matter to the regulatory or antitrust enforcement agency concerned, e.g., in cases of serious abuse requiring expeditious investigation or action by the agency. The decision to make such a referral is committed to the sole discretion of DMM. In all such cases of direct referral, DMM the CAISO CEO shall promptly inform the CAISO Governing Board and, the MSC and the CAISO CEO of the fact of and the content of the referral. **[Moved from Section 1.3.4 of Appendix P]**

11.1.2 For the avoidance of doubt, the CAISO itself is subject to referral by DMM.

11.2 All referrals to the Commission of alleged Market Violations are to be in writing, whether transmitted electronically, by fax, mail, or courier. DMM may alert the Commission orally in advance of the written referral.

11.3 The referral is to be addressed to the Commission’s Director of the Office of Enforcement, with a copy also directed to both the Director of the Office of Energy Market Regulation and the General Counsel.

11.4 The referral is to include, but need not be limited to, the following information.

11.4.1 The name[s] of and, if possible, the contact information for, the entity[ies] that allegedly took the action[s] that constituted the alleged Market Violation[s];

11.4.2 The date[s] or time period during which the alleged Market Violation[s] occurred and whether the alleged wrongful conduct is ongoing;

11.4.3 The specific rule or regulation, and/or tariff provision, that was allegedly violated, or the nature of any inappropriate dispatch that may have occurred;

11.4.4 The specific act[s] or conduct that allegedly constituted the Market Violation;

11.4.5 The consequences to the market resulting from the acts or conduct, including, if known, an estimate of economic impact on the market;

11.4.6 If DMM believes that the act[s] or conduct constituted a violation of the anti-manipulation rule of Part 1c, a description of the alleged manipulative effect on market prices, market conditions, or market rules;

11.4.7 Any other information DMM believes is relevant and may be helpful to the Commission.

11.5 Following a referral to the Commission, DMM is to continue to notify and inform the Commission of any information that DMM learns of that may be related to the referral but DMM shall not undertake any investigative steps regarding the referral except at the express direction of the Commission or Commission Staff.

12 Protocol on Referrals of Perceived Market Design Flaws and Recommended Tariff Changes to the Office of Energy Market Regulation.

12.1 DMM is to make a referral to the Commission in all instances where it has reason to believe market design flaws exist that it believes could effectively be remedied by rule or tariff changes. DMM must limit distribution of its identifications and recommendations to CAISO, the CAISO Governing Board, and to the Commission in the event it believes broader dissemination could lead to exploitation of the market design flaw, with an explanation of why further dissemination should be avoided at that time.

12.2 All referrals to the Commission relating to perceived market design flaws and recommended tariff changes are to be in writing, whether transmitted electronically, by fax, mail, or courier. DMM may alert the Commission orally in advance of the written referral.

12.3 The referral should be addressed to the Commission's Director of the Office of Energy Market Regulation, with copies directed to both the Director of the Office of Enforcement and the General Counsel.

12.4 The referral is to include, but need not be limited to, the following information.

12.4.1 A detailed narrative describing the perceived market design flaw[s];

12.4.2 The consequences of the perceived market design flaw[s], including, if known, an estimate of economic impact on the market;

12.4.3 The rule or tariff change(s) that DMM believes could remedy the perceived market design flaw;

12.4.4 Any other information DMM believes is relevant and may be helpful to the Commission.

12.5 Following a referral to the Commission, DMM is to continue to notify and inform the Commission of any additional information regarding the perceived market design flaw, its effects on the market, any additional or modified observations concerning the rule or tariff changes that could remedy the perceived design flaw, any recommendations made by DMM to CAISO, stakeholders, market participants or state commissions regarding the perceived design flaw, and any actions taken by CAISO regarding the perceived design flaw.

~~CAISO TARIFF APPENDIX P1~~

~~CAISO Department of Market Monitoring~~

~~P1.1 CAISO Department of Market Monitoring~~

~~P1.1.1 Information Gathering and Market Monitoring Indices for Evaluation~~

~~P1.1.1.1 Information System [Moved to Section 7.3 of Appendix P]~~

~~The Department of Market Monitoring shall be responsible for developing an information system and criteria for evaluation that will permit it to effectively monitor the CAISO Markets to identify and investigate abuses of that market, whether caused by exercises of market power or by other actions or inactions.~~

~~P1.1.1.2 Data Categories [Moved to Section 7.4 of Appendix P]~~

~~To develop the information system set forth in Section P1.1.1.1, the Department of Market Monitoring shall initially develop, and shall refine on the basis of experience, a detailed catalog of all the categories of data it will have the means of acquiring, and the procedures it will use (including procedures for protecting confidential data) to handle such data.~~

~~P1.1.1.3 Catalog of Market Monitoring Indices [Moved to Section 7.5 of Appendix P]~~

~~The Department of Market Monitoring shall initially develop, and shall refine on the basis of experience, a catalog of the CAISO Market monitoring indices that it will use to evaluate the data so collected.~~

~~P1.1.2 Evaluation of Information~~

~~P1.1.2.1 Ongoing Evaluation [Moved to Section 7.6 of Appendix P]~~

~~The Department of Market Monitoring shall evaluate and reevaluate on an ongoing basis the data categories and market monitoring indices that it has developed under Appendix P1, Sections P1.1.1.2 and P1.1.1.3, and the information it collects and receives from various other sources, including and in particular the CAISO's operation of the CAISO Markets. Such ongoing evaluations shall provide the basis for its reporting and publication responsibilities as set forth in this CAISO Tariff, for recommendations on proposed changes to the CAISO Tariff and CAISO Business Practice Manuals and other potential rules affecting the CAISO Markets, and for the development of criteria or standards for the initiation of proposed corrective or enforcement actions. In evaluating such information, the Department of Market Monitoring may consult the MSC or such external bodies as may be appropriate.~~

~~P1.1.2.2 Submission of Evaluation Results [Moved to Section 8.3 of Appendix P]~~

~~The final results of the Department of Market Monitoring's ongoing evaluations under Appendix P1, Section P1.1.2.1 shall routinely and promptly be submitted to the CAISO CEO and to the MSC for comment.~~

~~P1.1.3 Review of Rules of Conduct~~

~~The Department of Market Monitoring shall review Rules of Conduct for their effectiveness and consistency with its market monitoring activities and standards. The Department of Market Monitoring may at that time, and from time to time thereafter based on its experience in monitoring the CAISO Markets, propose to the CAISO CEO and/or the CAISO Governing Board that changes be made in such Rules of Conduct.~~

~~P1.1.4~~ ~~Reports and Recommendations~~

~~P1.1.4.1~~ ~~CAISO CEO and Governing Board~~

~~On the basis of the evaluation conducted under Appendix P1, Section P1.1.2 or the review conducted under Section P1.1.3, the Department of Market Monitoring shall prepare periodic reports, as required by the CAISO CEO, and specific ad hoc reports as appropriate, for the CAISO CEO and CAISO Governing Board on the state of competition in or the efficiency of the CAISO Markets; and on its monitoring activities, the results of its evaluation and review activities, and its development and implementation of recommendations. Where appropriate, the CAISO Department of Market Monitoring may recommend to the CAISO CEO and/or the CAISO Governing Board actions to be taken, including the amendment of the CAISO Tariff and CAISO Business Practice Manuals and corrective or enforcement action against specific entities. Such reports shall be made not less frequently than quarterly in the case of the CAISO CEO and annually in the case of the CAISO Governing Board and shall contain such information and be in such form as specified by such entities. Such reports shall be made public and publicized as specified by such entities except to the extent that they contain confidential or commercially sensitive information or to the extent such entities determine that effective enforcement of the monitoring function dictates otherwise.~~

~~P1.1.4.2~~ ~~Regulatory Agencies~~ [Moved to Section 8.2 of Appendix P]

~~As required in the CAISO Tariff or by the CAISO CEO and CAISO Governing Board, or as required by the regulatory agency with jurisdiction over the matters in question, the Department of Market Monitoring shall prepare reports to the FERC and other regulatory agencies, which shall be reviewed and approved by the CAISO CEO or his or her designee and then submitted as required. When publicly available reports are made to one regulatory agency with competent jurisdiction, such as the FERC, the Department of Market Monitoring may simultaneously make such reports available to other regulatory agencies with legitimate interests in their contents, such as the Electricity Oversight Board, the California Public Utilities Commission, the California Energy Commission and/or the California Attorney General.~~

~~P1.1.4.3~~ ~~CAISO Market Surveillance Committee~~

~~All reports and recommendations to be made to regulatory agencies under Appendix P1, Section P1.1.4.2, unless urgency requires otherwise, shall first be submitted to the MSC for comments, which comments shall be reflected in any submittal to the CAISO Governing Board seeking approval of any such reports or recommendations. All final reports made to external regulatory agencies shall be simultaneously submitted to the MSC.~~

~~P1.1.5~~ ~~Market Participants~~

~~P1.1.5.1~~ ~~Collection of Data~~ [Moved to Section 8.5.1 of Appendix P]

~~The Department of Market Monitoring may request that Market Participants or other entities whose activities may affect the operation of the CAISO Markets submit any information or data determined by the Department of Market Monitoring to be potentially relevant. This data will be subject to due safeguards to protect confidential and commercially sensitive data. Failures by Market Participants to provide such data shall be treated under Section 37. In the event of failures by other entities to provide such data, the CAISO may take whatever action is available to it and appropriate for it to take, including reporting the failure to the pertinent regulatory agency, after providing such entity the opportunity to respond in writing as to the reason for the alleged failure and may include possible exclusion from the CAISO Markets or termination of any relevant CAISO agreements or certifications. Before any such action is taken, the CAISO Market Participant shall be provided the opportunity to respond in writing as to the reason for the alleged failure.~~

~~P1.1.5.2~~ ~~Dissemination of Data~~ [Moved to Section 8.5.2 of Appendix P]

~~Any Market Participant may request that the CAISO provide data that the CAISO has collected concerning that Market Participant; and, such data may, subject to constraints on the CAISO's resources and at the CAISO's sole discretion, be provided by the CAISO subject to due safeguards to protect confidential and commercially sensitive data. Where such activity imposes a significant burden or expense on the CAISO, the data may be provided on the condition that a reasonable contribution to the cost incurred by the CAISO is made to the CAISO by the requesting party.~~

~~P1.1.6 External Consulting Assistance and Expert Advice~~

~~In carrying out any of its responsibilities under this CAISO Tariff, including the development of an information system, market monitoring indices and evaluation criteria, and the catalogs associated therewith, and in its analysis and ongoing evaluation of these catalogs and of the Rules of Conduct, the Department of Market Monitoring may hire consulting assistance subject to the budgetary approval of the CAISO CEO and may seek such expert external advice as it believes necessary.~~

~~P1.1.7 Liability for Damages [Moved to Section 4 of Appendix P]~~

~~As provided in Section 14 of the CAISO Tariff, the Department of Market Monitoring, the MSC, the CAISO CEO and other CAISO staff, and the CAISO Governing Board shall not be liable to any Market Participant under any circumstances whatsoever for any matter described in those sections, including but not limited to any financial loss or loss of economic advantage resulting from the performance or non-performance by such CAISO entities of their functions under this CAISO Tariff.~~

~~CAISO TARIFF APPENDIX P2~~

~~Market Surveillance Committee~~

~~P2.2 Market Surveillance Committee~~

~~P2.2.1 Establishment [Moved to Section 1.1 of Appendix O]~~

~~There shall be established a Market Surveillance Committee (MSC), whose role it shall be to provide independent external expertise on the CAISO market monitoring process and, in particular, to provide independent expert advice and recommendations to the CAISO CEO and Governing Board. Members of the Committee shall not be, and shall not be understood to be, employees or agents of the CAISO.~~

~~P2.2.2 Composition~~

~~P2.2.2.1 Qualifications [Moved to Sections 4 and 4.3 of Appendix O]~~

~~The MSC shall comprise a body of three or more independent and recognized experts whose combined professional expertise and experience shall encompass the following:~~

- ~~(a) economics, with emphasis on antitrust, competition, and market power issues in the electricity industry;~~
- ~~(b) experience in operational aspects of Generation and transmission in electricity markets;~~
- ~~(c) experience in antitrust or competition law in regulated industries; and~~
- ~~(d) financial expertise relevant to energy or other commodity trading.~~

~~P2.2.2.2~~ ~~Criteria for Independence~~

~~Each member of the MSC must meet the following criteria for independence:~~

~~P2.2.2.2.1~~ ~~no material affiliation, through employment, consulting or otherwise, with any Market Participant or Affiliate thereof consistent with the pertinent FERC Standards of Conduct; and~~

~~P2.2.2.2.2~~ ~~no material financial interest in any Market Participant or Affiliate thereof consistent with the pertinent FERC Standards of Conduct.~~

~~P2.2.2.2.3~~ ~~during their time on the Committee, members may not provide paid expert witness testimony or other commercial services to the CAISO or to any other party in connection with any legal or regulatory proceeding relating to the CAISO or any trade or other transaction involving the CAISO Markets (except that the Committee may consult with and make recommendations concerning the functioning of the markets to CAISO management or the CAISO Governing Board in connection with legal or regulatory proceedings).~~

~~P2.2.3~~ ~~Appointments to the MSC~~ [Moved to Section 4.4 of Appendix O]

~~For each position on the MSC, the CAISO CEO shall conduct a thorough search and requisite due diligence to develop a nomination to the CAISO Governing Board, which nomination shall be consistent with meeting the combined professional expertise and experience of the MSC set forth in Appendix P2, Section P2.2.2.1 and with the criteria for independence set forth in Appendix P2, Section P2.2.2.2. The CAISO Governing Board shall expeditiously consider such nominations. If the nomination is approved, the CAISO CEO shall appoint the candidate so nominated to the MSC. If the nomination is rejected, the CAISO CEO shall expeditiously proceed to develop another nomination.~~

~~P2.2.4~~ ~~Compensation and Reimbursements~~ [Moved to Section 4.2 of Appendix O]

~~Members of the MSC shall be compensated on such basis as the CAISO Governing Board shall from time to time determine.~~

~~Members of the MSC shall receive prompt reimbursement for all expenses reasonably incurred in the execution of their responsibilities under this Appendix P2, Section P2.2.~~

~~P2.2.5~~ ~~Liability for Damages~~ [Moved to Section 4.5 of Appendix O]

~~As provided in Section 14 of the CAISO Tariff, the Department of Market Monitoring, the MSC, the CAISO CEO and other CAISO staff, and the CAISO Governing Board shall not be liable to any Market Participant under any circumstances whatsoever for any matter described in these sections, including but not limited to any financial loss or loss of economic advantage resulting from the performance or non-performance by such CAISO entities of their functions under this CAISO Tariff.~~

~~P2.2.6~~ ~~SPECIFIC FUNCTIONS OF MARKET SURVEILLANCE COMMITTEE (MSC)~~

~~P2.2.6.1~~ ~~Information Gathering and Evaluation Criteria~~ [Moved to Section 7.1 of Appendix O]

~~The MSC shall review the initial catalogs of information and data and of evaluation criteria developed by the Department of Market Monitoring pursuant to Appendix P1, Section P1.1 and shall propose such changes, additions or deletions to such catalogs or items therein as it sees fit. In so doing, the MSC shall have full discretion to specify database items or evaluation criteria for inclusion in the pertinent catalog.~~

~~P2.2.6.2~~ ~~Evaluation of Information~~ [Moved to Section 5.1 of Appendix O]

~~The MSC may, upon request of the Department of Market Monitoring, the CAISO management or the CAISO Governing Board, or on its own volition, evaluate such information or data, including as may be collected by the Department of Market Monitoring on the basis of the evaluation criteria developed by the Department of Market Monitoring or on such further articulated evaluation criteria developed by the MSC.~~

~~P2.2.6.3 — Reports and Recommendations~~

~~P2.2.6.3.1 — Required Reports[Moved to Section 8.1 of Appendix O]~~

~~All evaluations carried out by the MSC pursuant to Appendix P2, Section P2.2.6.2, and any recommendations emanating from such evaluations, shall be embodied by the MSC in written reports to the CAISO CEO and CAISO Governing Board and shall be made publicly available subject to due restrictions on dissemination of confidential or commercially sensitive information. The MSC may submit any MSC report to FERC, subject to due restrictions on dissemination of confidential or commercially sensitive information.~~

~~P2.2.6.3.2 — Additional Reports[Moved to Section 5.5 of Appendix O]~~

~~The MSC may make such additional reports and recommendations as it sees fit relating to the monitoring program referred to in this CAISO Tariff, the analysis of information, the evaluation criteria or any corrective or enforcement actions proposed by the Department of Market Monitoring or proposed of its own volition.~~

~~P2.2.6.4 — Publication of Reports and Recommendations [Moved to Section 5.3 of Appendix O]~~

~~Upon request of the MSC, the CAISO shall publish reports and recommendations of the MSC or incorporate them, if consistent, into the CAISO's own reports or recommendations.~~

~~P2.2.7 — IMPLEMENTATION OF RECOMMENDATIONS~~

~~P2.2.7.1 — Plan and Rules of Conduct Changes[Moved to Section 5.2 of Appendix O]~~

~~Following a recommendation of the MSC, the CAISO Governing Board may make such changes as it believes are appropriate to the CAISO Tariff, any CAISO Business Practice Manual or Agreement, or any Rules of Conduct applicable in accordance with Section 22.11 of this CAISO Tariff.~~

~~P2.2.7.2 — Tariff Changes[Moved to Section 5.2 of Appendix O]~~

~~Upon recommendation of the MSC, the CAISO Governing Board shall consider and may adopt proposed CAISO Tariff changes in accordance with Section 22.11 of this CAISO Tariff.~~

~~P2.2.7.3 — Sanctions and Penalties[Moved to Section 5.4 of Appendix O]~~

~~Upon recommendation of the MSC, the CAISO may impose such sanctions or penalties as it believes necessary and as are permitted under the CAISO Tariff and related protocols approved by FERC; Section 37.9 or it may make any such referral to such regulatory or antitrust agency as it sees fit to recommend the imposition of sanctions and penalties.~~

~~P2.2.8 — PUBLICATION OF INFORMATION~~

~~P2.2.8.1 — Market Monitoring Data and Indices[Moved to Section 8.4 of Appendix P]~~

~~The CAISO Department of Market Monitoring shall, pursuant to Appendix P1, Section P1.1.1, develop a catalog of data and indices. Upon approval of the CAISO CEO, such catalogs shall be duly published on the CAISO Website and disseminated to all Market Participants.~~

~~P2.2.8.2~~ — ~~Reports to Regulators~~

~~The CAISO shall develop annual reports of market performance for delivery to FERC, and such other reports as may be required by FERC, which shall be submitted for review to the MSC. The Department of Market Monitoring shall prepare and submit such reports to the CAISO CEO, CAISO Governing Board and to the regulatory agency concerned.~~

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