

August 31, 2018

The Honorable Kimberly D. Bose  
Secretary  
Federal Energy Regulatory Commission  
888 First Street, NE  
Washington, DC 20426

**Re: California Independent System Operator Corporation  
ER18-\_\_\_\_\_-000**

**Interim Amendment to Pro Forma Reliability Must-Run  
Agreement and Request for Waiver of 60-Day Notice Period**

Dear Secretary Bose:

The California Independent System Operator Corporation (“CAISO”) submits the accompanying tariff amendments to implement interim revisions to its *pro forma* Reliability Must-Run Agreement (“RMR Agreement”).<sup>1</sup> The CAISO is taking this interim measure to facilitate its comprehensive policy initiative to review with stakeholders its RMR and capacity payment mechanism (“CPM”) backstop authorities, which will include a substantive replacement to the existing RMR Agreement. For RMR resources subject to the interim RMR Agreement, the proposed revisions will give the CAISO authority it does not now have, to allow the CAISO to terminate the RMR Agreement at the end of a contract year and redesignate the same resource for RMR service in the following year.

The CAISO proposes that it could exercise this authority only if the Commission accepts a new *pro forma* RMR Agreement at the conclusion of the comprehensive stakeholder process that the CAISO has underway. This interim modification will allow the CAISO and its stakeholder’s sufficient time to complete the policy review, develop a replacement RMR Agreement, and implement any needed software and business process changes. Any RMR designations after the interim RMR Agreement becomes effective, would be subject to the interim termination authority and transitioned to the new replacement *pro forma* agreement if they are needed for RMR service in a subsequent contract year. The CAISO does not propose including these tariff changes by default in the substantially revised new *pro forma* RMR Agreement, unless evaluated and

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<sup>1</sup> The CAISO submits this filing under Section 205 of the Federal Power Act, 16 USC § 824d, Part 35 of the Commission’s Regulations, 18 C.F.R. §§ 35, *et seq.*, and rules 207 and 602 of the Commission’s Rules of Practice and Procedure, 18 CFR §§ 385.207 and 385.602. The capitalized terms not otherwise defined have the meanings as specified in the CAISO tariff. The *pro forma* RMR Agreement is included in the CAISO tariff as Appendix G.

accepted in the comprehensive stakeholder process underway at the CAISO.

The CAISO respectfully requests the Commission waive its prior notice requirements<sup>2</sup> to make the RMR Agreement effective as of September 1, 2018 and issue an order approving the proposed tariff revisions on or before November 1, 2018.

## I. Background

The CAISO is responsible for the reliability of the CAISO-controlled grid. The CAISO has various tools and programs to assist in ensuring grid reliability. These tools include: (i) the voluntary CPM, under which the CAISO can procure backstop capacity by compensating a unit owner under various scenarios, typically for short-term needs;<sup>3</sup> and (ii) RMR Agreements, under which the CAISO designates as resource needed for reliability, and the unit owner is obligated to enter into an RMR Agreement.

There have been significant changes in the 20 years since the *pro forma* RMR Agreement became effective. Of particular relevance here, there was no resource adequacy program or CPM tariff authority at that time. Since early this year, the CAISO has been actively engaged with its stakeholders in reviewing and considering improvements to both its RMR and CPM programs, among other things, to ensure they work in a more complementary fashion.

Because of time needed to conduct a comprehensive review and stakeholder process, the CAISO proposes very limited changes to the *pro forma* RMR Agreement now to allow for the stakeholder process to continue so that it may address the challenges facing the CAISO market in a holistic and complete manner, while taking into account the possibility that the CAISO might need to designate additional units as RMR units before the Commission finally accepts a substantively revised *pro forma* RMR Agreement. The tariff changes proposed herein would provide the CAISO with authority it does not currently have to terminate the interim version of the RMR Agreement at the end of the contract year and to redesignate the same resource for RMR service for the immediately following year once the Commission has accepted a substantive replacement for the current *pro forma* RMR Agreement.<sup>4</sup>

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<sup>2</sup> See *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139, *clarified*, 65 FERC ¶ 61,081 (1993).

<sup>3</sup> See CAISO Tariff Section 43A. If the owner submits a bid for CPM capacity, that offer is binding if the CAISO makes a CPM offer. Otherwise, a CPM offer is voluntary.

<sup>4</sup> Under the currently effective RMR Agreement, if the CAISO terminates or does not extend the term of an RMR Agreement, the CAISO may not redesignate the RMR Unit, or any other non-RMR Unit at the same facility as the RMR Unit, for a one-year period following termination or expiration of the RMR Agreement. RMR Agreement, Section 2.2(d). The only exceptions to this rule apply if: (i) the CAISO demonstrates that the Unit is required to maintain

The Commission's acceptance of these interim changes will ensure that any future RMR designations will be subject to the interim RMR Agreement<sup>5</sup> and can be redesignated under the new replacement RMR Agreement once approved. Stakeholders will be on notice while the stakeholder process is underway that they will be required to transition to the version of the *pro forma* RMR Agreement that results from the current policy initiative and that the Commission determines is just and reasonable. That objective supports the conclusion that this interim amendment is just and reasonable.

## II. Stakeholder Process

On January 2, 2018, the CAISO issued a notice announcing that it was undertaking a review of the RMR and CPM programs. Initially, the stakeholder process was divided into two phases, with Phase 1 focused on developing a must-offer obligation for RMR units, and with Phase 2 dedicated to a more comprehensive review and potential refinements striving to harmonize RMR and CPM under a cohesive procurement framework.<sup>6</sup> However, based on stakeholder comments and the Commission's guidance in an April 12, 2018, order in Docket No. ER18-641-000 that the CAISO proposes a comprehensive package of reforms,<sup>7</sup> the CAISO announced that it would consider all of the substantive issues regarding the RMR Agreement in a single process. The CAISO also announced its intention to proceed with the limited tariff amendments proposed herein as a stop gap measure to resolve the looming disconnect.

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reliability and the need to designate the Unit as an RMR Unit is caused by an extended outage of a generation or transmission facility that was not known to CAISO at the time of the termination or expiration; or (ii) the Unit is selected through an CAISO competitive process in which the Unit Owner participated.

<sup>5</sup> The CAISO recently designated the Ellwood Generating Station and one of the generating units at the Ormond Beach Generating Station as RMR Units at its Board of Governors meeting on July 26, 2018. See CAISO, Board Decision on Reliability Must-Run Designation for the Ellwood Generating Station and the Ormond Beach Generating Station (July 26, 2018), available at [http://www.caiso.com/Documents/Decision\\_ReliabilityMustRunDesignation\\_EllwoodGeneratingStation\\_OrmondBeachGeneratingStation-Motion-Jul2018.pdf](http://www.caiso.com/Documents/Decision_ReliabilityMustRunDesignation_EllwoodGeneratingStation_OrmondBeachGeneratingStation-Motion-Jul2018.pdf). These designations were made under the currently effective Tariff, and therefore the current version of the *pro forma* RMR Agreement would apply. This filing seeks to have the interim RMR Agreement proposed here to apply to designations made on or after the requested effective date of September 1, 2018, and only until FERC has accepted the replacement *pro forma* Reliability Must-Run Contract that results from the CAISO's Reliability Must-Run and Capacity Procurement Mechanism Stakeholder Process ongoing as of August 31, 2018.

<sup>6</sup> See CAISO, Review of Reliability Must Run and Capacity Procurement Mechanism: Draft Final Proposal for Phase 1 Items and Items under Consideration for Phase 2, at 3 (March 13, 2018) available at <http://www.caiso.com/Documents/DraftFinalProposal-ReviewofReliabilityMustRunandCapacityProcurementMechanism.pdf>.

<sup>7</sup> *California Independent System Operator Corp.*, 163 FERC ¶ 61,023 (2018) ("CPM Order").

The tariff amendments proposed here are the product of the stakeholder process, which provided many opportunities for comment.<sup>8</sup> Stakeholders generally supported the CAISO's proposal, with only Calpine initially objecting.<sup>9</sup> The Board approved management's proposal and authorized the CAISO to make this filing at its public meeting held on July 26, 2018.

### III. Proposed Tariff Revisions

The CAISO proposes to revise three sections of the *pro forma* RMR Agreement as discussed in this section.<sup>10</sup> The changes only address the CAISO's authority to redesignate a unit as RMR in the contract year following the termination.

First, the CAISO proposes a change in Article 2.2(b) to add a termination right by the CAISO in one limited circumstance: when the Commission has accepted a replacement *pro forma* RMR Agreement that addresses the RMR program in a holistic manner at the conclusion of its current stakeholder process. The CAISO can exercise this termination option only after the Commission has found a new *pro forma* RMR Agreement to be just and reasonable, and it would become effective only at the beginning of the next contract year.

The second substantive change is in Article 2.2(f). It would allow the CAISO to redesignate RMR units immediately following a termination. As noted above,<sup>11</sup> under the current *pro forma* RMR Agreement, the CAISO may not decline to extend the term of an RMR Agreement and redesignate the same unit for RMR service in the immediately following year absent special circumstances. This proposed change adds a circumstance under which the CAISO may redesignate an RMR unit after termination, namely after the Commission's final acceptance of any replacement *pro forma* RMR Agreement that emerges from the ongoing stakeholder process. This allows the CAISO to redesignate a resource under the interim agreement, while preserving the right to convert to a Commission-approved, revised agreement that reflects provisions arising from the comprehensive stakeholder review of RMR.

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<sup>8</sup> The CAISO issued multiple papers, provided opportunity for comment, held stakeholder conference calls, developed and published draft tariff provisions, and provided additional opportunities for comment and discussion of the draft language.

<sup>9</sup> The CAISO addressed Calpine's initial objections by making clear that the termination right added in this agreement is limited to the interim agreement. See CAISO, Board Memorandum Re: Decision on Interim Reliability Must Run Agreement (July 18, 2018), available at [http://www.caiso.com/Documents/Decision\\_InterimReliabilityMust-RunAgreement-Memo-Jul2018.pdf](http://www.caiso.com/Documents/Decision_InterimReliabilityMust-RunAgreement-Memo-Jul2018.pdf).

<sup>10</sup> This submission does not address existing RMR Agreement provisions that this tariff filing does not propose to change.

<sup>11</sup> See text accompanying fn. 4, *supra*.

The final tariff changes, in Article 2.5(a) and 19.10(a), relate to the Termination Fee and Payment of Final Invoice. The change to the Termination Fee makes clear that, if an RMR unit is terminated and redesignated under the new provisions as a result of the a Commission-accepted substantively changed *pro forma* RMR Agreement, an otherwise applicable Termination Fee would not be available, thereby avoiding an unwarranted windfall. The change to the Payment of Final Invoice would ensure that the calculations for a Long-Term Planned Outage Adjustment would be based on the assumption that all Long-Term Planned Outages under the Agreement or a successor agreement entered into as a result of a termination or redesignation under these changes occur as stated.

#### **IV. Effective Date and Request for Waiver of 60-Day Notice Period**

The CAISO respectfully requests that the Commission issue an order accepting the tariff revisions in this filing by November 1, 2018, with the revisions effective September 1, 2018. The CAISO also respectfully requests that the Commission waive the prior notice requirement to permit the requested effective date. Good cause exists to grant waiver in this instance<sup>12</sup> because it would allow the CAISO to ensure that all RMR designations made on or after September 1, 2018, will be subject to the interim agreement and ultimately to the substantive replacement *pro forma* RMR Agreement. The CAISO stakeholder process is intended to assist in the efficient functioning of the CAISO markets. The current RMR Agreement has not been significantly updated in 20 years and requires sufficient time to review and update it to ensure that the CAISO has the appropriate backstop tools to procure capacity and services needed to maintain reliability. Although the CAISO is not currently aware of any imminent RMR designations, the CAISO is approaching the annual process of reviewing resource adequacy shortfalls, which could lead to new RMR designations prior to November 1, 2018, that should be subject to this interim agreement. Because the CAISO has been engaging with stakeholders in making these interim changes, which do not otherwise affect rates, terms, and conditions, and no entity will be disadvantaged by waiver of the notice period.

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<sup>12</sup> *California Indep. Sys. Operator Corp.*, 135 FERC ¶ 61,110 at P 26 (2011) (granting waiver upon showing of good cause)

## V. Correspondence

In accordance with the Commission's regulations<sup>13</sup> the CAISO requests that all correspondence, pleadings, and other communications concerning this filing be served upon the following individuals, whose names should be placed on the official services list established by the Commission with respect to this filing:

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## VI. Service

Copies of this filing, including all attachments, have been served upon the Public Utilities Commission of the State of California, the California Energy Commission, and all parties with effective Scheduling Coordinator Agreements under the CAISO tariff. In addition, the CAISO has posted the filing and all attachments on the CAISO website.

## VI. Attachments

In addition to this transmittal letter, the following documents support the instant filing:

- |               |   |
|---------------|---|
| Attachment A: | Proposed clean version of the interim RMR Agreement as revised by this filing;    |
| Attachment B: | Red-lined document showing the proposed changes to the interim RMR Agreement; and |

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<sup>13</sup> 18 C.F.R. § 385.203(b)(3).

Attachment C: Board Memorandum and CAISO Presentation to the  
CAISO Board.

## VII. Conclusion

The CAISO respectfully requests that the Commission issue an order by November 1, 2018, accepting the tariff changes proposed in this filing to be effective September 1, 2018, and grant waiver of the 60-day notice period.

Respectfully submitted,

**By: /s/ Sidney L. Mannheim**

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*Attorneys for the California Independent System Operator Corporation*

**Attachment A – Clean Tariff**

**Interim RMR Agreement**

**California Independent System Operator Corporation**



## Appendix G

### Pro Forma Reliability Must-Run Contract

#### MUST-RUN SERVICE AGREEMENT

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#### ARTICLE 2 TERM

##### 2.1 Term

- (a) This Agreement shall become effective on the later of March 31, 2008, or the date it is permitted to become effective by FERC, and shall continue in effect for one Contract Year.
- (b) CAISO may extend the term of this Agreement for an additional calendar year as to one or more Unit by notice given not later than October 1 of the expiring Contract Year. CAISO may extend the term for less than a full calendar year as to one or more Unit but only if CAISO gives notice not less than 12 months prior to the date to which it proposes to extend the term.

##### 2.2 Termination

- (a) Subject to any necessary authorization from FERC, this Agreement may be terminated as to one or more Unit in accordance with this Section 2.2; provided, however, that if this Agreement applies to a Facility having hydroelectric Unit, this Agreement may be terminated only as to all hydroelectric Units at the Facility. If this Agreement terminates as to fewer than all Units, the Agreement shall remain in effect as to the remaining Units. If this Agreement terminates as to all Units, the Agreement shall terminate.
- (b) This Agreement may be terminated as to one or more Units:
  - (i) by CAISO pursuant to Section 11.4 in the event of default by Owner;
  - (ii) by Owner pursuant to Section 11.4 in the event of default by CAISO;
  - (iii) by Owner pursuant to Section 7.4 (f), 7.5 (i) or 7.6 (h);
  - (iv) by Owner or CAISO, if the Unit is condemned by a Governmental Authority;
  - (v) by Owner or CAISO, if Owner's authorization from a Governmental Authority (including, where applicable, licenses under Part I of the Federal Power Act) that is necessary to site, operate or obtain access to such Unit is terminated or expires or is reissued or modified so that it becomes illegal, uneconomical or otherwise impractical for the Owner to continue operating the Facility. Owner shall be obligated to use its best efforts to renew and keep effective its licenses and authorizations and to oppose conditions or modifications which would make continued operation illegal, uneconomical or otherwise impractical; or
  - (vi) by CAISO when FERC has accepted the replacement *pro forma* Reliability Must-Run Contract that results from the CAISO's Reliability Must-Run and Capacity Procurement Mechanism Stakeholder Process ongoing as of August 31, 2018; termination pursuant to this subsection (vi) shall only become effective as of the end of the current Contract Year.
- (c) To the extent that Owner transfers the right to control the dispatch of the Facility or Unit which right is necessary to satisfy its obligations under this Agreement, Owner shall assign this Agreement to the transferee in accordance with Section 13.1.
- (d) Except as provided in Section 2.2(f), if CAISO terminates the Agreement or does not

extend the term of the Agreement as to a Unit, CAISO shall not redesignate the same Unit, or designate another non-reliability must-run unit at the same Facility, as a Reliability Must-Run Unit during the one year period following termination or expiration of the Agreement as to that Unit unless (i) CAISO demonstrates that the unit is required to maintain the reliability of the CAISO Controlled Grid or any portion thereof and the need to designate the unit as a Reliability Must-Run Unit is caused by an extended outage of a generation or transmission facility not known to CAISO at the time of the termination or expiration or (ii) the unit is selected through an CAISO competitive process in which Owner participated. For purposes of the foregoing, CAISO's need for spinning reserves, nonspinning reserves, replacement reserves or regulation as defined in the CAISO Tariff shall not be grounds for redesignating the Unit or designating another unit at the Facility as a Reliability Must-Run Unit.

- (e) Subject to any necessary authorization from FERC, this Agreement shall terminate as to any Unit leased by Owner in the event that, for any reason, the lease expires or is terminated unless Owner acquires ownership of such Unit upon such expiration or termination. Any termination under this Section 2.2 (e) shall not affect any right CAISO may have thereafter to designate such Unit as a Reliability Must-Run Unit and the conditions in Section 2.2 (d) shall not apply to such redesignation.
- (f) CAISO may redesignate the same Unit or designate another non-reliability must-run unit at the same Facility immediately following a termination under Section 2.2(b)(vi).

### **2.3 Effective Date of Expiration or Termination**

If FERC authorization is required to give effect to expiration or termination of this Agreement as to one or more Units, the effective date of the expiration or termination shall be the date FERC permits the expiration or termination to become effective. Owner shall promptly file for the requisite FERC authorizations to terminate service under this Agreement as of the proposed effective date of expiration or termination; provided, that nothing in this Agreement shall prejudice the right of either Party to contest the other Party's claim that a termination or expiration has occurred. If FERC authorization is not required to terminate service under this Agreement, the effective date of expiration or termination shall be the later of (i) the date specified in CAISO or Owner's notice of termination or (ii) the date that all conditions to the termination or expiration have been satisfied.

### **2.4 Effect of Expiration or Termination**

Expiration or termination of this Agreement shall not affect the accrued rights and obligations of either Party, including either Party's obligations to make all payments to the other Party pursuant to this Agreement or post-termination audit rights under Section 12.2.

### **2.5 Termination Fee**

- (a) CAISO shall pay Owner a Termination Fee calculated pursuant to Section 2.5 (b) if the Unit is Closed within six months after the Unit ceases to be subject to this Agreement as a result of termination pursuant to Sections 2.2 (b) (ii), (iii), (iv) or (v) or because CAISO does not extend the term under Section 2.1 (b). This Termination Fee shall not apply if there is a redesignation under Section 2.2(f). Within 60 days after the Unit is Closed, Owner will send CAISO a notice stating (i) the date the Unit Closed and (ii) the amount of the Termination Fee due Owner pursuant to this Section 2.5 including detailed calculations of each component of the formula in Section 2.5(b) identifying the source of each input used. For purposes of this Section, "Closed" shall mean that the Unit is not producing Energy or providing capacity and there are no Direct Contracts obligating any entity to deliver Energy or provide capacity from the Unit during the 36 month period beginning at the date the Unit Closed. A Unit shall cease to be Closed if, during the 36 month period beginning at the date the Unit Closed, any entity: (i) sells Energy or capacity; (ii) executes a Direct Contract for service or (iii) obtains a new permit from any

Governmental Authority for operations, in each case that would involve use of the Capital Item for which a Termination Fee is being paid.

(b) The Termination Fee shall be determined using the following formula:

$$T = \text{NCI} + \text{CWIP} - S$$

Where:

T = Termination Fee (\$)

NCI = Undepreciated portion of the cost of Capital Items which constitute part of the Closed Unit which were approved in accordance with Section 7.4 or 7.6 and were in service at the date the Unit Closed with the cost and depreciation rates determined under Section 7.4 or 7.6, as applicable. In calculating NCI, the undepreciated cost of each Capital Item shall be multiplied by the Surcharge Payment Factor applicable to that Capital Item.

CWIP = The actual cost, at the date the Unit Closed, of Capital Items for the Closed Unit which were approved in accordance with Section 7.4 or 7.6, as applicable, but were not in service at the date the Unit Closed, plus the cost to pay or terminate any remaining obligations incurred in connection with installation of the Capital Items. In calculating CWIP, the cost of each Capital Item shall be multiplied by the Surcharge Payment Factor applicable to that Capital Item.

S = The salvage value, if any, of the Capital Items included in the calculation of either NCI or CWIP.

The cost for each Capital Item shall be determined by agreement or ADR pursuant to Section 7.4 or 7.6. Except for those items for which a ten-year depreciation life is specified in Section 7.4 of this Agreement, the depreciation rate for each Capital Item shall be determined by agreement or ADR in connection with the applicable Capital Item approval process under Section 7.4 or 7.6.

(c) The Termination Fee shall be payable in 36 equal monthly installments calculated using the following formula:

$$M = T \left[ \frac{r}{1 - (1 + r)^{-36}} \right]$$

Where

M = the monthly payment,

T = Termination Fee under Section 2.5(b), and

r = an annual discount rate equal to the interest rate used by FERC for the calculation of refunds (as set forth in 18 C.F.R. § 35.19a) in effect on the date that Owner provides notice to the CAISO pursuant to Section 2.5(a) of this Agreement, divided by 12.

(d) If the Unit ceases to be Closed at any time within 36 months following the date the Unit Closed, CAISO shall cease payment of Termination Fee installments as of the Month in which the Unit ceased to be Closed, but Owner shall not be obligated to refund installments for any Month in which the Unit was Closed. Once a Unit has ceased to be Closed, CAISO shall not be required to pay any remaining Termination Fee installments even if the Unit again Closes.

(e) Any dispute regarding an element of the Termination Fee (e.g. salvage value) not resolved at the time the Capital Item was approved shall be subject to ADR. If the amount of the Termination Fees associated with a single termination or expiration is \$5 million or more as billed by Owner, the Responsible Utility shall have the same rights as CAISO to receive notice that the Unit(s) Closed and to initiate or participate in ADR.

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**ARTICLE 9  
STATEMENTS AND PAYMENTS**

\* \* \* \*

**9.10 Payment of Final Invoice**

- (a) Within 7 days of receipt by Owner of the Recalculation Settlement Statement for market transactions for the effective date of termination of this Agreement, Owner shall submit an invoice ("Final Invoice") to CAISO and a copy to the Responsible Utility for all charges and other amounts then due under this Agreement. Amounts then due shall include: (i) charges for all Billable MWh and Ancillary Services provided under this Agreement and not previously invoiced; (ii) the Long-term Planned Outage Adjustment under Section 8.6. and (iii) refunds described in section 9.1(f) for Condition 2 Units. Calculation of the Long-term Planned Outage Adjustment shall be made by deeming the effective date of termination to be the end of the Contract Year, and by assuming that all Long-term Planned Outages scheduled to occur after the termination date under this Agreement or any successor agreement entered into upon a redesignation pursuant to Section 2.2(f) occur as scheduled. The Final Invoice shall not include remaining Monthly payments of a Termination Fee under Section 2.5, which shall continue to be paid monthly until the obligation is extinguished.
- (b) CAISO shall pay Owner the amount stated in the Final Invoice in accordance with Section 9.3 through 9.8.

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**Attachment B – Marked Tariff**

**Interim RMR Agreement**

**California Independent System Operator Corporation**

## Appendix G

### Pro Forma Reliability Must-Run Contract

#### MUST-RUN SERVICE AGREEMENT

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#### ARTICLE 2 TERM

##### 2.1 Term

- (a) This Agreement shall become effective on the later of March 31, 2008, or the date it is permitted to become effective by FERC, and shall continue in effect for one Contract Year.
- (b) CAISO may extend the term of this Agreement for an additional calendar year as to one or more Unit by notice given not later than October 1 of the expiring Contract Year. CAISO may extend the term for less than a full calendar year as to one or more Unit but only if CAISO gives notice not less than 12 months prior to the date to which it proposes to extend the term.

##### 2.2 Termination

- (a) Subject to any necessary authorization from FERC, this Agreement may be terminated as to one or more Unit in accordance with this Section 2.2; provided, however, that if this Agreement applies to a Facility having hydroelectric Unit, this Agreement may be terminated only as to all hydroelectric Units at the Facility. If this Agreement terminates as to fewer than all Units, the Agreement shall remain in effect as to the remaining Units. If this Agreement terminates as to all Units, the Agreement shall terminate.
- (b) This Agreement may be terminated as to one or more Units:
  - (i) by CAISO pursuant to Section 11.4 in the event of default by Owner;
  - (ii) by Owner pursuant to Section 11.4 in the event of default by CAISO;
  - (iii) by Owner pursuant to Section 7.4 (f), 7.5 (i) or 7.6 (h);
  - (iv) by Owner or CAISO, if the Unit is condemned by a Governmental Authority; ~~or~~
  - (v) by Owner or CAISO, if Owner's authorization from a Governmental Authority (including, where applicable, licenses under Part I of the Federal Power Act) that is necessary to site, operate or obtain access to such Unit is terminated or expires or is reissued or modified so that it becomes illegal, uneconomical or otherwise impractical for the Owner to continue operating the Facility. Owner shall be obligated to use its best efforts to renew and keep effective its licenses and authorizations and to oppose conditions or modifications which would make continued operation illegal, uneconomical or otherwise impractical; or
  - (vi) by CAISO when FERC has accepted the replacement *pro forma* Reliability Must-Run Contract that results from the CAISO's Reliability Must-Run and Capacity Procurement Mechanism Stakeholder Process ongoing as of August 31, 2018; termination pursuant to this subsection (vi) shall only become effective as of the end of the current Contract Year.
- (c) To the extent that Owner transfers the right to control the dispatch of the Facility or Unit which right is necessary to satisfy its obligations under this Agreement, Owner shall assign this Agreement to the transferee in accordance with Section 13.1.
- (d) Except as provided in Section 2.2(f), if CAISO terminates the Agreement or does not

extend the term of the Agreement as to a Unit, CAISO shall not redesignate the same Unit, or designate another non-reliability must-run unit at the same Facility, as a Reliability Must-Run Unit during the one year period following termination or expiration of the Agreement as to that Unit unless (i) CAISO demonstrates that the unit is required to maintain the reliability of the CAISO Controlled Grid or any portion thereof and the need to designate the unit as a Reliability Must-Run Unit is caused by an extended outage of a generation or transmission facility not known to CAISO at the time of the termination or expiration or (ii) the unit is selected through an CAISO competitive process in which Owner participated. For purposes of the foregoing, CAISO's need for spinning reserves, nonspinning reserves, replacement reserves or regulation as defined in the CAISO Tariff shall not be grounds for redesignating the Unit or designating another unit at the Facility as a Reliability Must-Run Unit.

- (e) Subject to any necessary authorization from FERC, this Agreement shall terminate as to any Unit leased by Owner in the event that, for any reason, the lease expires or is terminated unless Owner acquires ownership of such Unit upon such expiration or termination. Any termination under this Section 2.2 (e) shall not affect any right CAISO may have thereafter to designate such Unit as a Reliability Must-Run Unit and the conditions in Section 2.2 (d) shall not apply to such redesignation.

(f) CAISO may redesignate the same Unit or designate another non-reliability must-run unit at the same Facility immediately following a termination under Section 2.2(b)(vi).

### **2.3 Effective Date of Expiration or Termination**

If FERC authorization is required to give effect to expiration or termination of this Agreement as to one or more Units, the effective date of the expiration or termination shall be the date FERC permits the expiration or termination to become effective. Owner shall promptly file for the requisite FERC authorizations to terminate service under this Agreement as of the proposed effective date of expiration or termination; provided, that nothing in this Agreement shall prejudice the right of either Party to contest the other Party's claim that a termination or expiration has occurred. If FERC authorization is not required to terminate service under this Agreement, the effective date of expiration or termination shall be the later of (i) the date specified in CAISO or Owner's notice of termination or (ii) the date that all conditions to the termination or expiration have been satisfied.

### **2.4 Effect of Expiration or Termination**

Expiration or termination of this Agreement shall not affect the accrued rights and obligations of either Party, including either Party's obligations to make all payments to the other Party pursuant to this Agreement or post-termination audit rights under Section 12.2.

### **2.5 Termination Fee**

- (a) CAISO shall pay Owner a Termination Fee calculated pursuant to Section 2.5 (b) if the Unit is Closed within six months after the Unit ceases to be subject to this Agreement as a result of termination pursuant to Sections 2.2 (b) (ii), (iii), (iv) or (v) or because CAISO does not extend the term under Section 2.1 (b). This Termination Fee shall not apply if there is a redesignation under Section 2.2(f). Within 60 days after the Unit is Closed, Owner will send CAISO a notice stating (i) the date the Unit Closed and (ii) the amount of the Termination Fee due Owner pursuant to this Section 2.5 including detailed calculations of each component of the formula in Section 2.5(b) identifying the source of each input used. For purposes of this Section, "Closed" shall mean that the Unit is not producing Energy or providing capacity and there are no Direct Contracts obligating any entity to deliver Energy or provide capacity from the Unit during the 36 month period beginning at the date the Unit Closed. A Unit shall cease to be Closed if, during the 36 month period beginning at the date the Unit Closed, any entity: (i) sells Energy or capacity; (ii) executes a Direct Contract for service or (iii) obtains a new permit from any

Governmental Authority for operations, in each case that would involve use of the Capital Item for which a Termination Fee is being paid.

(b) The Termination Fee shall be determined using the following formula:

$$T = \text{NCI} + \text{CWIP} - S$$

Where:

T = Termination Fee (\$)

NCI = Undepreciated portion of the cost of Capital Items which constitute part of the Closed Unit which were approved in accordance with Section 7.4 or 7.6 and were in service at the date the Unit Closed with the cost and depreciation rates determined under Section 7.4 or 7.6, as applicable. In calculating NCI, the undepreciated cost of each Capital Item shall be multiplied by the Surcharge Payment Factor applicable to that Capital Item.

CWIP = The actual cost, at the date the Unit Closed, of Capital Items for the Closed Unit which were approved in accordance with Section 7.4 or 7.6, as applicable, but were not in service at the date the Unit Closed, plus the cost to pay or terminate any remaining obligations incurred in connection with installation of the Capital Items. In calculating CWIP, the cost of each Capital Item shall be multiplied by the Surcharge Payment Factor applicable to that Capital Item.

S = The salvage value, if any, of the Capital Items included in the calculation of either NCI or CWIP.

The cost for each Capital Item shall be determined by agreement or ADR pursuant to Section 7.4 or 7.6. Except for those items for which a ten-year depreciation life is specified in Section 7.4 of this Agreement, the depreciation rate for each Capital Item shall be determined by agreement or ADR in connection with the applicable Capital Item approval process under Section 7.4 or 7.6.

(c) The Termination Fee shall be payable in 36 equal monthly installments calculated using the following formula:

$$M = T \left[ \frac{r}{1 - (1 + r)^{-36}} \right]$$

Where

M = the monthly payment,

T = Termination Fee under Section 2.5(b), and

r = an annual discount rate equal to the interest rate used by FERC for the calculation of refunds (as set forth in 18 C.F.R. § 35.19a) in effect on the date that Owner provides notice to the CAISO pursuant to Section 2.5(a) of this Agreement, divided by 12.

(d) If the Unit ceases to be Closed at any time within 36 months following the date the Unit Closed, CAISO shall cease payment of Termination Fee installments as of the Month in which the Unit ceased to be Closed, but Owner shall not be obligated to refund installments for any Month in which the Unit was Closed. Once a Unit has ceased to be Closed, CAISO shall not be required to pay any remaining Termination Fee installments even if the Unit again Closes.

(e) Any dispute regarding an element of the Termination Fee (e.g. salvage value) not resolved at the time the Capital Item was approved shall be subject to ADR. If the amount of the Termination Fees associated with a single termination or expiration is \$5 million or more as billed by Owner, the Responsible Utility shall have the same rights as CAISO to receive notice that the Unit(s) Closed and to initiate or participate in ADR.



\* \* \* \*

**ARTICLE 9  
STATEMENTS AND PAYMENTS**

\* \* \* \*

**9.10 Payment of Final Invoice**

- (a) Within 7 days of receipt by Owner of the Recalculation Settlement Statement for market transactions for the effective date of termination of this Agreement, Owner shall submit an invoice ("Final Invoice") to CAISO and a copy to the Responsible Utility for all charges and other amounts then due under this Agreement. Amounts then due shall include: (i) charges for all Billable MWh and Ancillary Services provided under this Agreement and not previously invoiced; (ii) the Long-term Planned Outage Adjustment under Section 8.6. and (iii) refunds described in section 9.1(f) for Condition 2 Units. Calculation of the Long-term Planned Outage Adjustment shall be made by deeming the effective date of termination to be the end of the Contract Year, and by assuming that all Long-term Planned Outages scheduled to occur after the termination date under this Agreement or any successor agreement entered into upon a redesignation pursuant to Section 2.2(f) occur as scheduled. The Final Invoice shall not include remaining Monthly payments of a Termination Fee under Section 2.5, which shall continue to be paid monthly until the obligation is extinguished.
- (b) CAISO shall pay Owner the amount stated in the Final Invoice in accordance with Section 9.3 through 9.8.

\* \* \* \*

**Attachment C – Memorandum and Presentation to the CAISO Board**

**Interim RMR Agreement**

**California Independent System Operator Corporation**



# Memorandum

**To:** ISO Board of Governors

**From:** Keith Casey, Vice President, Market and Infrastructure Development

**Date:** July 18, 2018

**Re:** **Decision on Interim Reliability Must Run Agreement**

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***This memorandum requires Board action.***

## EXECUTIVE SUMMARY

Management is seeking Board approval to file a limited, interim modification to the pro forma reliability must run (RMR) agreement pending the development of a more comprehensive proposed amended RMR agreement.

Currently, the ISO is engaged in a stakeholder initiative to review both the ISO's RMR authority and its capacity procurement mechanism authority. Management has targeted the March 2019 Board meeting for consideration of an updated RMR agreement and related tariff provisions for implementation in 2020. The purpose of the limited, interim modification to the current pro forma RMR agreement is to provide the ISO with the authority to terminate the interim form of agreement and immediately redesignate RMR units under the new comprehensive pro forma RMR agreement following FERC acceptance. The ISO does not have this right under the current pro forma RMR agreement.

Management is not proposing any changes to RMR rates or any other terms or conditions at this time. The interim form of the RMR agreement will not affect any RMR agreement currently in effect and the current pro forma RMR agreement will continue to apply to any RMR designations until the interim form of the RMR agreement is accepted by FERC. Management is planning to file in August and request a FERC decision in November 2018.

Management proposes the following motion:

***Moved, that the ISO Board of Governors approves the proposal to implement the interim RMR agreement proposal described in the memorandum dated July 18, 2018; and***

***Moved, that the ISO Board of Governors authorizes Management to make all necessary and appropriate filings with the Federal Energy Regulatory Commission to implement the interim RMR agreement***

***proposal described in the memorandum dated July 18, 2018, including any filings that implement the overarching initiative policy but contain discrete revisions to incorporate Federal Energy Regulatory Commission guidance in any initial ruling on the proposed tariff amendment.***

## **POSITIONS OF THE PARTIES**

At a May 30 working group meeting, the ISO announced its intent to move quickly to amend the pro forma RMR agreement in one interim respect. On June 12, the ISO posted a draft of the revised pro forma RMR agreement. Stakeholders submitted comments on June 25. Pacific Gas and Electric and the Six Cities support the proposal and offered clarifying language. Calpine expressed opposition to the proposal and suggested the ISO could negotiate the provision as part of the RMR negotiations following a new designation. The ISO held a stakeholder call on July 10 to discuss the draft language and receive stakeholder input. Notably, in response to Calpine's comments, the ISO clarified that the proposed termination is limited to the interim form of agreement. Management is currently considering stakeholder comments as a part of the tariff stakeholder process, including clarifications that respond to Calpine's concerns.

## **CONCLUSION**

Management requests the ISO Board of Governors approve the proposed interim modification to make the interim pro forma RMR agreement to be in effect until a more comprehensive updated pro forma RMR agreement is implemented.



## Decision on Interim Reliability Must-Run Agreement

Keith Johnson

Infrastructure and Regulatory Policy Manager

Board of Governors Meeting

General Session

July 26, 2018

The ISO is in the process of making substantive enhancements to its backstop procurement authority.

- Comprehensive reforms are scheduled to go to the Board in March 2019 for implementation in 2020
- Reforms will include
  - Clarifying when reliability must run procurement (RMR) is used versus the capacity procurement mechanism (CPM)
  - Adding a must offer obligation for RMR units
  - Updating the rate of return for RMR units
  - Revising CPM pricing
- Topics are inter-related and must be dealt with holistically

## Management proposes to file a limited, interim version of the pro forma RMR agreement.

- Would provide necessary time to complete holistic review of backstop authority
- Not proposing changes to current rates, terms or conditions
- Would add authority to terminate interim agreement and immediately re-designate units under new comprehensive agreement following FERC acceptance
- Plan to file in August and request FERC decision in November 2018
  - New designations brought to the Board after November 2018 would fall under new authority

## Stakeholders generally support the proposal.

- PG&E and Six Cities support proposal
- Calpine believes proposed interim agreement is piecemeal and unnecessary
  - Management believes proposal is necessary until comprehensive reform of the RMR agreement is completed
  - Management will make clear in its filing that the additional authority proposed is limited to the interim agreement



Management recommends the Board approve filing the interim agreement.

- Proposed changes will facilitate moving to enhanced backstop provisions sooner than would otherwise be the case
- Will work with stakeholders to develop specific language for FERC filing



Board of Governors  
General Session

July 26, 2018

Decision on interim reliability must-run agreement

**Motion**

Moved, that the ISO Board of Governors approves the proposal to implement the interim RMR agreement proposal described in the memorandum dated July 18, 2018; and

Moved, that the ISO Board of Governors authorizes Management to make all necessary and appropriate filings with the Federal Energy Regulatory Commission to implement the interim RMR agreement proposal described in the memorandum dated July 18, 2018, including any filings that implement the overarching initiative policy but contain discrete revisions to incorporate Federal Energy Regulatory Commission guidance in any initial ruling on the proposed tariff amendment.

**Moved:** Olsen

**Second:** Galiteva

Board Action: <b>Passed</b>	Vote Count: <b>5-0</b>
Bhagwat	Y
Ferron	Y
Galiteva	Y
Mullin	Y
Olsen	Y

**Motion Number: 2018-07-G8**