

# Standard Procedures for Resolution of Disputes


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Approved by:


Daniel Shonkwiler

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## TABLE OF CONTENTS

<b>1.0 INTRODUCTION.....</b>	<b>1</b>
<b>2.0 BACKGROUND MATERIAL AND DEFINITIONS.....</b>	<b>1</b>
2.1 The Supplemental Procedures and AAA Rules.....	1
2.2 Rules of Precedence.....	1
2.3 Other Definitions.....	1
<b>3.0 ROLES AND RESPONSIBILITIES.....</b>	<b>2</b>
<b>4.0 DISPUTE RESOLUTION PROCEDURES: TARIFF SECTIONS AND SUPPLEMENTAL PROCEDURES.....</b>	<b>2</b>
4.1 Dispute Resolution .....	2
13. Dispute Resolution .....	2
13.1 Applicability.....	2
13.2 Negotiation And Mediation.....	3
13.3 Arbitration.....	11
13.4 Appeal Of Award.....	25
<b>5.0 CONTACTS.....</b>	<b>27</b>
<b>6.0 VERSION HISTORY.....</b>	<b>28</b>
<b>7.0 APPROVAL .....</b>	<b>29</b>

 California ISO	General Counsel	Suggested Review Date:	10/12/2025
		ID No.:	
Standard Procedures for Resolution of Disputes Procedure		Version No.:	V # 4.1

## 1.0 INTRODUCTION

Section 13 of the ISO Tariff establishes a process for resolving disputes. Section 13.3.3 requires the CAISO Alternative Dispute Resolution (ADR) Coordinator to compile standard procedures for arbitration, which is one step in the dispute resolution process. The procedures, which are referred to as “Supplemental Procedures,” are compiled in this document, together with the text of Section 13 of the Tariff. Each Supplemental Procedure appears following the corresponding provision of the Tariff. Collectively, the Tariff and the Supplemental Procedures constitute the standard procedures for resolution of disputes under Section 13.

## 2.0 BACKGROUND MATERIAL AND DEFINITIONS

### 2.1 The Supplemental Procedures and AAA Rules

The term Supplemental Procedure(s) refers to the procedures for arbitration compiled by the CAISO ADR Coordinator pursuant to Section 13.3.3 of the ISO Tariff.

The Supplemental Procedures incorporate certain rules from the American Arbitration Association’s Commercial Arbitration Rules and Mediation Procedures, as required by Section 13.3.3.

The term AAA Rules refers to the Commercial Arbitration Rules and Mediation Procedures of the American Arbitration Association, effective September 1, 2022, or as subsequently revised by the American Arbitration Association in any superseding set of rules.

### 2.2 Rules of Precedence


To the extent that there is any variance between the Tariff, the AAA Rules adopted herein and the Supplemental Procedures, the Tariff shall take precedence over the Supplemental Procedures and the AAA Rules adopted herein. The Supplemental Procedures shall take precedence over the AAA Rules adopted herein.

### 2.3 Other Definitions

The term **Tariff** or **ISO Tariff** refers to the California Independent System Operator Corporation Fifth Replacement Electronic Tariff, dated June 28, 2010, as it may be amended from time to time.

Other capitalized terms will have the meanings provided in Appendix A of the ISO Tariff (Master Definitions Supplement). For ease of reference, these other capitalized terms and their definitions from Appendix A are as follows:

**CAISO ADR Procedures** - the procedures for resolution of disputes or differences set out in Section 13 of the Tariff.

 California ISO	General Counsel	Suggested Review Date:	10/12/2025
		ID No.:	
Standard Procedures for Resolution of Disputes Procedure		Version No.:	V # 4.1

**CAISO Document(s)** - the CAISO Tariff, CAISO bylaws, and any agreement entered into between the CAISO and a Scheduling Coordinator, a Participating TO or any other Market Participant pursuant to the CAISO Tariff.

### **3.0 ROLES AND RESPONSIBILITIES**

#### **CAISO Alternative Dispute Resolution Coordinator**

The individual designated by the ISO Chief Executive Officer to perform functions assigned to the CAISO ADR Coordinator in the CAISO ADR Procedures in Section 13 .

### **4.0 DISPUTE RESOLUTION PROCEDURES: TARIFF SECTIONS AND SUPPLEMENTAL PROCEDURES**

The information presented in this section reproduces Section 13 of the ISO tariff, with supplemental procedures interspersed as applicable.

#### **4.1 Dispute Resolution**


##### **13. Dispute Resolution**

##### **13.1 Applicability**

##### **13.1.1 General Applicability**

Except as limited below or otherwise as limited by law (including the rights of any party to file a complaint with FERC under the relevant provisions of the FPA), the CAISO ADR Procedures shall apply to all disputes between parties which arise under the CAISO Documents except where the decision of the CAISO is stated in the provisions of this CAISO Tariff to be final. The CAISO ADR Procedures shall not apply to:

- (1) Disputes arising under contracts which pre-date the CAISO Operations Date, except as the disputing parties may otherwise agree;
- (2) Disputes as to whether rates and charges set forth in this CAISO Tariff are just and reasonable under the FPA.

 California ISO	General Counsel	Suggested Review Date:	10/12/2025
		ID No.:	
Standard Procedures for Resolution of Disputes Procedure		Version No.:	V # 4.1

### **13.1.2 Disputes Involving Government Agencies**

If a party to a dispute is a government agency the procedures herein that provide for the resolution of claims and arbitration of disputes are subject to any limitations imposed on the agency by law, including but not limited to the authority of the agency to effect a remedy. If the governmental agency is a federal entity, the procedures herein shall not apply to disputes involving issues arising under the United States Constitution.

### **13.1.3 Injunctive And Declaratory Relief**

Where the court having jurisdiction so determines, use of the CAISO ADR Procedures shall not be a condition precedent to a court action for injunctive relief nor shall the provisions of California Code of Civil Procedure sections 1281 et seq. apply to such court actions.


### **13.1.4 Disputes Arising Under Section 11**

In the case of a dispute of a Settlement Statement under section 11.29.8.2 or 11.29.7.4, a Scheduling Coordinator, CRR Holder, Black Start Generator or Participating TO must initiate any good faith negotiation or other dispute resolution remedy under this Section 13 within 90 days of the day on which the ISO provides notice of its resolution of a dispute under such section.

## **13.2 Negotiation And Mediation**

### **13.2.1 Negotiation**


The CAISO and Market Participants (party or parties) shall make good-faith efforts to negotiate and resolve any dispute between them arising under CAISO Documents prior to invoking the CAISO ADR Procedures outlined herein. Each party shall designate an

 California ISO	General Counsel	Suggested Review Date:	10/12/2025
		ID No.:	
Standard Procedures for Resolution of Disputes Procedure		Version No.:	V # 4.1

individual with authority to negotiate the matter in dispute to participate in such negotiations.

### **13.2.2 Statement Of Claim**

In the event a dispute is not resolved through such good-faith negotiations, any one of the parties may submit a statement of claim, in writing, to each other disputing party, and the CAISO ADR Coordinator, which submission shall commence the CAISO ADR Procedures. The statement of claim shall set forth in reasonable detail (i) each claim, (ii) the relief sought, including the proposed award, if applicable, (iii) a summary of the grounds for such relief and the basis for each claim, (iv) the parties to the dispute, and (v) the individuals having knowledge of each claim. The other parties to the dispute shall similarly submit their respective statements of claim within fourteen (14) days of the date of the initial statement of claim or such longer period as permitted by mutual agreement of the parties. If any responding party wishes to submit a counterclaim in response to the statement of claim, it shall be included in such party's responsive statement of claim. A summary of the statements of claim shall be published by the CAISO on the CAISO Website, by Market Notice, and any other method chosen by the CAISO ADR Coordinator. No Market Participant shall be considered as having received notice of a claim decided or relief granted by a decision made under these procedures unless the summary of the statements of claim published by the CAISO includes such claim or relief.

 California ISO	General Counsel	Suggested Review Date:	10/12/2025
		ID No.:	
Standard Procedures for Resolution of Disputes Procedure		Version No.:	V # 4.1

## **Supplemental Procedure 1**

### **1. Notices and Fees**

#### **1.1. Notices**

Notices required under the Tariff or these Supplemental Procedures to be sent to the CAISO ADR Coordinator shall be sent with physical and electronic copies to:

Burton Gross  
Deputy General Counsel – Legal  
California ISO  
P.O. Box 639014  
Folsom, California 95763-9014  
E-mail: Send to both [bgross@caiso.com](mailto:bgross@caiso.com) and [e-recipient@caiso.com](mailto:e-recipient@caiso.com)

For delivery service other than U.S. Mail, the shipping address is 250 Outcropping Way.


#### **1.2. Summary of Claim**

Any party submitting a statement of claim, a responsive statement of claim, or a counterclaim (any of which is hereinafter referred to as a “Claim”) should include in its submission a proposed summary of such Claim, suitable for posting on the CAISO Website, in hard copy and in electronic format. To the extent required to ensure that the summary provides adequate notice of the nature of the claims and relief sought, the ISO may request edits or, if necessary, make edits to the proposed summary. The final summary shall be posted to meet the ISO’s obligation to publish summaries of Claims as provided in Section 13.2.2 of the Tariff.

A Claim shall include the preferred contact information for the claimant.

### **AAA Rules**


The following AAA Rules are adopted as part of these Supplemental Procedures: See R-5 (Answers and Counterclaims).

 California ISO	General Counsel	Suggested Review Date:	10/12/2025
		ID No.:	
Standard Procedures for Resolution of Disputes Procedure		Version No.:	V # 4.1

### 13.2.3 Selection Of Mediator

After submission of the statements of claim, the parties may request mediation, if at least seventy-five percent (75%) of the disputing parties so agree, except that where a dispute involves three parties, at least two of the parties must agree to mediation. If the parties agree to mediate, the CAISO ADR Coordinator shall distribute to the parties by facsimile or other electronic means a list containing the names of at least seven prospective mediators with mediation experience, or with technical or business experience in the electric power industry, or both, as he or she shall deem appropriate to the dispute. The parties shall have seven days from receipt of the CAISO ADR Coordinator's list of prospective mediators to agree upon a mediator from the list provided or from any alternative source, unless the time is extended by mutual agreement. If the parties cannot agree on a mediator, any party may request from the American Arbitration Association a list of at least seven mediators with technical or business experience in the electric power industry, or both. The parties will alternate in striking names from the list with the last name on the list becoming the mediator. The first party to strike off a name from the list shall be determined by lot. The parties shall have seven days from receipt of the list from the American Arbitration Association to complete the mediator selection process and appoint the mediator, unless the time is extended by mutual agreement. The mediator shall comply with the requirements of Section 13.3.2.




 California ISO	General Counsel	Suggested Review Date:	10/12/2025
		ID No.:	
Standard Procedures for Resolution of Disputes Procedure		Version No.:	V # 4.1

#### **13.2.4 Mediation**

The mediator and representatives of the disputing parties, with authority to settle the dispute, shall within fourteen (14) days after the mediator's date of appointment schedule a date to mediate the dispute. Matters discussed during the mediation shall be confidential and shall not be referred to in any subsequent proceeding. With the consent of all disputing parties, a resolution may include referring the dispute directly to a technical body (such as a WECC technical advisory panel) for resolution or an advisory opinion, or referring the dispute directly to FERC. The CAISO shall publish notice of the referral of the dispute on the CAISO's Website, and any other method adopted by the CAISO ADR Coordinator.

#### **13.2.5 Demand For Arbitration**

If the disputing parties have not succeeded in negotiating a resolution of the dispute within thirty (30) days of the initial statement of claim or, if within that period the parties agreed to mediate, within thirty (30) days of the parties first meeting with the mediator, such parties shall be deemed to be at impasse and any such disputing party may then commence the arbitration process, unless the parties by mutual agreement agree to extend the time. A party seeking arbitration shall provide notice of its demand for arbitration to the other disputing parties, the CAISO ADR Coordinator, who shall publish notice of such demand on the CAISO Website, and any other method adopted by the CAISO ADR Coordinator.

 California ISO	General Counsel	Suggested Review Date:	10/12/2025
		ID No.:	
Standard Procedures for Resolution of Disputes Procedure		Version No.:	V # 4.1

## **Supplemental Procedure 2**

### **2. Demand for Arbitration**

#### **2.1. Form of Demand**

A demand for arbitration shall be submitted to AAA together with a copy of these Standard Procedures for Resolution of Disputes. The demand shall indicate that the arbitrator must come from AAA's "National Energy Panel." Otherwise, the demand shall comply with AAA Rule R-4 (Filing Requirements and Procedures).

#### **2.1. Notice to CAISO ADR Coordinator and Market Participants**

A complete copy of the demand submitted to AAA shall be sent to the CAISO ADR Coordinator. Within 10 calendar days after receiving the demand, the CAISO ADR Coordinator shall post notice of the demand for arbitration on the CAISO's Website.

## **Supplemental Procedure 3**


### **3. Intervention by Third Parties, Consolidation and Joinder**

This supplemental procedure concerns the possible intervention of a third party in an arbitration, and the possibility that a party or parties to one arbitration may seek to consolidate their arbitration with another arbitration that is pending under these rules or join additional parties to their arbitration.

#### **3.1. Intervention**

**3.1.1** Any person or entity whose interests may be affected by the outcome of the arbitration and who can satisfy the standard for intervention under Federal Rule of Civil Procedure 24 may seek to intervene in the proceeding. Any such petition to intervene must be received by the CAISO ADR Coordinator within fifteen (15) calendar days of publication by the ISO of the notice of the Demand for Arbitration and a copy must be served on each participant in the arbitration. A list of participants shall be available on the ADR page of the CAISO Website.

**3.1.2** The petition to intervene shall set forth the grounds of the proposed intervention, the position and interest of the petitioner in the proceeding,

 California ISO	General Counsel	Suggested Review Date:	10/12/2025
		ID No.:	
Standard Procedures for Resolution of Disputes Procedure		Version No.:	V # 4.1

and whether the petitioner supports or opposes the relief sought in each Claim.


- 3.1.3** Any participant in the arbitration may send the CAISO ADR Coordinator an objection to a petition to intervene within fifteen (15) calendar days after receiving the petition. If there are no objections to the intervention, the case will move forward with all intervening parties joined through stipulation and sharing in the costs of the arbitration in an amount to be determined by the arbitrator(s).

### **3.2. Consolidation**

- 3.2.1** Two or more arbitrations under these CAISO rules may be consolidated if all parties to all of the arbitrations to be consolidated so agree.
- 3.2.2** Unless all parties agree to consolidation, the party requesting consolidation of two or more arbitrations must submit to the CAISO ADR Coordinator and serve on all other parties to both arbitrations a written request for consolidation with the supporting reasons for such request before an arbitrator is appointed for the later-filed case that is part of the consolidation request. Such time limit may be extended by the arbitrator appointed in the first-filed case upon a showing of good cause for the late request.
- 3.2.3** The other parties to the arbitrations shall provide their written responses to the consolidation request within 15 calendar days after the CAISO ADR Coordinator sends the motion to consolidate.

### **3.3. Joinder**

- 3.3.1** Additional parties may be joined to an arbitration if all parties to the arbitration and the parties proposed to be joined so agree.
- 3.3.2** Absent such consent or a showing of good cause, a request for joinder that satisfies the standard for joinder under Federal Rules of Civil Procedure 19 or 20 must be submitted to the CAISO ADR Coordinator prior to the appointment of an arbitrator.
- 3.3.3** The party requesting the joinder of one or more parties to a pending arbitration must send to the CAISO ADR Coordinator a written request that provides the names and contact information for such parties; the names and contact information for the parties' representatives, if known; and the supporting reasons for such request, including the basis for


 California ISO	General Counsel	Suggested Review Date:	10/12/2025
		ID No.:	
Standard Procedures for Resolution of Disputes Procedure		Version No.:	V # 4.1

compelling the proposed party to arbitrate under these rules. The requesting party must provide a copy of the joinder request to all parties in the arbitration and all parties it seeks to join at the same time it submits the request to the CAISO ADR Coordinator.

- 3.3.4** The other parties to the arbitration and the parties sought to be joined shall provide their written responses to the joinder request within 15 calendar days after the CAISO ADR Coordinator sends them the request for joinder.

### **3.4. Process for Contested Intervention, Consolidation or Joinder**

- 3.4.1** If any party or proposed party objects to a motion for intervention, consolidation or joinder, and an arbitrator who could rule on the issues has been appointed, that arbitrator shall rule on the motion. If an arbitrator who could rule on the motion has not been appointed, the CAISO ADR Coordinator will forward the objection to AAA and, after payment of any filing fee(s), AAA will designate one arbitrator from its National Energy Panel to consider the petitions and the objections thereto.
- 3.4.2** The designated arbitrator shall complete the disclosure process required by Section 13.3.2 of the Tariff and parties shall have five business days to submit an objection to the designated arbitrator to AAA. If any party submits a timely objection to the use of the arbitrator, AAA shall proceed under Supplemental Procedure 6. If no party submits an objection within five business days, or if a party or parties do submit such objections but AAA determines that the arbitrator should not be disqualified, the arbitrator shall be appointed for the purpose of considering the petitions and objections, and shall be sent all petitions, objections and copies of other relevant documents.
- 3.4.3** The arbitrator shall have thirty (30) calendar days from his or her appointment to consider the documents submitted and issue a decision in writing.
- 3.4.4** The arbitrator may upon a showing that the standards of these rules are satisfied and good cause grant the petition(s) for intervention, consolidation or joinder, provided that the issues in the arbitration will not be unduly broadened or the arbitration unduly extended. At the sole discretion of the arbitrator, the arbitrator may request additional

 California ISO	General Counsel	Suggested Review Date:	10/12/2025
		ID No.:	
Standard Procedures for Resolution of Disputes Procedure		Version No.:	V # 4.1

information from any party or proposed party.

### **3.5. Fees for Contested Intervention, Consolidation or Joinder**

If the request for intervention, consolidation or joinder is challenged by a party to the dispute, the following allocation rule shall apply with respect to the costs of deciding a contested petition to intervene:

- Each party challenging an intervention and each challenged intervenor shall pay its pro rata share of all fees and costs assessed by AAA in association with deciding the request to intervene.
- If the arbitrator finds that an intervention request or challenge thereto was made in bad faith or for purposes of delay, the arbitrator shall have discretion to assess all of the fees and costs related to the intervention arbitration to the non-prevailing party.
- After an intervention request has been granted, the intervenor shall file a statement of claim. If the statement of claim seeks separate monetary relief, the intervenor shall pay any additional filing fee assessed by AAA as a result.

## **13.3 Arbitration.**

### **Supplemental Procedure 4**


#### **4. Fees**

##### **4.1. In General**

Fees shall be as published in the applicable fee schedule to the AAA Rules. The filing fee shall be paid to AAA initially by the party filing a claim or counterclaim.

##### **4.2. Arbitrator Compensation**

Compensation per hour for the arbitrator(s), and any other arbitration costs other than the initial filing fee, will be initially split pro rata by all of the parties (including intervenors), with the hourly rate of compensation based upon the rate charged by the arbitrator selected.

 California ISO	General Counsel	Suggested Review Date:	10/12/2025
		ID No.:	
Standard Procedures for Resolution of Disputes Procedure		Version No.:	V # 4.1

#### **4.3. Allocation of Costs**

The Arbitrator(s) will allocate the arbitration costs in the award with each side on an arbitrated issue bearing its pro-rata share of such costs, unless otherwise determined by the arbitrator pursuant to Section 13.3.14 of the Tariff.

#### **4.4. Intervention Cross-Reference**

The provisions of this Supplemental Procedure 4 about arbitration costs do not cover contested requests to intervene, join or consolidate, which are separately addressed in Supplemental Procedure 3, or objections to the continuing use of an arbitrator, which are separately addressed in Supplemental Procedure 6.

#### **AAA Rules**


The following AAA Rules are adopted as part of these Supplemental Procedures:

R-55 (Administrative Fees), R-57 (Neutral Arbitrator's Compensation), R-58 (Deposits) and R-59 (Remedies for Nonpayment).

### **13.3.1 Selection of Arbitrator.**

#### **13.3.1.1 Disputes Under \$1,000,000**

Where the total amount of claims and counterclaims in controversy is less than \$1,000,000 (exclusive of costs and interest), the disputing parties shall select an arbitrator from a list containing the names of at least ten (10) qualified individuals supplied by the American Arbitration Association within fourteen (14) days following submission of the demand for arbitration. If the parties cannot agree upon an arbitrator within [the] stated time, they shall take turns striking names from the list of proposed arbitrators. The first

 California ISO	General Counsel	Suggested Review Date:	10/12/2025
		ID No.:	
Standard Procedures for Resolution of Disputes Procedure		Version No.:	V # 4.1

party to strike-off a name shall be determined by lot. This process shall be repeated until one name remains on the list, and that individual shall be the designated arbitrator.


### **13.3.1.2 Disputes of \$1,000,000 or Over**

Where the total amount of claims and counterclaims in controversy is \$1,000,000 or more (exclusive of interest and costs), the disputing parties may agree on any person to serve as a single arbitrator, or shall endeavor in good faith to agree on a single arbitrator from a list of ten (10) qualified individuals provided by the American Arbitration Association within fourteen (14) days following submission of the demand for arbitration. If the parties are unable to agree on a single arbitrator within the stated time, the party or parties demanding arbitration, and the party or parties responding to the demand for arbitration, shall each designate an arbitrator. Each designation shall be from the list of arbitrators no later than the tenth (10th) day thereafter. The two arbitrators so chosen shall then choose a third arbitrator.

## **Supplemental Procedure 5**

### **5. Arbitrators from AAA National Energy Panel**

Unless the parties agree otherwise in writing, a person is qualified to serve as an arbitrator only if he or she is a member of AAA's National Energy Panel and has substantial experience with legal issues related to electric transmission or wholesale markets for electricity.

 California ISO	General Counsel	Suggested Review Date:	10/12/2025
		ID No.:	
Standard Procedures for Resolution of Disputes Procedure		Version No.:	V # 4.1

### **13.3.2 Disclosures Required Of Arbitrators**


The designated arbitrator(s) shall be required to disclose to the parties any circumstances which might preclude him or her from rendering an objective and impartial determination.

Each designated arbitrator shall disclose:

- (a) Any direct financial or personal interest in the outcome of the arbitration;
- (b) Any information required to be disclosed by California Code of Civil Procedure Section 1281.9.; and
- (c) Any existing or past financial, business, professional, or personal interest that are likely to affect impartiality or might reasonably create an appearance of partiality or bias.

The designated arbitrator shall disclose any such relationships that he or she personally has with any party or its counsel, or with any individual whom he or she has been told will be a witness. Designated arbitrators should also disclose any such relationship involving members of their families or their current employers, partners, or business associates. All designated arbitrators shall make a reasonable effort to inform themselves of any interests or relationships described above. The obligation to disclose interests, relationships, or circumstances that might preclude an arbitrator from rendering an objective and impartial determination is a continuing duty that requires the arbitrator to disclose, at any stage of the arbitration, any such interests, relationships, or circumstances that arise, or are recalled or discovered. If, as a result of the continuing disclosure duty, an arbitrator makes a disclosure which is likely to affect his or her impartiality, or might reasonably create an appearance of partiality or bias or if party



 California ISO	General Counsel	Suggested Review Date:	10/12/2025
		ID No.:	
Standard Procedures for Resolution of Disputes Procedure		Version No.:	V # 4.1

independently discovers the existence of such circumstances, a party wishing to object to the continuing use of the arbitrator must provide written notice of its objection to the other parties within ten (10) days of receipt of the arbitrator's disclosure or the date of a party's discovery of the circumstances giving rise to that party's objection. Failure to provide such notice shall be deemed a waiver of such objection. If a party timely provides a notice of objection to the continuing use of the arbitrator the parties shall attempt to agree whether the arbitrator should be dismissed and replaced in the manner described in Section 13.3.1. If within ten (10) days of a party's objection notice the parties have not agreed how to proceed, the matter shall be referred to the American Arbitration Association for resolution.

### **Supplemental Procedure 6**

#### **6. Procedures Following Objection to Continuing Use of Arbitrator**

##### **6.1. Decision by AAA**


If a party provides timely notice of objection to the continuing use of the arbitrator, and the parties cannot agree how to proceed, AAA shall resolve the matter in accordance with AAA Rule R-19 (Disqualification of Arbitrator).

##### **6.2. Allocation of Costs**

Each party challenging the continuing use of an arbitrator shall pay a pro rata share of all fees and costs assessed by AAA in association with deciding whether to disqualify the arbitrator.

##### **6.3. Procedure Following Vacancy**

In the event of a vacancy due to disqualification or for any other reason, the matter shall proceed consistent with AAA Rule R-21 (Vacancies), except that any selection of an arbitrator shall be in accordance with the ISO Tariff and these Supplemental

 California ISO	General Counsel	Suggested Review Date:	10/12/2025
		ID No.:	
Standard Procedures for Resolution of Disputes Procedure		Version No.:	V # 4.1

Procedures.

### **13.3.3 Arbitration Procedures**

The CAISO ADR Coordinator shall compile and make available to the arbitrator and the parties standard procedures for the arbitration of disputes, which procedures (i) shall include provision, upon good cause shown, for intervention or other participation in the proceeding by any party whose interests may be affected by its outcome, (ii) shall conform to the requirements specified herein, and (iii) may be modified or adopted for use in a particular proceeding as the arbitrator deems appropriate, in accordance with Section 13.3.4. The procedures adopted by the CAISO ADR Coordinator shall be based on the latest edition of the American Arbitration Association Commercial Arbitration Rules, to the extent such rules are not inconsistent with this Section 13. Except as provided herein, all parties shall be bound by such procedures.

#### **Supplemental Procedure 7**

##### **7. Preliminary Administrative Conference**


The arbitrator(s) should conduct a preliminary administrative conference and set hearing dates and other deadlines consistent with Section 13.3.10 of the ISO Tariff. See also AAA Rule R-22.

##### **AAA Rules**

The following AAA Rules are adopted as part of these Supplemental Procedures:

R-5 (Answers and Counterclaims)


R-6 (Changes of Claim)

 California ISO	General Counsel	Suggested Review Date:	10/12/2025
		ID No.:	
Standard Procedures for Resolution of Disputes Procedure		Version No.:	V # 4.1

R-7 (Jurisdiction)  
 R-9 (Interpretation of Rules)  
 R-12 (Fixing the Locale)  
 R-20 (Communication with Arbitrator)  
 R-22 (Preliminary Hearing)  
 R-23 (Pre-Hearing Exchange and Production of Information), to the extent consistent with Section 13.3.7 of the ISO Tariff  
 R-24 (Enforcement Powers of Arbitrator)  
 R-25 (Date, Time, Place and Method of Hearing)  
 R-26 (Attendance at Hearings)  
 R-27 (Representation)  
 R-28 (Oaths)  
 R-29 (Official Record of Proceedings)  
 R-30 (Interpreters)  
 R-31 (Postponements)  
 R-32 (Arbitration in the Absence of a Party or Representative)  
 R-33 (Conduct of Proceedings), except that the parties shall use pre-filed direct testimony in the style of FERC proceedings unless they agree to proceed otherwise  
 R-35 (Evidence)  
 R-36 (Evidence by Written Statements and Post-Hearing Filing of Documents or Other Evidence)  
 R-37 (Inspection or Investigation)  
 R-40 (Closing of Hearing)  
 R-41 (Reopening of Hearing)  
 R-42 (Waiver of Rules)  
 R-43 (Extensions of Time)  
 R-44 (Serving of Notice and Communications)  
 R-46 (Majority Decision)  
 R-49 (Scope of Award)  
 R-50 (Award Upon Settlement – Consent Award)  
 R-51 (Delivery of Award to Parties)  
 R-52 (Modification of Award)  
 R-53 (Release of Documents for Judicial Proceedings)  
 R-54 (Applications to Court and Exclusion of Liability), subsections (a)(b)(d) and (e) only  
 R-60 (Sanctions)

#### **13.3.4 Modification Of Arbitration Procedures**

In determining whether to modify the standard procedures for use in the pending matter, the arbitrator shall consider (i) the complexity of the dispute, (ii) the extent to which facts

 California ISO	General Counsel	Suggested Review Date:	10/12/2025
		ID No.:	
Standard Procedures for Resolution of Disputes Procedure		Version No.:	V # 4.1

are disputed, (iii) the extent to which the credibility of witnesses is relevant to a resolution, (iv) the amount in controversy, and (v) any representations made by the parties. Alternatively, the parties may, by mutual agreement, modify the standard procedures. In the event of a disagreement between the arbitrator and the agreement of the parties regarding arbitration procedures to be utilized, the parties' agreement shall prevail.


### **13.3.5 Remedies**

#### **13.3.5.1 Arbitrator's Discretion**

The arbitrator shall have the discretion to grant the relief sought by a party, or determine such other remedy as is appropriate, unless the parties agree to conduct the arbitration "baseball" style. Unless otherwise expressly limited herein, the arbitrator shall have the authority to award any remedy or relief available from FERC, or any other court of competent jurisdiction. Where any CAISO Document leaves any matter to be agreed between the parties at some future time and provides that in default of agreement the matter shall be referred to the CAISO ADR Procedures, the arbitrator shall have authority to decide upon the terms of the agreement which, in the arbitrator's opinion, it is reasonable that the parties should reach, having regard to the other terms of the CAISO Document concerned and the arbitrator's opinion as to what is fair and reasonable in all the circumstances.

#### **13.3.5.2 "Baseball" Arbitration**

If the parties agree to conduct the arbitration "baseball" style, the parties shall submit to the arbitrator and exchange with each other their last best offers in the form of the award they consider the arbitrator should make, not less than seven (7) days in advance of the

 California ISO	General Counsel	Suggested Review Date:	10/12/2025
		ID No.:	
Standard Procedures for Resolution of Disputes Procedure		Version No.:	V # 4.1


date fixed for the hearing, or such other date as the arbitrator may decide. If a party fails to submit its last best offer in accordance with this Section, that party shall be deemed to have accepted the offer proposed by the other party. The arbitrator shall be limited to awarding only one of the proposed offers, and may not determine an alternative or compromise remedy.

### **13.3.6 Summary Disposition**

The procedures for arbitration of a dispute shall provide a means for summary disposition of a demand for arbitration, or a response to a demand for arbitration, that in the reasoned opinion of the arbitrator does not have a good faith basis in either law or fact. If the arbitrator determines that a demand for arbitration or response to a demand for arbitration does not have a good faith basis in either law or fact, the arbitrator shall have discretion to award the costs of the time, expenses, and other charges of the arbitrator to the prevailing party. A determination made under this Section is subject to appeal pursuant to Section 13.4.

#### **AAA Rule**

The following AAA Rule is adopted as part of these Supplemental Procedures: R-34 (Dispositive Motions).

 California ISO	General Counsel	Suggested Review Date:	10/12/2025
		ID No.:	
Standard Procedures for Resolution of Disputes Procedure		Version No.:	V # 4.1

### **13.3.7 Discovery Procedures**

The procedures for the arbitration of a dispute shall include adequate provision for the discovery of relevant facts, including the taking of testimony under oath, production of documents and other things, the presentation of evidence, the taking of samples, conducting of tests, and inspection of land and tangible items. The nature and extent of such discovery shall be determined as provided herein and shall take into account (i) the complexity of the dispute, (ii) the extent to which facts are disputed, (iii) the extent to which the credibility of witnesses is relevant to a resolution, and (iv) the amount in controversy. The forms and methods for taking such discovery shall be as described in the Federal Rules of Civil Procedure, except as modified pursuant to Section 13.3.4.


#### **Supplemental Procedure 8**

##### **8. Notice of Certain Discovery Requests Pursuant to ISO Tariff**

To the extent a discovery request seeks information that the ISO believes in its sole discretion to be confidential or commercially sensitive under Section 20.2 of its Tariff, the ISO is permitted to notify affected non-parties of the requests consistent with Section 20.4(b) of its Tariff. Non-parties that are notified of such discovery requests may submit written comments to the CAISO ADR Coordinator for the consideration of the arbitrator concerning any need to protect the requested data. The parties shall work together in good faith to accommodate any such needs to the extent practicable.

### **13.3.8 Evidentiary Hearing**


The arbitration procedures shall provide for an evidentiary hearing, with provision for the cross-examination of witnesses, unless all parties consent to the resolution of the matter on the basis of a written record. The forms and methods for taking evidence shall be

 California ISO	General Counsel	Suggested Review Date:	10/12/2025
		ID No.:	
Standard Procedures for Resolution of Disputes Procedure		Version No.:	V # 4.1

determined by the arbitrator(s) and modified pursuant to Section 13.3.4. The arbitrator may require such written or other submissions from the parties as he or she may deem appropriate, including submission of direct and rebuttal testimony of witnesses in written form. The arbitrator may exclude any evidence that is irrelevant, immaterial, unduly repetitious or prejudicial, or privileged. The arbitrator shall compile a complete evidentiary record of the arbitration which shall be available to the parties on its completion upon request.

### **13.3.9 Confidentiality**

Subject to the other provisions of this CAISO Tariff, any party may claim that information contained in a document otherwise subject to discovery is "Confidential" if such information would be so characterized under the Federal Rules of Evidence. The party making such claim shall provide to the arbitrator in writing the basis for its assertion. If the claim of confidentiality is confirmed by the arbitrator, he or she shall establish requirements for the protection of such documents or other information designated as "Confidential" as may be reasonable and necessary to protect the confidentiality and commercial value of such information. Any party disclosing information in violation of these provisions or requirements established by the arbitrator, unless such disclosure is required by federal or state law or by a court order, shall thereby waive any right to introduce or otherwise use such information in any judicial, regulatory, or other legal or dispute resolution proceeding, including the proceeding in which the information was obtained.

 California ISO	General Counsel	Suggested Review Date:	10/12/2025
		ID No.:	
Standard Procedures for Resolution of Disputes Procedure		Version No.:	V # 4.1


### **13.3.10 Timetable**

Promptly after the appointment of the arbitrator, the arbitrator shall set a date for the issuance of the arbitration decision, which shall be no later than six (6) months (or such date as the parties and the arbitrator may agree) from the date of the appointment of the arbitrator, with other dates, including the dates for an evidentiary hearing or other final submissions of evidence, set in light of this date. The date for the evidentiary hearing or other final submission of evidence shall not be changed, absent extraordinary circumstances. The arbitrator shall have the power to impose sanctions, including dismissal of the proceeding, for dilatory tactics or undue delay in completing the arbitration proceedings.

### **13.3.11 Decision**

**13.3.11.1** Except as provided below with respect to "baseball" style arbitration, the arbitrator shall issue a written decision granting the relief requested by one of the parties, or such other remedy as is appropriate, if any, and shall include findings of fact and law. The arbitration decision shall be based on (i) the evidence in the record, (ii) the terms of the relevant CAISO Documents, (iii) applicable United States federal law, including the FPA and any applicable FERC regulations and decisions, and international treaties or agreements as applicable, and (iv) applicable state law. Additionally, the arbitrator may consider relevant decisions in previous arbitration proceedings. A summary of the disputed matter and the arbitrator's decision shall be published on the CAISO Website and any other method chosen by the CAISO ADR Coordinator.




 California ISO	General Counsel	Suggested Review Date:	10/12/2025
		ID No.:	
Standard Procedures for Resolution of Disputes Procedure		Version No.:	V # 4.1

**13.3.11.2** In arbitration conducted "baseball" style, the arbitrator shall issue a written decision adopting one of the awards proposed by the parties, and shall include findings of fact and law. The arbitration decision shall be based on (i) the evidence in the record, (ii) the terms of the relevant CAISO Documents, (iii) applicable United States federal law, including the FPA and any applicable FERC regulations and decisions, and international treaties or agreements as applicable, and (iv) applicable state law. If the arbitrator concludes that no proposed award is consistent with the factors enumerated in (i) through (iv) above, or addresses all of the issues in dispute, the arbitrator shall specify how each proposed award is deficient and direct that the parties submit new proposed awards that cure the identified deficiencies. A summary of the disputed matter and the arbitrator's decision shall be published on the CAISO Website, and any other method chosen by the CAISO ADR Coordinator. An award shall not be deemed to be precedential.

**13.3.11.3** Where a panel of arbitrators is appointed pursuant to Section 13.3.1.2, a majority of the arbitrators must agree on the decision.

### **13.3.12 Compliance**

Unless the arbitrator's decision is appealed under Section 13.4, the disputing parties shall, upon receipt of the decision, immediately take whatever action is required to comply with the award to the extent the award does not require regulatory action. An award that is not appealed shall be deemed to have the same force and effect as an order entered by the FERC or any court of competent jurisdiction.


 California ISO	General Counsel	Suggested Review Date:	10/12/2025
		ID No.:	
Standard Procedures for Resolution of Disputes Procedure		Version No.:	V # 4.1

### **13.3.13 Enforcement**

Following the expiration of the time for appeal of an award pursuant to Section 13.4.3, any party may apply to FERC or any court of competent jurisdiction for entry and enforcement of judgment based on the award.

### **13.3.14 Costs**

The costs of the time, expenses, and other charges of the arbitrator shall be borne by the parties to the dispute, with each side on an arbitrated issue bearing its pro-rata share of such costs, and each party to an arbitration proceeding bearing its own costs and fees. If the arbitrator determines that a demand for arbitration or response to a demand for arbitration was made in bad faith, the arbitrator shall have discretion to award the costs of the time, expenses, and other charges of the arbitrator to the prevailing party. Notwithstanding the above, at the discretion of the arbitrator, the winning party in any dispute which has resulted in the enforcement of an important right affecting the public interest shall not be required to pay any of the costs of the arbitrator and may recover such of its own reasonable attorney fees, expert witness fees and other reasonable costs from the losing party to the dispute if (a) a significant benefit, whether pecuniary or non-pecuniary, has been conferred on the general public, (b) the necessity and financial burden of private enforcement are such as to make the award appropriate, and (c) such fees should not, in the interest of justice, be paid out of the recovery.

 California ISO	General Counsel	Suggested Review Date:	10/12/2025
		ID No.:	
Standard Procedures for Resolution of Disputes Procedure		Version No.:	V # 4.1

### **Cross Reference**

See Supplemental Procedure 4.3 as it relates to allocation of costs.


## **13.4 Appeal of Award**

### **13.4.1 Basis For Appeal**

A party may apply to the FERC or any court of competent jurisdiction to hear an appeal of an arbitration award only upon the grounds that the award is contrary to or beyond the scope of the relevant CAISO Documents, United States federal law, including, without limitation, the FPA, and any FERC regulations and decisions, or state law. Appeals shall, unless otherwise ordered by FERC or the court of competent jurisdiction, conform to the procedural limitations set forth in this Section 13.4.

### **13.4.2 Appellate Record**

The parties intend that FERC or the court of competent jurisdiction should afford substantial deference to the factual findings of the arbitrator. No party shall seek to expand the record before the FERC or court of competent jurisdiction beyond that assembled by the arbitrator, except (i) by making reference to legal authority which did not exist at the time of the arbitrator's decision, or (ii) if such party contends the decision was based upon or affected by fraud, collusion, corruption, misconduct or misrepresentation.

 California ISO	General Counsel	Suggested Review Date:	10/12/2025
		ID No.:	
Standard Procedures for Resolution of Disputes Procedure		Version No.:	V # 4.1

### **13.4.3 Procedures For Appeals**


**13.4.3.1** If a party to an arbitration desires to appeal an award, it shall provide a notice of appeal to the CAISO ADR Coordinator, all parties and the arbitrator within fourteen (14) days following the date of the award. The CAISO ADR Coordinator shall publish notice of the appeal on the CAISO Website, and any other method chosen by the CAISO ADR Coordinator.

Within ten (10) days of the filing of the notice of appeal, the appealing party must file an appropriate application, petition or motion with the FERC to trigger review under the FPA or with a court of competent jurisdiction. Such filing shall state that the subject matter has been the subject of an arbitration pursuant to the relevant CAISO Document.

**13.4.3.2** Within thirty (30) days of filing the notice of appeal (or such period as FERC or the court of competent jurisdiction may specify) the appellant shall file the complete evidentiary record of the arbitration and a copy of the award with FERC or with the court of competent jurisdiction. The appellant shall serve copies of a description of all materials included in the submitted evidentiary record.

### **13.4.4 Award Implementation**

Implementation of the award shall be deemed stayed pending an appeal unless and until, at the request of a party, the FERC or the court of competent jurisdiction to which an appeal has been filed, issues an order dissolving, shortening, or extending such stay. However, a summary of each appeal shall be published on the CAISO Website, and any other method chosen by the CAISO ADR Coordinator.

 California ISO	General Counsel	Suggested Review Date:	10/12/2025
		ID No.:	
Standard Procedures for Resolution of Disputes Procedure		Version No.:	V # 4.1

### 13.4.5 Judicial Review Of FERC Orders


FERC orders resulting from appeals shall be subject to judicial review pursuant to the FPA.

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## 5.0 CONTACTS

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For questions regarding these rules, please contact Dan Shonkwiler, Assistant General Counsel – Corporate & Litigation, at (916) 608-7015 or [dshonkwiler@caiso.com](mailto:dshonkwiler@caiso.com).

 California ISO	General Counsel	Suggested Review Date:	10/12/2025
		ID No.:	
Standard Procedures for Resolution of Disputes Procedure		Version No.:	V # 4.1

## 6.0 VERSION HISTORY

### REVISION HISTORY

VERSION NO.	EFFECTIVE DATE	REVISED BY	DESCRIPTION
1.0	03/31/1997		Rules Adopted
2.0	04/21/2010	Dan Shonkwiler & Roger Collanton	Revision of supplemental procedures to reflect delegation of responsibilities from ADR Committee to ISO General Counsel.
3.0	07/14/2015	Dan Shonkwiler	Complete revision.
3.1	09/20/2021	Dan Shonkwiler	Updated employee titles and formatting.
4.0	12/12/2023	Dan Shonkwiler	Revision of supplemental procedures to correspond with new AAA commercial rules of arbitration.
4.1	10/24/2024	Dan Shonkwiler	2024 Annual review. No Changes

 California ISO	General Counsel	Suggested Review Date:	10/12/2025
		ID No.:	
Standard Procedures for Resolution of Disputes Procedure		Version No.:	V # 4.1

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## 7.0 APPROVAL

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This procedure has been reviewed and approved by:

**VP, General Counsel and Chief Compliance Officer,**

Roger Collanton	Signature on File	10/24/2024
<hr/> Title	<hr/> Signature	<hr/> Date