

Resources were exempt from charges and payments under the Standard Capacity Product, RAAIM's predecessor, and remain exempt under RAAIM. The CAISO tariff requires Acquired Resources to recertify their status annually or lose their RAAIM-exempt status.

Numerous scheduling coordinators for units still under an existing contract that entitles the unit to acquired resource status did not submit a timely recertification for the 2018 RA compliance year. The CAISO understands there was confusion among these scheduling coordinators regarding the recertification procedures and timeline. In the absence of a waiver, these units would lose their RAAIM exemption permanently even though nothing changed regarding their contractual status.

Good cause exists to grant this limited, one-time waiver. It is possible that scheduling coordinators were confused about the deadline for recertifying their resources as Acquired Resources (in the transitional year as well as this past year) because of the changes in implementation deadlines and notices issued by CAISO. This confusion could have been the reason for the delay in submissions, which would cause them to lose the RAAIM exemption to which they are otherwise entitled. The CAISO requests that the Commission issue an order granting this waiver request by May 1, 2018, so the affected parties can have certainty regarding their RAAIM-exempt status for the 2018 RA compliance year and beyond.

The CAISO requests that Attachments A and B be afforded confidential treatment under 18 C.F.R. § 388.112. A resource's status as RA capacity and the fact of it being under a long-term supply contract is confidential business information, which is information of the type that the CAISO typically does not release to the public.

Attachment C to this filing is a proposed form of protective agreement acceptable to the CAISO it is prepared to utilize for 18 CFR § 388.112(b)(2).

I. BACKGROUND

A. The Standard Capacity Product (2009-2015)

In 2009, the Commission approved the RA Standard Capacity Product, which created a standard product definition for RA with defined performance incentives.² The performance incentives evaluated RA resource availability based on a unit's forced outages. Under the Standard Capacity Product, a resource providing RA capacity whose forced outage rate fell below a defined threshold was subject to charges, and units whose availability exceeded the threshold were eligible for award payments. The charges and payments were self-funding. The CAISO made payments only to the extent it assessed availability charges.

The Standard Capacity Product exempted from non-availability charges and availability incentive payments capacity provided "under a resource specific power supply contract that existed prior to June 28, 2009 and Resource Adequacy Capacity that was procured under a contract that was either executed or submitted to the applicable Local Regulatory Authority for approval prior to June 28, 2009, and is associated with specific Generating Units or System Resources"³ This exemption only applied "for the initial term of the contract and . . . terminate[d] upon the conclusion of the initial contract term."⁴

² *Cal. Indep. Sys. Operator Corp.*, 127 FERC ¶ 61,298 (2009).

³ Prior tariff section 40.9.2.2(2).

⁴ *Id.*

The purpose of this exemption for legacy supply contracts was the acknowledgement they likely had agreed-upon performance incentives. The CAISO and its stakeholders were concerned that imposing non-availability charges or making availability incentive payments beyond those reflected in the contractual provisions would create an inefficient set of incentives.⁵ Based on this rationale, the Commission accepted the proposed exemptions.⁶

When the Standard Capacity Product was in effect, the Business Practice Manual required the exempt resources to recertify their exemption annually through an affidavit submitted by an executive officer or member of senior management.⁷ The framework did not provide any express consequences if a resource failed to recertify by the stated deadline and the CAISO did not take adverse action against resources whose affidavit was untimely.

⁵ *Cal. Indep. Sys. Operator Corp.*, 127 FERC ¶ 61,298, P 59 (2009) (April 2009 Order) (“The CAISO asserts that this grandfathering proposal respects existing contractual arrangements and will ensure that such contracts are not subject to duplicative or potentially conflicting availability standards.”); *Cal. Indep. Sys. Operator Corp.*, Transmittal Letter, at 15, FERC Docket No. ER09-1064 (April 28, 2009) (“some parties raised concerns that . . . parties with existing RA contracts could be exposed to conflicting or duplicate availability standards and incentives due to . . . their existing contracts.”).

⁶ April 2009 Order at P 65 (accepting the CAISO exemption proposal but extending the date of the CAISO’s proposed cut-off date for exemption qualification).

⁷ Business Practice Manual for Reliability Requirements (Reliability Requirements BPM), Section 8.8.1, Version 25 (“If the generator owner seeks to continue the grandfathered status of the contract for the following trade year, then the Scheduling Coordinator for the generator must submit an affidavit executed by an executive officer or member of senior management of the generator owner or of the Scheduling Coordinator itself, who is authorized to bind the company legally and financially, and sworn under oath or affirmation that the contract meets the criteria in Tariff Sections 40.9.2(2) or 40.9.2(3) to continue to be exempt from the SCP non-availability charges and availability incentive payments.”).

B. Resource Adequacy Availability Incentive Mechanism (2016-Present)

On November 1, 2016, the CAISO implemented RAAIM as part of phase 1A of its reliability services initiative.⁸ RAAIM replaced the Standard Capacity Product as the mechanism to evaluate and incent performance for RA capacity. For the first five months RAAIM was in effect, the CAISO calculated non-availability charges and availability incentive payments for advisory purposes only. During this advisory period, the CAISO published the calculated charges and payments but did not include them on invoices for financial settlement.⁹

The major difference between RAAIM and the Standard Capacity Product is that RAAIM evaluates performance of RA capacity on whether the unit met its must-offer obligation, rather than basing performance on whether the unit was on forced outage.¹⁰ Similar to the Standard Capacity Product, RAAIM assesses charges (called non-availability charges) and makes payments (called availability incentive payments) to

⁸ On May 29, 2015, the CAISO filed tariff amendments to enact phase 1A of its reliability services initiative in Docket No. ER15-1825 (Phase 1A Tariff Amendment). The Commission approved the tariff revisions in an order issued on October 1, 2015. *Cal. Indep. Sys. Operator Corp.*, 153 FERC ¶ 61,002 (2015). The Phase 1A Tariff Amendment focused on enhancing and streamlining the CAISO's rules and processes regarding RA to meet the needs of an increasingly dynamic power grid. RAAIM, which is set forth in section 40.9 of the CAISO tariff, was a significant element of the Phase 1A Tariff Amendment.

⁹ Existing tariff section 40.9.1 states that the advisory period will be two months (*i.e.*, would last until January 1, 2017, given implementation of RAAIM on November 1, 2016). The Commission later granted a CAISO petition for limited tariff waiver that extended the advisory period by an additional three months. *Cal. Indep. Sys. Operator Corp.*, 158 FERC ¶ 61,108 (2017).

¹⁰ On October 2, 2017, the CAISO filed a tariff amendment in Docket No. ER18-1 to implement phase 1B and phase 2 of its reliability services initiative, which included revisions to the RAAIM tariff provisions (Phase 1B and Phase 2 Tariff Amendment). The Commission accepted the Phase 1B and Phase 2 Tariff Amendment effective February 15, 2018, as requested by the CAISO. *Cal. Indep. Sys. Operator Corp.*, 162 FERC ¶ 61,042 (2018). Separately, on January 29, 2018, the CAISO filed a tariff amendment in Docket No. ER18-728 to modify the RAAIM availability methodology (RAAIM Availability Methodology Tariff Amendment). While both filings are consequential for administering RAAIM, neither touches on the issues raised by this waiver request.

resources providing RA capacity through the CAISO's settlements process.¹¹ As with the Standard Capacity Product, RAIM incentive payments are self-funded based on the RAIM availability charges assessed.¹² In a month, non-availability charges can exceed incentive payments. In such circumstances, the excess funds roll over to following months and are available to fund availability incentive payments, but not in perpetuity. At the end of each RA compliance year, the CAISO distributes any remaining funds to load-serving entities based on their load ratio share for the year.¹³

When the CAISO implemented RAIM, it retained the exemption from non-availability charges or availability incentive payments for legacy contracts.¹⁴ The CAISO tariff defines resources covered by this exemption as Acquired Resources. "The entire capacity of an Acquired Resource is exempt from the RAIM provisions," rather than merely the portion covered by the legacy contract.¹⁵ For "Resource Adequacy Compliance Year 2016, [scheduling coordinators must] submit an affidavit to the CAISO . . . demonstrating that the Acquired Resource meets the eligibility criteria in Section 40.9.2.1(a), in accordance with the process and schedule in the Business Practice Manual."¹⁶ For each subsequent RA compliance year until the contract terminates, the scheduling coordinator must "submit confirmation to the CAISO that the information in

¹¹ Existing tariff section 40.9.1.

¹² Section 40.9.6.2(a).

¹³ Section 40.9.6.2(d).

¹⁴ The CAISO, however, provided the exemption to a more narrow set of resources. Phase 1A Tariff Amendment Transmittal Letter, at 81, ("Phase 1A narrowed the scope of the exemption, so not all resources that were exempt under the Standard Capacity Product continued to qualify for an exemption under RAIM.").

¹⁵ Section 40.9.2.1(a).

¹⁶ Section 40.9.2.1(b)(1).

the affidavit is still accurate and the Acquired Resource continues to meet the eligibility criteria in Section 40.9.2.1(a), in accordance with the process and schedule in Business Practice Manual.”¹⁷ Only if the underlying contract has changed would a new affidavit be required.

The CAISO tariff also now provides a concrete consequence if a scheduling coordinator failed to provide the annual request. The tariff now states that if “the Scheduling Coordinator for the resource does not submit a request to renew the exemption . . . , [then] the exemption shall terminate and the CAISO shall notify the Scheduling Coordinator of the termination in accordance with the process and schedule in [the] Business Practice Manual.”¹⁸ The Reliability Requirements BPM sets the deadline as the “last business day of October.”¹⁹

In implementing RAAIM, the CAISO modified the Reliability Requirements BPM to provide that, where there were no changes to the underlying contract, the annual recertification could take the form of “a confirmation to the CAISO that the information in the existing affidavit is still accurate” or “an affidavit [stating] that the contract meets the criteria in Tariff Section 40.9.2.1”²⁰ The Reliability Requirements BPM also directs that “[t]he confirmation or affidavit . . . must be submitted through CIDI.” The BPM also

¹⁷ Section 40.9.2.1(b)(2).

¹⁸ Tariff section 40.9.2.1(b)(2).

¹⁹ The Reliability Requirements BPM states that the “scheduling coordinator for the capacity must specifically seek an exemption each year” and that the “demonstration must be done in advance of the annual RA showing deadline in accordance with the BPM.” Exhibit A-2 of the BPM sets the annual RA deadline as the “last business day of October.”

²⁰ Reliability Requirements BPM, section 9.8.2 (“If the generator owner seeks to continue the Acquired Resource status of the contract for the following trade year, then the Scheduling Coordinator for the generator must submit a confirmation to the CAISO that the information in the existing affidavit is still accurate.”).

states that the scheduling coordinator for an Acquired Resource “must specifically seek an exemption each year”²¹

While these statements are relatively straightforward, the organization of section 9.8 of the BPM, which is the portion of the BPM addressing Acquired Resources could be seen as causing confusion. This part of the BPM has two subsections. Section 9.8.1 is titled “Exempting RA Resources,” and section 9.8.2 is titled “Notification of change in Acquired Resources.” There is no separate subsection addressing the maintenance and recertification of Acquired Resource status. Instead, the above-quoted statements appear in the body of sections 9.8.1 and 9.8.2, which, according to their titles would not be expected to address the recertification requirements. At a glance, the BPM could thus appear not to address this issue despite it doing so. The CAISO will modify the BPM before the next annual recertification process to remove any potential confusion.

C. Issues with Acquired Resource Recertification for the First Year of RAAIM

The general approach to the Acquired Resource recertification process is that affidavits would be required for the first year under RAAIM but affidavits would not be required for subsequent years unless there was a contractual change. The first year of RAAIM is referred to in the tariff as “Resource Adequacy Compliance Year 2016.”²² When the CAISO initially filed phase 1A of its reliability services initiative, it requested a March 1, 2016, effective date for the RAAIM provisions. With this effective date and a

²¹ *Id.* at section 9.8.1.

²² Section 40.9.2.1(b)(1).

two-month advisory period, seven months of the 2016 RA compliance year would have been under RAAIM. The CAISO later moved the effective date of the RAAIM tariff provision later to November 1, 2016, and the advisory period was extended from two months to five months. Through these schedule changes, the CAISO inadvertently neglected to amend the provision referring specifically to the 2016 RA compliance year. The CAISO also neglected to amend the Reliability Requirements BPM to specifically contemplate a due-date for the initial affidavits.

The RAAIM tariff provisions had an effective date of November 1, 2016, even though the last business day of October was October 31, 2016. Strict compliance with the tariff provision was not feasible because the affidavits were already late by the time they were required by the tariff. Further, the affidavits covering the 2016 RA compliance year would have held little value because binding RAAIM did not begin until well into the 2017 RA compliance year.

Because of these considerations, the CAISO collected the first set of RAAIM Acquired Resource affidavits for the 2017 RA compliance year. Through an October 31, 2016, market notice, the CAISO requested the initial affidavits by November 21, 2016.²³ Given the continued uncertainty about RAAIM implementation, the CAISO accepted affidavits into January 2017, which was still several months before binding RAAIM began.

²³ The October 31, 2016, market notice is available at: <http://www.aiso.com/Documents/AnnualAcquiredResourceNotification.html>.

D. Issues with Acquired Resource Recertification for the 2018 Resource Adequacy Year

On October 18, 2017, the CAISO issued a market notice reminding scheduling coordinators of the need to recertify their acquired resource status for the 2018 RA compliance year.²⁴ The market notice stated that recertification required the scheduling coordinator either to: (1) confirm that the affidavit provided for the 2017 RA compliance year remained accurate; or (2) for resources under a modified contract, provide a new affidavit attesting that the modified contract still meets the tariff requirements for an Acquired Resource. The market notice also extended the recertification deadline from the last business day in October to November 15, 2017, providing scheduling coordinators approximately two additional weeks to recertify their units.

Nine scheduling coordinators representing 18 resource IDs failed to renew their exemption by November 15.²⁵ Under section 40.9.2.1 of the CAISO tariff these resources would all lose their Acquired Resource status and be subject to RAAIM starting with the January 2018 RA month. Approximately 900 megawatts face the loss of a RAAIM exemption. Table 1, below, reflects the distribution of resource identification numbers and total megawatts potentially losing RAAIM exemption across the nine scheduling coordinators impacted by this filing.²⁶ Table 2, below, reflects the total megawatts, by year, that were affected by untimely recertification (*i.e.*, the year

²⁴ The October 18, 2017, market notice is available at: <https://www.caiso.com/Documents/2018AnnualAcquiredResourceNotification.html>.

²⁵ Table 1 and Table 2 reflect a sum of 23 resources, rather than the figure of 18, noted above. This is because some of the resources at issue are under contract with multiple scheduling coordinators. This filing, however, involves 18 unique resource identification numbers.

²⁶ A version of this table that reveals the scheduling coordinator identities is provided in confidential Attachment B.

represents when the megawatts would lose RAAIM-exempt status if this waiver were granted).

Table 1

	Number of Resource IDs	Sum of MW Potentially RAAIM Exempt
SC1	3	171
SC2	7	379
SC3	3	4
SC4	1	10
SC5	5	66
SC6	1	29
SC7	1	102
SC8	1	51
SC9	1	93
Total	23	906

Table 2

Year	Total MWs Losing Potential RAAIM Exemption	Number of Resource/SC Combos
2020	51	1
2021	150	2
2023	113	2
2024	104	2
2027	150	1
2028	172	4
2030	99	9
2034	22	1
2039	45	1
Total	906	23

Through its outreach to the affected entities, the CAISO understands that some scheduling coordinators were not aware of the deadline and stated that they did not realize that recertification was an annual requirement. In particular, the CAISO was informed that elimination of the requirement to submit an affidavit every year was mistaken for an elimination of the annual recertification requirement altogether. Some scheduling coordinators also indicated they thought recertification was only necessary

where there was a material change to the underlying contract. This latter point can be linked to the potentially confusing heading titles for sections 9.8.1 and 9.8.2 of the Reliability Requirements BPM, which could be read to suggest that recertification is not required unless there is an underlying contractual change, even though the CAISO tariff and the body of those BPM sections is straightforward in the requirements.

Once informed of the oversight, the affected entities expressed a desire to retain Acquired Resource status and requested that the CAISO retroactively extend the deadline. The CAISO considered this request and was sympathetic to these concerns because of the large number of scheduling coordinators expressing confusion and the revised Reliability Requirements BPM provisions. The CAISO concluded, however, that it did not have authority under its tariff based on the plain meaning of section 40.9.2.1 and the mandate that eligibility for the exemption terminates automatically upon failure to meet the recertification deadline. Without this waiver, the resources identified in Attachment A no longer will be Acquired Resources and will be subject to RAAIM.²⁷

In early January 2018, the CAISO notified the affected scheduling coordinators of its intent to file a waiver request with the Commission. The notification acknowledged there may have been confusion about the deadline and the need to renew a resource's Acquired Resource status every year. The CAISO also reminded the parties that the recertification is an annual requirement and that for future years CAISO did not anticipate either filing a similar waiver or supporting another party's similar waiver. Finally, the CAISO encouraged the scheduling coordinators to intervene in the

²⁷ While this waiver request is pending before the Commission, the CAISO will continue to exempt the resources from RAAIM. If the waiver request were not granted, then the CAISO will apply RAAIM to the identified resources retroactive to January 1, 2018. This retroactive application will be applied through recalculation settlement statements.

forthcoming waiver proceeding and provide firsthand accounts of the confusion regarding the deadline and need to recertify annually.

II. Request for Limited Waiver

To address the circumstances described above, the CAISO requests that the Commission grant a limited waiver of tariff section 40.9.2.1 to permit the scheduling coordinators for the resources identified in Attachment A to submit untimely Acquired Resource recertification for the 2018 RA compliance year. The CAISO also requests authority to waive any otherwise applicable RAIM availability charges or incentive payments for any unit that submits a valid recertification request by the extended deadline created through this waiver request. Finally, to the degree Commission would deem the CAISO procedures used to process affidavits for the start of RAIM described above as non-compliant with the applicable tariff provisions, the CAISO requests a waiver to ensure that no resource would lose Acquired Resource status based on the date on which it submitted its initial affidavit collected for the start of RAIM.

The Commission previously has granted requests for tariff waivers where: (1) the applicant acted in good faith; (2) the waiver was of limited scope; (3) the waiver addressed a concrete problem; and (4) the waiver did not have undesirable consequences, such as harming third parties.²⁸ This request satisfies all four elements. Therefore, good cause exists to grant the CAISO's waiver request.

²⁸ See, e.g., *Cal. Indep. Sys. Operator Corp.*, 158 FERC ¶ 61,072, at P 5 (2017); *N.Y. Indep. Sys. Operator, Inc.*, 146 FERC ¶ 61,061, at P 19 (2014); *PJM Interconnection, L.L.C.*, 146 FERC ¶ 61,041, at P 5 (2014); *ISO New England, Inc.*, 134 FERC ¶ 61,182, at P 8 (2011).

A. The CAISO Has Acted in Good Faith

The CAISO has acted in good faith because it submitted this waiver request as soon as practical once it determined that the parties covered by this waiver request: (1) risked losing Acquired Resource status despite their underlying contracts not having changed; (2) presented a facially reasonable basis for excusing their untimely submissions; and (3) could not be accommodated under the existing tariff provisions absent a waiver.

The CAISO also believes that the parties covered by this waiver request acted in good faith. A large number of entities expressed their confusion with the requirements. Considering the uncertainty surrounding the deadline regarding submission of the initial affidavits, these participants could have been led to believe that the submission deadline was not a binding constraint on retaining exempt status. The CAISO has also gone back and reviewed its Reliability Requirements BPM and recognized that the headings for sections 9.8.1 and 9.8.2 could be interpreted to suggest that Acquired Resources only must recertify their status where the underlying contract has changed.

B. The Requested Waiver is of Limited Scope

The waiver is of limited scope because it applies solely to the 9 scheduling coordinators for the 18 resources identified in Attachment A. If granted, this waiver would only provide the CAISO one-time authority to process a defined set of out-of-time Acquired Resource recertification for the parties referenced in Attachment A, along with providing assurances to those resources that their RAIM exemptions for the 2017 RA compliance year are not at risk of being unwound. The CAISO has clarified to the affected parties it does not intend to file a similar waiver request for additional years nor

does it intend to support such a request submitted by a scheduling coordinator or generating unit for any further years.

C. The Requested Waiver Will Remediate a Concrete Problem

The waiver addresses the concrete problem that the scheduling coordinators and generating units identified in Attachment A are at risk of losing Acquired Resource status even though their underlying supply contracts—the contracts that entitle them to such status—have not changed. This waiver remediates a concrete problem not only for the parties identified in Attachment A but also would avoid a problem for all other units providing RA capacity. Until the issues raised by this waiver are resolved, there will be continued uncertainty for all suppliers of RA capacity regarding the universe of units that might pay into, and be paid from, the closed pool of RAAIM funds.

Because the CAISO does not wish to extend similar treatment to resources that submit untimely recertification for future years, the CAISO is submitting a limited waiver request, rather than a tariff amendment. This addresses the concrete problem identified most appropriately.

D. The Requested Waiver Would Not Pose Undesirable Consequences

There will be no undesirable consequences, such as harming third parties, if the Commission grants the waiver because the waiver merely maintains the status quo. No new resources would receive Acquired Resource status through this waiver. Instead, resources that already have been exempt from RAAIM and the Standard Capacity Product for nine years simply would be provided an opportunity to maintain that exempt status—a status to which they would be entitled but for their failure to submit a timely recertification. Without this waiver, however, the resources identified in Attachment A

will lose their Acquired Resource status permanently and risk the threat of facing duplicative or inconsistent availability incentives under both RAAIM and their bilateral supply contracts. This risk is the reason the CAISO created the exemptions in the first place.

IV. Request for Effective Date, Commission Order, and Shortened Comment Period

The CAISO requests that the Commission issue an order on this request by May 1, 2018, and that the waiver be effective by that date. An order by this date will allow the CAISO and its market participants to proceed with certainty regarding RAAIM applicability for the balance of the 2018 RA compliance year and beyond.

VI. Service

The CAISO has served copies of this filing upon the California Public Utilities Commission and all parties with effective scheduling coordinator service agreements under the CAISO tariff. In addition, the CAISO has posted this filing on its website.

IV. COMMUNICATIONS

Under the Commission's regulations,²⁹ communications regarding this filing should be addressed to these individuals, whose names should be placed on the official service list established by the Commission regarding this submittal:

Anna A. McKenna
Assistant General Counsel
David Zlotlow
Senior Counsel
The California Independent
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²⁹ 18. C.F.R. § 385.203(b).

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V. CONCLUSION

The Commission should find that good cause exists to grant a limited waiver of tariff section 40.9.2.1 to permit the CAISO to process out-of-time annual Acquired Resource recertification for the affected parties identified on Attachment A for the 2018 RA compliance year and to provide certainty to those resources that their RAIM exemption for the 2017 RA compliance year will not be unwound. Further, the Commission should provide confidential treatment of Attachments A and B under 18 C.F.R. § 388.112.

Respectfully submitted,

/s/ David S. Zlotlow

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Corporation

Dated: February 14, 2018

Attachment A – List of Scheduling Resources by Scheduling Coordinator Identification Code
Petition for Limited Tariff Waiver for Out-of-Time Requests by Acquired Resources
California Independent System Operator Corporation

CONFIDENTIAL PRIVILEGED INFORMATION REDACTED

PURSUANT TO 18 C.F.R. § 388.112

REDACTED

Cal. ISO Petition for Limited Waiver of Acquired Resource Recert. Deadline -- Attachment A -- Privileged Treatment Requested



Attachment B – Table of Scheduling Coordinators and Identification Codes
Petition for Limited Tariff Waiver for Out-of-Time Requests by Acquired Resources
California Independent System Operator Corporation

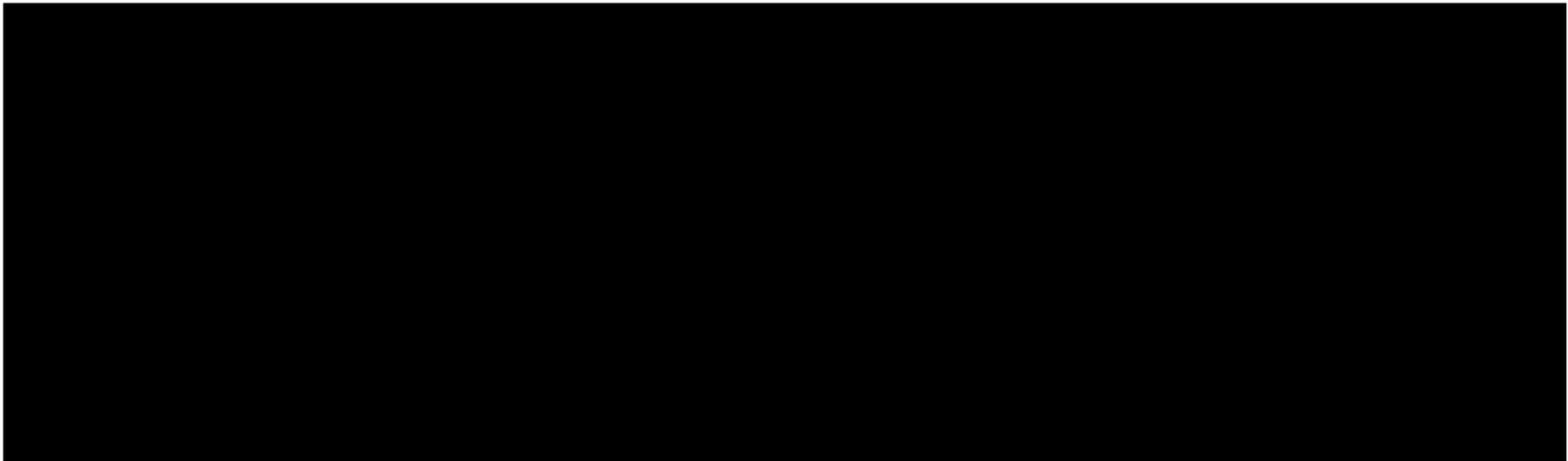
CONFIDENTIAL PRIVILEGED INFORMATION REDACTED

PURSUANT TO 18 C.F.R. § 388.112

REDACTED

Cal. ISO Petition for Limited Waiver of Acquired Resource Recert. Deadline -- Attachment B -- Privileged Treatment Requested

Total SCs	9
Total SCIDs	11



Attachment C – Form Protective Agreement

Petition for Limited Tariff Waiver for Out-of-Time Requests for Acquired Resources

California Independent System Operator Corporation

PROTECTIVE AGREEMENT

This Protective Agreement (“Agreement”) is entered into this ____ day of _____, 2018 by and between the California Independent System Operator Corporation (“CAISO”) and _____ (“Intervenor”), or *vice versa*, in connection with the proceeding before the Federal Energy Regulatory Commission (the “Commission”) in Docket No. _____. The CAISO and Intervenor are sometimes referred to as herein individually as a “Party” or jointly as the “Parties.”

1. The CAISO filed Protected Materials in the above-referenced Commission proceeding and Intervenor is a Participant in such proceeding, as the term Participant is defined in 18 C.F.R. Section 385.102(b), or has filed a motion to intervene or a notice of intervention in such proceeding. The CAISO and Intervenor enter into this Agreement in accordance with their respective rights and obligations set forth in 18 C.F.R. Section 388.112(b)(2). Notwithstanding any order terminating such proceeding, this Agreement shall remain in effect until specifically modified or terminated by the Commission or court of competent jurisdiction.

2. This Agreement applies to the following two categories of Protected Materials: (A) a Party may designate as protected those materials which customarily are treated by that Party as sensitive or proprietary, which are not available to the public, and which, if disclosed freely, would subject that Party or its customers to risk of competitive disadvantage or other business injury; and (B) a Party shall designate as protected those materials which contain privileged trade secret, commercial and financial information, as defined in 18 C.F.R. Section 388.107.

3. Definitions – For purposes of this Agreement:

(a) (1) The term “Protected Materials” means (A) materials provided by a Party in association with this proceeding and designated by such Party as protected; (B) any information contained in or obtained from such designated materials; (C) notes of Protected Materials; and (D) copies of Protected Materials. The Party producing the Protected Materials shall physically mark them on each page as “PROTECTED MATERIALS” or with words of similar import as long as the term “Protected Materials” is included in that designation to indicate that they are Protected Materials. If the Protected Materials contain Critical Energy Infrastructure Information, the Party producing such information shall additionally mark on each page containing such information the words “Contains Critical Energy Infrastructure Information – Do Not Release.”

(2) The term “Notes of Protected Materials” means memoranda, handwritten notes, or any other form of information (including electronic form) which copies or discloses materials described in Paragraph 3(a)(1). Notes of Protected Materials are subject to the same restrictions provided in this Agreement for Protected Materials except as specifically provided in this Agreement.

(3) Protected Materials shall not include (A) any information or document contained in the publicly-available files of the Commission or of any other federal or state agency, or any federal or state court, unless the information or document has been determined to be protected by such agency or court, or (B) information that is public knowledge, or which

becomes public knowledge, other than through disclosure in violation of this Agreement, or (C) any information or document labeled as “Non-Internet Public” by a Party, in accordance with Paragraph 30 of FERC Order No. 630, FERC Stats. & Regs. ¶ 31,140 (2003). Protected Materials do include any information or documents contained in the files of the Commission that has been designated as Critical Energy Infrastructure Information.

(b) The term “Non-Disclosure Certificate” shall mean the certificate annexed hereto by which Reviewing Representatives who have been granted access to Protected Materials shall certify their understanding that such access to Protected Materials is provided pursuant to the terms and restrictions of this Agreement, and that they have read the Agreement and agree to be bound by it. Each Party shall provide a copy of the Non-Disclosure Certificate(s) executed by its Reviewing Representative(s) to the other Party prior to such Reviewing Representative(s) receiving access to any Protected Materials.

(c) The term “Reviewing Representative” shall mean a person who has signed a Non-Disclosure Certificate and who is:

- (1) an attorney retained by a Party for purposes of this proceeding;
- (2) attorneys, paralegals, and other employees associated for purposes of this proceeding with an attorney described in Paragraph (3)(c)(1);
- (3) an expert or employee of an expert retained by a Party for the purpose of advising, preparing or testifying in this proceeding;
- (4) a person designated as a Reviewing Representative by order of the Commission; or
- (5) employees or other representatives of a Party with significant responsibility for matters involving this proceeding.

4. Protected Materials shall be made available under the terms of this Agreement only to Parties and only through their Reviewing Representative(s) as provided in Paragraphs 7-9.

5. Protected Materials shall remain available to a Party until the later of the date that an order terminating this proceeding becomes no longer subject to judicial review, or the date that any other Commission proceeding relating to the Protected Material is concluded and no longer subject to judicial review. If requested to do so in writing after that date, the Party shall, within fifteen days of such request, return the Protected Materials (excluding Notes of Protected Materials) to the Party that produced them, or shall destroy the materials, except that copies of filings, official transcripts and exhibits in this proceeding that contain Protected Materials, and Notes of Protected Materials may be retained, if they are maintained in accordance with Paragraph 6, below. Within such time period the Party, if requested to do so, shall also submit to the producing Party an affidavit stating that, to the best of its knowledge, all Protected Materials and all Notes of Protected Materials have been returned or have been destroyed or will be

maintained in accordance with Paragraph 6. To the extent Protected Materials are not returned or destroyed, they shall remain subject to this Agreement.

6. All Protected Materials shall be maintained by the Party in a secure place. Access to those materials shall be limited to those Reviewing Representatives specifically authorized pursuant to Paragraphs 8-9.

7. Protected Materials shall be treated as confidential by the Party and its Reviewing Representative(s) in accordance with the certificate executed pursuant to Paragraph 9. Protected Materials shall not be used except as necessary for the conduct of this proceeding, nor shall they be disclosed in any manner to any person except a Reviewing Representative who is engaged in the conduct of this proceeding and who needs to know the information in order to carry out that person's responsibilities in this proceeding. Reviewing Representatives may make copies of Protected Materials, but such copies become Protected Materials. Reviewing Representatives may make notes of Protected Materials, which shall be treated as Notes of Protected Materials if they disclose the contents of Protected Materials.

8. (a) If a Reviewing Representative's scope of employment includes the marketing of energy or the buying or selling of generating assets, the direct supervision of any employee or employees whose duties include the foregoing, the provision of consulting services to any person whose duties include the foregoing, or the direct supervision of any employee or employees whose duties include the foregoing, such Reviewing Representative may not use information contained in any Protected Materials obtained through this proceeding to give any Party or any competitor of any Party a commercial advantage.

(b) In the event that a Party wishes to designate as a Reviewing Representative a person not described in Paragraph 3(c) above, the Party shall seek agreement from the Party providing the Protected Materials. If an agreement is reached that person shall be a Reviewing Representative pursuant to Paragraphs 3(c) above with respect to those materials. If no agreement is reached, the Party shall submit the disputed designation to the Commission for resolution.

9. (a) A Reviewing Representative shall not be permitted to inspect, participate in discussions regarding, or otherwise be permitted access to Protected Materials pursuant to this Agreement unless that Reviewing Representative has first executed a Non-Disclosure Certificate; provided, that if an attorney qualified as a Reviewing Representative has executed such a certificate, the paralegals, secretarial and clerical personnel under the attorney's instruction, supervision or control need not do so. A copy of each Non-Disclosure Certificate shall be provided to counsel for the Party asserting confidentiality prior to disclosure of any Protected Material to that Reviewing Representative.

(b) Attorneys qualified as Reviewing Representatives are responsible for ensuring that persons under their supervision or control comply with this Agreement.

10. Any Reviewing Representative may disclose Protected Materials to any other Reviewing Representative as long as the disclosing Reviewing Representative and the receiving Reviewing Representative both have executed a Non-Disclosure Certificate. In the event that any Reviewing

Representative to whom the Protected Materials are disclosed ceases to be engaged in these proceedings, or is employed or retained for a position whose occupant is not qualified to be a Reviewing Representative under Paragraph 3(c), access to Protected Materials by that person shall be terminated. Even if no longer engaged in this proceeding, every person who has executed a Non-Disclosure Certificate shall continue to be bound by the provisions of this Agreement and the certification.

11. Subject to Paragraph 17, the Commission shall resolve any disputes arising under this Agreement. Prior to presenting any dispute under this Agreement to the Commission, the Parties shall use their best efforts to resolve it. If a Party contests the designation of materials as protected, it shall notify the Party that provided the Protected Materials by specifying in writing the materials whose designation is contested. This Agreement shall automatically cease to apply to such materials five (5) business days after the notification is made unless the Party, within said 5-day period, files a motion with the Commission, with supporting affidavits, demonstrating that the materials should continue to be protected. In any challenge to the designation of materials as protected, the burden of proof shall be on the Party seeking protection. If the Commission finds that the materials at issue are not entitled to protection, the procedures of Paragraph 17 shall apply. The procedures described above shall not apply to Protected Materials designated by a Party as Critical Energy Infrastructure Information. Materials so designated shall remain protected and subject to the provisions of this Agreement unless a Party requests and obtains a determination from the Commission's Critical Energy Infrastructure Information Coordinator that such materials need not remain protected.

12. All copies of all documents reflecting Protected Materials, including the portion of any hearing testimony, exhibits, transcripts, briefs and other documents which refer to Protected Materials, shall be filed and served in sealed envelopes or by other appropriate means endorsed to the effect that they are protected pursuant to this Agreement. Such documents shall be marked "PROTECTED MATERIALS" and shall be filed under seal and served under seal upon the Commission and all Reviewing Representatives who are on the service list. Such documents containing Critical Energy Infrastructure Information shall be additionally marked "Contains Critical Energy Infrastructure Information – Do Not Release." For anything filed under seal, redacted versions or, where an entire document is protected, a letter indicating such, will also be filed with the Commission and served on all parties on the service list. Counsel for the producing Party shall, upon the request of a Party, provide a list of Reviewing Representatives who are entitled to receive such material. Counsel shall take all reasonable precautions necessary to assure that Protected Materials are not distributed to unauthorized persons. If any Party desires to include, utilize or refer to any Protected Materials or information derived therefrom in pleadings, testimony or exhibits to these proceedings in such a manner that might require disclosure of such material to persons other than Reviewing Representatives, such Party shall first notify both counsel for the disclosing Party and the Commission of such desire, identifying with particularity each of the Protected Materials. Thereafter, use of such Protected Materials will be governed by procedures determined by the Commission.

13. Nothing in this Agreement shall be construed as precluding any Party from objecting to the use of Protected Materials on any legal grounds.

14. Nothing in this Agreement shall preclude any Party from requesting the Commission or any other body having appropriate authority to find that this Agreement should not apply to all or any materials previously designated as Protected Materials pursuant to this Agreement. The Commission may alter or amend this Agreement as circumstances warrant at any time during the course of this proceeding.

15. The Parties may amend this Agreement only by mutual consent and in writing, provided, however, that a Party has the right to seek changes to this Agreement as appropriate from the Commission.

16. All Protected Materials filed with the Commission, or any other judicial or administrative body, in support of, or as a part of, a motion, other pleading, brief, or other document, shall be filed and served in sealed envelopes or by other appropriate means bearing prominent markings indicating that the contents include Protected Materials subject to this Agreement. Such documents containing Critical Energy Infrastructure Information shall be additionally marked "Contains Critical Energy Infrastructure Information – Do Not Release."

17. If the Commission finds at any time in the course of this proceeding that all or part of the Protected Materials need not be protected, those materials shall, nevertheless, be subject to the protection afforded by this Agreement for three (3) business days from the date of issuance of the Commission's decision, and if the Party seeking protection files an interlocutory appeal or requests that the issue be certified to the Commission, for an additional seven (7) business days. No Party waives its rights to seek additional administrative or judicial remedies after the Commission's decision respecting Protected Materials or Reviewing Representatives, or the Commission's denial of any appeal thereof. The provisions of 18 C.F.R. Sections 388.112 and 388.113 shall apply to any requests for Protected Materials in the files of the Commission under the Freedom of Information Act (5 U.S.C. § 552).

18. Nothing in this Agreement shall be deemed to preclude either Party from independently seeking through discovery in any other administrative or judicial proceeding information or materials produced in this proceeding under this Agreement.

19. Neither Party waives the right to pursue any other legal or equitable remedies that may be available in the event of actual anticipated disclosure of Protected Materials.

20. The contents of Protected Materials or any other form of information that copies or discloses Protected Materials shall not be disclosed to anyone other than in accordance with this Agreement and shall be used only in connection with this proceeding. Any violation of this Agreement and of any Non-Disclosure Certificate executed hereunder shall constitute a violation of an order of the Commission.

IN WITNESS WHEREOF, the Parties each have caused this Protective Agreement to be signed by their respective duly authorized representatives as of the date first set forth above.

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Representing CAISO

Representing Intervenor

NON-DISCLOSURE CERTIFICATE

I hereby certify my understanding that access to Protected Materials is provided to me pursuant to the terms and restrictions of the Protective Agreement dated _____, 2018 by and between the CAISO and _____ concerning materials in Federal Energy Regulatory Commission Docket No. _____, that I have been given a copy of and have read the Protective Agreement, and that I agree to be bound by it. I understand that the contents of the Protected Materials, any notes or other memoranda, or any other form of information that copies or discloses Protected Materials shall not be disclosed to anyone other than in accordance with the Protective Agreement. I acknowledge that a violation of this certificate constitutes a violation of an order of the Federal Energy Regulatory Commission.

By: _____

Name: _____

Title: _____

Representing: _____