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February 5, 2010

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

FILED  
SECRETARY OF THE  
COMMISSION  
2010 FEB - 5 P 12: 36  
FEDERAL ENERGY  
REGULATORY COMMISSION

**Re: California Independent System Operator Corporation  
Docket No. ER10-\_\_\_\_-000  
Amendment to Credit Policy and Billing Provisions of the ISO  
Tariff**

Dear Secretary Bose:

The California Independent System Operator Corporation ("ISO") submits this filing to modify the credit policy and billing provisions of the ISO tariff and to make related tariff changes.<sup>1</sup> The ISO respectfully requests that the tariff changes contained in this filing be made become effective as of April 7, 2010.

Two extra copies of this filing are also enclosed. Please stamp these copies with the date and time filed and return them to the messenger.

## I. Background

Section 12 of the ISO tariff contains provisions that require market participants that submit schedules or transact in the ISO's markets to satisfy creditworthiness requirements or post financial security in order to provide reasonable assurance that the market participants can meet their present and

<sup>1</sup> The ISO submits this filing pursuant to Section 205 of the Federal Power Act, 16 U.S.C. § 824d, and Section 35.13 of the Commission's regulations, 18 C.F.R. § 35.13. The ISO is also sometimes referred to as the CAISO. Capitalized terms not otherwise defined herein have the meanings set forth in Appendix A to the ISO tariff, and except where otherwise noted herein, references to section numbers are references to sections of the tariff.

future financial obligations.<sup>2</sup> The ISO periodically evaluates whether changes should be made to its credit policy in order to better ensure that market participants satisfy creditworthiness standards or post financial security sufficient to cover all of their financial obligations in the ISO settlement process and avoid potential defaults in the ISO's markets. The ISO's periodic evaluations are consistent with the great concern placed on these issues by the Commission. As the Commission has stated:

[T]he Commission [has] explained that . . . credit downgrades have raised the level of concern regarding credit-related risks. . . . In addition, the Commission [has] stated that it believes that there are ways for ISOs/RTOs [independent system operators and regional transmission organizations] to reduce credit/default exposure and, in turn, to minimize the mutualized default risk in their markets. . . . ISOs/RTOs are typically non-profit entities that administer the market on behalf of market participants. In such markets, credit is collectively extended by market participants to each individual market participant. As a result, if one market participant defaults, it falls upon the remaining participants to make up the shortfall (i.e., the default risk is mutualized).<sup>3</sup>

Pursuant to the ISO's evaluations over the past few years, the ISO has made changes to its credit policy from time to time.<sup>4</sup>

In late 2008 and early 2009, the ISO and stakeholders developed a number of credit-related tariff revisions that included non-financial penalties that were filed with and accepted by the Commission in Docket No. ER09-589.<sup>5</sup> The revisions included the addition of Section 12.5.2 to the ISO tariff in order to provide for progressive disciplinary measures enforced by the ISO against market participants that fail timely to post additional financial security requested by the ISO, and the addition of Section 12.5.3 to the ISO tariff in order to provide for progressive disciplinary measures enforced by the ISO against market participants that fail timely to pay amounts set forth on invoices issued by the ISO.<sup>6</sup> These tariff changes went into effect on March 31, 2009, the implementation date of the new market design under which the ISO now operates.

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<sup>2</sup> Further implementation details regarding the credit provisions in Section 12 are found in the applicable Business Practice Manuals ("BPMs") available on the ISO's website at: <http://www.caiso.com/235f/235f939f8dc0.html>.

<sup>3</sup> *Policy Statement on Electric Creditworthiness*, 109 FERC ¶ 61,186, at PP 4-5 (2004).

<sup>4</sup> See the ISO's filings to modify its tariff in Docket Nos. ER06-700, ER07-613, ER07-1077, ER08-1059, ER09-589, and ER09-1681, as accepted by the Commission in those proceedings.

<sup>5</sup> See *California Independent System Operator Corp.*, 126 FERC ¶ 61,285 (2009).

<sup>6</sup> See *id.* at PP 40-42, 47.

The ISO noted in its tariff amendment filing in Docket No. ER09-589 that the ISO Governing Board ("Board") had also authorized other progressive disciplinary measures that the ISO would submit for Commission approval at a later date:

At its December 17, 2008 meeting, the Board also authorized CAISO management to include financial penalties as a component of progressive discipline when Market Participants fail to post additional Financial Security or pay amounts set forth in Invoices in a timely manner. As noted in the [Board Memorandum submitted in support of the tariff amendment] (at 5), the CAISO intends to modify the tariff to assess financial penalties, but the CAISO is deferring such filing until a future date after the implementation of MRTU, when new Charge Codes can be created to implement the penalties.<sup>7</sup>

Further, the ISO explained in the Memorandum that the first \$5 million of financial penalties for late postings of financial security and late payments of invoices would be used to fund a market reserve account that could be used to cover payment defaults, and any funds assessed in excess of \$5 million (and still available in the reserve account) would be used to reduce the Grid Management Charge ("GMC") revenue requirement for the following year.<sup>8</sup> In addition, the ISO explained that a further progressive disciplinary measure to be presented to the Board in December 2008 for future implementation was that "[o]ther enforcement actions, including termination, may apply to repeat offenders" of the requirements now set forth in Sections 12.5.2 and 12.5.3 of the ISO tariff.<sup>9</sup>

As explained in the attached Declaration of Kevin M. King, Senior Financial Analyst and Credit Manager for the ISO, since the implementation of the non-financial penalty elements of the ISO's progressive discipline process, approximately half of the active market participants in the ISO's new market have failed timely to pay amounts set forth in invoices or to post financial security requested by the ISO. Mr. King also explains that one of these incidents recently

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<sup>7</sup> Transmittal Letter for ISO Tariff Amendment, Docket No. ER09-589-000 (Jan. 29, 2009), at 6 n.9. The memorandum cited in the quotation above is an overview of the proposed credit policy changes provided by the ISO's Chief Financial Officer and Treasurer to the Board dated December 8, 2008 ("Memorandum"). See *id.* at 3 & n.5. The Memorandum is available on the ISO's website at <http://www.aiso.com/2098/20988a9a1ea70.html>. MRTU is short for Market Redesign and Technology Upgrade, which is the new market design implemented by the ISO in 2009.

<sup>8</sup> Memorandum at 5.

<sup>9</sup> "California ISO Credit Policy Enhancements Final Proposal" at 3, 4 ("Credit Policy Final Proposal"). The Credit Policy Final Proposal is available on the ISO's website page devoted the credit policy stakeholder process, <http://www.aiso.com/docs/2003/04/21/2003042117001924814.html>. An electronic link to the Credit Policy Final Proposal was included on page 1 of Attachment A to the Memorandum.

resulted in some ISO creditors not receiving payments until the day after the payments were supposed to be transferred to them, which the ISO understands created significant commercial challenges for some ISO creditors. Such occurrences increase credit-related risk in the ISO markets and suggest that implementation of the progressive disciplinary measures approved by the Board but not yet made effective are appropriate to provide a sufficient incentive for some market participants to make timely payments. In January 2010, the ISO determined that it was the appropriate time to develop and file tariff changes to implement the progressive disciplinary measures that were not included in the tariff changes filed with and accepted by the Commission in Docket No. ER09-589.

For these reasons, the ISO established a stakeholder process to develop and prepare the tariff revisions needed to implement the additional progressive disciplinary measures that were set forth in the Memorandum and the Credit Policy Final Proposal but not yet filed with the Commission. On January 14, 2010, the ISO posted a draft version of the tariff language for stakeholder review and issued a market notice requesting written stakeholder comments on the tariff language by January 21. No stakeholder comments were received. The ISO held a teleconference with stakeholders on January 25 at which no additional comments were received. On January 27, the ISO posted an update to the draft tariff language based on internal ISO review and issued a market notice requesting written stakeholder comments on the tariff language by January 28. Three stakeholders provided comments. The ISO held a stakeholder conference call on February 3 to discuss the comments and was able to resolve stakeholder concerns without any substantive revisions to the tariff language. After considering stakeholders' input, the ISO is now filing this tariff amendment.<sup>10</sup>

## **II. Proposed Tariff Changes**

### **A. Financial Penalties for Late Postings of Financial Security and Late Payments of Invoices**

The ISO proposes to modify Section 12.5.2 of the ISO tariff to add introductory language at the start of the section and to add provisions regarding financial penalties. Pursuant to new Section 12.5.2(c), after the third time and each subsequent time during a rolling twelve-month period beginning no earlier than April 7, 2010 that a market participant is late in posting additional financial security, the ISO will assess a penalty to the market participant, to be included in the next invoice to the market participant, equal to the greater of \$1,000 or two percent of the additional financial security amount that the market participant has been late in posting, up to a maximum amount of \$20,000 per each late

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<sup>10</sup> The materials posted by the ISO as part of the stakeholder process, and the stakeholders' written comments, are available on the ISO's website at <http://www.caiso.com/271f/271f7f51a3c0.html>.

posting.<sup>11</sup> The ISO included the same per-event financial penalty and maximum penalty amount in the Credit Policy Final Proposal.<sup>12</sup> The financial penalties will enhance the provisions in Section 12.5.2 by providing an additional deterrent to the late posting of financial security, at a dollar level that encourages timely posting but is not so high as to be unduly punitive. The ISO anticipates that the prospect of incurring up to \$20,000 in additional expense for each late posting (which means that penalty amount could be assessed multiple times to the same market participant) will cause market participants to make more timely postings. However, if experience shows that the maximum penalty of \$20,000 per event needs to be augmented in order to have a sufficient deterrent effect, the ISO will consider whether to make that adjustment.

The ISO is proposing that the rolling twelve-month period for purposes of assessing financial penalties would begin no earlier than April 7, 2010, the proposed effective date of this tariff amendment. This will permit market participants that have made late postings of financial security in the past to start with a clean slate as to any financial penalties proposed in the instant filing. This provision eliminates any possible concern that market participants were not given advance notice that their late postings could result in financial penalties being assessed to them. Similarly, as discussed further below, for purposes of suspension and termination, the rolling twelve-month period would also begin no earlier than April 7, 2010. For these reasons, the Commission should accept the financial penalty provisions.

In parallel, the ISO proposes to add similar provisions to the tariff section on progressive disciplinary measures for late payments of amounts set forth in invoices from the ISO. As explained above, Section 12.5.3 currently contains the tariff language on late payments of invoiced amounts. However, the ISO has determined that the language in Section 12.5.3 more appropriately belongs in Section 11.29, because that is the portion of the ISO tariff where the payment of invoices is primarily addressed. Therefore, the ISO proposes to move the provisions of Section 12.5.3, as modified by this tariff amendment, to new Section 11.29.14, and to make corresponding changes to tariff section cross-references.

The ISO also proposes to add new Section 11.29.9.6.4 to the ISO tariff to provide, pursuant to the Memorandum and the Credit Policy Final Proposal, that all penalty amounts collected for late postings of financial security and late payments of invoices will be used towards the funding of a market reserve account (called the new CAISO Penalty Reserve Account) that will be used to clear the CAISO Clearing Account in the event that there are insufficient funds to pay ISO creditors, and that on December 31 of each year, the ISO will draw any

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<sup>11</sup> The ISO will settle the financial penalties as miscellaneous charges and payments pursuant to Section 11.1.2 of the ISO tariff.

<sup>12</sup> Credit Policy Final Proposal at 3.

funds then available in the CAISO Penalty Reserve Account in excess of \$5 million to offset the following year's GMC revenue requirement. The use of penalty amounts for these purposes will provide a source of funds, in addition to any funds in the CAISO Reserve Account under the current ISO tariff,<sup>13</sup> to clear the CAISO Clearing Account in the event there are insufficient funds to pay ISO creditors. The penalties will be primarily available for "technical violations" of the obligation to pay the ISO by 10:00 a.m. on the due date. To the extent the ISO receives payments after 10:00 a.m., the ISO will be able to access the funds in the CAISO Penalty Reserve Account in order to help ensure that market participants that are owed money will receive it on the same day. If the ISO needs to access funds from the CAISO Penalty Reserve Account, they will be replenished upon receipt of funds from the market participant. Revenues in the account will also be available to offset defaults in the event of a true default – where the market participant either cannot pay or does not pay – and there is insufficient financial security to cover the default.

The provisions in Section 11.29.9.6.4 regarding the CAISO Penalty Reserve Account parallel the existing provisions in Section 11.29.9.6.2 regarding the CAISO Reserve Account with a few exceptions. Section 11.29.9.6.4 states that the section will only apply to amounts owed on a payment date occurring on or after April 7, 2010 (the proposed implementation date of the CAISO Penalty Reserve Account), and states that, after revenues from this account are used to offset a true payment default that is allocated in accordance with the ISO tariff, any funds that are subsequently added to the CAISO Penalty Reserve Account can only be used for a subsequent default. The ISO wanted to make clear that future penalties that the ISO received would not be available for a historical default once the default is finally allocated to the market.<sup>14</sup> Allowing future penalty revenues to apply to historical defaults would undermine one of the purposes of this tariff amendment, namely to have revenues available to access for "technical" defaults in order to minimize the risk that the ISO would be unable to pay creditors on the same day that it receives payments from debtors. The other difference is, as noted, that the revenues will be capped, with any amounts in excess of \$5 million as of December 31 used to offset the GMC.

The ISO proposes to add provisions in new Section 11.29.9.6.4.1, regarding replenishment of the CAISO Penalty Reserve Account following a payment default, that largely parallel the existing provisions in Section 11.29.9.6.2.1 regarding replenishment of the CAISO Reserve Account following a

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<sup>13</sup> See ISO tariff, Section 11.29.9.6.2.

<sup>14</sup> As the Commission is aware, the ISO tariff provisions that apply to the manner in which the ISO will allocate market participant default losses are the subject of ongoing settlement discussions in Docket No. EL09-62. The tariff language addressing CAISO Penalty Reserve Account replenishment proposed in the instant filing simply cross-references the applicable ISO tariff provisions concerning default loss allocation. As such, the tariff changes proposed in this proceeding will not affect the outcome of the proceeding in Docket No. EL09-62.

payment default. That is, the CAISO Penalty Reserve Account will be replenished to the extent there is available financial security or after receipt of funds from the market participant. The ISO also proposes to add to Appendix A the new defined term CAISO Penalty Reserve Account and to add new language to Sections 11.29.9.2, 11.29.13.4, and 11.29.13.10 to include references in those sections to the CAISO Penalty Reserve Account.

**B. Suspension and Termination in the Event of Chronic Late Postings of Financial Security and Late Payments of Invoices**

Pursuant to the Credit Policy Final Proposal, the ISO proposes to modify its tariff to allow the ISO to suspend and terminate the ability of chronic late posters of financial security and late payers of invoices to continue to participate in the ISO markets. New Section 12.5.2(e) of the ISO tariff states that, after the fifth time during a rolling twelve-month period beginning no earlier than April 7, 2010 that a market participant is late in posting additional financial security, the ISO may, notwithstanding any other provision of the ISO tariff: (i) suspend any and all rights of the market participant under the ISO tariff, effective upon sending written notice of the suspension to the market participant, and (ii) terminate any agreement entered into between the ISO and the market participant that allows the market participant to take part in the ISO markets, effective upon the date the ISO sends written notice of the termination to the market participant or upon the date established in accordance with Commission rules if the Commission's rules require the ISO to file the notice of termination. Section 12.5.2(e) also specifies that, if the ISO sends a notice of suspension or termination, the market participant will not have the right to prevent such suspension or termination by curing its late posting of additional financial security. The ISO will, following termination of an agreement pursuant to Section 12.5.2(e) and within 30 days of being satisfied that no sums remain owing by the market participant under the ISO tariff, return or release to the market participant, as appropriate, any money or credit support provided by such market participant to the ISO under Section 12 of the ISO tariff. The ISO proposes to make parallel tariff revisions to new Section 11.29.14 (which, as explained above, contains tariff language that has been moved from Section 12.5.3) applicable to market participants that chronically pay invoices after the 10:00 a.m. cutoff.

This suspension and termination authority is an appropriate measure to deter chronic late posting of financial security and late payment of invoices, both of which increase credit-related risk in the ISO markets. Similar to the tariff language regarding the April 7, 2010 effective date for the assessment of financial penalties, the tariff provision stating that the rolling twelve-month period for purposes of suspension or termination begins no earlier than April 7, 2010 will permit market participants that have made late postings of financial security in the past to start with a clean slate as to possible suspension or termination. Further, the ISO's proposed revisions regarding the return or release of money or

credit support within 30 days of being satisfied that no sums remain owing by the market participant under the ISO tariff are essentially the same as the existing provisions in the ISO tariff regarding the return or release of money or credit support to market participants whose Scheduling Coordinator Agreements and CRR Entity Agreements have been terminated.<sup>15</sup>

### III. Effective Date

The ISO requests that the Commission make all of the tariff revisions contained in the instant filing effective as of April 7, 2010.

### IV. Communications

Communications regarding this filing should be addressed to the following individuals, whose names should be put on the official service list established by the Commission with respect to this submittal:

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### V. Service

The ISO has served copies of this transmittal letter, and all attachments, on the California Public Utilities Commission, the California Energy Commission, and all parties with effective Scheduling Coordinator Service Agreements under the ISO tariff. In addition, the ISO is posting this transmittal letter and all attachments on the ISO website.

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<sup>15</sup> See ISO tariff, Sections 4.5.4.4(c), 4.10.3.1(d).

**VI. Attachments**

The following attachments, in addition to this transmittal letter, support the instant filing:

Attachment A	Revised ISO tariff sheets that incorporate the proposed changes described above
Attachment B	The proposed changes to the ISO tariff shown in black-line format
Attachment C	Declaration of Kevin M. King, Senior Financial Analyst and Credit Manager for the ISO

**VII. Conclusion**

For the foregoing reasons, the Commission should accept the proposed tariff changes contained in the instant filing to become effective on April 7, 2010. Please contact the undersigned if you have any questions regarding this matter.

Respectfully submitted,



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Counsel for the California Independent System Operator Corporation

**Attachment A – Clean Sheets**  
**Late Payment Enforcement Tariff Amendment**  
**Fourth Replacement CAISO Tariff**  
**February 5, 2010**

otherwise specified in this CAISO Tariff the CAISO will recover all costs incurred in connection with these CAISO banking facilities through the appropriate component of the Grid Management Charge. The CAISO shall establish and operate the following accounts:

- 11.29.9.2.1 A CAISO Clearing Account to and from which all payments are made;
  - 11.29.9.2.2 A CAISO Reserve Account from which any debit balances on the CAISO Clearing Account at the close of banking business on each Business Day shall be settled or reduced in accordance with this CAISO Tariff. The CAISO shall use the Financial Security provided by a Scheduling Coordinator, CRR Holder, or Candidate CRR Holder pursuant to Section 12, if necessary, to clear any debit balances on the CAISO Reserve Account that may arise as a result of that Scheduling Coordinator's or CRR Holder's failure to pay an amount due under this CAISO Tariff;
  - 11.29.9.2.3 A CAISO Surplus Account;
  - 11.29.9.2.4 A CAISO Penalty Reserve Account; and
  - 11.29.9.2.5 Such other accounts as the CAISO deems necessary or convenient for the purpose of efficiently implementing the funds transfer system under this CAISO Tariff. The CAISO shall notify Market Participants of the establishment of such accounts through the CAISO Website and by issuance of a Market Notice.
- 11.29.9.3 **Accounts of the Scheduling Coordinators, CRR Holders, Black Start Generators, and Participating TOs.**

Each Scheduling Coordinator, CRR Holder, Black Start Generator, and Participating TO shall establish and maintain a Settlement Account at a commercial bank located in the United States and reasonably acceptable to the CAISO which can effect money transfers via Fed-Wire where payments to and from the CAISO Clearing Account shall be made in accordance with this CAISO Tariff. Scheduling Coordinators, CRR Holders, and Black Start Generators may, but will not be required to, maintain separate accounts for

In the event that there are funds in the CAISO Surplus Account in excess of an amount to be determined by the CAISO Governing Board and identified in a Market Notice by the CAISO to Market Participants, the amount of such excess will be distributed to Scheduling Coordinators using the same method of apportioning the refund as the method employed in apportioning the liability for the Grid Management Charge.

**11.29.9.6.4 CAISO Penalty Reserve Account**

- (a) The CAISO Penalty Reserve Account will be available to the CAISO for the purpose of using funds collected for late payments of amounts set forth in Invoices pursuant to Section 11.29.14(c) and for late postings of Financial Security pursuant to Section 12.5.2(c) to clear the CAISO Clearing Account in the event that there are insufficient funds in the CAISO Clearing Account to pay CAISO Creditors. If there are insufficient funds in the CAISO Clearing Account to pay CAISO Creditors and to clear the account on any Payment Date occurring on or after April 7, 2010, due to payment default by one or more CAISO Debtors, the CAISO shall transfer funds from the CAISO Penalty Reserve Account to the CAISO Clearing Account to clear it by close of banking business on that Payment Date pursuant to Section 11.29.13.4. If available funds in the CAISO Penalty Reserve Account are insufficient to clear the CAISO Clearing Account and the payment default is not cured, the payment default will be allocated in accordance with the CAISO Tariff. After the payment default is allocated in accordance with the CAISO Tariff, any funds that are subsequently added to the CAISO Penalty Reserve Account can only be used to clear the CAISO Clearing Account pursuant to this Section 11.29.9.6.4 for payment defaults that occur after the funds were added to the CAISO Penalty Reserve Account.

- (b) On December 31 of each year, the CAISO will draw any funds then available in the CAISO Penalty Reserve Account in excess of five (5) million dollars and will apply that excess to offset the following year's Grid Management Charge revenue requirement pursuant to Schedule 1 of Appendix F.
- (c) If the CAISO Penalty Reserve Account is drawn upon, the CAISO will as soon as possible thereafter take any necessary steps against the defaulting Scheduling Coordinator or CRR Holder, including making any calculations or taking any other appropriate action, to replenish the CAISO Penalty Reserve Account, including drawing on any credit support or other Financial Security provided by the defaulting Scheduling Coordinator or CRR Holder pursuant to Section 12 or serving demands on any defaulting Scheduling Coordinator if Financial Security has been exhausted or if no Financial Security is available due to establishment of an Unsecured Credit Limit.
- (d) The proceeds of drawings under any line of credit, other credit facility, or other Financial Security of the CAISO Penalty Reserve Account will be held on trust for CAISO Creditors to which amounts are owed on any Payment Date occurring on or after April 7, 2010. If the CAISO Penalty Reserve Account is replenished as provided for in this Section 11.29.9.6.4, any credits shall be held on trust for CAISO Creditors to which amounts are owed on any Payment Date occurring on or after April 7, 2010.

**11.29.9.6.4.1 Replenishment Following Payment Default**

If the CAISO has debited the CAISO Penalty Reserve Account, then:

- (a) If, after the CAISO has debited the CAISO Penalty Reserve Account on a Payment Date, the CAISO Bank receives a remittance from a CAISO Debtor which has not been (but should have been, if it had been received on a timely basis) credited to the CAISO Clearing Account by 10:00 am on the Payment Date and which required the debiting of the CAISO Penalty Reserve Account, such remittance shall be credited to the CAISO Penalty Reserve Account.
- (b) The proceeds of any enforcement of Financial Security and/or amounts recovered under proceedings shall be credited to the CAISO Penalty Reserve Account.
- (c) If, after taking reasonable action, the CAISO determines that the default amount (or any part) and/or Interest cannot be recovered, such amounts shall be allocated in accordance with the CAISO Tariff.

**11.29.10 Billing and Payment.**

The CAISO shall prepare and send to each Scheduling Coordinator, CRR Holder, Black Start Generator or Participating TO two Invoices or Payment Advices for each billing period in each calendar month. There are two (2) billing periods in each calendar month. The first billing period is from the first to the fifteenth day of the month and second billing period is from the sixteenth to the last of day of the month. The CAISO will publish Invoices and Payment Advices for the first semi-monthly billing period in a month on the seventh Business Day after the Trading Day that is the fifteenth day of the month. The CAISO will publish Invoices and Payment Advices for the second semi-monthly billing period in a month on the seventh Business Day after the Trading Day that is the end of the month. Each Invoice or Payment Advice will show amounts which are to be paid by or to each Scheduling Coordinator, CRR Holder, Black Start Generator or Participating TO, the Payment Date, being the date on which such amounts are to be paid or received, and details of the CAISO Clearing Account to which any amounts owed by or to Scheduling Coordinators, CRR Holder, Black Start Generator or Participating TO are to be paid. Revenues owed from a Scheduling Coordinator, CRR Holder, Black Start Generator or Participating TO are expressed as a positive amount on an Invoice. Revenues owed to a Scheduling Coordinator, CRR Holder, Black Start Generator or Participating TO are expressed as a negative amount on a Payment Advice. Payments or charges for the items referred to in an Invoice or Payment Advice (except for the charges payable under long-term contracts) for each Trading Day in each calendar month shall be made five (5) Business Days after the date on which the semi-monthly Invoice or Payment Advice is issued.

**11.29.13.4 Use of CAISO Reserve Account**

If there are funds standing to the credit of the CAISO Reserve Account or the CAISO Penalty Reserve Account (including the proceeds of drawings under banking facilities described in Sections 11.29.9.6.2 and 11.29.9.6.4), the CAISO shall debit the CAISO Reserve Account or the CAISO Penalty Reserve Account with the default amount in order to clear the CAISO Clearing Account and effect payment to the CAISO Creditors.

**11.29.13.5 Action against a Defaulting Scheduling Coordinator or CRR Holder.**

The CAISO shall as soon as possible after taking action under 11.29.13.4 take any steps it deems appropriate against the defaulting Scheduling Coordinator to recover the default amount (and any Interest as set out in Section 11.29.13.3 including enforcing any Financial Security, exercising its rights of recoupment or set-off and/or bringing proceedings against the defaulting Scheduling Coordinator or CRR Holder pursuant to Section 11.29.21.1.

**11.29.13.6 Default to be Remedied Promptly.**

In the event that the CAISO reasonably believes that an outstanding amount which has not been paid by 10:00 am on the relevant Payment Date, is likely to be paid no later than close of banking business on the next Business Day then the CAISO may, but shall not be obliged to, delay enforcing that CAISO Debtor's Financial Security or taking other measures to recover payment until after the close of banking business on the next Business Day but Interest shall nonetheless accrue pursuant to Section 11.29.13.1.

**11.29.13.7 Set-Off.**

The CAISO is authorized to recoup, set off and apply any amount to which any defaulting CAISO Debtor is or will be entitled, in or towards the satisfaction of any of that CAISO Debtor's debts arising under the CAISO Settlement and billing process. Each CAISO Creditor and each CAISO Debtor expressly acknowledges the following application of funds: first to the current month's Grid Management Charge, and then as described in 11.29.13.8 unless otherwise specified in accordance with Section 11.29.17.

**11.29.13.8 Order of Payments.**

Unless otherwise specified in accordance with Section 11.29.17, the CAISO shall apply payments received in respect of amounts owing to CAISO Creditors to repay the relevant debts in the order of the creation of such debts.

**11.29.13.9 Interest Accruing while Enforcing the Financial Security.**

If the CAISO has debited the CAISO Reserve Account and it subsequently succeeds in enforcing the Financial Security provided by the defaulting Scheduling Coordinator or CRR Holder, the CAISO shall be entitled to withdraw from such Financial Security in addition to the default amount, all costs incurred and Interest accrued to the CAISO as a result of debiting the CAISO Reserve Account from the date of such debit to the date of enforcement of the said Financial Security.

**11.29.13.10 Application of Funds Received**

Amounts credited to the CAISO Clearing Account in payment of a default amount (as set out in Section 11.29.9.6.2.1 and 11.29.9.6.4.1) or as a result of enforcing the defaulting CAISO Debtor's Financial Security shall be applied to the CAISO Reserve Account pursuant to Section 11.29.9.6.2.1 or to the CAISO Penalty Reserve Account pursuant to Section 11.29.9.6.4.1 to reduce amounts outstanding under any CAISO banking facilities used to fund the CAISO Reserve Account or the CAISO Penalty Reserve Account on the relevant Payment Date and the balance (if any) shall be applied to reimburse pro rata any CAISO Creditors whose payments were reduced pursuant to Section 11.29.17.1.

**11.29.14 Enforcement Actions for Late Payments**

Each Market Participant that is late in paying the amount set forth in an Invoice from the CAISO is subject to the following enforcement actions:

- (a) After each of the first two (2) times during a rolling twelve (12) month period that a Market Participant is late in paying the amount set forth in an Invoice from the CAISO, the CAISO will send the delinquent Market Participant a warning notice.
- (b) After the third time during a rolling twelve (12) month period that a Market Participant is late in paying the amount set forth in an Invoice, the CAISO may revoke the Market Participant's Unsecured Credit Limit and require the Market Participant to post cash or another form of Financial Security reasonably acceptable to the ISO in lieu of unsecured credit or any other form of Financial Security to secure the Market Participant's financial obligations. The CAISO will require such a cash posting or other form of Financial Security for no fewer than twelve (12) months following the month in which the Market Participant's third delinquency occurs, and the CAISO may then return to the Market Participant all or a portion of the posted cash or other form of Financial Security, reinstate the Market Participant's ability to use an Unsecured Credit Limit, and reinstate the Market Participant's ability to use unsecured credit or other form of Financial Security to secure the Market Participant's financial obligations if, during the intervening time, the Market Participant has timely paid all of the amounts set forth in its Invoices from the CAISO, and timely met any requests for Financial Security pursuant to Section 12.4.

- (c) After the third time and each subsequent time during a rolling twelve (12) month period beginning no earlier than April 7, 2010 that a Market Participant is late in paying the amount set forth in an Invoice, the CAISO will assess a penalty to the Market Participant equal to the greater of \$1,000 or two percent (2%) of the amount set forth in the Invoice that the Market Participant has been late in paying, up to a maximum amount of \$20,000 per each late payment for which the CAISO assesses a penalty pursuant to this Section 11.29.14(c). This penalty will be included in the next Invoice to the Market Participant. Penalty amounts collected by the CAISO pursuant to this Section 11.29.14(c) will be treated as set forth in Section 11.29.9.6.4.
- (d) After the fourth and any subsequent times during a rolling twelve (12) month period that a Market Participant is late in paying the amount set forth in an Invoice, the CAISO may extend the time period that it imposes the measures described in Section 11.29.14 (b) for the Market Participant's third delinquency during a rolling twelve (12) month period.

- (e) After the fifth time during a rolling twelve-month period beginning no earlier than April 7, 2010 that a Market Participant is late in paying the amount set forth in an Invoice, the CAISO may, notwithstanding any other provision of the CAISO Tariff, (i) suspend any and all rights of the Market Participant under the CAISO Tariff, effective immediately after the CAISO sends written notice of the suspension to the Market Participant, and (ii) terminate any agreement entered into between the CAISO and the Market Participant that allows the Market Participant to participate in the CAISO Markets, effective upon the date the CAISO sends written notice of the termination to the Market Participant or upon the date established in accordance with FERC rules if FERC rules require the CAISO to file the notice of termination with FERC. If the CAISO sends a notice of suspension or termination to a Market Participant pursuant to this Section 11.29.14(e), the Market Participant will not have the right to prevent such suspension or termination by curing its late payment of an amount set forth in an Invoice. The CAISO will, following termination of an agreement pursuant to this Section 11.29.14(e) and within thirty (30) days of being satisfied that no sums remain owing by the Market Participant under the CAISO Tariff, return or release to the Market Participant, as appropriate, any money or credit support provided by such Market Participant to the CAISO under Section 12.
- (f) Any time that a Market Participant is late in paying the amount set forth in an Invoice, the CAISO will assess Interest to the Market Participant and will apply Interest payments as set forth in Section 11.29.13.1. Any time that a Market Participant is late in paying the amount set forth in an Invoice, the CAISO may also take other applicable enforcement actions in the CAISO Tariff and in the applicable Business Practice Manual, if deemed necessary by the CAISO to protect the financial integrity of the CAISO Markets.

**11.29.15 [NOT USED]**

**11.29.16 Prohibition on Transfers.**

The CAISO shall at no time instruct the CAISO Bank to transfer any sum from a CAISO Account to another account (not being a CAISO Account) unless that account is a Settlement Account or the amount is owed to the CAISO under this CAISO Tariff.

**12.5.2 Enforcement Actions for Late Posting of Financial Security**

Each Market Participant that is late in posting Financial Security within three (3) Business Days as required by Section 12.4 will be subject to the following enforcement actions:

- (a) After each of the first two (2) times during a rolling twelve (12) month period that a Market Participant is late in posting additional Financial Security within three Business Days as required by Section 12.4, the CAISO will send the delinquent Market Participant a warning notice.
- (b) After the third time during a rolling twelve (12) month period that a Market Participant is late in posting additional Financial Security, the CAISO may require the Market Participant to post an additional Financial Security Amount that is as high as the highest level of the Market Participant's Estimated Aggregate Liability during the preceding twelve (12) months. The CAISO will hold such additional Financial Security Amount for no fewer than twelve (12) months following the month in which the Market Participant's third delinquency occurs, and the CAISO may then return to the Market Participant all or a portion of such additional Financial Security Amount if, during the intervening time, the Market Participant has timely posted all further additional Financial Security Amounts requested by the CAISO and has timely paid all of the amounts set forth in the Invoices from the CAISO.
- (c) After the third time and each subsequent time during a rolling twelve (12) month period beginning no earlier than April 7, 2010 that a Market Participant is late in posting additional Financial Security, the CAISO will assess a penalty to the Market Participant equal to the greater of \$1,000 or two percent (2%) of the additional Financial Security Amount that the Market Participant has been late in posting, up to a maximum amount of \$20,000 per each late posting for which the CAISO assesses a penalty pursuant to this Section 12.5.2(c). This penalty will be included in the next Invoice to the Market Participant. Penalty amounts collected by the CAISO pursuant to this Section 12.5.2(c) will be treated as set forth in Section 11.29.9.6.4.

- (d) After the fourth and any subsequent times during a rolling twelve (12) month period that a Market Participant is late in posting additional Financial Security, the CAISO may extend the time period that it holds all or a portion of the additional Financial Security Amount resulting from the Market Participant's third delinquency during a rolling twelve (12) month period as described in Section 12.5.2(b).
- (e) After the fifth time during a rolling twelve (12) month period beginning no earlier than April 7, 2010 that a Market Participant is late in posting additional Financial Security, the CAISO may, notwithstanding any other provision of the CAISO Tariff, (i) suspend any and all rights of the Market Participant under the CAISO Tariff, effective immediately after the CAISO sends written notice of the suspension to the Market Participant, and (ii) terminate any agreement entered into between the CAISO and the Market Participant that allows the Market Participant to participate in the CAISO Markets, effective upon the date the CAISO sends written notice of the termination to the Market Participant or upon the date established in accordance with FERC rules if FERC rules require the CAISO to file the notice of termination with FERC. If the CAISO sends a notice of suspension or termination to a Market Participant pursuant to this Section 12.5.2(e), the Market Participant will not have the right to prevent such suspension or termination by curing its late posting of additional Financial Security. The CAISO will, following termination of an agreement pursuant to this Section 12.5.2(e) and within thirty (30) days of being satisfied that no sums remain owing by the Market Participant under the CAISO Tariff, return or release to the Market Participant, as appropriate, any money or credit support provided by such Market Participant to the CAISO under Section 12.
- (f) Any time that a Market Participant is late in posting additional Financial Security, the CAISO may also take other enforcement actions as described in this Section 12 and in the applicable Business Practice Manual, if deemed necessary by the CAISO to protect the financial integrity of the CAISO Markets.

[NOT USED]

**CAISO Metered Entity**

(a) any one of the following entities that is directly connected to the CAISO Controlled Grid:

i. a Generator other than a Generator that sells all of its Energy (excluding any Station Power that is netted pursuant to Section 10.1.3) and Ancillary Services to the Utility Distribution Company or Small Utility Distribution Company in whose Service Area it is located;

ii. an MSS Operator; or

iii. a Utility Distribution Company or Small Utility Distribution Company; and

(b) any one of the following entities:

i. a Participating Generator;

ii. a Participating TO in relation to its Tie Point Meters with other TOs or Balancing Authority Areas;

iii. a Participating Load;

iv. a Participating Intermittent Resource; or

v. a utility that requests that Unaccounted for Energy for its Service Area be calculated separately, in relation to its meters at points of connection of its Service Area with the systems of other utilities.

**CAISO Penalty Reserve Account**

The account established by the CAISO pursuant to Section 11.29.9.6.4.

**Attachment B - Blacklines**  
**Late Payment Enforcement Tariff Amendment**  
**Fourth Replacement CAISO Tariff**  
**February 5, 2010**

\*\*\*

**11.29.9.2 CAISO Accounts to be Established.**

The CAISO is authorized to establish and maintain bank accounts held in trust for Market Participants and obtain lines of credit and other banking facilities (not exceeding an aggregate amount set by the CAISO Governing Board) necessary for the operation of its Settlement and billing procedures. Unless otherwise specified in this CAISO Tariff the CAISO will recover all costs incurred in connection with these CAISO banking facilities through the appropriate component of the Grid Management Charge. The CAISO shall establish and operate the following accounts:

**11.29.9.2.1** A CAISO Clearing Account to and from which all payments are made;

**11.29.9.2.2** A CAISO Reserve Account from which any debit balances on the CAISO Clearing Account at the close of banking business on each Business Day shall be settled or reduced in accordance with this CAISO Tariff. The CAISO shall use the Financial Security provided by a Scheduling Coordinator, CRR Holder, or Candidate CRR Holder pursuant to Section 12, if necessary, to clear any debit balances on the CAISO Reserve Account that may arise as a result of that Scheduling Coordinator's or CRR Holder's failure to pay an amount due under this CAISO Tariff;

**11.29.9.2.3** A CAISO Surplus Account; and

**11.29.9.2.4** A CAISO Penalty Reserve Account; and

**11.29.9.2.45** Such other accounts as the CAISO deems necessary or convenient for the purpose of efficiently implementing the funds transfer system under this CAISO Tariff. The CAISO shall notify Market Participants of the establishment of such accounts through the CAISO Website and by issuance of a Market Notice.

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**11.29.9.6.4 CAISO Penalty Reserve Account**

(a) The CAISO Penalty Reserve Account will be available to the CAISO for the purpose of using funds collected for late payments of amounts set forth in Invoices pursuant to Section 11.29.14(c) and for late postings of Financial Security pursuant to Section 12.5.2(c) to clear the CAISO Clearing Account in the

event that there are insufficient funds in the CAISO Clearing Account to pay CAISO Creditors. If there are insufficient funds in the CAISO Clearing Account to pay CAISO Creditors and to clear the account on any Payment Date occurring on or after April 7, 2010, due to payment default by one or more CAISO Debtors, the CAISO shall transfer funds from the CAISO Penalty Reserve Account to the CAISO Clearing Account to clear it by close of banking business on that Payment Date pursuant to Section 11.29.13.4. If available funds in the CAISO Penalty Reserve Account are insufficient to clear the CAISO Clearing Account and the payment default is not cured, the payment default will be allocated in accordance with the CAISO Tariff. After the payment default is allocated in accordance with the CAISO Tariff, any funds that are subsequently added to the CAISO Penalty Reserve Account can only be used to clear the CAISO Clearing Account pursuant to this Section 11.29.9.6.4 for payment defaults that occur after the funds were added to the CAISO Penalty Reserve Account.

- (b) On December 31 of each year, the CAISO will draw any funds then available in the CAISO Penalty Reserve Account in excess of five (5) million dollars and will apply that excess to offset the following year's Grid Management Charge revenue requirement pursuant to Schedule 1 of Appendix F.
- (c) If the CAISO Penalty Reserve Account is drawn upon, the CAISO will as soon as possible thereafter take any necessary steps against the defaulting Scheduling Coordinator or CRR Holder, including making any calculations or taking any other appropriate action, to replenish the CAISO Penalty Reserve Account, including drawing on any credit support or other Financial Security provided by the defaulting Scheduling Coordinator or CRR Holder pursuant to Section 12 or serving demands on any defaulting Scheduling Coordinator if Financial Security has been exhausted or if no Financial Security is available due to establishment of an Unsecured Credit Limit.

(d) The proceeds of drawings under any line of credit, other credit facility, or other Financial Security of the CAISO Penalty Reserve Account will be held on trust for CAISO Creditors to which amounts are owed on any Payment Date occurring on or after April 7, 2010. If the CAISO Penalty Reserve Account is replenished as provided for in this Section 11.29.9.6.4, any credits shall be held on trust for CAISO Creditors to which amounts are owed on any Payment Date occurring on or after April 7, 2010.

**11.29.9.6.4.1 Replenishment Following Payment Default**

If the CAISO has debited the CAISO Penalty Reserve Account, then:

- (a) If, after the CAISO has debited the CAISO Penalty Reserve Account on a Payment Date, the CAISO Bank receives a remittance from a CAISO Debtor which has not been (but should have been, if it had been received on a timely basis) credited to the CAISO Clearing Account by 10:00 am on the Payment Date and which required the debiting of the CAISO Penalty Reserve Account, such remittance shall be credited to the CAISO Penalty Reserve Account.
- (b) The proceeds of any enforcement of Financial Security and/or amounts recovered under proceedings shall be credited to the CAISO Penalty Reserve Account.
- (c) If, after taking reasonable action, the CAISO determines that the default amount (or any part) and/or Interest cannot be recovered, such amounts shall be allocated in accordance with the CAISO Tariff.

\* \* \*

**11.29.13.4 Use of CAISO Reserve Account-**

If there are funds standing to the credit of the CAISO Reserve Account or the CAISO Penalty Reserve Account (including the proceeds of drawings under banking facilities described in Sections 11.29.9.6.2 and 11.29.9.6.4), ~~or the CAISO Penalty Reserve Account~~, the CAISO shall debit the CAISO Reserve

Account ~~or and~~ the CAISO Penalty Reserve Account with the default amount in order to clear the CAISO Clearing Account and effect payment to the CAISO Creditors.

\* \* \*

**11.29.13.10 Application of Funds Received-**

Amounts credited to the CAISO Clearing Account in payment of a default amount (as set out in Section 11.29.9.6.2.1 and 11.29.9.6.4.1) or as a result of enforcing the defaulting CAISO Debtor's Financial Security shall be applied to the CAISO Reserve Account pursuant to Section 11.29.9.6.2.1 or to the CAISO Penalty Reserve Account pursuant to Section 11.29.9.6.4.1 to reduce amounts outstanding under any CAISO banking facilities used to fund the CAISO Reserve Account or the CAISO Penalty Reserve Account on the relevant Payment Date and the balance (if any) shall be applied to reimburse pro rata any CAISO Creditors whose payments were reduced pursuant to Section 11.29.17.1.

\* \* \*

**11.29.14 [NOT USED]**

**42.5.3 Enforcement Actions for Late Payments-**

Each Market Participant that is late in paying the amount set forth in an Invoice from the CAISO is subject to the following enforcement actions:

- (a) After each of the first two (2) times during a rolling twelve- (12) month period that a Market Participant is late in paying the amount set forth in an Invoice from the CAISO, the CAISO will send the delinquent Market Participant a warning notice~~letter~~.
- (b) After the third time during a rolling twelve- (12) month period that a Market Participant is late in paying the amount set forth in an Invoice ~~from the CAISO~~, the CAISO may revoke the Market Participant's Unsecured Credit Limit and require the Market Participant to post cash or another form of Financial Security reasonably acceptable to the ISO in lieu of unsecured credit or any other form of Financial Security to secure the Market Participant's financial obligations. The CAISO will require such a cash posting or other form of Financial Security for no fewer than twelve (12) months following the month in which the Market Participant's third delinquency occurs, and the CAISO may then return to the Market Participant all or a portion of the posted cash or other form of Financial

Security, reinstate the Market Participant's ability to use an Unsecured Credit Limit, and reinstate the Market Participant's ability to use unsecured credit or other form of Financial Security to secure the Market Participant's financial obligations if, during the intervening time, the Market Participant has timely paid all of the amounts set forth in its Invoices from the CAISO, and timely met any requests for Financial Security pursuant to Section 12.4.

- (c) After the third time and each subsequent time during a rolling twelve (12) month period beginning no earlier than April 7, 2010 that a Market Participant is late in paying the amount set forth in an Invoice, the CAISO will assess a penalty to the Market Participant equal to the greater of \$1,000 or two percent (2%) of the amount set forth in the Invoice that the Market Participant has been late in paying, up to a maximum amount of \$20,000 per each late payment for which the CAISO assesses a penalty pursuant to this Section 11.29.14(c). This penalty will be included in the next Invoice to the Market Participant. Penalty amounts collected by the CAISO pursuant to this Section 11.29.14(c) will be treated as set forth in Section 11.29.9.6.4.
- (d) After the fourth and any subsequent times during a rolling twelve- (12) month period that a Market Participant is late in paying the amount set forth in an Invoice from the CAISO, the CAISO may extend the time period that it imposes the measures described in Section 11.29.14 (b) above for the Market Participant's third delinquency during a rolling twelve (12) month period.
- (e) After the fifth time during a rolling twelve-month period beginning no earlier than April 7, 2010 that a Market Participant is late in paying the amount set forth in an Invoice, the CAISO may, notwithstanding any other provision of the CAISO Tariff, (i) suspend any and all rights of the Market Participant under the CAISO Tariff, effective immediately after the CAISO sends written notice of the suspension to the Market Participant, and (ii) terminate any agreement entered into between the CAISO and the Market Participant that allows the Market Participant to participate in the CAISO Markets, effective upon the date the

CAISO sends written notice of the termination to the Market Participant or upon the date established in accordance with FERC rules if FERC rules require the CAISO to file the notice of termination with FERC. If the CAISO sends a notice of suspension or termination to a Market Participant pursuant to this Section 11.29.14(e), the Market Participant will not have the right to prevent such suspension or termination by curing its late payment of an amount set forth in an Invoice. The CAISO will, following termination of an agreement pursuant to this Section 11.29.14(e) and within thirty (30) days of being satisfied that no sums remain owing by the Market Participant under the CAISO Tariff, return or release to the Market Participant, as appropriate, any money or credit support provided by such Market Participant to the CAISO under Section 12.

- (f) Any time that a Market Participant is late in paying the amount set forth in an Invoice from the CAISO, the CAISO will assess Interest to the Market Participant and will apply Interest payments as set forth in Section 11.29.13.1. Any time that a Market Participant is late in paying the amount set forth in an Invoice from the CAISO, the CAISO may also take other applicable enforcement actions in the CAISO Tariff as described in this Section 12 and in the applicable Business Practice Manual, if deemed necessary by the CAISO to protect the financial integrity of the CAISO Markets.

\* \* \*

#### **12.5.2 Enforcement Actions for Late Posting of Financial Security-**

Each Market Participant that is late in posting Financial Security within three (3) Business Days as required by Section 12.4 will be subject to the following enforcement actions:

- (a) After each of the first two (2) times during a rolling twelve (12) -month period that a Market Participant is late in posting additional Financial Security within three Business Days as required by Section 12.4, the CAISO will send the delinquent Market Participant a warning notice letter.
- (b) After the third time during a rolling twelve (12) -month period that a Market Participant is late in posting additional Financial Security, the CAISO may require the Market

Participant to post an additional Financial Security Amount that is as high as the highest level of the Market Participant's Estimated Aggregate Liability during the preceding twelve (12) months. The CAISO will hold such additional Financial Security Amount for no fewer than twelve (12) months following the month in which the Market Participant's third delinquency occurs, and the CAISO may then return to the Market Participant all or a portion of such additional Financial Security Amount if, during the intervening time, the Market Participant has timely posted all further additional Financial Security Amounts requested by the CAISO and has timely paid all of the amounts set forth in the Invoices from the CAISO.

- (c) After the third time and each subsequent time during a rolling twelve (12) month period beginning no earlier than April 7, 2010 that a Market Participant is late in posting additional Financial Security, the CAISO will assess a penalty to the Market Participant equal to the greater of \$1,000 or two percent (2%) of the additional Financial Security Amount that the Market Participant has been late in posting, up to a maximum amount of \$20,000 per each late posting for which the CAISO assesses a penalty pursuant to this Section 12.5.2(c). This penalty will be included in the next Invoice to the Market Participant. Penalty amounts collected by the CAISO pursuant to this Section 12.5.2(c) will be treated as set forth in Section 11.29.9.6.4.
- (d) After the fourth and any subsequent times during a rolling twelve (12)-month period that a Market Participant is late in posting additional Financial Security, the CAISO may extend the time period that it holds all or a portion of the additional Financial Security Amount resulting from the Market Participant's third delinquency during a rolling twelve (12) month period as described in Section 12.5.2(b).
- (e) After the fifth time during a rolling twelve (12) month period beginning no earlier than April 7, 2010 that a Market Participant is late in posting additional Financial Security, the CAISO may, notwithstanding any other provision of the CAISO Tariff, (i) suspend any and all rights of the Market Participant under the CAISO Tariff, effective immediately after the CAISO sends written notice of the suspension to the Market Participant, and (ii) terminate

any agreement entered into between the CAISO and the Market Participant that allows the Market Participant to participate in the CAISO Markets, effective upon the date the CAISO sends written notice of the termination to the Market Participant or upon the date established in accordance with FERC rules if FERC rules require the CAISO to file the notice of termination with FERC. If the CAISO sends a notice of suspension or termination to a Market Participant pursuant to this Section 12.5.2(e), the Market Participant will not have the right to prevent such suspension or termination by curing its late posting of additional Financial Security. The CAISO will, following termination of an agreement pursuant to this Section 12.5.2(e) and within thirty (30) days of being satisfied that no sums remain owing by the Market Participant under the CAISO Tariff, return or release to the Market Participant, as appropriate, any money or credit support provided by such Market Participant to the CAISO under Section 12.

(f) Any time that a Market Participant is late in posting additional Financial Security, the CAISO may also take other enforcement actions as described in this Section 12 and in the applicable Business Practice Manual, if deemed necessary by the CAISO to protect the financial integrity of the CAISO Markets.

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#### **CAISO Tariff Appendix A**

#### **Master Definitions Supplement**

#### **CAISO Penalty Reserve Account**

The account established by the CAISO pursuant to Section 11.29.9.6.4.

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**Attachment C – Declaration of Kevin M. King**  
**Late Payment Enforcement Tariff Amendment**  
**Fourth Replacement CAISO Tariff**  
**February 5, 2010**

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

**California Independent System  
Operator Corporation**

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)

**Docket No. ER10-\_\_\_\_-000**

**DECLARATION OF KEVIN M. KING**

I, Kevin M. King, hereby provide my declaration in support of the tariff amendment filed by the California Independent System Operator Corporation ("ISO") in this proceeding.

1. I am employed as Senior Financial Analyst and Credit Manager for the ISO. In this position, I am responsible for the administration of the ISO's credit policy as described in the ISO Tariff and the Business Practice Manual for Credit Management. This includes all aspects of the credit management function, including assessing unsecured credit limits, negotiating and processing financial security instruments, and handling requests for additional or reduced financial security amounts. In addition, I coordinate efforts to obtain liability estimates and advise management of potential credit risks. Further, I am responsible for providing outreach to market participants and internal stakeholders concerned about credit issues and practices and am responsible for developing credit policy that anticipates the needs of the market in order to reduce credit risk and enhance the stability of the market to the benefit of ISO and its market participants.

2. I have worked in my current position at the ISO since October 31, 2005. Prior to joining the ISO, from April 2001 through October 2005, I held the positions of Enterprise

Risk Manager and Senior Project Manager for Imperial Irrigation District. My educational background includes a Masters of Business Administration from Saint Mary's College and a Bachelor of Science in Business Management from North Central College.

3. In late 2008, I led a credit policy stakeholder process that, among other proposed credit policy enhancements, included provisions for a progressive discipline process for market participants who paid invoices late or did not post financial security within the prescribed posting period. The progressive discipline program developed through that process, which was widely accepted by the stakeholders, included financial penalties, the ability to suspend or terminate a chronic offender of the policy, and non-financial elements. The progressive discipline program, in its entirety, was presented to and approved by the ISO Board of Governors in its December 2008 meeting. The non-financial elements of the progressive discipline program and the other credit policy enhancements were filed with and unconditionally approved by FERC and took effect March 31, 2009, the date that the ISO implemented its new market design (sometimes called the Market Redesign and Technology Upgrade or MRTU). Due to both the need to ensure MRTU readiness and post-implementation resource constraints, the financial penalty and suspension/termination elements of the progressive discipline program were not filed for FERC approval along with the non-financial elements and the other credit policy enhancements.

4. During the later part of 2009, after about nine months of experience with the progressive discipline program, I and others at the ISO decided it was necessary to initiate the effort to complete the progressive discipline program by adding the financial penalty and suspension/termination elements of the program that had been previously approved by stakeholders and the Board of Governors.

5. I am familiar with the operation of the ISO's credit and market clearing policies. Credit policy violations include cases in which market participants are late in providing additional financial security requested by the ISO, and market clearing policy violations include cases in which market participants are late in paying amounts shown on invoices issued by the ISO. The new ISO market design that went into effect on March 31, 2009 included partial implementation of progressive disciplinary measures under the ISO tariff for these types of credit and market clearing policy violations. Pursuant to the current progressive disciplinary measures that partially implement the ISO Board-approved policies, the ISO issues a warning notice to a market participant after the first two times during a rolling twelve-month period that the market participant is late in posting additional financial security or paying an invoiced amount. After the third time the market participant is late in making its posting of additional financial security, the ISO may take measures that include requiring the market participant to post more financial security that the ISO will retain for at least twelve months. After the third time the market participant is late in making its payment, the ISO may revoke any unsecured credit that the market participant may have and require it to be replaced by an alternative form of financial security which the ISO will retain for at least twelve months.

After the fourth and any subsequent time that the market participant is late in making its posting or payment, the ISO may extend the amount of time that it retains the additional financial security required after the third delinquency.

6. Despite the ISO's enforcement of these progressive disciplinary measures, there have been a number of instances since March 31, 2009 in which market participants have been late in posting additional financial security and in paying invoiced amounts.

7. Since March 31, 2009, fifty-eight individual market participants have been late one or more times in paying invoices by the 10:00 a.m. deadline set forth in the ISO tariff. These fifty-eight market participants make up approximately half of the active market participants in the ISO's new market. Of this number, twenty-nine market participants have been late one time in paying invoiced amounts, eighteen market participants have been late two times in paying invoiced amounts, and eleven market participants have been late three or more times in paying invoiced amounts. Of the eleven market participants that have paid invoiced amounts late three or more times, one market participant has paid invoiced amounts late six times and two market participants have paid invoiced amounts late seven times.

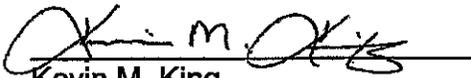
8. On January 20, 2009, the payment by one market participant, which was of a sizeable invoiced amount, was made so late in the day that Fed-Wire, the service the ISO uses for transferring payments, was unable to transfer the entirety of the late payment amount to ISO creditors. As a result, some ISO creditors did not receive

payment from that amount until January 21. The ISO has been informed that this late payment created significant commercial challenges for some ISO creditors.

9. Since March 31, 2009, three market participants have been late one or more times in posting financial security. Of this number, two market participants have been late one time in posting additional financial security and one market participant has been late three or more times in posting additional financial security.

10. These incidents of late payments of invoiced amounts and late postings of financial security have led the ISO to conclude that it should implement further progressive disciplinary measures as approved by the ISO Board to help ensure that market participants make timely postings and payments. Specifically, the ISO has concluded that financial penalties and the potential for suspension or termination of market participant status – measures approved by the ISO Board but not yet implemented – should be implemented as soon as possible.

I affirm under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge, information, and belief.

  
Kevin M. King

Executed this 5<sup>th</sup> day of February, 2010.