

The CAISO requests the Commission afford Attachment A confidential treatment under 18 C.F.R. § 388.112. The CAISO believes the scheduling coordinators involved would consider their CAISO settlement information to be confidential business information, which is information of the type that the CAISO typically does not release to the public. Attachment B to this filing is a proposed form of protective agreement acceptable to the CAISO it is prepared to utilize for purposes of 18 CFR § 388.112(b)(2).

I. DISCUSSION

Section 37 of the CAISO's tariff contains rules of conduct for CAISO market participants, violations of which result in the CAISO levying tariff-defined penalties. Section 37.9.4 of the CAISO tariff requires the CAISO to place all proceeds of penalties collected under section 37 into a trust account. After the end of the year, the CAISO must allocate those proceeds, with interest, to scheduling coordinators representing eligible market participants. The CAISO allocates the funds to market participants without a rules of conduct violation in that year in proportion the total grid management charge they paid over the year. Section 37.9.4 also requires the CAISO to "obtain FERC's approval of its determination of eligible Market Participants and their respective shares of the trust account proceeds" before distributing the penalty proceeds.

SCE's wholesale distribution access tariff (WDAT) on file with the Commission calls for forfeited interconnection study deposits to be "remitted to the ISO and treated in

accordance with ISO Tariff Section 37.9.4.”³ Although Section 37.9.4 contemplates that the penalty proceeds would be allocated to eligible market participants not assessed a financial penalty under section 37 of the CAISO tariff, the CAISO does not limit distribution of the WDAT funds to market participants without a rules of conduct violation for the year. The CAISO has explained it is not appropriate to apply the “eligible market participant” standard because the interconnection proceeds are not related to whether a market participant complied with the Rules of Conduct.⁴ Each scheduling coordinator should receive an allocation of the total forfeited funds based on its pro rata share of grid management charge payments made by that scheduling coordinator during the year in which the funds were forfeited; the *pro rata* allocation should not account for whether a scheduling coordinator was assessed a financial penalty under section 37 during the calendar year.

On August 26, 2022, the CAISO filed a petition in docket no. ER22-2730 requesting Commission approval to distribute both the funds collected from rules of conduct violations in 2021 and the forfeited WDAT study deposits from SCE for 2021. The Commission approved the CAISO’s proposed distribution through an order issued December 15, 2022.⁵ After receiving Commission approval, the CAISO identified an error in its proposed allocation of the \$179,199.13 in forfeited WDAT deposits.⁶

³ SCE WDAT, Clustering Large Generator Interconnection Procedures, section 3.4.1.2, (“Any proceeds of the Interconnection Study Deposit not otherwise reimbursed to the Interconnection Customer or applied to costs incurred or irrevocably committed to be incurred for the Interconnection Studies shall be remitted to the ISO and treated in accordance with ISO Tariff Section 37.9.4.”).

⁴ *Cal. Indep. Sys. Operator Corp.*, 166 FERC ¶ 61,139, P 20 (2019).

⁵ *Cal. Indep. Sys. Operator Corp.*, 181 FERC ¶ 61,199 (2022).

⁶ The CAISO’s proposed allocation of the rules of conduct proceeds did not contain this error; that allocation is not at issue in this filing.

Specifically, the *pro rata* allocation inadvertently included an entity affiliated with a CAISO market participant that does not pay grid management charge based on a pre-defined Commission-approved contractual arrangement. This entity should not have received an allocation of the forfeited WDAT study deposits from SCE for 2021, based on the contractual agreement, and therefore was allocated funds incorrectly in the CAISO's filing in docket no. ER22-2730. As the CAISO was finalizing the process of distributing the funds to market participants, it identified the error and corrected it before distributing the funds on January 24, 2023. The CAISO reallocated the funds *pro rata* based on the correct total grid management charge values.

Confidential Attachment A to this filing provides the corrected allocation that aligns with what the CAISO already allocated. This attachment also provides further details on the impact to each scheduling coordinator and a high-level summary of the overall impacts of the corrected allocation as compared to that proposed in docket no. ER22-2730. The CAISO seeks Commission approval of this corrected allocation. If the Commission so approves, then the CAISO would take no further action in distributing the funds. In the CAISO's view, the correct entities already have received the proper allocation of both principal and interest. If, however, the Commission finds that the CAISO should allocate the forfeited WDAT funds based on the allocation it included in its August 26 filing, then the CAISO would need to resettle the allocation to claw back the funds in question from the other 485 scheduling coordinator IDs and allocate the funds to the entity inadvertently included in that filing.

II. CORRESPONDENCE AND MARKET NOTICE

Under the Commission's Regulations,⁷ the CAISO requests that all correspondence, pleadings, and other communications about this filing be served upon the following, whose names should be placed on the official service list established by the Commission regarding this filing:

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Because this matter may interest all scheduling coordinators, the CAISO will issue a market notice of this filing.

⁷ 18 C.F.R. § 385.203(b).

III. CONCLUSION

The CAISO requests that the Commission approve the disposition of proceeds described in Attachment A, and provide confidential treatment of those attachments under 18 C.F.R. § 388.112.

Respectfully submitted,

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March 1, 2023

Attachment A

**[ATTACHMENT CONSISTS OF PRIVILEGED MATERIAL REDACTED
PURSUANT TO 18 C.F.R. 388.112]**

Attachment B

**Re: California Independent System Operator Corporation
Docket No. ER23-____-000**

**PETITION OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR
CORPORATION FOR APPROVAL OF DISPOSITION OF NON-REFUNDABLE
INTERCONNECTION FINANCIAL SECURITY**

Filed March 1, 2023

Form Protective Agreement

PROTECTIVE AGREEMENT

This Protective Agreement (“Agreement”) is entered into this ____ day of _____, 2023 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 _____, 2023 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: _____