

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

California Independent System)
Operator Corporation) Docket No. ER18-____-000

PETITION FOR LIMITED TARIFF WAIVER

The California Independent System Operator Corporation (CAISO) respectfully requests that the Commission grant a limited waiver of the CAISO tariff to exempt 42 demand response resources,¹ totaling 69.16 megawatts (MW) of capacity, from otherwise applicable non-availability charges and incentive payments under the Resource Adequacy Availability Incentive Mechanism (RAAIM) that would be charged or paid, respectively, from April 1, 2017, to April 30, 2018.² The CAISO respectfully requests that the Commission issue an order granting this waiver by July 30, 2018, so the affected parties and the CAISO can have certainty regarding RAAIM application for the 13-month waiver period.

Through a combination of non-availability charges and incentive payments, RAAIM is the CAISO’s mechanism for evaluating and incenting performance for resource adequacy (RA) capacity. Resources providing RA capacity with a maximum resource capacity (pmax) below 1 MW are exempt from RAAIM.³ The CAISO incorrectly applied this exemption to the 42 resources at issue in this filing, and none

¹ The 42 demand response resources affected are identified in confidential Attachment A.

² The CAISO submits this petition for limited waiver pursuant to Rule 207 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.207. The capitalized terms not otherwise defined have the meanings in the CAISO tariff, and references to specific sections, articles, and appendices are references to sections, articles, and appendices in the current CAISO tariff and revised or proposed in this filing, unless otherwise indicated.

³ Tariff section 40.9.2(a)(1).

has been subject to RAAIM since RAAIM became financially binding on April 1, 2017. Most of the resources (33 resources representing 59.16 MWs) qualified for the exemption for part of the waiver period but lost their eligibility at some point. The remaining 9 resources, representing 10 MWs, never qualified for the exemption. The CAISO understands the scheduling coordinators involved may have had the incorrect impression that their bidding activity was uncoupled from RAAIM impacts due to the CAISO's erroneous settlement statements showing no exposure to RAAIM. Their confusion may have been compounded because demand response resources, including all of these resources, were exempt from the standard capacity product, RAAIM's predecessor. Absent a waiver, the CAISO is required under its tariff to apply RAAIM charges and payments retroactively to resources that participated in the market under the mistaken belief they were exempt.

The CAISO requests that Attachments A and B be afforded confidential treatment under 18 C.F.R. § 388.112. A resource's status as RA capacity and its unit operating characteristics registered in Master File constitute confidential business information, which is information of the type the CAISO typically does not release to the public. Attachment C to this filing is a proposed form of protective agreement acceptable to the CAISO it is prepared to utilize for 18 CFR § 388.112(b)(2).

I. BACKGROUND

In 2009, the Commission approved the RA standard capacity product, which created a common RA product definition with defined availability incentives.⁴ The

⁴ *Cal. Indep. Sys. Operator Corp.*, 127 FERC ¶ 61,298 (2009).

performance incentives evaluated RA performance based on a unit's availability. A resource providing RA capacity whose availability fell below a defined threshold was subject to charges, and units whose availability exceeded the threshold were eligible for incentive payments. The standard capacity product was designed as a self-funding mechanism; charges assessed to resources with below-threshold performance were collected in a closed pool of funds and distributed to resources with above-threshold performance. The standard capacity product had several exemptions for particular categories of RA resources, including an exemption for resources with a pmax below 1 MW⁵ and demand response resources.⁶

On November 1, 2016, the CAISO implemented RAAIM as part of phase 1A of its reliability services initiative (RSI).⁷ RAAIM replaced the standard capacity product. Although RAAIM changed many details of how the CAISO evaluated RA availability, the basics (*i.e.*, creating defined availability thresholds, assessing charges and payments for availability below and above the thresholds, making the mechanism self-funding) remained the same. The RAAIM design carried over the existing exemption for RA resources below 1 MW.⁸ RAAIM, however, did not carry over the categorical exemption for demand response resources.⁹ For the first five months RAAIM was in effect, the

⁵ Prior tariff section 40.9.2(1).

⁶ Prior tariff section 40.9.2(4) ("Demand response resources . . . will not be subject to Non-Availability Charges or Availability Incentive Payments. . .").

⁷ On May 29, 2015, the CAISO filed tariff amendments to enact phase 1A of its reliability services initiative in Docket No. ER15-1825 (Phase 1A Tariff Amendment). The Commission approved the tariff revisions in an order issued on October 1, 2015. *Cal. Indep. Sys. Operator Corp.*, 153 FERC ¶ 61,002 (2015). The Phase 1A Tariff Amendment focused on enhancing and streamlining the CAISO's rules and processes regarding RA to meet the needs of an increasingly dynamic power grid. RAAIM, which is set forth in section 40.9 of the CAISO tariff, was a significant element of the Phase 1A Tariff Amendment.

⁸ Tariff section 40.9.2(a)(1).

⁹ The CAISO, however, provided the exemption to a more narrow set of resources. Phase 1A

CAISO calculated non-availability charges and incentive payments for advisory purposes only. Financially binding RAAIM charges and payments began on April 1, 2017.

In January 2018, a representative of a demand response resource asked the CAISO a question about RA unrelated to RAAIM exemptions. In determining the answer to that question the CAISO discovered that the systems it uses to calculate RAAIM (and SCP before it) were not configured to eliminate the pmax-based exemption if an existing resource's pmax increased from below 1 MW to 1 MW or above. The effect was that the CAISO treated any resource that ever had a pmax below 1 MW as though it were permanently exempt from SCP and RAAIM regardless of its current pmax. Under the standard capacity product, this issue had no practical impact because all of the resources whose pmax went from below 1 MW to 1 MW or above were demand response resources that were subject to the standard capacity product's exemption for demand response, irrespective of their pmax. The CAISO started applying the RAAIM requirements to the affected resources correctly as of May 1, 2018.

With elimination of the categorical demand response exemption under RAAIM, the CAISO's implementation of the pmax-based exemption now has a practical impact; RA resources whose pmax at some point increased from below 1 MW to 1 MW or above have received incorrect settlement statements reflecting a RAAIM exemption. Of the affected resources, 9 resources, representing 10 MWs, had their pmax go to 1 MW or above *before* RAAIM was in effect, meaning that they never should have been

Tariff Amendment Transmittal Letter, at 81, ("Phase 1A narrowed the scope of the exemption, so not all resources that were exempt under the Standard Capacity Product continued to qualify for an exemption under RAAIM.").

treated as exempt from RAAIM for any period.¹⁰ Therefore, absent the requested waiver, the CAISO must apply RAAIM to these nine resources for the entire period that RAAIM has been financially binding.

The remaining 33 resources, representing 59.16 MWs, had a pmax below 1 MW when RAAIM became financially binding but increased their pmax to 1 MW or above at some point after RAAIM became financially binding. The CAISO correctly exempted these 33 resources from RAAIM for part of the period between April 1, 2017, and April 30, 2018, but incorrectly exempted them for the period during which their pmax was registered at 1 MW or above. Absent this waiver, the CAISO would have to apply RAAIM to these 33 resources for part of the period that RAAIM has been financially binding. Attachment A, for which the CAISO requests confidential treatment, identifies the specific resources and the date on which their pmax first was registered at 1 MW or above. This date indicates the date when the resource would begin benefiting from this waiver, if it were granted.

This issue impacts four scheduling coordinators, although the overwhelming impact (38 out of the 42 resources) falls on a single scheduling coordinator. Based on discussions with the most significantly impacted scheduling coordinator, the CAISO believes this waiver in total would excuse approximately \$300,000 in RAAIM charges. Creating a comprehensive estimate of the financial impact would require burdensome and extensive offline market re-runs, which the CAISO has not undertaken. Attachment B, for which the CAISO also requests confidential treatment, summarizes the known

¹⁰ This total of 9 resources that never were exempt from RAAIM includes two resources totaling 2.5 MWs that had their pmax increased to 1 MW or above effective April 1, 2017. That is, they lost their pmax-based exemption on the same day that RAAIM became financially binding.

impact by scheduling coordinator in terms of MWs of capacity impacted.

As it became increasingly clear that there was an error with how the CAISO administered the pmax-based waiver, the CAISO soon informed the primary scheduling coordinator involved. By mid-January the scheduling coordinator for these units soon began bidding their resources into the market in a way to avoid RAIM charges. This mitigated future exposure to RAIM charges and payments for the scheduling coordinator, even if the CAISO had not actually corrected the exemption status in its systems until May 1, 2018.

The CAISO is confident that proper implementation of its tariff requires applying the correct RAIM charges and payments retroactively on recalculation settlement statements. At the same time, the CAISO recognizes that because the settlement statements participants received between April 1, 2017, and May 1, 2018, did not indicate correct application of the RAIM charges and payments, participants could have failed to alter their bidding behavior in ways to avoid RAIM charges. The tariff provisions implementing RAIM are clear that demand response has no general RAIM exemption. However, scheduling coordinators may have detrimentally relied on the CAISO's continued treatment of all of these demand response resources as though they were exempt after RSI implementation. Had they received correct settlement statements during that time, scheduling coordinators could have adjusted their bidding behavior. Therefore, the Commission should grant the waiver so that the CAISO can avoid having to apply the RAIM charges and payments retroactively to the affected resources.

In late April 2018, the CAISO notified all of the affected scheduling coordinators of this issue and of the CAISO's intent to file a waiver request with the Commission that would excuse them from retroactive application of any otherwise applicable RAIM charges and payments through April 30, 2018. Although the primary scheduling coordinator involved adjusted its behavior in January, it took longer to communicate with the other scheduling coordinators, determine that the CAISO would move forward with this waiver, and correct the CAISO systems that administer the exemptions. For these reasons, the requested waiver extends through the end of April 2018, rather than an earlier time.

II. Request for Limited Waiver

To address the circumstances described above, the CAISO requests that the Commission grant a limited waiver of tariff section 40.9 to excuse all RAIM non-availability charges and incentive payments that otherwise would apply for the resources identified in Attachment A for the 13-month period running from April 1, 2017, to April 30, 2018. The Commission previously has granted requests for tariff waivers where: (1) the applicant acted in good faith; (2) the waiver was of limited scope; (3) the waiver addressed a concrete problem; and (4) the waiver did not have undesirable consequences, such as harming third parties.¹¹ This request satisfies all four elements. Therefore, good cause exists to grant the CAISO's waiver request.

¹¹ See, e.g., *Cal. Indep. Sys. Operator Corp.*, 158 FERC ¶ 61,072, at P 5 (2017); *N.Y. Indep. Sys. Operator, Inc.*, 146 FERC ¶ 61,061, at P 19 (2014); *PJM Interconnection, L.L.C.*, 146 FERC ¶ 61,041, at P 5 (2014); *ISO New England, Inc.*, 134 FERC ¶ 61,182, at P 8 (2011).

A. The CAISO Has Acted in Good Faith

The CAISO has acted in good faith because it submitted this waiver request as soon as practical once it determined that the parties covered by this request faced exposure to RAAIM charges that accrued based on those parties' likely reliance on their CAISO settlement statements. The CAISO also believes that the parties covered by this waiver request acted in good faith, based on the potentially conflicting messages they received through the CAISO settlement process as compared to the CAISO tariff. This waiver would apply to circumstances where persistent incorrect CAISO settlement statements, combined with potential confusion over a major market change and historical practice, could have created reasonable reliance.

B. The Requested Waiver is of Limited Scope

The waiver is of limited scope because it applies solely to the 4 scheduling coordinators for the 42 resources, totaling 69.12 MW, identified in Attachment A. The waiver is also limited in scope because it applies only for the April 1, 2017, to April 30, 2018, period. Moreover, for 33 of the resources (representing 59.16 MW), the waiver only would alter application of RAAIM for part of the 13-month waiver period because they still would qualify partially for the pmax-based exemption.

C. The Requested Waiver Will Remediate a Concrete Problem

The waiver addresses the concrete problem of applying retroactive charges to scheduling coordinators and generating units identified in Attachment A. Retroactive application of the charges is problematic because these participants cannot change their bidding behavior retroactively for the remaining period now that they are fully informed that they are subject to RAAIM. These scheduling coordinators risk RAAIM

non-availability charges that accrued based on market participation the scheduling coordinators reasonably could have believed was exempt from consideration under RAAIM.

D. The Requested Waiver Would Not Pose Undesirable Consequences

There will be no undesirable consequences if the Commission grants the waiver. Given that the waiver applies to a small and defined universe of resources providing RA capacity, this waiver would not undermine RAAIM's essential role in establishing incentives for RA capacity. Assuming the resources covered by this waiver on net were below the RAAIM availability threshold, granting this waiver would reduce the amount paid into the closed pool of RAAIM funds. This potentially would reduce what is paid to resources with above-threshold performance and, if those resources were paid the maximum allowable, also reduce the payout to load serving entities of the unallocated funds remaining at the end of the year.¹² This reduction in payments, however, likely will be spread broadly and would be a minor gain to the impacted parties, as compared to the inequity that would be concentrated on a select few market participants were this filing not granted. In this context, the waiver is necessary to avoid undesirable consequences.

¹² Section 40.9.6.2(d) specifies that any unallocated non-availability charges remaining on December 31 of each year “will be distributed to Load Serving Entities based on their load ratio share for the year.”

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

The CAISO requests that the Commission issue an order on this request by July 30, 2018. An order by this date will provide the affected parties and the CAISO certainty regarding RAIM application for the waiver period. It will also permit the CAISO to enact an orderly process for implementing RAIM for the 42 resources, in the event the Commission does not grant this waiver request. August 9, 2018, is the first date on which the CAISO could begin applying RAIM retroactively for these resources. This is when the CAISO will publish the nine-month recalculation settlement statement for October 2017. The remaining 12 months covered by the waiver request would be addressed on either nine-month or 18-month recalculation settlement statements published on calendar dates after August 9.¹³

VI. SERVICE

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

¹³ The CAISO's 2018 payments calendar is available at <http://www.caiso.com/Documents/CaliforniaISOPaymentsCalendar2018.xls>.

IV. COMMUNICATIONS

Under the Commission's regulations,¹⁴ communications regarding this filing should be addressed to these individuals, whose names should be placed on the official service list established by the Commission regarding this submittal:

Anna A. McKenna
Assistant General Counsel
David Zlotlow
Senior Counsel
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V. CONCLUSION

The Commission should find that good cause exists to grant a limited waiver of tariff section 40.9 to shield the resources identified in Attachment A from exposure to RAIM for the 13-month period running from April 1, 2017, to April 30, 2018. Further, the Commission should provide confidential treatment of Attachments A and B under 18 C.F.R. § 388.112.

Respectfully submitted,

/s/ David S. Zlotlow
Roger E. Collanton
General Counsel
Anna A. McKenna
Assistant General Counsel
David S. Zlotlow
Senior Counsel

Counsel for the California Independent System
Operator Corporation

Dated: May 30, 2018

¹⁴ 18. C.F.R. § 385.203(b).

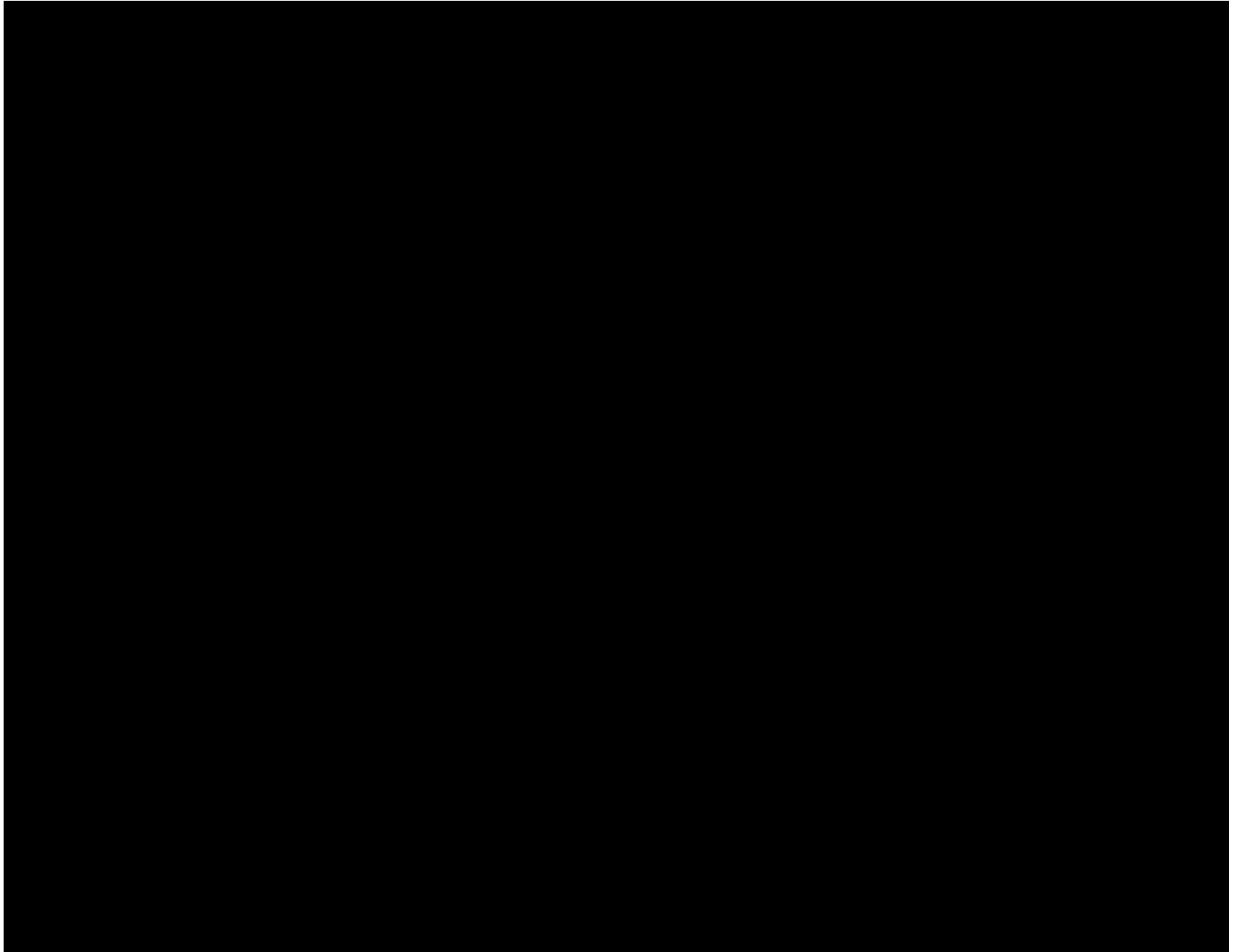
Attachment A – List of Demand Response Resources
Petition for Limited Tariff Waiver for Demand Response Resources
California Independent System Operator Corporation

CONFIDENTIAL PRIVILEGED INFORMATION REDACTED
PURSUANT TO 18 C.F.R § 388.112

REDACTED

CUI/PRIV

Cal. ISO Petition for Limited Waiver of RAAIM -- Attachment A -- Privileged Treatment Requested



REDACTED

CUI/PRIV

Cal. ISO Petition for Limited Waiver of RAIM -- Attachment A -- Privileged Treatment Requested



Attachment B – MWs of Capacity Impacted
Petition for Limited Tariff Waiver for Demand Response Resources
California Independent System Operator Corporation

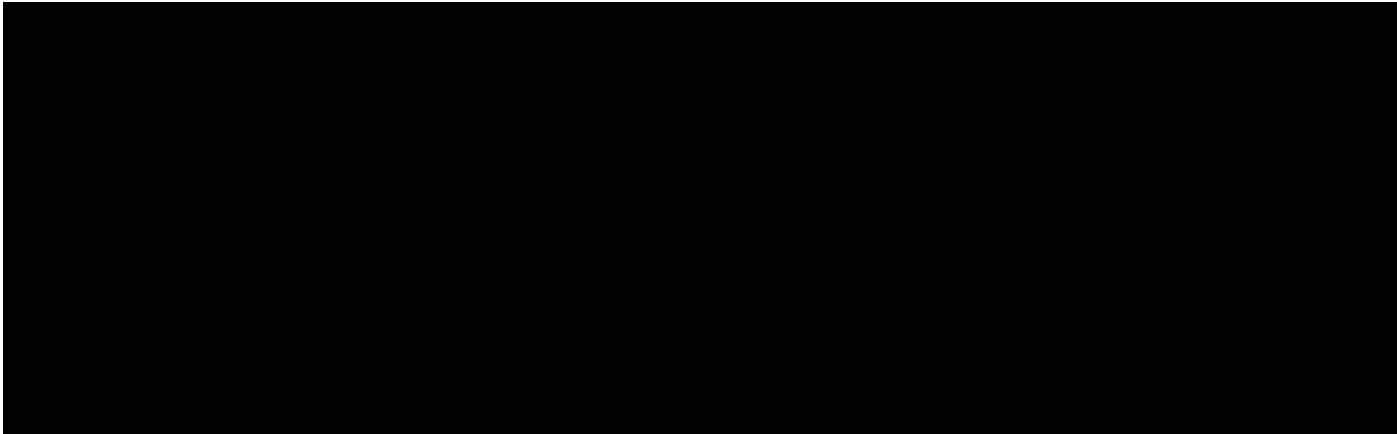
CONFIDENTIAL PRIVILEGED INFORMATION REDACTED

PURSUANT TO 18 C.F.R § 388.112

REDACTED

CUI/PRIV

Cal. ISO Petition for Limited Waiver of RAAIM -- Attachment B -- Privileged Treatment Requested



Attachment C – Form Protective Agreement
Petition for Limited Tariff Waiver for Demand Response Resources
California Independent System Operator Corporation

PROTECTIVE AGREEMENT

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

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

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

3. Definitions – For purposes of this Agreement:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Representing CAISO

Representing Intervenor

NON-DISCLOSURE CERTIFICATE

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

By: _____

Name: _____

Title: _____

Representing: _____