

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

**California Independent System            )       Docket No. ER04-609-\_\_\_\_  
Operator Corporation                    )**

**MOTION FOR LEAVE TO FILE ANSWER AND ANSWER OF  
THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION TO  
MOTIONS TO INTERVENE, COMMENTS, AND PROTESTS**

**I.       INTRODUCTION AND SUMMARY**

On March 2, 2004, the California Independent System Operator Corporation (“ISO”)<sup>1</sup> filed Amendment No. 58 to the ISO Tariff in the above-captioned proceeding (“Amendment No. 58”). Amendment No. 58 would modify the ISO Tariff to provide clarity on issues related to the implementation of the Phase 1B market design changes, specifically, (1) to clarify how the Tolerance Band will be applied to condition bid cost recovery and the application of UDP within and outside of a Waiver Denial Period; (2) to clearly define constrained output generation; (3) to clarify how UDP will be applied to dynamically scheduled System Resources; and (4) to ensure that the same data is used to represent a unit’s operating characteristic for both market and Reliability Must-Run (“RMR”) dispatch and settlements.

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<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meaning set forth in the Master Definitions Supplement, Appendix A to the ISO Tariff.

A number of parties have submitted motions to intervene, comments, and protests concerning Amendment No. 58.<sup>2</sup> The ISO does not oppose the interventions of parties that have sought leave to intervene in the proceeding. Moreover, a number of the parties explain that they support some or all of the principles contained in Amendment No. 58, the specific proposals in Amendment No. 58, or both. *See, e.g.*, Reliant at 4, SCE at 2. However, some parties also raise concerns and protests with regard to certain aspects of Amendment No. 58. Pursuant to Rules 212 and 213 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. §§ 385.212, 385.213, the ISO hereby requests leave to file an answer, and files its answer, to the comments and protests submitted in this proceeding.<sup>3</sup> As explained below, the Commission should accept Amendment No. 58 in its entirety, except for the limited modifications noted below.

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<sup>2</sup> The following entities filed motions to intervene, comments, and/or protests: California Electricity Oversight Board (“EOB”); Calpine Corporation (“Calpine”); Cities of Redding, Santa Clara, and Palo Alto, California, and the M-S-R Public Power Agency (“Cities/M-S-R”); Cogeneration Association of California; Duke Energy North America LLC and Duke Energy Trading and Marketing, L.L.C. (collectively, “Duke Energy”); Dynegy Power Marketing, Inc., El Segundo Power LLC, Long Beach Generation LLC, Cabrillo Power I LLC, and Cabrillo Power II LLC (collectively, “Dynegy”), together with Williams Energy Marketing & Trading Company (“Williams”) (jointly, “Dynegy/Williams”); The Metropolitan Water District of Southern California (“MWD”); Modesto Irrigation District; Northern California Power Agency (“NCPA”); Reliant Energy Power Generation, Inc. and Reliant Energy Services, Inc. (collectively, “Reliant”), Sacramento Municipal Utility District (“SMUD”); Southern California Edison Company (“SCE”); and Transmission Agency of Northern California.

<sup>3</sup> To the extent this answer is deemed an answer to protests, the ISO requests waiver of Rule 213 (18 C.F.R § 385.213) to permit it to make this Answer. Good cause for this waiver exists here because the answer will aid the Commission in understanding the issues in the proceeding, provide additional information to assist the Commission in the decision-making process, and help to ensure a complete and accurate record in this case. *See, e.g., Entergy Services, Inc.*, 101 FERC ¶ 61,289, at 62,163 (2002); *Duke Energy Corporation*, 100 FERC ¶ 61,251, at 61,886 (2002); *Delmarva Power & Light Company*, 93 FERC ¶ 61,098, at 61,259 (2000).

## II. ANSWER

### A. The proposed defined term “Constrained Output Generation” is reasonable for its intended use.

Calpine proposes that the proposed term “Constrained Output Resources” be rejected (1) because the term was not included in the proposed Tariff language and (2) the definition included in Amendment No. 58 transmittal letter is too vague. Calpine at 5.

While the ISO included the proposed definition in the transmittal letter,<sup>4</sup> the ISO inadvertently omitted including the definition in the proposed Tariff language. The ISO corrected this omission on March 19, 2004, when it submitted an errata filing that included proposed Tariff language defining Constrained Output Generation. The definition the ISO proposed – which Calpine asserts is vague and ambiguous – is taken verbatim from the Commission’s October 22, 2003 order on Amendment No. 54 to the ISO Tariff.<sup>5</sup>

Calpine’s protest of the proposed definition of “Constrained Output Generation” appears to center on the assertion that the proposed definition is unsuitable for what Calpine calls a “multi-lumpy” generating facility – a combined cycle plant in which a conventional steam turbine is operated from the waste heat of several combustion turbines. The ISO acknowledges that the definition of “Constrained Output Generation” was not intended to encompass combined

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<sup>4</sup> Amendment No. 58 Transmittal Letter at 4.

<sup>5</sup> *California Independent System Operator Corporation*, 105 FERC 61,091 at P 70 (2003) (“Amendment No. 54 Order”). The ISO notes that, by a notice of filing issued on March 23, 2004, comments concerning the errata filing are due by April 9, 2004. The ISO may decide to file a response to any comments that it receives concerning the errata filing.

cycle facilities. The definition was intended to encompass only simple-cycle combustion turbines, which typically are either off-line or operating at full load. The ISO's purpose for defining Constrained Output Generation is to allow such simple-cycle units to be eligible to set the Market Clearing Price. Unlike combined cycle resources, which have some ability to vary their output and thus have the opportunity to set the marginal price,<sup>6</sup> simple-cycle block-loaded resources, whose output is not continuously variable, would be unable to set the marginal price without some accommodation because they would never be marginal except in the coincidental situation where the incremental amount of energy required was exactly equal to the resource's maximum output. The ISO notes that several independent system operators are working to develop a model for representing the particular characteristics of combined cycle facilities. Such a model may take months to develop. Until such a model is developed, the ISO urges the Commission to adopt the proposed definition of Constrained Output Generation so as to facilitate allowing such generating units to set the market clearing price under some circumstances as the Commission has already approved, both for the ISO<sup>7</sup> and for other independent system operators, including the New York ISO.

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<sup>6</sup> To truly be considered "marginal", a unit would have to be able to provide an incremental balancing Energy requirement as small as 1 MW.

<sup>7</sup> See Amendment No. 54 Order at P 75.

**B. The proposal to use one set of unit characteristic values for both market transactions and Reliability Must-Run (RMR) transactions is reasonable.**

Calpine protests that the ISO is imposing “a requirement that the RMR Unit’s market transaction minimum load and start-up lead times be limited to the minimum load start-up lead times contained in an RMR agreement.” Calpine at 3. Calpine – the only party protesting this aspect of Amendment No. 58, though not the only RMR Owner filing comments on Amendment No. 58 -- may misunderstand the ISO’s proposal. The ISO did not propose to mandate that an RMR Owner had to use the values for start-up lead time and minimum load in the RMR Contract for its market transactions. That outcome would result only if the RMR Owner does not modify Schedule A of its RMR Contract to specify that it will use the values contained in the Master File, which apply to the unit’s market transactions, to also apply to service dispatched under its RMR Contract. Instead, the ISO proposed to allow an RMR Owner to specify in Schedule A of the RMR Contract that the start-up lead time and minimum load ( $P_{min}$ ) to be used to dispatch and settle RMR transactions will be the same values used to dispatch and settle market transactions.

The absurd situation the ISO seeks to change through its proposal is one in which the ISO must dispatch and settle a market transaction for a unit in one hour using one set of unit operating characteristics, and then dispatch and settle an RMR transaction for the same unit operating in the same operating range and perhaps even in the same hour using different values for the same unit characteristics. Absent some material change in the unit or its operating

environment from one moment to the next, there is no reason for using different unit characteristics to settle transactions merely because one transaction is dispatched through the RMR Contract and another through the market. The unit operating characteristics are the same whether the unit is Dispatched under the RMR Contract or through the market. If the ISO communicates with the Scheduling Coordinator and the Scheduling Coordinator merely instructs the unit's operator to change the output of the unit, the unit operator cannot tell the difference between an RMR transaction and a market transaction.

Apparently Calpine believes the difference is the RMR Contract itself, which quite reasonably includes penalties for non-performance. Calpine notes that an RMR Owner would never include the maximum ranges of operation that the unit could achieve in the RMR Contract; instead, the RMR Owner would only include conservative values that it feels its unit can achieve. Calpine thus implies that a unit owner would be willing to accept more risk or push its unit's performance when market dollars are at stake, but the owner need not provide the same level of unit performance for a cost-based call to maintain reliability. Alternatively, Calpine is asserting that it is not important that a unit be able to reliably perform to the operating characteristics specified for market service – ostensibly because there is not as stringent a penalty for not performing to the market instruction as there is for not performing to the RMR instruction. Both premises are flawed. A unit's operating characteristics are what they are, independent of the price or risk associated with the services provided.

Specifying a static value for an operating characteristic that can change over time and with different conditions is generally thought of as a necessary convention, whether for the markets or for the RMR Contract. It is not workable, for either RMR Owners or for ISO, for the RMR Owner to be constantly communicating small changes to unit operating characteristics to the ISO.<sup>8</sup> A reasonable and sustainable convention is established by creating relatively static values that generally reflect the characteristics of the unit. This convention can cut both ways. An owner can be both insulated from risk and prevented from selling more of its unit if those values are set conservatively. An owner can both sell more Energy and Ancillary Services and assume more risk of non-performance if the values are set aggressively. As the system operator, the ISO does not believe it should accommodate a supplier's desire to offer a risk-differentiated quality of service (*i.e.*, the more money there is to be made, the more risk the supplier is willing to take with the unit). To provide for reliable operations, the ISO would greatly prefer that whatever values are submitted reflect the unit's ability to perform under any circumstance, not what the unit can perform in the most favorable conditions. But in any case, an RMR Owner should not transfer risk to other parties by specifying conservative values for RMR service but different, more aggressive values for market service.

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<sup>8</sup> The owner can communicate changes to unit operating characteristics to the ISO via the "SLIC" logging interface. However, it is not likely that a unit owner with many units in its portfolio would be constantly communicating small changes in operating characteristics in each of its units to the ISO.

The Commission has already approved the approach proposed by the ISO for minimum load and start-up lead times in Amendment No. 58 for ramp rates in Amendment No. 54. Amendment No. 54 order at P 23. The Commission should approve the approach proposed for start-up lead time and minimum load proposed in Amendment No. 58.

**C. UDP should be applied to a unit operating during a Waiver Denial Period.**

Dynegy/Williams asserts that the ISO indicated it would not apply UDP within a Waiver Denial Period in the memorandum requesting approval of Amendment No. 58 from the ISO Governing Board, then filed to apply UDP outside of the Tolerance band but not to condition Bid Cost Recovery or Minimum Load Cost Compensation (“MLCC”) on a unit operating within the Tolerance Band during a Waiver Denial Period. Dynegy/Williams at 5. Dynegy/Williams is correct in asserting that the Board memorandum indicates that UDP will be waived when the ISO dispatches imbalance energy within a Waiver Denial Period. The ISO recognizes and admits that it did not accurately represent the proposed changes to Section 11.2.4.1.1.1 in its presentation to the ISO Governing Board. The ISO was not intentionally trying to mislead its Board. The ISO stands by what it filed in Amendment No. 58.

In the Amendment No. 54 Order, the Commission clearly indicated that the ISO could not withhold bid cost recovery and MLCC from a unit operating outside of the Tolerance band during a Waiver Denial Period. Amendment No. 54 Order at P 107. Paragraph 107 of that Order, though, concludes with the following



sentence: “This language [denying MLCC if the unit operates outside of the Tolerance band] is inconsistent with the proposal for Uninstructed Deviation Penalties which are assessed only against energy generated outside of the Tolerance Band.” The Commission understandably rejected conditioning MLCC and Bid Cost Recovery on performance within the Tolerance Band expecting that UDP – which are applied outside the Tolerance Band – should be sufficient to encourage a unit to operate within the Tolerance Band.

Dynergy/Williams asserts that a unit should not be subject to any UDP during a Waiver Denial Period because the unit is not operating voluntarily but at the request of the ISO. Dynergy/Williams at 6. As directed by the Commission, the ISO cannot revoke MLCC or Bid Cost Recovery for a unit committed under a Waiver Denial Period and Dispatched by the ISO. If UDP are not applied during a Waiver Denial Period, it is unclear what incentive the unit has to follow the ISO’s Dispatch Instructions. According to Dynergy/Williams, the unit’s owner does not want the unit to even be operating under these conditions, so by Dynergy/Williams’ own admission the owner has practically no incentive to follow the ISO’s instructions. UDP alone serve as the proper incentive to follow the ISO’s instructions. Like Calpine, (*see supra* Section II.B), Dynergy/Williams appears to be arguing for two sets of performance standards – one set to be applied when the owner wants the unit to be operating, and a second ostensibly less stringent set that applies when the unit is operating not at the owner’s behest but for a reliability requirement. This argument ignores the fact that the unit does not know the difference between when it is operating for a market

transaction and operating for a reliability requirement and that the effect of uninstructed deviation from a unit operating when an owner wants it to be operating does not have a different effect on ISO Control Area operations than an uninstructed deviation from a unit operating at the ISO's request. The Commission has directed that the ISO cannot apply three "sticks" – UDP, the loss of MLCC and the loss of Bid Cost Recovery – to discourage nonperformance, and the ISO has complied with the Commission's direction. But it is imperative that UDP should still apply to adequately encourage compliance with the ISO's Dispatch Instructions, even if the unit is operating during a Waiver Denial Period.

**D. Operating within the Tolerance band should be a condition for Bid Cost Recovery.**

Reliant seeks clarification as to whether a dynamically scheduled System Resource should be eligible for Bid Cost Recovery if it is operating outside the Tolerance Band. Reliant at 9.

Duke Energy urges the Commission to reject the ISO's proposal to condition Bid Cost Recovery by applying the Tolerance Band outside of a Waiver Denial Period. Duke Energy at 2-3. Duke Energy cites paragraph 107 of the Amendment No. 54 order, which states:

We reject the CAISO's proposal not to compensate a Must-Offer Generator for either minimum load costs or bid costs for energy dispatched above minimum load when it generates outside of the Tolerance Band within a Settlement Interval. We find that the proposed language revoking payment for minimum load costs contravenes our directive that the CAISO must compensate a generator under the Must-Offer Obligation for that generator's minimum load costs. We further find the CAISO's proposed Tariff

language which would deny bid cost recovery to a must-offer generator whose energy output varies from its expected output by more than the Tolerance Band to be unacceptable. This language is inconsistent with the proposal for Uninstructed Deviation Penalties which are assessed only against energy generated outside of the Tolerance Band.

(Citation omitted.)

While this paragraph does not specify whether its principles apply during or outside of a Waiver Denial Period, the context is clear. A unit is not entitled to MLCC outside of a Waiver Denial Period. If it were, any unit that wanted the ISO to pay MLCC would simply start-up and operate at minimum load whether or not the ISO had denied its waiver. Read in that context, the Commission is not permitting the ISO to deny MLCC or Bid Cost Recovery to a unit operating during a Waiver Denial Period. Further, though not expressly stated, the context for the Commission's directive must be a unit operating outside of a self-commitment period during a Waiver Denial Period, because a unit is not entitled to MLCC during a self-commitment period (*i.e.*, when a unit has a forward Energy Schedule).

Requiring a unit to operate within the Tolerance Band is necessary to prevent a resource from earning money for non-performance. Under certain circumstances, UDP may not be a sufficient deterrent to discourage a resource from failing to comply with a Dispatch Instruction. A resource can be paid for not performing due to the fact that the ISO settles Imbalance Energy and provides Bid Cost Recovery based on the *instruction*, but applies UDP based on the *delivery*. The following example illustrates this principle:

A resource with a bid of \$50/MWh is instructed to deliver 100 MW. The resource does not respond to the instruction (*i.e.*, delivers 0 MWh). The Market Clearing Price when the resource is instructed is \$20/MWh. The resource will be paid according to the instruction: 100 MW times \$20/MWh = \$2,000. The deviation due to the unit's failure to respond is also charged the MCP: (100 MW) times \$20/MWh = (\$2,000). UDP – a 50% premium on the MCP – are applied: (100 MW) times (0.5) times \$20/MWh = (\$1,000). Finally, because Bid Cost Recovery is based on the instruction even though the resource failed to deliver any of the instructed Energy, Bid Cost Recovery – paid based on the difference between the market clearing price and the unit's bid price - would amount to 100 MW times (\$50/MWh - \$20/MWh) = \$3,000. The net settlement would be:

Payment for the instruction	\$2,000
Charge for the deviation	(\$2,000)
UDP	(\$1,000)
<u>Bid Cost Recovery</u>	<u>\$3,000</u>
Net Settlement	\$2,000

Because Bid Cost Recovery is paid based on the instruction, the unit receives a net payment of \$2,000 even though it did not generate any Energy in response to the ISO's instruction. Clearly this outcome is neither just nor reasonable.

The ISO proposes that dynamically scheduled System Resources will also be provided with Bid Cost Recovery (*see infra* Section II.M). As the example above shows, it is also necessary to apply the Tolerance Band to dynamically scheduled System Resources to avoid paying for Energy instructed but not delivered.

In sum, both dynamically scheduled System Resources and Generating Units within the ISO Control Area should have to operate within the Tolerance Band to be eligible for Bid Cost Recovery.

**E. P<sub>max</sub> should be determined as the sum of the unit net dependable capabilities or ownership shares.**

Reliant requests that the Commission direct the ISO to define  $P_{\max}$  as the sum of the physical resources making up the dynamically scheduled System Resource. Reliant at 7. Reliant notes that the ISO advanced two proposals at a March 11, 2004 stakeholder meeting. The first proposal was to determine  $P_{\max}$  as the sum of the Final Hour-Ahead Energy Schedules, Final Hour-Ahead Ancillary Services Schedules, and any Supplemental Energy. The second was to determine  $P_{\max}$  as the sum of the capabilities of the physical resources that make up the dynamically scheduled System Resource. Reliant then asserts that the latter proposal is the only suitable proposal. While this issue is still being discussed as part of the ISO and stakeholder efforts to develop a comprehensive dynamic scheduling framework, the ISO generally agrees with Reliant. However, the ISO notes that in the case of a Joint Ownership Unit in which only part of the output of the facility may be imported to the ISO Control Area, it is more appropriate to base  $P_{\max}$  on the sum of the ownership or entitlement shares, not the sum of the physical resource capabilities. Furthermore, the capability used should not simply be the nameplate capability, but the net dependable capability. The ISO therefore proposes that  $P_{\max}$  be determined as the lesser of the sum of either (1) the net dependable capabilities of the individual generating units or (2)

the entitlement shares of the individual generating units making up the System Resource.

**F. Dynamically scheduled System Resources will have the ability to submit real-time limits through SLIC**

Reliant requests the ISO clarify if dynamically scheduled System Resources will have the ability to “make entries in the ISO’s computer-based logging program (‘SLIC’) to avoid incurring UDP.” Reliant at 5 (footnote omitted). In Amendment No. 58, the ISO proposed that dynamically scheduled System Resources should be treated as Generating Units internal to the ISO Control Area for the purposes of assessing UDP. To provide that such dynamically scheduled System Resources appear to the ISO as internal Generating Units for the purposes of applying UDP, such resources will be assigned a Master File Resource ID and, as discussed above, a Master File  $P_{\max}$  value. Consequently, Scheduling Coordinators for dynamically scheduled System Resources will have the ability to notify the ISO of outages for those resources through SLIC as if the resources were Generating Units in the ISO Control Area. Should such a resource be unable to meet its Hour-Ahead Schedule due to a real-time outage, the Scheduling Coordinator will be able to avoid UDP that might be incurred as a result of that outage if it notifies the ISO of that outage via SLIC within 30 minutes of the onset of the outage. Additionally, dynamically scheduled System

Resources will be able to report any real-time transmission curtailments that may affect their dynamic Energy schedules.<sup>9</sup>

The ISO therefore proposes to amend Section 11.2.4.1.2 (p) as follows:

Generating Units **or dynamically scheduled System Resources** with Uninstructed Imbalance Energy will be exempted from the Uninstructed Deviation Penalty if the Generating Unit **or dynamically scheduled System Resource** was physically incapable of delivering the expected Energy, provided that the Generating Unit **or dynamically scheduled System Resource** had notified the ISO within 30 minutes of the onset of an event that prevents the resource from performing its obligations. A Generating Unit **or dynamically scheduled System Resource** must notify ISO operations staff of its reasons for failing to deliver the expected Energy in accordance with Section 2.3.3.9.2 and must provide information to the ISO that verifies the reason the resource failed to comply with the Dispatch instruction within 48 hours of the operating hour in which the instruction is issued;

**G. The Tolerance Band applies to out-of-market (OOM) transactions from dynamically scheduled System Resources.**

Reliant requests that the ISO revise Section 11.2.4.1.2. (o) to make that section on OOM transactions consistent with Sections 11.2.4.1.2 (l) and (m). Reliant at 8-9. The ISO so clarifies the sections by proposing that UDP apply to OOM transactions from dynamically scheduled System Resources if the delivered energy differs from the agreed-upon energy by more than the Tolerance Band. The ISO notes that the Tolerance Band does not apply to non-dynamically scheduled System Resources,<sup>10</sup> so UDP would apply to any agreed-

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<sup>9</sup> In Section II.H, below, the ISO proposes to clarify that dynamically scheduled System Resources are also exempt from UDP that might arise from actions taken by other Control Area operators.

to Energy from an OOM transaction that a non-dynamically scheduled System Resource fails to deliver.

The ISO proposes to modify Section 11.2.4.1.2 (o) as shown in shaded text below:

The Uninstructed Deviation Penalty shall apply to any excess Energy delivered from or any shortfall of Energy not delivered from an Out of Market (OOM) **transaction** involving a Generating Unit or a System Unit once the ISO and the supplier have agreed upon the time of, duration of, and the amount of Energy to be delivered in the OOM transaction. The Uninstructed Deviation Penalty shall apply to **energy outside the Tolerance Band from** firm OOM transactions with **dynamically scheduled System Resources to the extent the agreed-to Energy is not delivered or over-delivered, and to any energy from non-dynamically scheduled** System Resources to the extent ~~the System Resource fails to deliver the agreed-to Energy~~ **is not delivered** ~~or over-delivers the agreed-to Energy~~ if that over- or under-delivery was due to action taken by or not taken by the System Resource and not the result of action taken by a control area operator due to a curtailment of firm transmission capability or to prevent curtailment of native firm load occurring subsequent to **the OOM transaction** ~~issuing the Pre-Dispatch Instruction;~~

**H. UDP will not apply to deviations from dynamically scheduled System Resources due to the actions of another Control Area**

Cities/M-S-R protest that the modifications the ISO proposed to Section 11.2.4.1.2 (o) would subject dynamically scheduled System Resources to UDP for an OOM transaction if any deviation is due to the actions of another Control Area. Cities/M-S-R at 9-10. This was not the ISO's intent. Deviations from either "static" (e.g., hourly scheduled) System Resources or from dynamically scheduled System Resources should not be subject to UDP if the deviations are

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due to the actions of another Control Area and not the actions or inactions of the System Resource.

In Amendment No. 58, the ISO proposed the following modification to Section 11.2.4.1.2 (o):

The Uninstructed Deviation Penalty shall apply to any excess Energy delivered from or any shortfall of Energy not delivered from an Out of Market (OOM) transaction involving a Generating Unit or a System Unit once the ISO and the supplier have agreed upon the time of, duration of, and the amount of Energy to be delivered in the OOM transaction. The Uninstructed Deviation Penalty shall apply to firm OOM transactions with **dynamically scheduled System Resources to the extent the agreed-to Energy is not delivered or over-delivered, and to non-dynamically scheduled** System Resources to the extent ~~the System Resource fails to deliver the agreed-to Energy~~ **is not delivered** ~~or over-delivers the agreed-to Energy~~ if that over- or under-delivery was due to action taken by or not taken by the System Resource and not the result of action taken by a control area operator due to a curtailment of firm transmission capability or to prevent curtailment of native firm load occurring subsequent to **the OOM transaction** ~~issuing the Pre-Dispatch Instruction;~~

While Cities/MSR proposed substantial new language to eliminate the perceived inappropriate distinction between System Resources and dynamically scheduled System Resources in this section,<sup>11</sup> the ISO believes it can accomplish the same goal by adding a comma as shown in the shaded text below:<sup>12</sup>

The Uninstructed Deviation Penalty shall apply to any excess Energy delivered from or any shortfall of Energy not delivered from

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<sup>10</sup> See, e.g., Settlements and Billing Protocol Appendix D Section 2.6.1, which states that Non-dynamically scheduled System Resources do not have a Tolerance Band.

<sup>11</sup> Cities/M-S-R at 10.

<sup>12</sup> Proposed modifications from Section II.G are also included in the version of Section 11.2.4.1.2 (o) shown here.

an Out of Market (OOM) **transaction** involving a Generating Unit or a System Unit once the ISO and the supplier have agreed upon the time of, duration of, and the amount of Energy to be delivered in the OOM transaction. The Uninstructed Deviation Penalty shall apply to **energy outside the Tolerance Band from** firm OOM transactions with **dynamically scheduled System Resources to the extent the agreed-to Energy is not delivered or over-delivered, and to any energy from non-dynamically scheduled** System Resources to the extent ~~the System Resource fails to deliver the agreed-to Energy~~ **is not delivered**, ~~or over-delivers the agreed-to Energy~~ if that over- or under-delivery was due to action taken by or not taken by the System Resource and not the result of action taken by a control area operator due to a curtailment of firm transmission capability or to prevent curtailment of native firm load occurring subsequent to **the OOM transaction** ~~issuing the Pre-Dispatch Instruction;~~

**I. UDP should not apply to energy from a dynamically scheduled System Resource that is also a Qualifying Facility.**

SCE asserts that UDP should not be applied to energy from a dynamically scheduled System Resource if that resource is a Qualifying Facility (“QF”). SCE at 2-3. SCE notes that because the utility contracting with that QF has no control over the output of the QF, the utility should not be subject to UDP.

In Amendment No. 54, the ISO proposed to exempt energy from QFs from UDP:

11.2.4.1.2. (e) ... The Uninstructed Deviation Penalty also will not apply to Qualifying Facilities that have not executed a Participating Generator Agreement (PGA), pending resolution of QF-PGA issues at the Commission;

Because the ISO has proposed a blanket exemption for QFs that have not signed a Participating Generator Agreement, the ISO agrees with SCE that

Energy from dynamically scheduled System Resources that are QFs not under a PGA should be exempt from UDP.

**J. The ISO is willing to revise 11.2.4.1.2 (o) per Dynegy/Williams' December 12, 2003 protest regarding the inclusion of expected energy for OOM transactions.**

Dynegy/Williams notes a modification it proposed, in the Amendment No. 54 proceeding, to Section 11.2.4.1.2 (o). In that proceeding, the ISO explained that it does not oppose the modification and will include it if directed to do so by the Commission. See Amendment No. 54 Answer (filed Dec. 29, 2003), at 10. The ISO commits to make the modification if the Commission so directs.

**K. Changes to Schedule A of the RMR Contract must still be filed with the Commission.**

SCE argues that the ISO is using its Tariff to allow RMR Owners to modify Schedule A of the RMR Contract without requiring a direct filing with the Commission. SCE at 3. The ISO was not trying to pre-empt the requirement to file any change with the Commission by proposing to allow RMR Owners an opportunity to specify that the values used to settle RMR transactions would be the same values used to settle market transactions. The ISO understands that any change to Schedule A of the RMR Contract, even if supported by the ISO, has to be approved by the Commission.

A Responsible Utility pays RMR Contract costs. As such, it is entitled to have information to validate the charges assessed to it. If an RMR Owner modifies Schedule A to its RMR Contract to use market values for start-up lead time, minimum load or ramp rate, those market values will be used to settle RMR

Contract transactions. It is reasonable to provide the Responsible Utility with the values used to settle RMR transactions, even if those values are the values used in the market. However, the current RMR invoice shows only the static RMR Contract values and not the market values. The ISO pledges to work with RMR Owners and Responsible Utilities to provide this information in a way that meets the confidentiality requirements of the RMR Contract and the ISO Tariff.

- L. The ISO agrees that the proposals in Amendment No. 58 related to the application of UDP to dynamically scheduled System Resources should be superseded by the upcoming comprehensive proposal on dynamic scheduling.**

TANC notes that the ISO is currently working to develop a comprehensive approach to dynamic scheduling. TANC requests that any modifications proposed in Amendment No. 58 be only temporary until any superceding modifications of the comprehensive proposal can be put into effect. TANC at 6-7. The ISO agrees that any changes put into effect through Amendment No. 58 should be superseded by changes proposed through a comprehensive implementation of dynamic scheduling principles. When the ISO filed Amendment No. 58, the ISO requested that the proposed modifications be put into effect at the same time the Phase 1B modifications are put into effect. Because the Phase 1B modifications were delayed after Amendment No. 58 was filed, and because the ISO expects to file its comprehensive dynamic scheduling framework in May 2004, it is possible the dynamic scheduling modifications proposed in Amendment No. 58 will be completely overtaken by those in the comprehensive proposal.

**M. The ISO proposes to modify the Tariff to expressly provide for Bid Cost Recovery for dynamically scheduled System Resources, but should not modify the sections Reliant suggests.**

Reliant suggests that if the ISO intended to provide Bid Cost Recovery for dynamically scheduled System Resources, the ISO failed to modify Tariff Section 11.2.4.1.2 and Section 2.6.3 of the "Billing and Settlements Protocol"<sup>13</sup> which set forth rules for Bid Cost Recovery for System Resources. Reliant at 9-10. Those sections provide Bid Cost Recovery for hourly pre-dispatched System Resources, but do not provide for Bid Cost Recovery for dynamically scheduled System Resources.

While the ISO agrees that dynamically scheduled System Resources should be provided Bid Cost Recovery, they should not be provided Bid Cost Recovery through modifications to either of the sections Reliant cites. Those sections deal with hourly pre-dispatched System Resources, not dynamically scheduled System Resources. Instead, the ISO proposes that to include dynamically scheduled System Resources in the first sentence of Section 11.2.4.1.1.1 of the ISO Tariff, which provides Bid Cost Recovery for Generating Units and System Units, and Curtailable Demand,<sup>14</sup> and to do the same in the title and first sentence of Section 2.6 to Appendix D to the Settlements and Billing Protocol, which also provides for Bid Cost Recovery. The ISO also proposes to include dynamically scheduled System Resources in the first sentence of Section 2.6.1

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<sup>13</sup> Reliant is actually referring to Appendix D to the Settlements and Billing Protocol.

<sup>14</sup> The ISO proposed to change the term "Curtailable Load" to "Curtailable Demand" in the Compliance Filing it submitted on March 11, 2004 in the Amendment No. 54 proceeding.

of Appendix D to the Settlements and Billing Protocol, which defines the application of the Tolerance Band.

The ISO's proposed changes to the first sentence of Section 11.2.4.1.1.1 and to Sections 2.6 and 2.6.1 of Appendix D to the Settlements and Billing Protocol are shown below:

**11.2.4.1.1.1 Bid Cost Recovery for Generating Units, System Units, dynamically scheduled System Resources and Curtailable Load [Demand].**

The ISO shall determine, for each Trading Day, for each Generating Unit, System Unit, dynamically scheduled System Resource and Curtailable Load, Dispatched in the Real-Time Market pursuant to Section 2.5.22, whether there exists a surplus or deficit in that resource's recovery of its Energy Bid costs, that are less than or equal to the Maximum Bid Level, through Instructed Imbalance Energy credits, as set forth in Section 11.2.4.1.1.

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**Appendix D to the Settlements and Billing Protocol**

**D 2.6 Calculation of Unrecovered Cost Payment for Generators and dynamically scheduled System Resources**

As set forth in 11.2.4.1.1.1, Generator resources and dynamically scheduled System Resources will be eligible to recover their bid costs (less than or equal to the Maximum Bid Level) for extra-marginal Energy dispatched above Pmin, if such costs are not recovered from the net of expected revenues earned through participation in the ISO's real-time market during the Trade Day (24-hour period).

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## Appendix D to the Settlements and Billing Protocol

### D 2.6.1 Tolerance Band and Performance Check

The ISO shall determine the Tolerance Band for each Settlement Interval o for PGA resources **and dynamically scheduled System Resources** based on the data from the Master File as follows:

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- N. The ISO will implement Phase 1B so as not to jeopardize operations and will make the appropriate notifications as already approved by the Commission.**

Dynergy/Williams request that the Commission modify the ten-day notice requirement for Phase 1B implementation by adding a new requirement that the ISO certify its software and market testing for Phase 1B and providing for Market Participants to submit comments on the ISO's certification. Dynergy/Williams at 9-10. Dynergy/Williams's request should be denied on both procedural and substantive grounds.

As Dynergy/Williams note, the ten-day notice requirement was approved by the Commission in the Amendment No. 54 Order. See Dynergy/Williams at 9 n.21 (citing Amendment No. 54 Order at Ordering Paragraph (B)).

Dynergy/Williams did not, however, seek rehearing on the subject of the ten-day notice requirement (nor did any other party). Therefore, Dynergy/Williams' request for a modification to the requirement at this late date is untimely and

constitutes a collateral attack on the Amendment No. 54 Order.<sup>15</sup> As the Commission directed in the Amendment No. 54 Order, the requirement should go into effect without any further procedures being applied. See Amendment No. 54 Order at Ordering Paragraph (B).

Further, the Commission's approval of a ten-day notice requirement, without any other procedures being necessary, is entirely consistent with the treatment of changes contained in previous amendments to the ISO Tariff. In a number of cases, the Commission has approved Tariff changes that have gone into effect upon notice from the ISO.<sup>16</sup> Therefore, Dynegy/Williams' assertion that further procedures are required is off the mark.

Dynegy/Williams also requests that the ISO not implement the Phase 1B modifications until October 1, after the summer peak season. Dynegy/Williams at 10-11. Dynegy/Williams cites the ISO's previously stated preference for not implementing major software modifications during the summer peak season.

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<sup>15</sup> See *California Independent System Operator Corporation*, 104 FERC ¶ 61,128 at P 13 (2003); *New York State Electric and Gas Corporation*, 82 FERC ¶ 61,823 n. 12 (1998).

<sup>16</sup> See *AES Redondo Beach, L.L.C., et al.*, 87 FERC ¶ 61,208, at 61,815 (1999) (approving ISO's proposal to implement, following electronic notice to Market Participants, modifications to the ISO's communications system through which sellers of Imbalance Energy would be automatically notified that their bids have been accepted); Filing Containing Notice of Implementation, Docket No. ER99-1971-007 (May 19, 2000) (containing notice to implement the same); *California Independent System Operator Corporation*, 91 FERC ¶ 61,324, at 62,117 (2000) (approving the ISO's ten-minute market proposal effective on the later of July 1, 2000 or ten days after the ISO posted notice on the ISO Home Page that the modified software necessary to implement ten-minute markets was ready for use); Filing Containing Notice of Implementation, Docket No. ER00-2383-000 (filed Aug. 23, 2000) (containing notice to implement the same); *California Independent System Operator Corporation*, 86 FERC ¶ 61,122, at 61,417-19 (1999), and *California Independent System Operator Corporation*, 87 FERC ¶ 61,208, at 61,810-11 (1999) (approving non-payment by the ISO for uninstructed deviations from awarded Ancillary Services capacity); Filing Containing Notice of Implementation, Docket Nos. ER99-896-000, *et al.* (filed Sept. 5, 2000) (containing notice to implement the same).



The ISO agrees that in the past the ISO has generally expressed a preference for delaying the implementation of new software until after the summer peak season. Because the Phase 1B modifications impose UDP that encourage compliance with ISO Dispatch Instructions, and provide for a more optimal real-time dispatch system, those improvements could argue in favor of not waiting until after the summer peak season to deploy the Phase 1B software.

Dynergy/Williams also cites an event that occurred on March 8, 2004, as to which the ISO acknowledges that operator error contributed to firm load shedding, as justification for not implementing the Phase 1B modifications until after the summer peak season. *Id.* By citing the March 8, 2004 event as justification for delaying Phase 1B modifications, Dynergy/Williams imply – without a shred of evidence to support their implication – that the operator error that occurred that day must have been due to the implementation of new software systems. If Dynergy/Williams have such evidence, they should be required to present it, but should not make such unfounded associations. The March 8 event may be unfortunate, but it forms no basis to infer either that the implementation of the Phase 1B systems have anything to do with what happened that day or that the implementation of the Phase 1B systems will make the recurrence of such an event more likely.

Dynergy/Williams also note that UDP have not been tested in the market simulation already conducted for the Phase 1B implementation. Dynergy/Williams at 9. Based on this and other feedback from Market Participants, the ISO is currently evaluating implementing the Real-Time Market Application software but

initially suspending settling UDP for some fixed period of time. During this time, though the ISO will not settle the UDP, the ISO will provide Market Participants with the MWh quantities of UDP that would have applied during this initial period. This “UDP for matchsticks” phase would be in effect for a predetermined, limited period, (*i.e.*, one or two months), until Market Participants can determine how their resources are performing with the UDP algorithms in place and can make any necessary adjustments to their monitoring and control systems. However, the Commission cannot permit Market Participants’ dislike of UDP to unreasonably delay implementing real dollar UDP settlements. Should the ISO request and the Commission grant a trial period for UDP, the ISO urges the Commission not to let the trial period extend indefinitely so as to nullify a program the Commission has already approved.

**O. The ISO did not intend to presume approval of language submitted in 11.2.4.1.1.1.**

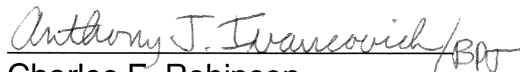
Dynergy/Williams state that they support the proposed changes in the Amendment No. 58 filing to one sentence in Section 11.2.4.1.1.1 of the ISO Tariff, but caution that the Commission should not inadvertently approve underlying language in that same sentence which was provided in a compliance filing in the Amendment No. 54 proceeding. Dynergy/Williams at 12-13. The ISO agrees that the Commission should not inadvertently approve any proposed changes to the ISO Tariff. Moreover, to the extent the Commission disapproves any proposed changes to the ISO Tariff (e.g., those contained in the Amendment No. 54 compliance filing), the ISO will submit further modifications to satisfy the


Commission's directives. The ISO notes, though, that the proposed changes in the Amendment No. 58 filing, which Dynegy/Williams supports, are possible to make and have meaning *only if* they are made on top of the underlying language from the compliance filing in the Amendment No. 54 proceeding. Thus, if the Commission is going to approve the language in Section 11.2.4.1.1.1 that Dynegy/Williams supports, it should also approve the underlying language in the section.

### III. CONCLUSION

Wherefore, for the foregoing reasons, the ISO respectfully requests that the Commission accept Amendment No. 58 in its entirety, except for the limited modifications noted herein.

Respectfully submitted,

  
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Date: April 7, 2004



April 7, 2004

The Honorable Magalie R. Salas  
Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, D.C. 20426

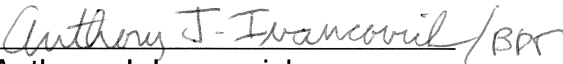
**Re: California Independent System Operator Corporation  
Docket No. ER04-609-\_\_\_\_\_**

Dear Secretary Salas,

Enclosed for filing, please find the *Motion For Leave To File Answer And Answer Of The California Independent System Operator Corporation To Motions To Intervene, Comments, And Protests.*

Thank you for your assistance in this matter.

Respectfully submitted

  
Anthony J. Ivancovich  
Counsel for The California Independent  
System Operator Corporation

## CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in the above-captioned dockets.

Dated at Folsom, California on this 7th day of April, 2004.

  
Anthony J. Ivancovich  
Anthony J. Ivancovich