

California Independent System Operator Corporation  
Fifth Replacement Tariff

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### **13. Dispute Resolution**

#### **13.1 Applicability**

##### **13.1.1 General Applicability**

Except as limited below or otherwise as limited by law (including the rights of any party to file a complaint with FERC under the relevant provisions of the FPA), the CAISO ADR Procedures shall apply to all disputes between parties which arise under the CAISO Documents except where the decision of the CAISO is stated in the provisions of this CAISO Tariff to be final. The CAISO ADR Procedures shall not apply to:

- (1) Disputes arising under contracts which pre-date the CAISO Operations Date, except as the disputing parties may otherwise agree;
- (2) Disputes as to whether rates and charges set forth in this CAISO Tariff are just and reasonable under the FPA.

##### **13.1.2 Disputes Involving Government Agencies**

If a party to a dispute is a government agency the procedures herein that provide for the resolution of claims and arbitration of disputes are subject to any limitations imposed on the agency by law, including but not limited to the authority of the agency to effect a remedy. If the governmental agency is a federal entity, the procedures herein shall not apply to disputes involving issues arising under the United States Constitution.

##### **13.1.3 Injunctive and Declaratory Relief**

Where the court having jurisdiction so determines, use of the CAISO ADR Procedures shall not be a condition precedent to a court action for injunctive relief nor shall the provisions of California Code of Civil Procedure sections 1281 et seq. apply to such court actions.

##### **13.1.4 Disputes Arising Under Section 11**

In the case of a dispute of a Settlement Statement under section 11.29.8.2 or 11.29.7.4, a Scheduling Coordinator, CRR Holder, Black Start Generator or Participating TO must initiate any good faith negotiation or other dispute resolution remedy under this Section 13 within 90 days of the day on which the CAISO provides notice of its resolution of a dispute under such section.

## **13.2 Negotiation and Mediation**

### **13.2.1 Negotiation**

The CAISO and Market Participants (party or parties) shall make good-faith efforts to negotiate and resolve any dispute between them arising under CAISO Documents prior to invoking the CAISO ADR Procedures outlined herein. Each party shall designate an individual with authority to negotiate the matter in dispute to participate in such negotiations.

### **13.2.2 Statement of Claim**

In the event a dispute is not resolved through such good-faith negotiations, any one of the parties may submit a statement of claim, in writing, to each other disputing party, and the CAISO ADR Coordinator, which submission shall commence the CAISO ADR Procedures. The statement of claim shall set forth in reasonable detail (i) each claim, (ii) the relief sought, including the proposed award, if applicable, (iii) a summary of the grounds for such relief and the basis for each claim, (iv) the parties to the dispute, and (v) the individuals having knowledge of each claim. The other parties to the dispute shall similarly submit their respective statements of claim within fourteen (14) days of the date of the initial statement of claim or such longer period as permitted by mutual agreement of the parties. If any responding party wishes to submit a counterclaim in response to the statement of claim, it shall be included in such party's responsive statement of claim. A summary of the statements of claim shall be published by the CAISO on the CAISO Website, by Market Notice, and any other method chosen by the CAISO ADR Coordinator. No Market Participant shall be considered as having received notice of a claim decided or relief granted by a decision made under these procedures unless the summary of the statements of claim published by the CAISO includes such claim or relief.

### **13.2.3 Selection of Mediator**

After submission of the statements of claim, the parties may request mediation, if at least seventy-five percent (75%) of the disputing parties so agree, except that where a dispute involves three parties, at least two of the parties must agree to mediation. If the parties agree to mediate, the CAISO ADR Coordinator shall distribute to the parties by facsimile or other electronic means a list containing the names of at least seven prospective mediators with mediation experience, or with technical or business experience in the electric power industry, or both, as he or she shall deem appropriate to the dispute.

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The parties shall have seven days from receipt of the CAISO ADR Coordinator's list of prospective mediators to agree upon a mediator from the list provided or from any alternative source, , unless the time is extended by mutual agreement. If the parties cannot agree on a mediator, any party may request from the American Arbitration Association a list of at least seven mediators with technical or business experience in the electric power industry, or both. The parties will alternate in striking names from the list with the last name on the list becoming the mediator. The first party to strike off a name from the list shall be determined by lot. The parties shall have seven days from receipt of the list from the American Arbitration Association to complete the mediator selection process and appoint the mediator, unless the time is extended by mutual agreement. The mediator shall comply with the requirements of Section 13.3.2

**13.2.4 Mediation**

The mediator and representatives of the disputing parties, with authority to settle the dispute, shall within fourteen (14) days after the mediator's date of appointment schedule a date to mediate the dispute.

Matters discussed during the mediation shall be confidential and shall not be referred to in any subsequent proceeding. With the consent of all disputing parties, a resolution may include referring the dispute directly to a technical body (such as a WECC technical advisory panel) for resolution or an advisory opinion, or referring the dispute directly to FERC. The CAISO shall publish notice of the referral of the dispute on the CAISO's Website, and any other method adopted by the CAISO ADR Coordinator.

**13.2.5 Demand for Arbitration**

If the disputing parties have not succeeded in negotiating a resolution of the dispute within thirty (30) days of the initial statement of claim or, if within that period the parties agreed to mediate, within thirty (30) days of the parties first meeting with the mediator, such parties shall be deemed to be at impasse and any such disputing party may then commence the arbitration process, unless the parties by mutual agreement agree to extend the time. A party seeking arbitration shall provide notice of its demand for arbitration to the other disputing parties, the CAISO ADR Coordinator, who shall publish notice of such demand on the CAISO Website, and any other method adopted by the CAISO ADR Coordinator.

### **13.3 Arbitration**

#### **13.3.1 Selection of Arbitrator**

##### **13.3.1.1 Disputes Under \$1,000,000**

Where the total amount of claims and counterclaims in controversy is less than \$1,000,000 (exclusive of costs and interest), the disputing parties shall select an arbitrator from a list containing the names of at least ten (10) qualified individuals supplied by the American Arbitration Association within fourteen (14) days following submission of the demand for arbitration. If the parties cannot agree upon an arbitrator within fourteen (the) stated time, they shall take turns striking names from the list of proposed arbitrators. The first party to strike-off a name shall be determined by lot. This process shall be repeated until one name remains on the list, and that individual shall be the designated arbitrator.

##### **13.3.1.2 Disputes of \$1,000,000 or Over**

Where the total amount of claims and counterclaims in controversy is \$1,000,000 or more (exclusive of interest and costs), the disputing parties may agree on any person to serve as a single arbitrator, or shall endeavor in good faith to agree on a single arbitrator from a list of ten (10) qualified individuals provided by the American Arbitration Association within fourteen (14) days following submission of the demand for arbitration. If the parties are unable to agree on a single arbitrator within the stated time, the party or parties demanding arbitration, and the party or parties responding to the demand for arbitration, shall each designate an arbitrator. Each designation shall be from the list of arbitrators no later than the tenth (10<sup>th</sup>) day thereafter. The two arbitrators so chosen shall then choose a third arbitrator.

#### **13.3.2 Disclosures Required of Arbitrators**

The designated arbitrator(s) shall be required to disclose to the parties any circumstances which might preclude him or her from rendering an objective and impartial determination. Each designated arbitrator shall disclose:

- (a) Any direct financial or personal interest in the outcome of the arbitration;
- (b) Any information required to be disclosed by California Code of Civil Procedure Section 1281.9.; and
- (c) Any existing or past financial, business, professional, or personal interest that are likely to affect impartiality or might reasonably create an appearance of partiality or bias.

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The designated arbitrator shall disclose any such relationships that he or she personally has with any party or its counsel, or with any individual whom he or she has been told will be a witness. Designated arbitrators should also disclose any such relationship involving members of their families or their current employers, partners, or business associates. All designated arbitrators shall make a reasonable effort to inform themselves of any interests or relationships described above. The obligation to disclose interests, relationships, or circumstances that might preclude an arbitrator from rendering an objective and impartial determination is a continuing duty that requires the arbitrator to disclose, at any stage of the arbitration, any such interests, relationships, or circumstances that arise, or are recalled or discovered. If, as a result of the continuing disclosure duty, an arbitrator makes a disclosure which is likely to affect his or her impartiality, or might reasonably create an appearance of impartiality or bias or if a party independently discovers the existence of such circumstances, a party wishing to object to the continuing use of the arbitrator must provide written notice of its objection to the other parties within ten (10) days of receipt of the arbitrator's disclosure or the date of a party's discovery of the circumstances giving rise to that party's objection. Failure to provide such notice shall be deemed a waiver of such objection. If a party timely provides a notice of objection to the continuing use of the arbitrator the parties shall attempt to agree whether the arbitrator should be dismissed and replaced in the manner described in Section 13.3.1. If within ten (10) days of a party's objection notice the parties have not agreed how to proceed, the matter shall be referred to the American Arbitration Association for resolution.

**13.3.3 Arbitration Procedures**

The CAISO ADR Coordinator shall compile and make available to the arbitrator and the parties standard procedures for the arbitration of disputes, which procedures (i) shall include provision, upon good cause shown, for intervention or other participation in the proceeding by any party whose interests may be affected by its outcome, (ii) shall conform to the requirements specified herein, and (iii) may be modified or adopted for use in a particular proceeding as the arbitrator deems appropriate, in accordance with Section 13.3.4. The procedures adopted by the CAISO ADR Coordinator shall be based on the latest edition of the American Arbitration Association Commercial Arbitration Rules, to the extent such rules are not inconsistent with this Section 13. Except as provided herein, all parties shall be bound by such procedures.

#### **13.3.4 Modification of Arbitration Procedures**

In determining whether to modify the standard procedures for use in the pending matter, the arbitrator shall consider (i) the complexity of the dispute, (ii) the extent to which facts are disputed, (iii) the extent to which the credibility of witnesses is relevant to a resolution, (iv) the amount in controversy, and (v) any representations made by the parties. Alternatively, the parties may, by mutual agreement, modify the standard procedures. In the event of a disagreement between the arbitrator and the agreement of the parties regarding arbitration procedures to be utilized, the parties' agreement shall prevail.

#### **13.3.5 Remedies**

##### **13.3.5.1 Arbitrator's Discretion**

The arbitrator shall have the discretion to grant the relief sought by a party, or determine such other remedy as is appropriate, unless the parties agree to conduct the arbitration "baseball" style. Unless otherwise expressly limited herein, the arbitrator shall have the authority to award any remedy or relief available from FERC, or any other court of competent jurisdiction. Where any CAISO Document leaves any matter to be agreed between the parties at some future time and provides that in default of agreement the matter shall be referred to the CAISO ADR Procedures, the arbitrator shall have authority to decide upon the terms of the agreement which, in the arbitrator's opinion, it is reasonable that the parties should reach, having regard to the other terms of the CAISO Document concerned and the arbitrator's opinion as to what is fair and reasonable in all the circumstances.

##### **13.3.5.2 "Baseball" Arbitration**

If the parties agree to conduct the arbitration "baseball" style, the parties shall submit to the arbitrator and exchange with each other their last best offers in the form of the award they consider the arbitrator should make, not less than seven (7) days in advance of the date fixed for the hearing, or such other date as the arbitrator may decide. If a party fails to submit its last best offer in accordance with this Section, that party shall be deemed to have accepted the offer proposed by the other party. The arbitrator shall be limited to awarding only one of the proposed offers, and may not determine an alternative or compromise remedy.

#### **13.3.6 Summary Disposition**

The procedures for arbitration of a dispute shall provide a means for summary disposition of a demand for arbitration, or a response to a demand for arbitration, that in the reasoned opinion of the arbitrator does

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not have a good faith basis in either law or fact. If the arbitrator determines that a demand for arbitration or response to a demand for arbitration does not have a good faith basis in either law or fact, the arbitrator shall have discretion to award the costs of the time, expenses, and other charges of the arbitrator to the prevailing party. A determination made under this Section is subject to appeal pursuant to Section 13.4.

**13.3.7 Discovery Procedures**

The procedures for the arbitration of a dispute shall include adequate provision for the discovery of relevant facts, including the taking of testimony under oath, production of documents and other things, the presentation of evidence, the taking of samples, conducting of tests, and inspection of land and tangible items. The nature and extent of such discovery shall be determined as provided herein and shall take into account (i) the complexity of the dispute, (ii) the extent to which facts are disputed, (iii) the extent to which the credibility of witnesses is relevant to a resolution, and (iv) the amount in controversy. The forms and methods for taking such discovery shall be as described in the Federal Rules of Civil Procedure, except as modified pursuant to Section 13.3.4.

**13.3.8 Evidentiary Hearing**

The arbitration procedures shall provide for an evidentiary hearing, with provision for the cross-examination of witnesses, unless all parties consent to the resolution of the matter on the basis of a written record. The forms and methods for taking evidence shall be determined by the arbitrator(s) and modified pursuant to Section 13.3.4. The arbitrator may require such written or other submissions from the parties as he or she may deem appropriate, including submission of direct and rebuttal testimony of witnesses in written form. The arbitrator may exclude any evidence that is irrelevant, immaterial, unduly repetitious or prejudicial, or privileged. The arbitrator shall compile a complete evidentiary record of the arbitration which shall be available to the parties on its completion upon request.

**13.3.9 Confidentiality**

Subject to the other provisions of this CAISO Tariff, any party may claim that information contained in a document otherwise subject to discovery is "Confidential" if such information would be so characterized under the Federal Rules of Evidence. The party making such claim shall provide to the arbitrator in writing the basis for its assertion. If the claim of confidentiality is confirmed by the arbitrator, he or she

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shall establish requirements for the protection of such documents or other information designated as “Confidential” as may be reasonable and necessary to protect the confidentiality and commercial value of such information. Any party disclosing information in violation of these provisions or requirements established by the arbitrator, unless such disclosure is required by federal or state law or by a court order, shall thereby waive any right to introduce or otherwise use such information in any judicial, regulatory, or other legal or dispute resolution proceeding, including the proceeding in which the information was obtained.

**13.3.10 Timetable**

Promptly after the appointment of the arbitrator, the arbitrator shall set a date for the issuance of the arbitration decision, which shall be no later than six (6) months (or such date as the parties and the arbitrator may agree) from the date of the appointment of the arbitrator, with other dates, including the dates for an evidentiary hearing or other final submissions of evidence, set in light of this date. The date for the evidentiary hearing or other final submission of evidence shall not be changed, absent extraordinary circumstances. The arbitrator shall have the power to impose sanctions, including dismissal of the proceeding, for dilatory tactics or undue delay in completing the arbitration proceedings.

**13.3.11 Decision**

**13.3.11.1** Except as provided below with respect to “baseball” style arbitration, the arbitrator shall issue a written decision granting the relief requested by one of the parties, or such other remedy as is appropriate, if any, and shall include findings of fact and law. The arbitration decision shall be based on (i) the evidence in the record, (ii) the terms of the relevant CAISO Documents, (iii) applicable United States federal law, including the FPA and any applicable FERC regulations and decisions, and international treaties or agreements as applicable, and (iv) applicable state law. Additionally, the arbitrator may consider relevant decisions in previous arbitration proceedings. A summary of the disputed matter and the arbitrator's decision shall be published on the CAISO Website and any other method chosen by the CAISO ADR Coordinator.

**13.3.11.2** In arbitration conducted “baseball” style, the arbitrator shall issue a written decision adopting one of the awards proposed by the parties, and shall include findings of fact and law. The arbitration decision shall be based on (i) the evidence in the record, (ii) the terms of the relevant CAISO Documents,

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(iii) applicable United States federal law, including the FPA and any applicable FERC regulations and decisions, and international treaties or agreements as applicable, and (iv) applicable state law. If the arbitrator concludes that no proposed award is consistent with the factors enumerated in (i) through (iv) above, or addresses all of the issues in dispute, the arbitrator shall specify how each proposed award is deficient and direct that the parties submit new proposed awards that cure the identified deficiencies. A summary of the disputed matter and the arbitrator's decision shall be published on the CAISO Website, and any other method chosen by the CAISO ADR Coordinator. An award shall not be deemed to be precedential.

**13.3.11.3** Where a panel of arbitrators is appointed pursuant to Section 13.3.1.2, a majority of the arbitrators must agree on the decision.

**13.3.12 Compliance**

Unless the arbitrator's decision is appealed under Section 13.4, the disputing parties shall, upon receipt of the decision, immediately take whatever action is required to comply with the award to the extent the award does not require regulatory action. An award that is not appealed shall be deemed to have the same force and effect as an order entered by the FERC or any court of competent jurisdiction.

**13.3.13 Enforcement**

Following the expiration of the time for appeal of an award pursuant to Section 13.4.3, any party may apply to FERC or any court of competent jurisdiction for entry and enforcement of judgment based on the award.

**13.3.14 Costs**

The costs of the time, expenses, and other charges of the arbitrator shall be borne by the parties to the dispute, with each side on an arbitrated issue bearing its pro-rata share of such costs, and each party to an arbitration proceeding bearing its own costs and fees. If the arbitrator determines that a demand for arbitration or response to a demand for arbitration was made in bad faith, the arbitrator shall have discretion to award the costs of the time, expenses, and other charges of the arbitrator to the prevailing party. Notwithstanding the above, at the discretion of the arbitrator, the winning party in any dispute which has resulted in the enforcement of an important right affecting the public interest shall not be required to pay any of the costs of the arbitrator and may recover such of its own reasonable attorney

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fees, expert witness fees and other reasonable costs from the losing party to the dispute if (a) a significant benefit, whether pecuniary or non-pecuniary, has been conferred on the general public, (b) the necessity and financial burden of private enforcement are such as to make the award appropriate, and (c) such fees should not, in the interest of justice, be paid out of the recovery.

**13.4 Appeal of Award**

**13.4.1 Basis for Appeal**

A party may apply to the FERC or any court of competent jurisdiction to hear an appeal of an arbitration award only upon the grounds that the award is contrary to or beyond the scope of the relevant CAISO Documents, United States federal law, including, without limitation, the FPA, and any FERC regulations and decisions, or state law. Appeals shall, unless otherwise ordered by FERC or the court of competent jurisdiction, conform to the procedural limitations set forth in this Section 13.4.

**13.4.2 Appellate Record**

The parties intend that FERC or the court of competent jurisdiction should afford substantial deference to the factual findings of the arbitrator. No party shall seek to expand the record before the FERC or court of competent jurisdiction beyond that assembled by the arbitrator, except (i) by making reference to legal authority which did not exist at the time of the arbitrator's decision, or (ii) if such party contends the decision was based upon or affected by fraud, collusion, corruption, misconduct or misrepresentation.

**13.4.3 Procedures for Appeals**

**13.4.3.1** If a party to an arbitration desires to appeal an award, it shall provide a notice of appeal to the CAISO ADR Coordinator, all parties and the arbitrator within fourteen (14) days following the date of the award. The CAISO ADR Coordinator shall publish notice of the appeal on the CAISO Website, and any other method chosen by the CAISO ADR Coordinator.

Within ten (10) days of the filing of the notice of appeal, the appealing party must file an appropriate application, petition or motion with the FERC to trigger review under the FPA or with a court of competent jurisdiction. Such filing shall state that the subject matter has been the subject of an arbitration pursuant to the relevant CAISO Document.

**13.4.3.2** Within thirty (30) days of filing the notice of appeal (or such period as FERC or the court of competent jurisdiction may specify) the appellant shall file the complete evidentiary record of the

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arbitration and a copy of the award with FERC or with the court of competent jurisdiction. The appellant shall serve copies of a description of all materials included in the submitted evidentiary record.

**13.4.4 Award Implementation**

Implementation of the award shall be deemed stayed pending an appeal unless and until, at the request of a party, the FERC or the court of competent jurisdiction to which an appeal has been filed, issues an order dissolving, shortening, or extending such stay. However, a summary of each appeal shall be published on the CAISO Website, and any other method chosen by the CAISO ADR Coordinator.

**13.4.5 Judicial Review of FERC Orders**

FERC orders resulting from appeals shall be subject to judicial review pursuant to the FPA.

**13.5 Allocation of Awards Payable by or to the CAISO**

**13.5.1 Allocation of an Award**

If the CAISO must pay an award to a party pursuant to good faith negotiations or the CAISO ADR Procedures, the CAISO will recover the amount of the award from Market Participants and Scheduling Coordinators. If the CAISO receives an award from a party pursuant to good faith negotiations or the CAISO ADR Procedures, the CAISO will flow back the amount of the award to Market Participants and Scheduling Coordinators.

**13.5.2 Timing of Adjustments**

Upon determination that an award is payable by or to the CAISO pursuant to good faith negotiations or the CAISO ADR Procedures, the CAISO shall calculate the amounts payable to and receivable from the party, Market Participants, and Scheduling Coordinators, as soon as reasonably practical, and shall show any required adjustments as a debit or a credit in a subsequent Recalculation Settlement Statement or, in the case of an amount payable by the CAISO to a party, as soon as the CAISO and that party may agree.

**13.5.3 Method of Allocation**

**13.5.3.1 Allocation to Market Participants**

The CAISO will use best efforts to determine which Market Participant(s) is or are responsible for and/or benefit from payment of an award by or to the CAISO and to allocate receipt of or payment for the award equitably to such Market Participant(s). In undertaking the allocation, the CAISO shall consider the extent of a Market Participant's participation in affected markets and the CAISO Tariff in effect on the applicable

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Trading Day(s), and may consider any other relevant factor, including but not limited to, applicable contracts.

**13.5.3.2 Residual Amounts**

Any awards for which the CAISO is unable to identify Market Participants in accordance with 13.5.3.1 and any award amounts that the CAISO is unable to collect that are not covered by Section 11.29.17.1 or Section 11.29.17.2 will be allocated to all Scheduling Coordinators through neutrality adjustments.