

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

California Independent System) Docket No. ER24-____-000
Operator Corporation)

**PETITION OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR
CORPORATION FOR APPROVAL OF DISPOSITION OF PENALTY ASSESSMENT
PROCEEDS**

Pursuant to Rule 207 of the Commission’s Rules of Practice and Procedure¹ and section 37.9.4 of the California Independent System Operator Corporation (CAISO) tariff, the CAISO seeks Commission approval to distribute a \$16,500 penalty assessed in 2020 against Tenaska Power Services Co. (Tenaska) in its role as scheduling coordinator for Blue Lake Power, LLC (Blue Lake) for a violation of CAISO tariff section 37.6.1.

The CAISO proposes to distribute the proceeds under the allocation in Attachment A to this filing. The CAISO requests the Commission afford these attachments confidential treatment under 18 C.F.R. § 388.112. The CAISO believes the scheduling coordinators involved would consider their CAISO settlement information to be confidential business information, which is information of the type that the CAISO typically does not release to the public.² Attachment B to this filing is a proposed form

¹ 18 C.F.R. § 385.207.

² *Cal. Indep. Sys. Operator Corp.*, 166 FERC ¶ 61,139 (2019) (approving request to maintain confidentiality of the specific payments over an intervenor’s objection) (Order Approving 2017 Calendar Year Filing).

of protective agreement acceptable to the CAISO it is prepared to utilize for purposes of 18 CFR § 388.112(b)(2).

I. DISCUSSION

A. Tariff Provisions Governing Distribution of Proceeds

Section 37.9.4 of the CAISO tariff requires the CAISO to place all proceeds of penalties collected under section 37 into a trust account. After the end of the year, the CAISO must allocate those proceeds, with interest, to scheduling coordinators representing eligible market participants. Section 37.9.4 provides that an eligible market participant “shall be those Market Participants that were not assessed a financial penalty pursuant to this Section 37 during the calendar year.” Section 37.9.4 also requires the CAISO to “obtain FERC’s approval of its determination of eligible Market Participants and their respective shares of the trust account proceeds” before distributing the penalty proceeds.

In distributing the funds, the CAISO pays eligible market participants based on the product of: (a) the amount in the trust account, including interest; and (b) the ratio of grid management charge payments by the scheduling coordinator on behalf of eligible market participants to the total of such amounts paid by all scheduling coordinators. The payment cannot be more than the grid management charge paid by the scheduling coordinator on behalf of all eligible market participants it represents. After the disposition, the scheduling coordinator distributes the amounts to the eligible market participants in proportion to their share of the grid management charge paid by the scheduling coordinator on their behalf. For example, assume a scheduling coordinator represented three market participants (MP₁, MP₂, and MP₃) for the year and each was

responsible for paying \$5,000 in grid management charge. If the scheduling coordinator is not charged any sanctions during the year, then the CAISO will count the scheduling coordinator as having paid \$15,000 in grid management charge for the pro rata distribution. It is then up to the scheduling coordinator to pass along whatever amount of the penalty proceeds the CAISO allocates based on that \$15,000 in grid management charge in equal portions to each of MP₁, MP₂, and MP₃. If, however, the CAISO assessed this scheduling coordinator a rules of conduct sanction because of conduct attributable to MP₁, then that is the ineligible market participant and the scheduling coordinator will be treated as having paid \$10,000 in grid management charge for the pro rata distribution, rather than \$15,000 in grid management charge had there been no sanction. It is then up to that scheduling coordinator to make the appropriate distributions to MP₂ and MP₃.

B. Distributing the Blue Lake/Tenaska Penalty

In 2020, the CAISO assessed a penalty of \$16,500 against Tenaska in its role as Blue Lake's scheduling coordinator. The penalty was assessed under CAISO tariff section 37.6.1, which imposes a \$500/day penalty for each day tariff-required information is submitted late. Specifically, Blue Lake was 33 days late in restoring telemetry on its generating resource. Blue Lake paid the penalty and then appealed to the Commission on March 19, 2021, in docket number ER21-1492.³ When the CAISO filed with the Commission seeking approval to distribute the penalty proceeds for 2020

³ Neither Tenaska nor Blue Lake sought to toll the penalty pursuant to CAISO tariff section 37.8.10.

in docket number ER21-2040 it noted the proposed allocation did not include Blue Lake's penalty because the appeal was still pending.⁴ On November 3, 2023, the Commission denied Blue Lake's requested relief.⁵ Accordingly, the CAISO now seeks Commission approval to distribute the \$16,500 penalty as reflected in confidential Attachment A.⁶ The proposed distribution follows the same pro rata allocation the Commission previously approved for the 2020 calendar year.⁷ Consistent with prior practice, the allocation excludes the two federal power marketing administrations that participate in the CAISO because they are exempt from rules of conduct penalties under CAISO tariff section 22.9(a).⁸

II. CORRESPONDENCE AND MARKET NOTICE

In accordance with the Commission's Regulations,⁹ the CAISO requests that all correspondence, pleadings, and other communications about this filing be served upon the following, whose names should be placed on the official service list established by the Commission regarding this filing:

⁴ *Petition of the California Independent System Operator Corporation for Approval of Disposition of Penalty Assessments Proceeds and Non-Refundable Interconnection Financial Security*, at 4 n.8, FERC Docket No. ER21-2040 (May 28, 2021).

⁵ *Blue Lake Power, LLC*, 185 FERC ¶ 61,100 (2023).

⁶ The allocation for some scheduling coordinators is under \$10. Per section 11.29.7.2.1, Invoices and Payment Advices "for amounts less than \$10.00 will be adjusted to \$0.00 and no amount will be due to or from that Scheduling Coordinator" The Invoices/Payment Advices on which the CAISO will allocate the penalty proceeds are likely to have other debits and credits that bring the total amount of the Invoice/Payment Advice above \$10. If that is not the case and the total amount remains less than \$10, then that Scheduling Coordinator will not receive the funds identified in any of the confidential attachments to this filing.

⁷ *Cal. Indep. Sys. Operator Corp.*, 176 FERC ¶ 61,081 (2021).

⁸ See, e.g., *Petition of the California Independent System Operator Corporation for Approval of Disposition of Penalty Assessments Proceeds and Non-Refundable Interconnection Financial Security*, at 6-7, FERC Docket No. ER24-355 (Nov. 2, 2023).

⁹ 18 C.F.R. § 385.203(b).

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

III. CONCLUSION

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

Respectfully submitted,

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November 29, 2023

Attachment A

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

Attachment B

**Re: California Independent System Operator Corporation
Docket No. ER24-____-000**

**PETITION OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR
CORPORATION FOR APPROVAL OF DISPOSITION OF PROCEEDS OF
PENALTY ASSESSMENTS**

Filed November 29, 2023

Form Protective Agreement

PROTECTIVE AGREEMENT

This Protective Agreement (“Agreement”) is entered into this ____ day of _____, 2023 by and between the California Independent System Operator Corporation (“CAISO”) and _____ (“Intervenor”), or *vice versa*, in connection with the proceeding before the Federal Energy Regulatory Commission (the “Commission”) in Docket No. _____. The CAISO and Intervenor are sometimes referred to as herein individually as a “Party” or jointly as the “Parties.”

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

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

3. Definitions – For purposes of this Agreement:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Representing CAISO

Representing Intervenor

NON-DISCLOSURE CERTIFICATE

I hereby certify my understanding that access to Protected Materials is provided to me pursuant to the terms and restrictions of the Protective Agreement dated _____, 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: _____