

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

CalWind Resources, Inc.)	
)	
v.)	Docket No. EL14-4-000
)	
California Independent System Operator Corporation)	

**ANSWER OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR
CORPORATION TO COMPLAINT**

The California Independent System Operator Corporation (“ISO”) submits this answer to CalWind Resources, Inc's (“CalWind's”) October 11, 2013 complaint asserting that section 25 of the ISO’s tariff is not just and reasonable.¹ Section 25 provides that the maximum amount of interconnection service an existing generator already connected to the ISO controlled grid may receive, without being required to submit a new interconnection request, is the generator’s existing net generating capacity. CalWind argues that the ISO tariff should instead allow a qualifying facility (“QF”) to receive an interconnection agreement reflecting previously studied, but undeveloped, capacity reflected in its historical state-jurisdictional interconnection contracts, even where the generator’s actual physical capacity is, and always has been, substantially less.

CalWind’s complaint should be rejected both on procedural and substantive grounds. Procedurally, CalWind’s complaint will be rendered moot

¹ The ISO submits this answer pursuant to Rules 206(f) and 213 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. §§ 385.206(f), 385.213, and the Notice of Complaint issued in this proceeding on October 15, 2013. CalWind also made several procedural requests in its complaint. CalWind at 1, 21-23. The ISO separately filed an answer to the procedural requests on October 16, 2013 in Docket Nos. EL14-4 and ER13-1216.

before CalWind could develop any additional generating capacity to its existing facility. This dispute concerns CalWind's rights to interconnection service under its historical agreements with Southern California Edison Company ("SCE"). The ISO is not a party to these historical agreements. In addition, the ISO plans to relinquish control over the transmission facility that CalWind is interconnected to in December 2013, when the facility is reclassified as a distribution facility. Accordingly, this dispute is ultimately between CalWind and SCE involving what rights, if any, CalWind has under the preexisting bilateral state jurisdictional agreement with SCE, and what capacity should be reflected in a Commission-jurisdictional interconnection agreement pursuant to SCE's wholesale distribution access tariff. This ISO tariff is not relevant to addressing these rights. The Commission should thus dismiss CalWind's complaint in the interest of judicial and administrative efficiency.

Even if the Commission should decide to entertain CalWind's complaint, it should be rejected on the merits because CalWind fails to demonstrate that section 25 of the ISO tariff is unjust and unreasonable for the following reasons:

- Contrary to CalWind's assertions, section 25 is fully compliant with the Commission's rulings in Order Nos. 2003 and 2006. Those orders make clear that existing resources do not have to be studied, if their capacity and electrical characteristics are "substantially unchanged" upon conversion. CalWind's proposed rule, however, would allow it to increase its capacity by over 60 percent, which cannot be considered as "substantially unchanged."

- CalWind alleges that section 25 would lead to unreasonable results. This argument, however, is based on hypotheticals associated with capacity reductions due to outages or equipment degradation that do not relate to net capacity to be reflected in an interconnection agreement pursuant to section 25. Further, CalWind's argument that its previous interconnection arrangements with SCE should be treated as an "encumbrance" is without merit. SCE has not identified any encumbrances in connection with CalWind's previous interconnection agreement and the ISO's has modeled CalWind's facility based on its existing net capacity based on information provided to the ISO by SCE.

In addition, CalWind's proposal would lead to unjust and unreasonable outcomes. For example:

- CalWind's proposal would require the ISO to provide interconnection service based on generating capacity that has never been reflected in the ISO's base case and is substantially greater than the amount ever constructed, without the ISO first studying the contemporaneous impacts of interconnecting such additional capacity. Doing so would be contrary to basic principles of system reliability and good utility practice, as reflected in the ISO's interconnection procedures.
- CalWind's proposal would have serious negative implications for the efficiency and fairness of the ISO's interconnection process because it would require the ISO and its transmission owners to either overbuild transmission upgrades to account for generating capacity that may

never be built, thus increasing the costs to generators in the interconnection queue as well as transmission ratepayers, or to attempt to “re-prioritize” its interconnection queue when a QF demands an ISO interconnection agreement for expansion capacity.

- CalWind’s proposal is also inconsistent with the fundamental nature of interconnection service, which is distinct from transmission service. Reservations of interconnection service would be contrary to well-established Commission policy holding that generators cannot hoard capacity on the transmission system in perpetuity.

Accordingly even if the Commission does not dismiss the complaint in the interest of judicial and administrative efficiency, it should summarily dismiss the complaint on the merits.²

I. BACKGROUND

CalWind owns the Pajuella Peak Wind Park, an existing QF wind generator which has been operating since 1985.³ During that entire time, the maximum net generating capacity (*i.e.*, nameplate rating minus auxiliary load) of the Pajuella Peak facility has been 21.795 MW, as evidenced by CalWind’s QF self-recertification of the facility.⁴ Based on information provided by SCE, the ISO’s base case used for interconnection study purposes has always stated that

² Even if the Commission believes that CalWind has presented a facially credible challenge to the justness and reasonableness of section 25 of the ISO tariff, the Commission should not rule on this complaint separately, but consolidate it with the hearing on CalWind’s ISO LGIA in Docket ER13-1216 so that these issues can be considered in the context of the underlying facts.

³ CalWind purchased the Pajuella Peak facility in 1997.

⁴ Self-recertification, Docket No. QF83-290-001, at 4 (Feb. 7, 1997).

the capacity of the facility is 21.795 MW. CalWind's participating generator agreement with the ISO specifies 20.0 MW of capacity.⁵

Pursuant to a series of power purchase agreements, the last of which expired on March 29, 2013, the entire output of the Pajuela Peak facility was sold to SCE. During this period, the facility obtained interconnection service solely from SCE under state-jurisdictional arrangements.⁶ In 2012, CalWind began the process of obtaining interconnection service under the ISO tariff.

Section 25 of the ISO tariff provides that an existing generator already connected to the ISO controlled grid, whose total output was previously sold to a participating transmission owner ("Participating TO") or on-site customer but whose output or any portion thereof will be sold at wholesale, need not enter the ISO's interconnection queue if it submits an affidavit representing that its "total capability and electrical characteristics . . . will remain substantially unchanged."⁷

In the Order No. 2003 proceeding, commenters argued that it would be inappropriate to treat an existing QF as a newly interconnected generator because, if the QF were already in the base case used by the transmission provider to determine the impacts of new generation, there would be no need to study it separately. The Commission agreed, and concluded that an existing QF

⁵ A copy of this agreement is attached as Exhibit B to this Answer. The MW value is listed in Schedule 1 to that agreement. As explained in CalWind's complaint, the discrepancy between the 20 MW and 21.795 MW values is due to the fact that CalWind took approximately 2 MW of capacity out of service just prior to April 1, 2013. CalWind at 4, n. 4.

⁶ The Pajuela Peak facility was not required to comply with the tariff because it was an "exempt QF facility" as that term is defined in appendix A to the tariff.

⁷ ISO tariff sections 25.1, 25.1.2.

need not submit an interconnection request if it represents that “the output of its generator will be substantially the same after conversion.”⁸

CalWind submitted an affidavit representing that the Pajuela Peak facility has a “total gross generating capacity of 22.36 MW with power purchase capacity of 21.795 MW.”⁹ Nevertheless, CalWind informed the ISO and SCE that it believed it was entitled to receive an ISO large generator interconnection agreement (“LGIA”) permitting it to interconnect up to 37.5 MW, approximately 15.5 MW more than its existing capacity, which has never been developed. CalWind reasoned that its state-jurisdictional interconnection facilities agreement with SCE, entered into in 1983, provided for the ability to interconnect a 37.5 MW facility. The ISO and SCE informed CalWind that this is not permitted under section 25 because a 15.5 MW addition to a 22 MW facility, which represents an over 60 percent increase in capacity, would not qualify as “substantially unchanged.” Due to this dispute, SCE filed an unexecuted LGIA for CalWind reflecting its existing capacity.¹⁰ CalWind protested this filing, arguing that its interconnection contracts with SCE entitled it to an LGIA for a 37.5 MW plant. The Commission set the issues relating to the unexecuted LGIA for hearing.

CalWind’s facility will only be interconnected to the ISO controlled grid for approximately two more months. SCE is currently in the process of completing

⁸ *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146, at P 815 (2003) (“Order No. 2003”).

⁹ See Exhibit 1 to SCE’s April 1, 2013 filing of an unexecuted LGIA with Cal Wind in Docket No. ER13-1216-000.

¹⁰ The unexecuted LGIA filed by SCE was based on the *pro forma* LGIA set forth in appendix CC to the ISO tariff.

upgrades in the area in which CalWind is located pursuant to the East Kern Wind Resource Area (“EKWRA”) reconfiguration project. This project, which was approved by the ISO in 2010, will result in a number of facilities that currently operate as network transmission facilities becoming radial distribution facilities, including the line to which CalWind is interconnected. As a consequence, the ISO plans to relinquish control of these facilities in December 2013. At that time, these facilities will no longer be under the ISO’s operational control and CalWind will obtain interconnection service directly through SCE pursuant to the terms of SCE’s wholesaled distribution access tariff.

II. ANSWER

A. The Complaint Should be Dismissed in the Interest of Judicial and Administrative Efficiency.

The Commission should dismiss CalWind’s complaint in the interest of judicial and administrative efficiency because even if the Commission were to rule in CalWind’s favor on the merits of the complaint, such an outcome would not provide CalWind with the ability to build and interconnect an additional 15 MW of generating capacity at the Pajuela Peak facility pursuant to an ISO LGIA.

The facilities to which CalWind is interconnected will be re-classified as distribution facilities on or about December 15, 2013. At that time, the ISO plans to relinquish control and these facilities will no longer be subject to ISO operational control.¹¹ CalWind’s interconnection service will then be provided solely by SCE, pursuant to the terms of SCE’s wholesale distribution access

¹¹ See Declaration of Deborah A. LeVine, Exhibit A to this filing (“LeVine Declaration”), at P 9.

tariff. The question of whether the ISO tariff allows for the result that CalWind desires will be moot. Given that CalWind has not even begun construction of any additional capacity, there is no feasible way that it could utilize an additional 15.5 MW of interconnection service during the short time that it will receive interconnection service pursuant to an ISO LGIA. As such, a favorable ruling on CalWind's complaint would not result in CalWind's bringing additional capacity on-line prior to when CalWind's point of interconnection will be removed from the ISO's operational control. The issue that will ultimately be in dispute is what level of capacity should be reflected in an LGIA in accordance with SCE's wholesale distribution access tariff. A three-party LGIA pursuant to the ISO tariff will have no practical value for CalWind in terms of facilitating its expansion plans.

Moreover, a necessary predicate to CalWind's request for relief is the resolution of the factual question of whether CalWind's contracts with SCE provide it with the right to a level of interconnection service (37.5 MW) greater than the current capacity of its generating facility (21.795 MW). This is one of the issues the Commission set for hearing in Docket No. ER13-1216. Even if the Commission were to conclude that CalWind's complaint has merit, no relief can be afforded to CalWind unless and until it establishes that its contracts with SCE provide it with 37.5 MW of interconnection service. CalWind has yet to establish this. Accordingly, the Commission should dismiss CalWind's complaint.¹²

¹² Alternatively, if the Commission declines to dismiss CalWind's complaint on procedural grounds, and believes that CalWind has presented a credible challenge to the justness and reasonableness of section 25, the Commission should then consolidate the issues in this complaint with the hearing in Docket No. ER13-1216, so that these issues can be considered in the appropriate factual context.

B. CalWind Fails to Show that the Previously Approved Provisions in Tariff Section 25 Are Unjust and Unreasonable.

1. The Commission Found Section 25 Just and Reasonable.

CalWind alleges that section 25 of the ISO tariff does not comply with Order No. 2003.¹³ This is wrong. First, CalWind bases its argument on the incorrect assertion that the ISO never made any filing to conform its tariff with the Commission's QF conversion ruling in Order No. 2003.¹⁴ In fact, in a January 5, 2005 filing, the ISO included specific revisions to incorporate this rule into its tariff.¹⁵ In that filing the ISO added the exact language that is the subject of CalWind's complaint.¹⁶

CalWind then claims that, in response to protests of its implementation of the policy on QF conversions, the ISO failed to modify tariff section 5.7 (predecessor to section 25), consistent with the Commission's ruling in a proceeding regarding the ISO's QF-specific Participating Generator Agreement

¹³ CalWind at 14-16.

¹⁴ CalWind at 14. CalWind's claim that the ISO failed to add language to its tariff to comply with the Commission's QF conversion rule relies on an earlier (January 20, 2004) ISO filing to comply with Order No. 2003 that the Commission rejected in its entirety for reasons regarding the ISO's status as an "independent entity." CalWind at 14. *See also California Independent System Operator Corp., et al.*, 108 FERC ¶ 61,104, at PP 24-25 (2004) (rejecting January 20, 2004 ISO compliance filing). Due to the fact that it was rejected, that filing obviously has no relevance to the existing controversy.

¹⁵ Transmittal letter for ISO compliance filing, Docket No. ER04-445-006, at 32-33 (Jan. 5, 2005) (quoting Order No. 2003 at P 815); attachment H to that compliance filing (containing proposed tariff revisions). The ISO proposed these changes to tariff section 5.7, which was subsequently renumbered to section 25. Specifically, as relevant to this proceeding, the current version of former section 5.7.1 is set forth in section 25.1, and the current version of former section 5.7.1.2 is set forth in section 25.1.2.

¹⁶ See ISO Tariff Section 25.1.2 (allowing a converting QF to avoid having to submit an interconnection request if its "total capability and electrical characteristics . . . will remain substantially unchanged")

("QF-PGA").¹⁷ CalWind confuses two separate issues. Only one entity took issue with the ISO's QF conversion rule, arguing that requiring an affidavit and verification process to ensure that a QF's "total capability and electrical characteristics" remained "substantially unchanged" would be burdensome.¹⁸ Separately, the same party also argued that the ISO's LGIA should be amended to account for the "operational characteristic differences" between merchant plants and QFs, consistent with the Commission's findings in the QF-PGA proceeding, a separate proceeding unrelated to Order No. 2003.¹⁹ The Commission, in its order in response to the ISO's Order No. 2003 compliance filing, accepted the ISO's tariff language without explicitly addressing the argument that the affidavit process was burdensome. The Commission did, however, address the argument regarding the relationship between the QF-PGA and the LGIA, directing the ISO to amend its LGIP and LGIA "to be consistent with the PGA designed for QFs."²⁰

Therefore, the QF-PGA compliance issue is irrelevant because it has nothing to do with the ISO's QF conversion rule, which the Commission accepted

¹⁷ CalWind at 14-15.

¹⁸ Amended Motion to Intervene Out of Time and Protest of the Cogeneration Association of California and the Energy Producers and Users Coalition, Docket Nos. ER04-445-005, *et al.*, at 4 (Jan. 27, 2005). The protesters claimed that the affidavit and verification process proposed by the ISO was unnecessary to implement the Commission's conversion rule and would be too burdensome for QFs.

¹⁹ *Id.* at 4-5.

²⁰ *California Independent System Operator Corp., et al.*, 112 FERC ¶ 61,009, at P 140 (2005) (citing Opinion No. 464, *California Independent System Operator Corp., et al.*, 104 FERC ¶ 61,196 (2003)).

without modification.²¹ Moreover, the ISO *did* submit a compliance filing that expressly included proposed revisions to comply with the Commission’s QF-PGA directive.²² In that filing, the ISO added language to its LGIA stating that if a matter is explicitly addressed by the QF-PGA and is inconsistent with a provision of the LGIA, the QF-PGA will govern.²³ The Commission accepted this filing with no changes to the relevant compliance language.²⁴

2. Section 25 Does Not Conflict with Order No. 2006.

CalWind also argued that section 25 is unjust and unreasonable based on language in Order No. 2006.²⁵ Specifically, CalWind points to the Commission’s statement in paragraph 559 that a QF conversion will not trigger the need for a new interconnection request “if its transmission requirements are consistent with the capacity provided for in its existing interconnection agreement.”²⁶ CalWind suggests that this language modified the conversion rule set forth in Order No. 2003 so as to require a transmission provider to offer an interconnection

²¹ See *id.* at P 1 (stating that the Commission accepted the ISO’s compliance filing “with certain modifications, as discussed below”). The modifications did not include changes to tariff section 5.7.1 or 5.7.1.2.

²² Transmittal letter for ISO compliance filing, Docket No. ER04-435-015, *et al.*, at 11 (Aug. 30, 2005) (explaining that the ISO submitted proposed tariff revisions to comply with the Commission’s directive “to be consistent with the Qualifying Facility (‘QF’) specific Participating Generator Agreement (‘PGA’) offered by the ISO (‘QF PGA’)”); attachment A to that compliance filing (containing proposed tariff revisions).

²³ To support its claim, CalWind erroneously cites and provides in attachment VII to its complaint a *different* compliance filing that the ISO submitted on August 30, 2005, in Docket No. ER04-445-012. *Id.*

²⁴ *California Independent System Operator Corp., et al.*, 115 FERC ¶ 61,237, at P 23 (2006); see also *id.* at ordering paragraph (C).

²⁵ CalWind at 16-19 (citing *Standardization of Small Generator Interconnection Agreements and Procedures*, Order No. 2006, FERC. Stats. & Regs. ¶ 31,180 (2005) (“Order No. 2006”).

²⁶ CalWind at 10-11, 13, 16, 18.

agreement based on the amount of capacity reflected in a previous interconnection agreement, regardless of whether the capacity was actually constructed. This interpretation is at odds with the logical reading of paragraph 559 as well as the underlying context.

The Commission issued paragraph 559 in response to comments filed by the California Wind Energy Association (“California Wind Energy”), noting the QF conversion rule in Order No. 2003 and asking the Commission to clarify that the same logic applies to small QFs when they have a *“transmission demand that remains the same before and after contract conversion.”*²⁷ California Wind Energy also noted that “in some cases a qualifying facility’s interconnection agreement provides for a capacity greater than the capacity sold pursuant to the PURPA power purchase contract.” California Wind Energy asked the Commission to clarify that “the QF, upon contract conversion, should not be obligated to file an Interconnection Request *so long as its transmission requirements are consistent with the capacity provided for in the prior interconnection agreement.*”²⁸

In response to these California Wind Energy comments,²⁹ the Commission stated:

California Wind Energy also asks the Commission to clarify that a plant repowering at the time of contract conversion *that does not increase plant capacity* will not trigger an obligation to file an Interconnection Request. We clarify that a contract conversion *that*

²⁷ *Id.* (emphasis added).

²⁸ *Id.* at 3-4 (emphasis added).

²⁹ The Commission summarized the comments in Order No. 2006 at PP 553-54.

does not affect a generator's demands on the Transmission System does not trigger an obligation to file. When a QF's existing interconnection agreement provides for capacity greater than the capacity sold by the QF to the interconnecting utility under the PURPA power purchase contract, the QF's contract conversion will not trigger an obligation to file an Interconnection Request *if its transmission requirements are consistent with the capacity provided for in the existing interconnection agreement.*³⁰

The first sentence in paragraph 559 clearly indicates that the Commission was only speaking to conversions where a generator “does not increase plant capacity.”³¹ Therefore, CalWind's suggestion, that the Commission meant to extend its exemption for conversion QFs to situations in which a QF seeks to substantially increase its capacity above its existing capability, is not plausible. Instead, the most logical reading of this paragraph is that the Commission was clarifying the rule in Order No. 2003 to apply to a situation in which a QF has sold less than its total capability pursuant to a power purchase agreement with its host utility. This situation – a QF having previously sold less than its total capability – does not constitute a “substantial change” in capability and, therefore, the QF would still be entitled to receive, upon conversion, an interconnection agreement reflecting its total capability.³² This is reinforced by the Commission's statement that the QF conversion exemption only applies to situations in which the conversion “does not affect a generator's demands on the Transmission

³⁰ Order No. 2006 at P 559 (emphasis added).

³¹ *Id.*

³² This situation is actually applicable to CalWind insofar as CalWind's most recent power purchase agreement with SCE was for 19.95 MW of capacity (see CalWind at 7), although the total capability of the plant reflected in the ISO's interconnection planning studies is 21.795 MW. Based on this, and consistent with the Commission's statement in paragraph 559 of Order No. 2006, the ISO has indicated to CalWind and SCE that it would be appropriate to reflect 21.795 MW in CalWind's LGIA, even though it was selling less than this full output to SCE.

System.”³³ In the case of a unit that is seeking a substantial increase in capacity above its existing and historic total capability, such as CalWind, there is no way of knowing whether its demands on the transmission system would change without first performing a study. Therefore, Order No. 2006 cannot be read as supporting CalWind’s argument.³⁴

In addition, section 25 is in full accordance Order 2006.³⁵ If a generator demonstrates that its total capability and electrical characteristics are “substantially unchanged” compared to its configuration prior to conversion³⁶ it will necessarily show that it will not increase the demands of the facility on the transmission system and, therefore, does not need to be studied through the generator interconnection process. But if the customer fails to make the required demonstration, *i.e.*, it cannot show that the total generating capability and electrical characteristics will be substantially unchanged, then the contract conversion might affect the facility’s demands on the transmission system and the customer is required to file an interconnection request pursuant to tariff

³³ Order No. 2006 at P 559.

³⁴ Even if CalWind’s interpretation of Order No. 2006 were correct, it would have no bearing on CalWind’s LGIA because Order No. 2006 involved the Commission’s *pro forma* interconnection procedures and agreement for *small generators*, which the Commission defines as generators with a total net capacity of 20 MW or less. Under this definition, CalWind is a “large generator” and therefore subject to Order No. 2003.

³⁵ Likewise, none of the tariffs of the other Independent System Operators and Regional Transmission Organizations include a provision that excuses an interconnection customer from submitting an interconnection request in the circumstances proposed by CalWind. All of those entities maintain interconnection procedures that the Commission has accepted as just and reasonable.

³⁶ To make the required demonstration, the interconnection customer submits an affidavit and supporting information as needed. The ISO or the applicable Participating TO has the right to verify whether or not the total capability or electrical characteristics have changed or will change. ISO tariff section 25.1.2.

section 25 so that the ISO and Participating TO can study whether additional network upgrades are necessary to accommodate changes to the facility.

3. CalWind Fails to Demonstrate that Section 25 Would Result in Unreasonable Outcomes.

CalWind argues that the ISO's implementation of tariff sections 25.1 and 25.1.2 would lead to absurd results by limiting a QF's contract conversion rights to its net generating capability at the time of conversion, even if the net generating capacity is reduced due to last-minute changes (*e.g.*, a *force majeure* event) or through equipment degradation. These examples are unconvincing for two reasons. First, the ISO tariff, in accordance with Order Nos. 2003 and 2006, requires an interconnection study only if there is "substantial" change in total capability or electrical characteristics. Thus, minor changes in output are already accounted for in the explicit language of section 25, and would not serve to disqualify a QF from utilizing the conversion exemption. Nor would temporary outages do so. Second, because a resource can reliably operate at any level below its historic maximum capability, the ISO requires the resource to be studied only if its maximum capability has increased or may increase above this amount, or there are or will be other electrical changes that require a study. Consistent with Order Nos. 2003 and 2006, it is the increase or potential increase in the demands on the transmission system that triggers the need to be studied.

CalWind also argues that the ISO's implementation of tariff sections 25.1 and 25.1.2 is inconsistent with tariff section 25.3, which requires the ISO and Participating TOs to take existing "encumbrances" into account.³⁷ It appears that

³⁷ CalWind at 20.

CalWind is erroneously claiming that its 15.5 MW of undeveloped capacity is an “encumbrance” within the meaning of section 25.3. Encumbrances are defined in the ISO tariff as legal restrictions on participating TO that affect the operation of transmission lines and associated facilities that the ISO must take account of in operating those transmission lines and associated facilities.³⁸ The issue presented in CalWind’s complaint involves generator interconnection service, not transmission service, and therefore CalWind’s interconnection agreement with SCE would not be considered an encumbrance.³⁹ Also, the ISO’s obligation with respect to legally binding encumbrances is limited to those obligations reported to the ISO by a transmission owner.⁴⁰ SCE has never identified its interconnection agreement with CalWind as an “encumbrance.”⁴¹ Thus, even if CalWind’s purported right to an additional 15.5 MW could theoretically constitute an encumbrance, which it cannot, the ISO has no obligation to protect it because it was never reported to the ISO.

B. CalWind’s Proposed Tariff Change Would Adversely Impact the ISO’s Interconnection Process.

³⁸ ISO tariff appendix A, definition of “Encumbrance.”

³⁹ Further, since CalWind’s interconnection agreement with SCE has expired, there is no longer an “existing” state-jurisdictional interconnection contract to apply once the CalWind QF begins making wholesale sales, and therefore, no existing obligation that could constitute an encumbrance.

⁴⁰ See Amended and Restated Transmission Control Agreement among the California Independent System Operator and Transmission Owners (January 3, 2013) at Sections 4.1.5, 6.4, available at <http://www.caiso.com/Documents/TransmissionControlAgreement.pdf>

⁴¹ See Transmission Control Agreement, Appendix B available at <http://www.caiso.com/Documents/TransmissionControlAgreementAppendices.pdf>

Based on information provided by SCE, the ISO has consistently modeled CalWind in its interconnection studies at the level of its actual, physical net-to-grid capacity of 21.795 MW.⁴² Because this is the assumption that has informed all previous and current ISO interconnection studies, and the results thereof, the ISO and SCE would need to study any substantial change to the output of CalWind, as well as any other QF that claims a right to add capacity based on a previous non-ISO interconnection agreement.

CalWind contends that SCE had already planned for the impact of a 37.5 MW plant when it performed its original interconnection studies.⁴³ Even if this were true, nearly thirty years have passed since that study was performed, during which time the capability of CalWind's facility has never exceeded 21.795 MW. Meanwhile, the topography of the transmission grid has changed and additional generators have been developed in the area where the CalWind facility is located. CalWind's proposed rule would have the ISO and SCE simply assume that the system can support a 37.5 MW generating facility – representing a greater than 60 percent increase in capacity – at the same location, despite the fact that the additional 15.5 MW has never been built, and the generating facility has never been modeled, as a 37.5 MW plant.

If the ISO was required to offer conversion QFs interconnection agreements based not on their actual capacity, but on their purported contractual rights in excess of their actual capacity, the ISO would need to fundamentally change the operation of its interconnection process by either modifying its base

⁴² See LeVine Declaration at P 7.

⁴³ CalWind at 6-7.

cases going forward or attempting to account for additional capacity when such a QF requests contract conversion. Either solution would be problematic.

In the first instance, the ISO would first have to find some mechanism to identify all contracts that might potentially provide a QF with interconnection service greater than the capacity the QF actually constructed, none of which involve the ISO as a party and presumably could date back as far as when the Commission first adopted its QF regulations in the 1970s.⁴⁴ Even if the ISO could identify all these contracts, modifying its base cases to reflect undeveloped capacity would mean planning for capacity that may never materialize. This would result in the ISO and its participating TOs identifying and building upgrades in excess of what is necessary to accommodate existing capacity and capacity associated with projects in development as reflected in discrete interconnection requests. The costs of these un-utilized or under-utilized transmission upgrades would be borne in the first instance by generators in the interconnection queue, increasing their upfront funding costs, and then ultimately by transmission ratepayers, or, potentially, the participating TOs, if they could not justify these costs as prudent.

Alternatively, waiting for QFs in this situation to request interconnection service before accounting for their impact would inject substantial uncertainty into the interconnection process, to the detriment of other generators. Existing interconnection customers would face the potential of having their queue position effectively displaced whenever a QF in CalWind's situation decided it wished to

⁴⁴ Also, as with CalWind, there would likely be disputes between the Participating TO and the QF as to the level of interconnection service to which the QF was entitled under these contracts, which would have to be resolved before an ISO LGIA could be executed.

develop the additional capacity reflected in its expired state-jurisdictional interconnection agreement. Consistent with good utility practice, the ISO would still need to conduct a study to determine whether adding substantial capacity to the existing QF would require upgrades in addition to those already in-service or planned in connection with projects in the existing queue. If additional upgrades were required, then the costs of those upgrades would need to be allocated to some other entities – either other interconnection customers in the queue or the applicable Participating TOs.

The absurd outcomes associated with CalWind's proposed rule suggest that CalWind's dispute is not really with the ISO tariff, but rather, its state-jurisdictional interconnection agreement with SCE. Even if CalWind were able to establish that SCE should have preserved for it interconnection service based on a three-decade-old agreement for an output level substantially greater than its actual, physical capability, there is no basis for modifying the ISO tariff. To the extent that CalWind can establish that it is entitled to relief because its bilateral contracts with SCE allowed the prior owner of the Pajuela facility to install 37.5 MW of capability when those contracts were executed, such relief would be under the terms of those contracts. The ISO was never a party to those contracts. The Commission should reject CalWind's complaint as an inappropriate attempt to use the ISO tariff as a backdoor means of enforcing what CalWind believes are its rights under agreements that pre-date the ISO's existence.

C. CalWind’s Proposed Rule is Inconsistent with Commission Policy Regarding the Nature of Interconnection Service and Capacity Reservations.

The purpose of interconnection service is to provide a generator with a safe and reliable connection to the transmission system.⁴⁵ As the Commission has emphasized, however, interconnection service does not provide a right to transmission delivery service.⁴⁶ Thus, interconnection service does not represent an ongoing reservation of discrete system capacity.⁴⁷

CalWind’s argument that a generator has the right to reserve, in perpetuity, a level of access to the transmission grid greater than its physical capacity, would turn this construct on its head.⁴⁸ Such an outcome would be directly at odds with the Commission’s repeated findings that unfettered reservations of transmission capacity are not permitted. The Commission articulated this principle clearly in *Aero Energy*, in which the Commission refused to allow a transmission provider to maintain the exclusive rights to utilize its transmission line.⁴⁹ Likewise, in *Milford* and *Alta Wind*, the Commission rejected

⁴⁵ See Order No. 2003 at 767.

⁴⁶ Order No. 2003 at PP 23, 767; Arizona Public Service Co., 94 FERC ¶ 61,027 at 61,076, order on reh'g, 94 FERC ¶ 61,267 (2001).

⁴⁷ Even with respect to existing transmission rights, the ISO maintains such rights through congestion revenue rights rather than discrete reservations of transmission capacity, and utilizes congestion management to relieve transmission line overloads.

⁴⁸ CalWind’s factual situation presents a perfect illustration of the absurdity of its position. Under CalWind’s rule SCE, and subsequently the ISO, would have been required to maintain an additional 15.5 MW of available but unused grid access for nearly 30 years, without any indication of when CalWind might choose to utilize that capacity.

⁴⁹ *Aero Energy LLC*, 116 FERC ¶ 61,149, at P 21 (2006) (“*Aero Energy*”) (“Having built the Sagebrush Line, Sagebrush now wants to bank unused transmission capacity until it, and no one else, wants to use it. . . . [T]he Sagebrush Partners may not reserve all of the Sagebrush Line’s transmission capacity to themselves, whether they use that capacity or not.”).

unlimited reservations of capacity. The Commission explained that it would permit an owner of interconnection facilities to have priority rights to capacity on those facilities at the time of a third-party request for service *only if* the owner has specific, pre-existing generator expansion plans with milestones for construction of generation facilities that will use the interconnection facilities and can demonstrate that it has made material progress toward meeting those milestones.⁵⁰ CalWind fails to address this substantial body of Commission precedent. Yet, CalWind's proposed rule would lead to the same outcome as it would provide CalWind and other similarly situated generators with a similar priority, regardless of whether and when they constructed the capacity stated in their original interconnection agreements.⁵¹ As the Commission precedent demonstrates, CalWind's proposed relief should be rejected.

III. SERVICE AND COMMUNICATIONS

All service of pleadings and documents and all communications regarding this proceeding should be addressed to the following:

⁵⁰ *Milford Wind Corridor, LLC*, 129 FERC ¶ 61,149, at PP 22, 24 (2009) ("*Milford*"); *Alta Wind I, et al.*, 134 FERC ¶ 61,109, at PP 16-17 (2011) ("*Alta Wind*").

⁵¹ Allowing perpetual reservations of transmission access as proposed by CalWind could also adversely incentivize generators to request and enter into interconnection agreements for projects larger than they intended to build, in order to "stake out" any excess capacity available on the transmission system.

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IV. CONCLUSION

For the foregoing reasons, the Commission should dismiss the complaint submitted by CalWind in this proceeding.

Respectfully submitted,

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/s/ Sidney M. Davies
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Attorneys for the California Independent System Operator Corporation

Dated: October 31, 2013

Exhibit A

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

CalWind Resources, Inc.)	
)	
v.)	Docket No. EL14-4-000
)	
California Independent System)	
Operator Corporation)	

**DECLARATION OF DEBORAH A. LEVINE ON BEHALF OF THE
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION**

I, Deborah A. Le Vine, hereby declare as follows:

1. I am employed as the Director of Infrastructure Contracts & Management at the California Independent System Operator Corporation (“ISO”). My business address is 250 Outcropping Way, Folsom, CA 95630. I have been employed by the ISO since January 1998.
2. The ISO created the position of Director of Infrastructure Contracts & Management in 2012 in order to manage the ISO’s generation interconnection queue and generation interconnection agreement (“GIA”) portfolio, and other regulatory contracts required by the ISO tariff. My responsibilities include proactively monitoring that the parties to interconnection agreements are meeting the terms and conditions thereof, managing the over 260 projects currently in the ISO’s interconnection queue, aligning internal ISO processes consistent with queue management efforts, and resolving interconnection customer issues. In addition, I am responsible for all regulatory contracts negotiated and executed between the ISO and market participants, including but not limited to, QF conversions,

Participating Generator Agreements, Meter Service Agreements, and Adjacent Balancing Authority Operating Agreements,.

3. Prior to assuming this position, I was the Director of System Operations, in which I oversaw day-to-day grid and market operations. In this capacity, I also monitored compliance with North American Electric Reliability Corporation and the Western Electricity Coordinating Council standards and the market operations provisions of the ISO tariff. I have also held Director positions at the ISO in Contracts & Compliance, during which time the ISO developed and negotiated its initial pro forma interconnection agreements, Contracts & Special Projects, Market Services, and Project Management for the Market Redesign and Technology Update.
4. I earned a Bachelor of Science degree in Electrical Engineering from San Diego State University in San Diego, California in May 1981. In May 1987, I received a Master in Business Administration from Pepperdine University in Malibu, California. In December 2002, I completed an Executive Program from the John F. Kennedy School of Government, Harvard University in Cambridge, Massachusetts. In August 2007, I completed an Advanced Masters Certificate program in Project Management from Villanova University in Villanova, Pennsylvania. Additionally, I am a registered Professional Electrical Engineer in the State of California.
5. My declaration will address two subjects relevant to the complaint filed by CalWind Resources Inc. ("Calwind") in this docket on October 11, 2013. First, I will briefly describe the current interconnection configuration and modeling assumptions for the Pajuella Peak Wind Park ("Pajuella Peak facility") owned by CalWind. Second, I will describe how the interconnection configuration for the Pajuella Peak facility

will change as a result of the ISO relinquishing operational control of the transmission facilities currently being constructed by Southern California Edison Company (“SCE”) in the East Kern Wind Resource Area (“EKWRA”).

6. The Pajuela Peak facility is currently interconnected to the Cal Cement-Monolith transmission line, which is part of the Antelope/Bailey 66 kV system of network transmission facilities owned by SCE. The Antelope/Bailey 66 kV system is currently under ISO operational control.
7. Based on information provided by SCE at the time the ISO commenced operations, the ISO’s base case used for interconnection study purposes has always reflected the capacity of the Pajuela Peak facility as 21.795 MW. In accordance with the base case, the ISO has consistently modeled the Pajuela Peak facility in its interconnection studies at the facility’s 21.795 MW capacity. In addition, Schedule 1 of the Net Scheduled Participating Generator Agreement that CalWind executed for the Pajuela Peak facility on April 3, 2013 states that the designed gross (nameplate) capacity MW of the facility is 20.0 MW. A copy of this agreement is attached as Exhibit B to the ISO’s answer to CalWind’s complaint.
8. In 2010, the ISO Governing Board approved the EKWRA project in order to address reliability issues on SCE’s Antelope/Bailey 66 kV system. The scope of the EKWRA project includes construction of a 66 kV bus and two 220/66 kV transformer banks at SCE’s Windhub substation, line rearrangement work, and separation of lines and facilities through new switching and breaker schemes.
9. Upon completion of the reconfiguration work, most of the existing Antelope/Bailey 66kV system will operate as a radial distribution system, including the transmission

line to which the Pajuella Peak facility is interconnected, at which point the ISO plans to relinquish operational control of these facilities.¹

10. It is anticipated that the reconfiguration work under the EKWRA project will be completed on December 15, 2013. Although additional work under the EKWRA project will be performed through June 30, 2014, that work will have no impact on the reclassification of the portion of the system to which Pajuella Peak is interconnected as a radial distribution system as of the reconfiguration date.
11. Therefore, as of the reconfiguration date, which the ISO expects to occur on December 15, 2013, the Pajuella Peak facility will be interconnected to a radial distribution system, not a network system as is currently the case. As a result, the ISO expects that that radial distribution system will be under SCE, not ISO, operational control, and any interconnection service for the Pajuella Peak facility will be provided solely by SCE under its tariff.

¹ A more detailed description of the EKWRA project, including a list of facilities that will become distribution facilities, is available on the ISO's website at http://www.caiso.com/Documents/EastKernWindResourceAreaFacilities-Removed-ISO_OperationalControl.pdf

I declare, under penalty of perjury, that the foregoing statements are true and correct.

Executed this 31st day of October, 2013, in Folsom, California.

A handwritten signature in blue ink, reading "Deborah A. Le Vine". The signature is written in a cursive style with a large initial "D".

Deborah A. Le Vine

Exhibit B

**CALIFORNIA INDEPENDENT SYSTEM
OPERATOR CORPORATION**

AND

CALWIND RESOURCES, INCORPORATED

**NET SCHEDULED PARTICIPATING
GENERATOR AGREEMENT**

**NET SCHEDULED PARTICIPATING GENERATOR AGREEMENT
(NS PGA)**

THIS AGREEMENT is dated this 3 day of APRIL, 2013 and is entered into, by and between:

(1) **CalWind Resources, Incorporated**, having its principal place of business located at **2659 Townsgate Road, Suite 122, Westlake Village, California 91361** (the "Participating Generator");

and

(2) **California Independent System Operator Corporation**, a California nonprofit public benefit corporation having a principal executive office located at such place in the State of California as the CAISO Governing Board may from time to time designate, currently 250 Outcropping Way, Folsom, California 95630 (the "CAISO").

The Participating Generator and the CAISO are hereinafter referred to as the "Parties".

Whereas:

- A. The CAISO Tariff provides that the CAISO shall not accept Bids for Energy or Ancillary Services generated by any Generating Unit interconnected to the CAISO Controlled Grid, or to the Distribution System of a Participating TO or of a UDC or MSS Operator otherwise than through a Scheduling Coordinator.
- B. The CAISO Tariff further provides that the CAISO shall not be obliged to accept Bids relating to Generation from any Generating Unit interconnected to the CAISO Controlled Grid unless the relevant Generator undertakes in writing to the CAISO to comply with all applicable provisions of the CAISO Tariff.
- C. The Participating Generator wishes to be able to submit Bids, from a Net Scheduled Generating Unit to the CAISO through a Scheduling Coordinator and, therefore, wishes to undertake to the CAISO that it will comply with the applicable provisions of the CAISO Tariff, except as otherwise specified in this Agreement.

- D. It is the intent of the Parties that this Agreement will harmonize the special operational characteristics of the Participating Generator's Net Scheduled Generating Unit with the CAISO's grid operation function. Nothing in this Agreement is intended to limit or restrict the rights of the Participating Generator under Section 4.6.3.2 of the CAISO Tariff.
- E. The Parties are entering into this Agreement in order to establish the terms and conditions on which the CAISO and the Participating Generator will discharge their respective duties and responsibilities under the CAISO Tariff.

NOW THEREFORE, in consideration of the mutual covenants set forth herein, **THE PARTIES AGREE** as follows:

ARTICLE I

DEFINITIONS AND INTERPRETATION

- 1.1 Master Definitions Supplement.** Unless defined in this Agreement, all capitalized terms and expressions used in this Agreement shall have the same meaning as those contained in the Master Definitions Supplement to the CAISO Tariff.
- 1.2 Rules of Interpretation.** The following rules of interpretation and conventions shall apply to this Agreement:
- (a) if there is any inconsistency between this Agreement and the CAISO Tariff, the CAISO Tariff will prevail to the extent of the inconsistency, except as expressly provided otherwise in this Agreement;
 - (b) the singular shall include the plural and vice versa;
 - (c) the masculine shall include the feminine and neutral and vice versa;
 - (d) "includes" or "including" shall mean "including without limitation";
 - (e) references to a Section, Article or Schedule shall mean a Section, Article or a Schedule of this Agreement, as the case may be, unless the context otherwise requires;
 - (f) a reference to a given agreement or instrument shall be a reference to that agreement or instrument as modified, amended, supplemented or restated through the date as of which such reference is made;

- (g) unless the context otherwise requires, references to any law shall be deemed references to such law as it may be amended, replaced or restated from time to time;
- (h) unless the context otherwise requires, any reference to a “person” includes any individual, partnership, firm, company, corporation, joint venture, trust, association, organization or other entity, in each case whether or not having separate legal personality;
- (i) unless the context otherwise requires, any reference to a Party includes a reference to its permitted successors and assigns;
- (j) any reference to a day, week, month or year is to a calendar day, week, month or year; and
- (k) the captions and headings in this Agreement are inserted solely to facilitate reference and shall have no bearing upon the interpretation of any of the terms and conditions of this Agreement.

ARTICLE II

ACKNOWLEDGEMENTS OF PARTICIPATING GENERATOR AND CAISO

- 2.1 CAISO Responsibility.** The Parties acknowledge that the CAISO is responsible for the efficient use and reliable operation of the CAISO Controlled Grid consistent with achievement of planning and Operating Reserve criteria no less stringent than those established by the Western Electricity Coordinating Council and the North American Electric Reliability Corporation and further acknowledges that the CAISO may not be able to satisfy fully these responsibilities if the Participating Generator fails to fully comply with all of its obligations under this Agreement.
- 2.2 Scope of Application to Parties.** The Participating Generator and CAISO acknowledge that all Qualifying Facility Generators (except those specified in Section 2.2.1 of this Agreement) and CHP Resources wishing to submit Bids to the CAISO through a Scheduling Coordinator shall first execute this Agreement or the standard Participating Generator Agreement applicable to any Generator. The Parties acknowledge that execution of this Agreement by the Participating Generator satisfies the requirement set forth in Section 4.6 of the CAISO Tariff.
- 2.2.1 Exemption for Certain Generators.** A Generator with an Existing QF Contract with a UDC is not required to sign a Net Scheduled Participating Generator Agreement if: (a) the Generator sells all of its Energy (excluding any Energy consumed by auxiliary Load equipment electrically connected

to the QF at the same point) and Ancillary Services to the UDC; (b) the Generator sells any Energy through "over the fence" arrangements as authorized under Section 218(b) of the California Public Utilities Code; or (c) the Generator employs landfill gas technology for the generation of electricity as authorized under 218(c) of the California Public Utilities Code.

ARTICLE III

TERM AND TERMINATION

3.1 Effective Date. This Agreement shall remain in full force and effect until terminated pursuant to Section 3.2 of this Agreement and shall be effective as of the later of: (1) the date the Agreement is executed by the Parties; or (2) where the Participating Generator is a party to an existing Participating Generator Agreement, the date upon which termination of the existing Participating Generator Agreement is accepted for filing and made effective by FERC, if such FERC filing is required; or (3) where the Participating Generator is a party to an existing Participating Generator Agreement and this Agreement is required to be filed with FERC for acceptance, the later of the date upon which termination of the existing Participating Generator Agreement is accepted for filing and made effective by FERC, or the date this Agreement is accepted for filing and made effective by FERC.

3.2 Termination

3.2.1 Termination by CAISO. Subject to Section 5.2, the CAISO may terminate this Agreement by giving written notice of termination in the event that the Participating Generator commits any material default under this Agreement and/or the CAISO Tariff which, if capable of being remedied, is not remedied within thirty (30) days after the CAISO has given, to the Participating Generator, written notice of the default, unless excused by reason of Uncontrollable Forces in accordance with Article X of this Agreement. With respect to any notice of termination given pursuant to this Section, the CAISO must file a timely notice of termination with FERC, if this Agreement was filed with FERC, or must otherwise comply with the requirements of FERC Order No. 2001 and related FERC orders. The filing of the notice of termination by the CAISO with FERC will be considered timely if: (1) the filing of the notice of termination is made after the preconditions for termination have been met, and the CAISO files the notice of termination within sixty (60) days after issuance of the notice of default; or (2) the CAISO files the notice of termination in accordance with the requirements of FERC Order No. 2001. This Agreement shall terminate upon acceptance by FERC of such a notice of termination, if

filed with FERC, or thirty (30) days after the date of the CAISO's notice of default, if terminated in accordance with the requirements of FERC Order No. 2001 and related FERC orders.

3.2.2 Termination by Participating Generator. In the event that the Participating Generator no longer wishes to submit Bids and transmit Energy or provide Ancillary Services through a Scheduling Coordinator over the CAISO Controlled Grid, it may terminate this Agreement, on giving the CAISO not less than ninety (90) days written notice, provided, however, that in accordance with Section 4.1.3, the Participating Generator may modify Schedule 1 to eliminate generating resources which it no longer owns or no longer has contractual entitlement to and such modification shall be effective upon receipt by the CAISO. With respect to any notice of termination given pursuant to this Section, the CAISO must file a timely notice of termination with FERC, if this Agreement has been filed with FERC, or must otherwise comply with the requirements of FERC Order No. 2001 and related FERC orders. The filing of the notice of termination by the CAISO with FERC will be considered timely if: (1) the request to file a notice of termination is made after the preconditions for termination have been met, and the CAISO files the notice of termination within thirty (30) days of receipt of such request; or (2) the CAISO files the notice of termination in accordance with the requirements of FERC Order No. 2001. This Agreement shall terminate upon acceptance by FERC of such a notice of termination, if such notice is required to be filed with FERC, or upon ninety (90) days after the CAISO's receipt of the Participating Generator's notice of termination, if terminated in accordance with the requirements of FERC Order No. 2001 and related FERC orders.

ARTICLE IV

GENERAL TERMS AND CONDITIONS

4.1 Net Scheduled Generating Units

4.1.1 Identification of Net Scheduled Net Scheduled Generating Unit. The Participating Generator has identified the Net Scheduled Generating Unit that it owns, operates or has a contractual entitlement to, in Schedule 1, as required by Section 4.6.4 of the CAISO Tariff.

4.1.2 Technical Characteristics. The Participating Generator shall provide to the CAISO the required information regarding operating contacts, rated capacity, and operating characteristics of the Net Scheduled Generating Unit. Pursuant to Sections 8.9 and 8.10 of the CAISO Tariff, and the Existing QF Contract or Amended QF Contract, if any, associated with that

Net Scheduled Generating Unit, the CAISO may verify, inspect and test the capacity and operating characteristics of the Net Scheduled Generating Unit. The performance of such inspection or test shall be conducted at a time mutually agreed upon by the Parties, which agreement shall not unreasonably be withheld.

4.1.3 Notification of Changes. Sixty (60) days prior to changing any technical information in Schedule 1, the Participating Generator shall notify the CAISO of the proposed changes. Pursuant to Sections 8.9 and 8.10 of the CAISO Tariff, the CAISO may verify, inspect and test the capacity and operating characteristics; provided that the performance of such inspection or test is conducted at a time mutually agreed upon by the Parties, which agreement shall not unreasonably be withheld. The CAISO shall post on the CAISO Website a schedule showing, for at least one year in advance: (i) the proposed dates on which the CAISO's Master File will be updated, which dates shall occur at least every three months; (ii) the dates on which the information contained in the revised Master File will become effective; and (iii) the deadlines by which changed technical information must be submitted to the CAISO in order to be tested and included in the next scheduled update of the CAISO's Master File. Unless the Participating Generator fails to test at the values in the proposed change(s), the change will become effective upon the effective date for the next scheduled update of the Master File, provided the Participating Generator submits the changed information by the applicable deadline. Subject to such notification this Agreement shall not apply to any Net Scheduled Generating Unit identified in Schedule 1 which the Participating Generator no longer owns nor has contractual entitlement.

4.2 Agreement Subject to CAISO Tariff. The Parties will comply with all applicable provisions of the CAISO Tariff except as expressly provided in Sections 4.2.1 through 4.2.5 of this Agreement.

4.2.1 Net Generation Metering. Notwithstanding Section 10.1.3 of the CAISO Tariff, the Participating Generator may net the value for the Generation produced by each Net Scheduled Generating Unit listed in Schedule 1 and the value for the Demand of the Self-provided Load that is (i) served by the Net Scheduled Generating Unit and (ii) electrically located on the same side of the Point of Demarcation.

4.2.2 Meter and Telemetry Location. The Participating Generator may satisfy the provisions of the CAISO Tariff for the installation of meters and telemetry by installing at the Point of Demarcation meters and telemetry for the purpose of recording the net impact of the Net Scheduled Generating Unit upon the CAISO Controlled Grid; provided that the installed meters and telemetry satisfy the technical functional and

performance requirements for meters and telemetry set forth in the CAISO Tariff.

4.2.3 Scheduling, Billing and Settlement. For scheduling, billing, and settlement purposes regarding Net Scheduled Generating Unit Self-provided Load, measurements shall be made at the Point of Demarcation.

4.2.4 Operating Limitations. Net Scheduled Generating Unit operating limitations shall be set forth in Schedule 1 of this Agreement, the resource data template used for transmittal of Participating Generator technical data to the CAISO pursuant to the CAISO Tariff, or as otherwise mutually agreed to by the Parties.

4.2.5 Limitations on CAISO Operating Orders. The CAISO will not knowingly issue an operating order that: (1) requires the Participating Generator to reduce its Generation below the delineated minimum operating limit, other than in a System Emergency; (2) conflicts with operating instructions provided by the Participating Generator; or (3) results in damage to the Participating Generator's equipment, provided that any such equipment limitation has been provided to the CAISO and incorporated in the Participating Generator's operating instructions to the CAISO. If the Participating Generator: (1) receives a Schedule which requires operation below the minimum operating limit, and (2) deviates from that Schedule to continue to operate at the minimum operating limit, it will not be subject to any penalties or sanctions as a result of operating at the minimum operating limit. The Participating Generator's consequences for deviating from Schedules in Real-Time will be governed by the CAISO Tariff.

4.3 Obligations Relating to Ancillary Services

4.3.1 Submission of Bids. When the Scheduling Coordinator on behalf of the Participating Generator submits a Bid for Ancillary Services, the Participating Generator will, by the operation of this Section 4.3.1, warrant to the CAISO that it has the capability to provide that service in accordance with the CAISO Tariff and that it will comply with CAISO Dispatch Instructions for the provision of the service in accordance with the CAISO Tariff.

4.3.2 Certification. The Participating Generator shall not use a Scheduling Coordinator to submit a Bid for the provision of an Ancillary Service or submit a Submission to Self-Provide an Ancillary Service unless the Scheduling Coordinator serving that Participating Generator is in possession of a current certificate pursuant to Sections 8.3.4 and 8.4 of the CAISO Tariff.

4.4 Obligations relating to Major Incidents

4.4.1 Major Incident Reports. The Participating Generator shall promptly provide such information as the CAISO may reasonably request in relation to major incidents, in accordance with Section 4.6.7.3 of the CAISO Tariff.

4.5 Dispatch and Curtailment. The CAISO shall only dispatch or curtail a Net Scheduled Generating Unit of the Participating Generator: (a) to the extent the Participating Generator bids Energy or Ancillary Services from the Net Scheduled Generating Unit into the CAISO's markets or the Energy is otherwise available to the CAISO under Section 40 or 43 of the CAISO Tariff; or (b) if the CAISO must dispatch or curtail the Net Scheduled Generating Unit in order to respond to an existing or imminent System Emergency or condition that would compromise CAISO Balancing Authority Area integrity or reliability as provided in Sections 7 and 7.6.1 of the CAISO Tariff.

4.6 Information to Be Provided by Participating Generator. The Participating Generator shall provide to the CAISO (a) a copy of any existing power purchase agreement, if any, with a UDC or MSS for the Net Scheduled Generating Unit listed in Schedule 1, and (b) a copy or a summary of the primary terms of any agreement for standby service with a UDC or MSS Operator, a statement that the Net Scheduled Generating Unit is taking standby service pursuant to UDC tariff, or a statement that the Self-provided Load shall be curtailed concurrently with any Outage of the Generation serving that Self-provided Load in an amount sufficient to cover that Outage. The Participating Generator shall notify the CAISO promptly of any change in the status of any of the foregoing.

ARTICLE V

PENALTIES AND SANCTIONS

5.1 Penalties. If the Participating Generator fails to comply with any provisions of this Agreement, the CAISO shall be entitled to impose penalties and sanctions on the Participating Generator. No penalties or sanctions may be imposed under this Agreement unless a Schedule or CAISO Tariff provision providing for such penalties or sanctions has first been filed with and made effective by FERC. Nothing in the Agreement, with the exception of the provisions relating to the CAISO ADR Procedures, shall be construed as waiving the rights of the Participating Generator to oppose or protest any penalty proposed by the CAISO to the FERC or the specific imposition by the CAISO of any FERC-approved penalty on the Participating Generator.

- 5.2 Corrective Measures.** If the Participating Generator fails to meet or maintain the requirements set forth in this Agreement and/or in the CAISO Tariff as limited by the provisions of this Agreement, the CAISO shall be permitted to take any of the measures, contained or referenced in the CAISO Tariff, which the CAISO deems to be necessary to correct the situation.

ARTICLE VI

COSTS

- 6.1 Operating and Maintenance Costs.** The Participating Generator shall be responsible for all its costs incurred in connection with operating and maintaining the Net Scheduled QF identified in Schedule 1 for the purpose of meeting its obligations under this Agreement.

ARTICLE VII

DISPUTE RESOLUTION

- 7.1 Dispute Resolution.** The Parties shall make reasonable efforts to settle all disputes arising out of or in connection with this Agreement. In the event any dispute is not settled, the Parties shall adhere to the CAISO ADR Procedures set forth in Section 13 of the CAISO Tariff, which is incorporated by reference, except that any reference in Section 13 of the CAISO Tariff to Market Participants shall be read as a reference to the Participating Generator and references to the CAISO Tariff shall be read as references to this Agreement.

ARTICLE VIII

REPRESENTATIONS AND WARRANTIES

- 8.1 Representation and Warranties.** Each Party represents and warrants that the execution, delivery and performance of this Agreement by it has been duly authorized by all necessary corporate and/or governmental actions, to the extent authorized by law.
- 8.2 Necessary Approvals.** The Participating Generator represents that all necessary leases, approvals, permits, licenses, easements, rights of way or access to install, own and/or operate its Net Scheduled QF have been or will be obtained by the Participating Generator prior to the effective date of this Agreement.

- 8.3 Specific Warranty.** The Participating Generator represents and warrants that: (1) the Net Scheduled Generating Unit listed in Schedule 1 is (a) a Qualifying Facility or is operated as an integral part of a Qualifying Facility, or (b) is a CHP Resource, and (2) (a) the Self-provided Load of the Participating Generator that is served by the Net Scheduling QF either has, and continues to have through the term of this Agreement, standby service from a UDC or MSS Operator under terms approved by the Local Regulatory Authority or the Federal Energy Regulatory Commission, as applicable, or (b) the Self-provided Load shall be curtailed concurrently with any Outage of the Generation serving that Self-provided Load in an amount sufficient to cover that Outage.

ARTICLE IX

LIABILITY

- 9.1 Liability.** The provisions of Section 14 of the CAISO Tariff will apply to liability arising under this Agreement, except that all references in Section 14 of the CAISO Tariff to Market Participants shall be read as references to the Participating Generator and references to the CAISO Tariff shall be read as references to this Agreement.

ARTICLE X

UNCONTROLLABLE FORCES

- 10.1 Uncontrollable Forces Tariff Provisions.** Section 14.1 of the CAISO Tariff shall be incorporated by reference into this Agreement except that all references in Section 14.1 of the CAISO Tariff to Market Participants shall be read as a reference to the Participating Generator and references to the CAISO Tariff shall be read as references to this Agreement.

ARTICLE XI

MISCELLANEOUS

- 11.1 Assignments.** Either Party may assign or transfer any or all of its rights and/or obligations under this Agreement with the other Party's prior written consent in accordance with Section 22.2 of the CAISO Tariff. Such consent shall not be unreasonably withheld. Any such transfer or assignment shall be conditioned upon the successor in interest accepting the rights and/or obligations under this Agreement as if said successor in interest was an original Party to this Agreement.

- 11.2 Notices.** Any notice, demand or request which may be given to or made upon either Party regarding this Agreement shall be made in accordance with Section 22.4 of the CAISO Tariff, provided that all references in Section 22.4 of the CAISO Tariff to Market Participants shall be read as a reference to the Participating Generator and references to the CAISO Tariff shall be read as references to this Agreement, and unless otherwise stated or agreed shall be made to the representative of the other Party indicated in Schedule 3. A Party must update the information in Schedule 3 of this Agreement as information changes. Such changes shall not constitute an amendment to this Agreement.
- 11.3 Waivers.** Any waiver at any time by either Party of its rights with respect to any default under this Agreement, or with respect to any other matter arising in connection with this Agreement, shall not constitute or be deemed a waiver with respect to any subsequent default or other matter arising in connection with this Agreement. Any delay, short of the statutory period of limitations, in asserting or enforcing any right under this Agreement shall not constitute or be deemed a waiver of such right.
- 11.4 Governing Law and Forum.** This Agreement shall be deemed to be a contract made under, and for all purposes shall be governed by and construed in accordance with, the laws of the State of California, except its conflict of law provisions. The Parties irrevocably consent that any legal action or proceeding arising under or relating to this Agreement to which the CAISO ADR Procedures do not apply, shall be brought in any of the following forums, as appropriate: any court of the State of California, any federal court of the United States of America located in the State of California, or, where subject to its jurisdiction, before the Federal Energy Regulatory Commission.
- 11.5 Consistency with Federal Laws and Regulations.** This Agreement shall incorporate by reference Section 22.9 of the CAISO Tariff as if the references to the CAISO Tariff were referring to this Agreement.
- 11.6 Merger.** This Agreement constitutes the complete and final agreement of the Parties with respect to the subject matter hereof and supersedes all prior agreements, whether written or oral, with respect to such subject matter.
- 11.7 Severability.** If any term, covenant, or condition of this Agreement or the application or effect of any such term, covenant, or condition is held invalid as to any person, entity, or circumstance, or is determined to be unjust, unreasonable, unlawful, imprudent, or otherwise not in the public interest by any court or government agency of competent jurisdiction, then such term, covenant, or condition shall remain in force and effect to the

maximum extent permitted by law, and all other terms, covenants, and conditions of this Agreement and their application shall not be affected thereby, but shall remain in force and effect and the Parties shall be relieved of their obligations only to the extent necessary to eliminate such regulatory or other determination unless a court or governmental agency of competent jurisdiction holds that such provisions are not separable from all other provisions of this Agreement.

11.8 [NOT USED]


11.9 Amendments. This Agreement and the Schedules attached hereto may be amended from time to time by the mutual agreement of the Parties in writing. Amendments that require FERC approval shall not take effect until FERC has accepted such amendments for filing and made them effective. If the amendment does not require FERC approval, the amendment will be filed with FERC for information. Nothing contained herein shall be construed as affecting in any way the right of the CAISO to unilaterally make application to FERC for a change in the rates, terms and conditions of this Agreement under Section 205 of the FPA and pursuant to FERC's rules and regulations promulgated thereunder, and the Participating Generator shall have the right to make a unilateral filing with FERC to modify this Agreement pursuant to Section 206 or any other applicable provision of the FPA and FERC's rules and regulations thereunder; provided that each Party shall have the right to protest any such filing by the other Party and to participate fully in any proceeding before FERC in which such modifications may be considered. Nothing in this Agreement shall limit the rights of the Parties or of FERC under Sections 205 or 206 of the FPA and FERC's rules and regulations thereunder, except to the extent that the Parties otherwise mutually agree as provided herein.

11.10 Counterparts. This Agreement may be executed in one or more counterparts at different times, each of which shall be regarded as an original and all of which, taken together, shall constitute one and the same Agreement.

11.11 Rights Reserved. Execution of this Agreement does not deprive the Participating Generator of any unexpressed legal right, either under law or under an existing power purchase agreement.


IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed on behalf of each by and through their authorized representatives as of the date hereinabove written.

California Independent System Operator Corporation

By: 
Name: Eric J. Schmitt
Title: Vice President, Operations
Date: April 3, 2013



CalWind Resources, Incorporated

By: 
Name: S. Douglas Levitt
Title: President
Date: March 29, 2013

SCHEDULE 1

Section 1: Technical Characteristics of NS Participating Generator Units CalWind Resources, Incorporated

Name of Facility	Name of Generating Unit Owner	CAISO Resource ID	Type of Unit	Primary Fuel Type	Designed Gross Capacity (Nameplate) (MW)	Limitations (Reference #)
Wind Resource I	CalWind Resources, Inc.	NZWIND 6 CALWIND	Wind Turbines	Wind	9.0	CalWind 1-6
Pajuela Peak - Wind Resource II	CalWind Resources, Inc.	ARBWD 6 OF	Wind Turbines	Wind	20.0	Pajuela Peak 1-8

1/ Current effective values for purposes of submitting Self-Schedules and Bids for Energy and/or Ancillary Services in the CAISO Markets may differ from those set forth in this Schedule 1, depending on the results of CAISO performance testing pursuant to Sections 8.9, 8.10 and Appendix K: Ancillary Services Requirements Protocol of the CAISO Tariff. This and other values are subject to certification by the CAISO in accordance with Section 4.3.2 of the NS Participating Generator Agreement. More detailed Generating Unit operating data must be provided at a time and in a format specified by the CAISO in response to CAISO requests pursuant to CAISO Tariff Sections 4.6.4, and 4.6.7.1 and 30.

SCHEDULE 1

Section 2: Limitations of NS Participating Generator Units CalWind Resources, Incorporated

Reference #	Description of Limitation
CalWind 1	Output fluctuates based on availability and velocity of wind resource.
CalWind 2	Facility, due to lack of SCADA, must maintain a minimum output of 1 MW to prevent damage to the facility's equipment.
CalWind 3	Facility has limited low voltage ride-through (LVRT) capability, limited to generator manufacturer's design.
CalWind 4	Facility has limited power factor control, limited to generator manufacturer's design.
CalWind 5	In an emergency situation facility requires a two (2) hour advanced notice to curtail output due to lack of remote control. Facility will manage all awarded bids outside of this emergency notice limitation.
CalWind 6	In an emergency situation facility requires a one (1) hour advanced notice to restart generation due to lack of remote control. Facility will manage all awarded bids outside of this emergency notice limitation.
Pajuela Peak 1	Output fluctuates based on availability and velocity of wind resource.
Pajuela Peak 2	Facility, due to lack of SCADA, must maintain a minimum output of 1 MW to prevent damage to the facility's equipment.
Pajuela Peak 3	Facility has limited low voltage ride-through (LVRT) capability, limited to generator manufacturer's design.
Pajuela Peak 4	Facility has limited power factor control, limited to generator manufacturer's design.
Pajuela Peak 5	In an emergency situation the facility requires a six (6) hour advanced notice to curtail more than 8.58MW of output due to lack of remote control. Facility will manage all awarded bids outside of this emergency notice limitation.
Pajuela Peak 6	In an emergency situation facility requires a three (3) hour advanced notice to restart more than 8.58MW of generation due to lack of remote control. Facility will manage all awarded bids outside of this emergency notice limitation.
Pajuela Peak 7	In an emergency situation the facility requires a one (1) hour advanced notice to curtail 8.58MWs or less of output. Facility will manage all awarded bids outside of this emergency notice limitation.
Pajuela Peak 8	In an emergency situation facility requires a one (1) hour advanced notice to restart 8.58MWs or less of generation. Facility will manage all awarded bids outside of this emergency notice limitation.

SCHEDULE 2

CAISO IMPOSED PENALTIES AND SANCTIONS

[Section 5.1]

TO BE INSERTED UPON FERC APPROVAL

SCHEDULE 3**NOTICES****(Section 11.2)****Participating Generator**

Name of Primary Representative: S. Douglas Levitt
Title: President
Company: CalWind Resources, Incorporated
Address: 2659 Townsgate Road, Ste. 122
City/State/Zip Code: Westlake Village, CA 91361
Email address: sdl@calwind.com
Phone: (805) 496-4347
Fax: (805) 496-1788

Name of Alternative Representative: Pete Levitt
Title: Vice President
Company: CalWind Resources, Incorporated
Address: 2659 Townsgate Road, Ste. 122
City/State/Zip Code: Westlake Village, CA 91361
Email address: pete@calwind.com
Phone: (805) 496-4347
Fax: (805) 496-1788

CAISO

Name of Primary Representative: Regulatory Contracts Group
Address: 250 Outcropping Way
City/State/Zip Code: Folsom, CA 95630
Email address: RegulatoryContracts@caiso.com
Phone: (916) 608-7027
Fax: (916) 608-7292

Name of Alternative Representative: Christopher J. Sibley
Title: Lead Contract Negotiator
Address: 250 Outcropping Way
City/State/Zip Code: Folsom, CA 95630
Email address: csibley@caiso.com
Phone: (916) 608-7030
Fax: (916) 608-7292

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon all of the parties listed on the official service list for the captioned proceeding, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated at Washington, D.C., this 31st day of October, 2013.

/s/ Michael Kunselman
Michael Kunselman