

# ALSTON & BIRD LLP

The Atlantic Building  
950 F Street, NW  
Washington, DC 20004

**REDACTED VERSION FOR PUBLIC RELEASE**

**PRIVILEGED INFORMATION CONTAINED IN SEPARATE VOLUME**

April 5, 2010

The Honorable Kimberly D. Bose  
Secretary  
Federal Energy Regulatory Commission  
888 First Street, NE  
Washington, DC 20426

**Re: California Independent System Operator Corporation  
Docket No. ER10-\_\_\_\_-000**

**Non-Conforming Service Agreement No. 1527 and Requests  
for Waiver of Certain ISO Tariff Provisions and for Waiver of  
Notice Requirement**

Dear Secretary Bose:

The California Independent System Operator Corporation ("ISO") submits for Commission acceptance a Dynamic Scheduling Host Balancing Authority Operating Agreement ("DSHBAOA") between the ISO and Gila River Power, L.P. ("Gila River") as a "non-conforming" service agreement.<sup>1</sup> The enclosed Gila River DSHBAOA has been designated as Service Agreement No. 1527.

In connection with the filing of the Gila River DSHBAOA, the ISO requests that the Commission grant a waiver of ISO tariff provisions that would otherwise require Intermediary Balancing Authorities located between the ISO and Gila

---

<sup>1</sup> The ISO submits the Gila River DSHBAOA pursuant to Section 205 of the Federal Power Act, 16 U.S.C. § 824d. The ISO is sometimes referred to as the CAISO. Capitalized terms not otherwise defined herein have the meanings set forth in the Master Definitions Supplement, Appendix A to the ISO tariff, and in the Gila River DSHBAOA.

River to execute certain agreements.<sup>2</sup> The ISO's request satisfies the Commission's standards for obtaining such a waiver. The ISO also requests waiver of the notice requirement to permit the Gila River DSHBAOA to be made effective as of June 1, 2010.<sup>3</sup>

## I. Purpose of the DSHBAOA

The DSHBAOA is applicable to the operators of Balancing Authority Areas hosting resources located outside the ISO's Balancing Authority Area that wish to schedule dynamic imports of energy and energy associated with ancillary services (except regulation service, unless otherwise specified) into the ISO Balancing Authority Area.<sup>4</sup> The DSHBAOA establishes the framework of operating requirements for the dynamic scheduling functionality and requires the Host Balancing Authority Area responsible for the functionality to comply with the applicable provisions of the ISO tariff, including the ISO Dynamic Scheduling Protocol ("DSP").<sup>5</sup> The DSP contains several important operating and scheduling provisions that are derived primarily from applicable North American Electric Reliability Corporation ("NERC") policies and Western Electricity Coordinating Council ("WECC") requirements.

## II. Variation from the *Pro Forma* DSHBAOA

There are a number of differences between the enclosed Gila River DSHBAOA and the *pro forma* DSHBAOA, which include the following:<sup>6</sup>

- Section 1.1 has been modified to omit provisions regarding the effective date that are inapplicable to the Gila River DSHBAOA.
- Section 1.2 has been modified to omit provisions regarding termination that are inapplicable to the Gila River DSHBAOA.

---

<sup>2</sup> The ISO requests this waiver pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.207.

<sup>3</sup> The ISO and Gila River have also executed a Dynamic Scheduling Agreement for Scheduling Coordinators ("DSASC"), to become effective on April 5, 2010, but because that agreement does not differ in any respect from the *pro forma* DSASC contained in Appendix B.5 to the ISO tariff, the Gila River DSASC will not be filed.

<sup>4</sup> The *pro forma* DSHBAOA is contained in Appendix B.9 to the ISO tariff.

<sup>5</sup> The DSP is contained in Appendix X to the ISO tariff.

<sup>6</sup> Many of the differences described below were also proposed in a filing the ISO submitted on October 20, 2005 in Docket No. ER06-57-000, which contained a non-conforming Dynamic Scheduling Host Control Area Operating Agreement (the former name of the Dynamic Scheduling Host Balancing Authority Area Operating Agreement) between the ISO and Portland General Electric Company. The Commission accepted that filing by a letter order issued on December 12, 2005.

- In Section 2, a definition of Applicable Standards (*i.e.*, the DSP and the ISO's Standards for Imports of Regulation) has been added to recognize that the Gila River DSHBAOA addresses imports of regulation service in addition to other dynamic schedules. Further, a definition of Dynamic Scheduling Functionality has been added to emphasize the distinctions between Gila River's responsibilities as the Host Balancing Authority for the dynamic scheduling functionality and the responsibilities of the scheduling coordinator for dynamic scheduling. Moreover, a definition of Standards for Imports of Regulation has been added to recognize that the Gila River DSHBAOA addresses imports of regulation in addition to other dynamic schedules and that the ISO has established separate standards for such imports of regulation. Also, the definition of CAISO Tariff has been modified to delete an outdated reference to the ISO Protocols, and the definition of System Resource has been modified to reference the Standards for Imports of Regulation.
- Section 3.1 has been modified to include a reference to the incorporation of provisions regarding imports of regulation as part of the purpose of the Gila River DSHBAOA, which service is not addressed in the *pro forma* DSHBAOA, in addition to other dynamic schedules. Also, Section 3.1 has been modified to capitalize the term Automatic Generation Control ("AGC"), which is defined in the WECC glossary of terms that serves as the source of defined terms for the DSHBAOA.
- Section 3.2 has been modified to reference specifically the NERC and WECC reliability standards and the NERC Dynamic Transfer Reference Document.
- Section 3.3 has been modified to state that the Gila River DSHBAOA incorporates, by reference, the Standards for Imports of Regulation.
- Section 3.4 has been modified to put the phrase "point of contact" into lower-case text.
- In Section 4, a reference to the Applicable Standards replaces a reference to the DSP.
- Section 5 has been modified to add separate section headings regarding telemetry (Section 5.1) and control for regulation service (Section 5.2). In Section 5.1, a reference to the Applicable Standards replaces a reference to the DSP. Section 5.2 has been added to incorporate into the Gila River DSHBAOA the terms governing the ISO's issuance of control signals to Gila River for imports of regulation, which terms the ISO has implemented with other Balancing Authority Areas from which imports of regulation are

to be provided, but which service is not addressed in the *pro forma* DSHBAOA.

- Section 6.1 has been modified to state that Gila River as the Host Balancing Authority is required to support scheduling coordinators' requests for regulation schedules to the ISO Balancing Authority Area reflecting the instantaneous energy production or allocation levels issued by the ISO's EMS/AGC.
- Section 6.2 has been modified to clarify the Area Control Error ("ACE") calculation for Gila River and the ISO that will result from the DSHBAOA, and a provision has been added to recognize the effect on the ACE calculation of the imports of regulation through AGC.
- Section 6.3 has been modified to clarify that the integrated amount of interchange over the hour will be computed based on the ISO's request for power (rather than the instantaneous production of the resource), and the hourly value will be agreed to by Gila River's and the ISO's respective adjacent Balancing Authority Areas.
- As a result of the negotiations regarding the DSHBAOA, Gila River has agreed to modify Section 6.4 to indicate that it will generate for real-time deviations such that the ISO will receive the requested amount of dynamically scheduled regulation service. However, Gila River reserves the right in Section 6.4 to share real-time deviations on a pro rata basis, in which case the ISO will be responsible for the regulation obligation for the dynamic schedule and Gila River will be responsible for the regulation obligation of the balance of the resource's output.
- In Section 8.4, a reference to the Applicable Standards replaces a reference to the DSP.
- Section 10.3 has been modified to expand on and clarify the inability of the parties to obtain consequential and related types of damages from each other.
- Section 11.8 has been modified to apply to amendments that require (rather than are subject to) Commission approval. Also, Section 11.8 has been modified to state that the standard of review that will apply to proposed modifications to the Gila River DSHBAOA will be the "just and reasonable" standard of review. Further, the section has been revised to state that Schedules 1 and 3 to the Gila River DSHBAOA (which contain, respectively, operational contact and notice information) are provided for informational purposes and that revisions to those schedules do not

constitute a material change to the Gila River DSHBAOA warranting Commission review.

### III. Request for Waiver of ISO Tariff Provisions

The ISO Balancing Authority Area is not adjacent to the Balancing Authority Area in which Gila River is located (*i.e.*, the Host Balancing Authority Area). Located between the ISO Balancing Authority Area and the Host Balancing Authority Area are two Intermediary Balancing Authority Areas: the Balancing Authority Areas of Salt River Project ("SRP") and Arizona Public Service Company ("APS"). The ISO requests that the Commission grant a waiver of Section 4.5.4.3(d) of the ISO tariff and Section 3.1 of Appendix X to the ISO tariff, which would otherwise require SRP and APS each to execute an agreement with the ISO to support the dynamic scheduling functionality as Intermediary Balancing Authorities.<sup>7</sup>

The Commission has explained that, "[w]here good cause for a waiver of limited scope exists, there are no undesirable consequences, and the resultant benefits to customers are evident, the Commission has found that a one-time waiver is appropriate."<sup>8</sup> The ISO satisfies each component of this Commission standard for granting a waiver of the two ISO tariff provisions cited above. Good cause for the ISO's requested waiver exists because the ISO has determined that additional commitments are not needed from SRP and APS in order for this particular configuration of the dynamic scheduling functionality to be implemented, and SRP and APS have each informed the ISO that they are unwilling to execute any agreements as Intermediary Balancing Authorities that would meet the requirements of the two ISO tariff provisions. Further, the requested waiver will be of limited scope because it only concerns two provisions of the ISO tariff that contain virtually identical requirements regarding the execution of certain agreements, and will only apply in the instant case. Moreover, no undesirable consequences will result from granting the requested waiver because the ISO has determined that, for this particular configuration,

---

<sup>7</sup> Section 4.5.4.3(d) of the ISO tariff states that "Intermediary Balancing Authorities [will] each execute with the CAISO an Interconnected Balancing Authority Area Operating Agreement, a Dynamic Scheduling Host Balancing Authority Operating Agreement as provided in Appendix B.9, or a special operating agreement related to the operation of dynamic functionality." Similarly, Section 3.1 of Appendix X to the ISO tariff states that "[t]he Host Balancing Authority and all Intermediary Balancing Authorities must each execute an Interconnected Balancing Authority Area Operating Agreement ('IBAAOA') with the CAISO, with accompanying service schedule, a Dynamic Scheduling Host Balancing Authority Operating Agreement, or a special agreement particular to the operation of the functionality supporting dynamic imports of Energy, and/or Energy associated with non-Regulation Ancillary Services to the CAISO Balancing Authority Area."

<sup>8</sup> *Southern California Edison Co.*, 125 FERC ¶ 61,009, at P 17 (2008) (citing *California Independent System Operator Corp.*, 124 FERC ¶ 61,031 (2008), and *California Independent System Operator Corp.*, 118 FERC ¶ 61,226 (2007)).

dynamic scheduling of imports of energy and energy associated with ancillary services and imports of regulation from Gila River into the ISO Balancing Authority Area can occur regardless of whether SRP and APS execute any agreements as Intermediary Balancing Authorities. In this case the EMS signal communication will not be transmitted through the Intermediary Balancing Authorities; rather the EMS signal will be transmitted directly between Gila River and the ISO and will be available to the Intermediary Balancing Authorities. NERC and WECC Reliability Standards, including interchange information and approval through e-tagging will continue to apply to the Gila River, APS, SRP, and the ISO. Lastly, granting the requested waiver will result in benefits to customers because it will facilitate the dynamic scheduling of imports of energy and energy associated with ancillary services and imports of regulation from Gila River into the ISO Balancing Authority Area, which will increase the supply of those services into the ISO market. For these reasons, it is appropriate for the Commission to grant a one-time waiver of the requirements of Section 4.5.4.3(d) of the ISO tariff and Section 3.1 of Appendix X to the ISO tariff in this proceeding.<sup>9</sup>

#### **IV. Request for Privileged Treatment**

Included in a separate volume along with the enclosed DSHBAOA, pursuant to Commission Order Nos. 630 and 630-A,<sup>10</sup> is a sealed copy of the non-public portions of the DSHBAOA, specifically, Schedule 1. The ISO is seeking privileged treatment for Schedule 1 under 18 C.F.R. § 388.112 because it contains confidential telephone numbers of operating personnel, the public disclosure of which could unnecessarily reveal sensitive information. Therefore, the ISO submits that these materials should be exempt from public exposure and should be granted privileged treatment.

#### **V. Effective Date and Request for Waiver of Notice Requirement**

The ISO respectfully requests waiver of the notice requirement in order to permit the enclosed DSHBAOA to be made effective as of June 1, 2010.<sup>11</sup> Good cause exists for granting this waiver because it will allow the Gila River DSHBAOA to go into effect on the date contemplated by the parties, and will not

---

<sup>9</sup> If similar circumstances arise in any future proceeding for Commission acceptance of a Dynamic Scheduling Host Balancing Authority Operating Agreement, the ISO may seek a waiver at that time of the requirements of Section 4.5.4.3(d) of the ISO tariff and Section 3.1 of Appendix X to the ISO tariff. The ISO does not presently foresee that similar circumstances will arise in a future case.

<sup>10</sup> *Critical Energy Infrastructure Information*, Order No. 630, FERC Stats. and Regs. ¶ 31,140, *order on reh'g*, Order No. 630-A, FERC Stats. and Regs. ¶ 31,147 (2003).

<sup>11</sup> Specifically, the ISO requests waiver, pursuant to Section 35.11 of the Commission's regulations (18 C.F.R. § 35.11), of Section 35.3 of the Commission's regulations (18 C.F.R. § 35.3), in order to permit the requested June 1, 2010 effective date.

result in harm to any party. Granting the requested waiver, therefore, is appropriate.

#### **VI. Expenses**

No expense or cost associated with this filing has been alleged or judged in any judicial or administrative proceeding to be illegal, duplicative, unnecessary, or demonstratively the product of discriminatory employment practices.

#### **VII. Service**

Copies of this filing have been served upon Gila River and the California Public Utilities Commission. In addition, the filing has been posted on the ISO's website.

Enclosed for filing are six copies of each of the following:

- (1) this letter of transmittal; and
- (2) the public version of the Gila River DSHBAOA, provided in a format that complies with Order No. 614, *Designation of Electric Rate Schedule Sheets*, FERC Stats. and Regs. ¶ 31,096 (2000) (Attachment A).

The filing also includes a separate volume that contains the non-public portions of the Gila River DSHBAOA described above.

Also enclosed are two additional copies of this filing to be date-stamped and returned to our messenger.

**VIII. Correspondence**

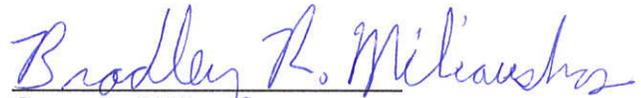
The ISO requests that all correspondence, pleadings and other communications concerning this filing be served upon the following:

Michael D. Dozier\*  
Senior Counsel  
California Independent System  
Operator Corporation  
151 Blue Ravine Road  
Folsom, CA 95630  
Tel: (916) 608-7048  
Fax: (916) 608-7222  
E-mail: [mdozier@caiso.com](mailto:mdozier@caiso.com)

Bradley R. Miliauskas\*  
Alston & Bird LLP  
The Atlantic Building  
950 F Street, NW  
Washington, DC 20004  
Tel: (202) 756-3405  
Fax: (202) 654-4875  
E-mail:  
[bradley.miliauskas@alston.com](mailto:bradley.miliauskas@alston.com)

\* Individuals designated for service pursuant to Rule 203(b)(3),  
18 C.F.R. § 203(b)(3).

Respectfully submitted,



Sean A. Atkins  
Bradley R. Miliauskas  
Alston & Bird LLP  
The Atlantic Building  
950 F Street, NW  
Washington, DC 20004

Nancy Saracino  
General Counsel  
Michael D. Dozier  
Senior Counsel  
California Independent System  
Operator Corporation  
151 Blue Ravine Road  
Folsom, CA 95630

Attorneys for the California Independent System Operator Corporation

# **ATTACHMENT A**

DYNAMIC SCHEDULING HOST BALANCING AUTHORITY  
OPERATING AGREEMENT  
BETWEEN THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION  
AND GILA RIVER POWER, L.P.

Issued by: Nancy Saracino, Vice President, General Counsel and Corporate Secretary

Issued on: April 5, 2010

Effective: June 1, 2010

---

**CALIFORNIA INDEPENDENT SYSTEM  
OPERATOR CORPORATION**

**AND**

**GILA RIVER POWER, L.P.**

**DYNAMIC SCHEDULING HOST  
BALANCING AUTHORITY OPERATING  
AGREEMENT**

---

---

**DYNAMIC SCHEDULING HOST BALANCING AUTHORITY  
OPERATING AGREEMENT**

**THIS DYNAMIC SCHEDULING HOST BALANCING AUTHORITY OPERATING AGREEMENT ("AGREEMENT")** is established this 5th day of April, 2010, and is accepted by and between:

**Gila River Power, L.P.** ("Host Balancing Authority"), having its registered and principal executive office at 100 South Ashley Drive, Suite 1400, Tampa, Florida 33602,

and

**California Independent System Operator Corporation** ("CAISO"), 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, initially 151 Blue Ravine Road, Folsom, California 95630.

The Host Balancing Authority and the CAISO are hereinafter referred to as the "Parties".

**Whereas:**

- A. The Parties named above operate Balancing Authority Areas.
- B. The Parties wish to coordinate operation of dynamic scheduling functionality to satisfy North American Electric Reliability Corporation ("NERC") and Western Electricity Coordinating Council ("WECC") standards and criteria and Good Utility Practice.
- C. The Host Balancing Authority does not have an Interconnected Balancing Authority Area Operating Agreement ("IBAAOA") with the CAISO and desires to implement an agreement to facilitate dynamic scheduling from System Resources in its Balancing Authority Area to the CAISO Balancing Authority Area without an IBAAOA.
- D. The Parties wish to enter into this Agreement to establish the terms and conditions for the operation of the dynamic scheduling functionality from Host Balancing Authority's Balancing Authority Area to the CAISO Balancing Authority Area.
- E. The CAISO has certain statutory obligations under California law to maintain power system reliability.

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

---

## **1. Term and Termination**

### **1.1 Effective Date**

This Agreement shall be effective as of the date this Agreement is accepted for filing and made effective by the Federal Energy Regulatory Commission ("FERC") and shall continue in effect until terminated.

### **1.2 Termination**

This Agreement may be terminated by either Party upon thirty (30) days written notice to the other Party or upon mutual consent of both Parties. Termination will be effective upon acceptance by FERC of notice of termination. The CAISO shall timely file the notice of termination with FERC. 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 (2) the CAISO files the notice of termination with FERC within sixty (60) days after issuance of the notice of termination by a Party.

## **2. Definitions**

### **2.1 WECC Definitions**

Except as defined below, terms and expressions used in this Agreement shall have the same meanings as those contained in the WECC Glossary of WECC Terms and Acronyms.

### **2.2 Specific Definitions**

**2.2.1 Applicable Standards:** The CAISO Dynamic Scheduling Protocol and the CAISO's Standards for Imports of Regulation.

**2.2.2 CAISO Dynamic Scheduling Protocol:** The CAISO's Dynamic Scheduling Protocol, which is set forth in Appendix X of the CAISO Tariff.

**2.2.3 CAISO Tariff:** CAISO Operating Agreement and Tariff as amended from time to time, together with any appendices or attachments thereto.

**2.2.4 Dynamic Scheduling Functionality:** The systems and processes necessary to facilitate delivery of energy, ancillary services (and associated energy), and/or regulation service that is scheduled dynamically to the CAISO from the System Resource in the Host Balancing Authority's Balancing Authority Area.

**2.2.5 Good Utility Practice:** Any of the practices, methods, and acts engaged in or approved by a significant portion of the electric utility industry in the WECC region during the relevant time period, or any of the practices,

methods, and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, and expedition. Good Utility Practice is not intended to be any one of a number of the optimum practices, methods, or acts to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region.

- 2.2.6 Point of Contact:** A person or entity having the authority to receive and act upon scheduling or dispatch communications from the other Balancing Authority and available through a communications device mutually agreed upon on a 24-hour, 7-day basis.
- 2.2.7 Scheduling Coordinator:** An entity certified by the CAISO for the purposes of undertaking the functions of: submitting bids or schedules for energy, generation, transmission losses, and ancillary services; coordinating generation; tracking, billing, and settling trades with other Scheduling Coordinators; submitting forecast information; paying the CAISO's charges; and ensuring compliance with CAISO protocols.
- 2.2.8 Standards for Imports of Regulation:** The CAISO's "Standards for Imports of Regulation", which document is posted on the CAISO internet website ([www.caiso.com](http://www.caiso.com)).
- 2.2.9 System Resource:** "System Resource" is defined in the CAISO Tariff and, in the context of this Agreement, may include combinations of resources as described in the CAISO Dynamic Scheduling Protocol and Standards for Imports of Regulation.

### 3 General

#### 3.1 Purpose

This Agreement sets forth the requirements that must be satisfied by the Host Balancing Authority should it elect to support Scheduling Coordinators' requests for implementation of a dynamic scheduling functionality and delivery of energy and energy associated with ancillary services and regulation service into the CAISO Balancing Authority Area. The requirements encompass technical (energy management system ("EMS"), Automatic Generation Control ("AGC"), and communications), interchange scheduling, telemetry, and aspects of Balancing Authority Area operations.

---

**3.2 NERC/WECC Operating Standards Observed**

Nothing in this Agreement is intended to change, supersede, or alter either Party's obligations to abide by NERC or WECC reliability standards or the NERC Dynamic Transfer Reference Document.

**3.3 Applicable Standards**

This Agreement incorporates, by reference, the CAISO Dynamic Scheduling Protocol and the Standards for Imports of Regulation.

**3.4 Communication**

The CAISO and the Host Balancing Authority shall each operate and maintain a 24-hour, 7-day control center with real-time scheduling and control functions. Appropriate control center staff will be provided by each Party who shall be responsible for operational communications and who shall have sufficient authority to commit and bind that Party. The CAISO and the Host Balancing Authority shall jointly develop communication procedures necessary to support scheduling and dispatch functions. The points of contact and the procedures for insuring reliable communication are identified in Schedule 1.

**4. Telecommunications Requirements**

The CAISO and Host Balancing Authority shall establish and maintain real-time, redundant, diversely routed, communications links between the CAISO EMS and the Host Balancing Authority EMS, with the primary link utilizing the standard inter-control center communications protocol ("ICCP") in accordance with the Applicable Standards for the dynamically scheduled System Resources listed in Schedule 2.

**5. Telemetry and Control****5.1 Telemetry**

For each operating hour for which a System Resource is scheduled to deliver energy and/or energy associated with any of the non-regulating ancillary services to the CAISO Balancing Authority Area, the Host Balancing Authority shall provide, via the ICCP communication links to the CAISO EMS, the data for each System Resource, as set forth in the Applicable Standards.

**5.2 Control for Regulation Service**

To facilitate provision of regulation service to the CAISO, the Host Balancing Authority EMS shall be able to receive control signals, in real time, from the CAISO EMS, via the ICCP or other agreed upon protocols

and communications links, causing the System Resource to vary its energy production when issued a new set-point signal by the CAISO. Further detailed information regarding control requirements may be found in the Applicable Standards.

## **6. Interchange Scheduling Requirements**

### **6.1 Dynamic Scheduling**

The Host Balancing Authority shall support Scheduling Coordinators' requests to arrange dynamic interchange schedules for the delivery of regulation service to the CAISO Balancing Authority Area, reflecting the System Resource's instantaneous energy production or allocation level as caused by real time control signals issued by the CAISO EMS/AGC and taking into account available transmission capacity. The Host Balancing Authority shall support Scheduling Coordinators' requests to arrange dynamic interchange schedules for the delivery of energy to the CAISO Balancing Authority Area, reflecting the System Resource's instantaneous energy production or allocation level and taking into account available transmission capacity.

### **6.2 Treatment of Area Control Error ("ACE")**

The Host Balancing Authority Area and the CAISO Balancing Authority Area shall instantaneously compensate their respective Automatic Generation Control (AGC) calculations in their Energy Management Systems (EMS) based on the System Resource's variable energy output level such that the System Resource energy production or allocation changes, caused by the CAISO EMS/AGC control signals, have an equal in magnitude and opposite in sign effect on the Host Balancing Authority Area and the CAISO Balancing Authority Area's Area Control Error (ACE). The ACE calculation for both the Host Balancing Authority Area and the CAISO Balancing Authority Area shall include the dynamic schedule in the Net Interchange Schedule value derived from the control signal that is instantaneously compensated for in the AGC calculation such that the dynamic schedule will be equal in magnitude and opposite in sign effect for the Host Balancing Authority Area and the CAISO Balancing Authority Area.

### **6.3 Integration of Dynamic Scheduling**

For each operating hour during which energy was dynamically scheduled for delivery to the CAISO Balancing Authority Area, the Host Balancing Authority shall compute an integrated amount of interchange based on the CAISO request for power integrated over the hour. Such integrated MWh value shall be agreed to hourly with the Adjacent Balancing Authority Area.

---

**6.4 Delivery of Megawatts ("MW")**

The CAISO Balancing Authority shall receive the requested amount of regulation from the dynamic System Resource. The Host Balancing Authority will remain responsible for regulation obligation for the portion of the System Resource's output not dynamically scheduled into the CAISO Balancing Authority Area, in accordance with NERC and WECC reliability standards. The Host Balancing Authority will reserve the right to share the real-time deviation on a pro-rata basis.

**6.5 Access to Information**

The Parties agree to exchange information related to telemetry sent and received with respect to the delivery of energy (i) at the request of the other Party for purposes of after-the-fact interchange accounting or (ii) on demand for any other purpose.

**7. Other Host Balancing Authority Responsibilities****7.1 Operational Jurisdiction**

The Host Balancing Authority will have, at a minimum, the level of operational jurisdiction over the System Resource and the associated dynamic schedule that NERC and WECC vest in Host Balancing Authorities.

**7.2 E-Tagging**

The Host Balancing Authority must support associated e-tagging as described in the CAISO Dynamic Scheduling Protocol and deemed to be consistent with NERC and/or WECC requirements.

**7.3 Real-Time Adjustments**

The Host Balancing Authority must have a means to manually override and/or otherwise adjust the dynamic signal in real-time, if needed.

**7.4 Coordination with Other Balancing Authorities**

The Host Balancing Authority must provide in real-time the instantaneous value of each dynamic schedule to every intermediary Balancing Authority Area through whose systems such dynamic schedule may be implemented to the CAISO.

**8. Other****8.1 Losses**

The CAISO shall not be responsible for transmission losses caused by transmitting energy dynamically within or across the Host Balancing Authority's Balancing Authority Area for delivery to the CAISO.

**8.2 Certification**

Only CAISO-certified System Resource/Host Balancing Authority arrangements will be allowed to bid or self provide ancillary services in the CAISO's ancillary services market through a CAISO-certified Scheduling Coordinator.

**8.3 No Guarantee of Award**

Certification of a System Resource/Host Balancing Authority arrangement allows for bidding of energy and/or certain ancillary services into the CAISO market; it does not, however, guarantee selection of such bid.

**8.4 Performance Assessment**

The CAISO will monitor and measure dynamically imported ancillary services, whether bid or self-provided, against the performance benchmarks described in the Applicable Standards.

**8.5 Description of System Resources**

Each dynamically scheduled System Resource permitted pursuant to this Agreement is described in Schedule 2.

**9. Notifications**

The CAISO and the Host Balancing Authority shall jointly develop methods for coordinating the notification of all affected scheduling entities within their respective Balancing Authority Areas regarding schedule changes in emergency or curtailment conditions.

**10 Liability****10.1 Uncontrollable Forces**

An Uncontrollable Force means any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm, flood, earthquake, explosion, any curtailment, order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities, or any

other cause beyond the reasonable control of a Balancing Authority which could not be avoided through the exercise of Good Utility Practice.

Neither the CAISO nor the Host Balancing Authority will be considered in default of any obligation under this Agreement or liable to the other for direct, indirect, and consequential damages if prevented from fulfilling that obligation due to the occurrence of an Uncontrollable Force. Neither the CAISO nor the Host Balancing Authority will be considered in default of any obligation under this Agreement to the extent caused by any act, or failure to act, of any intermediary Balancing Authority.

In the event of the occurrence of an Uncontrollable Force, which prevents either the CAISO or the Host Balancing Authority from performing any obligations under this Agreement, the affected entity shall not be entitled to suspend performance of its obligations in any greater scope or for any longer duration than is required by the Uncontrollable Force. The CAISO and the Host Balancing Authority shall each use its best efforts to mitigate the effects of such Uncontrollable Force, remedy its inability to perform, and resume full performance of its obligations hereunder.

## **10.2 Liability To Third Parties**

Except as otherwise expressly provided herein, nothing in this Agreement shall be construed or deemed to confer any right or benefit on, or to create any duty to, or standard of care with reference to any third party, or any liability or obligation, contractual or otherwise, on the part of CAISO or the Host Balancing Authority.

## **10.3 Liability Between the Parties**

The Parties' duties and standard of care with respect to each other, and the benefits and rights conferred on each other, shall be no greater than as explicitly stated herein. Neither Party, its directors, officers, employees, or agents, shall be liable to the other Party for any loss, damage, claim, cost, charge, or expense, whether direct, indirect, or consequential, arising from the Party's performance or nonperformance under this Agreement, except for a Party's gross negligence, or willful misconduct. In no event shall a Party be liable to the other Party hereto for any lost or prospective profits or any other special, punitive, exemplary, consequential, incidental or indirect losses or damages (in tort, contract, or otherwise) under or in respect of this Agreement or for any failure of performance related hereto howsoever caused, whether or not arising from a Party's sole, joint, or concurrent negligence.

---

**11 Miscellaneous****11.1 Assignments**

Either Party to this Agreement may assign its obligations under this Agreement, with the other Party's prior written consent. Such consent shall not be unreasonably withheld.

Obligations and liabilities under this Agreement shall be binding on the successors and assigns of the Parties. No assignment of this Agreement shall relieve the assigning Party from any obligation or liability under this Agreement arising or accruing prior to the date of assignment.

**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 writing and unless otherwise stated or agreed shall be made to the representative of the other Party indicated in Schedule 3 and shall be deemed properly served, given, or made: (a) upon delivery if delivered in person, (b) five (5) days after deposit in the mail if sent by first class United States mail, postage prepaid, (c) upon receipt of confirmation by return facsimile if sent by facsimile, or (d) upon delivery if delivered by prepaid commercial courier service. A Party must update the information in Schedule 3 relating to its address as that 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 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**

Subject to Section 11.5, 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. The Parties irrevocably consent that any legal action or proceeding arising under or relating to this Agreement shall be brought in any of the following forums, as appropriate: a court of the State of California or 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. No provision of this

Agreement shall be deemed to waive the right of any Party to protest, or challenge in any manner, whether this Agreement, or any action or proceeding arising under or relating to this Agreement, is subject to the jurisdiction of the Federal Energy Regulatory Commission.

### **11.5 Consistency with Federal Laws and Regulations**

(a) Nothing in this Agreement shall compel any person or federal entity to: (1) violate federal statutes or regulations; or (2) in the case of a federal agency, to exceed its statutory authority, as defined by any applicable federal statutes, regulations, or orders lawfully promulgated thereunder. If any provision of this Agreement is inconsistent with any obligation imposed on any person or federal entity by federal law or regulation to that extent, it shall be inapplicable to that person or federal entity. No person or federal entity shall incur any liability by failing to comply with any provision of this Agreement that is inapplicable to it by reason of being inconsistent with any federal statutes, regulations, or orders lawfully promulgated thereunder; provided, however, that such person or federal entity shall use its best efforts to comply with the CAISO Tariff to the extent that applicable federal laws, regulations, and orders lawfully promulgated thereunder permit it to do so.

(b) If any provision of this Agreement requiring any person or federal entity to give an indemnity or impose a sanction on any person is unenforceable against a federal entity, the CAISO shall submit to the Secretary of Energy or other appropriate Departmental Secretary a report of any circumstances that would, but for this provision, have rendered a federal entity liable to indemnify any person or incur a sanction and may request the Secretary of Energy or other appropriate Departmental Secretary to take such steps as are necessary to give effect to any provisions of this Agreement that are not enforceable against the federal entity.

### **11.6 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.

---

## 11.7 Section Headings

Section headings provided in this Agreement are for ease of reading and are not meant to interpret the text in each Section.

## 11.8 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 has made them effective. Nothing contained herein shall be construed as affecting in any way the right of the CAISO or the Host Balancing Authority 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; 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. The standard of review FERC shall apply when acting upon proposed modifications to this Agreement by the CAISO shall be the "just and reasonable" standard of review rather than the "public interest" standard of review. The standard of review FERC shall apply when acting upon proposed modifications to this Agreement by FERC's own motion or by a signatory other than the CAISO or non-signatory entity shall also be the "just and reasonable" standard of review. Schedules 1 and 3 are provided for informational purposes and revision to these schedules do not constitute a material change in the Agreement warranting FERC review.

## 11.9 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.

**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 first written above.

**California Independent System Operator Corporation**

By:   
Name: JAMES W. DETMERS  
Title: VP OPERATIONS  
Date: 4/5/10



**Gila River Power, L.P.  
By Gila River Power LLC, its General Partner**

By:   
Name: Michael R. Schuyler  
Title: President  
Date: 4/1/10

**SCHEDULE 1**

**Privileged Material Redacted Pursuant to 18 C.F.R. 388.112**

**SCHEDULE 2**
**DESCRIPTION OF DYNAMICALLY SCHEDULED SYSTEM RESOURCES  
 [Section 4]**

System Resource ID	GILARV_2_PWWDYN
System Resource Scheduling Limit at the Associated CAISO Intertie <sup>1</sup>	300 MWs
Associated CAISO Intertie ID	Palo Verde: ID: PWWEST
Generating Resource(s) Comprising the System Resource, with General Location Information	Four power blocks each made up of two natural gas combustion turbines and one steam turbine, with a total rating of approximately 2200 MWs. Power block number 4 is dynamically scheduled to a third party. Power blocks 1, 2, and 3 will supply 300 MWs of regulation to the CAISO.
Host Balancing Authority Area	Gila River Maricopa Arizona (GRMA) Gila River Power, L.P. Constellation Energy Control and Dispatch LLC
Intermediary Balancing Authority Area(s)	Arizona Public Service Company (APS) Salt River Project (SRP)

<sup>1</sup> This value represents the maximum amount of power that can be dynamically scheduled by the System Resource into the CAISO Balancing Authority Area, and is subject to limitation by congestion on the scheduling path or system emergencies that could reduce or eliminate the ability to schedule and transfer power from time-to-time.

---

**SCHEDULE 3****NOTICES**  
**[Section 11.2]****Host Balancing Authority**

Name of Primary Representative:	Ken Parker
Title:	Manager, Control Area Operations
Company:	Gila River Power, L.P.
Address:	100 South Ashley Drive, Suite 1400
City/State/Zip Code	Tampa, Florida 33602
Email Address:	kparker@entegrapower.com
Phone:	(813) 301-4907
Fax No:	(813) 301-4994
Name of Alternative Representative:	JT Thompson
Title:	Vice President
Company:	Constellation Energy Control and Dispatch, LLC
Address:	500 Dallas Street, Suite 3015
City/State/Zip Code	Houston, TX 77002
Email Address:	Jt.thompson@constellation.com
Phone:	(713) 332-2901
Fax No:	(442) 213-3246

---

**CAISO**

Name of Primary Representative: Ms. Roni L. Reese  
Title: Sr. Contracts Analyst  
Address: 151 Blue Ravine Road  
City/State/Zip Code: Folsom, CA 95630  
Email Address: rreese@caiso.com  
Phone: (916) 608-7027  
Fax No: (916) 608-7292

Name of Alternative Representative: Christopher J. Sibley  
Title: Senior Contracts Negotiator  
Address: 151 Blue Ravine Road  
City/State/Zip Code: Folsom, CA 95630  
Email Address: csibley@caiso.com  
Phone: (916) 608-7030  
Fax No: (916) 608-7292