

Black Hills Comments to CAISO RCSA

- I. WHEREAS / RECITAL PROVISIONS – In section A, CAISO is described as having already registered and been certified with NERC; however, it seems unlikely that certification will have occurred by December 2018 when non-CAISO BAs are to have executed the contract. Some reference to this fact would seem appropriate. In addition, it seems that there should be some discussion in the contract as to what happens if Certification does not occur. Perhaps certification is a condition precedent to any obligations under the contract and is terminable without penalty and any need for extended notice. Another alternative, is that any decision denying certification acts to terminate the contract.

- II. GENERAL COMMENTS – In a number of Sections (2.1¹, 2.2, 2.3, and _____) there is a direct tie out to the tariff language which will cover RC Service Agreements; it is difficult to understand the full import and scope of these sections without that corollary tariff language. There should be another round of comments on the RCSA when the tariff language has been posted/circulated so as to allow better review.

- III. Term and Termination –
 - A. Term- Currently there is no discussion specifically as to when billing starts verses the contract effective date verses the RC Services date. Specification of when initial payment obligations begin would be helpful.
 - B. Termination – As noted previously, currently there is no discussion in the contract of what will occur if CAISO is not certified. This might not be an issue ongoing with subsequent joining parties but could implicate the first two on-boarding phases (CAISO BA and non-CAISO BA signing in 12/2018).

¹ For example, section 2.1 indicates that the Agreement is subject to section X.X. of the CAISO Tariff which is incorporated herewith and section 2.2 The AISO agrees to Provide RC services to the RC customer, commencing on the RC Service Date, in accordance with Section X.X. of the CAISO tariff.

C. Termination by CAISO and Termination by RC customer - Both of these provisions contain a reference to “preconditions for termination” however it is not clear what those preconditions constitute.

1. Section 3.2.1 - With specific regard to termination by CAISO, it is unclear whether there needs to be any matching up to the withdrawal window or whether termination by CAISO for default can occur outside that window.
2. Section 3.2.2 Termination by RC Customer – There are two effective dates included in the section. The section indicates that a RC customer driven termination will be effective the April 1 following the notice of withdrawal (assuming 12 months’ notice). However, if an entity is FERC jurisdictional, the section goes on to state that notice is effective upon FERC approval of the notice of termination. It is difficult to understand the interplay of these two components and additional clarification is likely necessary.

IV. Article IV Penalties and Sanctions

- A. Currently the contract does not include any discussion of CAISO’s scope of obligations in this section, or a commitment to use reasonable/best effort to minimize penalties. Because this is purely a contractual relationship for some parties, some discussion seems necessary and appropriate.
- B. Section 4.1 – Allocation of Reliability Related Penalty Costs – It does not appear that this section has been revised to reflect the recent draft final proposal which in essence has two options in the face of a penalty, which at least from the proposal appear to be at this point a discretionary decision on the part of CAISO: (1) FERC filing to directly allocate or (2) pay from general reserve fund. In addition, would urge that CAISO consider including the reference contained in the proposal paper, which indicates that (upon a FERC filings) which seeks allocation, all RC customers retain all rights to intervene or protest during the filing process.

V. Article V Billings and Settlements –

A. Though there was discussion in the final draft proposal about how rates will be set, will run and will be determined, the pro forma contract does not appear to include any information in that regard. Similarly, there is no discussion on how RC customer or representatives of RC customer can have input into the budgeting process. Perhaps much of this will be contained in the tariff, but some discussion in the contract seems appropriate. For instance, any constraints on CAISO's ability to impose a mid-year rate change etc.

VI. Article VIII – Liability

A. Section 8.1 would suggest that the introductory phrase, “except as otherwise provided in this Agreement be deleted,” there is nothing else in the Contract which would allow a part to recovery special damages, thus the introductory phrase is at best superfluous and potentially ambiguous.

B. Section 8.3 “Recovery for Third Party Indemnity” – There is a cross reference in this section to Section 14 of the tariff, and it is unclear as to which portion of Section 14, to which CAISO is referring. Additional clarification or a more discrete pinpoint site is suggested.

VII. Article X - Miscellaneous

A. Section 10.9 “Amendments”- CAISO seeks to preserve the right to make a unilateral 205 filing to change the rates, terms and conditions of the Agreement with all other parties limited to a 206 challenge. The construct, though not unusual for FERC jurisdictional *pro forma* service agreements seems to create unequal bargaining power with regard to this contractual service. Consider additional discussion and stakeholder input on this subject.

VIII. Items unmentioned in contract-

- A. Any Audit Rights of RC customers- Because this new arrangement is intended to involve entities outside the CAISO, it seems like there needs to be some ability to audit at least the RC service component. In the alternative, will CAISO audit as part of its RC function and provide the results to RC customers?

- B. RC Oversight Committee – Though I understand that there will be references in the tariff to the RC Oversight Committee. It seems like there should be some reference to the role of that committee or scope in the RC contract as it forms the benefit of the bargain between the two parties.