

**Los Angeles Department of Water and Power's Comments on the  
Proposed Reliability Coordinator Services Agreement and Tariff Language**  
August 8, 2018

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Pursuant to the California Independent System Operator's ("CAISO") stakeholder notice issued on July 18, 2018, the Los Angeles Department of Water and Power ("LADWP") submit the following comments, edits and questions to the CAISO regarding the proposed Reliability Coordinator Services Agreement dated July 18, 2018 (the "RC Services Agreement"), and the proposed Reliability Coordinator tariff language dated July 18, 2018. LADWP reserves the right to submit additional comments, edits and questions.

**The following comments, questions and edits relate to the RC Services Agreement.**

1. Section 1.1.6 RC Services Date. LADWP has the following question: Should this section be revised to incorporate the date established according to Section 19.2(4) of the CAISO Tariff? That section explains how the date is established, as currently that information is missing in this Agreement Section 1.1.6.
2. Section 1.2 Rules of Interpretation. LADWP suggests the following edit to 1.2(a):
  - (a) if and to the extent a matter is specifically addressed by a provision of this Agreement, the provision of this Agreement shall govern notwithstanding any inconsistent provisions of Section 19 of the CAISO Tariff;
  - (b) if and to the extent this Agreement provides that a matter shall be determined in accordance with the applicable provisions of Section 19 of the CAISO Tariff, the applicable provisions of Section 19 of the CAISO Tariff shall govern;
  - (k) unless otherwise defined in this Agreement, terms and expressions used in this Agreement will have the same meanings as those contained in the "NERC Glossary of Terms Used in Reliability Standards.
3. Section 2.2 Description of CAISO Responsibilities. LADWP has the following question: What will CAISO do to ensure that there are no gaps for customers in receiving RC services as the service provider shifts from Peak to CAISO. Would CAISO be willing to include some language in this Agreement to address RC Customers' concerns of potential gap in service, which may lead to RC Customer's non-compliance of Reliability Standards.
4. Section 2.2.1 Supplemental Services—HANA. LADWP has the following comment: The way it is currently written, it is missing a discussion of the initial services. Also, it appears services are provided on a October 1 through September 30 basis, not a calendar year basis. LADWP suggests the following edits (red text) to address these issues:

"The CAISO agrees to provide HANA services to the RC Customer at its request

for an additional charge, as set forth in Section 19.3 of the CAISO Tariff. The RC Customer shall notify CAISO of the initial HANA services the RC Customer desires to take in accordance with Section 19.3(c) of the CAISO Tariff. Each year October 1 thereafter, the RC Customer will notify the CAISO in writing as to which HANA services it is electing to take for the next 12 months ending September 30. If the RC Customer does not provide such notice to the CAISO by October 1, the CAISO will continue to provide the RC Customer with the same HANA services it is providing to the RC Customer during the period that ended September 30.

If the RC Customer elects to receive HANA services, the RC Customer agrees to pay for three years of services regardless of whether it takes HANA services for the entire three year term, and will be invoiced one-third of that amount annually during the initial three year term. Thereafter, the RC Customer will be invoiced annually for HANA services as described above.”

Additionally, LADWP has the following questions about Section 2.2.1: 1) Does the 3 year obligation apply only to the initial group of customers that purchase both RC and HANA services, or does it apply to each customer thereafter that decides to purchase both RC and HANA services; 2) Does the 3 year obligation apply to the customer or each service the customer takes. For example, each October 1<sup>st</sup>, the HANA services can change, does the 3 year obligation apply only to the HANA services taken during the initial year in which HANA services are provided to the customer or is there a 3 year funding obligation for each HANA service the customer takes, i.e. if additional services are taken after the initial year, there is a 3 year funding obligation for each later acquired service; 3) If the initial year of services is less than 12 months, are the fees for those services prorated; likewise, if the service is terminated during the 12 month period by CAISO, is the fee for the terminated service prorated; 4) Since CAISO can change the HANA service at any time by changing its BPM, how are fees adjusted to coincide with the change in services?

5. Section 2.4 RC Customer Entity Status. LADWP has the following question: Is a customer to check “all” that applies? LADWP suggests the following addition to the end of Section 2.4:

“RC Customer shall notify CAISO in the event there is a change in the registered reliability functions applicable to the RC Customer.”

6. Section 2.5 Identification of Transmission Operators and Transmission Owners. LADWP have the following questions:

1) If a RC customer is an Operating Agent of a jointly owned project, as the OA does the RC customer need to identify those joint participants/owners? 2) If yes, what rights/obligations would such joint participants/owners have if any, under this

Agreement; 3) If no, what rights/obligations would such joint participants/owners have, will they have to sign an Agreement with CAISO?

7. Section 3.2.1 Termination by CAISO. LADWP has the following questions/comments:

1) What constitutes a “material default” in the context of this Agreement; 2) The CAISO should not be able to terminate this Agreement before the RC Customer has shifted to a new RC service provider; 3) If the RC Customer is still required to pay for the services, shouldn’t CAISO not be allowed to terminate the Agreement during the initial 3 year term of the Agreement; 4) After the initial 3 year term, if CAISO terminates the Agreement mid-year, is the RC Customer responsible for the full year’s fees or are they prorated? If they are not prorated, should CAISO be allowed to terminate the Agreement mid-year when RC Customers are not provided with the same right to terminate mid-year.

8. Section 3.2.2 Termination by RC Customer. LADWP suggest the following addition:

“If the RC Customer is not a public utility subject to FERC jurisdiction, the RC Customer’s rights and obligations under this Agreement will terminate as of the termination date provided in the RC Customer’s notice of termination, regardless of any action or inaction by FERC with respect to any application by the CAISO to terminate this Agreement.”

Also, LADWP suggests the addition of language in the Agreement for CAISO to continue providing service (and RC Customer will pay for such service) after the notification to terminate and that such service continues until the RC Customer fully transitions to a new RC service provider; and that CAISO will reasonably assist in the transition regardless of the reason for termination, i.e. even if it’s for RC Customer default. This seamless transition is necessary to ensure compliance of Reliability Standards and operational reliability.

9. Section 3.2.3 Transition Assistance. LADWP has the following question: Should the word “transition” in the 4<sup>th</sup> line of that provision be “effective date of the notice of termination”, ...

10. Section 4.1 Allocation of Reliability Related Penalty Costs. LADWP has the following comment: The RC Customer should be able to allocate penalties to the CAISO to the extent the CAISO was a contributing cause of the penalty to be issued to the RC Customer.

11. Article V Billing and Settlement. LADWP suggests adding the following:

**5.2 Default MWh.** At the time it executes this Agreement, the RC Customer will provide an initial default MWh volume in Schedule 1. The default MWh volume shall be calculated as follows:

- 5.2.1 Default NEL MWh.** The initial default Net Energy for Load MWh volume will be based on the previous year's data provided by the NERC/WECC report on NEL for the Load Serving Entity multiplied by 1.25.
- 5.2.2 Default NG MWh.** The initial default Net Generation MWh volume will be based on the sum of the RC Customer's generator(s) installed capacity multiplied by a .90 capacity factor and multiplied by 8,760 hours per year. If the RC Customer's installed capacity changes, the default Net Generation MWh volume set forth in Schedule 1 must be amended.
- 5.2.3 Validation of Default MWh Amount.** The CAISO reserves the right to request that the RC Customer provide it with data to validate the RC Customer's stated default MWh amount in Schedule 1. The RC Customer agrees to provide in a timely manner such requested data necessary for the CAISO to perform such validation, and the CAISO agrees to use this information solely for this purpose.

12. Section 5.3 Invoice and Payment Process. LADWP suggests adding the following as a new first sentence:

“CAISO shall invoice and RC Customer shall pay for RC Services in accordance with Section 19.7 of the CAISO Tariff.”

LADWP suggests revising the second paragraph of the section to read as follows:

“For billing purposes in accordance with this Section, the RC Customer represents that it is registered with NERC for the following reliability functions within the Western Interconnection (check the box that applies): ...”

Finally, LADWP suggests adding the following sentence under the Checklist:

“RC Customer shall notify CAISO in the event there is a change in the registered reliability functions applicable to the RC Customer.”

13. Section 6.1 Confidentiality. LADWP suggests the following edits since Section 19.15 of the CAISO Tariff addresses CAISO's receipt of RC Customer's confidential information only:

“Confidential Information will be treated in accordance with Section 19.15 of the CAISO Tariff and any other applicable confidentiality or data sharing agreements in effect between the Parties. CAISO acknowledges RC Customer may be subject to public disclosure legal requirements and must comply with such legal requirements.”

14. Section 7.1 Governing Law and Forum. LADWP suggested edit:

“This Agreement will be deemed to be a contract made under, and for all purposes will 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 will 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. The CAISO acknowledges that a Party may be an exempt entity as described in section 201(f) of the Federal Power Act, 16 U.S.C. 824(f) and this Agreement does not extend the Federal Energy Regulatory Commission’s jurisdiction over said Party.”

15. Section 8.1 Liability. LADWP suggested edit:

“Except as expressly provided in this Agreement, neither Party, nor any of its directors, officers, employees, consultants or agents will be liable to the other Party under any circumstances, whether any claim is based in contract, in tort, in equity for any punitive, or otherwise, for any special, consequential, indirect or incidental damages of any nature whatsoever, including, but not limited to, lost profits, loss of earnings or revenue, loss of use, loss of contract or loss of goodwill, or for any costs or expenses (including legal expenses) arising out of or in connection the performance or non-performance of its obligations under this Agreement.”

16. Section 8.3 Recovery for Third Party Indemnity. LADWP suggested edits:

“To the extent that the CAISO suffers any loss as a result of any third party claims arising out of the performance of this Agreement in violation of Section 8.2 herein, the CAISO will be entitled to seek recovery of such loss through Section 14 of the CAISO Tariff, except that any reference in Section 14 of the CAISO Tariff to Market Participants will be read as a references to the RC Customer and references to the CAISO Tariff will be read as references to this Agreement, and except further to the extent that they result from intentional wrongdoing or gross negligence on the part of the CAISO or of its officers, directors, or employees. The CAISO shall give written notice of any third-party claims against which it is entitled to recovery under this Section to the RC Customer promptly after becoming aware of them. The RC Customer shall be entitled to control any litigation in relation to such third-party claims (including settlement and other negotiations) and the CAISO shall, subject to its right to be reimbursed against any resulting costs, cooperate fully with the RC Customer in defense of such claims.”

17. Section 9.1 Dispute Resolution. LADWP has the following question: Can this Agreement have a simple dispute resolution procedure not tied to Section 13 of the CAISO Tariff, which seems very complicated. LA is ok with Section 9.2 Limitation of Disputes. Only suggested change is that it should just be “Reliability Standards” since that is a defined term in the NERC Glossary.

18. Proposed new Section 9.2 Limitation on Disputes. Suggest the following:

“Any dispute that concerns compliance with a Reliability Standard, including the CAISO’s performance of the specific tasks and functions applicable to a Reliability Coordinator, will not be subject to dispute under this Agreement or the CAISO Tariff and may only be initiated and processed by the agency responsible for the enforcement of the Reliability Standard pursuant to the agency rules of practice and procedure applicable to such claim or dispute.”

19. Section 10.3 Consistency with Federal Laws and Regulations. LADWP suggests replacing the provision with the following:

“The participation under this Agreement by a person which is not a public utility under the Federal Power Act, is subject in all respects to the laws and regulations of the state of its creation and to rate schedules adopted by its governing board under state law. FERC has exclusive jurisdiction to interpret this Agreement, and how it applies to such person. However, in the event that the person, subject to state court review, determines that a conflict exists between the applicable state law, regulations, or rate schedules and the provisions of this Agreement as interpreted by FERC, such state law, regulations, or rate schedules shall, effective upon the CAISO’s filing with FERC as described below, govern with respect to the application of this Agreement to the person. Should the person determine that such a conflict exists, such person must submit in writing to the CAISO documents notifying the CAISO of the person’s determination of such a conflict and explaining both the conflict (including what state laws, regulations or rate schedules, and what provisions of this Agreement, are at issue) and what actions the person is taking in response to that determination. The CAISO will review the documents submitted by such person and, if it determines that any modification to this Agreement that would become effective under this provision will not impair the efficiency of RC Services and will not make such person’s continued participation in RC Service unduly discriminatory or preferential, the CAISO will file the documents provided by such person with the Commission. If the CAISO cannot make such a determination, then the CAISO will terminate this Agreement immediately and the modification to this Agreement described in the documents will not take effect. Such person shall notify the CAISO as soon as practicable after it identifies a potential conflict that it expects to ask its governing board to determine pursuant to this provision,

and negotiate in good faith with the CAISO to modify this Agreement in a way that avoids the conflict.”

20. Section 10.3.2 No Waiver of Federal Rights. LADWP’s suggested edit:

“**No Waiver of Rights.** By entering into this Agreement, no person shall be deemed to have waived its rights to protest or challenge in any action or proceeding, any allocation of reliability related penalties, nor does any governmental entity waive its sovereign immunity.”

21. Section 10.4 Assignments. LADWP suggests that only the RC Customer may assign/transfer the Agreement with CAISO’s prior written consent.

**The following comments, questions and edits relate to the proposed Reliability Coordinator Tariff provisions.**

22. When will CAISO share its draft Business Practice Manual for RC Services to the stakeholders for review and comments? Stakeholders need to review in case there’s additional questions/comments on the draft agreement/Tariff. Substantive provisions are deferred to the Business Practice Manual.

23. Tariff Section 19.2(b)(6), will CAISO consider a July 1, 2019 start date for those RC Customers outside of the CAISO BAA?

24. Tariff Section 19.2(b)(9), what does CAISO envision for the Readiness Statement, i.e. is this just a checklist of items that CAISO and RC Customer go through to make sure ready, or more of an Agreement. LADWP needs to get a better understanding of this statement to determine the type of approval needed from our governance.

25. Tariff Section 19.5 (b)(2), provision should be revised to ensure that CAISO does not have authority to initiate a remedy against the RC Customer in the event RC Customer receives a penalty or enters into a settlement agreement regarding NERC Reliability Standard compliance.

26. Tariff Section 19.7(d)(3), LADWP will need 21 business days to catch billing errors rather than 5.

27. Tariff Section 19.7(d)(4) addresses invoice disputes. Is there a mechanism in place for RC Customer is contesting the billing itself for reasons other than the ones mentioned in the section?

28. Tariff Section 19.7(e)(3) Late Payment and Default. LADWP’s City Charter does not allow for late payment charges. LADWP would need a carve out for \$1,000 late payment fee.

29. Tariff Section 19.7(e)(5)(b) Payment. LADWP needs 21 business days to process payment rather than 15. All payment processes need to be 21 business days.