





October 26, 2007

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

**Re: California Independent System Operator Corporation  
Docket Nos. ER06-615-\_\_\_\_ and ER08-\_\_\_\_-000**

Dear Secretary Bose:

Pursuant to Section 205 of the Federal Power Act<sup>1</sup> and Part 35 of the Commission's regulations,<sup>2</sup> and in compliance with Paragraph 417 of the Commission order issued on September 21, 2006 in Docket No. ER06-615,<sup>3</sup> the California Independent System Operator Corporation ("CAISO") respectfully submits an original and five copies of proposed revisions to the *pro forma* Reliability Must-Run ("RMR") Contract, and includes the revised *pro forma* RMR Contract in the CAISO's Market Redesign and Technology Upgrade ("MRTU") Tariff.<sup>4</sup> The CAISO also submits related changes to the MRTU Tariff to move the provisions concerning the settlement and billing of RMR Charges and payments from Part J of Appendix N to Section 11.13, update those provisions, update the related provisions of Section 41, and add to and modify the definitions in Appendix A, as appropriate. The CAISO requests waiver of the Commission's notice requirements to permit all of the changes contained in the instant filing to be made effective as of March 31, 2008, which is the date on which MRTU is scheduled to be implemented.

<sup>1</sup> 16 U.S.C. § 824d.

<sup>2</sup> 18 C.F.R. § 35, *et seq.*

<sup>3</sup> *California Independent System Operator Corp.*, 116 FERC ¶ 61,274 (2007) ("September 21 Order").

<sup>4</sup> Capitalized terms not otherwise defined herein have the meanings set forth in the Master Definitions Supplement, Appendix A to the MRTU Tariff, and in the *pro forma* RMR Contract as modified by the instant filing. The *pro forma* RMR Contract is also known as the *pro forma* Must-Run Service Agreement.

The main purpose of this filing is to modify the *pro forma* RMR Contract to be consistent with the MRTU Tariff. To this end, the *pro forma* RMR Contract, as modified, reflects that RMR Units will be dispatched as a result of the Market Power Mitigation and Reliability Requirements Determination (“MPM-RRD”) process in the MRTU Tariff. The *pro forma* RMR Contract has also been modified in a number of other respects to be consistent with the MRTU Tariff and updated to remove anachronistic language. All of these proposed changes are described below. The CAISO wants to underscore that these changes maintain the balance of benefits and burdens inherent in the existing *pro forma* RMR Contract.<sup>5</sup> In addition, the CAISO is proposing to modify tariff language relating to the settlement and billing of RMR Charges and payments and to move that tariff language currently in Part J of Appendix N to Section 11.13 of the MRTU Tariff. The modifications to this tariff language are non-substantive.

The CAISO is also tendering two copies of this filing to be time and date stamped and returned to our courier.

## I. BACKGROUND

The current version of the *pro forma* RMR Contract was approved by the Commission prior to the inception of MRTU,<sup>6</sup> and has not been included in earlier versions of the CAISO Tariff, the current CAISO Tariff, or the MRTU Tariff. In Paragraph 417 of the September 21 Order, the Commission noted the statement in Appendix G of the MRTU Tariff that the *pro forma* RMR Contract would be filed with the Commission upon settlement of certain terms and conditions related to MRTU. The Commission directed the CAISO to continue its ongoing efforts to address issues relating to how the *pro forma* RMR Contract should be modified for MRTU through the CAISO stakeholder process and to “file any amendments with the Commission as necessary and appropriate.”

On September 5, 2007, the CAISO posted a draft revised *pro forma* RMR Contract for MRTU on the CAISO Website for stakeholder comment. Three stakeholders provided written comments on the draft. On October 2, 2007, the CAISO held a conference call with stakeholders to discuss the proposed changes and stakeholder comments. On October 12, 2007, the CAISO posted on the CAISO Website (i) a table of changes that the CAISO proposed to make to the draft revised *pro forma* RMR Contract based on stakeholder comments, (ii)

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<sup>5</sup> In this regard, the CAISO notes that some stakeholders, including Southern California Edison Company, have urged the CAISO to change the cost allocation so that RMR costs would be allocated to Load Serving Entities rather than the Responsible Utility under an RMR Contract. The CAISO has indicated that it would pursue this change if, but only if, it became necessary to enter into an RMR Contract with a resource not currently under an RMR Contract.

<sup>6</sup> See *California Independent System Operator Corp.*, 87 FERC ¶ 61,250 (1999); September 21 Order at P 416 n.195.

a draft of a further revised *pro forma* RMR Contract, and (iii) a draft of related changes to the MRTU Tariff. The CAISO requested that stakeholders submit any written comments concerning the CAISO's October 12, 2007 posting by October 19, 2007. Only one stakeholder submitted further written comments noting three minor errors in the CAISO's posting and offering a formatting suggestion.<sup>7</sup>

## II. PROPOSED CHANGES

The changes contained in the instant filing are provided in accordance with the directive in Paragraph 417 of the September 21 Order that the CAISO "file any amendments with the Commission as necessary and appropriate," following the conclusion of a CAISO stakeholder process, with regard to issues relating to the *pro forma* RMR Contract.

In the instant filing, the CAISO proposes the following modifications to the *pro forma* RMR Contract:

- The CAISO has modified, added, and deleted defined terms to conform the terminology used in the *pro forma* RMR Contract with the terminology used in the MRTU Tariff as it will be implemented in 2008.<sup>8</sup>
- The CAISO has modified the definition of Dispatch Notice, and has added the defined terms Manual RMR Dispatch Notice and RMR Dispatch, to clarify how RMR Dispatch will be handled under the MRTU Tariff. Specifically, RMR Units will be dispatched through the MPM-RRD process set forth in the MRTU Tariff but may also be dispatched manually.<sup>9</sup>
- The CAISO has modified the definition of Requested MWh to clarify that the definition includes ramping energy calculated pursuant to the MRTU Tariff.

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<sup>7</sup> The documents described above are available on the CAISO Website at <http://www.caiso.com/17ba/17ba873e19350.html>, under the heading "RMR Contract Agreement". Also, the CAISO provides, in Attachment C to the instant filing, market notices (dated September 6, September 24, and October 15, 2007) that are related to the stakeholder process described above.

<sup>8</sup> For example, the CAISO has replaced the defined term Financial Settlement Statement in the *pro forma* RMR Contract with the term Recalculation Settlement Statement, which the correct term used in the MRTU Tariff. The CAISO has also deleted the defined terms Market Ramping Energy, Ramping Energy, and RMR Ramping Energy from the *pro forma* RMR Contract because ramping energy will be included in Dispatch Notices issued under MRTU.

<sup>9</sup> See MRTU Tariff, Sections 31.2, 31.2.1, 33.4, and 41.5, and the CAISO's RMR Training Workbook, which is available on the CAISO Website at <http://caiso.com/1860/1860858661860.html>.

- The CAISO has modified the definition of Start-up to specify that it means the action of bringing a Unit from Shutdown to Minimum Load (rather than the action of bringing a Unit from Shutdown to being Synchronized), in order to align the definition with Schedule D of the *pro forma* RMR Contract.
- The CAISO has modified the definition of Substitute Unit to specify that, in the case of Units providing Ancillary Services, a Substitute Unit must be, *inter alia*, located in the same Local Capacity Area (rather than the same "Zone", a term that is not used in MRTU) as the Unit identified in the Dispatch Notice. Similarly, the CAISO has modified Section 4.7(f)(iii) to state that, in the case of Units providing Ancillary Services, a Comparable RMR Unit must, *inter alia*, be located in the same Local Capacity Area as the Unit which otherwise would be subject to a Dispatch Notice.
- The CAISO has modified Section 4.1(b) to substitute the phrase "congestion on non-competitive paths" for "intra-zonal congestion," and to substitute the phrase "congestion on competitive paths" for "inter-zonal congestion," in order to align the provisions of the *pro forma* RMR Contract with MRTU where the MPM-RRD process determines whether there are incremental RMR needs due to Congestion on uncompetitive paths.
- The CAISO has modified Section 4.1(c) to eliminate the reference therein to the Hunters Point power plant, which has been retired, and to revise the procedures the CAISO will use to procure additional Ancillary Services when needed,<sup>10</sup> and to update provisions concerning the circumstances in which the Bid Sufficiency Test will be applied and how it will be applied.<sup>11</sup>
- The CAISO has modified Section 4.2 to revise the provisions therein concerning the timing of Dispatch Notices, in order to align the section with the method of RMR Dispatch under MRTU.
- The CAISO has deleted the provisions formerly contained in Section 4.5 concerning Dispatch Notices to a Unit scheduled in Market Transactions,

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<sup>10</sup> For example, the CAISO has modified Section 4.1(c)(i)(B) to replace the phrase "hour-ahead Ancillary Services markets" with "CAISO's Real-Time Markets," because there is no hour-ahead Ancillary Services market under MRTU. Further, because the CAISO will be attempting to procure 100% of its Ancillary Services in the Day-Ahead, several elements of the Bid Sufficiency Test do not apply under MRTU, so these elements have been deleted from the section.

<sup>11</sup> For example, the CAISO has modified Sections 4.1(c)(iii)(B) and -(C) to reflect the fact that, under MRTU, the CAISO will procure 100% of its Ancillary Services in the Day-Ahead Market and will not shift Ancillary Service procurement between the Day-Ahead Market and the Real-Time Market.

because, under MRTU, Dispatch Notices will only be issued if incremental energy is needed from an RMR Unit as a result of the MPM-RRD process or if there is a local reliability need requiring Manual RMR Dispatch or if a resource is needed for local reliability and has not been dispatched through the Day-Ahead Market processes and is needed for local reliability.

- The CAISO has modified Section 5.1 to update the provisions therein concerning Owner's delivery of Energy and Ancillary Services, in order to reflect the practical reality that, under MRTU, the CAISO requires some lead time to accommodate an RMR Unit substitution request.
- The CAISO has modified Section 5.2 to update the provisions therein concerning the substitution of Market Transactions for Dispatch Notices.
- The CAISO has modified Section 9.1 to state, consistent with the currently effective CAISO Tariff and the MRTU Tariff,<sup>12</sup> that invoices for amounts less than \$10.00 will be adjusted to \$0.00. The CAISO believes it is appropriate to and practical to make this change to the *pro forma* RMR Contract as well.
- The CAISO has included, as Part 5 of Schedule C, provisions concerning variable cost payment with regard to biomass generation.
- The CAISO has eliminated the definitions and other provisions concerning Market Ramping Energy, Ramping Energy, and RMR Ramping Energy from the *pro forma* RMR Contract. As noted above, ramping energy is compensated as energy under MRTU.
- The CAISO has updated section references in the *pro forma* RMR Contract to reflect the current version of the MRTU Tariff (including the changes proposed in the instant filing).
- The CAISO has deleted outdated references in the *pro forma* RMR Contract to the California Power Exchange ("PX") and its tariff, and has, where applicable, added new provisions in place of references to the PX tariff. The CAISO has also deleted anachronistic references to dates and related events.

The CAISO is including the revised *pro forma* RMR Contract in Appendix G to the MRTU Tariff.

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<sup>12</sup> See CAISO Tariff, Section 11.6.2.1; MRTU Tariff, Section 11.29.7.2.1.

In addition to the changes to the *pro forma* RMR Contract, the instant filing contains changes to the MRTU Tariff with regard to the settlement and billing of RMR Charges and payments. First, the CAISO proposes to move all of the provisions in Part J of Appendix N concerning the settlement and billing of RMR Charges and payments (other than the definitions contained in Part J of Appendix N, as described below) to Section 11.13, and to delete the balance of Part J of Appendix N (concerning the rules of interpretation of that Part J, the relationship of Part J with Appendix N, amendments to that Part J, *etc.*), which becomes irrelevant text once the provisions are moved to Section 11.13. The CAISO also proposes the following modifications to the provisions in Section 11.13:

- The CAISO has modified the provisions in Section 11.13.7.5 concerning payment default by an RMR Owner or Responsible Utility to delete a phrase concerning the CAISO's reasonable opinion that all or any part of any amount due to be remitted to the relevant Facility Trust Account by the RMR Owner or the Responsible Utility will not be or has not been remitted.
- The CAISO has revised the reference in Section 11.13.9.1 to the use of "Electronic Data Interchange ('EDI')" for the issuance of CAISO Invoices to refer more generically to the use of the CAISO's secure communications system, as EDI will no longer be employed under MRTU.
- The CAISO has updated section references in Section 11.13 and has made minor clarifying and corrective changes to conform Section 11.13 with the MRTU Tariff as it will be implemented in 2008.

The CAISO proposes to delete the reference in Section 41.1 of the MRTU Tariff to the Hunters Point power plant (which, as mentioned above, has been retired), and also proposes minor conforming revisions to Section 41.6 of the MRTU Tariff to reflect the changes in section references to the new provisions of Section 11.13 and changes in the defined terms.

Further, the CAISO proposes to move the definitions of the terms Adjusted RMR Invoice, Estimated RMR Invoice, Facility Trust Account, Prior Period Change, Prior Period Change Worksheet, Responsible Utility Facility Trust Account, RMR Default Amount, RMR Invoice, RMR Payment, RMR Payments Calendar, RMR Refund, and RMR Security, after modifying these defined terms to update section references and make minor clarifying and corrective changes, from Part J of Appendix N to Appendix A.<sup>13</sup> The CAISO has also added to

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<sup>13</sup> All but one of the definitions listed above were formerly contained in Section 1.2.3 of Part J of Appendix N. The definition of RMR Default Amount (formerly called Default Amount) was contained in Section 7.5 of Part J of Appendix N.

Appendix A the new defined term Manual RMR Dispatch, which means “[a]n RMR Dispatch Notice issued by the CAISO other than as a result of the MPM-RDD process,” and has modified, for clarity, the existing definition of RMR Dispatch in Appendix A to state that it means the “quantity of Energy or Ancillary Services that is mandated by the CAISO to be delivered in a given market for a resource by an RMR Unit under an RMR Contract.”

### III. EFFECTIVE DATE AND REQUEST FOR WAIVER

Pursuant to Section 35.11 of the Commission’s regulations,<sup>14</sup> the CAISO respectfully requests waiver of Section 35.3 of the Commission’s regulations<sup>15</sup> to permit that all of the changes in the instant filing to be made effective as of March 31, 2008 (*i.e.*, more than 120 days after the date of this filing). Good cause exists to grant this request for waiver, because March 31, 2008 is the date on which MRTU is scheduled to be implemented. Therefore, granting the requested waiver is appropriate.

### IV. CONTENTS OF THE INSTANT FILING

In addition to this transmittal letter, the instant filing includes the following attachments:

- |              |                                                                                                                                                                                        |
|--------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Attachment A | Clean MRTU Tariff sheets reflecting the changes described in the instant filing (including the addition of the revised <i>pro forma</i> RMR Contract to Appendix G of the MRTU Tariff) |
| Attachment B | The proposed changes to the MRTU Tariff described in the instant filing, shown in black-line format                                                                                    |
| Attachment C | The proposed changes to the current version of the <i>pro forma</i> RMR Contract described in the instant filing, shown in black-line format for informational purposes                |
| Attachment D | Market notices related to the CAISO stakeholder process that preceded the instant filing, as described in Section I, above                                                             |

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<sup>14</sup> 18 C.F.R. § 35.11.

<sup>15</sup> 18 C.F.R. § 35.3.



## V. REQUEST FOR WAIVER OF ORDER NO. 614 REQUIREMENTS

Although the clean MRTU Tariff sheets provided in Attachment A to the instant filing do contain header and footer information, the CAISO requests waiver of the requirements of the Commission's Order No. 614<sup>16</sup> to the extent this information does not fully comport with these requirements. As the CAISO explained in its February 9, 2006, MRTU Tariff filing and its November 20, 2006 filing to comply with the September 21 Order (both submitted in Docket No. ER06-615), this waiver is justified because the portions of the current CAISO Tariff that serve as the basis of the MRTU Tariff are likely to be amended in the normal course of business between the filing date and the proposed MRTU implementation date. Prior to the MRTU implementation date, the CAISO will submit tariff sheets containing the MRTU Tariff provisions approved by the Commission that fully comply with Order No. 614.

## VI. COMMUNICATIONS

Correspondence and other communications regarding this filing should be directed to:

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<sup>16</sup> *Designation of Electric Rate Schedule Sheets*, FERC Stats. & Regs., Regs. Preambles ¶ 31,096 (2000).

**VII. SERVICE**

The CAISO has served copies of the instant filing on the California Public Utilities Commission, the California Energy Commission, the California Electricity Oversight Board, all parties with effective Scheduling Coordinator Service Agreements under the CAISO Tariff, and all parties in Docket No. ER06-615. In addition, the CAISO has posted a copy of this filing on the CAISO Website.

**VIII. CONCLUSION**

For the reasons set forth above, the CAISO respectfully requests that the Commission accept the proposed modifications to the MRTU Tariff contained in the instant filing.

Respectfully submitted,



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**Attachment A**  
**RMR Contract – Clean Sheets**  
**MRTU Tariff Section 205 Filing**  
**and**  
**Compliance Filing with Paragraph 417 of September 21, 2006 Order, Docket No. ER06-615**

**October 26, 2007**

**11.12.2 Allocation of Costs From Participating Intermittent Resources.**

The charges (payments) for Uninstructed Imbalance Energy that would have been calculated if the Settlement Interval deviations by each Participating Intermittent Resource were priced at the appropriate Resource Specific Settlement Interval LMP shall be assigned to a monthly balancing account for all Participating Intermittent Resources in the CAISO Control Area. The balance in such account at the end of each month shall be netted against the aggregate payments (charges) by Scheduling Coordinators on behalf of Participating Intermittent Resources. The resulting balance shall be assigned to each Scheduling Coordinator in the same proportion that such Scheduling Coordinator's aggregate Net Negative Uninstructed Deviations in that month bears to the aggregate Net Negative Uninstructed Deviations for all Scheduling Coordinators in the Control Area in that month.

**11.12.3 Payment of Forecasting Fee.**

A fee to defray the costs of the implementation of the forecasting service for Participating Intermittent Resources shall be assessed to Scheduling Coordinators for Participating Intermittent Resources as specified in Schedule 4 of Appendix F.

**11.12.4 Price for Uninstructed Deviations for Participating Intermittent Resources.**

Uninstructed Deviations associated with each Participating Intermittent Resource in a Scheduling Coordinator's portfolio shall be settled as provided in Section 34.19.2.5 at the monthly weighted average Dispatch Interval LMP, where the weights are the metered Generation quantities associated with each Dispatch Interval LMP.

**11.13 Settlements and Billing of Reliability Must-Run Charges and Payments.**

**11.13.1 Objectives.**

The objective of this Section 11.13 is to inform RMR Owners which are responsible for preparation of invoices, and Responsible Utilities, which are responsible for payment of Reliability Must-Run Charges pursuant to Section 41.7, of the manner in which the RMR Charges referred to in Section 41.6 shall be verified and settled and of the procedures regarding the billing, invoicing and payment of these RMR Charges.

**11.13.2 Accounts.**

**11.13.2.1 Facility Trust Account.**

The CAISO shall establish a Facility Trust Account for each RMR Contract. Each Facility Trust Account shall consist of two segregated commercial bank accounts: (1) an RMR Owner Facility Trust Account, which will be held in trust for the RMR Owner, and (2) a Responsible Utility Facility Trust Account, which will be held in trust for the Responsible Utility. RMR Charges paid by the Responsible Utility to the CAISO in connection with the RMR Contract will be deposited into the RMR Owner Facility Trust Account and RMR Payments from the CAISO to the RMR Owner will be withdrawn from such account, all in accordance with this Section 11.13, Section 41.6, and the RMR Contract. RMR Refunds received by the CAISO from the RMR Owner in accordance with the RMR Contract will be deposited into the Responsible Utility Facility Trust Account and such RMR Refunds will be withdrawn from such account and paid to the Responsible Utility in accordance with this Section 11.13, Section 41.6, and the RMR Contract. The RMR Owner Facility Trust Account and the Responsible Utility Facility Trust Account shall have no other funds commingled in them at any time.

**11.13.2.2 RMR Owner's Settlement Accounts.**

Each RMR Owner shall establish and maintain a settlement account at a commercial bank located in the United States and reasonably acceptable to the CAISO which can effect money transfers via Fed-Wire where payments to and from the Facility Trust Accounts shall be made in accordance with this Section 11.13. Each RMR Owner shall notify the CAISO of its settlement account details upon entering into its RMR Contract with the CAISO and may notify the CAISO from time to time of any changes by giving at least fifteen (15) days notice before the new account becomes operational.

**11.13.3 RMR Payments Calendar.**

The CAISO shall issue an RMR Payments Calendar for the purposes of this Section 11.13 which shall contain those dates set forth in Section 9.1 (b) of the RMR Contract and the following information:

- (a) the date on which RMR Owners are required to issue to the CAISO, with a copy to the Responsible Utility, their Estimated RMR Invoice pursuant to their RMR Contract;
- (b) the date on which the CAISO is required to initiate proposed adjustments to the Estimated RMR Invoice to the Responsible Utility and to the RMR Owner;
- (c) the date by which the RMR Owners are required to issue their Revised Estimated RMR Invoice reflecting appropriate revisions to the original Estimated RMR Invoice agreed upon by the Responsible Utility and the RMR Owner (In the event no revisions are required, the RMR Owner shall submit an e-mail to the CAISO and Responsible Utility stating there are no revisions and the Estimated RMR Invoice should be deemed as the Revised Estimated RMR Invoice.);
- (d) the date on which the CAISO is required to issue to the Responsible Utility or RMR Owner the CAISO Invoice based on the Revised Estimated RMR Invoice;
- (e) the date on which RMR Owners are required to issue to the CAISO, with a copy to the Responsible Utility, their Adjusted RMR Invoice pursuant to their RMR Contract;
- (f) the date on which the CAISO is required to initiate proposed adjustments to the Adjusted RMR Invoice to the Responsible Utility and the RMR Owner;
- (g) the date by which the RMR Owners are required to issue their Revised Adjusted RMR Invoice reflecting appropriate revisions to the original Adjusted RMR Invoice agreed upon by the Responsible Utility and the RMR Owner. (In the event no revisions are required, the RMR Owner shall submit an e-mail to the CAISO and Responsible Utility stating there are no revisions and the Adjusted RMR Invoice should be deemed as the Revised Adjusted RMR Invoice.);

- (h) the date on which the CAISO is required to issue to the Responsible Utility or the RMR Owner the CAISO Invoice based on the Revised Adjusted RMR Invoice;
- (i) the dates by which the Responsible Utility and RMR Owner must have notified the CAISO of any dispute in relation to the CAISO Invoice, Estimated RMR Invoice or Adjusted RMR Invoice (including the Revised Estimated RMR Invoice and Revised Adjusted RMR Invoice) or the CAISO's proposed adjustments;
- (j) the date and time by which Responsible Utilities or RMR Owners are required to have made payments into the RMR Owner Facility Trust Account or Responsible Utility Facility Trust Account in payment of the CAISO Invoices relating to each Revised Estimated RMR Invoice and each Revised Adjusted RMR Invoice; and
- (k) the date and time by which the CAISO is required to have made payments into the RMR Owners' Facility Trust Accounts or Responsible Utilities' Facility Trust Accounts in payment of the Revised Estimated RMR Invoice and the Revised Adjusted RMR Invoice pursuant to their RMR Contract.

If the day on which any CAISO Invoice, any RMR Invoice, or any payment is due is not a Business Day, such statement or invoice shall be issued or payment shall be due on the next succeeding Business Day. Information relating to charges for Energy or Ancillary Services which are payable by the CAISO pursuant to Sections 8 and 11 to the Scheduling Coordinators representing the RMR Owners will be contained in the RMR Payments Calendar.

**11.13.4 Information Provided by RMR Owners to the CAISO.**

Each RMR Invoice and any Prior Period Change Worksheet shall include, or be accompanied by, information about RMR Payments and RMR Refunds in sufficient detail to enable the CAISO to verify all RMR Charges and all RMR Refunds, and such information shall be copied to the Responsible Utility. Each RMR Invoice shall separately show the amounts due for services from each Reliability Must-Run Unit.

This information shall be provided in an electronic form in accordance with the RMR Invoice template developed jointly and agreed to by the CAISO, Responsible Utilities and RMR Owners in accordance with the RMR Contracts and the principles in Schedule O to those RMR Contracts, and maintained on the CAISO Website.

**11.13.5 Validation of RMR Charges and RMR Refunds.**

The CAISO shall validate, based on information provided by each RMR Owner pursuant to paragraph 4, the amount due from the relevant Responsible Utility for RMR Charges and the amount due to the relevant Responsible Utility for RMR Refunds applicable to the Reliability Must-Run Generation and Ancillary Services of that RMR Owner, but shall not represent or warrant the accuracy or completeness of the information provided by the RMR Owner. The CAISO shall provide copies of its exception report and information to the relevant Responsible Utility and RMR Owner.

The CAISO shall not be obligated to pay the Responsible Utility any RMR Refunds unless and until the CAISO has received corresponding RMR Refunds into the Responsible Utility Facility Trust Account from the RMR Owner.

**11.13.6 Description of the Billing Process.**

**11.13.6.1 Issuance of RMR Invoices by the RMR Owner.**

Each RMR Owner shall provide any RMR Invoice to the CAISO in the electronic form, mutually agreed by the parties, which may be updated by agreement with the CAISO, Responsible Utilities and RMR Owners from time to time in accordance with the requirements of Schedule O of the RMR Contract, on each of the days specified in the RMR Payments Calendar, and shall send to the relevant Responsible Utility a copy of that invoice on the day of issue.

**11.13.6.2 Review of the RMR Invoice by the CAISO.**

The CAISO shall review each RMR Invoice within the period specified in the RMR Payments Calendar and is required to initiate proposed adjustments to that invoice to the RMR Owner and the relevant Responsible Utility. Once the CAISO initiates proposed adjustments, the RMR Owner shall issue a Revised Estimated RMR Invoice or Revised Adjusted RMR Invoice.



**11.13.6.3 Issuance of CAISO Invoices by the CAISO.**

The CAISO shall provide to the Responsible Utility and the RMR Owner on the dates specified in the RMR Payments Calendar CAISO Invoices showing:

- (a) the amounts which, on the basis of the Revised Estimated RMR Invoice or the Revised Adjusted RMR Invoice, as the case may be, and pursuant to Section 11.13, are to be paid by or to the relevant Responsible Utility and RMR Owner;
- (b) the Payment Date, being the date on which such amounts are to be paid and the time for such payment;
- (c) details (including the account number, bank name and Fed-Wire transfer instructions) of the RMR Owner Facility Trust Account to which any amounts owed by the Responsible Utility are to be paid, or of the RMR Responsible Utility Facility Trust Account to which any amounts owed by the RMR Owner are to be paid.

**11.13.6.4 Resolving Disputes Relating to Invoices.**

**11.13.6.4.1 Review of the Invoices by the Responsible Utility.**

Each Responsible Utility shall have the review period specified in the RMR Payments Calendar to review RMR Invoices and CAISO Invoices, validate and propose adjustments to such invoices, and notify the CAISO of any dispute. Notwithstanding the above, each Responsible Utility shall have the review time specified in Section 41.6 to dispute such invoice.

**11.13.6.4.2 Dispute Notice.**

If a Responsible Utility disputes any item or calculation relating to any revised RMR Invoice, or any CAISO Invoice, it shall provide the CAISO, with a copy to the RMR Owner, via email or such other communication mode as the parties may mutually agree upon, a notice of dispute at any time from the receipt of the copy of such invoice from the RMR Owner or the CAISO to the expiration of the period for review set out in Section 11.13. The CAISO shall initiate a corresponding dispute with the RMR Owner under the RMR Contract.

**11.13.6.4.3 Contents of Dispute Notice.**

The notice of dispute shall state clearly the Revised Estimated RMR Invoice, Revised Adjusted RMR Invoice, or CAISO Invoice in dispute, the item disputed (identifying specific Reliability Must-Run Units and time periods), the reasons for the dispute, and the proposed amendment (if appropriate) and shall be accompanied by all available evidence reasonably required to support the claim.

**11.13.6.4.4 Prior Period Change Agreed to by the RMR Owner.**

Subject to Sections 11.13.6.4.5 or 11.13.6.4.6, if the RMR Owner agrees with the proposed change, the change shall be shown in a Prior Period Change Worksheet and included in the next appropriate May or December Estimated RMR Invoice as specified in Article 9.1 of the RMR Contract.

**11.13.6.4.5 Dispute Involving the RMR Owner.**

If the dispute relates to an item originating in any RMR Invoice, the applicable provisions of the RMR Contract and Section 41.6.1 shall apply.

**11.13.6.4.6 Dispute Involving an Alleged Error or Breach or Default of the CAISO's Obligations Under Section 41.6.**

If the dispute relates to an alleged error or breach or default of the CAISO's obligations under Section 41.6, the applicable provisions of the RMR Contract and Section 41.6.1 shall apply.

**11.13.6.4.7 Payment Pending Dispute.**

Subject to Section 41.6, if there is any dispute relating to an item originating in an RMR Invoice that is not resolved prior to the Payment Date, the Responsible Utility shall be obligated to pay any amounts shown in the relevant CAISO Invoice on the Payment Date irrespective of whether any such dispute has been resolved or is still pending. The Responsible Utility may notify the CAISO that the payment is made under protest, in which case the CAISO shall notify the RMR Owner that payment is made under protest. In accordance with Section 9.6 of the RMR Contract, if such dispute is subsequently resolved in favor of the Responsible Utility that made the payment under protest, then any amount agreed or determined to

be owed by the RMR Owner to the CAISO shall be repaid by the RMR Owner to the CAISO, with interest at the interest rate specified in the RMR Contract from the date of payment by the CAISO to the RMR Owner of the disputed amount to the date of repayment by the RMR Owner, as specified in Section 11.13.6.4.4. If an RMR Owner does not agree to make the change pursuant to Section 11.13.6.4.4, then such repayment shall be made by CAISO's deduction of such amount from the next CAISO Invoices until extinguished, or if the RMR Contract has terminated, by paying a RMR Refund in such amount to the Responsible Utility Facility Trust Account, subject to the limitation of Section 41.6.2.

**11.13.7 Payment Procedures.**

**11.13.7.1 Payment Date.**

The Payment Date for RMR Payments to and RMR Refunds from RMR Owners shall be the due date specified in the RMR Contract and in the RMR Payments Calendar and the same shall be the Payment Date for the CAISO and Responsible Utilities in relation to RMR Charges, provided that the RMR Owner has furnished the Responsible Utility and the CAISO with the Revised Estimated RMR Invoice or the Revised Adjusted RMR Invoice no less than nine (9) calendar days before the due date. The Payment Date shall be stated on the CAISO Invoice.

**11.13.7.2 Payment Method.**

All payments and refunds by the CAISO to RMR Owners and Responsible Utilities shall be made via Fed-Wire. However, if the RMR Owner is also the Responsible Utility, at the discretion of the RMR Owner, payments and refunds may be made by memorandum account instead of wire transfer.

**11.13.7.3 Payment by RMR Owners and Responsible Utilities.**

Each RMR Owner shall remit to the Responsible Utility Facility Trust Account the amount shown on the relevant CAISO Invoice as payable by that RMR Owner not later than 10:00 am on the Payment Date. Subject to Section 41.6, each Responsible Utility shall remit to the RMR Owner Facility Trust Account the amount shown on the relevant CAISO Invoice not later than 10:00 am on the Payment Date.

**11.13.7.4 Payment by the CAISO.**

The CAISO shall verify the amounts available for distribution to Responsible Utilities and/or RMR Owners on the Payment Date and shall give instructions to the CAISO Bank to remit from the relevant Facility Trust Account to the relevant settlement account maintained by each Responsible Utility or RMR Owner the amounts determined by the CAISO to be available for payment to each Responsible Utility or RMR Owner.

**11.13.7.5 Payment Default by RMR Owner or Responsible Utility.**

If by 10.00 am on a Payment Date the CAISO, in its reasonable opinion, believes the RMR Default Amount will not be or has not been remitted, the CAISO shall immediately notify the RMR Owner and the Responsible Utility. Where the RMR Default Amount was due from the Responsible Utility, the CAISO and RMR Owner shall proceed as set forth in Section 41.6 and the applicable provision of the RMR Contract. Where the RMR Default Amount was due from the RMR Owner, the CAISO and the Responsible Utility shall proceed as set forth in the applicable provision of the RMR Contract.

**11.13.7.5.1 Default Relating to Market Payments.**

For the avoidance of doubt, non payment to RMR Owners, or their respective Scheduling Coordinators, of charges for Energy or Ancillary Services which are payable by the CAISO to Scheduling Coordinators representing such RMR Owners shall be dealt with pursuant to Sections 11.3 to 11.30 (inclusive).

**11.13.7.6 Set-off.**

**11.13.7.6.1 Set-off in the Case of a Defaulting Responsible Utility.**

The CAISO is authorized to apply any amount to which any defaulting Responsible Utility is or will be entitled from the Responsible Utility Facility Trust Account in or towards the satisfaction of any amount owed by that Responsible Utility to the RMR Owner Facility Trust Account arising under the settlement and billing process set out in this Section 11.13.

For the avoidance of doubt, neither the CAISO nor any Responsible Utility will be authorized to set off any amounts owed by that Responsible Utility in respect of one Facility Trust Account against amounts owed to that Responsible Utility in respect of another Facility Trust Account or any amounts owed by that

Responsible Utility under this Section 11.13 against amounts owed to that Responsible Utility except as provided by Section 41.6.

**11.13.7.6.2 Set-off in the Case of a Defaulting RMR Owner.**

The CAISO is authorized to apply any amount to which any defaulting RMR Owner is or will be entitled from the RMR Owner Facility Trust Account in or towards the satisfaction of any amount owed by that RMR Owner to the Responsible Utility Facility Trust Account in accordance with Article 9 of the RMR Contract and Sections 41.6 and 11.10.2.

For the avoidance of doubt, neither the CAISO nor any RMR Owner will be authorized to set off any amounts owed by that RMR Owner in respect of one Facility Trust Account against amounts owed to that RMR Owner in respect of another Facility Trust Account or any amounts owed by that RMR Owner under this Section 11.13 against amounts owed to that RMR Owner under the RMR Contract.

**11.13.7.7 Default Interest.**

Responsible Utilities shall pay interest on RMR Default Amounts to the CAISO at the interest rate specified in the RMR Contract for the period from the relevant Payment Date to the date on which the payment is received by the CAISO.

RMR Owners shall pay interest to the CAISO on RMR Default Amounts at the interest rate specified in the RMR Contract for the period from the date on which payment was due to the date on which the payment is received by the CAISO.

The CAISO shall pay interest to RMR Owners at the interest rate specified in the RMR Contract for the period from the date on which payment is due under the RMR Contract to the date on which the payment is received by the RMR Owner.

The CAISO shall pay interest to Responsible Utilities at the interest rate specified in the relevant RMR Contract for the period from the date following the date it received an RMR Refund from the relevant RMR Owner to the date in which the payment is received by the relevant Responsible Utility.

Where payment of an RMR Default Amount is made by exercise of a right of set-off or deduction, payments shall be deemed received when payment of the sum which takes that set-off or deduction into account is made.

**11.13.8 Overpayments.**

The provisions of Sections 11.29.19.3 and 11.29.19.4 shall apply to RMR Owners and Responsible Utilities which have been overpaid by the CAISO and references to CAISO Creditors in these sections and in the relevant Sections of the CAISO Tariff shall be read, for the purposes of this Section 11.13, to mean RMR Owners and Responsible Utilities as applicable. Disputed amounts shall not be considered to be overpayments until and unless the dispute is resolved.

**11.13.9 Communications.**

**11.13.9.1 Method of Communication.**

CAISO Invoices will be issued by the CAISO via the CAISO's secure communication system. RMR Invoices and Prior Period Change Worksheets will be issued by the RMR Owner in an electronic form mutually agreed by the parties and maintained on the CAISO Website. The CAISO shall also post Prior Period Change examples and Prior Period Change guidelines as specified in Article 9.1 of the RMR Contract.

**11.13.9.2 Emergency Procedures.**

**11.13.9.2.1 Emergency Affecting the CAISO.**

In the event of an emergency or a failure of any of the CAISO software or business systems, the CAISO may deem any Estimated RMR Invoice or any Adjusted RMR Invoice to be correct without thorough verification and may implement any temporary variation of the timing requirements relating to the settlement and billing process contained in this Section 11.13.

**11.13.9.2.2 Emergency Affecting the RMR Owner.**

In the event of an emergency or a failure of any of the RMR Owner's systems, the RMR Owner may use Estimated RMR Invoices as provided in the applicable section of the RMR Contract or may implement any temporary variation of the timing requirements relating to the settlement and billing process contained in this Section 11.13 and its RMR Contract. Details of the variation will be published on the CAISO Website. Communications of an emergency nature on a due date or a Payment Date relating to payments shall be made by the fastest practical means including by telephone.

**11.13.10 Confidentiality.**

The provisions of Sections 11.29.10.1 and 20.5 shall apply to this Section 11.13 between and among the RMR Owners, the CAISO and Responsible Utilities. Except as may otherwise be required by applicable law, all confidential information and data provided by RMR Owner or the CAISO to the Responsible Utility pursuant to the RMR Contract, Section 41.6 or this Section 11.13 shall be treated as confidential and proprietary to the providing party to the extent required by Section 12.5 and Schedule N of the RMR Contract and will be used by the receiving party only as permitted by such Section 12.5 and Schedule N.

**11.14 Neutrality Adjustments.**

The CAISO shall be authorized to levy additional charges or make additional payments as special adjustments in regard to:

**41. Procurement of RMR.**

**41.1 Procurement of Reliability Must-Run Generation by the CAISO.**

A Reliability Must-Run Contract is a contract entered into by the CAISO with a Generator which operates a Generating Unit giving the CAISO the right to call on the Generator to generate Energy and, only as provided in this Section 41.1, or as needed for Black Start or Voltage Support required to meet local reliability needs, or to procure Ancillary Services from Potrero power plant to meet operating criteria associated with the San Francisco local reliability area, to provide Ancillary Services from the Generating Units as and when this is required to ensure that the reliability of the CAISO Controlled Grid is maintained.

**41.2** The CAISO will, subject to any existing power purchase contracts of a Generating Unit, have the right at any time based upon CAISO Controlled Grid technical analyses and studies to designate a Generating Unit as a Reliability Must-Run Unit. A Generating Unit so designated shall then be obligated to provide the CAISO with its proposed rates for Reliability Must-Run Generation for negotiation with the CAISO. Such rates shall be authorized by FERC or the Local Regulatory Authority, whichever authority is applicable.

**41.3** In addition to the Local Capacity Technical Study under 40.3.1, the CAISO may perform additional technical studies, as necessary, to ensure compliance with Reliability Criteria. The CAISO will then determine which Generating Units it requires to continue to be Reliability Must-Run Units, which Generating Units it no longer requires to be Reliability Must-Run Units and which Generating Units it requires to become the subject of a Reliability Must-Run Contract which had not previously been so contracted to the CAISO. None of the Generating Units owned by Local Publicly Owned Electric Utilities are planned to be designated as Reliability Must-Run Units by the CAISO as of the CAISO Operations Date but are expected to be operated in such a way as to maintain the safe and reliable operation of the interconnected transmission system comprising the CAISO Control Area. However, in the future, Local Publicly Owned Electric Utilities may contract with the CAISO to provide Reliability Must-Run Generation.



such remaining Ancillary Services requirement. If the CAISO determines that a bid insufficiency condition exists as described in this Section 41.5.3, the CAISO may nonetheless accept available Bids if it determines in its sole discretion that the prices specified in the Bids and the Energy Bid Curves created by the Bids indicate that the Scheduling Coordinators were not attempting to exercise market power.

#### **41.6 Reliability Must-Run Charge.**

The CAISO shall prepare and send to each Responsible Utility in accordance with Section 11.13, a CAISO Invoice as provided in the RMR Contract in respect of those costs incurred under each Reliability Must-Run Contract that are payable to the CAISO by such Responsible Utility or payable by the CAISO to such Responsible Utility pursuant to Section 41.7. The CAISO Invoices as provided in the RMR Contract shall reflect all reductions or credits required or allowed under or arising from the Reliability Must-Run Contract or under this Section 41.6. The CAISO Invoice as provided in the RMR Contract shall separately show the amounts due for services from each RMR Owner. Each Responsible Utility shall pay the amount due under each CAISO Invoice as provided in the RMR Contract by the due date specified in the CAISO Invoice as provided in the RMR Contract, in default of which interest shall become payable at the interest rate provided in the Reliability Must-Run Contract from the due date until the date on which the amount is paid in full. For each Reliability Must-Run Contract, the CAISO shall establish two, segregated commercial bank accounts under the Facility Trust Account referred to in Section 11.13.2.1 and Article 9 of the Reliability Must-Run Contract. One commercial bank account, the RMR Owner Facility Trust Account, shall be held in trust by the CAISO for the RMR Owner. The other commercial bank account, the Responsible Utility Facility Trust Account, shall be held in trust by the CAISO for the Responsible Utility. Payments received by the CAISO from the Responsible Utility in connection with the Reliability Must-Run Contract, including payments following termination of the Reliability Must-Run Contract, will be deposited into the RMR Owner Facility Trust Account and payments from the CAISO to the RMR Owner will be withdrawn from such account, in accordance with this Section 41.6, Article 9 of the Reliability Must-Run Contract and Section 11.13. Any payments received by the CAISO from the RMR Owner in connection with the Reliability Must-Run Contract will be deposited into the Responsible Utility Facility Trust Account. Any payments due to the Responsible Utility of funds received from the RMR Owner in connection with the Reliability Must-Run Contract will be withdrawn from the Responsible

Reliability Must-run Contract. Neither the RMR Owner Facility Trust Account nor the Responsible Utility Facility Trust Account shall have other funds commingled in it at any time. The CAISO shall not modify this Section or Section 11.13 as it applies to procedures for the billing, invoicing and payment of charges under Reliability Must-Run Contracts without the Responsible Utility's consent, provided, however, that no such consent shall be required with respect to any change in the method by which costs incurred by the CAISO under RMR Contracts are allocated to or among Responsible Utilities.

**41.6.1** Except where the Responsible Utility is also the RMR Owner, the Responsible Utility's payment of the CAISO Invoice as provided in the RMR Contract shall be made without offset, recoupment or deduction of any kind whatsoever. Notwithstanding the foregoing, if the CAISO fails to deduct an amount required to be deducted under Section 41.6.2, the Responsible Utility may deduct such amount from payment otherwise due under such CAISO Invoice as provided in the RMR Contract.

**41.6.2** If the Responsible Utility disputes a CAISO Invoice as provided in the RMR Contract, Revised Estimated RMR Invoice, or Revised Adjusted RMR Invoice, or Final Invoice, it shall pay the CAISO Invoice as provided in the RMR Contract but may pay under protest and reserve its right to seek a refund, with interest, from the CAISO. If resolution of the dispute results in an amount paid by the Responsible Utility under protest being due from the CAISO to the Responsible Utility and from the RMR Owner to the CAISO, and such amount was paid to the RMR Owner by the CAISO, then such amount, with interest at the interest rate specified in the applicable Reliability Must-Run Contract from the date of payment until the date on which the amount is repaid in full, shall be refunded by the RMR Owner to the CAISO and from the CAISO to the Responsible Utility, pursuant to Article 9 of the Reliability Must-Run Contract and Section 11.13, by the RMR Owner's inclusion of such refund amount in the appropriate invoice. If the RMR Owner does not include such refund amount (including interest) in the appropriate invoice, then such refund amount shall be deducted by the CAISO from the next succeeding amounts otherwise due from the Responsible Utility to the CAISO and from the next succeeding amounts otherwise due from the CAISO to the RMR Owner with respect to the applicable Reliability Must-Run Contract or, if such RMR Contract has terminated, such amount shall be refunded by the CAISO to the Responsible Utility; provided, however, that if and to the extent that such resolution is based on an error

or breach or default of the RMR Owner's obligations to the CAISO under the Reliability Must-Run

Contract, then such refund obligation shall extend only to amounts actually collected by the CAISO from the RMR Owner as a result of such resolution. If resolution of the dispute requires the CAISO, but not the RMR Owner, to pay the Responsible Utility, then such award shall be recovered from any applicable insurance proceeds, provided that to the extent sufficient funds are not recoverable through insurance, the amount of the award (whether determined through settlement, or ADR or otherwise) shall be collected by the CAISO pursuant to Section 13.5, and in any event, the award shall be paid by the CAISO to the Responsible Utility pursuant to Section 13.5.

**41.6.3** If the Responsible Utility disputes a CAISO Invoice as provided in the RMR Contract, a Revised Estimated Invoice, a Revised Adjusted RMR Invoice, or a Final Invoice, or part thereof, based in whole or in part on an alleged error by the RMR Owner or breach or default of the RMR Owner's obligations to the CAISO under the Reliability Must-Run Contract, the Responsible Utility shall notify the CAISO of such dispute within twelve (12) months of its receipt of the applicable Revised Adjusted RMR Invoice or Final Invoice from the CAISO, except that the Responsible Utility may also dispute a Revised Estimated RMR Invoice, Revised Adjusted RMR Invoice, or Final Invoice for the reasons set forth above in this Section 41.6.3, within sixty (60) days from the issuance of a final report with respect to an audit of the RMR Owner's books and accounts allowed by a Reliability Must-Run Contract.

**41.6.4** If the Responsible Utility disputes a CAISO Invoice as provided in the RMR Contract, a Revised Estimated RMR Invoice, a Revised Adjusted RMR Invoice, or a Final Invoice, based in whole or in part on an alleged error by the CAISO or breach or default of the CAISO's obligations to the Responsible Utility, the Responsible Utility shall notify the CAISO of such dispute prior to the later to occur of: (i) the date twelve (12) months following the date on which the CAISO submitted such invoice to the Responsible Utility for payment or (ii) the date sixty (60) days following the date on which a final report is issued in connection with an operational audit, pursuant to Section 22.1.2.2, of the CAISO's performance of its obligations to Responsible Utilities under this Section 41.6.4 conducted by an independent third party selected by the CAISO Governing Board and covering the period to which such alleged dispute relates. The CAISO or any Responsible Utility shall have the right to request, but not to require, that the CAISO Governing Board arrange for such an operational audit at any time.

**41.6.5** Notwithstanding Section 13, any Responsible Utility dispute relating to a CAISO Invoice

as provided in the RMR Contract, a Revised Estimated Invoice, a Revised Adjusted Invoice, a Final Invoice, or a RMR Charge, RMR Payment or RMR Refund shall be resolved through the dispute resolution process specified in the relevant RMR Contract. If the Responsible Utility fails to notify the CAISO of any dispute as provided above, it shall be deemed to have validated the invoice and waived its right to dispute such invoice.

**41.6.6** The RMR Owner shall, to the extent set forth herein, be a third party beneficiary of, and have all rights that the CAISO has under the CAISO Tariff, at law, in equity or otherwise, to enforce the Responsible Utility's obligation to pay all sums invoiced to it in the CAISO Invoices as provided in the RMR Contract but not paid by the Responsible Utility, to the extent that, as a result of the Responsible Utility's failure to pay, the CAISO does not pay the RMR Owner on a timely basis amounts due under the Reliability Must-Run Contract. The RMR Owner's rights as a third party beneficiary shall be no greater than the CAISO's rights and shall be subject to the dispute resolution process specified in the relevant RMR Contract. Either the CAISO or the RMR Owner (but not both) will be entitled to enforce any claim arising from an unpaid CAISO Invoice as provided in the RMR Contract, and only one party will be a "disputing party" under the dispute resolution process specified in the relevant RMR Contract with respect to such claim so that the Responsible Utility will not be subject to duplicative claims or recoveries. The RMR Owner shall have the right to control the disposition of claims against the Responsible Utility for non-payments that result in payment defaults by the CAISO under a Reliability Must-Run Contract. To that end, in the event of non-payment by the Responsible Utility of amounts due under the CAISO Invoice as provided in the RMR Contract, the CAISO will not take any action to enforce its rights against the Responsible Utility unless the CAISO is requested to do so by the RMR Owner. The CAISO shall cooperate with the RMR Owner in a timely manner as necessary or appropriate to most fully effectuate the RMR Owner's rights related to such enforcement, including using its best efforts to enforce the Responsible Utility's payment obligations if, as, to the extent, and within the time frame, requested by the RMR Owner. The CAISO shall intervene and participate where procedurally necessary to the assertion of a claim by the RMR Owner.

**41.7 Responsibility for Reliability Must-Run Charge.**



<b>Services Net Energy Charge</b>	conjunction with the Energy Transmission Services Uninstructed Deviations Charge, for the recovery of the CAISO's costs of providing reliability on a scalable basis, i.e., a function of the intensity of the use of the transmission system within the Control Area and the occurrence of system outages and disruptions. The formula for determining the Energy Transmission Services Net Energy Charge is set forth in Appendix F, Schedule 1, Part A of this Tariff.
<b>Energy Transmission Services Uninstructed Deviations Charge</b>	The component of the Grid Management Charge that provides, in conjunction with the Energy Transmission Services Net Energy Charge, for the recovery of the CAISO's costs of providing reliability on a scalable basis, in particular for the costs associated with balancing transmission flows that result from uninstructed deviations. The formula for determining the Energy Transmission Services Uninstructed Deviations Charge is set forth in Appendix F, Schedule 1, Part A of this Tariff.
<b>Engineering &amp; Procurement (E&amp;P) Agreement</b>	An agreement that authorizes the Participating TO to begin engineering and procurement of long lead-time items necessary for the establishment of the interconnection in order to advance the implementation of the Interconnection Request.
<b>Entitlements</b>	The right of a Participating TO obtained through contract or other means to use another entity's transmission facilities for the transmission of Energy.
<b>Environmental Dispatch</b>	Dispatch designed to meet the requirements of air quality and other environmental legislation and environmental agencies having authority or jurisdiction over the CAISO.
<b>Estimated RMR Invoice</b>	The monthly invoice issued by the RMR Owner to the CAISO for estimated RMR Payments or RMR Refunds pursuant to the RMR Contract.
<b>E-Tag</b>	An electronic tag associated with an Interchange schedule in accordance with the requirements of WECC.
<b>ETC</b>	Existing Transmission Contracts
<b>ETC Self-Schedule</b>	Self-Schedules submitted by Scheduling Coordinators pursuant to Existing Rights as reflected in the TRTC Instructions.
<b>Exceptional Dispatch</b>	A Dispatch Instruction issued to avoid a Market Interruption for the purposes specified in Section 34.9. Energy from Exceptional Dispatches shall not set any Dispatch Interval LMP.

<b>Extremely Long-Start Resource (ELS Resource)</b>	A Generating Unit that has a Start-Up Time greater than 18 hours or a System Resource that is either: 1) a non-Resource-Specific System Resource with contractual limitations that require the Energy be transacted (i.e., committed) prior to the publishing time of the Day-Ahead Market results (1300 hours on the day before the Trading Day) or 2) a Resource-Specific System Resource that has a Start-Up Time greater than 18 hours.
<b>Facility Study</b>	An engineering study conducted by a Participating TO to determine required modifications to the Participating TO's transmission system, including the cost and scheduled completion date for such modifications that will be required to provide needed services.
<b>Facility Study Agreement</b>	An agreement between a Participating TO and either a Market Participant, Project Sponsor, or identified principal beneficiaries pursuant to which the Market Participants, Project Sponsor, and identified principal beneficiaries agree to reimburse the Participating TO for the cost of a Facility Study.
<b>Facility Trust Account</b>	For each RMR Contract, the account established and operated by the CAISO to and from which all payments under Section 11.13 shall be made. Each Facility Trust Account will have two segregated commercial bank accounts, an RMR Owner Facility Trust Account and a Responsible Utility Facility Trust Account.

<b>Low Voltage Access Charge (LVAC)</b>	The Access Charge applicable under Section 26.1 to recover the Low Voltage Transmission Revenue Requirement of a Participating TO.
<b>Low Voltage Transmission Facility</b>	A transmission facility owned by a Participating TO or to which a Participating TO has an Entitlement that is represented by a Converted Right, which is not a High Voltage Transmission Facility, that is under the CAISO Operational Control.
<b>Low Voltage Transmission Revenue Requirement (LVTRR)</b>	The portion of a Participating TO's TRR associated with and allocable to the Participating TO's Low Voltage Transmission Facilities and Converted Rights associated with Low Voltage Transmission Facilities that are under the CAISO Operational Control.
<b>Low Voltage Wheeling Access Charge</b>	The Wheeling Access Charge associated with the recovery of a Participating TO's Low Voltage Transmission Revenue Requirement in accordance with Section 26.1.
<b>LRA</b>	Local Regulatory Authority
<b>LSE</b>	Load-Serving Entity
<b>LVAC</b>	Low Voltage Access Charge
<b>LVTRR</b>	Low Voltage Transmission Revenue Requirement
<b>Maintenance Outage</b>	A period of time during which an Operator (i) takes its transmission facilities out of service for the purposes of carrying out routine planned maintenance, or for the purposes of new construction work or for work on de-energized and live transmission facilities (e.g., relay maintenance or insulator washing) and associated equipment; or (ii) limits the capability of or takes its Generating Unit or System Unit out of service for the purposes of carrying out routine planned maintenance, or for the purposes of new construction work.
<b>Manual RMR Dispatch</b>	An RMR Dispatch Notice issued by the CAISO other than as a result of the MPM-RRD process.
<b>Marginal Cost of Congestion (MCC)</b>	The component of LMP at a PNode that accounts for the cost of congestion, as measured between that Node and a Reference Bus.



	Controlled Grid, control Generation, and perform operational power flow studies.
<b>Power System Stabilizers (PSS)</b>	An electronic control system applied on a Generating Unit that helps to damp out dynamic oscillations on a power system. The Power System Stabilizers senses Generator variables, such as voltage, current and shaft speed, processes this information and sends control signals to the Generator voltage regulator.
<b>Power Transfer Distribution Factor (PTDF)</b>	The percentage of a power transfer that flows on a transmission facility as a result of the injection of power at a specific bus and the withdrawal of power at another bus or a Reference Bus.
<b>Preliminary Settlement Statement</b>	The initial statement issued by the CAISO of the calculation of the Settlements and allocation of the charges in respect of all Settlement Periods covered by the period to which it relates.
<b>Pre-RA Import Commitment</b>	Any power purchase agreement, ownership interest, or other commercial arrangement entered into on or before March 10, 2006, by a Load Serving Entity serving Load in the CAISO Control Area for the procurement of Energy or capacity from a resource or resources located outside the CAISO Control Area. The Pre-RA Import Commitment shall be deemed to terminate upon the expiration of the initial term of the Pre-RA Import Commitment, notwithstanding any "evergreen" or other renewal provision exercisable at the option of the Load Serving Entity.
<b>Pre-RA Import Commitment Capability</b>	The quantity in MW assigned to a particular Intertie into the CAISO Control Area based on a Pre-RA Import Commitment.
<b>Price Taker</b>	A quantity only Energy Bid with no associated price.
<b>Pricing Node (PNode)</b>	A single network Node or subset of network Nodes where a physical injection or withdrawal is modeled and for which a Locational Marginal Price is calculated and used for financial settlements.
<b>Primary CAISO Control Center</b>	The CAISO Control Center located in Folsom, California.
<b>Prior Period Change</b>	Any correction, surcharge, credit, refund or other adjustment pertaining to a billing month pursuant to an RMR Contract which is discovered after the Revised Adjusted RMR Invoice for such billing month has been issued.
<b>Prior Period Change Worksheet</b>	A worksheet prepared by the RMR Owner and submitted to the CAISO following discovery of a necessary change to an RMR Invoice after the Revised Adjusted RMR Invoice for the billing month has been issued.

<b>Resource-Specific Tier 1 UIE Settlement Interval Price</b>	The price used to settle Tier 1 UIE as calculated pursuant to Section 11.5.2.1.
<b>Responsible Participating Transmission Owner (or Responsible Participating TO or Responsible PTO)</b>	The party providing transmission service under an Existing Contract listed in Appendix A of a Responsible Participating Transmission Owner Agreement and that is the Scheduling Coordinator for each Existing Right holder listed in Appendix A of that RPTOA, unless that Scheduling Coordinator responsibility is transferred pursuant to the provisions of the RPTOA.
<b>Responsible Participating Transmission Owner Agreement (RPTOA)</b>	An agreement between the CAISO and a Responsible Participating Transmission Owner, a <i>pro forma</i> version of which has been accepted by FERC as a CAISO rate schedule in 88 FERC ¶ 61,077.
<b>Responsible Utility</b>	The utility which is a party to the Transmission Control Agreement in whose Participating TO Service Territory the Reliability Must-Run Unit is located or whose Participating TO Service Territory is contiguous to the Participating TO Service Territory in which a Reliability Must-Run Unit owned by an entity outside of the CAISO
<b>Responsible Utility Facility Trust Account</b>	A segregated commercial bank account under the Facility Trust Account containing funds held in trust for the Responsible Utility under an RMR Contract.

	Controlled Grid is located.
<b>Revenue Meter Data Acquisition and Processing System (RMDAPS)</b>	A collective name for the set of CAISO systems used to collect, validate, edit and report on Revenue Quality Meter Data.
<b>Revenue Quality Meter Data</b>	Meter data meeting the standards and requirements established and maintained by the CAISO.
<b>Revenue Requirement</b>	The revenue level required by a utility to cover expenses made on an investment, while earning a specified rate of return on the investment.
<b>Revised Adjusted RMR Invoice</b>	The monthly invoice issued by the Reliability Must-Run Owner to the CAISO pursuant to the Reliability Must-Run Contract reflecting any appropriate revisions to the Adjusted Reliability Must-Run Invoice based on the CAISO's validation and actual data for the billing month.
<b>Revised Estimated RMR Invoice</b>	The monthly invoice issued by the Reliability Must-Run Owner to the CAISO pursuant to the Reliability Must-Run Contract reflecting appropriate revisions to the Estimated Reliability Must-Run Invoice based on the CAISO's validation of the Estimated Reliability Must-Run Invoice.
<b>RMDAPS</b>	Revenue Meter Data Acquisition and Processing System
<b>RMR</b>	Reliability Must-Run
<b>RMR Default Amount</b>	Any amount due to be remitted to the relevant Facility Trust Account by the RMR Owner or the Responsible Utility in accordance with an RMR Contract.
<b>RMR Dispatch</b>	The quantity of Energy or Ancillary Services that is mandated by the CAISO to be delivered in a given market for a resource by an RMR Unit under an RMR Contract.
<b>RMR Dispatch Notice</b>	Notice received by an RMR Unit from the CAISO containing an RMR Dispatch.
<b>RMR Invoice</b>	Any Estimated RMR Invoice, Revised Estimated RMR Invoice, Adjusted RMR Invoice, or Revised Adjusted RMR Invoice under an RMR Contract.

<b>RMR Owner</b>	The provider of services under a Reliability Must-Run Contract.
<b>RMR Owner Facility Trust Account</b>	The commercial bank account held in trust by the CAISO for the benefit of the owner of an RMR Unit subject to an RMR Contract as required and specified in Section 9.2 of the pro forma RMR Contract.
<b>RMR Payment</b>	Any amounts which the CAISO is obligated to pay to RMR Owners under the RMR Contracts, net of any applicable credits under the RMR Contracts.
<b>RMR Payments Calendar</b>	The payment calendar issued by the CAISO pursuant to Section 11.13.
<b>RMR Proxy Bid</b>	For RMR Condition 1 Units, an amount calculated based on the hourly variable costs as defined in Schedule C of the applicable RMR Contract in the form of a monotonically increasing function consistent with the bidding rules in Section 30, which is used in the MPM-RRD process described in Section 31.2. For RMR Condition 2 Units, the Energy Bid defined in Schedule M of the RMR Contract, which is used in the MPM-RRD process described in Section 31.2.

<b>RMR Refund</b>	Any amounts which RMR Owners are obligated to pay to the CAISO and the CAISO is obligated to pay to the Responsible Utilities under the RMR Contracts, or resulting from any order by the FERC, for deposit into the Responsible Utility Facility Trust Account.
<b>RMR Security</b>	The form of security provided by a Responsible Utility to cover its liability under Section 11.13.
<b>RPTOA</b>	Responsible Participating Transmission Owner Agreement
<b>RRD</b>	Reliability Requirement Determination
<b>RTCD</b>	Real-Time Contingency Dispatch
<b>RTD</b>	Real-Time Dispatch
<b>RTED</b>	Real-Time Economic Dispatch
<b>RTM</b>	Real-Time Market
<b>RTM AS Bid Cost</b>	The Bid Cost of a BCR Eligible Resource for Ancillary Service capacity in the RTM.
<b>RTM Bid Cost</b>	The total of a resource's RTM Start-Up Cost, RTM Minimum Load Cost, RTM Pump Shut-Down Cost, RTM Pumping Cost, RTM Energy Bid Cost, and RTM AS Bid Cost.
<b>RTM Bid Cost Shortfall</b>	For each Settlement Interval, for any BCR Eligible Resource, the negative amount resulting from the difference between its RTM Bid Cost and its RTM Market Revenue.
<b>RTM Bid Cost Surplus</b>	For each Settlement Interval, for any BCR Eligible Resource, the positive amount, if any, resulting from the difference between its RTM Bid Cost and its RTM Market Revenue.
<b>RTM Bid Cost Uplift</b>	The system-wide net of the RTM Bid Cost Shortfalls and RTM Bid Cost Surpluses for a Settlement Interval of all BCR Eligible Resources with Unrecovered Bid Cost Uplift Payments. This amount will be netted according to Section 11.8.6.2 to calculate the Net RTM Bid Cost Uplift before allocation to Scheduling Coordinators.

**CAISO TARIFF APPENDIX G**

**Pro Forma Reliability Must-Run Contract**

**PRO FORMA  
MUST-RUN SERVICE AGREEMENT**

dated \_\_\_\_\_, 20\_\_

between

**[OWNER NAME]**

and

**CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION**

CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION  
 FERC ELECTRIC TARIFF  
 AMENDED AND RESTATED SECOND REPLACEMENT VOLUME NO. I  
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### MUST-RUN SERVICE AGREEMENT

THIS MUST-RUN SERVICE AGREEMENT is made as of the \_\_\_ day of \_\_\_\_\_, 19\_\_\_, between \_\_\_\_\_, a [corporation/limited liability company/municipal corporation] organized under the laws of the State of \_\_\_\_\_ (the "Owner"), and the CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION, a nonprofit public benefit corporation incorporated under the laws of the State of California (the "CAISO").

#### RECITALS

- A. Owner is the owner or lessee of, or is otherwise entitled to dispatch and market the Energy and Ancillary Services produced from and provided by, the electrical generating Units located at the Facility described in Schedule A to this Agreement;
- B. Under Section 345 of the California Public Utilities Code, CAISO is responsible for the efficient use and reliable operation of the CAISO Controlled Grid;
- C. CAISO has determined that it needs the ability to dispatch Units under the terms and conditions of this Agreement to have Owner deliver Energy into or provide Ancillary Services to the CAISO Controlled Grid when required by CAISO to ensure the reliability of the CAISO Controlled Grid; and
- D. Each Unit covered by this Agreement has been designated as a Reliability Must-Run Unit. In consideration of the covenants and agreements contained in this Agreement, the Parties agree as follows:

#### ARTICLE 1 DEFINITIONS

Terms, when used with initial capitalization in this Agreement and the attached schedules shall have the meanings set out below. The singular shall include the plural and vice versa. "Includes" or "including" shall mean "including without limitation." References to a section, article or schedule shall mean a section, article or schedule of this Agreement, unless another agreement or instrument is specified. Unless the context otherwise requires, references to any law shall be deemed references to such law as amended, replaced or restated from time to time. 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 identity. References to "Owner" or "CAISO" shall, unless the context otherwise requires, mean Owner and CAISO respectively and their permitted assigns and successors. References to sections or provisions of the CAISO Tariff include any succeeding sections or provisions of the CAISO Tariff.

**"Adjusted RMR Invoice"** is defined in Section 9.1(b).

**"ADR"** means alternative dispute resolution pursuant to Section 11.1 and Schedule K.

**"Agreement"** means this Must-Run Service Agreement, including schedules, as amended from time to time.

**"Ancillary Services"** means those ancillary services identified in Schedule E.

**“Applicable UDC Tariff”** means the applicable retail tariff(s), of the utility distribution company in whose service territory the Unit is located, under which the Unit is eligible to purchase power to meet its auxiliary power requirements, whether or not the Unit actually purchases auxiliary power under the tariff(s). The Applicable UDC Tariff for the Facility is set out on Schedule A.

**“Availability”** means, in relation to a Unit, the maximum quantity of Energy or Ancillary Services, measured at the Delivery Point, the Unit is capable of producing at any given time assuming adequate time to ramp the Unit to that maximum quantity. For hydroelectric Units, Availability measures the extent to which the Unit is capable of producing Energy or providing Ancillary Services, given sufficient usable water to produce Energy or provide Ancillary Services. The Availability of a Unit is measured in MW.

**“Availability Deficiency Factor”** is calculated as set forth in Section 8.5.

**“Availability Payment”** means the payment to Owner described in Section 8.1 for Condition 1 and 8.2 for Condition 2.

**“Availability Test”** means a test of a Unit’s Availability requested by CAISO or Owner pursuant to Section 4.9(a).

**“Bid Sufficiency Test”** means the test described in Section 4.1(c).

**“Billable MWh”** is defined in Section 8.3(a).

**“Billing Month”** is defined in Section 9.1(b).

**“Black Start”** means the ability of a Unit to start without an external source of electricity or the process of doing so.

**“Business Day”** means any of Monday through Friday, excluding any day which is a Federal bank holiday.

**“CAISO Availability Notice”** means a notice given by CAISO to Owner modifying the Availability of the Unit under Section 4.9 (a)(vi) or Section 5.4 (b).

**“CAISO Controlled Grid”** means the system of transmission lines and associated facilities that from time to time are under CAISO’s operational control.

**“CAISO Invoice”** is defined in Section 9.1(b).

**“CAISO’s Repair Share”** is defined in Section 7.5 (g).

**“CAISO Settlements Calendar”** is defined in Section 9.1(b).

**“CAISO Tariff”** means the California Independent System Operator Tariff on file with FERC and in effect from time to time.

**"Calculation Hour"** is defined in Section 8.3(c)(i)(A).

**"California Agency"** means the agency or agencies responsible for representing the State of California in FERC proceedings involving the rates, terms and conditions of service under this Agreement.

**"Capital Item"** means an addition or modification to, change in or repair, replacement or renewal of plant, equipment or facilities used by Owner to fulfill Owner's obligations under this Agreement. A Capital Item does not include Repairs to such plant, equipment or facilities. A Capital Item does not include an Upgrade, unless recovery of costs of the Upgrade has been approved by CAISO. For purposes of this Agreement, Capital Items are "retirement units" or other items the costs of which are properly capitalized in accordance with the FERC Uniform System of Accounts, 18 C.F.R. Part 101.

**"Closed"** is defined in Section 2.5.

**"Collateral"** is defined in Section 9.7.

**"Comparable RMR Unit"** is defined in Section 4.7 (f).

**"Competitive Constraint Run"** is defined in Appendix A to the CAISO Tariff.

**"Condition 1"** means the terms of this Agreement applicable to a Unit providing service under Condition 1 as described in Section 3.1.

**"Condition 2"** means the terms of this Agreement applicable to a Unit providing service under Condition 2 as described in Section 3.1.

**"Confidential Information"** is defined in Section 12.5.

**"Contract Service Limits"** for a given Unit means the Maximum Annual MWh, Maximum Annual Service Hours, Maximum Annual Start-ups, and, if applicable, the Maximum Monthly MWh as stated in Section 13 of Schedule A.

**"Contract Year"** means a calendar year; provided, however, that the initial Contract Year shall commence on the Effective Date and expire at the end of the calendar year in which the Effective Date occurred. If the Agreement terminates during a calendar year, the last Contract Year shall end on the termination date.

**"Counted MWh"** is defined in Section 5.3.

**"Counted Service Hours"** is defined in Section 5.3.

**"Counted Start-ups"** is defined in Section 5.3.

**"Credit Carryforward"** is defined in Section 9.1(e) and Section 9.1(f).

**"Day Ahead Schedule"** is defined in Appendix A to the CAISO Tariff.

**"Deliver"** means to deliver Energy into the CAISO Controlled Grid or Distribution Grid (at the Delivery Point or such other point as the Parties may otherwise agree) or to provide Ancillary Services (whether or not any Energy is Delivered as part of the Ancillary Service) pursuant to a Dispatch Notice (including deliveries for which a Dispatch Notice has been issued under Section 4.5 and deliveries in substitute Market Transactions under Section 5.2) and the terms "Delivered" and "Delivering" shall be construed accordingly.

**"Delivered Ancillary Services"** means the type and, if applicable, the MW of Ancillary Services Delivered by Owner.

**"Delivered MWh"** means the MWh of Energy Delivered by Owner and shall be equal to the sum of Billable MWh, Hybrid MWh, MWh deemed Delivered under Section 5.1 (f); and MWh Delivered from Substitute Units under Section 5.1 (c) or Section 5.1 (d).

**"Delivery Point"** means the point identified in Section 4 of Schedule A where Energy and Ancillary Services are to be Delivered.

**"Direct Contract"** means a contract between Owner and one or more identified persons for the sale of Energy or Ancillary Services other than under this Agreement, and shall in no event include a transaction in a market run by CAISO.

**"Dispatch Notice"** means a notice delivered by CAISO to Owner's Scheduling Coordinator on a daily, hourly or real-time basis requesting dispatch of one or more Unit(s) to provide Energy or Ancillary Services under this Agreement. Dispatch Notices include: (a) Day-Ahead Schedules and Real-Time Dispatches where the RMR Unit or Units are flagged as RMR Dispatches as a result of the Market-Power Mitigation and Reliability Requirements Determination processes pursuant to the CAISO Tariff, (b) Manual RMR Dispatch Notices, (c) notices deemed to have been given by CAISO for the Energy actually Delivered by a Unit that starts or increases Energy output as a result of a "system emergency" as defined in the CAISO Tariff whether the start or increase occurs automatically (for Units specified in Section 2 of Schedule A as having the ability to Start-up or ramp automatically) or pursuant to a standing written order of the CAISO, and (d) Test Dispatch Notices given by CAISO under Section 4.9 other than Test Dispatch Notices issued at Owner's request to test Availability or heat input of the Unit.

**"Distribution Grid"** means the radial lines, distribution lines and other facilities used to transmit or distribute Energy from the Facility other than the CAISO Controlled Grid.

**"Due Date"** means the date which is the 30th day after the date on which a Party submits an invoice to the other Party. Notwithstanding the above, the Due Dates for the Revised Estimated RMR Invoice, the Revised Adjusted RMR Invoice, and the CAISO Invoice shall be as specified in Section 9.1(b). If the 30th day, or other Due Date as specified in Section 9.1(b), is not a Business Day, the Due Date shall be the next Business Day.

**"Effective Date"** means the date this Agreement becomes effective pursuant to Section 2.1 thereof.

**“Energy”** means electrical energy.

**“Estimated RMR Invoice”** is defined in Section 9.1(b).

**“Existing Contractual Limitation”** means a contractual limitation on the Start-up or operation of a Unit existing prior to the date the Unit was designated as a Reliability Must-Run Unit. All Existing Contractual Limitations are described in Section 14 of Schedule A.

**“Facility”** means the electrical generating facility described in Schedule A. A hydroelectric facility may include one or more electric generating facilities which are hydraulically linked by a common water system.

**“Facility Trust Account”** is defined in Section 9.2.

**“FERC”** means the Federal Energy Regulatory Commission, any successor agency, or any other agency to whom authority under the Federal Power Act affecting this Agreement has been delegated.

**“Final Invoice”** is defined in Section 9.10(a).

**“Financing Agreement”** means agreements for financing the Facility or any portion of the Facility.

**“Fixed Option Payment Factor”** is set forth in Section 2 of Schedule B.

**“Force Majeure Event”** means any occurrence beyond the reasonable control of a Party which causes the Party to be unable to perform an obligation under this Agreement in whole or in part and which could not have been avoided by the exercise of Good Industry Practice. Force Majeure Event includes an act of God, war, civil disturbance, riot, strike or other labor dispute, acts or failures to act of Governmental Authority, fire, explosion, flood, earthquake, storm, drought, lightning and other natural catastrophes. A Force Majeure Event shall not include lack of finances or the price of fossil fuel.

**“Forced Outage”** means a reduction in Availability of a Unit for which sufficient notice is not given to allow the outage to be factored into CAISO's day-ahead or hour-head scheduling process.

**“Good Industry Practice”** means any of the practices, methods, and acts engaged in or approved by a significant portion of the electric power industry during the relevant time period, or any of the practices, methods, and acts which, in the exercise of reasonable judgment in the 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 Industry Practice does not require use of the optimum practice, method, or act, but only requires use of practices, methods, or acts generally accepted in the region covered by the Western Systems Coordinating Council.

**“Governmental Authority”** means the government of any nation, any state or other political subdivision thereof, including any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to a government.

**“Hourly Metered Total Net Generation”** means the electric generation in MWh for the Unit in any Settlement Period as measured by the Unit’s electrical meter described in Schedule A, Section 5, “Metering and Related Arrangements”, minus any auxiliary loads metered on the load side of such electrical meter for that Settlement Period in accordance with the CAISO Tariff.

**“Hybrid MWh”** is defined in Section 8.3(b).

**“Hydroelectric Dependable Capacity”** is the amount of MWh forecast to be produced by a hydroelectric Facility in an adverse hydrologic year.

**“Interest Rate”** means the lesser of the rate of interest per annum calculated in accordance with 18 C.F.R. 35.19a of the FERC’s Regulations or the maximum rate permitted by law.

**“Local Capacity Area”** is defined in Appendix A to the CAISO Tariff.

**“Long-term Planned Outage”** means a planned interruption, in whole or in part, in the electrical output of a Unit to permit Owner to perform a major equipment overhaul and inspection or for new construction work but only if the outage is scheduled to last 21 consecutive days or more (which may span more than one Contract Year) and either (a) is scheduled in accordance with the CAISO’s outage coordination protocol prior to the beginning of the Contract Year or (b) was scheduled as a Long-term Planned Outage for the last quarter of the expiring Contract Year but, with approval of the CAISO Outage Coordination Office, was postponed and rescheduled into the new Contract Year.

**“Manual RMR Dispatch Notice”** is a Dispatch Notice issued other than as a result of the Market Power Mitigation and Reliability Requirements Determination process as described in the CAISO Tariff.

**“Market Power Mitigation and Reliability Requirements Determination” or “MPM-RRD”** is as defined in the CAISO Tariff.

**“Market Schedule”** is defined in Section 8.3(c)(i)(C).

**“Market Transaction”** means a delivery of Energy or provision of Ancillary Services from a Unit pursuant to a Direct Contract or bids into markets run by the, CAISO or any similar entity.

**“Maximum Annual MWh”** means, for each Unit, the maximum MWh of Energy that Owner may be obligated to Deliver from the Unit in each Contract Year without becoming entitled to charges for excess service under Schedule G. The Maximum Annual MWh for each Unit is set out in Section 12 of Schedule A. The rules for counting MWh are set out in Section 5.3.



**“Maximum Annual Service Hours”** means, for each Unit, the maximum Service Hours that Owner may be obligated to provide service from the Unit in each Contract Year without becoming entitled to charges for excess service under Schedule G. The Maximum Annual Service Hours for each Unit is set out in Section 12 of Schedule A. The rules for counting Service Hours are set out in Section 5.3.

**“Maximum Annual Start-ups”** means, for each Unit, the maximum number of times Owner may be obligated to Start-up the Unit in each Contract Year without becoming entitled to charges for Start-ups under Schedule G. The Maximum Annual Start-ups for each Unit is set out in Section 12 of Schedule A. The rules for counting Start-ups are set out in Section 5.3.

**“Maximum Monthly MWh”** means, for each hydroelectric Unit, the maximum MWh of Energy that Owner may be obligated to Deliver from the Unit without becoming entitled to charges for excess service under Schedule G. The Maximum Monthly MWh for each hydroelectric Unit is set out in Section 12 of Schedule A. The rules for counting MWh are set out in Section 5.3.

**“Maximum Net Dependable Capacity”** means the amount shown in Section 1 of Schedule A as the Maximum Net Dependable Capacity of a Unit.

**“Minimum Load”** means, for each Unit, the higher of (1) the lowest level in MW at which the Unit can maintain stable continuous operations, or (2) the Minimum Load for the Unit as shown in Section 9 of Schedule A.

**“Minimum Off Time”** means, for each Unit, the minimum time following Shutdown that the Unit must remain off line before initiation of the next Start-up. The Minimum Off Time for each Unit is shown in Section 11 of Schedule A.

**“Minimum Run Time”** means, for each Unit, the minimum time the Unit must remain Synchronized following Start-up. The Minimum Run Time for each Unit is shown in Section 10 of Schedule A.

**“Month”** means a calendar month.

**“Monthly Option Payment”** is defined in Section 8.1(a) for Condition 1 and Section 8.2(a) for Condition 2.

**“Motoring Charge”** means the payment in accordance with Schedule E for the Energy required to spin a generator or condenser that is electrically connected to the CAISO Controlled Grid or Distribution Grid to provide Ancillary Services in circumstances where the generator is not producing Energy.

**“MW”** means one megawatt.

**“MWh”** means one megawatt hour.

**“Net Repair Costs”** is defined in Section 7.5(a).

**“New Responsible Utility”** is defined in Section 9.4 (f).

**“Nonmarket Transaction”** means a Delivery of Energy or Ancillary Services other than Hybrid MWh from a Unit pursuant to a Dispatch Notice.

**“Non-Performance Penalty”** means a penalty computed pursuant to Section 8.5.

**“Other Outage”** means any reduction in the Availability of a Unit as reflected in an CAISO Availability Notice or Owner’s Availability Notice (whether characterized by the North American Electric Reliability Council (“NERC”) as a “forced outage”, “planned outage” or “maintenance outage”) other than a Long-term Planned Outage.

**“Owner’s Availability Notice”** means a notice given under Section 4.9(a)(vii) or Section 7.3(b) by Owner to CAISO notifying CAISO of the Availability of a Unit.

**“Owner’s Repair Cost Obligation”** is an allowance for Repairs to be made during the Contract Year calculated pursuant to Section 7.5 (k). Owner’s Repair Cost Obligation is set out in Section 13 of Schedule A.

**“Party”** means either CAISO or Owner, and “Parties” means CAISO and Owner.

**“Penalty Period”** is defined in Section 8.5 (a).

**“Pre-empted Dispatch Payment”** is defined in Schedule E.

**“Prepaid Start-ups”** is defined in Section 8.4.

**“Prepaid Start-up Charge”** means the payment to Owner for Prepaid Start-ups described in Section 8.1.

**“Prepaid Start-up Cost”** is defined in Schedule D.

**“Prior Period Change(s)”** is defined in Section 9.1(g).

**“Prior Period Change Examples”** is defined in Section 9.1(l).

**“Prior Period Change Guidelines”** is defined in Section 9.1(l).

**“Prior Period Change Worksheet”** is defined in Section 9.1(g).

**“Ramp Rate”** is the applicable Ramp Rate as stated in Section 8 of Schedule A.

**“Ramping Constraint”** means the limits on ramping a Unit to higher or lower output as set out in Section 7 of Schedule A.

**“Real-Time Dispatch”** is defined in Appendix A of the CAISO Tariff.

**“Recalculation Settlement Statement”** is defined in Appendix A of the CAISO Tariff.

**“Reliability Must-Run Unit”** means a “reliability must-run unit” as defined in Appendix A of the CAISO Tariff.

**“Repair”** means repairs or replacement required to remedy or prevent any loss or damage that impairs the capability of the Unit to Deliver Energy or Ancillary Services, the cost of which is properly treated as an expense in accordance with the FERC Uniform System of Accounts, 18 C.F.R. Part 101.

**“Repair Payment Factor”** is determined pursuant to Section 7.5(g).

**“Requested Ancillary Services”** means the type and, if applicable, the MW of Ancillary Services CAISO requests Owner to Deliver from a Unit pursuant to a Dispatch Notice.

**“Requested MW”** means the MW of Energy CAISO requests Owner to Deliver pursuant to a Dispatch Notice.

**“Requested MWh”** means the product of the Requested MW of Energy and the time in hours (or fraction thereof) during which the Dispatch Notice requested Delivery of the Requested MW. This includes ramping energy calculated pursuant to the CAISO Tariff.

**“Requested Operation Period”** means the time during which CAISO requests that a Unit Deliver Energy or Ancillary Services pursuant to a Dispatch Notice.

**“Response Notice”** is defined in Section 14.3(b)(ii).

**“Responsible Utility”** is an entity which, under the CAISO Tariff, is responsible for paying all or part of the costs incurred by CAISO under this Agreement.

**“Responsible Utility Facility Trust Account”** is defined in Section 9.2.

**“Revised Adjusted RMR Invoice”** is defined in Section 9.1(b).

**“Revised Estimated RMR Invoice”** is defined in Section 9.1(b).

**“RMR Dispatch”** is as defined in Appendix A of the CAISO Tariff.

**“RMR Invoices”** means the four invoices issued each Billing Month by Owner to CAISO pursuant to Section 9.1 for payment of charges under this Agreement. The four invoices are the Estimated RMR Invoice, Revised Estimated RMR Invoice, Adjusted RMR Invoice, and Revised Adjusted RMR Invoice.

**“RMR Invoice Template”** is defined in Section 9.1(d).

**“RMR Owner Facility Trust Account”** is defined in Section 9.2.

**“RMR Payments Calendar”** means the calendar issued by CAISO pursuant to Section 11.13 of the CAISO Tariff.

**“Scheduling Coordinator”** means an entity certified by CAISO for the purposes of undertaking the functions specified in Section 4.5 of the CAISO Tariff with respect to a unit.

**“Scheduling Coordinator Revenues”** is defined in Section 9.1(f).

**“Service Hours”** means the amount of time (measured in hours or fractions thereof) a Unit is Delivering Energy or Ancillary Services pursuant to a Dispatch Notice.

**“Settlement Period”** means the period beginning at the start of the hour and ending at the end of the hour.

**“Shutdown”** means the condition of a Unit when it is not Synchronized and not in Start-up.

**“Small Project Estimate”** is defined in Section 7.4 (b).

**“Start-up”** means the action of bringing a Unit from Shutdown to Minimum Load and the terms “Starts-up”, “Started-up” and “Starting-up” shall be construed accordingly.

**“Start-up Lead Time”** means, for each Unit, the amount of time required to Start-up the Unit, as shown in Section 6 of Schedule A.

**“Start-up Payment”** is defined in Schedule D.

**“Substitute Unit”** means a generating unit or combination of units, other than the Unit identified in the Dispatch Notice (whether or not located at the Facility, whether or not designated as a Reliability Must-Run Unit and whether or not owned by Owner), which, under the circumstances existing at the time, is capable of providing system reliability benefits equivalent to the system reliability benefits provided by the Unit identified in the Dispatch Notice. In the case of Units providing Ancillary Services, a Substitute Unit must (i) be certified to provide the requested type of Ancillary Service, (ii) provide the same or higher ramp rate and MW of capacity and, (iii) is located in the same Local Capacity Area as the Unit identified in the Dispatch Notice.

**“Surcharge Payment”** means the payment to Owner for Capital Items described in Section 8.1 for Condition 1 and Section 8.2 for Condition 2.

**“Surcharge Payment Factor”** means the percentage of the cost of a Capital Item that CAISO is obligated to pay.

**“Synchronized”** means the condition where a Unit is electrically connected to and capable of delivering Energy to the CAISO Controlled Grid or Distribution Grid.

**“Termination Fee”** means amounts determined pursuant to the termination fee formula contained in Section 2.5(b).

**“Termination Fee Invoice”** is defined in Section 9.9(a).

**“Test Dispatch Notice”** means a notice issued to test a Unit pursuant to Section 4.9.

**“Trading Day”** means the day on which Energy or Ancillary Services are to be Delivered.

**“Unit”** means an individual electricity generating unit which has been designated a Reliability Must-Run Unit and is part of the Facility identified in Schedule A.

**“Unit Availability Limit”** means for any hour the maximum MW which Owner is obligated to make available to CAISO from a Unit. The Unit Availability Limit shall be the lower of (a) the Maximum Net Dependable Capacity of the Unit or (b) the Availability of the Unit as stated in the currently effective Owner’s Availability Notice or CAISO Availability Notice.

**“Unplanned Capital Item Notice”** is defined in Section 7.6(b).

**“Unplanned Repair Notice”** is defined in Section 7.5(b).

**“Upgrade”** means any change or modification to the Facility that increases the nameplate capacity rating of an existing Unit or adds a new unit.

**“Variable Cost Payment”** means the payment to Owner for Billable MWh described in Schedule C.

**ARTICLE 2**  
**TERM**

**2.1 Term**

- (a) This Agreement shall become effective on the later of March 31, 2008, or the date it is permitted to become effective by FERC, and shall continue in effect for one Contract Year.
- (b) CAISO may extend the term of this Agreement for an additional calendar year as to one or more Unit by notice given not later than October 1 of the expiring Contract Year. CAISO may extend the term for less than a full calendar year as to one or more Unit but only if CAISO gives notice not less than 12 months prior to the date to which it proposes to extend the term.

**2.2 Termination**

- (a) Subject to any necessary authorization from FERC, this Agreement may be terminated as to one or more Unit in accordance with this Section 2.2; provided, however, that if this Agreement applies to a Facility having hydroelectric Unit, this Agreement may be terminated only as to all hydroelectric Units at the Facility. If this Agreement terminates as to fewer than all Units, the Agreement shall remain in effect as to the remaining Units. If this Agreement terminates as to all Units, the Agreement shall terminate.
- (b) This Agreement may be terminated as to one or more Units:
  - (i) by CAISO pursuant to Section 11.4 in the event of default by Owner;
  - (ii) by Owner pursuant to Section 11.4 in the event of default by CAISO;
  - (iii) by Owner pursuant to Section 7.4 (f), 7.5 (i) or 7.6 (h);
  - (iv) by Owner or CAISO, if the Unit is condemned by a Governmental Authority; or
  - (v) by Owner or CAISO, if Owner's authorization from a Governmental Authority (including, where applicable, licenses under Part I of the Federal Power Act) that is necessary to site, operate or obtain access to such Unit is terminated or expires or is reissued or modified so that it becomes illegal, uneconomical or otherwise impractical for the Owner to continue operating the Facility. Owner shall be obligated to use its best efforts to renew and keep effective its licenses and authorizations and to oppose conditions or modifications which would make continued operation illegal, uneconomical or otherwise impractical.
- (c) To the extent that Owner transfers the right to control the dispatch of the Facility or Unit which right is necessary to satisfy its obligations under this Agreement, Owner shall assign this Agreement to the transferee in accordance with Section 13.1.
- (d) If CAISO terminates the Agreement or does not extend the term of the Agreement as to a Unit, CAISO shall not redesignate the same Unit, or designate another non-reliability must-run unit at the same Facility, as a Reliability Must-Run Unit during the one year period following termination or expiration of the Agreement as to that Unit unless (i) CAISO demonstrates that the unit is required to maintain the reliability of the CAISO Controlled Grid or any portion thereof and the need to designate the unit as a Reliability Must-Run Unit is caused by an extended outage of a generation or transmission facility not known to CAISO at the time of the termination or expiration or (ii) the unit is selected through an CAISO competitive process in which Owner participated. For purposes of the foregoing, CAISO's need for spinning reserves, nonspinning reserves, replacement reserves or regulation as defined in the CAISO Tariff shall not be grounds for redesignating the Unit or designating another unit at the Facility as a Reliability Must-Run Unit.
- (e) Subject to any necessary authorization from FERC, this Agreement shall terminate as to any Unit leased by Owner in the event that, for any reason, the lease expires or is terminated unless Owner acquires ownership of such Unit upon such expiration or termination. Any termination under this Section 2.2 (e) shall not affect any right CAISO may have thereafter to designate such Unit as a Reliability Must-Run Unit and the conditions in Section 2.2 (d) shall not apply to such redesignation.

**2.3 Effective Date of Expiration or Termination**

If FERC authorization is required to give effect to expiration or termination of this Agreement as to one or more Units, the effective date of the expiration or termination shall be the date FERC permits the expiration or termination to become effective. Owner shall promptly file for the requisite FERC authorizations to terminate service under this Agreement as of the proposed effective date of expiration or termination; provided, that nothing in this Agreement shall prejudice the right of either Party to contest the other Party's claim that a termination or expiration has occurred. If FERC authorization is not required to terminate service under this Agreement, the effective date of expiration or termination shall be the later of (i) the date specified in CAISO or Owner's notice of termination or (ii) the date that all conditions to the termination or expiration have been satisfied.

**2.4 Effect of Expiration or Termination**

Expiration or termination of this Agreement shall not affect the accrued rights and obligations of either Party, including either Party's obligations to make all payments to the other Party pursuant to this Agreement or post-termination audit rights under Section 12.2.

**2.5 Termination Fee**

(a) CAISO shall pay Owner a Termination Fee calculated pursuant to Section 2.5 (b) if the Unit is Closed within six months after the Unit ceases to be subject to this Agreement as a result of termination pursuant to Sections 2.2 (b) (ii), (iii), (iv) or (v) or because CAISO does not extend the term under Section 2.1 (b). Within 60 days after the Unit is Closed, Owner will send CAISO a notice stating (i) the date the Unit Closed and (ii) the amount of the Termination Fee due Owner pursuant to this Section 2.5 including detailed calculations of each component of the formula in Section 2.5(b) identifying the source of each input used. For purposes of this Section, "Closed" shall mean that the Unit is not producing Energy or providing capacity and there are no Direct Contracts obligating any entity to deliver Energy or provide capacity from the Unit during the 36 month period beginning at the date the Unit Closed. A Unit shall cease to be Closed if, during the 36 month period beginning at the date the Unit Closed, any entity: (i) sells Energy or capacity; (ii) executes a Direct Contract for service or (iii) obtains a new permit from any Governmental Authority for operations, in each case that would involve use of the Capital Item for which a Termination Fee is being paid.

(b) The Termination Fee shall be determined using the following formula:

$$T = \text{NCI} + \text{CWIP} - S$$

Where:

T = Termination Fee (\$)

NCI = Undepreciated portion of the cost of Capital Items which constitute part of the Closed Unit which were approved in accordance with Section 7.4 or 7.6 and were in service at the date the Unit Closed with the cost and depreciation rates determined under Section 7.4 or 7.6, as applicable. In calculating NCI, the undepreciated cost of each Capital Item shall be multiplied by the Surcharge Payment Factor applicable to that Capital Item.

CWIP = The actual cost, at the date the Unit Closed, of Capital Items for the Closed Unit which were approved in accordance with Section 7.4 or 7.6, as applicable, but were not in service at the date the Unit Closed, plus the cost to pay or terminate any remaining obligations incurred in connection with installation of the Capital Items. In calculating CWIP, the cost of each Capital Item shall be multiplied by the Surcharge Payment Factor applicable to that Capital Item.

S = The salvage value, if any, of the Capital Items included in the calculation of either NCI or CWIP.

The cost for each Capital Item shall be determined by agreement or ADR pursuant to Section 7.4 or 7.6. Except for those items for which a ten-year depreciation life is specified in Section 7.4 of this Agreement, the depreciation rate for each Capital Item shall be determined by agreement or ADR in connection with the applicable Capital Item approval process under Section 7.4 or 7.6.

- (c) The Termination Fee shall be payable in 36 equal monthly installments calculated using the following formula:

$$M = T \left[ \frac{r}{1 - (1 + r)^{-36}} \right]$$

Where

M = the monthly payment,  
T = Termination Fee under Section 2.5(b), and  
r = an annual discount rate equal to the interest rate used by FERC for the calculation of refunds (as set forth in 18 C.F.R. § 35.19a) in effect on the date that Owner provides notice to the CAISO pursuant to Section 2.5(a) of this Agreement, divided by 12.

- (d) If the Unit ceases to be Closed at any time within 36 months following the date the Unit Closed, CAISO shall cease payment of Termination Fee installments as of the Month in which the Unit ceased to be Closed, but Owner shall not be obligated to refund installments for any Month in which the Unit was Closed. Once a Unit has ceased to be Closed, CAISO shall not be required to pay any remaining Termination Fee installments even if the Unit again Closes.
- (e) Any dispute regarding an element of the Termination Fee (e.g. salvage value) not resolved at the time the Capital Item was approved shall be subject to ADR. If the amount of the Termination Fees associated with a single termination or expiration is \$5 million or more as billed by Owner, the Responsible Utility shall have the same rights as CAISO to receive notice that the Unit(s) Closed and to initiate or participate in ADR.

### ARTICLE 3 CONDITIONS OF MUST-RUN AGREEMENT

#### 3.1 Conditions Under Which Units Will Operate

This Agreement includes two conditions of service under which Owner may provide service from its Unit(s). By way of general description and subject to the specific provisions set forth in this Agreement:

- (i) A Unit under Condition 1 may participate in Market Transactions and Owner will retain all revenues from participation in Market Transactions;
- (ii) A Unit under Condition 2 shall bid in accordance with Section 6.1 (b) to participate in Market Transactions when CAISO has issued a Dispatch Notice for the Unit and Owner will not retain revenues from participation in Market Transactions. A Unit under Condition 2 shall not participate in a Market Transaction when CAISO has not issued a Dispatch Notice for the Unit.

Owner shall begin operating each Unit under the Condition designated by Owner prior to the Effective Date and thereafter may transfer the Unit to a different Condition pursuant to Section 3.2.

**3.2 Transfer Between Conditions**

- (a) Except for a hydroelectric Unit, Owner may, from time to time, transfer a Unit from one Condition to the other Condition, provided that it may not do so without CAISO's consent unless, as of the transfer date, the Unit will have been subject to its existing Condition for at least twelve months. If a transfer is to become effective at the beginning of a Contract Year, Owner shall provide CAISO at least 30 days prior notice of the transfer. For a transfer to become effective at any other time, Owner shall give CAISO notice at least 90 days prior to the transfer. If a Unit is transferred from Condition 1 to Condition 2 during a Contract Year, Owner shall credit to CAISO on the first invoice after the transfer is effective an amount computed by multiplying (i) the positive difference, if any, of the Prepaid Start-ups minus the Counted Start-ups by (ii) the Prepaid Start-up Cost. If a Unit is transferred from Condition 2 to Condition 1, CAISO shall not be required to pay a Condition 1 Prepaid Start-up Charge for the remainder of the Contract Year in which the transfer occurred, but shall pay, for each Start-up, the Condition 1 Start-up Payment calculated pursuant to Equation D-1 in Schedule D.
- (b) A hydroelectric Unit may only operate under Condition 1.
- (c) CAISO may not transfer a Unit from one Condition to the other Condition.
- (d) Any transfer of a Unit from one Condition to the other Condition shall be effective on the first day of the Month following expiration of the applicable notice.
- (e) If a Unit is transferred from Condition 1 to Condition 2, Surcharge Payments for Capital Items shall be changed prospectively from the effective date of the transfer to reflect a Surcharge Payment Factor of 1.0. If a Unit is transferred from Condition 2 to Condition 1, Surcharge Payments for Capital Items shall be changed prospectively from the effective date of the transfer to reflect the Condition 1 Surcharge Payment Factor previously determined for the Capital Item, or if the factor was not previously determined, the Surcharge Payment Factor agreed to by CAISO and Owner. If Owner and CAISO do not agree on the Surcharge Payment Factor, the Surcharge Payment Factor shall be determined through ADR in accordance with Schedule B.

**ARTICLE 4  
DISPATCH OF UNITS**

**4.1 CAISO's Right to Dispatch**

- (a) Subject to the limitations set forth in this Agreement, CAISO shall direct dispatch of a Unit by delivering a Dispatch Notice to Owner's Scheduling Coordinator in accordance with the CAISO Tariff.
- (b) Dispatch Notices for Energy, other than Energy associated with Ancillary Services, shall be issued solely for purposes of meeting local reliability needs or managing congestion on non-competitive paths. For purposes of dispatching Energy, local reliability needs do not include Energy required to manage congestion on competitive paths. CAISO shall issue Dispatch Notices to meet local reliability needs or manage congestion on non-competitive paths, whenever market bids cannot be used to meet those needs or manage such congestion or such market bids cannot be used to meet those needs or manage such congestion without taking a bid out of merit order or requiring CAISO to decrement another supplier's schedule to accommodate the unit which provided the bid. CAISO may not issue a Dispatch Notice to fill a need for imbalance energy.



- (c) Except as needed for black start or voltage support required to meet local reliability needs, to meet operating criteria associated with the Potrero power plant, or as outlined below, CAISO may issue Dispatch Notices for Ancillary Services only if the available bids in Ancillary Service capacity markets do not provide sufficient capacity to meet CAISO's requirements.
- (i) If the CAISO determines on a Trading Day that it needs additional Ancillary Service on that Trading Day, CAISO shall use the following procedures:
- (A) CAISO shall communicate such needs to all Scheduling Coordinators as quickly as possible after such needs are identified.
- (B) After completing (A), CAISO shall attempt to procure those additional Ancillary Services from the CAISO's Real-Time market (in the appropriate region if CAISO is procuring Ancillary Services on a regional basis) that have not closed, subject to the Bid Sufficiency Test described below.
- (C) CAISO shall not issue a Dispatch Notice for Ancillary Services for any hour of the Trading Day before the earlier of (a) the time at which the real-time market for that hour closes or (b) if a Start-up would be required to provide the Ancillary Service, such earlier time as is necessary to comply with the applicable Start-up Lead Time and Ramping Constraints on Schedule A.
- (ii) CAISO shall not be required to accept any bid for an Ancillary Service above applicable bid caps then in effect under the CAISO Tariff before issuing a Dispatch Notice for Ancillary Services.
- (iii) Bid Sufficiency Test
- (A) The Bid Sufficiency Test may only be applied:
- (1) To purchases from the real-time market;
- (2) If CAISO has fully complied with its obligation to promptly notify Scheduling Coordinators of its need to acquire additional ancillary services from the real-time market; and
- (3) To the extent that the approved CAISO Tariff does not preclude such a test.
- (B) The Bid Sufficiency Test shall be applied on an individual hourly basis and for an individual Ancillary Service type. The test result shall be considered "insufficient" in real-time market if, and only if - (1) bids in the real-time market for the particular Ancillary Service (including any bids that can be used to satisfy that particular Ancillary Services requirement under Section 8.2.3.5 of the CAISO Tariff) represent less than two times such remaining Ancillary Service requirement; or (2) there are fewer than two unaffiliated bidders to provide such remaining Ancillary Service requirement. If the application of the Bid Sufficiency Test results in a determination of "insufficiency", the CAISO may issue a Dispatch Notice to satisfy its needs for that hour and that individual Ancillary Service.
- (C) If the result of the Bid Sufficiency Test is a finding that available bids are "insufficient", CAISO may nonetheless accept available market bids if it determines in its sole discretion that the prices bid and the supply curve created by the bids indicate that the bidders were not attempting to exercise market power.

#### 4.2 Timing of Dispatch Notices

Subject to the terms and conditions of this Agreement, CAISO shall issue Manual RMR Dispatch Notices promptly after it makes a determination that it will require Energy or Ancillary Services under this Agreement.

**4.3 Form and Content of Dispatch Notices**

- (a) All Dispatch Notices shall be in writing if circumstances permit. If circumstances require that a Dispatch Notice be given or changed orally, the Dispatch Notice shall be confirmed in writing within 24 hours after the oral notice or change was given.
- (b) Each Dispatch Notice shall specify the Unit from which CAISO requests Owner to Deliver Energy or Ancillary Services, the time of commencement and termination of the Requested Operation Period and, for each hour of the Requested Operation Period, the Requested MW or the Requested Ancillary Services. A Dispatch Notice for a hydroelectric Facility must request that Owner Deliver Energy from the entire Facility rather than from a specific Unit. However, CAISO may request that Owner Deliver Ancillary Services from specific Units in a hydroelectric Facility; provided that Energy associated with such Ancillary Services shall be Delivered from the Facility and not the specified Units. CAISO may issue Dispatch Notices in real time without specifying the time the Requested Operation Period is to terminate and may adjust the Requested MW or Requested Ancillary Services in real time if CAISO provides all such information in writing as provided in Section 4.3(a).

**4.4. Non-complying Dispatch Notices**

Owner shall not be obligated to comply with a Dispatch Notice that does not comply with Section 4.3 or 4.6 and Owner shall not be liable, suffer any penalties or suffer any reduction in payments for failure to comply with a Dispatch Notice which is not in compliance with those Sections, provided that Owner promptly notifies CAISO that the notice does not comply with Section 4.3 or 4.6 and provides the reasons the Dispatch Notice does not comply. Owner may provide such notice after the Requested Operation Period if the notice concerns a Dispatch Notice given during, or less than one-half hour prior to, the Requested Operation Period. Compliance with a Dispatch Notice shall not be deemed a waiver of objections to the Dispatch Notice.

**4.5 Intentionally left blank.**

**4.6 Limitations on CAISO's Right to Dispatch**

CAISO's Dispatch Notice may not request Owner to, and Owner shall not be obligated to:

- (i) Provide service from a Unit at less than the Minimum Load for the Unit;
- (ii) Provide service from a Unit for less than the Minimum Run Time;
- (iii) Start-up a Unit after less than the Minimum Off Time;
- (iv) Start-up a Unit unless the time between the delivery of the Dispatch Notice requesting such Start-up and the commencement of the applicable Requested Operation Period equals at least the Start-up Lead Time for the Unit and the Dispatch Notice provides sufficient time to satisfy the Ramping Constraint of the Unit;
- (v) Provide service from a Unit in excess of its Unit Availability Limit;
- (vi) Provide service from a Unit when to do so would violate environmental limitations applicable to the Unit as set forth in Section 3 of Schedule A;
- (vii) Start-up or provide service from a Unit in violation of any applicable law, regulation, license or permit; or
- (viii) Start-up or provide service from a Unit to the extent that doing so would cause a breach of an Existing Contractual Limitation; or
- (ix) Deliver Energy or Ancillary Services to the extent such Delivery would cause a breach of a contract for capacity made available through an Upgrade or a Capital Item or Repair for which CAISO is not obligated to make a Surcharge Payment or pay CAISO's Repair Share.

**4.7 Dispatch in Excess of Contract Service Limits**

- (a) CAISO shall use its best efforts in accordance with Good Industry Practice not to issue a Dispatch Notice that would cause a Unit's Counted Start-ups, Counted MWh, or Counted Service Hours to exceed any of the Unit's Contract Service Limits.
- (b) CAISO may issue a Dispatch Notice requiring a Unit to Deliver Energy or Ancillary Services after the Unit has exceeded a Contract Service Limit only if the Requested MWh or Requested Ancillary Services cannot be obtained by CAISO either (i) by accepting market bids in accordance with Section 4.1 or (ii) from Comparable RMR Unit(s) without exceeding the contract service limits or violating other operational limitations under CAISO's agreement with the Comparable RMR Unit(s). Owner shall use its best efforts, in accordance with Good Industry Practice, to comply with such Dispatch Notice.
- (c) If Owner of a hydroelectric Facility complies with a request to exceed the Maximum Monthly MWh, Owner may reduce the Maximum Monthly MWh for remaining Months of the Contract Year to reflect the accelerated use of available water. Not later than 15 days after any delivery in excess of Maximum Monthly MWh, Owner shall provide CAISO a notice showing revised Maximum Monthly MWh for remaining Months of the Contract Year.
- (d) If the Owner does not comply with a Dispatch Notice under Section 4.7(b), Owner at CAISO's request shall provide a written explanation.
- (e) If Owner, in compliance with a Dispatch Notice, Starts-up a Unit and the Counted Start-ups for the Contract Year exceed the Maximum Annual Start-ups for the Unit, CAISO shall pay for each such excess Start-up at the rate set out in Schedule G. If Owner, in compliance with a Dispatch Notice, Delivers Energy and the Counted MWh for the Unit for the Contract Year exceeds the Maximum Annual MWh, the Counted Service Hours from the Unit for the Contract Year exceed the Maximum Annual Service Hours, or if applicable, the Counted MWh for the Month exceed the Maximum Monthly MWh, CAISO shall pay for the Billable MWh Delivered in response to such Dispatch Notice and exceeding the Contract Service Limit at the rates set forth in Schedule G.
- (f) For purposes of this Section 4.7:
  - (i) "Best efforts" does not require Owner to provide service inconsistent with the limitations set forth in Section 4.6 or if Owner reasonably believes providing the service might cause significant physical harm to the Unit.
  - (ii) The term "Good Industry Practice" shall not be applied to permit CAISO to consider the relative costs of Comparable RMR Units when determining whether to request dispatch of a Unit in excess of the Contract Service Limits.
  - (iii) "Comparable RMR Unit" means a unit which has been designated a Reliability Must-Run Unit and which, in CAISO's reasonable judgment, is capable of providing system reliability benefits to CAISO equivalent to the system reliability benefits provided by the Unit which otherwise would be subject to the Dispatch Notice. In the case of Units providing Ancillary Services, a Comparable RMR Unit must: (A) be certified to provide the Requested type of Ancillary Service, (B) provide the same or higher ramp rate and MW capacity and (C) is located in the same Local Capacity Area as the Unit which otherwise would be subject to the Dispatch Notice.
- (g) CAISO and Owner shall have the right to dispute the other Party's actions or inactions under this Section 4.7 and any dispute shall be subject to resolution through ADR.

**4.8 Air Emissions**

If CAISO determines that it is necessary to reserve MWh to satisfy potential dispatches under this Agreement without violating present or future limitations on the discharge of air pollutants or contaminants into the atmosphere specified by any federal, state, regional or local law by any regulation, air quality implementation plan, or permit condition promulgated or imposed by any Governmental Authority, the terms and conditions of such reservation shall be set out on Schedule P.

**4.9 Test Dispatch Notices**

(a) Availability Tests

- (i) CAISO may from time to time test the Availability of a Unit by requiring the Unit to Deliver Energy pursuant to a Test Dispatch Notice provided to Owner's Scheduling Coordinator using the procedures described in Section 4.2 and 4.3. CAISO, without cause, may request one Availability Test each Contract Year. CAISO may request additional Availability Tests if the Unit fails to comply fully with a Dispatch Notice. CAISO shall not request an Availability Test for a hydroelectric Unit during periods of constrained water availability. Lack of available water shall not be deemed to result in a failed test and reduction of the Unit Availability Limit for a hydroelectric Unit.
- (ii) Owner may request an Availability Test at any time. CAISO shall issue a Test Dispatch Notice within three days after receipt of Owner's request, but for good cause, CAISO may reschedule the test to a date acceptable to Owner. Owner's request shall state the amount of Energy to be produced. The effect of operations pursuant to such a request is set out in Section 5.3.
- (iii) The Test Dispatch Notice shall be marked "Availability Test Dispatch Notice." The Test Dispatch Notice shall specify a Requested Operation Period of four hours of continuous operations at the requested output plus any applicable Start-up Lead Time, time to satisfy Ramping Constraints and time for Shutdown (or for hydroelectric Units the time sufficient water is available, if that is less).
- (iv) Subject to the other conditions or restrictions expressed in this Agreement, Owner shall provide service from the Unit and Deliver the Requested MWh in accordance with the Availability Test Dispatch Notice; provided, however, that Owner, in response to such Test Dispatch Notice, may deliver all or part of the Requested MWh in a Market Transaction by complying with the procedures set forth in Section 5.2.
- (v) An Availability Test shall be treated as having been successfully completed if the average MW Delivered at the Delivery Point during the Availability Test was not less than 99% of the Requested MW for the Requested Operation Period. The average MW Delivered during the Availability Test shall be computed by dividing (i) the total MWh produced during the four-hour period immediately following completion of the ramp up, multiplied by the appropriate ambient temperature correction factors for the Unit as set out in Section 3 of Schedule A, by (ii) four hours.
- (vi) If a Unit fails an Availability Test, CAISO may issue a CAISO Availability Notice restating the Availability of the Unit to a level not less than the average MW Delivered during the Availability Test. Following the notice, Owner shall not issue an Owner's Availability Notice increasing the Availability of the Unit above the level determined through such failed Availability Test until (A) the Unit has successfully completed a subsequent Availability Test, (B) the Unit has delivered in Market Transactions, pursuant to a Dispatch Notice or in a combination of the two, during a continuous four hour operating period, average MW in excess of those determined in the Availability Test or (C) Owner has otherwise demonstrated to CAISO's reasonable satisfaction that the Availability of the Unit has been restored.
- (vii) If the average MW Delivered during the Availability Test exceed 101% of the Unit Availability Limit in effect prior to the Availability Test, Owner may issue an Owner's Availability Notice setting Availability retroactive to the time the request was received by CAISO to the lesser of (A) the average MW Delivered during the Availability Test or (B) the Maximum Net Dependable Capacity.

- (b) **Emissions Test**  
If it is necessary for Owner to operate a Unit to fulfill regulatory requirements for emissions testing, Owner may request CAISO to issue a Dispatch Notice for such operation. Owner shall provide a request specifying the test date at least seven days in advance of the emissions test. CAISO shall issue a Dispatch Notice to schedule the requested operation on the date specified in Owner's request, or for good cause, CAISO may cause the test to be rescheduled to a date acceptable to Owner, provided that CAISO shall not delay the test by more than seven days without Owner's consent. The Test Dispatch Notice shall be marked "Emissions Test Dispatch Notice".
- (c) **Black Start Test**  
CAISO may from time to time test Unit(s) designated to provide Black Start service by requiring the Unit to deliver Black Start service pursuant to a Test Dispatch Notice provided to Owner's Scheduling Coordinator using the procedures described in Sections 4.2 and 4.3. Such Test Dispatch Notice shall be marked "Black Start Test Notice." The Black Start Test shall be performed in accordance with the Ancillary Services Requirements Protocol in the CAISO Tariff. CAISO shall not request a Black Start Test for a hydroelectric Unit during periods of constrained water availability.
- (d) **Heat Input Test**  
Not more frequently than once each Contract Year, Owner may, by giving at least seven days' prior notice to CAISO, request CAISO to issue a Test Dispatch Notice in order for Owner to determine the heat input of a Unit. CAISO shall not unreasonably refuse to issue a Test Dispatch Notice for a heat input test. The Test Dispatch Notice shall be marked "Heat Input Test Notice." The heat input test shall be conducted in accordance with testing standards and procedures agreed to by CAISO and Owner. In the absence of such agreement, the standards and procedures shall be determined through ADR before such test may be conducted. The arbitrator shall specify procedures for testing which are consistent with Good Industry Practice. Following such a heat input test, Owner shall be permitted to make a filing under Section 205 of the Federal Power Act limited to modifying the heat inputs used in the Variable Cost Payment, Start-up Payment, Preempted Dispatch Payment and Mandatory Energy Bid in Schedules C, D, E and M, respectively, to reflect the results of such test.

#### **4.10 Forecasts Of CAISO's Requirements**

Not later than November 15 of each year, CAISO shall provide Owner and the Responsible Utility with a non-binding forecast representing CAISO's then current best estimate of the monthly MWh, monthly peak day MW, and monthly Service Hours that CAISO will require each Unit to provide each month during the ensuing Contract Year ("Annual Forecast"). In addition, not later than June 15 of each year, CAISO shall provide Owner and with a non-binding forecast ("Update") representing CAISO's then current best estimate of the monthly MWh, monthly peak day MW, and monthly Service Hours that CAISO will require each Unit to provide each month from June through the end of the Contract Year. Each Annual Forecast and Update will take into account the Long-term Planned Outages. The Annual Forecasts and Updates shall be treated as confidential pursuant to Section 12.5 and shall not be binding.

#### **4.11 Determination of Contract Service Limits**

- (a) If CAISO has extended the term of this Agreement pursuant to Section 2.1 (b), then not later than October 31 of the expiring Contract Year Owner shall make a filing under Section 205 of the Federal Power Act limited to revising Schedule A to reflect the Contract Service Limits for all Units other than hydroelectric Units for the ensuing Contract Year. The Contract Service Limits for each year after the initial Contract Year shall be determined through application of the following rules:
  - (i) Maximum Annual MWh for each Unit shall be the average annual MWh produced in Market and Nonmarket Transactions by the Unit during the 60 month period ending June 30 of the expiring Contract Year;

- (ii) Maximum Annual Service Hours for each Unit shall be the average annual Service Hours the Unit operated in Market and Nonmarket Transactions during the 60 month period ending June 30 of the expiring Contract Year; and
- (iii) Maximum Annual Start-Ups shall be the number of Start-ups of the Unit for Market and Nonmarket Transactions during the year selected by CAISO. CAISO may select any of the five preceding years to determine Maximum Annual Start-Ups but shall select the same year for all Units at the Facility. For purposes of the foregoing sentence only, a year shall mean a 12-month period ending June 30. Thus, by way of example, CAISO may determine Maximum Annual Start-ups for calendar year 2002 based on the Maximum Annual Start-ups during any of the following five periods: (A) 12 months ended June 30, 2001; (B) 12 months ended June 30, 2000; (C) 12 months ended June 30, 1999; (D) 12 months ended June 30, 1998; or (E) 12 months ended June 30, 1997.

Owner shall provide the information necessary to determine the Contract Service Limits to CAISO and the Responsible Utility not less than 15 days prior to the filing. CAISO shall give notice to Owner and Responsible Utility identifying the year to be used to determine Maximum Annual Start-ups not later than five Business Days after it receives the information from Owner.

- (b) If CAISO has extended the term of this Agreement pursuant to Section 2.1 (b), then not later than 15 days prior to the beginning of the ensuing Contract Year, Owner of a hydroelectric Facility shall make a filing under Section 205 of the Federal Power Act to reflect the revised Contract Service Limits to be in effect during the ensuing Contract Year for the hydroelectric Facility. Such filing shall be based on Owner's current water management forecast and shall reflect the water expected to be available for electric generation above the Hydroelectric Dependable Capacity. Such filing, if accepted or approved, shall set the Maximum Monthly MWh in Schedule A for the ensuing Contract Year, subject to adjustment in accordance with the notice described below giving revised Monthly Maximum MWh. The Maximum Monthly MWh in Schedule A of this Agreement on the Effective Date reflects the Hydroelectric Dependable Capacity. Not later than April 15 of each Contract Year, Owner shall provide notice to CAISO giving revised Maximum Monthly MWh for each remaining Month of the Contract Year based on its then current water management forecast. If, during any Contract Year, Owner determines that drought conditions jeopardize its ability to supply Hydroelectric Dependable Capacity, Owner shall promptly give notice to the CAISO of this determination, including revised Maximum Monthly MWh for each remaining Month of the Contract Year. Following such a determination, Owner shall provide CAISO with weekly updated water management forecasts until the earlier of the end of the Contract Year or Owner's determination that its ability to supply the Hydroelectric Dependable Capacity is no longer jeopardized by such conditions. CAISO acknowledges that the accuracy of a water management forecast may be substantially affected by a Force Majeure Event at any time after the Owner provides the forecast and consequently Owner shall not be liable for the accuracy of the water management forecast or any reliance on it other than a Monthly Maximum MWh amount.

## ARTICLE 5 DELIVERY OF ENERGY AND ANCILLARY SERVICES BY OWNER

### 5.1 Owner's Delivery of Energy and Ancillary Services

- (a) Subject to the limits in this Agreement, and subject to the CAISO's Real-Time Dispatch instructions whether flagged as an RMR Dispatch or not, Owner shall provide service from the Units and Deliver the Requested MWh or Requested Ancillary Services in accordance with each Dispatch Notice. To the maximum extent practical, and except for regulation, Owner shall Deliver at each moment of each hour during the Requested

- Operation Period not less than the Requested MW or Requested Ancillary Services. If Owner has disputed a Dispatch Notice under Section 4.6 (i) (Minimum Load) (ii) (Minimum Run Time) (iii) (Minimum Off Time) (iv) (Start-up Lead Time and Ramping Constraint), or (v) (Unit Availability Limit) and such dispute is not resolved prior to the time for delivery, Owner will use reasonable efforts to comply with the Dispatch Notice, but shall not be liable to CAISO if it is unable to do so and Owner prevails in the dispute.
- (b) If Owner has disputed a Dispatch Notice under Section 4.6 (vi) (environmental), (vii) (violation of law), (viii) (Existing Contractual Limitations) or (ix) (Upgrade Contract), Owner shall not be required to Deliver Energy or Ancillary Services pending resolution of the dispute as to whether the Dispatch Notice violated such Section; provided, however, that Owner shall not be relieved from any liability that it would otherwise have for failure to comply with the disputed Dispatch Notice if it subsequently is determined that the Dispatch Notice did not violate Section 4.6 (vi), (vii), (viii) or (ix).
- (c) Subject to CAISO approval, if Owner cannot Deliver the Requested MWh or Requested Ancillary Services by providing service from the Unit identified in a Dispatch Notice, Owner may Deliver the requested services by providing service from a Substitute Unit. Owner shall provide oral or written notice to CAISO as soon as possible in advance of the first Real-Time Dispatch of the Requested Operation Period stating why it cannot provide the requested service from the Unit identified in the Dispatch Notice, identifying the Substitute Unit, describing the services it will provide from the Substitute Unit and specifying the charges applicable to service from the Substitute Unit. CAISO may deny approval only if the proposed unit does not qualify as a Substitute Unit or if there is insufficient time to accommodate the request prior to the running of the MPM-RRD process and the operator determines that the substitution would affect the MPM-RRD results, in which case the substitution request will be accommodated for any remaining portion of the Requested Operation Period, if the unit is otherwise acceptable. The total cost to CAISO for service from the Substitute Unit shall be at the rate specified by the Owner, provided that the total cost will not exceed the total costs for the same amount of service from the Unit specified in the Dispatch Notice.
- (d) If Owner can Deliver the Requested MWh or Requested Ancillary Services by providing service from the Unit identified in the Dispatch Notice, Owner may Deliver the requested services by providing service from (i) the Unit identified in CAISO's Dispatch Notice or (ii) with CAISO's consent, a Substitute Unit. Owner of a hydroelectric Unit will Deliver the Requested MWh from the Facility and will Deliver the Voltage Support and Black Start requested in a Dispatch Notice from the specified Unit or a Substitute Unit. If Owner proposes to satisfy its delivery obligations by providing service from a Substitute Unit, Owner shall provide oral or written notice to CAISO prior to the Requested Operation Period identifying the Substitute Unit, describing the services it will provide from Substitute Unit and specifying the charges applicable to service from the Substitute Unit. Owner may Deliver the agreed services from the Substitute Unit and will be paid at the agreed rates if CAISO accepts Owner's proposal, or CAISO and Owner otherwise agree on the services and applicable rates for service from a Substitute Unit. CAISO's decision shall not be subject to ADR.
- (e) Owner shall Deliver the Requested MWh or Requested Ancillary Services at the Delivery Point or such other point(s) reasonably acceptable to CAISO and shall comply with the metering and related arrangements set forth in Section 5 of Schedule A to this Agreement or as otherwise specified in Owner's applicable Meter Service Agreement.
- (f) If Owner would have been able to Deliver the Requested MWh or Requested Ancillary Services but for an outage in the CAISO Controlled Grid or Distribution Grid beyond Owner's reasonable control, Owner shall be deemed to have complied with the Dispatch Notice for purposes of Sections 5.4 and 8.5.

**5.2 Substitution of Market Transactions for Dispatch Notices**

- (a) Owner may satisfy, in whole or in part, its obligation to Deliver Energy, but not Ancillary Services, during a Requested Operation Period by delivering Energy under a Market Transaction from the Unit identified in a Dispatch Notice if Owner complies with the requirements and procedures of this Section 5.2.
- (b) Owner shall give notice of its intent to substitute a Market Transaction through the submission of bids in the CAISO's Markets. Any dispatch level that clears the Competitive Constraint Run of the MPM-RRD process through the submission of Economic Bids or Self-Schedules, and is reflected in the Day-Ahead Schedule or Real-Time Dispatch, shall be deemed a Market Transaction.
- (c) Owner may substitute a Market Transaction only if the deadline for bids into the market selected by Owner has not passed.
- (d) Intentionally left blank.

**5.3 Rules for Calculating Counted Start-ups, Counted MWh and Counted Service Hours**

- (a) The following rules shall govern calculation of Counted Start-ups:
  - (i) Except as limited below, all Start-ups successfully completed in compliance with a Dispatch Notice shall be included in Counted Start-ups for the Unit for which the Dispatch Notice was issued.
  - (ii) If a Start-up required by a Dispatch Notice is canceled by CAISO after the Start-up is initiated, Counted Start-ups shall include a fractional Start-up computed by dividing (i) the lesser of (a) the time elapsed between initiation of the Start-up and cancellation or (b) the Start-up Lead Time by (ii) the applicable Start-up Lead Time for the Unit.
  - (iii) For Units under Condition 1, if a Dispatch Notice is issued pursuant to Section 4.5 for a period in which the Unit is scheduled to operate or is operating in a Market Transaction for which a Start-up was required, or Owner substitutes a Market Transaction under Section 5.2 for a Requested Operation Period for which a Start-up was required, Counted Start-ups shall include one-half of the Start-up for the Unit for which the Dispatch Notice was issued. No Start-up shall be counted more than once.
  - (iv) For Units under Condition 2, Counted Start-ups shall include each Start-up whether the Energy is Delivered to the CAISO in a Nonmarket Transaction or is delivered in a Market Transaction pursuant to bids made under Section 6.1 (b).
  - (v) If Owner complies with a Dispatch Notice by Delivering the Requested MWh or Ancillary Services from a Substitute Unit, any Start-ups of the Substitute Unit will not be included in Counted Start-ups for the Unit specified in the Dispatch Notice or the Substitute Unit.
  - (vi) Except as provided in Section 5.3(a)(iii), any Start-up not required to comply with a Dispatch Notice will not be included in Counted Start-ups.
- (b) The following rules shall govern calculation of Counted MWh:
  - (i) Except as limited below, all MWh Delivered in compliance with a Dispatch Notice shall be included in Counted MWh for the Unit for which the Dispatch Notice was issued.
  - (ii) For Units under Condition 1, if a Dispatch Notice is issued pursuant to Section 4.5 for a period in which a Unit is scheduled to operate or is operating in a Market Transaction or if Owner, in response to a Dispatch Notice, substitutes a Market Transaction under Section 5.2 for all or part of the Requested MWh, MWh equal to the sum of (A) Billable MWh plus (B) 50% of the Hybrid MWh, will be included in Counted MWh for the Unit for which the Dispatch Notice was issued.
  - (iii) If a Unit operating under Condition 2 sells Energy pursuant to bids made under Section 6.1 (b), the Billable MWh shall be included in Counted MWh for the Unit.
  - (iv) Intentionally left blank.



- (v) If Owner Delivers Requested MWh or Energy associated with Ancillary Services from a Substitute Unit, the MWh Delivered from the Substitute Unit will not be included in Counted MWh for the Unit specified in the Dispatch Notice or the Substitute Unit.
- (c) The following rules shall govern calculation of Counted Service Hours:
  - (i) Except as limited below, all Service Hours expended in compliance with a Dispatch Notice other than Service Hours expended for Ancillary Services during which the Unit is not Synchronized shall be included in Counted Service Hours for the Unit for which the Dispatch Notice was issued.
  - (ii) For Units under Condition 1, if a Dispatch Notice is issued pursuant to Section 4.5 for a period in which a Unit is scheduled to operate or is operating in a Market Transaction or if Owner, in response to a Dispatch Notice, substitutes a Market Transaction under Section 5.2 for all or part of the Requested MWh, one-half of the Requested Operation Period will be included in Counted Service Hours for the Unit for which the Dispatch Notice was issued.
  - (iii) If a Unit operating under Condition 2 sells Energy pursuant to bids made under Section 6.1 (b), each Service Hour expended by the Unit to produce the Energy shall be included in Counted Service Hours.
  - (iv) If Owner Delivers Requested MWh or Ancillary Services from a Substitute Unit, the Service Hours expended by the Substitute Unit will not be included in Counted Service Hours for the Unit specified in the Dispatch Notice or the Substitute Unit.
- (d) Counted MWh, Counted Service Hours and Counted Start-ups for the Contract Year ending December 31, 1999 shall include MWh, Service Hours and Start-ups for the period January 1, 1999 through the Effective Date under the reliability must-run rate schedule which is superseded by this Agreement using the rules set out in this Section 5.3 as if this Agreement had been in effect during that period. Owner's initial report under Section 5.5 shall show the MWh, Service Hours and Start-ups for the period January 1, 1999 through the Effective Date calculated using the rules set out in this Section 5.3.

#### **5.4 Owner's Failure To Deliver Requested MWh or Requested Ancillary Services**

- (a) Owner shall promptly notify CAISO if Owner will not be able to Deliver all or part of the Requested MWh or Requested Ancillary Services from the Unit identified in the Dispatch Notice or from the Substitute Unit previously accepted by CAISO.
- (b) If a Unit fails to Deliver the full amount of Requested MWh or Requested Ancillary Services, CAISO may issue an CAISO Availability Notice restating the Availability to a level not less than the Availability indicated by the actual deliveries. If CAISO has issued an CAISO Availability Notice under this Section 5.4(b), Owner shall not issue an Owner's Availability Notice increasing the Availability of the Unit until (i) the Unit has successfully completed an Availability Test, (ii) the Unit has delivered in Market Transactions or in a combination of Market Transactions and Nonmarket Transactions pursuant to a Dispatch Notice during a continuous four hour operating period, average MW in excess of those shown in the CAISO Availability Notice, or (iii) Owner has otherwise demonstrated to the CAISO's reasonable satisfaction that the Availability of the Unit has been restored. CAISO's only other remedies for Owner's failure to Deliver Requested Ancillary Services or Requested MWh are as set out in Sections 8.5, 11.3 and 12.6.

#### **5.5 Reports**

Not less than two days prior to the beginning of every Month during the Contract Year, Owner or Owner's Scheduling Coordinator shall provide CAISO and the Responsible Utility a report for each Unit setting forth as of the day before the date of the report the Counted MWh, Counted Service Hours and Counted Start-ups for the current Contract Year. All reports shall be treated as confidential pursuant to Section 12.5.

**ARTICLE 6**  
**MARKET TRANSACTIONS**

**6.1 Right To Engage In Market Transactions**

- (a) In addition to the right to substitute a Market Transaction pursuant to Section 5.2, if a Unit is operating under Condition 1, Owner may enter into Market Transactions for Energy or Ancillary Services at any level outside of a Requested Operation Period. If CAISO has issued a Dispatch Notice for Energy to a Unit under Condition 1, Owner may enter into Market Transactions for Energy at any level during the Requested Operation Period, and may enter into a Market Transaction for Ancillary Services at any level that does not preclude compliance with the Dispatch Notice. If CAISO has issued a Dispatch Notice for Ancillary Services to a Unit under Condition 1, Owner may enter into Market Transactions for Energy or Ancillary Services at any level that does not preclude compliance with the Dispatch Notice.
- (b) If CAISO issues a Dispatch Notice for a Unit operating under Condition 2, Owner shall submit bids in succeeding available Energy and Ancillary Services markets for the Requested Operation Period in accordance with the following requirements:
- (i) If the next available market is an Energy market, Owner shall bid all Energy the Unit can produce, up to the Unit Availability Limit, in excess of the higher of (A) Energy or Ancillary Services capacity cleared in a prior market; or (B) capacity required to Deliver Requested Ancillary Services. Owner shall bid all Energy at the bid price calculated using the formula in Part I of Schedule M.
  - (ii) If the next available market is an Ancillary Services market, Owner shall bid all available capacity, up to the Unit Availability Limit, in excess of the higher of the capacity needed to (A) deliver Energy and Ancillary Services cleared in a prior market or (B) Deliver the Requested MWh or Ancillary Services different from the Requested Ancillary Service.
  - (iii) If the markets are concurrent, Owner shall bid in the Ancillary Services market all available capacity, up to the Unit Availability Limit, in excess of the higher of the capacity needed to (A) deliver Energy and Ancillary Services cleared in a prior market or (B) Deliver the Requested MWh or Ancillary Services different from the Requested Ancillary Service.
  - (iv) Owner shall bid all Ancillary Service capacity at the bid price calculated using the formula in Part II of Schedule M.
  - (v) Owner shall not bid Energy or Ancillary Services in excess of the quantities the Unit can provide during the Requested Operation Period given the Unit's ramp rates, Ramping Constraints and any other applicable operating limitations, with due allowance for a Unit's ability to change output during the Requested Operation Period.
  - (vi) Neither Owner nor Owner's Scheduling Coordinator shall bid Energy or Ancillary Services to the extent that participating in a Market Transaction would conflict with a contract entered into prior to the Effective Date. Owner shall include in Section 14 of Schedule A a description of all contract restrictions affecting Owner's ability to participate in Market Transactions.

CAISO may order Owner not to bid to participate in a Market Transaction if CAISO determines that participation in Market Transactions would cause a Unit to exceed Contract Service Limits or impair CAISO's ability to dispatch the Unit to meet reliability needs at other times during the Contract Year. A Unit operating under Condition 2 shall not otherwise engage in Market Transactions.

**ARTICLE 7  
OPERATION AND MAINTENANCE**

**7.1 Owner's Obligation**

Owner shall fuel, operate and maintain each Unit, or cause the Unit to be fueled, operated and maintained, in accordance with applicable law and Good Industry Practice and with due regard for the reliability purpose of this Agreement. Owner is not required to have or maintain fuel oil burning capability, fuel oil inventories, or permits to burn fuel oil and shall not be required to burn fuel oil to respond to a Dispatch Notice unless, and then only to the extent that, the Unit's primary fuel is distillate fuel oil or Schedule H requires Owner to maintain fuel oil capability.

**7.2 Outages and Overhauls**

- (a) Owner shall be entitled to take a Unit out of operation or reduce the Availability of the Unit to repair and maintain the Unit in accordance with Good Industry Practice and the requirements of the CAISO Tariff. The dates and times of the outages and any changes to those dates and times shall be determined in accordance with the CAISO Tariff. For purposes of complying with the requirements of the CAISO Tariff, Other Outage shall be separated between "maintenance outage" and "forced outage," as defined in the CAISO Tariff.
- (b) Owner shall have the right to curtail or discontinue, in whole or in part, Deliveries of Energy or Ancillary Services from a Unit for so long as, and to the extent that, a Forced Outage affecting the Unit continues or when, in Owner's judgment in accordance with Good Industry Practice, operating conditions at the Unit so require. Curtailment or discontinuance under this Section shall give rise to applicable remedies under Article 8.

**7.3 Reports and Notices**

- (a) As soon as practical after commencement of a Forced Outage, Owner shall give CAISO notice of the Forced Outage, the expected duration of the outage, and the expected time when the Unit will be available to generate electricity and the expected Availability during and following the Forced Outage. Owner shall keep CAISO informed of any developments that will affect either the duration of the Forced Outage or the Availability of the Unit during or after the end of the Forced Outage.
- (b) Owner shall keep CAISO advised of the Availability of each Unit by promptly issuing Owner's Availability Notices any time Owner becomes aware that the Unit's Availability changed in accordance with Section 9 of the CAISO Tariff. Owner may not reduce a Unit's Availability due to the cost of fuel. An Owner's Availability Notice shall become effective when issued, provided, however, that if Owner becomes subject to a Non-Performance Penalty under Section 8.5, any Owner's Availability Notice given during the Penalty Period shall not become effective until 72 hours after the Owner's Availability Notice is given. An Owner's Availability Notice or CAISO's Availability Notice shall continue in effect until it is superseded by a subsequent Owner's Availability Notice or CAISO's Availability Notice.

**7.4 Planned Capital Items**

- (a) On or before March 1 of each year, Owner shall provide CAISO a preliminary report in the form required by this Section 7.4 showing Owner's proposed Capital Items for the next Contract Year and a five-year forecast of anticipated Capital Items in the Form attached as Schedule L-1, assuming the Agreement will be extended. Owner shall submit a final report in the form required by this Section 7.4 reflecting updated information by August 1 of each year. Owner may, but shall not be obligated to, include an Upgrade as a proposed Capital Item in either the preliminary or final report.

- (b) The preliminary and final reports for proposed Capital Items for the next Contract Year shall be submitted on the form attached as Schedule L-1. Owner shall provide additional information requested by the CAISO necessary to evaluate the proposal. Each preliminary and final report shall separately list individual projects expected to cost more than \$500,000 and shall include two "Small Project Estimates." One Small Project Estimate shall identify Capital Items (projected to cost less than \$500,000 each) required to maintain or enhance reliability. The second Small Project Estimate shall identify all other Capital Items projected to cost less than \$500,000 each. Individual Capital Items projected to cost more than \$50,000 shall be identified separately in one of the two Small Project Estimates. All Capital Items covered by the Small Project Estimate will be depreciated over 10 years.
- (c) Within 60 days after submission of the final report, CAISO will notify Owner of the proposed Capital Items CAISO has approved and the Capital Items it has not approved. If CAISO fails to provide notice within such 60 day period, all Capital Items included in the final report shall be deemed approved as proposed by Owner. Approval constitutes CAISO agreement that the CAISO's share of the estimated cost of the Capital Item will be recovered through Surcharge Payment under Article 8 and will be eligible for recovery through a Termination Fee pursuant to Section 2.5. If the actual cost of the Capital Item exceeds the estimated cost, CAISO may initiate ADR to determine whether the additional costs were reasonable and shall not be obligated to pay through Surcharge Payments or as a Termination Fee any portion of the overrun found to be unreasonable in such ADR proceeding. If CAISO contests the additional costs, Owner shall have the burden of proving that the additional costs were reasonable. If CAISO does not initiate ADR or makes a separate agreement with Owner, the additional costs shall be deemed reasonable and CAISO shall be obligated to pay CAISO's share of the actual costs through Surcharge Payments or as a Termination Fee.
- (d) If a proposed Capital Item is not approved, CAISO shall provide Owner a detailed statement of the reasons for the disapproval and, if the proposal would be acceptable with modifications, a detailed list of the proposed modifications. Owner may accept the modifications proposed by CAISO, or CAISO or Owner may initiate an ADR proceeding to review CAISO's rejection or proposed modification if the Capital Item is necessary for Owner to meet its obligations under this Agreement. In such proceeding, CAISO may not support its disapproval on any basis not shown in its detailed statement of the reasons for disapproval. Any Capital Items approved through such ADR proceeding shall be recovered by Owner through Surcharge Payments under Article 8 and will be eligible for recovery through a Termination Fee pursuant to Section 2.5. Owner shall not be obligated to install any Capital Item unless CAISO is obligated to pay a Surcharge Payment for the Capital Item.
- (e) The preliminary and final reports and all additional information about proposed Capital Items provided to CAISO shall be treated as Confidential Information in accordance with Section 12.5.
- (f) If CAISO rejects a proposed Capital Item, such rejection is not reversed by ADR and it would be uneconomical, impractical or illegal to continue operation without the Capital Item, then Owner, subject to obtaining authorization from FERC (if required by law to do so), may terminate this Agreement with respect to the affected Unit without cost or liability therefor, except as provided in Section 2.4.

**7.5 Unplanned Repairs**

- (a) In the event of any loss or damage to the Facility that impairs the capability of one or more Units to Deliver Energy or Ancillary Services, Owner shall, without additional charge, make necessary Repairs, to the extent that:
- (i) the total cost (net of proceeds received by Owner from Insurers and other third parties pursuant to applicable insurance, warranties and other contracts in connection with all Repairs and excluding costs covered by clause (ii)) of all Repairs for all Units ("Net Repair Costs") during the Contract Year does not exceed Owner's Repair Cost Obligation for the Facility; or
  - (ii) the loss or damage impairing the Unit's capability to produce Energy or Ancillary Services was caused by Owner's failure to comply with Good Industry Practice or by any wrongful act or omission by Owner. The reference to "Units" in clause (i) includes all Reliability Must-Run Units located at the Facility, but no other Reliability Must-Run Units. Except as provided above, Owner shall not be obligated to make any Repairs unless CAISO is obligated to pay CAISO's Repair Share for the Repairs.
- (b) If the Net Repair Costs incurred by Owner for all Repairs since the beginning of the Contract Year exceed Owner's Repair Cost Obligation, then Owner shall provide a notice thereof ("Unplanned Repair Notice") in the form attached as Schedule L-1 to CAISO. Owner shall provide such additional information as CAISO may reasonably require to evaluate such proposed Repairs.
- (c) CAISO shall submit a written acceptance or objection to Owner's proposal within 21 days of receipt of an Unplanned Repair Notice. CAISO shall be deemed to have accepted Owner's proposal in the Unplanned Repair Notice if CAISO does not submit a written objection within 21 days after receipt of the Unplanned Repair Notice, as provided above. Any objection shall be based on one or more of the following grounds:
- (i) the loss or damage was caused by Owner's failure to comply with Good Industry Practice;
  - (ii) the loss or damage was caused by a wrongful act or omission by Owner;
  - (iii) the Repairs are not required or are more extensive than required in order to make good the loss or damage concerned or to comply with applicable law;
  - (iv) the Net Repair Costs for the Contract Year will not exceed or has not exceeded the Owner's Repair Cost Obligation;
  - (v) the estimated cost of Repairs exceeds that which is reasonably necessary to effect such Repairs;
  - (vi) the Repair will not result in benefits to CAISO as compared to alternatives available to CAISO;
  - (vii) Owner's proposals for carrying out the Repairs or the proposed CAISO's Repair Share are unreasonable;
  - (viii) Owner's proposal includes estimated costs which are not properly treated as an expense under FERC's Uniform System of Accounts; or
  - (ix) Owner has not provided sufficient information to evaluate Owner's proposal. In addition to providing the basis of the objection, any objection of CAISO shall include a list of all changes CAISO contends should be made to Owner's proposal and justification of all such changes.
- (d) If CAISO submits an objection to an Unplanned Repair Notice, the Parties shall attempt to reach agreement on changes to Owner's proposal. If the Parties have not reached agreement within 30 days after CAISO's receipt of the Unplanned Repair Notice, Owner or CAISO may refer the matter to ADR under a schedule (specified by the arbitrator if the participants cannot agree) requiring a decision within 30 days following appointment of the arbitrator. The ADR decision will be effective without delay.
- (e) Owner shall proceed with the Repairs if it is agreed or determined pursuant to ADR that CAISO will pay CAISO's Repair Share or that Owner is otherwise obligated to make the Repairs. Owner shall keep full and detailed records of the cost of the Repairs and shall make them available to CAISO for inspection upon reasonable request.

- (f) If the actual cost of the Repairs exceeds the estimated cost, CAISO may initiate ADR to determine whether the additional costs were reasonable and shall not be obligated to pay any portion of the additional cost found to be unreasonable in such ADR proceeding. Owner shall have the burden of proving that the additional costs were reasonable.
- (g) If it is agreed or determined pursuant to ADR that CAISO will pay for a Repair, CAISO shall pay CAISO's Repair Share of the actual cost as a lump sum within 60 days after the later of (i) the completion of the Repair and (ii) the effective date of authorization by FERC, if any is necessary, for Owner to charge such cost to CAISO. "CAISO's Repair Share" means the Repair Payment Factor for the Repair at issue multiplied by the amount by which (i) the agreed or determined cost of Repairs at issue plus the Net Repair Costs of all prior Repairs for the Contract Year minus the cost of all prior Repairs for which CAISO is obligated to pay CAISO's Repair Share during the Contract Year exceeds (ii) Owner's Repair Cost Obligation. The Repair Payment Factor shall be as agreed to by Owner and CAISO. If Owner and CAISO do not agree on the Repair Payment Factor, the Repair Payment Factor shall equal the Fixed Option Payment Factor, unless the Owner demonstrates in ADR that it would not have made the proposed Repair in accordance with Good Industry Practice but for its obligations under this Agreement, in which case the Repair Payment Factor shall be as determined in ADR.
- (h) Owner shall use commercially reasonable efforts to recover its full entitlements under applicable insurance policies, warranties and other contracts even after CAISO has paid CAISO's Repair Share. Owner shall keep CAISO informed of the status of such recovery efforts and will refund to CAISO any portions of CAISO's Repair Share payment that is later recovered from any other party as a credit to CAISO on the next invoice with interest at the Interest Rate from the date such proceeds are received by Owner to the Due Date of such next invoice, or if this Agreement is terminated, as a payment upon submission of the Final Invoice.
- (i) If Owner is not obligated to make a Repair and does not do so, and if it would be uneconomical, impractical or illegal to continue operation without the Repair, then Owner, subject to obtaining authorization from FERC (if required by law to do so), may terminate this Agreement with respect to the affected Unit without cost or liability therefor, except as provided in Section 2.4.
- (j) If Owner makes a Repair notwithstanding that CAISO is not obligated to pay for the Repair, Owner shall not be entitled to recover the costs of the Repair from CAISO unless FERC approves recovery of the costs.
- (k) Owner's Repair Cost Obligation shall be an amount computed as follows:
  - (i) Intentionally left blank
  - (ii) The Owner's Repair Cost Obligation shall be equal to 3% of the fixed operation and maintenance costs for all Units at the Facility, underlying the rates in effect at the beginning of the Contract Year.

## 7.6 Unplanned Capital Items

- (a) To the extent a Capital Item is required to remedy or prevent impairment of the Unit's capability to Deliver Energy or Ancillary Services and the impairment was caused by Owner's failure to comply with Good Industry Practice or by any wrongful act or omission by Owner, Owner shall install such Capital Item at Owner's expense. Otherwise, Owner shall not be obligated to install any Capital Item unless CAISO is obligated to pay a Surcharge Payment for the Capital Item. The issue of whether Owner is obligated to install a Capital Item is subject to ADR.
- (b) If, during the Contract Year, Owner determines it is necessary to install Capital Items not approved under Section 7.4 and Owner has expended all amounts covered by the approved Small Project Estimates under Section 7.4, Owner shall provide a notice thereof ("Unplanned Capital Item Notice") on the form attached as Schedule L-1 to CAISO. Owner shall provide such information as CAISO may reasonably require in order to evaluate the proposed Capital Items.

- (c) CAISO shall submit a written acceptance or objection to Owner's proposal within 21 days after receipt of a complete Unplanned Capital Item Notice provided that if the proposal does not involve either loss or damage to the Facility or a Capital Item required by law or regulation, CAISO shall respond within 60 days. If CAISO fails to provide notice within such period, Owner's proposal in the Unplanned Capital Item Notice shall be deemed approved. Any objection shall be based on one or more of the following grounds:
- (i) the impairment being remedied or prevented was caused by Owner's failure to comply with Good Industry Practice;
  - (ii) the impairment being remedied or prevented was caused by a wrongful act or omission by Owner;
  - (iii) the Capital Item is not required or is more extensive than required in order to remedy or prevent impairment to the Facility or to comply with applicable law;
  - (iv) the estimated cost of the Capital Item exceeds that which is reasonably necessary;
  - (v) installation of the Capital Item will not result in benefits to CAISO as compared to alternatives available to CAISO;
  - (vi) Owner's proposals for installing or testing the Capital Item are unreasonable;
  - (vii) Owner's proposals for depreciation of the cost of the Capital Item or calculation of the Annual Capital Item Cost and Surcharge Payment Factor are unreasonable; or
  - (viii) Owner has not provided sufficient information to evaluate Owner's proposal. In addition to providing the basis of the objection, any objection of CAISO shall include a list of all changes CAISO contends should be made to Owner's proposal and justification of all such changes.
- (d) If CAISO submits an objection to an Unplanned Capital Item Notice, the Parties shall attempt to reach agreement on changes to Owner's proposal. If Owner's proposal involves either loss or damage to the Facility or the Capital Item is required by law and the Parties have not reached agreement 30 days after CAISO's receipt of the Unplanned Capital Item Notice, either Owner or CAISO may refer the matter to ADR under a schedule (specified by the arbitrator if the participants cannot agree) requiring a decision within 30 days following appointment of the arbitrator. The ADR decision will be effective without delay. Failure to agree on other proposed Capital Items may also be referred to ADR but without an expedited schedule.
- (e) Owner shall proceed to install the Capital Item if it is agreed or determined pursuant to ADR that CAISO will pay a Surcharge Payment for the Capital Item or that Owner is otherwise required to install the Capital Item. Owner shall keep full and detailed records of the cost of the Capital Item and shall make them available to CAISO for inspection upon reasonable request.
- (f) If the actual cost of the Capital Item exceeds the estimated cost, CAISO may initiate ADR to determine whether the additional costs were reasonable and shall not be obligated to pay any portion of the additional cost found to be unreasonable in such ADR proceeding. Owner shall have the burden of proving that the additional costs were reasonable.
- (g) If it is agreed or determined pursuant to ADR that CAISO will pay for the Capital Item, CAISO shall be deemed to have agreed that the cost of the Capital Item will be recovered through a Surcharge Payment under Article 8 and will be eligible for recovery through a Termination Fee pursuant to Section 2.5. The costs included in Surcharge Payments and Termination Fees to be paid by CAISO shall be net of all proceeds received by Owner from insurers and other third parties pursuant to applicable insurance, warranties and other contracts after deducting all costs Owner incurred to collect the proceeds. Owner shall use commercially reasonable efforts to recover its full entitlements under applicable insurance policies, warranties and other contracts. Owner shall keep CAISO informed of the status of such recovery efforts and will adjust future Surcharge Payments to reflect proceeds later recovered from any other party.

- (h) If the capability or performance of a Unit is impaired, if Owner is not obligated to install a Capital Item to remedy such impairment under Section 7.6(a) and does not do so, and if it would be uneconomical, impractical or illegal to continue operation without the Capital Item, then Owner, subject to obtaining authorization from FERC (if required by law to do so), may terminate this Agreement with respect to the affected Unit without cost or liability therefor except as provided in Section 2.4.
- (i) If Owner installs a Capital Item notwithstanding that CAISO is not obligated to pay for the Capital Item, Owner shall not be entitled to recover the costs of the Capital Item from CAISO unless FERC approves recovery of the costs.
- (j) Notwithstanding any other provision of this Agreement, if a Capital Item is required to remedy impairment of the Facility, the Unit's Monthly Option Payment shall not be decreased for any of the period of time during which Owner is waiting for CAISO's response to an Unplanned Capital Item Notice or during which ADR concerning an Unplanned Capital Item Notice is pending unless it is determined that Owner is required to install the Capital Item pursuant to Section 7.6 (a).

#### **7.7 Adjustments to Performance Characteristics**

- (a) If Owner installs any Capital Item or makes any Repairs the costs of which are paid by CAISO under this Agreement, Owner shall modify the Maximum Net Dependable Capacity, Unit Availability Limit, and performance characteristics of the affected Unit to reflect the resulting changes in operating costs effective as of the date CAISO's payment of CAISO's Repair Share of the Repairs is made, or in the case of a Capital Item, the date the cost of the Capital Item is included in a Surcharge Payment or the rates paid by CAISO.
- (b) If FERC authorization is required to permit Owner to recover the CAISO's Repair Share from CAISO or to include the costs of a Capital Item in a Surcharge Payment or the rates paid by CAISO hereunder, Owner shall make a Section 205 filing limited to recovery of the costs and implementation of related changes to performance characteristics, shall request that the filing become effective as of the date the Capital Item or Repair was placed in service and request expedited consideration of the filing. If CAISO has approved the Capital Item or Repair, CAISO shall intervene in support of such filing including support of requests to place the change in effect without suspension or hearing.
- (c) If Owner makes Repairs or installs a Capital Item when not required to do so and CAISO has not agreed or is not required by ADR to pay for such Repair or Capital Item, Owner may either:
  - (i) make an appropriate adjustment to the Maximum Net Dependable Capacity, Unit Availability Limit and performance characteristics of the affected Unit to reflect the capability the Unit would have had if the Capital Item had not been installed or the Repairs had not been made; or
  - (ii) make appropriate adjustment to the Maximum Net Dependable Capacity, Unit Availability Limit and performance characteristics of the affected Unit to reflect the Repairs or installation of the Capital Item.
- (d) Any adjustment to the Heat Input characteristics of the Unit shall be made in accordance with Section 4.9(d).

#### **7.8 Upgrades of Generating Units**

Owner may Upgrade any Unit at the Facility, provided that no Upgrade shall release Owner from Owner's performance obligations under this Agreement. CAISO shall secure no rights under this Agreement to any capacity or services increased or enhanced by any Upgrade unless the Parties agree as to the terms of CAISO's rights and the amount of CAISO's payment for such Upgrade. If the Parties so agree, the Maximum Net Dependable Capacity, Unit Availability Limit and performance characteristics of the affected Unit shall be adjusted to reflect CAISO's agreed upon rights to the Upgrade provided that any adjustment in heat input shall be made in accordance



with Section 4.9(d). If FERC authorization is required to permit Owner to recover the portion of the Upgrade cost CAISO has agreed to pay for the agreed revisions to the Unit characteristics, Owner shall make a Section 205 filing limited to recovery of the costs and implementation of related changes to the Maximum Net Dependable Capacity, Unit Availability Limit and performance characteristics, shall request that the filing become effective as of the date CAISO begins paying its agreed portion of the cost of the Upgrade and request expedited consideration of the filing. CAISO shall intervene in support of such filing including support of requests to place the change in effect without suspension or hearing.

**7.9 Third-Party Participation in CAISO Review Process**

- (a) Subject to fulfillment of the requirements of Section 7.9 (b), CAISO shall consult with the Responsible Utility and the California Agencies prior to approving Capital Items or Repairs. CAISO may approve Capital Items or Repairs aggregating less than \$5,000,000 for the Facility in a Contract Year without approval of the Responsible Utility or the California Agencies. After Capital Items and Repairs aggregating \$5,000,000 for the Facility in a Contract Year have been approved by CAISO, CAISO's approval of all other Capital Items and Repairs for that Contract Year shall not be effective unless the Responsible Utility has consented to such Capital Item or Repair.
- (b) The requirements of Section 7.9 (a) relating to Responsible Utilities shall apply only if and to the extent that the Responsible Utility agrees to waive its right to challenge before the FERC Owner's recovery of approved costs of Repairs or Capital Items. The requirement of Section 7.9 (a) relating to the California Agency shall apply only if and to the extent that each California Agency agrees to waive its right to challenge Owner's recovery of costs associated with the proposed Repairs or Capital Item on any grounds not set out in written objections provided by the California Agencies to CAISO and Owner within 30 days of the California Agencies' receipt of the preliminary and final reports under Section 7.5 or Section 7.6.
- (c) Provided that the California Agencies and Responsible Utility are bound by the provisions of the Confidentiality and Non-disclosure Agreement attached as Schedule N and make the waivers required in Section 7.9 (b), Owner will provide copies of the required reports and notices under Section 7.4, Section 7.5 or Section 7.6, and any additional information provided to the CAISO pursuant to Sections 7.4, 7.5 and 7.6, as the case may be, to the California Agencies and Responsible Utility at the same time as the reports, notices and information are provided to CAISO, and CAISO will provide copies of all information provided to Owner pursuant to such Sections to the California Agencies and Responsible Utility.

**ARTICLE 8  
RATES AND CHARGES**

**8.1 Condition 1**

When a Unit is under Condition 1, CAISO shall pay Owner each Month for each Unit the sum of:

- (a) the Monthly Option Payment which shall be equal to the Monthly Availability Payment plus the Monthly Surcharge Payment, minus the sum of all Non-Performance Penalties for the Month. In no event shall (i) the Monthly Option Payment for any month be less than zero, (ii) the sum of the Monthly Availability Payments for a Contract Year exceed the Annual Fixed Revenue Requirement for the Contract Year, or (iii) the sum of the Monthly Surcharge Payments for the Contract Year exceed the Annual Capital Item Cost (as defined in Schedule B) for the Contract Year. The Monthly Availability Payment and the Monthly Surcharge Payment shall each be computed in accordance with Schedule B. The Non-Performance Penalties for the Month shall be calculated in accordance with Section 8.5;

- (b) the Variable Cost Payment computed in accordance with Schedule C;
- (c) one-twelfth of the Prepaid Start-up Charge as set out on Schedule D;
- (d) the sum of the Start-up Adjustments calculated in accordance with Schedule D for each Start-up during the Month which was a Prepaid Start-up;
- (e) the sum for all Settlement Periods in the Month of the Pre-empted Dispatch Payments and Motoring Charges calculated in accordance with Schedule E;
- (f) once the Counted MWh for the Contract Year equals the Maximum Annual MWh, the Counted Service Hours for the Contract Year equals the Maximum Annual Service Hours, or the Counted MWh for hydroelectric units for the Month equals the Maximum Monthly MWh, a payment for each subsequent Billable MWh at the rate set out on Schedule G;
- (g) once the Counted Start-ups for the Contract Year equals the Maximum Annual Start-ups, a payment for each additional Start-up calculated in accordance with Schedule G; and
- (h) charges for services Delivered from Substitute Units pursuant to Sections 5.1(c) and (d).

## 8.2 Condition 2

When a Unit is operating under Condition 2, CAISO shall pay Owner the sum of:

- (a) the Monthly Option Payment, which shall be equal to the Monthly Availability Payment plus the Monthly Surcharge Payment, minus the sum of all Non-Performance Penalties for the Month. In no event shall (i) the Monthly Option Payment for any month be less than zero, (ii) the sum of the Monthly Availability Payments for a Contract Year exceed the Annual Fixed Revenue Requirement for the Contract Year or (iii) the sum of the Monthly Surcharge Payments for the Contract Year exceed the Annual Capital Item Cost (as defined in Schedule B) for the Contract Year. The Monthly Availability Payment and the Monthly Surcharge Payment shall each be computed in accordance with Schedule B. The Non-Performance Penalties for the Month shall be calculated in accordance with Section 8.5.
- (b) the Variable Cost Payment computed in accordance with Schedule C;
- (c) the sum of all Start-up Payments for the Month until Counted Start-ups equal Maximum Annual Start-ups computed in accordance with Schedule D;
- (d) the sum for all Settlement Periods in the Month of Motoring Charges calculated in accordance with Schedule E;
- (e) once the Counted MWh for the Contract Year equals the Maximum Annual MWh or the Counted Service Hours for the Contract Year equals the Maximum Annual Service Hours, a payment for each subsequent Billable MWh at the rate set out on Schedule G;
- (f) once the Counted Start-ups for the Contract Year equals the Maximum Annual Start-ups, a payment for each additional Start-up calculated in accordance with Schedule G; and
- (g) charges for services Delivered from Substitute Units pursuant to Section 5.1(c) and (d).

## 8.3 Determination of Billable MWh and Hybrid MWh

- (a) "Billable MWh" shall be determined by application of the following rules:
  - (i) If a Unit under Condition 1 or Condition 2 Delivers MWh only in Nonmarket Transactions during a Settlement Period, the Billable MWh shall be the lesser of (A) the Hourly Metered Total Net Generation or (B) the Requested MWh.
  - (ii) If a Unit under Condition 1 delivers MWh in both Market and Nonmarket Transactions during a Settlement Period:
    - (A) If the Hourly Metered Total Net Generation during the Settlement Period is equal to or greater than the Requested MWh applicable to the Settlement Period, the Billable MWh shall be (1) the Requested MWh minus (2) the Hybrid MWh, but shall never be less than zero.
    - (B) If the Hourly Metered Total Net Generation during the Settlement Period is less than the Requested MWh applicable to the Settlement Period, the Billable MWh shall be (1) Hourly Metered Total Net Generation minus (2) the Hybrid MWh, but shall never be less than zero.

- (iii) If a Unit is under Condition 2, the Billable MWh shall be the lesser of (A) the Hourly Metered Total Net Generation or (B) the sum of (1) Requested MWh and (2) the amount, if any, by which the total MWh for which Owner's bids pursuant to Section 6.1 (b) cleared the market exceeds the Requested MWh.
- (b) "Hybrid MWh" shall be the sum of the MWh scheduled in Market Transactions which were substituted for Requested MWh under Section 5.2 and the MWh scheduled in Market Transactions for which CAISO issued a Dispatch Notice pursuant to Section 4.5 provided that Hybrid MWh shall never exceed the Hourly Metered Total Net Generation.

#### 8.4 Determination of Prepaid Start-ups

Prepaid Start-ups for Condition 1 shall be the Maximum Annual Start-ups. There shall be no Prepaid Start-ups for Condition 2.

#### 8.5 Non-Performance Penalty

- (a) If a Unit fails to comply fully with a Dispatch Notice and such failure is not due to a Force Majeure Event under this Agreement, the Unit shall be subject to a Non-Performance Penalty computed in accordance with this Section 8.5.
- (b) The Non-Performance Penalty shall be calculated for each hour of the Penalty Period in which Owner is not deemed to be in full compliance with a Dispatch Notice and is not excused from performance. The Non-Performance Penalty shall be the sum of the amounts calculated for each Settlement Period in the Month by multiplying (i) the Availability Deficiency Factor for the Settlement Period by (ii) the sum of the Hourly Penalty Rate and the Hourly Surcharge Penalty Rate for the Unit as set forth on Schedule B; provided that the Non-Performance Penalty for any Month shall not exceed the sum of the Condition 1 Availability Payment and Condition 1 Surcharge Payment (for Units on Condition 1), or the sum of the Condition 2 Availability Payment and Condition 2 Surcharge Payment (for Units on Condition 2) for the Month. For purposes of this calculation:
  - (i) an Availability Deficiency Factor shall be calculated for each hour of the Penalty Period as one minus the number determined by dividing (a) the Delivered MWh for the hour in question by (b) the product of the Unit Availability Limit and the percentage of the hour (up to 100%) that the Unit was subject to a Dispatch Notice;
  - (ii) the Penalty Period shall be the 72 hour period beginning at the time Owner fails to comply fully with a Dispatch Notice, provided that if Owner in accordance with Section 7.2(a) had scheduled an outage to begin during the 72 hour period, the Penalty Period will terminate at the time the outage was scheduled to begin.
  - (iii) the Unit Availability Limit shall be the Unit Availability Limit as it existed at the time CAISO issued the Dispatch Notice with which Owner failed to comply but reduced to eliminate the effect of any Force Majeure Event affecting deliveries during the Penalty Period.
- (c) For purposes of this Section 8.5 and Section 4.9(a)(i), a Unit shall be deemed to be in full compliance with a Dispatch Notice if the Unit Delivers (i) at least 97 percent of the Requested MW or (ii) not more than 2 MW less than the Requested MW.

#### 8.6 Long-term Planned Outage Adjustment

Not later than 60 days after the end of each Contract Year, Owner shall submit to CAISO a statement showing the Long-term Planned Outage Adjustment for the Contract Year. The Long-term Planned Outage Adjustment shall equal (a) the Hourly Availability Charge plus each Hourly Capital Item Charge, as shown in Schedule B, multiplied by (b) the difference, if positive, of (i) the hours scheduled for performance of Long-term Planned Outages minus (ii) the actual hours spent performing Long-term Planned Outages during the Contract Year. Owner shall credit any Long-term Planned Outage Adjustment on the next invoice or, if this Agreement has terminated, shall pay any Long-term Planned Outage Adjustment to the CAISO upon submission of the Final Invoice.

**ARTICLE 9  
STATEMENTS AND PAYMENTS**

**9.1 Invoicing**

- (a) The billing, invoicing and payment of charges under this Agreement shall be as specified in this Article 9, Schedule O to this Agreement and Section 11.13 of the CAISO Tariff. CAISO shall not modify any provision of Section 41 of the CAISO Tariff or Section 11.13 as they apply to this Agreement without Owner's consent, provided that Owner's consent shall not be required for a change of allocations of RMR costs among market participants under the CAISO Tariff. Notwithstanding anything in this Agreement to the contrary, invoices either due or from the RMR Owner or Responsible Utility for an amount less than \$10.00 will be adjusted to \$0.00 and no amounts will be due to or from that RMR Owner or Responsible Utility for that invoice.
- (b) Owner will submit to CAISO RMR Invoices for each Month during the term of this Agreement, which are defined in this Section 9.1(b) as follows: (i) Estimated RMR Invoice; (ii) Revised Estimated RMR Invoice; (iii) Adjusted RMR Invoice; and (iv) Revised Adjusted RMR Invoice. In the event there are no revisions to the Estimated RMR Invoice or the Adjusted RMR Invoice, Owner shall submit an e-mail to CAISO with a copy to the Responsible Utility indicating that the Estimated RMR Invoice or the Adjusted RMR Invoice shall be deemed to be the Revised Estimated RMR Invoice or the Revised Adjusted RMR Invoice.
- (i) Within 14 days after the end of each Month during the term of this Agreement (and, if this Agreement does not expire or terminate at the end of a Month, within 14 days after the end of the Month in which the Agreement expires or terminates), Owner shall submit an estimated invoice ("Estimated RMR Invoice") to CAISO for all charges and credits due under this Agreement for the Month ("Billing Month"). Each Estimated RMR Invoice shall reflect actual data for the Billing Month to the extent actual data is available and shall otherwise reflect estimated data.
- (ii) By the date specified on the RMR Payments Calendar, Owner shall submit a revised estimated invoice ("Revised Estimated RMR Invoice") to CAISO, which will include appropriate revisions based on the CAISO's validation of the Estimated RMR Invoice. The Due Date of the Revised Estimated RMR Invoice shall be the 30th day after the date on which Owner submitted the Estimated RMR Invoice to CAISO, or if such date is not a Business Day, the Due Date shall be the next Business Day.
- (iii) By the date specified on the RMR Payments Calendar, CAISO shall submit an invoice ("CAISO Invoice") to the Responsible Utility, with an e-mail notification to Owner and the Responsible Utility, which specifies the payment due from the Responsible Utility to CAISO and from CAISO to Owner on the basis of the Revised Estimated RMR Invoice. However, in the event the payment is due from Owner to CAISO and from CAISO to the Responsible Utility, then CAISO shall submit the CAISO Invoice to Owner with an e-mail notification to Owner and the Responsible Utility.
- (iv) Within 7 days of receipt by Owner of the Recalculation Settlement Statement for the last day of the Billing Month, Owner shall submit an adjusted invoice ("Adjusted RMR Invoice") to CAISO, reflecting actual data for the Billing Month.
- (v) By the date specified on the RMR Payments Calendar, Owner shall submit to CAISO an invoice reflecting actual data for the Billing Month and including appropriate revisions based on the CAISO's validation of the Adjusted RMR Invoice ("Revised Adjusted RMR Invoice"). The Due Date of the Revised Adjusted RMR Invoice shall be the 30th day after the date on which Owner submitted the Adjusted RMR Invoice to CAISO, or if such date is not a Business Day, the Due Date shall be the next Business Day.

- (vi) By the date specified on the RMR Payments Calendar, CAISO shall submit an CAISO Invoice to the Responsible Utility, with an e-mail notification to Owner and the Responsible Utility, which specifies the payment due from the Responsible Utility to CAISO and from CAISO to Owner on the basis of the Revised Adjusted RMR Invoice. However, in the event the payment is due from Owner to CAISO and from CAISO to the Responsible Utility, then CAISO shall submit the CAISO Invoice to Owner with an e-mail notification to Owner and the Responsible Utility.
- (c) If the day on which any RMR Invoice is due to be issued is not a Business Day, such RMR Invoice shall be issued on the next succeeding Business Day.
- (d) Each RMR Invoice shall use the template posted on the CAISO Website in accordance with Schedule O ("RMR Invoice Template"). Each RMR Invoice shall set out detailed calculations and breakdowns of the amounts due, shall identify the source of each input used in the calculations, and shall identify all relationships among data in different invoice levels.
- (e) This section 9.1(e) applies to all Condition 1 Units. Any amounts received by or due to Owner's Scheduling Coordinator for Billable MWh and Ancillary Services Delivered in Nonmarket Transactions during the Billing Month shall be subtracted from the amount otherwise due under each RMR Invoice. If subtraction of the Energy and any Ancillary Service amounts for a Unit under Condition 1 results in a credit to CAISO on an RMR Invoice, the credit shall be carried forward ("Credit Carryforward") to the RMR Invoices for each succeeding Billing Month in that Contract Year until extinguished; provided that Owner shall not be required to carry any such credit into a later Contract Year or to pay any part of such credit to CAISO.
- (f) This section 9.1(f) applies to all Condition 2 Units. All amounts received by or due to Owner's Scheduling Coordinator in connection with Market Transactions and Nonmarket Transactions during the Billing Month ("Scheduling Coordinator Revenues") shall be subtracted from the amount otherwise due under each RMR Invoice. If subtracting the Scheduling Coordinator Revenues results in a credit to CAISO on an RMR Invoice, the credit shall be carried forward ("Credit Carryforward") to the appropriate RMR Invoices for each succeeding Billing Month in that Contract Year until extinguished. If there is an unextinguished credit balance remaining at the end of the Contract Year, Owner shall refund to CAISO an amount equal to the lesser of (i) the remaining balance of Scheduling Coordinator Revenues or (ii) the total amounts due Owner pursuant to Section 8.2 for the Contract Year minus all Scheduling Coordinator Revenues previously credited to Owner during such Contract Year. Such refund amount will be included on December's Adjusted RMR Invoice, or the Final Invoice if the Agreement is terminated.
- (g) In the event any corrections, surcharges, credits, refunds or other adjustments pertaining to a Billing Month are discovered after the Revised Adjusted RMR Invoice for such Billing Month has been issued ("Prior Period Changes"), then such Prior Period Changes shall be included in a worksheet for the prior period ("Prior Period Change Worksheet") and submitted for payment in the next allowed Billing Month for Prior Period Changes. The allowed Billing Months for Prior Period Changes are as follows. Any Prior Period Changes pertaining to the months of January through June of a Contract Year which are discovered prior to the submission of the December Estimated RMR Invoice for such Contract Year shall be included in a Prior Period Change Worksheet submitted with the December Estimated RMR Invoice. Any Prior Period Changes pertaining to the months of July through December of a Contract year which are discovered prior to the submission of the May Estimated RMR Invoice for the subsequent Contract year shall be included, subject to Section 9.8, in a Prior Period Change Worksheet submitted with the May Estimated RMR Invoice for the subsequent Contract Year. Any Prior Period Changes pertaining to a Billing Month for a prior Contract Year which are discovered after

the first opportunity to submit a Prior Period Change Worksheet has passed, shall be included in a Prior Period Change Worksheet submitted with the Estimated RMR Invoice for the next December or May Billing Month, whichever comes first. Any Prior Period Changes pertaining to the time when the Facilities were under a superseded rate schedule using Conditions of Must Run Agreement A, B, and C, shall be calculated through a separate process and not included on RMR Invoices issued under this Agreement unless the Prior Period Changes result from the Revenue Requirements Settlements outlined in the Stipulation and Agreement approved on May 28, 1999, in FERC Docket No. ER98-441-000, et al.

- (h) Owner shall send a copy of each RMR Invoice and any Prior Period Change Worksheet(s) to the Responsible Utility at the time it sends such invoices to CAISO.
  - (i) Owner shall provide supporting detail with the Prior Period Change Worksheets to identify the relevant Contract Year and provide clear calculations by Facility, by Billing Month, and such other detail as necessary to support the Prior Period Change(s). This level of detail shall be consistent with the level of detail originally required to perform the computation(s) that are being corrected in the Prior Period Change Worksheet. Prior Period Change Worksheets, when required, shall include all identified Prior Period Changes for each applicable prior Contract Year, and shall be computed as specified in section 9.1(j).
  - (j) A Prior Period Change Worksheet shall contain the following information and calculations for each Billing Month in the relevant Contract Year(s), commencing with the Billing Month pertaining to the Prior Period Change(s):
    - (i) The Revised Adjusted RMR Invoice for the Billing Month or, if such Billing Month has previously been submitted on a Prior Period Change Worksheet, the most recent revision of such RMR Invoice.
    - (ii) A revision of the RMR Invoice specified in paragraph (1) above which shows the RMR Invoice revised to incorporate the Prior Period Change(s) as if such Prior Period Change(s) had been invoiced in the Billing Month which gave rise to the Prior Period Change(s). Such revision shall incorporate the impact of the Prior Period Change(s) on RMR payments, including any impact resulting from the Credit Carryforward calculation for the current or previous Billing Months in the Contract Year. For Condition 2 Units, such calculation shall include a recalculation of the refund described in Section 9.1(f).
    - (iii) The difference between the amounts calculated under paragraph (2) above and paragraph (1) above. The amount due to or from Owner as a result of this calculation shall be clearly specified, with interest shown separately from any other amount due. Interest shall be calculated at the Interest Rate from the Due Date of the Revised Estimated RMR Invoice for the Billing Month to the date payment of the amount due is made.
- Owner shall total for all Billing Months which are included on the Prior Period Change Worksheet, the amount due as a result of the calculation in paragraph (3) above for each Billing Month. Owner shall also total for all Billing Months which are included on the Prior Period Change Worksheet, the interest due as a result of the calculation in paragraph (3) above for each Billing Month. The total amount due and interest due shall be transferred from the Prior Period Change Worksheet to the appropriate Estimated RMR Invoice, and such amounts shall be due as specified on the Estimated RMR Invoice.
- (k) Any time a Unit switches from Condition 1 to Condition 2 or Condition 2 to Condition 1 during a Contract Year, the provisions of Section 9.1(e) shall apply to the months when the unit was on Condition 1 and the provisions of Section 9.1(g) shall apply to the months when the unit was on Condition 2.

- (l) CAISO shall separately post on the CAISO Website examples ("Prior Period Change Examples") developed and agreed to by the RMR Invoice Task Force created under Schedule O of the calculations described in Sections 9.1(e), 9.1(f), 9.1(g) and 9.1(j) to provide guidance on the correct treatment of Prior Period Changes and to show the correct preparation of the Prior Period Change Worksheet and transfer of amount due to the appropriate Estimated RMR Invoice. Additionally, the RMR Invoice Task Force shall develop and agree to, and CAISO shall post on the CAISO Website, guidelines ("Prior Period Change Guidelines") underlying the calculations described in Sections 9.1(e), 9.1(f), 9.1(g) and 9.1(j). The Prior Period Change Worksheet shall be prepared, and the amount due shall be calculated and transferred to the Estimated RMR Invoice, in accordance with the RMR Invoice Template, the Prior Period Change Examples, and the Prior Period Change Guidelines posted on the CAISO Website. In the event of a dispute regarding the treatment of Prior Period Changes, all Parties to such dispute shall refer to the Prior Period Change Examples and Prior Period Change Guidelines posted on the CAISO Website for guidance.

## 9.2 Facility Trust Accounts

CAISO shall establish two segregated commercial bank accounts under the "Facility Trust Account" referred to in Sections 11.13 and 41 of the CAISO Tariff for each Responsible Utility. One commercial bank account, the "RMR Owner Facility Trust Account", shall be held in trust by CAISO for Owner. The other commercial bank account, the "Responsible Utility Facility Trust Account", shall be held in trust by CAISO for the Responsible Utility. Payments received by CAISO from a Responsible Utility in connection with this Agreement, including payments following termination of this Agreement, will be deposited into the RMR Owner Facility Trust Account and payments from CAISO to Owner will be withdrawn from such Account, all in accordance with Sections 11.13 and 41 of the CAISO Tariff and this Article 9. Any payments received by CAISO from Owner in connection with this Agreement, including payments following termination of this Agreement, will be deposited into the Responsible Utility Facility Trust Account. Any payments to a Responsible Utility of funds received from Owner under this Agreement will be withdrawn from the Responsible Utility Facility Trust Account, all in accordance with Section 11.13 and 41 of the CAISO Tariff, and this Agreement. Neither the RMR Owner Facility Trust Account nor the Responsible Utility Facility Trust Account shall have other funds commingled in it at any time.

## 9.3 Payment

- (a) CAISO shall pay Owner all invoiced amounts due on Revised Estimated RMR Invoices, Revised Adjusted RMR Invoices, and Final Invoices whether or not disputed by CAISO or the Responsible Utility except to the extent that CAISO (i) is entitled to a refund on a Revised Estimated or Revised Adjusted RMR Invoice or Final Invoice against such payment under this Agreement or (ii) is entitled to deduct an amount under Section 9.6. All payments shall be made from the RMR Owner Facility Trust Account on or before the Due Date by wire transfer in accordance with instructions from Owner. If Owner is also the Responsible Utility, at the discretion of Owner payments to it may be made by memorandum account instead of wire transfer. Owner shall establish and maintain a settlement account at a commercial bank located in the United States and reasonably acceptable to CAISO which can effect money transfers via Fed-Wire where payments to and from the Facility Trust Accounts shall be made in accordance with Section 9.2 and Section 11.13 of the CAISO Tariff. Owner shall notify CAISO of its settlement account details prior to the Effective Date. Owner may from time to time change its settlement account details, provided that, Owner shall give CAISO 15 days notice before making changes. In the event there is a refund amount due to CAISO, Owner shall refund the amount due CAISO in accordance with Section 9.2 and Section 11.13 of the CAISO Tariff.

- (b) If a Revised Adjusted RMR Invoice is less than the amount paid by CAISO on the Revised Estimated RMR Invoice, the difference shall be paid by Owner to CAISO with interest at the Interest Rate from the Due Date of the Revised Estimated RMR Invoice to the Due Date of the Revised Adjusted RMR Invoice, or, if the Agreement is terminated, shall be paid to CAISO on submission of the Final Invoice. If a Revised Adjusted RMR Invoice is greater than the amount paid by CAISO under the Revised Estimated RMR Invoice, CAISO shall pay Owner the difference with interest at the Interest Rate from the Due Date of the Revised Estimated RMR Invoice to the Due Date of the Revised Adjusted RMR Invoice by CAISO.

#### 9.4 Payment Default

- (a) Except as provided in Section 9.4 (b), Owner, in addition to any other remedy it may have, may pursue all claims against CAISO and the Collateral, as defined in Section 9.7 below, if CAISO fails to pay any invoice in full by the Due Date as required under Section 9.3. CAISO, in addition to any other remedy it may have, may pursue all claims against Owner if Owner fails to pay any invoice in full by the Due Date as required under Section 9.3. The parties' remedies shall be subject to the limitations set forth in Article 11.
- (b) If the amounts CAISO has not paid have been invoiced by CAISO to the Responsible Utility and the Responsible Utility has not paid such amounts to CAISO, Owner shall cause execution to issue against, and shall collect solely from the Collateral or the Responsible Utility, and not CAISO, if all of the following conditions have been satisfied:
- (i) The Responsible Utility is **[INSERT SCE, PGE or SDGE, as applicable]**
  - (ii) CAISO has invoiced via the CAISO Invoice **[INSERT SCE, PGE or SDGE, as applicable]** for costs (net of any applicable credits, all as shown on the Revised Estimated or Revised Adjusted RMR Invoice) after deducting only amounts permitted to be deducted under Section 9.6.
  - (iii) The CAISO Tariff expressly requires **[INSERT SCE, PGE or SDGE, as applicable]** to pay all amounts shown on the CAISO Invoices without offset, recoupment or deduction (except to the extent that Section 41 of the CAISO Tariff permits deduction of amounts that are due the Responsible Utility after resolution of a dispute) and, to the extent that **[INSERT SCE, PGE or SDGE, as applicable]** disputes any amounts due under the CAISO Invoices, to pay the disputed amounts under protest and subject to refund with interest; and
  - (iv) **[INSERT SCE, PGE or SDGE, as applicable]** fails to pay all or a portion of the amounts due under the CAISO Invoices and did not have the right to have such amount deducted under Section 41 of the CAISO Tariff.
- (c) Notwithstanding the provisions of Section 9.4 (b), Owner may cause execution to issue against, and collect from, CAISO, the Responsible Utility, the Collateral or insurance maintained by CAISO pursuant to Section 12.1(a), if notwithstanding the requirement to pay CAISO Invoices without offset, recoupment or deduction (except to the extent that Section 41 of the CAISO Tariff permits deduction of amounts that are due the Responsible Utility after resolution of a dispute), a Responsible Utility nonetheless offsets amounts unrelated to this Agreement or withholds amounts based on a breach or default by CAISO of any of its obligations to the Responsible Utility.
- (d) The CAISO Invoices shall separately show the amounts due for services from each Facility. If the Responsible Utility withholds any portion of the amount due under the CAISO Invoices, CAISO shall inform Owner of the specific Facility and time periods for which the Responsible Utility withheld payments.



- (e) As a condition for Owner's agreement not to seek to recover amounts from CAISO under Section 9.4(b), CAISO agrees to include and retain in the CAISO Tariff provisions expressly recognizing that Owner is a third party beneficiary of, and has all rights that CAISO has under the CAISO Tariff, at law, in equity or otherwise, to enforce the Responsible Utility's obligation to pay all sums invoiced to it in the CAISO Invoices but not paid by the Responsible Utility, to the extent that, as a result of the Responsible Utility's failure to pay, CAISO does not pay Owner on a timely basis amounts due under this Agreement. Owner recognizes that its rights as a third party beneficiary are (i) no greater than CAISO's rights against the Responsible Utility, and (ii) subject to Section 13 of the CAISO Tariff regarding dispute resolution. Either CAISO or Owner (but not both) will be entitled to enforce any claim arising from unpaid CAISO Invoices, and only one party will be a "disputing party" under Section 13 of the CAISO Tariff with respect to such claim so that the Responsible Utility will not be subject to duplicate claims or recoveries. Owner shall have the right to control the disposition of claims against the Responsible Utility for non-payments which result in payment defaults by CAISO under this Agreement. To that end, CAISO agrees that in the event of nonpayment by the Responsible Utility of amounts due under the CAISO Invoices, CAISO will not take any action to enforce its rights against the Responsible Utility unless CAISO is requested to do so by Owner. CAISO shall cooperate with Owner in a timely manner as necessary or appropriate to most fully effectuate Owner's rights related to such enforcement, including using its best efforts to enforce the Responsible Utility's payment obligations if, as, to the extent, and within the time frame, requested by Owner. CAISO shall intervene and participate where procedurally necessary to the assertion of a claim by Owner.
- (f) If a Responsibility Utility was not the Responsible Utility on April 1, 1998 (a "New Responsible Utility") and if:
- (i) The senior unsecured debt of the New Responsible Utility is rated or becomes rated at less than A- from Standard & Poors ("S&P") or A3 from Moody's Investment Services ("Moody's), and
  - (ii) Such ratings do not improve to A- or better from S&P or A3 or better from Moody's within 60 days,
- CAISO shall then require the New Responsible Utility to issue and confirm to CAISO an irrevocable and unconditional letter of credit in an amount equal to three times the highest monthly payment invoiced by CAISO to the New Responsible Utility (or the prior Responsible Utility) in connection with services provided under this Agreement during the last 3 months for which invoices have been issued. The letter of credit must be issued by a bank or other financial institution whose senior unsecured debt rating is not less than A from S&P and A2 from Moody's. The letter of credit shall authorize CAISO or Owner to draw on the letter of credit for deposit solely into the RMR Owner Facility Trust Account in an amount equal to any amount due and not paid by the Responsible Utility under the CAISO Invoices.

#### 9.5 Interest

If CAISO or Owner fails to make any payment by the Due Date, the amount due but not paid shall accrue interest at the Interest Rate from the Due Date until the amount is paid.

**9.6 Disputed Amounts**

- (a) If CAISO or the Responsible Utility disputes a Revised Estimated or Revised Adjusted RMR Invoice or Final Invoice or part thereof submitted by Owner under this Agreement, or if the Responsible Utility disputes an CAISO Invoice or part thereof that relates to an RMR Invoice or Final Invoice submitted by Owner to CAISO under this Agreement, and if such dispute is based in whole or part on an alleged error or breach or default of Owner's obligations to CAISO under this Agreement, then CAISO promptly shall give written notice to Owner of the reasons for the dispute and the amount in dispute. CAISO shall pay Owner the disputed amount without offset, recoupment or reduction of any kind or nature. Such payment may, however, be made by CAISO under protest with reservation of the right to seek a refund with interest at the Interest Rate from the date of the disputed payment to the date of repayment. If CAISO notifies Owner that CAISO or the Responsible Utility disputes any amount of Owner's RMR Invoice or Final Invoice, Owner shall at its own cost provide CAISO with all information and assistance CAISO reasonably requires to resolve the dispute and shall join with CAISO in any discussions and negotiations with the Responsible Utility to resolve the dispute. The dispute shall be subject to ADR provided that in such ADR proceeding only one entity (CAISO or Responsible Utility) will be the disputing party with respect to such claim. Owner shall be obligated to refund to CAISO as a result of resolution of such dispute only if, and to the extent, the resolution determines the amount invoiced by Owner exceeded the amounts due Owner under this Agreement for the period covered by the RMR Invoice(s) and/or Final Invoice. Any amount agreed or determined to be owed by Owner to CAISO under this Section 9.6 (a) shall be refunded by Owner to CAISO with interest, by Owner's inclusion of such refund (including interest) in a Prior Period Change Worksheet included with the next appropriate May or December Estimated RMR Invoice as specified in Sections 9.1(g) through 9.1(l) of this Agreement. If Owner does not include such refund (including interest) in the appropriate RMR Invoice, then such refund shall be made by CAISO's deduction of such amount from the next Revised Estimated and Revised Adjusted RMR Invoice(s) and Final Invoice submitted by Owner to CAISO under this Agreement until such amount is extinguished, or, if this Agreement has terminated, by paying such amount to CAISO. Interest shall be at the Interest Rate unless it is determined through ADR that the amount invoiced by Owner was submitted without a good faith basis in fact or law, in which case interest shall be at twice the Interest Rate.
- (b) It is expressly understood that the Responsible Utility shall, to the extent set forth herein, be a third party beneficiary of, and shall have all rights that CAISO has under this Agreement, at law, in equity and otherwise, to dispute an RMR Invoice or Final Invoice submitted to CAISO by Owner under this Agreement and to enforce Owner's obligation to make any required payment to CAISO under this Agreement to the extent CAISO does not make a related deposit into the Responsible Utility Facility Trust Account as a result of Owner's failure to make the required payment. The rights of the Responsible Utility as third party beneficiary shall be no greater than CAISO's rights against Owner and shall be subject to the ADR provisions of this Agreement. Either CAISO or the Responsible Utility, but not both, will be entitled to enforce any claim arising from a related set of facts, and only one such entity will be a disputing party under Article 11 of this Agreement with respect to any such claim so that Owner shall not be subject to duplicate claims or recoveries. If the Responsible Utility is not the Owner, the Responsible Utility shall control the disposition of all claims against Owner for non-payment described in this Section 9.6, including the choice of disputing party. The CAISO shall have the right to intervene for the purpose of participating in the proceeding even if it is not the disputing party. CAISO shall cooperate with the Responsible Utility in a timely manner as necessary or appropriate to most fully effectuate the Responsible Utility rights related to such enforcement, including using its best efforts to enforce Owner's payment obligations if, as, to the extent, and within the time frame, requested by Responsible Utility. Subject to the foregoing, CAISO shall intervene and participate where procedurally necessary to the assertion of a claim by the Responsible Utility.

### 9.7 Payment Security

To secure all of CAISO's payment obligations to Owner under this Agreement, CAISO agrees to grant Owner a security interest and lien in the following collateral (collectively, the "Collateral"): (a) all past, present and future accounts and other amounts Responsible Utility owes CAISO at any time pursuant to Section 41 of the CAISO Tariff attributable to invoices submitted by Owner under this Agreement (collectively, the "Accounts"), (b) the RMR Owner Facility Trust Account, all funds in the RMR Owner Facility Trust Account at any time, and all funds paid on account of any Accounts, (c) all proceeds of the Collateral, if any, and (d) all of CAISO's right, title and interest in the Collateral. CAISO represents and warrants to Owner that (a) CAISO has the authority to grant such security interest, (b) CAISO will have good, marketable and exclusive title to all of the Collateral, (c) such security interest and lien will at all times be a valid, enforceable and first-priority lien on the Collateral, and (d) such security interest will be duly perfected by the filing of a financing statement under the California Uniform Commercial Code describing the Collateral in the office of the Secretary of State of California and the delivery of a written notice of Owner's security interest to the bank with which the RMR Owner Facility Trust Account is maintained. If CAISO defaults on its obligation to pay under this Agreement, Owner shall be entitled to enforce such security interest, to exercise its rights in the Collateral, to collect the Accounts from Responsible Utility, to collect all funds in the RMR Owner Facility Trust Account, and to exercise all other rights and remedies under the California Uniform Commercial Code. CAISO agrees to promptly execute and deliver all financing statements and other documents Owner reasonably requests, including but not limited to a written notice of Owner's security interest in the Collateral to the bank with which the RMR Owner Facility Trust Account is maintained, in order to maintain, perfect and enforce such security interest.

### 9.8 Errors

If a Party discovers an error in the amount of an invoice or payment under this Agreement and notifies the other Party within 60 days after discovering the error, the error shall be corrected as specified in Sections 9.1(g) through 9.1(l) of this Agreement; provided that a Party shall not be entitled to have an error corrected unless the Party notifies the other Party within 12 months after the date of the applicable Revised Adjusted RMR Invoice or Final Invoice, or within 60 days after issuance of the final report with respect to an audit pursuant to Section 12.2(g), whichever is later.

### 9.9 Payment of Termination Fee

- (a) Within 14 days after the end of each Month during the period in which any Termination Fee is payable under Section 2.5, Owner shall submit an invoice ("Termination Fee Invoice") to CAISO and a copy to the Responsible Utility for all Termination Fee amounts due for the Month. Each Termination Fee Invoice shall: (i) be broken down by Unit and (ii) clearly identify the source of each input used.
- (b) CAISO shall pay Owner amounts invoiced under this Section 9.9 in accordance with Sections 9.3 through 9.8. If CAISO or, if applicable, the Responsible Utility, has disputed the amount of a Termination Fee stated in a Termination Fee Invoice, then neither CAISO nor the Responsible Utility shall be required to give notice of the same disputed amount as to subsequent Termination Fee Invoices.

### 9.10 Payment of Final Invoice

- (a) Within 7 days of receipt by Owner of the Recalculation Settlement Statement for market transactions for the effective date of termination of this Agreement, Owner shall submit an invoice ("Final Invoice") to CAISO and a copy to the Responsible Utility for all charges and other amounts then due under this Agreement. Amounts then due shall include: (i) charges for all Billable MWh and Ancillary Services provided under this Agreement and not previously invoiced; (ii) the Long-term Planned Outage Adjustment under Section 8.6.

- and (iii) refunds described in section 9.1(f) for Condition 2 Units. Calculation of the Long-term Planned Outage Adjustment shall be made by deeming the effective date of termination to be the end of the Contract Year, and by assuming that all Long-term Planned Outages scheduled to occur after the termination date occur as scheduled. The Final Invoice shall not include remaining Monthly payments of a Termination Fee under Section 2.5, which shall continue to be paid monthly until the obligation is extinguished.
- (b) CAISO shall pay Owner the amount stated in the Final Invoice in accordance with Section 9.3 through 9.8.

## ARTICLE 10 FORCE MAJEURE EVENTS

### 10.1 Notice of Force Majeure Events

If either Party is unable to perform its obligations under this Agreement due to a Force Majeure Event, the Party unable to perform shall notify the other Party of the Force Majeure Event promptly after the occurrence thereof. The Party's notice may be given orally but shall promptly be confirmed in writing or electronically.

### 10.2 Effect of Force Majeure Event

- (a) If a Force Majeure Event prevents a Party from performing, in whole or in part, its obligations under this Agreement, such Party's obligations, other than obligations to pay money (unless the means of transferring funds is affected), shall be suspended and such Party shall have no liability with respect to such obligations; provided, that the suspension of the Party's obligations is of no greater scope and of no longer duration than is required by the Force Majeure Event.
- (b) If a Force Majeure Event (other than a flood, storm or drought affecting a hydroelectric Unit) reduces the Availability of a Unit, the Availability shall be determined as if the Unit were available up to the Unit Availability Limit in effect prior to the Force Majeure Event through the earlier of the 120th day following the Force Majeure Event or until the Unit's Availability is restored, whichever occurs first. If a flood or storm Force Majeure Event reduces the Availability of a hydroelectric Unit, the Availability shall be determined as if the Unit were available up to its Unit Availability Limit in effect prior to the Force Majeure Event through the earlier of the 120th day following the Force Majeure Event or until the Unit's Availability is restored, and as if the Unit were available up to one-half of such Unit Availability Limit from the 120th day through the earlier of the 240th day or the date on which the Unit's Availability is restored. If a drought Force Majeure Event reduces the Availability of a hydroelectric Unit, the Availability shall be determined as if the Unit were available up to its Unit Availability Limit in effect prior to the Force Majeure Event until the Unit's Availability is restored following the end of the drought Force Majeure Event.

### 10.3 Remedial Efforts

The Party that is unable to perform by reason of a Force Majeure Event shall use commercially reasonable efforts to remedy its inability to perform and to mitigate the consequences of the Force Majeure Event as soon as reasonably practicable; provided, that no Party shall be required to obtain replacement power or to settle any strike or other labor dispute on terms which, in the Party's sole discretion, are contrary to its interest and, except to the extent that the Unit's primary fuel is distillate fuel oil or Schedule H expressly requires Owner to maintain fuel oil capability for the Unit, Owner shall not be required to obtain or use fuel oil to operate a Unit. The Party unable to perform shall advise the other Party of its efforts to remedy its inability to perform and to mitigate the consequences of the Force Majeure Event, and shall advise the other Party of when it believes it will be able to resume performance of its obligations under this Agreement.

**ARTICLE 11  
REMEDIES**

**11.1 Dispute Resolution**

The Parties shall make reasonable efforts to settle all disputes arising out of or in connection with this Agreement. Unless this Agreement expressly provides that a particular type of dispute is not subject to ADR, the Parties shall use ADR procedures to resolve all disputes which are not otherwise settled. Owner and CAISO will promptly join with all other owners of Reliability Must-Run Units and all Responsible Utilities to jointly develop ADR procedures to be used in connection with such disputes. Following unanimous agreement of Owner, CAISO and Responsible Utilities to the ADR procedures, such procedures shall be posted on CAISO Website. Until there is unanimous agreement on such procedures, the Parties shall use the ADR procedures contained in Schedule K.

**11.2 Waiver of Damages**

- (a) Except for the obligations set forth in Section 11.4 (Termination for Default) and Section 12.6 (Indemnity), neither Party shall be liable to the other Party for any claim, loss or damage of any nature arising out of or relating to the performance or breach of this Agreement including replacement power costs, loss of revenue, loss of anticipated profits or loss of use of, or damage to, plant or other property, personal injury, or death; provided, however, that this waiver of liability shall not include or cover any claim, damage or loss arising out of the willful misconduct of either Party. Amounts that are specifically payable or reimbursable by the other Party under the terms of this Agreement shall not be considered "claims, losses or damages" for purposes of this Section.
- (b) Neither Party shall be liable to the other for any special, indirect, incidental or consequential damages suffered by the other Party or by third parties arising out of, or relating to, this Agreement or the performance of, or breach of any obligation under, this Agreement, or the negligence of any Party. This limitation shall apply even if the Party is advised of the possibility of these damages.
- (c) Except for the obligations to make or adjust payments or pay penalties expressly provided in Section 2.5 (Termination Fee), Section 7.4 (Planned Capital Items), Section 7.5 (Unplanned Repairs), Section 7.6 (Unplanned Capital Items), Section 7.8 (Upgrades of Generating Units), Article 8 (Rates and Charges) and Article 9 (Statements and Payments), of this Agreement, either Party's maximum aggregate liability for any and all claims arising out of or relating to performance or breach of this Agreement during the Contract Year, whether based upon contract, tort (regardless of degree of fault or negligence), strict liability, warranty, or otherwise, including any liability for Owner's failure to Deliver Requested MWh or Requested Ancillary Services shall not exceed \$20 million.

**11.3 Injunctive Relief**

In addition to any other remedy to which a Party may be entitled by reason of the other Party's breach of this Agreement, the Party not in default shall be entitled to seek temporary, preliminary and permanent injunctive relief from any court of competent jurisdiction restraining the other Party from committing or continuing any breach of this Agreement.

**11.4 Termination For Default**

- (a) If either Party shall fail to perform any material obligation imposed on it by this Agreement and that obligation has not been suspended pursuant to Section 10, the other Party, at its option, may terminate this Agreement by giving the Party in default notice setting out specifically the circumstances constituting the default and declaring its intention to terminate this Agreement. If the Party receiving the notice disputes the notice, it shall notify the other Party within 14 days after receipt of the notice setting out specifically the grounds of such disputes. Time is of the essence in remedying a default. If the Party receiving the notice does not, within 30 days after receiving the notice, remedy the default or refer the dispute to ADR, the Party not in default shall be entitled by a further notice to terminate this Agreement. The Party not in default shall have a duty to mitigate damages.
- (b) Termination of this Agreement pursuant to this Section 11.4 shall be without prejudice to the right of Owner or CAISO to collect any amounts due to it prior to the time of termination. If CAISO terminates this Agreement as to any Unit(s) due to Owner's default, Owner shall reimburse to CAISO the amount, if any, by which costs incurred by CAISO as a direct result of the termination through the end of the then current Contract Year exceed the costs which CAISO would have incurred absent such termination.

**11.5 Cumulative and Nonexclusive**

Except as provided in Section 5.4(b), each remedy provided for in this Agreement shall be cumulative and not exclusive.

**11.6 Beneficiaries**

Except as is specifically set forth in this Agreement, nothing in this Agreement, whether express or implied, confers any rights or remedies under, or by reason of, this Agreement on any persons other than the Parties and their respective successors and assigns, nor is anything in this Agreement intended to relieve or discharge the obligations or liability of any third party, nor give any third person any rights of subrogation or action against any Party. The owner of title to a Unit that is leased to Owner is an intended beneficiary of Section 2.2(e).

**ARTICLE 12  
COVENANTS OF THE PARTIES**

**12.1 Insurance**

- (a) The CAISO shall maintain (i) an errors and omissions insurance policy and (ii) director and officer insurance, with combined aggregate coverage of at least \$150 million under the two policies and an operating reserve of at least \$15 million. The CAISO may reduce the level of insurance coverage, but may not do so unless it provides Owner at least 90 days notice of its intent to reduce the insurance coverage. At Owner's request, CAISO shall provide Owner with evidence of the insurance coverage it has in place. This Section 12.1 shall not be construed to require CAISO to maintain any level of coverage for any period after termination of the Agreement.
- (b) Owner and CAISO will secure and maintain in effect during the term of this Agreement the insurance required by Schedule I. Self-insurance may be utilized by mutual agreement. Owner shall name CAISO as an additional insured on its general commercial liability insurance policies. CAISO shall name Owner as an additional insured on its errors and omissions insurance policies. Owner and CAISO will each certify or cause its respective insurance agent to certify that it is insured under a major risk management program, including self-insured retentions, and except for policies covered by Section 12.1 (a), such insurance will remain in effect in amounts meeting the requirements of Schedule I.

**12.2 Books And Records**

- (a) For a period of 36 months from creation of the records, Owner shall maintain and make available for audit by CAISO complete operations records for each Unit. Such records shall include:
- (i) information for each Settlement Period on the Availability of the Units, Delivered MWh and Delivered Ancillary Services,
  - (ii) outages,
  - (iii) Facility licenses and permits,
  - (iv) copies of operating and maintenance agreements for the Unit,
  - (v) a list of citations filed against the Unit by any environmental, air quality, health and safety, or other regulatory agency in the last 36 months,
  - (vi) a list of any resolved and unresolved WSCC log items from the last 36 months pertaining to the Unit,
  - (vii) maintenance, overhauls and inspections performed, and
  - (viii) books, accounts and all documents required to support Owner's statements, invoices, charges and computations made pursuant to this Agreement.
- CAISO may audit Owner's books, accounts and documents relating to invoices, statements, charges and computations no more frequently than once each Contract Year, and only one time following expiration or termination of this Agreement.
- (b) The Responsible Utility shall have the right to participate jointly with CAISO in auditing books, accounts, documents and operating records of the Facilities to the extent required to verify the accuracy and correctness of all Owner's statements, invoices, and computations underlying all Owner charges passed through by CAISO to the Responsible Utility in connection with services rendered by Owner under this Agreement.
- (c) For a period of 36 months from the creation of the records, CAISO shall maintain and make available for audit by Owner all operations records required to permit Owner to verify that CAISO has complied with its obligations to Owner under this Agreement.
- (d) In addition to the audit rights under Section 12.2 (a) and (b), if Owner's rates are determined pursuant to the formula contained in Schedule F, representatives of CAISO and the Responsible Utility shall have the right jointly to audit the records, accounts and supporting documents of Owner to verify (i) the accuracy of any arithmetic calculation and (ii) application of the formula.
- (e) If Owner's rates are determined pursuant to the formula contained in Schedule F, the California Agency shall have the right to audit the records, accounts and supporting documents of Owner or CAISO to verify the accuracy of any arithmetic calculation and application of the formula, including the accuracy of allocation to accounts under the FERC Uniform System of Accounts, 18 C.F.R. Part 101. If there is more than one California Agency, only one audit shall be conducted by the California Agencies and such audit shall be binding on all the California Agencies.
- (f) Any entity exercising its right to audit under this Section 12.2 shall give the audited entity not less than 30 days prior written notice of the audit. Books or records requested in any audit shall be available for inspection by the auditing entity at the offices of the entity being audited between 9:00 A.M. and 5:00 P.M. on Business Days. Any audit under this Section 12.2 shall be completed not more than 36 months after the records were created. Any audit right herein shall be limited to the books and accounts of Owner or CAISO and shall not extend to the books and accounts of the parent or any other affiliate of Owner or CAISO. The expense of any audit shall be borne solely by the auditing Party or entity.
- (g) No adjustments to payments shall be required as a result of an audit unless, and then only to the extent that, CAISO, Owner, or another entity making such an audit under this Section 12.2 takes written exception to the books and accounts and makes a claim upon Owner or CAISO for any discrepancies disclosed by such audit within 60 days following issuance of the final audit report.
- (h) All information provided during the course of an audit shall be treated as Confidential Information in accordance with Section 12.5.

- (i) Nothing in this Agreement shall override any obligation Owner or CAISO may have under applicable law to maintain books and records for periods longer than 36 months nor shall this Agreement override any obligation Owner or CAISO may have to make books and records available for audit by FERC or any other entity. Nothing in this Agreement is intended to limit in any manner (i) the authority of FERC to audit the books and records of Owner or CAISO or the manner in which such audit is noticed or conducted or (ii) CAISO's right to audit market participants (including Owner) under the CAISO Tariff.

### 12.3 Representations And Warranties

- (a) CAISO represents and warrants to Owner as follows:
  - (i) CAISO is a validly existing corporation with full authority to enter into this Agreement.
  - (ii) CAISO has taken all necessary measures to have the execution and delivery of this Agreement authorized, and upon the execution and delivery of this Agreement shall be a legally binding obligation of CAISO.
- (b) Owner represents and warrants to CAISO as follows:
  - (i) Owner is a validly existing [limited liability company][corporation] [municipal corporation] with full authority to enter into this Agreement.
  - (ii) Owner has taken all necessary measures to have the execution and delivery of this Agreement authorized, and upon the execution and delivery this Agreement shall be a legally binding obligation of Owner.

### 12.4 Responsibilities

Each Party shall be responsible for protecting its facilities from possible damage by reason of electrical disturbances or faults caused by the operation, faulty operation, or non-operation of the other Party's facilities. The other Party shall not be liable for any damages so caused.

### 12.5 Confidentiality

- (a) Except as may otherwise be required by applicable law, all information and data provided by the Parties to one another pursuant to this Agreement and marked "Confidential" or otherwise identified with specificity in writing as confidential at the time of disclosure ("Confidential Information") shall be treated as confidential and proprietary material of the providing Party and will be kept confidential by the receiving Party and used solely for purposes of this Agreement. Confidential Information will not include information that is or becomes available to the public through no breach of this Agreement, information that was previously known by the receiving Party without any obligation to hold it in confidence, information that the receiving Party receives from a third party who may disclose that information without breach of law or agreement, information that the receiving Party develops independently without using the Confidential Information, and information that the disclosing Party approves for release in writing. The receiving Party shall keep such information confidential and shall limit the disclosure of any such Confidential Information to only those personnel within its organization with responsibility for using such information in connection with this Agreement. The receiving Party shall assure that personnel within its organization read and comply with the provisions of this Section 12.5 and any Confidentiality Agreement implementing this Section 12.5. The Parties shall use all reasonable efforts to maintain the confidentiality of the Confidential Information in any litigation, shall promptly notify the providing Party of any attempt by a third party to obtain the Confidential Information through legal process or otherwise. A Party or third party beneficiary under Article 9 which has received Confidential Information may use that information in litigation or regulatory proceedings related to this Agreement but only after notice to the other Party and affording the other Party an opportunity to obtain a protective order or other relief to prevent or limit disclosure of the Confidential Information.



- (b) The Parties may provide any Confidential Information (i) to the Responsible Utility pursuant to provisions of this Agreement under which information is to be provided to that Responsible Utility and as required for settlement and billing; (ii) to any entity with audit rights under Section 12.2 or review rights specified in other provisions of this Agreement, (iii) on a need-to-know basis, to Owner's Scheduling Coordinator, financial institutions, agents, lessors of the Unit and potential purchasers of interests in a Unit; and, (iv) as required for settlement and billing, to Scheduling Coordinators responsible for paying for services provided under this Agreement. As a condition to receiving any Confidential Information under this Section 12.5, the recipient shall execute a Confidentiality Agreement in the applicable form contained in Schedule N and thereby agree to be subject to the non-disclosure and other obligations contained in this Section 12.5.
- (c) The obligation to provide confidential treatment to Confidential Information shall not be affected by the inadvertent disclosure of Confidential Information by either Party.

## 12.6 Indemnity

Subject to the limitations in Section 11.2 (b), each Party shall indemnify, defend and hold harmless the other Party and its officers, directors, employees, agents, contractors and sub-contractors, from and against all third party claims, judgments, losses, liabilities, costs, expenses (including reasonable attorneys' fees) and damages for personal injury, death or property damage, caused by the negligence or willful misconduct related to this Agreement or breach of this Agreement of the indemnifying Party, its officers, directors, agents, employees, contractors or sub-contractors, provided that this indemnification shall be only to the extent such personal injury, death or property damage is not attributable to the negligence or willful misconduct related to this Agreement or breach of this Agreement of the Party seeking indemnification, its officers, directors, agents, employees, contractors or sub-contractors. This indemnification shall not include or cover any claim covered by any workers' compensation law. This indemnification shall be for an amount not exceeding the deductible of the indemnifying Party's commercial general liability insurance in the case of Owner and errors and omission insurance in the case of CAISO. The indemnified Party shall give the other Party prompt notice of any such claim. The indemnifying Party shall have the right to choose competent counsel, control the conduct of any litigation or other proceeding, and settle any claim. The indemnified Party shall provide all documents and assistance reasonably requested by the indemnifying Party. Section 14 of the CAISO Tariff shall not apply to this Agreement.

## 12.7 Owner Financial Requirements

- (a) Through the term of the Agreement, Owner shall maintain an investment grade rating by Moody's or Standard and Poor's or provide documentation from a financial institution or corporate owner acceptable to the CAISO that there is an equity position described below. The CAISO shall not unreasonably withhold acceptance of the documentation.
  - (i) An equity to debt ratio of at least 30%, or
  - (ii) An equity to total asset ratio of at least 30% or
  - (iii) Demonstrate to the CAISO's reasonable satisfaction that other factors, including, without limitations, commercial financing arrangements, and working capital positions, mitigate the risk of Owner failing to meet the performance requirements under this Agreement.
- (b) If the Owner does not possess and maintain an investment grade rating, an equity position or make other arrangements as described in Section 12.7 (a), then it must provide one of the following:
  - (i) Proof of insurance to cover the financial exposure to the CAISO for one year of Capital Items, Repairs, fuel and any other operating expenses; or
  - (ii) Security to cover the financial exposure to the CAISO for one year of Capital Items, Repairs, fuel and any other operating expenses in one of the following forms:

- (A) standby letter of credit;
- (B) corporate guarantee;
- (C) cash deposit; or
- (D) security bond.

### ARTICLE 13 ASSIGNMENT

#### 13.1 Assignment Rights and Procedures

Neither Party shall assign its rights or delegate its duties under this Agreement without the prior written consent of the other Party, which shall not be unreasonably withheld. CAISO shall be entitled to deny consent to a proposed assignment by Owner only if the assignee does not meet the financial criteria set out in Section 13.2 (a) or the technical criteria set out in Section 13.2 (b). Notwithstanding the foregoing, if FERC approves an assignment, then the non-assigning Party shall be deemed to have consented to the assignment, subject to the non-assigning Party's right to seek judicial review of a FERC decision. Each Party shall give the other Party prompt notice of any proposed assignment or delegation, together with such information as the other Party may reasonably request with respect to the proposed assignment or assignee. Each Party shall be deemed to consent to the assignment or delegation unless it submits a written objection to the assignment or delegation within 14 days of receiving the notice and all financial and technical information as required in Sections 13.2(a) and 13.2(b). In the event of an assignment of this Agreement pursuant to a Financing Agreement, CAISO will execute for the benefit of the bank, financial institution or other entity with an interest in the Financing Agreement, a consent to such assignment reasonably acceptable to CAISO and Owner. An assignment of this Agreement by Owner in connection with the sale of a Unit shall terminate Owner's rights and obligations under this Agreement prospectively from the effective date of the assignment.

#### 13.2 Limitation on Right to Withhold Consent

- (a) CAISO shall not withhold consent to assignment of this Agreement on financial grounds if the assignee meets the financial requirements in Section 12.7(a) or provides financial security pursuant to Section 12.7(b).
- (b) CAISO shall not withhold consent to an assignment on grounds that the assignee is not technically qualified if the assignee was an Owner of a Reliability Must-Run Unit as of May 1, 1999 or the assignee submits appropriate documentation to the CAISO to establish that it has sufficient resources and expertise to be able to:
  - (i) Secure the necessary fuel and transportation for the fuel for the Facility;
  - (ii) Secure all necessary support services, including water supply, communications, waste disposal, etc. for the Facility;
  - (iii) Provide service from the Facility in compliance with the terms of this Agreement;
  - (iv) Provide the engineering and other technical services required to support operation and maintenance of the Facility;
  - (v) Obtain as necessary, and comply with all permits or licenses required to operate or maintain the Facility; and
  - (vi) Provide environmental services required for the operation and maintenance of the Facility.
- (c) The proposed assignee shall provide the last two years' annual audited financial statements and quarterly financial statements (unaudited) prior to the proposed date of purchase. If the proposed assignee is a new company and there are no historical financial statements, then a financial institution or corporate owner must provide pro forma financial statements in a form acceptable to the CAISO.

**13.3 Transfer of Conditions Following Assignment**

If this Agreement is assigned to a new Owner pursuant to Section 13.1, the new Owner may transfer one or more Units to a different Condition by giving CAISO at least seven days prior notice provided that such notice is given not later than 30 days after the effective date of the assignment. The transfer shall become effective on the first day of month following the later of (i) seven days after the effective date of the assignment or (ii) seven days after the date CAISO receives the new Owner's transfer notice. This section shall not apply to assignment to a new Owner which is an affiliate of Owner as defined in 18 C.F.R. Section 161.2.

**ARTICLE 14  
MISCELLANEOUS PROVISIONS**

**14.1 Notices**

Except as otherwise expressly provided in this Agreement or required by law, all notices, consents, requests, demands, approvals, authorizations and other communications provided for in this Agreement shall be in writing and shall be sent by personal delivery, certified mail, return receipt requested, facsimile transmission or by recognized overnight courier service, to the intended Party at such Party's address set forth in Schedule J. Any notices which may be given orally and are given orally shall be confirmed in writing. All such notices shall be deemed to have been duly given and to have become effective: (a) upon receipt if delivered in person or by facsimile; (b) two days after having been delivered to an air courier for overnight delivery; or (c) seven days after having been deposited in the United States mail as certified or registered mail, return receipt requested, all fees pre-paid, addressed to the applicable address(es) set forth in Schedule J.

**14.2 Effect of Invalidation**

Each covenant, condition, restriction and other term of this Agreement is intended to be, and shall be construed as, independent and severable from each other covenant, condition, restriction and other term. If any covenant, condition, restriction or other term of this Agreement is held to be invalid by any court or regulatory body having jurisdiction, the invalidity of such covenant, condition, restriction or other term shall not affect the validity of the remaining covenants, conditions, restrictions or other terms hereof unless the invalidity has a material impact upon the rights and obligations of the Parties. If an invalidity has a material impact on the rights and obligations of the Parties, the Parties shall make a good faith effort to renegotiate and restore the benefits and burdens of this Agreement as they existed prior to the determination of an invalidity.

**14.3 Amendments**

- (a) Any amendments or modifications of this Agreement shall be made only in writing and, except for changes authorized by the FERC under Sections 205 or 206 of the Federal Power Act, shall be duly executed by both Parties. To the extent that any amendments or modifications are subject to FERC approval, such amendments or modifications shall become effective when permitted to be effective by FERC. For purposes of this Agreement, transfer of any Unit from one condition to the other condition or termination of the Agreement as to less than all Units shall not constitute a modification or amendment to this Agreement.
- (b) Where Owner's rates are not subject to FERC jurisdiction, either CAISO or Owner may, not later than 90 days prior to the end of each Contract Year, serve a notice on the other Party and the Responsible Utility stating that it requires a review of the terms of this Agreement, including any rates, prices and charges contained therein ("Review Notice").
  - (i) The Review Notice shall, as a minimum requirement, set forth the following:
    - (A) the precise nature of the proposed revisions (indicating, where possible, the relevant Article, Section and Schedule); and
    - (B) justification for each proposed revision.

- (ii) The Party in receipt of the Review Notice shall respond to such notice within 30 days of its receipt by issuing a notice in response ("Response Notice"). The Response Notice shall, as a minimum requirement, set forth the following:
  - (A) those revisions set forth in the Review Notice that are accepted as proposed;
  - (B) those revisions set out in the Review Notice that are not accepted;
  - (C) alternative proposals (if any) to the proposed revisions set out in the Review Notice;
  - (D) any revisions required by the responding party not covered by (A) through (C) above; and
  - (E) its justification for any of the matters raised under Sections 14.3 (b) (ii) (B) (C) or (D).
- (iii) Any Party failing to respond to a Review Notice shall be deemed to have accepted the revisions set out in the Review Notice.
- (iv) Following receipt of the Response Notice the duly authorized representatives of the Parties shall meet to negotiate in good faith any revisions to this Agreement.
- (v) In the event that the Parties are unable to reach agreement on the revisions to be made to this Agreement within 60 days of the date of the Review Notice, either Party may refer the matter for resolution through ADR. The arbitrator shall determine the revisions, if any, to the Agreement on the basis that:
  - (A) the purpose of the Agreement is to maintain the reliability of CAISO Controlled Grid; and
  - (B) costs and charges payable by CAISO should reflect the costs of providing services to the CAISO.
- (vi) In the event that the Parties agree to the revisions, or such matters are determined through ADR, or a Party fails to respond to a Review Notice, the agreed, determined or deemed accepted revisions shall take effect and the rights and obligations of the Parties shall be amended as from the beginning of the ensuing Contract Year or from such other date and time agreed between the Parties or determined through ADR, and following such time the Parties shall act in accordance with the terms and conditions of this Agreement as amended.

#### **14.4 Filings Under Sections 205 or 206 of the Federal Power Act**

Nothing contained in this Agreement shall be construed as affecting the right of Owner unilaterally to make application to FERC for a change in rates, terms and conditions under Section 205 of the Federal Power Act and pursuant to FERC rules and regulations promulgated thereunder. CAISO may challenge such application or may submit complaints concerning Owner's rates, terms and conditions under Section 206 of the Federal Power Act and pursuant to FERC rules and regulations promulgated thereunder.

#### **14.5 Construction**

The language in all parts of this Agreement shall in all cases be construed as a whole and in accordance with its fair meaning, and shall not be construed strictly for or against either of the Parties.

#### **14.6 Governing Law**

This Agreement shall be interpreted and construed under and pursuant to the laws of the State of California, without regard to conflicts of laws principles.

**14.7 Parties' Representatives**

Both Parties shall ensure that throughout the term of this Agreement, a duly appointed Representative is available for communications between the Parties. The Representatives shall have full authority to deal with all day-to-day matters arising under this Agreement. If a Party's Representative becomes unavailable, the Party shall promptly appoint another Representative. Acts and omissions of Representatives shall be deemed to be acts and omissions of the Party. Owner and CAISO shall be entitled to assume that the Representative of the other Party is at all times acting within the limits of the authority given by the Representative's Party. Owner's Representatives and CAISO's Representatives shall be identified on Schedule J.

**14.8 Merger**

This Agreement and the Stipulation and Agreements filed April 2, 1999 and August 14, 2000 in Docket Nos. ER98-441-000 et al. constitute the full agreement of the Parties with respect to the subject matter hereto and supersede all prior agreements, whether written or oral, with respect to such subject matter.

**14.9 Independent Contractors**

Nothing contained in this Agreement shall create any joint venture, partnership or principal/agent relationship between the Parties. Neither Party shall have any right, power or authority to enter into any agreement or commitment, act on behalf of, or otherwise bind the other Party in any way.

**14.10 Conflict with CAISO Tariff**

The CAISO Tariff shall govern matters relating to the subject matter of this Agreement which are not set forth in this Agreement. In all other circumstances, this Agreement shall govern. In the event of a conflict between the terms and conditions of this Agreement and any terms and conditions set forth in the CAISO Tariff the terms and conditions of this Agreement shall prevail.

**14.11 Waiver**

The failure to exercise any remedy or to enforce any right provided in this Agreement shall not constitute a waiver of such remedy or right or of any other remedy or right provided herein. A Party shall be considered to have waived any remedies or rights hereunder only if such waiver is in writing.

**14.12 Assistance**

During the term of this Agreement, each Party shall provide such reasonable assistance and cooperation as the other Party may require in connection with performance of the duties and obligations of each Party under this Agreement, including, but not limited to, assistance in securing any necessary regulatory approvals and in facilitating necessary financing.

**14.13 Headings**

Article and section headings used in this Agreement are inserted for convenience only and are not intended to be a part hereof or in any way to define, limit, describe or to otherwise be used in interpreting the scope and intent of the particular provisions to which they refer.

CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION  
FERC ELECTRIC TARIFF  
AMENDED AND RESTATED SECOND REPLACEMENT VOLUME NO. I      Original Sheet No. 793DDD

IN WITNESS WHEREOF, this Agreement has been executed as of the date first above written.  
[OWNER]

By: \_\_\_\_\_

Name:

Title:

The California Independent System Operator Corporation

By: \_\_\_\_\_

Name:

Title:

**FERC  
RELIABILITY MUST-RUN SCHEDULES**

- Schedule A Unit Characteristics, Limitations and Owner Commitments
- Schedule B Monthly Option Payment
- Schedule C Variable Cost Payment
- Part 1 for Thermal Units  
Part 2 for Geothermal Units  
Part 3 for Conventional Hydro Units  
Part 4 for Pumped Storage Hydro Units  
Part 5 for Biomass Generation Units
- Schedule D Start-up Payment
- Part 1 for Condition 1 Units  
Part 2 for Condition 2 Units
- Schedule E Ancillary Services Payment
- Part 1 for Condition 1  
Part 2 for Condition 2  
Part 3 for Black Start Services
- Schedule F Determination of Annual Revenue Requirements of Must-Run Generating Units
- Schedule G Charges for Service in Excess of Contract Service Limits
- Schedule H Fuel Oil Service
- Schedule I Insurance Requirements
- Schedule J Notices
- Schedule K Dispute Resolution
- Schedule L-1 Request for Approval of Capital Items or Repairs
- Schedule L-2 Capital Item and Repair Progress Reports
- Schedule M Mandatory Market Bid for Condition 2 Units  
When Dispatched by the CAISO
- Schedule N-1 Non-Disclosure and Confidentiality Agreement for Responsible Utilities
- Schedule N-2 Non-Disclosure and Confidentiality Agreement for Entities Other than Responsible  
Utilities
- Schedule O Owner's Invoice Process
- Schedule P Reserved Energy for Air Emissions Limitations

**Schedule A**

**Unit Characteristics, Limitations and Owner Commitments**

**1. Description of Facility**

Provide the following information for all units at the Facility, regardless of their RMR designation status. Information regarding units not designated as Reliability Must-Run Units is required only if and to the extent that the information is used to allocate Facility costs between Reliability Must-Run Units and other units.

Unit	RMR (Y/N)	Maximum Net Dependable Capacity (includes CAISO-paid Upgrade capacity)*	Fuel Type

For this Facility, the Owner will use \_\_\_\_\_ [insert either MW, MW/hrs, or service hours] in Schedule B to allocate Annual Fixed Revenue Requirements to and among Units. This election shall be applicable to all Facilities containing Reliability Must Run Units subject to any "RMR contract" as defined in the CAISO Tariff executed by Owner or any of its affiliates as defined in 18 CFR § 161.2.

\* Maximum Net Dependable Capacity shall reflect any transformer or line loss to the Delivery Point.

**2. Description of RMR Units**

Provide the address(es) of the Units at the Facility and the following tabular information:

	Unit
Type (fossil, combustion turbine, etc.)	
Synchronous Condenser Capability (Y/N)	
Power Factor Range (lead to lag)	
Maximum Reactive Power Leading, MVar	
Maximum Reactive Power Lagging, MVar	
Load at Maximum MVar Lagging, MW	
Load at Maximum MVar Leading, MW	
Black Start Capable (Y/N)	
Automatic Start or Ramp (Y/N)*	
Upgrade Capacity Paid by CAISO, MW	

\* If "Y", describe the conditions under which the Unit will start or ramp automatically.

**3. Operational and Regulatory Limitations of RMR Units:**

Air Emissions Limitations

List applicable NO<sub>x</sub>, CO, SO<sub>2</sub>, particulate, and other appropriate emissions limits; note the name and address of the lead agency; the agency's applicable rule number(s); and note those pollutants for which an emissions cap applies.



**Monthly Reserved MWh for Air Emission Limitations**

Operating Limits related to Ambient Temperatures

Ambient Temperature Correction Factors for Availability Test

Provide a curve or table showing the Ambient Temperature Correction Factors for each Unit (the relationship between Ambient Temperature and Maximum Net Dependable Capability).  
FERC License Conditions (hydroelectric Units)

Other Limits (e.g., cooling water discharge)

**4. Delivery Point**

Unit	Transmission Node (Station Name)	Voltage

**5. Metering and Related Arrangements**

Unit	Meter Location	Meter (Manufacturer & Model No.)

**6. Start-up Lead Times**

Non-hydroelectric Units

Unit	Start-up Segment Number	Generating Unit Down Time (Minutes)	Generating Unit Start-up Time (Minutes)
	1		
	2		
	n		

"X<sub>max</sub>" used in Schedules C and D shall be equal to or less than the hours in the heading of this column. The Start-up Lead Time shall be the Startup time as defined and submitted by the Owner through the process outlined in the CAISO Tariff Schedules and Bids Protocol Section 6.6 or its successor.

Hydroelectric Start-up Lead Times

Unit	Time from notification to Minimum Load - Normal work hours	Time from notification to Minimum Load - Outside Normal Work hours

**7. Ramping Constraint**

Describe any constraints the Unit incurs between Minimum Load and PMax.

**8. Ramp Rate**

Unit	Ramp Rate Segment Number	Output of Point Range (MW)	Minimum Ramp Rate (MW/Minute)	Maximum Ramp Rate (MW/Minute)
	1			
	2			
	n			

Separate Ramp Rates will be shown for each load range and will describe any special restrictions affecting Ramp Rates at various load points, e.g., feed pump operation, heat soaks, etc.

The Ramp Rate shall be the Operational Ramp Rate submitted by the Owner through the process described in the CAISO Tariff. On the Effective Date, the values in the CAISO Master File shall be set equal to the values shown in the table above.

**9. Minimum Load**

Unit	Manual (MW)	AGC (MW)

**10. Minimum Run Time**

Unit	Hours

**11. Minimum Off Time**

Unit	Hours

**12. Contract Service Limits**

Unit	Maximum Annual MWh	Maximum Annual Service Hrs	Maximum Annual Start-ups

Maximum Monthly MWh (Hydroelectric Units only)

MWh

Unit	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec

**13. Owner's Repair Cost Obligation**

Owner's Repair Cost Obligation for the current Contract Year is \$ .

**14. Existing Contractual Limitations and Other Contract Restrictions on Market Transactions**

**15. Applicable UDC Tariff(s)**

[List each Tariff and schedule to which it applies]

**Schedule B  
 Monthly Option Payment**

The formulas and values used to compute the Monthly Option Payment in accordance with Section 8.1 and Section 8.2 for each Unit for each Month are set forth in Equation B-1 below:

**Equation B-1**

$$\text{Monthly Option Payment} = \text{Monthly Availability Payment} + \text{Monthly Surcharge Payment} - \text{Monthly Nonperformance Penalty}$$

The Monthly Option Payment can never be less than zero.

1. The Monthly Availability Payment is calculated in accordance with Equation B-2 below:

**Equation B-2**

$$\text{Monthly Availability Payment (\$)} = \text{lesser of } \left[ \begin{array}{l} \text{Current Monthly Availability Payment (\$)} \\ \text{or} \\ \text{100\% of AFRR minus Cumulative Monthly Availability Payments Excluding Current Monthly Availability Payment (\$)} \end{array} \right]$$

2. The Current Monthly Availability Payment is calculated in accordance with Equation B-3 below:

**Equation B-3**

$$\text{Current Monthly Availability Payment (\$)} = \text{Sum for all hours} \left[ \begin{array}{l} \text{Hourly Availability Charge (\$/hr)} * \frac{\text{Unit Availability Limit (MW)}}{\text{Maximum Net Dependable Capacity (MW)}} \end{array} \right]$$

Where:

- A. Hourly Availability Charge is calculated in accordance with Equation B-4 below:

**Equation B-4**

$$\text{Hourly Availability Charge} = \text{Hourly Availability Rate} * \text{Fixed Option Payment Factor}$$

Where:

- Hourly Availability Rate is calculated in accordance with Equation B-5 below.

**Equation B-5**

$$\text{Hourly Availability Rate} = \frac{\text{Annual Fixed Revenue Requirement}}{\text{Target Available Hours}}$$

Annual Fixed Revenue Requirement is set forth in Section 7 below.

Target Available Hours are set forth in Section 6 below.

- For Units under Condition 1, the Fixed Option Payment Factor is set forth in Table B-0 below:

Table B-0	
Unit	Fixed Option Payment Factor

For Units under Condition 2, the Fixed Option Payment Factor is 1.

The Hourly Availability Charges for the Contract Year are set forth in Table B-1 below:

Table B-1		
	Condition 1	Condition 2
Unit 1		

- B. Unit Availability Limit is defined in Article 1 of the Agreement.
- C. Maximum Net Dependable Capacity is shown in Section 1 of Schedule A.

3. The Monthly Surcharge Payment is calculated in accordance with Equation B-6 below:

**Equation B-6**

$$\text{Monthly Surcharge Payment (\$)} = \text{lesser of } \left[ \begin{array}{l} \text{Current Monthly Surcharge Payment (\$)} \\ \text{or } 100\% \text{ of Sum of all Annual Capital Item Costs minus Cumulative Monthly Surcharge Payments Excluding Current Monthly Surcharge Payment (\$)} \end{array} \right]$$

4. The Current Monthly Surcharge Payment is calculated in accordance with Equation B-7 below:

**Equation B-7**

$$\text{Current Monthly Surcharge Payment (\$)} = \text{Sum for all hours} \left[ \begin{array}{l} \text{Sum of all Hourly Capital Item Charges (\$/hr)} * \frac{\text{Unit Availability Limit (MW)}}{\text{Maximum Net Dependable Capacity (MW)}} \end{array} \right]$$

Where:

A. The Hourly Capital Item Charge for each Capital Item approved pursuant to Sections 7.4 or 7.6 is calculated in accordance with Equation B-8 below:

**Equation B-8**

$$\text{Hourly Capital Item Charge} = \text{Hourly Capital Item Rate} * \text{Surcharge Payment Factor}$$

Where:

- Hourly Capital Item Rate is calculated in accordance with Equation B-9 below:

**Equation B-9**

$$\text{Hourly Capital Item Rate} = \frac{\text{Annual Capital Item Cost}}{\text{Target Available Hours}}$$

- Annual Capital Item Cost is the amount recoverable by Owner under this Agreement in a Contract Year for each Capital Item approved pursuant to Section 7.4 or Section 7.6.
- Target Available Hours are shown in Section 6 below.

- For Units under Condition 1, the Surcharge Payment Factor for all Capital Items covered by the Small Project Budget shall be the Fixed Option Payment Factor. For all other Capital Items, the Surcharge Payment Factor shall be as agreed to by Owner and CAISO. If the Owner and CAISO do not agree on the Surcharge Payment Factor, the Surcharge Payment Factor shall equal the Fixed Option Payment Factor, unless the Owner demonstrates in ADR that it would not have installed the proposed Capital Item in accordance with Good Industry Practice but for its obligations to the CAISO under this Agreement, in which case the Surcharge Payment Factor shall be as determined in ADR.
- For Units under Condition 2, the Surcharge Payment Factor is 1.

The Hourly Capital Item Charges for the Contract Year are set forth in Table B-2 below:

Unit	Capital Item Project No.	Annual Capital Item Cost	Condition 1 Surcharge Payment Factor	Condition 1 Hourly Capital Item Charge	Condition 2 Hourly Capital Item Charge

- B. Unit Availability Limit is defined in Article 1 of the Agreement.
  - C. Maximum Net Dependable Capacity is shown in Section 1 of Schedule A.
5. The Monthly Nonperformance Penalty is calculated pursuant to Section 8.5 using the following variables:

A. Hourly Penalty Rate

A Unit's Hourly Penalty Rate for each Contract Year is the lesser of (a) the Unit's Hourly Availability Rate for the Contract Year (calculated pursuant to Item 2.A above), or (b) three times the Unit's Hourly Availability Charge for the Contract Year (as shown in Table B-1 above).

The Hourly Penalty Rates for the Contract Year are set forth in Table B-3 below:

Unit	Condition 1	Condition 2
Unit 1		

B. Hourly Surcharge Penalty Rate

A Unit's Hourly Surcharge Penalty Rate for each Capital Item for each Contract Year is the lesser of (a) the corresponding Hourly Capital Item Rate for the Contract Year (calculated pursuant to Item 4.A above), or (b) three times the applicable Hourly Capital Item Charge for the Contract Year (as shown in Table B-2 above). The Hourly Surcharge Penalty Rates for the Contract Year are set forth in Table B-4 below:

Unit	Capital Item Project No.	Hourly Capital Item Rate	Condition 1 Hourly Surcharge Penalty Rate	Condition 2 Hourly Surcharge Penalty Rate

6. Target Available Hours

A Unit's Target Available Hours for each Contract Year are calculated in accordance with the Equation B-10 below:

Equation B-10

$$\text{Target Available Hours (TAH)} = \text{Hours in the Calendar Year} - (\text{Average Other Outage Hours} + \text{Long-Term Planned Outage Hours})$$

Average Other Outage Hours means the average annual Other Outage Hours for the Unit during the 60-month period ending June 30 of the previous calendar year.

Long-term Planned Outage Hours means the Long-term Planned Outage Hours for the Contract Year scheduled with CAISO pursuant to Section 7.2(a). For periods prior to December 31, 1998, Other Outage Hours shall exclude a planned interruption, in whole or in part, in the electrical output of a Unit to permit Owner to perform a major equipment overhaul or inspection or for new construction work, but only if the outage lasted 21 or more consecutive days.

Long-term Planned Outage Hours scheduled for a Contract Year shall be subject to the Long-term Scheduled Outage Adjustment pursuant to Section 8.6 of the Agreement.

The Average Other Outage Hours, Long-term Planned Outage Hours and Target Available Hours for each Unit for the Contract Year are shown in Table B-5 below:

Unit	Average Other Outage Hours	Long-term Planned Outage Hours	TAH

For the purposes of calculating Target Available Hours for the Contract Year ending December 31, 1999, (a) Average Other Outage Hours shall be calculated using the average annual Other Outage Hours for the Unit during the 60-month period ending December 31, 1998, and (b) Long-term Planned Outage Hours shall be calculated using the hours scheduled for performing Long-term Planned Outages as if the Agreement had become effective on January 1, 1999.

7. Annual Fixed Revenue Requirement (AFRR)

The Annual Fixed Revenue Requirement for each Unit is set forth in Table B-6 below. For any Contract Year commencing on or after January 1, 2002, the Annual Fixed Revenue Requirement shall be determined by the Formula Rate set forth in Schedule F, unless Owner files a superseding rate schedule under Section 205 of the Federal Power Act.

Unit	Annual Fixed Revenue Requirement

8. Limited Section 205 Filing for an Extension of Contract Term

If CAISO has extended the term of this Agreement pursuant to Section 2.1(b), then not later than October 31 of the expiring Contract Year, Owner shall make a filing with FERC under Section 205 of the Federal Power Act containing the values in Tables B-1 through B-6 for the ensuing Contract Year.

In the event that a Long-term Planned Outage that is scheduled for the last quarter of the expiring Contract Year is postponed or rescheduled after October 31 of such year to the ensuing Contract Year, Owner shall make an additional Section 205 filing to revise the values in Tables B-1 through B-5 to reflect such rescheduled Long-term Planned Outage Hours.

**SCHEDULE C**

**Variable Cost Payment  
 Part 1 for Thermal Units**

The Variable Cost Payment for each Unit for the Billing Month shall be the amount calculated in accordance with the following formula:

$$\text{Variable Cost Payment} = \begin{matrix} \text{A. CAISO Unit Monthly Billed Fuel Cost +} \\ \text{B. CAISO Unit Monthly Fuel Imbalance} \\ \text{C. Charge +} \\ \text{D. CAISO Monthly Other Fuel Related Cost +} \\ \text{E. CAISO Monthly Emissions Cost +} \\ \text{F. CAISO Monthly Variable O\&M Cost +} \\ \text{G. CAISO Scheduling Coordinator Charge +} \\ \text{CAISO ACA Charge} \end{matrix}$$

Each component of the Variable Cost Payment for thermal Units will be calculated as described below:

**A. CAISO Unit Monthly Billed Fuel Cost**

The CAISO Unit Monthly Billed Fuel Cost is calculated in accordance with Equation C1-0.

Equation C1-0

$$\left( \begin{matrix} \text{CAISO} \\ \text{Unit} \\ \text{Monthly} \\ \text{Billed} \\ \text{Fuel Cost} \\ \text{(\$)} \end{matrix} \right) = \frac{\begin{matrix} \text{Monthly sum of the} \\ \text{CAISO Unit Hourly Cap Heat} \\ \text{Input} \\ \text{for this Unit} \\ \text{(MMBtu)} \end{matrix}}{\begin{matrix} \text{Monthly sum of the CAISO} \\ \text{Unit Hourly Cap Heat Input} \\ \text{for all Units at the Facility} \\ \text{(MMBtu)} \end{matrix}} * \left( \begin{matrix} \text{CAISO} \\ \text{Facility} \\ \text{Monthly} \\ \text{Billed} \\ \text{Fuel Cost} \end{matrix} \right)$$

Where:

- CAISO Unit Hourly Cap Heat Input for each Unit is calculated in accordance with Equation C1-6;
- The CAISO Facility Monthly Billed Fuel Cost is calculated in accordance with Equation C1-1.



**1. The CAISO Facility Monthly Billed Fuel Cost**

The CAISO Facility Monthly Billed Fuel Cost is calculated in accordance with Equation C1-1.

**Equation C1-1**

$$\left( \begin{array}{l} \text{CAISO} \\ \text{Facility} \\ \text{Monthly} \\ \text{Billed} \\ \text{Fuel Cost} \\ (\$) \end{array} \right) = \text{Lesser of} \left( \begin{array}{l} \text{CAISO} \\ \text{Facility} \\ \text{Cumulative} \\ \text{Actual} \\ \text{Fuel Cost} \\ (\$) \end{array} \right) \text{ or } \left( \begin{array}{l} \text{CAISO} \\ \text{Facility} \\ \text{Cumulative} \\ \text{Cap} \\ \text{Fuel Cost} \\ (\$) \end{array} \right) - \left( \begin{array}{l} \text{CAISO Facility} \\ \text{Cumulative} \\ \text{Billed} \\ \text{Fuel Cost} \\ (\$) \end{array} \right)$$

Where:

- The CAISO Facility Cumulative Actual Fuel Cost is the sum of all CAISO Unit Monthly Actual Fuel Costs for all Units at the Facility since the start of the Contract Year, including the current Month. CAISO Unit Monthly Actual Fuel Costs for each Unit is calculated in accordance with Equation C1-2.
- The CAISO Facility Cumulative Cap Fuel Cost is the sum of all CAISO Unit Monthly Cap Fuel Costs for all Units at the Facility since the start of the Contract Year, including the current Month. CAISO Unit Monthly Cap Fuel Costs is the sum of the CAISO Unit Hourly Cap Fuel Cost (calculated pursuant to Equation C1-5) for each hour of the Month for each Unit.
- The CAISO Facility Cumulative Billed Fuel Cost is the sum of all CAISO Unit Monthly Billed Fuel Costs for all Units at the Facility since the start of the Contract Year, excluding the current Month. CAISO Unit Monthly Billed Fuel Cost for each Unit is calculated in accordance with Equation C1-0.

**2. CAISO Unit Monthly Actual Fuel Cost**

The CAISO Unit Monthly Actual Fuel Cost is calculated in accordance with Equation C1-2.

**Equation C1-2**

$$\left( \begin{array}{l} \text{CAISO} \\ \text{Unit} \\ \text{Monthly} \\ \text{Actual} \\ \text{Fuel Cost} \\ (\$) \end{array} \right) = \frac{\text{Monthly sum of the CAISO Unit Hourly Cap Heat Input for the Unit (MMBtu)}}{\text{Monthly sum of the Unit Hourly Cap Heat Inputs for all units at the Facility metered by the Fuel Meter (MMBtu)}} * \left[ \left( \begin{array}{l} \text{Monthly} \\ \text{Metered} \\ \text{Fuel} \\ \text{MMBtu} \end{array} \right) * \left( \begin{array}{l} \text{CAISO} \\ \text{Monthly} \\ \text{Fuel} \\ \text{Price} \\ (\$/\text{MMBtu}) \end{array} \right) - \left( \begin{array}{l} \text{Monthly} \\ \text{Start-up} \\ \text{Fuel Cost} \\ (\$) \end{array} \right) \right]$$

Where:

- CAISO Unit Hourly Cap Heat Input is calculated in accordance with Equation C1-6.
- Unit Hourly Cap Heat Input is calculated in accordance with either Equation C1-7a or C1-7b.
- Monthly Metered Fuel is the non-duplicative sum of the quantities of fuel for the Month as measured by all gas metering systems or fuel oil measuring systems, as applicable ("Fuel Meters"), for the Unit.
  - (a) If the fuel is natural gas, the Owner may select from one of three options for the Fuel Meter:

- (i) the revenue meter used by the entity providing natural gas to measure gas delivered to one or more Units ("Fuel Custody Meter");
- (ii) a gas metering system installed at the Facility to measure gas used in one or more Units that meets the measurement accuracy standard in the tariff of the local gas distribution company in whose service area the Facility is located and the measurement accuracy standards set forth below, and is subject to an annual accuracy test performed under the CAISO's direction, as described below; or
- (iii) a gas metering system installed at the Facility by the local gas distribution company in whose service area the Facility is located and maintained by the local gas distribution company to the same standards as revenue meters of the local gas distribution company.

For the selected Fuel Meter option, the Owner shall provide the required information for all Units, both RMR and non-RMR, connected to the specific Fuel Custody Meter.

If the Owner selects option (ii), the Owner shall assure the overall accuracy of the gas metering systems<sup>1</sup> in use for the Units are within acceptable industry and regulatory standards.<sup>2</sup> Gas metering systems shall be designed, installed, calibrated and maintained according to standards set forth by the American Gas Association (AGA), the American National Standards Institute (ANSI) and the California Public Utilities Commission (CPUC). An audit trail of all calibration records and measurement parameters used in volume and heating-value calculations as recorded electronically by the flow computer shall be maintained and all data shall be in no-longer-than-hourly intervals. All equations and calculations performed by the flow computer may be reviewed for accuracy and completeness, including compressibility, volumetric flow and energy flow, by the CAISO or its agent. A consistent base pressure (14.73 psi) and base temperature (60°F) shall be used at all times. If the Facility has multiple sources of fuel gas, a gas chromatograph ("GC") shall be installed which analyzes all constituents of the blended gas, with the sampling point downstream of the individual supplies such that proper mixing occurs prior to sampling. The GC speed loop shall permit analysis of the gas in "real time".

In order to ensure the accuracy of a gas metering system selected under option (ii), an initial acceptance test shall be conducted by Owner and shall be witnessed by the CAISO or its agent to assure the

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<sup>1</sup> The gas metering system includes the primary measurement element (orifice, turbine meter, etc.); secondary elements such as pressure, temperature and heating-value measurement devices; the gas chromatograph, the flow computer or other data-collection and storage device; and the communication or output system.

<sup>2</sup> The American Gas Association (AGA) and the American National Standards Institute (ANSI) publish industry standards that gas utilities and gas transportation companies use for gas metering. Applicable standards include: AGA Report No. 3, Orifice Metering of Natural Gas; AGA Report No. 7, Measurement of Gas by Turbine Meters, AGA Report No. 8, Compressibility Factors of Natural Gas; AGA Report No. 9, Measurement of Gas by Multipath Ultrasonic Meters; ANSI B109.2, Diaphragm Type Gas Displacement Meters; and ANSI B109.3 Rotary Type Gas Displacement Meters. Also, CPUC General Order 58-A requires customer meters to register accurately to within – 2% to 1%.

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installation meets applicable industry standards. Such a test shall be conducted at five load points (maximum load, minimum load, and three evenly spaced load points), under steady state conditions (i.e., off Automatic Generation Control), and for a minimum of one hour at each load point. Analysis of the test results shall consist of a side-by-side comparison of volumetric flow, energy flow, gas-specific gravity and mole percents, and other factors mutually agreed to by the CAISO and Owner for the Fuel Custody Meter and the meter installed at the Facility under option (ii). The gas metering system installed under option (ii) shall be deemed acceptable if the side-by-side energy flow comparison for the period shall be within +1 percent to -2 percent. The gas-metering system shall meet the required accuracy throughout the entire operating range of the RMR Unit. Following CAISO acceptance, an annual routine test shall be conducted at a time chosen by the CAISO to verify and confirm the performance of Owner's gas-metering system. With the exception that the test shall be conducted at one load point specified by the CAISO, such a test shall be conducted in a similar fashion to the initial acceptance test and shall include inspection of the primary flow element; instrument end-to-end calibration; confirmation of integrity of sensing lines (meaning there shall be no leaks); confirmation of proper GC operation; and proper flow-computer operation and data handling. All systems and sub-systems utilized during the initial acceptance test, including, but not limited to, (a) all primary devices, including the differential producing device of the gas metering system, the GC, and differential pressure ("dP") and temperature instruments; (b) all secondary devices and circuits, including dP and temperature transmitters and circuits, sensing lines, GC sampling line and secondary circuits; and (c) all electronic devices, flow computers and devices, shall be sealed with an CAISO-certified seal and no maintenance work or modifications and changes, including making any changes to flow computer programming, shall be permitted without prior approval by the CAISO.

If any part of the option (ii) gas-metering system requires either routine or emergency maintenance, the Owner shall notify the CAISO immediately by telephone or other means specified by the CAISO. The Owner shall inform the CAISO of the time period during which such maintenance is expected to occur. The CAISO may, at its discretion, require gas-metering systems which are changed or modified during maintenance or repair to undergo re-certification, including acceptance testing. If the maintenance activity is necessary due to concerns that the gas-metering system is not operating in accordance with the required accuracy standards, such maintenance work shall be completed within 2 business days from the time when the concern was first noted.

A V-cone meter may not be used under option (ii), unless the meter was installed prior to January 1, 1997.

If, as a result of a change in the use of fuel gas from a supplier other than the local distribution company, the properties of the fuel gas change materially (Higher Heating Value (HHV) or Specific Gravity (SG) varies more than -3 percent to +3 percent due to the addition of new gas constituents) following the installation of a gas metering system under option (ii) or option (iii), Owner shall notify the CAISO within twenty-four (24) hours. Acceptance testing shall be conducted to verify the metering accuracy due to the change in fuel gas supply and to test whether Owner's gas metering system meets the technical requirements of this specification. Owner shall be obligated to install any equipment necessary to bring its gas metering system into compliance. Owner shall not enter into any third-party agreements for non-pipeline grade fuel gas without the prior approval of the CAISO. Such approval shall not be granted until the CAISO has evaluated Owner's gas metering system, including the effect of the non-pipeline grade fuel gas on metering accuracy.

If an Owner selects option (iii) and the Facility has multiple sources of fuel gas, the local gas distribution company shall install a GC which analyzes all constituents of the blended gas, with the sampling point downstream of the individual supplies such that proper mixing occurs prior to sampling. The GC speed loop should permit analysis of the gas in "real time".

(b) If the fuel is other than natural gas, the Fuel Meter value shall be determined monthly by measuring the fuel oil consumed during the month using, at Owner's one-time election, either (i) a metering process which is acceptable to the Owner and CAISO or (ii) a calculation acceptable to the Owner and CAISO based on a tank-volume measurement process performed on the day immediately prior to the beginning of the Month and the last day of the Month and fuel oil deliveries during the Month. The metering or measurement process adopted shall comply with, or be comparable to, one or more applicable American Petroleum Institute ("API") Manual of Petroleum Measurement Standards.<sup>3</sup> If Owner and CAISO cannot agree on an acceptable process, it shall be determined through ADR pursuant to Schedule K to this Agreement. Owner shall be permitted to change its election between metering as described in (i) above or tank volume measurement described in (ii) above only to reflect changes in the physical circumstances of the Unit or a change in the type of fuel burned at the Unit.

During any period in which the Fuel Meter fails to accurately measure gas flow, the Owner shall provide information to the CAISO sufficient to estimate the gas flow during such failure. This information may include unit electric-generating history, accurate recorded gas flow based on another meter and heat input characteristics of all Units served by the failed meter. This information will be used to estimate the gas flow during the failure period to the mutual satisfaction of the CAISO, the Responsible Utility and the Owner.

If a Fuel Meter serves RMR Units as well as other units, the heat input characteristics of the other units will be included in Table C1-7a or C1-7b, as applicable, and the Monthly sum of the Unit Hourly Cap Heat Inputs for all units at the Facility metered by the Fuel Meter used in Equation C1-2 will include Hourly Cap Heat Inputs for such other units calculated using Equation C1-7a or C1-7b, whichever is applicable.

- CAISO Monthly Fuel Price is calculated in accordance with Equation C1-3.
- Monthly Start-Up Fuel Cost is the sum of the Start-Up Fuel Costs for all Start-ups (for Market and Nonmarket Transactions) in the Month for all units metered by the Fuel Meter with the Start-up Fuel Costs for each Unit calculated in accordance with Equations D-1a or D-1b in Schedule D, as applicable. If a Start-up is initiated but is not successfully completed, the Start-up Fuel Costs shall be adjusted in accordance with Equation C1-2a:

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<sup>3</sup> The applicable API Manual of Petroleum Measurement Standards are: Chapter 2.2A (Measurement and Calibration of Upright Cylindrical Tanks by the Manual Strapping Method); Chapter 3.1B (Standard Practice for Level Measurement of Liquid Hydrocarbons in Stationary Tanks by Automatic Tank Gauging); Chapter 3.3 (Level Measurement of Liquid Hydrocarbons in Stationary Pressurized Storage Tanks by Automatic Tank Gauging); Chapter 5.2 (Measurement of Liquid Hydrocarbons by Displacement Meters); and Chapter 5.3 (Measurement of Liquid Hydrocarbons by Turbine Meters).

**Equation C1-2a**

$$\begin{array}{l} \text{Adjusted} \\ \text{Start-up} \\ \text{Fuel Cost} \\ \text{for Canceled} \\ \text{Starts} \\ \text{(\$)} \end{array} = \frac{\begin{array}{l} \text{Number of hours} \\ \text{committed to the} \\ \text{Start-up} \\ \text{Applicable} \\ \text{Start-up Lead Time} \\ \text{in hours shown in} \\ \text{Section 6 of} \\ \text{Schedule A} \end{array}}{\text{Start-up}} \times \begin{array}{l} \text{Fuel Costs} \\ \text{(\$)} \end{array}$$

Where:

- The "number of hours committed to the Start-up" is the lesser of (a) time elapsed between the initiation of the Start-up and the cancellation or (b) the Applicable Start-up Lead Time as shown in Section 6 of Schedule A.

**3. CAISO Monthly Fuel Price**

The CAISO Monthly Fuel Price is calculated in accordance with Equation C1-3.

**Equation C1-3**

$$\begin{array}{l} \text{CAISO Monthly Fuel Price} \\ \text{(\$/MMBtu)} \end{array} = \frac{\text{Monthly sum of CAISO Unit Hourly Cap Fuel Cost (\$)}}{\text{Monthly sum of CAISO Unit Hourly Cap Heat Input (MMBtu)}}$$

Where:

- CAISO Unit Hourly Cap Fuel Cost (\$) is calculated in accordance with Equation C1-5;
- CAISO Unit Hourly Cap Heat Input (MMBtu) is calculated in accordance with Equation C1-6.

**4. Intentionally Omitted** (There is no Equation C1-4.)

**5. CAISO Unit Hourly Cap Fuel Cost**

For each hour, the CAISO Unit Hourly Cap Fuel Cost is calculated in accordance with Equation C1-5.

**Equation C1-5**

$$\text{CAISO Unit Hourly Cap Fuel Cost (\$)} = \text{CAISO Unit Hourly Cap Heat Input (MMBtu)} \times \text{Hourly Fuel Price (\$/MMBtu)}$$

Where:

- The Hourly Fuel Price is calculated in accordance with Equation C1-8;
- The CAISO Unit Hourly Cap Heat Input (MMBtu) is calculated in accordance with Equation C1-6.

**6. CAISO Unit Hourly Cap Heat Input**

For each hour, the CAISO Unit Hourly Cap Heat Input is calculated in accordance with Equation C1-6.

**Equation C1-6**

$$\text{CAISO Unit Hourly Cap Heat Input} = \text{Unit Hourly Cap Heat Input (MMBtu)} * \frac{\text{Billable MWh}}{\text{Hourly Metered Total Net Generation (MWh)}}$$

Where:

- Unit Hourly Cap Heat Input is calculated in accordance with either Equation C1-7a or C1-7b.

**7. Unit Hourly Cap Heat Input (MMBtu)**

The Unit Hourly Cap Heat Input to a Unit for any load is given by the following equations and shall be determined either by a polynomial equation (C1-7a) or exponential equation (C1-7b):

**Equation C1-7a**

$$\text{Unit Hourly Cap Heat Input} = 1.02 * (AX^3 + BX^2 + CX + D) * E$$

**Equation C1-7b**

$$\text{Unit Hourly Cap Heat Input} = 1.02 * \frac{(A * (B + CX + De^{FX}))}{E}$$

Where:

- X is Unit's Hourly Metered Total Net Generation, MWh;
- e is the base of natural logarithms;
- A, B, C, D are coefficients given for Equation C1-7a in Table C1-7a and given for Equation C1-7b in Table C1-7b;
- The coefficient E is applicable only when burning fuel oil. At all other times, it shall be set to 1.0.
- F is a coefficient given in Table C1-7b.

Table C1-7a					
	A	B	C	D	E

Table C1-7b						
	A	B	C	D	E	F

**8. Hourly Fuel Price**

The Hourly Fuel Price for Units shall be the same for each hour of a given day and is calculated in accordance with Equation C1-8.

**Equation C1-8 (Gas)**

$$\text{Hourly Fuel Price (\$/MMBtu)} = \text{Commodity Price (\$/MMBtu)} + \text{Intrastate Transportation Rate (\$/MMBtu)}$$

**Equation C1-8 (Oil)**

$$\text{Hourly Fuel Price (\$/MMBtu)} = \text{Commodity Price (\$/MMBtu)} + \text{Transportation Rate (\$/MMBtu)}$$

**Commodity Price for Natural Gas**

For the Facilities within the service area of SCE or SDG&E, the Commodity Price shall be the product of 1.02 and the simple average of the following indices:

- Gas Daily, SoCal Gas, Large Packages index (midpoint)
- BTU Daily Gas Wire, SoCal Border index, Topock
- NGI Daily Gas Price Index, Southern California Border (average)

For the Facilities within the service territory of PG&E, the Commodity Price shall be the product of 1.02 and the simple average of the following indices:

- Gas Daily, PG&E Citygate index (midpoint)
- NGI Daily Gas Price Index, PG&E Citygate (average)

The indices to be used for each Settlement Period in a given day are shown in Table C1-8. Where more than one day's index is shown for a Trading Day, the average of the two daily indices should be used. If an applicable index for a day, which is used to compute the index's average for a Trading Day, is not published, then that index will not be used to compute the Commodity Price for that trading day. If no index for a day is published, then the average of applicable indices on the Index Publication Date preceding and the Index Publication Date following such day will be substituted for the Index Publication Date index for that day in Table C1-8. In the event that an index ceases to be published, Parties shall agree on a replacement index.

Table C1-8  
 Natural Gas Price Indices

Trading Day	Index Publication Date*		
	<u>Gas Daily</u> **	Btu Daily ** <u>Gas Wire</u>	NGI Daily ** <u>Price Index</u>
Tuesday	Tuesday/ Wednesday	Monday/ Tuesday	Tuesday/ Wednesday
Wednesday	Wednesday/ Thursday	Tuesday/ Wednesday	Wednesday/ Thursday
Thursday	Thursday/ Friday	Wednesday/ Thursday	Thursday/ Friday
Friday	Friday/ Monday	Thursday/ Friday	Friday/ Monday
Saturday	Monday/ Tuesday	Friday/ Monday	Monday/ Tuesday
Sunday	Monday/ Tuesday	Friday/ Monday	Monday/ Tuesday
Monday	Monday/ Tuesday	Friday/ Monday	Monday/ Tuesday

\* *The Index Publication Date is the date of the publication which contains the prices for the applicable Trading Day.*

\*\* *Where more than one day's index is shown for a Trading Day, the average of the two daily indices should be used.*

Gas Daily: The "Flow Date(s)" column should match the Trading Day.

Btu Daily: The Index Publication Date should be the day prior to the Trading Date in the Table above, except for Sunday and Monday, where Friday should be used as the Index Publication Date.

NGI Daily: The Index Publication Date should be the same as the Trading Date in the tables above, except for Saturday and Sunday, where Monday should be used as the Index Publication Date.

**Commodity Price for Distillate Fuel Oil**

The Commodity Price for Distillate Fuel Oil shall be the simple average of the midpoint of the ranges for CARB No. 2 Diesel and for Jet as published in Platt's Oilgram United States West Coast Product Assessments (page 22). If the Unit can burn only Jet, the Commodity Price shall be the midpoint of the range for Jet.

In an event the index ceases to be published, the Parties shall agree on a replacement index.

For distillate fuel, the index will be for the last day prior to the RMR Transaction Day.



**Commodity Price for No. 6 Residual Fuel Oil**

The fuel price shall be the prudent actual replacement cost of the fuel consumed, or, if the fuel is consumed and not replaced, then the fuel price will be "last-in-first-out" (LIFO) inventory price of the fuel consumed.

Where conversion from barrels of Fuel to MMBtu is required, the following conversion coefficients shall be used:

- No. 1 Distillate Fuel Oil - 5.754 MMBtu per barrel;
- No. 2 Distillate Fuel Oil - 5.796 MMBtu per barrel;
- Jet Fuel - 5.650 MMBtu per barrel;
- No. 6 Residual Fuel Oil - 6.258 MMBtu per barrel.

**Intrastate Transportation Rate for Gas**

The Intrastate Transportation Rate for Gas shall be the applicable intrastate transportation rate determined as follows:

Units served by SDG&E: The Southern California Gas Company intrastate transportation rate (currently GT-SD) plus the volumetric component of the SDG&E gas transportation rate for electric generation service, including the ITCS<sup>4</sup> (currently GTUEG - SD), or any successor rate for electric generation service applicable to deliveries to the Facility, divided by one minus the applicable in-kind shrinkage allowance, if any.

Units served by Southern California Gas: The Southern California Gas Company intrastate transportation rate for firm electric generation service, including the ITCS (GT-F) plus the G-ITC Wheeler Ridge Interconnection Access fee, if applicable, or any successor rate for firm electric generation service applicable to deliveries to the Facility, divided by one minus the applicable in-kind shrinkage allowance, if any.

Units served by PG&E: The PG&E intrastate transportation charge stated in Rate Schedule G-EG, or any successor rate for electric generation service applicable to deliveries to the Facility, divided by one minus the applicable in-kind shrinkage allowance, if any.<sup>5</sup>

**Transportation Rate for Distillate Fuel Oil**

The Transportation Rate for Distillate Fuel Oil shall be [REDACTED]. There shall be no Transportation Rate for No. 6 Residual Fuel Oil.

<sup>4</sup> ITCS means Interstate Transition Cost Surcharges.

<sup>5</sup> If the Facility does not qualify for service under Rate Schedule G-EG, the applicable rate shall be given by Rate Schedule G-NT.

**B. CAISO Monthly Fuel Imbalance Charge**

**Levels of Responsibility**

Each month, the Owner is responsible for all Nonmarket fuel imbalance charges incurred up to and including 2.25 percent of the CAISO Facility Monthly Billed Fuel Cost.

The Monthly Fuel Imbalance Charge is equal to 75% of 1st Tier Imbalance plus 100% of 2nd Tier Imbalances;

Where:

The **1st Tier Imbalances** is that portion of the Monthly Sum of Daily Imbalance Charges which exceeds 2.25 percent of the CAISO Facility Monthly Billed Fuel Cost for the Month and is less than or equal to 10.0 percent of the CAISO Facility Monthly Billed Fuel Cost for the Month.

The **2nd Tier Imbalances** is that portion of the Monthly Sum of Daily Imbalance Charges which is greater than 10.0 percent of the CAISO Facility Monthly Billed Fuel Cost for the Month.

The Monthly Sum of Daily Imbalance Charges is the sum for all days in the month of imbalance charges and similar fees and penalties imposed on Owner (or its fuel supplier and paid by Owner) by transportation providers delivering gas to the Units because deliveries were in excess of or less than scheduled for a given day, but only to the extent that (i) the imbalance was caused by Owner compliance with a Dispatch Notice issued after (or less than 30 minutes prior) to the Transporter's deadline for scheduling transportation, and (ii) Owner issued a notice to the CAISO as soon as possible after the Owner became aware it might incur imbalance charges advising CAISO of such possible charges.

In any month in which Owner incurs a 1<sup>st</sup> Tier or 2<sup>nd</sup> Tier Imbalance charge, Owner will provide the CAISO with a report showing the allocation of the imbalance charges between Market Transactions and Nonmarket Transactions. If CAISO or the Responsible Utility disagree on allocation, the dispute will be resolved through ADR.

To receive payment for a 2nd Tier Imbalance, Owner must document in an informational filing with FERC that the charges were appropriately allocated to Nonmarket Transactions and it was commercially reasonable to incur them. As used in this context and for purposes of calculating imbalance charges, "commercially reasonable" does not mean that Owner is required to acquire storage to avoid imbalances. If either the CAISO or Responsible Utility disagree with the imbalance charges, desires a formal review and gives such notice to the Owner within 30 days of the informational filing, the Owner must file under Section 205 of the Federal Power Act to collect any 2<sup>nd</sup> Tier Imbalance charges.

Pursuant to the above, the Monthly Fuel Imbalance Charge is calculated in accordance with Equation C1-9.

**Equation C1-9**

$$\text{Monthly Fuel Imbalance Charge} = 0.75 * \left[ \begin{array}{l} \text{Monthly Sum of Daily Imbalance Charges} \\ \text{CAISO Facility Monthly Billed Fuel Cost} \end{array} - 0.0225 * \right] + 0.25 * \left[ \begin{array}{l} \text{Monthly Sum of Daily Imbalance Charges} \\ \text{CAISO Facility Monthly Billed Fuel Cost} \end{array} - 0.10 * \right]$$

Note that if either of the two bracketed portions of the equation yields a value less than or equal to zero, then that portion of the equation is set to zero.

**C. CAISO Monthly Other Fuel Related Cost**

The CAISO Monthly Other Fuel Related Cost is calculated in accordance with Equation C1-10.

**Equation C1-10**

$$\text{CAISO Monthly Other Fuel Related Cost} = \frac{\text{Monthly sum of Billable MWh}}{\text{Monthly sum of Total Hourly Metered Net Generation}} * \left[ \begin{array}{l} \text{Other Gas Tariff Charges} \\ \text{Applicable Taxes} \end{array} \right]$$

Where:

- Other Gas Tariff Charges are those intrastate gas transportation tariff charges not included in Transportation Rate Charges set forth in Section A.8 of this Schedule listed below:

[Insert applicable charges]

- Applicable taxes and fees are:
  1. [Insert applicable local utility user taxes]
  2. [Insert applicable G-SUR fee]

All other fuel related taxes and fees are intended to be covered by the two percent adder in Hourly Fuel Cost and are the Owner's responsibility.

**D. CAISO Monthly Emissions Cost**

**Part 1 for SCAQMD-Jurisdictional Thermal Units**

The CAISO Monthly Emissions Cost for each Unit shall be the sum, for all hours in the month, of the CAISO Hourly Emissions Cost. These costs apply to a Facility within the South Coast Air Quality Management District (SCAQMD).

The CAISO Hourly Emissions Cost shall be calculated in accordance with Equation C1-11.

**Equation C1-11**

CAISO Hourly Emissions Cost (\$/hr) =

- a. CAISO Hourly RECLAIM Trading Credit Cost (\$/hr) +
- b. CAISO Hourly NOx Emissions Cost (\$/hr) +
- c. CAISO Hourly Organic Gases Emissions Cost (\$/hr) +
- d. CAISO Hourly Sulfur Oxides Emissions Cost (\$/hr) +
- e. CAISO Hourly Particulate Matter Emissions Cost (\$/hr) +
- f. CAISO Hourly Carbon Monoxide Emissions Cost (\$/hr) +
- g. CAISO Hourly Sulfur Dioxides Trading Credit Costs (\$/hr)

**a. CAISO Hourly RECLAIM Trading Credit Cost**

For each hour, the CAISO Hourly RECLAIM Trading Credit ("RTC") Cost for NOx emissions required for the Unit to generate the Billable MWh is calculated in accordance with Equation C1-12.

**Equation C1-12**

$$\text{CAISO Hourly RECLAIM Trading Credit Cost (\$/hr)} = \text{Hourly NO}_x \text{ Emissions (lbs/hr)} * \text{RECLAIM NO}_x \text{ Trading Credit Rate (\$/lb)} * \frac{\text{Billable MWh}}{\text{Hourly Metered Total Net Generation}}$$

**Where:**

- Hourly NOx Emissions is calculated in accordance with Equation C1-13.

**Equation C-13**

$$\text{Hourly NO}_x \text{ Emissions (lbs/hr)} = AX^2 + BX + C$$

**Where:**

- X is the Hourly Metered Total Net Generation for the hour.
- Coefficients A, B, and C are given in Table C1-13 for each Unit.

Table C1-13			
Description of Unit	A	B	C

The RECLAIM NOx Trading Credit Rate (\$/lb) will be equal to the 13-week sales-weighted average sales price for RTCs calculated as of the last day of the Month from sales records available from the SCAQMD for all actual sales in the SCAQMD during the thirteen preceding weeks, including the Settlement Period.

**b. CAISO Hourly NOx Emissions Cost**

For each hour, the CAISO Hourly NOx Emissions Cost for the Billable MWh is calculated in accordance with Equation C1-14.

**Equation C1-14**

$$\text{CAISO Hourly Nox Emissions Cost (\$/hr)} = (5 * 10^{-4}) * \text{Hourly Nox Emissions (lbs/hr)} * \text{NOx Emissions Fee (\$/ton)} * \frac{\text{Billable MWh}}{\text{Hourly Metered Total Net Generation}}$$

**Where:**

- $(5 \times 10^{-4})$  is the conversion factor from lbs to tons.
- Hourly NOx Emissions is calculated in accordance with Equation C1-13.
- NOx Emissions Fee is obtained from Table III of SCAQMD Rule 301(e). The fee is dependent upon the Cumulative Tons of Pollutant (NOx), which is calculated in accordance with Equation C1-15. The Cumulative Tons of Pollutant is reset to zero each July 1st.

**Equation C1-15**

$$\text{Cumulative Tons of Pollutant (tons/hr)} = \frac{\text{Tons of Pollutant From the prior July 1}^{\text{st}} \text{ to the Previous Hour}}{\text{July 1}^{\text{st}}} + \text{Tons of Pollutant For Current Hour}$$

**Where:**

- Tons of Pollutant for Current Hour is in accordance with Equation C1-16.

**Equation C1-16**

$$\text{Tons of Pollutant for Current Hour (tons/hr)} = (4.76 * 10^{-7}) * (AX^3 + BX^2 + CX + D) * \text{Pollutant Emissions Amount for Natural Gas}$$

**Where:**

- $(4.76 * 10^{-7})$  is the conversion factor from lbs. to tons (1 ton/2000 lbs.) and from mmcf to MMBtu (1 mmcf/1050 MMBtu).
- X is the Hourly Metered Total Net Generation, MWh.
- Coefficients A, B, C, and D are the coefficients of the hourly heat rate curve given in Table C1-16 for each Unit.

Table C1-16			
Description of Unit	A	B	C

Pollutant Emissions Amount For Natural Gas is the applicable pollutant from SCAQMD General Instruction Book (for the latest year), Annual Emissions Reporting Program, Appendix A - Common Emission Factors For Combustion Equipment, Table 1 - Common Emission Factors For Combustion Equipment for Forms B1 and B1U.

**c. - f. CAISO Hourly Organic Gases Emissions Cost, CAISO Hourly Sulfur Oxides Emissions Cost, CAISO Hourly Particulate Matter Emissions Cost, and CAISO Hourly Carbon Monoxide Emissions Cost**

The CAISO Hourly Organic Gases (OG) Emissions Cost, CAISO Hourly Sulfur Oxides (SOx) Emissions Cost, CAISO Hourly Particulate Matter (PM) Emissions Cost, and CAISO Hourly Carbon Monoxide (CO) Emissions Cost are each calculated in accordance with Equation C1-17.

**Equation C1-17**

$$\begin{matrix} \text{CAISO Hourly} \\ \text{Applicable} \\ \text{Emissions Cost} \\ \text{($/hr)} \end{matrix} = (4.76 * 10^{-7}) * \begin{matrix} \text{CAISO Unit Hourly} \\ \text{Cap Heat Input} \\ \text{(MMBtu/hr)} \end{matrix} * \begin{matrix} \text{Associated} \\ \text{Emissions Factor} \\ \text{(lbs/mmcf)} \end{matrix} * \begin{matrix} \text{Associated} \\ \text{Emissions Fee} \\ \text{($/ton)} \end{matrix}$$

Where:

- CAISO Hourly Applicable Emissions Cost is the CAISO Hourly OG Emissions Cost, CAISO Hourly SOx Emissions Cost, CAISO Hourly PM Emissions Cost, or CAISO Hourly CO Emissions Cost.
- $(4.76 * 10^{-7})$  is the conversion factor from lbs. to tons (1 ton/2000 lbs.) and from mmcf to MMBtu (1 mmcf/1050 MMBtu).
- Associated Emissions Factor is the associated OG Emissions Factor, SOx Emissions Factor, PM Emissions Factor or CO Emissions Factor from Table 1 from General Instruction Book for the SCAQMD (for the latest year) Annual Emissions Reporting Program.
- Associated Emissions Fee is the associated OG Emissions Fee, SOx Emissions Fee, PM Emissions Fee, or CO Emissions Fee from Table III of SCAQMD Rule 301(e), and is dependent upon the Cumulative Tons of Pollutant pursuant to Equation C1-15.

**g. CAISO Hourly Sulfur Dioxides Trading Credit Costs**

Beginning in the year 2000, certain Units will be subject to Title IV of the Federal Clean Air Act for providing SO<sub>2</sub> Allowances to cover related trading costs. Prior to 2000, the CAISO Hourly Sulfur Dioxides Trading Credit Cost will be zero. The Owner may make a filing under Section 205 of the Federal Power Act limited to recovering applicable CAISO Hourly Sulfur Dioxides Trading Credit Costs when such costs are incurred.

**Part 2 for Ventura County Air Pollution Control District<sup>6</sup>**

Beginning in the year 2000, certain Units will be subject to Title IV of the Federal Clean Air Act for providing SO<sub>2</sub> Allowances to cover related trading costs. Prior to 2000, the CAISO Hourly Sulfur Dioxides Trading Credit Cost will be zero. The Owner may make a filing under Section 205 of the Federal Power Act limited to recovering applicable CAISO Hourly Sulfur Dioxides Trading Credit Costs when such costs are incurred.

**E. CAISO Monthly Variable O&M Cost**

The CAISO Monthly Variable O&M Cost for each Unit shall be the product of the Unit's Billable MWh for the Billing Month and the Unit's Variable O&M Rate. Variable O&M Rate for each Unit shall be:

Table C1-18	
Unit	Variable O&M Rate (\$/MWh)

**F. CAISO Scheduling Coordinator Charge**

The CAISO Scheduling Coordinator Charge for each Unit shall be the product of \$0.31 and the Unit's Billable MWh for the Billing Month.

**F. CAISO ACA Charge**

The CAISO ACA Charge is the product of the Unit's Billable MWh for the Billing Month and the applicable annual charge for short-term sales under 18 CFR Section 382.201 of the FERC Regulations.

**SCHEDULE C**

**Variable Cost Payment for All Conditions  
 Part 2 for Geothermal Units**

For each Unit each Month, the Variable Cost Payment for Billable MWh from the Unit pursuant to Nonmarket Transactions during that Month shall be the amount calculated in accordance with the following formula:

$$\text{Variable Cost Payment} = \begin{array}{l} \text{A. CAISO Monthly Billed Fuel Cost} + \\ \text{B. CAISO Monthly Variable O\&M Cost} + \\ \text{C. CAISO Scheduling Coordinator Charge} \\ \text{D.} + \\ \text{CAISO ACA Charge} \end{array}$$

Each component of the Variable Cost Payment for geothermal Units is calculated as described below:

<sup>6</sup> Ventura County APCD, where Mandalay Generating Station is located, does not require payment of emissions fees, but rather permit renewal fees. The permit renewal fees are included in the fixed O&M costs.

**A. CAISO Monthly Billed Fuel Cost [for Geysers Main only]**

The CAISO Monthly Billed Fuel Cost is given by Equation C2-1.

**Equation C2-1**

$$\text{CAISO Monthly Billed Fuel Cost} = \text{Billable MWh} * \text{Steam Price (\$/MWh)}$$

Where:

- Steam Price is \$16.34/MWh.
- For purposes of Equation C2-1, Billable MWh is all Billable MWh Delivered after cumulative Hourly Metered Total Net Generation during the Contract Year from all Units exceeds the Minimum Annual Generation given by Equation C2-2.

**Equation C2-2**

$$\text{Minimum Annual Generation} = (\text{Annual Average Field Capacity} * 8760 \text{ hours} * 0.4) - (A+B+C)$$

Where:

- Annual Average Field Capacity is the arithmetic average of the two Field Capacities in MW for each Contract Year, determined as described below.

Field Capacity shall be determined for each six-month period from July 1 through December 31 of the preceding calendar year and January 1 through June 30 of the Contract Year. Field Capacity shall be the average of the five highest amounts of net generation (in MWh) simultaneously achieved by all Units during eight-hour periods within the six-month period. The capacity simultaneously achieved by all Units during each eight-hour period shall be the sum of Hourly Metered Total Net Generation for all Units during such eight-hour period, divided by eight hours. Such eight-hour periods shall not overlap or be counted more than once but may be consecutive.

Within 30 days after the end of each six-month period, Owner shall provide CAISO and the Responsible Utility with its determination of Field Capacity, including all information necessary to validate that determination.

- A is the amount of Energy that cannot be produced (as defined below) due to the curtailment of a Unit during a test of the Facility, a Unit or the steam field agreed to by CAISO and Owner.
- B is the amount of Energy that cannot be produced (as defined below) due to the retirement of a Unit or due to a Unit's Availability remaining at zero after a period of ten Months during which the Unit's Availability has been zero.
- C is the amount of Energy that cannot be produced (as defined below) because a Force Majeure Event reduces a Unit's Availability to zero for at least thirty (30) days or because a Force Majeure Event reduces a Unit's Availability for at least one hundred eighty (180) days to a level below the Unit Availability Limit immediately prior to the Force Majeure Event.



- The amount of Energy that cannot be produced is the sum, for each Settlement Period during which the condition applicable to A, B or C above exists, of the difference between the Unit Availability Limit immediately prior to the condition and the Unit Availability Limit during the condition.

**A. CAISO Monthly Billed Fuel Cost [for Geysers Units 13 & 16 only]**

The CAISO Monthly Billed Fuel Cost is given by Equation C2-1.

**Equation C2-1**

$$\text{CAISO Monthly Billed Fuel Cost} = \text{Billable MWh} * \text{Steam Price (\$/MWh)}$$

Where:

- Steam Price is \$11.25/MWh, which includes the cost of steam condensate re-injection.

**B. CAISO Monthly Variable O&M Cost**

The CAISO Monthly Variable O&M Cost for each Unit is given by Equation C2-3 and is the product of the sum of Billable MWh for the Billing Month and the Unit's Variable O&M Rate. Variable O&M Rate for each Unit is shown in Table C2-1:

**Equation C2-3**

$$\text{CAISO Monthly Variable O\&M Cost} = \text{Monthly sum of Billable MWh} * \text{Variable O\&M Rate}$$

Table C2-1	
Unit	Variable O&M Rate (\$/MWh)

**C. CAISO Scheduling Coordinator Charge**

The CAISO Scheduling Coordinator Charge for each Unit shall be the product of \$0.31 and the Unit's of Billable MWh for the Billing Month.

**D. CAISO ACA Charge**

The CAISO ACA Charge is the product of the Unit's Billable MWh for the Billing Month and the applicable annual charge for short-term sales under 18 CFR Section 382.201 of the FERC Regulations, to the extent payable by Owner for Billable MWh.

**SCHEDULE C**

**Variable Cost Payment for All Conditions  
Part 3 for Conventional Hydro Units**

For each month and each Unit, the Variable Cost Payment for Billable MWh from the Unit pursuant to Nonmarket Transactions during that Month shall be the amount calculated in accordance with the following formula:

$$\text{Variable Cost Payment} = \begin{array}{l} \text{A. CAISO Scheduling Coordinator Charge} \\ + \\ \text{CAISO ACA Charge} \end{array}$$

**A. CAISO Scheduling Coordinator Charge**

The CAISO Scheduling Coordinator Charge for each Unit shall be the product of \$0.31 and the Unit's Billable MWh for the Billing Month.

**B. CAISO ACA Charge**

The CAISO ACA Charge is the product of the Unit's Billable MWh for the Billing Month and the applicable annual charge for short-term sales under 18 CFR Section 382.201 of the FERC Regulations.

**SCHEDULE C**

**Variable Cost Payment for All Conditions  
Part 4 for Pumped Storage Hydro Units**

For each month and each Unit, the Variable Cost Payment for Billable MWh from the Unit pursuant to Nonmarket Transactions during that Month shall be the amount calculated in accordance with the following formula:

$$\text{Variable Cost Payment} = \begin{array}{l} \text{A. CAISO Monthly Billed Fuel Cost} + \\ \text{B. CAISO Scheduling Coordinator} \\ \text{C. Charge} + \\ \text{CAISO ACA Charge} \end{array}$$

**A. CAISO Monthly Billed Fuel Cost**

The CAISO Monthly Billed Fuel Cost is given by Equation C4-1:

**Equation C4-1**

CAISO Monthly Billed Fuel Cost = Year-to-Date CAISO Fuel Cost – Sum of Previous Months' CAISO Monthly Billed Fuel Cost in the Contract Year

Where:

- Year-to-Date CAISO Fuel Cost is given by Equation C4-2.
- Sum of Previous Months' CAISO Monthly Billed Fuel Cost in the Contract Year shall be the sum of the CAISO Monthly billed Fuel Cost for each Month from January 1 of the Contract Year<sup>7</sup> through the end of the Month in the Contract Year before the Billing Month.

**Equation C4-2**

$$\text{Year-to-Date CAISO Fuel Cost} = (\text{YTD Pumping Cost/YTD Energy Produced}) \times \text{Variable O\&M Rate}$$

Where:

- YTD Pumping Cost = Total cost of Energy purchased by Owner for pumping, including transmission charges, from January 1 of the Contract Year through the end of the Billing Month.
- YTD Energy Produced = Total Energy produced by the Facility for Market and Nonmarket Transactions from January 1 of the Contract Year through the end of the Billing Month.
- YTD Billable MWh = Total Billable MWh from January 1 of the Contract Year through the end of the Billing Month.

**B. CAISO Scheduling Coordinator Charge**

The CAISO Scheduling Coordinator Charge for each Unit shall be the product of \$0.31 and the Unit's Billable MWh for the Billing Month.

**C. CAISO ACA Charge**

The CAISO ACA Charge is the product of the Unit's Billable MWh for the Billing Month and the applicable annual charge for short-term sales under 18 CFR Section 382.201 of the FERC Regulations.

**Schedule C**

**Variable Cost Payment for All Conditions  
Part 5 for Biomass Generation Units**

For each month and each Unit, the Variable Cost Payment for Billable MWh from the Unit pursuant to Nonmarket Transaction during that Month shall be the amount calculated in accordance with the following formula:

---

<sup>7</sup> For purposes of Equations C4-1 and C4-2 as applied in 1999, Contract Year includes those months in the year, beginning in January 1999, when the same services as under this Agreement were provided to ISO under a predecessor rate schedule, as well as months when such services are provided under this Agreement.

Variable Cost Payment = A. CAISO Monthly Billed Fuel Cost +  
 B. CAISO Variable O&M Cost +  
 C. CAISO Scheduling Coordinator Charge

**A. CAISO Monthly Billed Fuel Cost**

The CAISO Monthly Billed Fuel Cost is given by Equation C5-1:

**Equation C4-1**

CAISO Monthly Billed Fuel Cost = Billable MWh \* Monthly Average Fuel Cost (\$MWh)

Where:

- Monthly Average Fuel Cost (\$ / MWh) = Negotiated Cost Based Amount.

**B. CAISO Monthly Variable O&M Cost**

The CAISO ACA Charge is the product of the Unit's Billable MWh for the Billing Month and the applicable annual charge for short-term sales under 18 CFR Section 382.201 of the FERC Regulations.

**Equation C5-2**

CAISO Monthly Variable O&M Cost = Monthly Sum of billable MWh \* Variable O&M Rate

Table C5-1	
Unit	Variable O&M Rate (\$/MWh)

**C. CAISO Scheduling Coordinator Charge**

The CAISO Scheduling Coordinator Charge for each Unit shall be the product of \$0.31 and the Unit's Billable MWh for the Billing Month.

**SCHEDULE D**

**Part 1**

**Start-up Payment for Condition 1 Units**

**1. Prepaid Start-up Charge**

Prepaid Start-up Charge for each Unit operating under Condition 1 for each Contract Year will be calculated as the Prepaid Start-up Cost times the number of Prepaid Start-ups. The number of Prepaid Start-up equals the Maximum Annual Start-ups per Unit. The Prepaid Start-up Cost will be calculated in accordance with Equation D-1 for Start-up Cost with the following assumptions:

- a. Hourly Fuel Price: For the initial Contract Year the Hourly Fuel Price shall be the simple average of the applicable index prices from Table C1-8 of Schedule C for the period beginning on the later of the initial publication date of such indices or January 1, 1998 and ending December 31, 1998, plus the applicable Transportation Rate under Equation C1-8 as in effect on April 1, 1999. For each subsequent Contract Year, the Hourly Fuel Price shall be agreed upon by CAISO and Owner; if there is no agreement, the Hourly Fuel Price shall be the simple average of the Hourly Fuel Prices for the twelve months ending the prior June 30 as calculated in accordance with Equation C1-8 of Schedule C;
- b. Energy Price shall be based on the [insert Applicable UDC Tariff rate], including applicable demand charges, provided that the Applicable UDC Tariff rate shall only be the energy charge rate at those Facilities where Units have the capability to use Energy from other units at the same Facility to effect Start-ups or where generation from other units is otherwise permitted under the CAISO Tariff to be netted against auxiliary power needed to effect Start-up of the Unit. For the initial Contract Year, the Energy Price shall be calculated as the total auxiliary power (including Energy for Start-ups) costs charged to the Facility by its supplier of end-use Energy for the six-month period ending December 31, 1998 divided by the auxiliary power (including Energy for Start-ups) consumed at the Facility for that same time period. For Facilities that have not been charged for auxiliary power for the six-month period ending December 31, 1998, the Energy Price for the Initial Contract Year shall be the simple average of the prices for Energy for varying times of day shown in the Applicable UDC Tariff. For each subsequent Contract Year, the Energy Price shall be calculated as the total auxiliary power (including Energy for Start-ups) costs charged to the Facility by its supplier of end-use Energy for the twelve months ending the prior June 30 divided by the auxiliary power (including Energy for Start-ups) consumed at the Facility for that same twelve-month period;
- c) All Start-ups are assumed to be from maximum time off line as shown by value XMax in Table D-1, and
- d) Other Start-up Costs shall be zero (\$0) for non-hydroelectric Units; for hydroelectric Units, other Start-up costs shall be the cost shown in Table D-2 for Normal Work Hours.

The Prepaid Start-up Cost and Prepaid Start-up Charge for the current Contract Year are set forth in Table D-0:

Table D-0			
Unit	Number of Prepaid Start-ups	Prepaid Start-up Cost	Prepaid Start-up Charge
Unit			

**2. Start-up Cost**

The cost for a Start-up shall be calculated in accordance with Equation D-1:

**Equation D-1**

$$\begin{array}{rclclcl}
 \text{Start-up} & & \text{Start-up} & & \text{Start-up} & & \text{Other} & & \text{Shutdown} \\
 \text{Cost} & = & \text{Fuel Cost} & + & \text{Power Cost} & + & \text{Start-up Costs} & + & \text{Power Cost} \\
 (\$) & & (\$) & & (\$) & & (\$) & & (\$)
 \end{array}$$

Each component of the Start-up Cost in Equation D-1 is set forth below.

**a. Start-up Fuel Costs**

The Start-up Fuel Cost shall be calculated in accordance with Equation D-1a:

**Equation D-1a**

$$\text{Start-up Fuel Cost (\$)} = \left[ \frac{\text{(A)}}{\text{(MMBtu/hr)}} * \frac{\text{(x)}}{\text{(hrs)}} + \text{(B)} \right] * \text{Hourly Fuel Price (\$MMBtu)}$$

Where:

- "x" equals the number of hours since the Unit ceased operation and cannot exceed "x<sub>Max</sub>".
- The Hourly Fuel Price is calculated pursuant to Schedule C Equation C1-8 for the hour in which the Start-up began.
- The values A, B and x<sub>Max</sub> for each Unit are given in Table D-1 below.

**b. Start-up Power Costs**

The Start-up Power Cost shall be calculated in accordance with Equation D-1b:

**Equation D-1b**

$$\text{Start-up Power Cost (\$)} = \left( \left[ \frac{\text{(C)}}{\text{(MWh/hr)}} * \frac{\text{(x)}}{\text{(hrs)}} \right] + \frac{\text{(D)}}{\text{(MWh)}} \right) * \text{Energy Price (\$/MWh)}$$

Where:

- "x" is equal to the hours since the Unit ceased operation and cannot exceed "x<sub>Max</sub>".
- The Energy Price shall be equal to the total auxiliary power (including Energy for Start-ups) costs charged to the Facility by its supplier of end-use Energy for the billing cycle in which the Start-up was initiated divided by the total auxiliary power (including Energy for Start-ups) consumed at the Facility during such billing cycle.
- The values C, D and x<sub>Max</sub> are given in Table D-1 below.

**c. Shutdown Power Costs**

The Shutdown Power Cost shall be calculated in accordance with Equation D-1c:

**Equation D-1c**

$$\text{Shutdown Power Cost (\$)} = \text{Shutdown Power Requirement (MWh)} * \text{Energy Price (\$/MWh)}$$

The Energy Price shall be equal to the total auxiliary power (including Energy for Shutdowns) costs charged to the Facility by its supplier of end-use Energy for the billing cycle in which the Shutdown was initiated divided by the total auxiliary power (including Energy for Shutdowns) consumed at the Facility during such billing cycle. The Shutdown Power Requirement is given in Table D-1 below.

**d. Other Start-up Costs for Hydroelectric Only**

Other Start-up Costs are the cost of labor to start hydroelectric Units that require an operator to manually parallel, and reflect the labor costs to travel to the site. If the Start-up of a hydroelectric Unit occurs outside normal work hours, the Start-up Costs include the minimum work hours and labor rates as set by the applicable collective bargaining agreement(s).

The Other Start-up Costs shall be calculated in accordance with Equation D1-d. The values for E are provided in Table D-2 for normal work hour and outside of normal work hour situations.

**Equation D-1d**

$$\text{Other Start-up Costs (\$)} = E$$

Once a Unit has been given a Dispatch Notice to Start-up, other Start-up Costs are incurred.

<b>Table D-1, Start-Up Costs</b>						
	X <sub>Max</sub>	A	B <sup>8</sup>	C	D	Shutdown Power Requirement
Unit	(Hrs)	(mmBtu)/hr	(mmBtu)	(MWh)/hr	(MWh)	(MWh)

<b>Table D-2, Other Start-Up Costs – Hydroelectric Units</b>		
Unit	E (Normal Work Hours) (\$)	E (Outside Normal Work Hours) (\$)

<sup>8</sup> Includes fuel consumed from the time Unit reaches Synchronization to the time Unit reaches Minimum Load.

**3. Monthly Start-up Adjustment**

For each Start-up successfully completed in compliance with a Dispatch Notice during the Billing Month, and each Start-up initiated in compliance with a Dispatch Notice but not successfully completed because it is canceled or rescinded by CAISO, until the total Counted Start-ups for the Contract Year equals the number of Prepaid Start-ups for the Contract Year, the Monthly Start-up Adjustment, which shall be a credit or payment, is the sum of Prepaid Start-up Adjustments, and Prepaid Start-up Adjustments for Canceled Start-ups calculated in accordance with Equations D-2 and D-3:

**Equation D2**

Prepaid Start-up Adjustment = Prepaid Start-up Cost calculated in accordance with Section 1 minus the actual Start-up Cost calculated in accordance with Equation D-1.

**Equation D-3**

Prepaid Start-up Adjustment for Canceled Start-up =  $\frac{\text{Number of hours committed to the Start-up applicable Start-up Lead Time (hrs) as shown in Schedule A, Section 6}}{\text{Prepaid Start-up Adjustment calculated in accordance with Equation D-2}}$  \*

Where:

- The "number of hours committed to the Start-up" is the lesser of (a) time elapsed between the initiation of the Start-up and the cancellation and (b) the applicable Start-up Lead Time.

**SCHEDULE D**

**Part 2**

**Start-up Payment for Condition 2 Units**

**1. Start-up Payment**

The Start-up Payment for each Start-up successfully completed for each Unit operating under Condition 2 equals the Start-up Cost calculated using Equation D-1.

**2. Payment for Canceled Start-up**

If Start-up is initiated under a Dispatch Notice but is not successfully completed because it is canceled or rescinded by the CAISO, the Start-up Payment is calculated in accordance with Equation D-4:



**Equation D-4**

$$\begin{array}{l}
 \text{Start-up} \\
 \text{Payment for} \\
 \text{Canceled Start-up} \\
 \text{(\$)}
 \end{array}
 =
 \frac{\begin{array}{l}
 \text{Number of hours} \\
 \text{committed to the} \\
 \text{Start-up} \\
 \text{applicable Start-up} \\
 \text{Lead Time (hrs)} \\
 \text{as shown in} \\
 \text{Schedule A, Section 6}
 \end{array}}{\text{Start-up Cost}}
 *
 \begin{array}{l}
 \text{calculated in} \\
 \text{accordance with} \\
 \text{Equation D-1 (\$)}
 \end{array}$$

The "number of hours committed to the Start-up" is the lesser of (a) time elapsed between the initiation of the Start-up and the cancellation or (b) the applicable Start-up Lead Time.

**SCHEDULE E**

**Ancillary Services  
 Part 1 for Condition 1**

The CAISO may call upon the Unit to provide the following Ancillary Services as defined in the CAISO Tariff:

- Regulation
- Spinning Reserve
- Nonspinning Reserve
- Replacement Reserve
- Voltage Support (including synchronous condenser operation)
- Black Start

If the Unit is otherwise generating, the Owner shall be required to operate the Unit within the Power Factor range of the Unit specified in Schedule A to provide Ancillary Services without additional compensation.

Certain Units (hydroelectric and synchronous condensers) can provide Ancillary Services without generating Energy. Under this Condition, Owner will be compensated for Motoring Charges if the Unit is providing Ancillary Services while synchronized without generating Energy.

**Motoring Charge**

When Units are operated as synchronous condensers (i.e., motored using electric power) to provide Ancillary Services, if applicable, the payment for that service is given by the following formula:

$$\text{Motoring Charge} = (\text{Power consumption rate (MWh/hr)}) * (\text{hours operated}) * (\text{Energy Price})$$

Where the Power consumption rate is given by the following table:

Unit	Power consumption rate (MWh/hour)
------	-----------------------------------

The Energy Price shall be equal to the total power costs charged to the Facility by its supplier of end-use Energy under the Applicable UDC Tariff for the billing cycle in which the Motoring Charge was incurred divided by the total power consumed at the Facility under such tariff during such billing cycle.

**Pre-empted Dispatch Payment**

If the CAISO issues a Dispatch Notice to:

- (i) decrease a Unit's scheduled output of Energy in a Market Transaction to provide Ancillary Services;
- (ii) decrease a Unit's scheduled provision of Ancillary Services capacity in a Market Transaction in order to provide Regulation, Spinning Reserve, Nonspinning Reserve, or Replacement Reserve pursuant to a Dispatch Notice,
- (iii) decrease a Unit's scheduled provision of Ancillary Service capacity in a Market Transaction in order to provide Energy pursuant to a Dispatch Notice, the CAISO shall pay the appropriate Pre-empted Dispatch Payment described below. The Pre-empted Dispatch Payments are intended to make an Owner whole with respect to the original Market Transaction.

**A. For Pre-empted Energy Market Transactions:**

Pre-empted Dispatch Payment = Imbalance Energy Charge – Cost Savings

- Imbalance Energy Charge =  $(X_o - X_n) \times$  Penalty Price
- Penalty Price = Unrestricted Imbalance Energy Price + additional penalties (per MWh) imposed by the CAISO for failure to comply with Market Schedules due to compliance with Dispatch Notice.
- Cost Savings = Fuel Cost Savings + Emissions Savings + Other Savings

Where:

- $X_o$  = Original Total Schedule in Market and Nonmarket Transactions;
- $X_n$  = New Total Schedule in Market and Nonmarket Transactions;

For fossil fuel Units, the Fuel Cost Savings is calculated as follows:

- Fuel Cost Savings = Fuel Savings x Hourly Fuel Price
- Fuel Savings =  $( (AX_o^3 + BX_o^2 + CX_o + D) - (AX_n^3 + BX_n^2 + CX_n + D) ) \times E$
- or
- Fuel Savings =  $[ ( A \times (B + CX_o + De^{FX_o}) ) - ( A \times (B + CX_n + De^{FX_n}) ) ] \times E$
- A, B, C, D, E and F are the coefficients from Table C1-7a or C1-7b, as applicable;
- Hourly Fuel Price is calculated in Equation C1-8.

For geothermal Units, the Fuel Cost Savings is calculated by the following formula:

$$\text{Fuel Cost Savings} = (X_o - X_n) * \text{Hourly Fuel Price}$$

Where:

- Hourly Fuel Price is the Steam Price identified in Equation C2-1 in Schedule C. However, for purposes of this Pre-empted Dispatch Payment calculation, the value for the Steam Price will be set to zero for Geysers Main Units until the cumulative Hourly Metered Total Net Generation for the Contract Year from all Units exceeds the Minimum Annual Generation given in Equation C2-2.

For pumped storage hydroelectric Units, the Fuel Cost Savings is calculated by the following formula:

$$\text{Fuel Cost Savings} = (X_o - X_n) * \text{Hourly Fuel Price}$$

Where:

- Hourly Fuel Price is YTD Pumping Cost / YTD Energy Produced; and YTD Pumping Cost and YTD Energy Produced are as defined in Equation C4-2.

For conventional hydroelectric Units, the Fuel Cost Savings is zero.

Other Savings =  $((X_o - X_n) * (\text{Variable O\&M Rate} + \text{applicable annual charge for short-term sales under 18 CFR 382.201 of the FERC Regulations}))$

Emissions Savings = RECLAIM Savings + NOx Emissions Fee Savings + Organic Gases Fee Savings + Sulfur Oxides Fee Savings + Particulate Matter Savings + Carbon Monoxide Fee Savings

RECLAIM Savings =  $((AX_o^2 + BX_o + C) - (AX_n^2 + BX_n + C)) * \text{RECLAIM NOx Trading Credit Rate}$

Where:

- A, B and C are the coefficients from Table C1-13;
- Xo = Original Total Schedule in Market and Nonmarket Transactions;
- Xn = New Total Schedule in Market and Nonmarket Transactions;

NOx Emissions Fee Savings =  $\frac{((AX_o^2 + BX_o + C) - (AX_n^2 + BX_n + C))}{2000} * \text{NO}_x \text{ Emissions Fee;}$

Where:

- A, B and C are the coefficients from Table C1-13;
- Xo = Original Total Schedule in Market and Nonmarket Transactions;
- Xn = New Total Schedule in Market and Nonmarket Transactions;

Organic Gases Fee Savings =

$4.76 * 10^{-7} * \text{Gas Fuel Savings} * \text{Associated Emission Factor for Organic Gases} * \text{Associated Emissions Fee for Organic Gases}$

Sulfur Oxides Fee Savings =

$4.76 * 10^{-7} * \text{Gas Fuel Savings} * \text{Associated Emission Factor for Sulfur Oxides} * \text{Associated Emissions Fee for Sulfur Oxides}$

Particulate Matter Oxides Fee Savings =

$4.76 * 10^{-7} * \text{Gas Fuel Savings} * \text{Associated Emission Factor for Particulate Matter} * \text{Associated Emission Fee for Particulate Matter}$

Carbon Monoxide Fee Savings =

$4.76 * 10^{-7} * \text{Gas Fuel Savings} * \text{Associated Emission Factor for Carbon Monoxide} * \text{Associated Emission Fee for Carbon Monoxide}$

All Emissions Fees and Emission Factors are determined in accordance with Schedule C.

[If applicable, insert emission cost savings formula for fuel other than natural gas.]

The Owner will be entitled to retain all payments received from the Owner's Scheduling Coordinator for the Unit's scheduled output.

**B. For Pre-empted Ancillary Services Market Transactions:**

CAISO shall pay Owner the product of (i) the difference between the MW of the Ancillary Service Owner had scheduled to provide in a Market Transaction and the MW of Ancillary Services Owner is able to provide after complying with the Dispatch Notice and (ii) the Market Clearing Price the Owner pays to buy back its commitment to deliver the preempted MW of Ancillary Services (if the Owner actually incurs such a cost), or the penalty the Owner pays for failure to deliver the preempted MW of Ancillary Services (if the Owner actually incurs such a cost) for the applicable Ancillary Service, market, and hour. In addition, if compliance with the Dispatch Notice causes reduction of a market regulation transaction, the CAISO shall also pay the Owner the product of the Regulation Energy Payment Adjustment (REPA) amount, if applicable, and the MW of Regulation which Owner had scheduled but is unable to provide because of its compliance with the Dispatch Notice.

**Schedule E**  
**Ancillary Services**  
**Part 2 for Condition 2**

The CAISO may call upon the Unit to provide the following Ancillary Services as defined in the CAISO Tariff:

Regulation  
Spinning Reserve  
Nonspinning Reserve  
Replacement Reserve  
Voltage Support (including synchronous condenser operation)  
Black Start

The Owner shall be required to operate the Unit within the Power Factor range of the Unit specified in Schedule A to provide Voltage Support without additional compensation. The Owner shall receive no payment for any Ancillary Services Capacity provided. However, operation of a Unit in synchronous condenser mode will be compensated as shown below.

**Motoring Charge**

When Units are operated as synchronous condensers (i.e., motored using electric power) to provide Ancillary Services, if applicable, the payment for that service is given by the following formula:

Motoring Charge = ( Power consumption rate (MWh/hr) ) \* (hours operated) \* (Energy Price)

Where the Power consumption rate is given by the following table:

Unit	<u>Power consumption rate (MWh/hour)</u>
------	------------------------------------------

The Energy Price shall be equal to the total power costs charged to the Facility by its supplier of end-use Energy under the Applicable UDC Tariff for the billing cycle in which the Motoring Charge was incurred divided by the total power consumed at the Facility under such tariff during such billing cycle.

**Schedule E**  
**Ancillary Services**  
**Part 3 for Black Start Services**

For those Units with Black Start capability, the cost of maintaining such capability is included in this Agreement and no additional costs shall be charged to the CAISO for maintaining such capability. The CAISO will pay for Black Start service, including for a Black Start Test Dispatch Notice, at the rates and prices in this Agreement for Start-Ups and Delivery of Energy in connection with the Black Start service. Owner shall maintain the Black Start capability of the Unit and the Facility and provide Black Starts in accordance with the CAISO Ancillary Services Requirements Protocol and the CAISO Dispatch Protocol, which shall be deemed incorporated by reference into this Agreement.

When the CAISO first gives written notice to the Owner that it has obtained adequate Black Start service through an auction or a separate agreement with Owner or other Generators and Black Start service under this Agreement is no longer required, the CAISO shall not be entitled to call upon this Unit to provide Black Start service. Once the CAISO has given this notice, the Owner may remove Black Start service from this Agreement by filing unilaterally a change in rate schedule with FERC. Such filing shall not be required to include any reduction in rate or revenue solely because Black Start service is removed. The CAISO shall not oppose the absence of any rate or revenue reduction that results solely from removing such service.

**Schedule F**

**Determination of Annual Revenue Requirements  
 of Must-Run Generating Units**

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**Article I. Purpose and General Procedures**

**Part A. Determination of Rates and Charges**

This Schedule F establishes the procedures and methodology for determining the Annual Fixed Revenue Requirements (in dollars) and Variable O&M Rates (in \$/MWh) for facilities designated for must-run service for purposes of calculating certain charges for such service under the RMR Contract.

The Annual Fixed Revenue Requirements and the Variable O&M Rate for each designated must-run generating facility shall be determined annually. The Annual Fixed Revenue Requirements and the Variable O&M Rate for each such facility that shall be used for calculating charges to the CAISO during each calendar year shall be determined by application of the Formula set forth in Article II hereof to the Owner's costs incurred during the twelve-month period ended on June 30 of the prior calendar year. Each twelve-month period ending on June 30 of each year is hereinafter referred to as the "Cost Year" relating to the rates and charges that are effective during the succeeding calendar year.

**Part B. Informational Filings**

In connection with the determination of rates and charges for each calendar year, reflecting costs incurred during the June 30 Cost Year as described in the foregoing Part A of this Article I, the Owner shall provide to the CAISO an Information Package detailing and supporting all calculations involved in such determination. A single Information Package may contain all such informational materials pertaining to all of the Owner's designated must-run facilities. On or before October 1, 2001, the Owner shall provide to the CAISO the Information Package relating to the rates and charges to become effective on January 1, 2002. Thereafter, on November 1 of each year, the Owner shall provide to the CAISO the Information Package relating to the rates and charges to be effective during the calendar year beginning on the following January 1.

Each such Information Package shall be in a clear and readable format and shall contain:

1. detailed workpapers showing the derivation of costs under the Formula for the relevant Cost Year along with supporting schedules showing the data used in applying the formula, presented in a format consistent with the presentation of information in the FERC Form No. 1;
2. a clear identification of the depreciation rates reflected in claimed costs for the Cost Year and the rate of return and every other stated item (i.e., any item which appears as a numerical value in the Formula and which only may be changed by a filing with the FERC);

3. a comparison of the major components of the resulting revenue requirements for the relevant Cost Year with the corresponding components of the revenue requirements that result from the application of the Formula using costs from the Owner's FERC Form No. 1 relating to the preceding calendar year;
4. such additional documentation as to specific items of costs required by the Formula.

The Owner shall provide each Information Package to the CAISO in printed form and a suitable electronic format. The CAISO shall post the Information Package on its website. A suitable electronic format shall be any format that the FERC permits for electronic filings.

Coincident with providing each such Information Package to the CAISO, the Owner shall also submit the Information Package to the FERC in an informational filing so as to allow for review of the related rates and charges by the FERC staff and affected parties. As to the informational filing relating to rates and charges to be effective during calendar year 2002, (i) discovery requests by the FERC staff and affected parties shall be made within 45 days of the filing, with responses by the Owner due within 60 days of the filing, and (ii) protests, if any, by affected parties shall be filed with the FERC within 75 days of the filing. As to each subsequent informational filing, (i) discovery requests by the FERC staff and affected parties shall be made within 20 days of the filing, with responses by the Owner due within 35 days of the filing, and (ii) protests, if any, by affected parties shall be filed with the FERC within 45 days of the filing. In the event that the need arises during the discovery process for the nondisclosure or confidentiality of information, the Owner and affected parties, other than FERC Staff and state regulatory agencies, shall utilize the procedures contained in Schedules N-1 and N-2 of the RMR Contract. If the Owner seeks the confidentiality or nondisclosure of information provided to FERC or state regulatory agencies, it shall follow the applicable rules, regulations and statutory provisions of those agencies.

Protests to the Information Package challenging arithmetic calculations or conformity to the Rate Formula, not resolved by summary disposition of the FERC, shall be resolved by the use of the Alternative Dispute Resolution procedures in Schedule K of the RMR contract. In such a proceeding, the Owner will bear the burden of proof as in a proceeding under Section 205 of the Federal Power Act (FPA). If it is found that an erroneous calculation or non-conforming formula element has been used, refunds shall be ordered. The amount of refunds shall restore the parties to the positions they would have occupied had the erroneous calculations or non-conforming formula elements not been used, with interest calculated pursuant to Section 35.19a of the Commission's regulations, 18 C.F.R. Section 35.19a.

If a matter is set for hearing, additional discovery shall be permitted in accordance with the Commission's Rules of Practice and Procedure. Under hearings established pursuant to this provision, refund rights will be as in a proceeding under Section 205 of the FPA. Any refunds due as the result of a final Commission order will be credited or paid to the CAISO with interest in accordance with 18 C.F.R. 35.19a.

In addition to the discovery provided above, affected parties shall have the ability to audit the Owner's books and records as provided in Section 12.2 of the RMR Contract. To the extent that an audit discloses that the formula was not correctly applied for a particular year, the affected prior billings shall be corrected, and appropriate refunds or credits shall be provided to the CAISO, with interest determined in accordance with 18 C.F.R. 35.19a.

Notwithstanding the above procedures, all parties retain full rights to make filings at any time under Sections 205 and 206 of the FPA, as appropriate.



## Article II. Formula for Determination of Annual Revenue Requirements

### Part A. Purpose and Overview

The purpose of this Formula For Determination of Annual Revenue Requirements ("Formula") is to specify the method for determining the Annual Revenue Requirements, and certain components thereof, of particular must-run generating units for each Cost Year.

Part B of this Formula contains the specifications for the components of costs that may be included in the Annual Revenue Requirements of individual designated must-run generating units (*i.e.*, for each "Subject Resource").

Part C of this Formula sets forth (i) general instructions for the use and application of the Formula, and (ii) certain general definitions of terms used herein.

### Part B. Determination of Annual Revenue Requirements

#### Section 1. Annual Fixed Revenue Requirements and Variable O&M Rate

##### (A) Annual Fixed Revenue Requirements

The "Annual Fixed Revenue Requirements" for the Subject Resource is the amount determined as the following difference:

1. Total Annual Revenue Requirements, as defined below; less
2. Total Annual Variable Costs, as defined below.

##### (B) Variable O&M Rate

The "Variable O&M Rate" for the Subject Resource is the rate (in \$/MWh) determined as the follows:

$$\text{Variable O\&M Rate} = [\text{Annual Variable O\&M Expenses}]/[\text{Annual Net Generation}]$$

where "Annual Variable O&M Expenses" is defined hereinbelow, and "Annual Net Generation" is the net generation (in MWh) of the Subject Resource during the Cost Year.

Notwithstanding the foregoing, whenever the Annual Net Generation of the Subject Resource is zero or negative, the Variable O&M Rate shall be deemed to be zero.

##### (C) Total Annual Revenue Requirements

The "Total Annual Revenue Requirements" for the Subject Resource is the amount that is the sum of the following amounts:

1. Operating Expenses, determined pursuant to Section 2 below; and
2. Return and Income Tax Allowance, determined pursuant to Section 3 below.

## Section 2. Operating Expenses

"Operating Expenses" for the Subject Resource is the quantity that is the sum of the following amounts:

1. Total O&M Expenses, as defined below;
2. Depreciation Expenses, as defined below;
3. Taxes Other Than Income Taxes, as defined below; and
4. Revenue Credits, as defined below.

### (A) Total O&M Expenses

"Total O&M Expenses" is the amount of expenses arising from the operation and maintenance of the Subject Resource, including Production O&M Expenses, Transmission O&M Expenses, Distribution O&M Expenses, and Administrative & General Expenses, all as defined below.

- (1) **Production O&M Expenses:** Expenses incurred directly in operating and maintaining the Subject Resource:
  - (a) **Steam Production O&M:** For steam units only, amounts properly recorded in Accounts 500-515.
  - (b) **Hydro Production O&M:** For hydro units only, amounts properly recorded in Accounts 535-545.
  - (c) **Other Power Generation O&M:** For other types of units, amounts properly recorded in Accounts 546-554.
  - (d) **Other Power Supply Expenses:** Amounts properly recorded in Accounts 555-557, if any, that are reasonably assignable or allocable to the Subject Resource.
- (2) **Transmission O&M Expenses:** Expenses incurred directly in operating and maintaining the transmission facilities associated with the Subject Resource, as properly recorded in Accounts 560-573 and reasonably assignable or allocable to the Subject Resource.
- (3) **Distribution O&M Expenses:** Expenses incurred directly in operating and maintaining the distribution facilities associated with the Subject Resource, as properly recorded in Accounts 580-598 and reasonably assignable or allocable to the Subject Resource.
- (4) **Administrative and General (A&G) Expenses:** Those portions, if any, of administrative and general expenses, as properly recorded in Accounts 920-935, that are reasonably related to the operation of the Subject Resource, determined from appropriate direct assignment or reasonable allocation. Such expenses shall exclude (i) franchise fees related solely to the Owner's retail sales, (ii) retail regulatory expenses, (iii) assessments under 18 CFR Section 382.201 of the FERC Regulations, (iv) association dues, and (v) general advertising expenses.

Notwithstanding the foregoing, O&M Expenses hereunder shall exclude all Scheduling Coordinator Charges as charged under the CAISO Tariff, irrespective of in which Account or Accounts such charges are included.

**(B) Depreciation Expenses**

"Depreciation Expenses" are provisions for depreciation and amortization for the Subject Resource, as properly recorded in Accounts 403, 404, 405, 406, and 407, including only:

- (1) **Production Plant Depreciation:** Depreciation and amortization, if any, of investment in the Subject Resource;
- (2) **Transmission Plant Depreciation:** Depreciation and amortization, if any, of investment in the transmission facilities associated with the Subject Resource, as reasonably assignable or allocable to the Subject Resource;
- (3) **Distribution Plant Depreciation:** Depreciation and amortization, if any, of investment in the distribution facilities associated with the Subject Resource, as reasonably assignable or allocable to the Subject Resource;
- (4) **General and Intangible Plant Depreciation:** Depreciation and amortization, if any, of general and intangible plant investments that are reasonably assignable or allocable to the Subject Resource.

Notwithstanding the foregoing, costs recorded in Accounts 405, 406 and 407 shall be included hereunder only if, and to the extent that, FERC shall have permitted the inclusion of such costs for ratemaking purposes for the Owner under the RMR Contract.

**(C) Taxes Other Than Income Taxes**

"Taxes Other Than Income Taxes" are taxes other than income and revenue taxes, as properly recorded in Account 408.1, that are reasonably assignable and allocable to the Subject Resource, including for example:

1. Property and Property-Related Taxes;
2. Payroll and Labor-Related Taxes;
3. Other Taxes, if any, identifiable as reasonably assignable or allocable to the Subject Resource.

Taxes Other Than Income Taxes assignable and allocable to the Subject Resource shall not include any taxes related solely to, or arising solely from, the Owner's retail sales.

**(D) Revenue Credits**

"Revenue Credits" are those revenues, if any, that are (i) properly recorded in Account 451 (Miscellaneous Service Revenues), Account 453 (Sales of Water and Water Power), Account 454 (Rent From Electric Property), Account 455 (Interdepartmental Sales), and Account 456 (Other Electric Revenues), and (ii) directly related to, or reasonably allocable to, the Subject Resource. Such Revenue Credits shall be treated as negative values hereunder.

**(E) Treatment of Capital Leases**

The foregoing components of Operating Expenses may include expenses associated with capital leases as approved by the Commission, as set forth more fully under Article II, Part B, Section 4(A) of this Formula.

**Section 3. Return and Income Tax Allowance**

"Return and Income Tax Allowance" is the quantity that is the sum of:

1. the product of:
  - a. Allowable Pre-Tax Rate of Return, and
  - b. Net Investment,as both such quantities are hereinafter defined; and
2. the quantity equal to:

$$[ITC Amortization]/(1-t)$$

where:

- a. "t" is the effective, combined state and federal income tax rate.
- b. "ITC Amortization," is amortization, if any, of investment tax credits, as properly recorded in Account 411.4, that are reasonably assignable or allocable to the Subject Resource and to those portions of general and intangible plant investments that are reasonably assignable or allocable to the Subject Resource. Notwithstanding the foregoing, this term shall include only those amounts of amortization of investment tax credits which the Owner shall have elected to receive under Section 46(f)(1) of the Internal Revenue Code. ITC Amortization amounts that reduce net income shall be treated as negative values hereunder, while ITC Amortization amounts, if any, that increase net income shall be treated as positive values hereunder.

**Section 4. Net Investment**

"Net Investment" is the quantity that is determined as follows:

$$\text{Net Investment} = \text{Gross Plant Investment} - \text{Depreciation Reserve} + \text{CWIP} + \text{PHFU} - \text{ADIT} + \text{Working Capital}$$

where the quantities appearing in the foregoing equation are defined hereinafter below.

In determining Net Investment hereunder, each component thereof, other than Cash Allowance, shall be determined as the end-of-year balances in the Accounts specified for the relevant Cost Year.

**(A) Gross Plant Investment**

"Gross Plant Investment" is gross original cost plant investment as properly recorded in Accounts 101, 102, 106, and 114, including only the following amounts:

- (1) **Production Plant Investment:** investment in the generating unit itself and in common facilities associated with the unit, as recorded in Accounts 310-316, 330-336, or 340-346, 106 and 114;
- (2) **Transmission Plant Investment:** investment in transmission facilities associated with the Subject Resource, as properly recorded in Accounts 350-359, 106, and 114, and reasonably assignable or allocable to the Subject Resource;
- (3) **Distribution Plant Investment:** investment in distribution facilities associated with the Subject Resource, as properly recorded in Accounts 360-373, 106, and 114, and reasonably assignable or allocable to the Subject Resource; and
- (4) **General and Intangible Plant Investment:** reasonably assignable and allocable portions, if any, of general and intangible plant investment, recorded in Accounts 389-399 and 301-303, 106 and 114.

Subject to the limitations detailed in this paragraph, when the Owner has a capital lease in lieu of gross plant investment, it may include Account 101.1 hereunder. A lease may be capitalized and the costs included for ratemaking purposes if the Owner demonstrates that the lease qualifies as a capital lease under 18 C.F.R. Part 101, General Instruction No. 19 (1998), and the Owner has obtained, prior to the informational filing, approval to include such costs for ratemaking purposes from the FERC under the FPA. Capital leases shall be accounted for in accordance with 18 C.F.R. Part 101, General Instruction No. 20 (1998).

**(B) Depreciation Reserve**

"Depreciation Reserve" is accumulated provision for depreciation and amortization, as properly recorded in Accounts 108, 111, and 115, related to the Subject Resource, including the following amounts:

- (1) **Production Plant Depreciation Reserve:** amounts of Depreciation Reserve for the investment in the unit itself and in common facilities associated with the unit;
- (2) **Transmission Plant Depreciation Reserve:** amounts of Depreciation Reserve for the investment in transmission facilities associated with the Subject Resource, as reasonably assignable or allocable to the Subject Resource;
- (3) **Distribution Plant Depreciation Reserve:** amounts of Depreciation Reserve for the investment in distribution facilities associated with the Subject Resource, as reasonably assignable or allocable to the Subject Resource;
- (4) **General and Intangible Plant Reserve:** amounts of Depreciation Reserve for the portions, if any, of general and intangible plant investments reasonably assignable and allocable to the Subject Resource.

Credit balances in the aforementioned accounts shall be treated as positive values hereunder, and debit balances in such accounts shall be treated as negative values.

**(C) CWIP**

"CWIP" is the amount of construction work in progress, as properly recorded in Account 107 for construction projects associated with the Subject Resource related solely and directly to pollution control for the Subject Resource.

(D) **PHFU**

"PHFU" is the cost of plant held for future use, as properly recorded in Account 105 that is reasonably assignable or allocable to the Subject Resource.

(E) **ADIT**

"ADIT" is accumulated provision for deferred income taxes, as properly recorded in Accounts 190, 281, 282, 283, and 255, that are reasonably assignable or allocable to the investment in, or operation of, the Subject Resource, including the following amounts:

- (1) **Production Plant ADIT:** amounts of ADIT arising directly from the investment in, or operation of, the Subject Resource itself and common facilities associated with the Subject Resource;
- (2) **Transmission Plant ADIT:** amounts of ADIT arising directly from the investment in, or operation of, the transmission facilities, if any, associated with the Subject Resource;
- (3) **Distribution Plant ADIT:** amounts of ADIT arising directly from the investment in, or operation of, distribution facilities, if any, associated with the Subject Resource; and
- (4) **General and Intangible Plant ADIT:** amounts of ADIT arising from the portions, if any, of general and intangible plant investments reasonably assignable and allocable to the Subject Resource.

For purposes of this Formula, ADIT means accumulated provision for deferred income taxes, as properly recorded in the aforementioned Accounts, *including* amounts previously recorded in such accounts and reclassified as a result of the adoption of SFAS No. 109, but *excluding* amounts recorded in such accounts as a result of the adoption of SFAS No. 109, such that the required adoption of SFAS No. 109 will have no effect on the costs determined hereunder.

Notwithstanding the foregoing, as to Account 255, ADIT hereunder shall include only those amounts, if any, related to investment tax credits which the Owner shall have elected to receive under Section 46(f)(2) of the Internal Revenue Code.

ADIT balances that are credit balances shall be treated as positive values hereunder, while ADIT balances that are debit balances shall be treated as negative values hereunder.

Owner shall support all amounts of ADIT included and not included hereunder in the manner described in sections 35.13(h)(6) and (7) of the Commission's regulations (Statements AF and AG, respectively), except that the time period for the relevant data for the informational package will be consistent with the requirements of this formula, rather than the "Periods" referenced in those regulations.

(F) **Working Capital**

"Working Capital" is the sum of the portions, if any, of the following items that are reasonably assignable or allocable to the Subject Resource:

- (1) **Fuel Stocks**, which is the amount of fossil fuel stock, if any, maintained for the Subject Resource, as properly recorded in Account 151;

- (2) **Plant Materials and Supplies**, consisting of the value of plant materials and supplies reasonably assignable or allocable to the Subject Resource, as properly recorded in Accounts 154 and 163;
- (3) **Prepayments**, consisting of the amount, if any, of prepayments reasonably assignable or allocable to the Subject Resource, as properly recorded in Account 165;
- (4) **Working Cash Allowance**, which is one-eighth of O&M Expenses (as defined herein), less (a) Total Annual Fuel Costs (as defined hereinbelow), and (b) all amounts or portions, if any, of Account 555 (Purchased Power) that may be included in such O&M Expenses; and

**Unamortized Deferred Costs**, which shall be that portion, if any, of Account 186 directly related to, or reasonably allocable to, the Subject Resource.

#### Section 5. Allowable Pre-Tax Rate of Return

The Allowable Pre-Tax Rate of Return shall be the sum of:

- (a) 12.25%, and
- (b) 30% of the amount, if any, by which (a) the latest available 6-month average of yields on 10-year U.S. Treasury Bonds, as of the date of the first Informational Filing, exceeds (b) the latest available 6-month average of yields on 10-year U.S. Treasury Bonds as of *[the effective date of the settlement]*.

Notwithstanding the foregoing, the Owner may make application to the FERC, prior to or in conjunction with the first Informational Filing, in a limited proceeding to seek to establish a different Allowable Pre-Tax Rate of Return under Section 205 of the Federal Power Act.

#### Section 6. Additional Quantities

##### (A) Annual Variable O&M Expenses

"Annual Variable O&M Expenses" is the sum of the following quantities:

- (1) **Variable Production O&M Expenses**: those portions of Production O&M Expenses, as defined above, other than fuel expenses, that are reasonably determined to be variable expenses, in the sense that they are incurred as a result of, or otherwise are reasonably associated with, the production of energy by the Subject Resource.
- (2) **Variable A&G Expenses**: that portion of A&G Expenses that is related or allocable to the foregoing Variable Production O&M Expenses.

Notwithstanding the foregoing, starting with the first information filing hereunder and continuing until the Owner elects to use a different method to determine its Annual Variable O&M Expenses, the Owner may compute Annual Variable O&M Expenses as the amount equal to the product of (a) the Initial Variable O&M Rate, in \$/MWh, for the Subject Resource, as set forth in Exhibit A hereto (Exhibit A can be found in Appendix B

to the Stipulation and Agreement), times (b) the Net Generation of the Subject Resource (as defined hereinabove). Whenever the Owner does not compute Annual Variable O&M Expenses based on the Initial Variable O&M Rate in the foregoing manner, the Owner shall include in each of Informational Package a detailed explanation of the method or methods used to classify O&M expenses as between fixed (*i.e.*, capacity-related) expenses and variable (*i.e.*, energy-related) expenses and the reason(s) such method results in just and reasonable rates.

**(B) Annual Fixed O&M Expenses**

"Annual Fixed O&M Expenses" is the quantity that is equal to the following:

- (1) Total O&M Expenses, as defined hereinabove, less
- (2) the sum of:
  - a. Annual Variable O&M Expenses, as defined hereinabove, and
  - b. Annual Variable Fuel Costs, as defined hereinbelow,
  - c. Annual Emissions Costs, as defined hereinbelow, and
  - d. Annual Non-Fuel Start-Up Costs, as defined hereinbelow.

**(C) Fuel Expenses**

**(1) Total Annual Fuel Costs**

"Total Annual Fuel Costs" is the total fuel expense for the Subject Resource for the Cost Year properly recorded in Account 501 or Account 547, as appropriate depending on the nature of the Subject Resource.

**(2) Annual Fixed Fuel Costs**

"Annual Fixed Fuel Costs" is that portion, if any, of Total Annual Fuel Costs related to fuel handling and administration of fuel planning, procurement and transportation which do not vary with the amount of fuel purchased.

**(3) Annual Variable Fuel Costs**

"Annual Variable Fuel Costs" is the quantity that is the following difference:

1. Total Annual Fuel Costs, less
2. Annual Fixed Fuel Costs.

**(D) Annual Emissions Costs**

"Annual Emissions Costs" is the total emissions costs that are related to the operation of the Subject Resource during the Cost Year.



**(E) Annual Non-Fuel Start-Up Costs**

"Annual Non-Fuel Start-Up Costs" is the aggregate sum of costs, other than fuel costs, attributable to start-ups of the Subject Resource during the Cost Year, consisting of start-up power costs, shut-down power costs, and other non-fuel start-up costs, all as determined pursuant to the applicable sections of Schedule D of the RMR Contract, as applied to all start-ups of the Subject Resource during the Cost Year.

**(F) Total Annual Variable Costs**

"Total Annual Variable Costs" is the sum of:

1. Annual Variable O&M Expenses,
2. Annual Variable Fuel Costs, and
3. Annual Emissions Costs.

**Part C. General Instructions and Explanatory Notes**

**Section 1. General Instructions**

In applying this Formula to a Subject Resource, the following instructions and explanations shall be followed:

**(A) No Duplicative Charges**

The costs determined and referenced by this Formula shall exclude costs that are recoverable, or that are actually recovered, elsewhere under the applicable contract or agreement between the Owner and the CAISO. There shall be no double counting of costs hereunder.

**(B) Determination of Depreciation Expenses**

Depreciation Expenses, Depreciation Reserve, and Deferred Income Taxes reflected in the revenue requirements determined pursuant to this Formula shall be computed using either fixed depreciation rates or depreciation rates determined annually from fixed mortality characteristics (i.e., service lives, net salvage ratios, etc.). Such depreciation rates and/or mortality characteristics, which may differ for particular assets or groups of assets comprising, or related to, the Subject Resource, are set forth on Exhibit B, which is attached hereto and made a part hereof. Such depreciation rates and/or mortality characteristics may not be changed except pursuant to Section 205 or Section 206 of the FPA. Nothing herein shall be construed as affecting any requirements of the FERC regarding the use by the Owner of depreciation rates for financial reporting purposes.

**(C) Costs in Excess of Original Cost**

The components of rate base and the costs reflected under the Formula shall not include an acquisition adjustment or costs associated with an acquisition adjustment unless the Owner shall have obtained approval from the FERC to include under the Formula such an adjustment or such costs for ratemaking purposes under the FPA. The effective date for the inclusion of such costs shall be as set forth in the FERC order.

**(D) Use of FERC Accounting**

The costs determined and referenced by this Formula shall reflect only FERC-basis accounting, and shall not reflect any accounting for costs approved by any state regulatory commission or other body if not approved or accepted by the FERC for use in connection with the RMR Contract. Except as otherwise provided herein, the accounting for costs for purposes of applying this Formula shall be consistent with the requirements of the Uniform System of Accounts.

**(E) Accounting Methods**

The costs determined and referenced by this Formula shall reflect only such accounting methods prescribed by such authorities as AICPA and FASB that shall have been approved or accepted by the FERC for use in connection with the RMR Contract. The Owner shall be required to seek and gain such approval or acceptance from the FERC prior to reflecting any changed accounting methods in the determination of costs in connection with this Formula.

The Owner shall carry the burden of demonstrating that its accounting methods and entries reflected in the costs determined and referenced by this Formula produce just, reasonable, and nondiscriminatory rates for its customers.

**(F) Out-of-Period Adjustments**

The costs determined and referenced by this Formula shall not reflect any accounting entries the purpose of which is to adjust or correct for accounting entries in years other than the Cost Year if such adjusting or correcting entries would have an unjust, unreasonable, or discriminatory effect on the CAISO.

**(G) Extraordinary Costs**

Extraordinary costs included in the costs determined and referenced by this Formula shall be subject to amortization over a reasonable period of time. In determining how costs should be amortized, the parties shall also determine how the costs being amortized should be recovered in the event that the plant closes and does not reopen.

As used herein, "extraordinary costs" mean costs arising from events and transactions that are of an unusual nature and infrequent occurrence, the effects of which are abnormal and significantly different from the ordinary and typical activities of the Owner, and would not reasonably be expected to recur in the foreseeable future. In determining significance, items should be considered individually and not in the aggregate. However, the effects of a series of related transactions arising from a single specific and identifiable event or plan of action should be considered in the aggregate. An item can be extraordinary even if it is less than five (5) percent of income computed before the extraordinary item. In its annual Information Package, the Owner shall identify and provide explanations for all extraordinary costs which it seeks to include in the rates and charges determined pursuant to this Formula, and the Owner shall bear the burden of proof, as in a proceeding under Section 205 of the FPA, that its proposed treatment of extraordinary costs is just and reasonable.

**(H) Imprudently Incurred Costs**

The costs determined and referenced by this Formula shall not include any costs which have been determined by the FERC in a proceeding under Section 206 of the FPA to have been imprudently incurred by the Owner.

**(I) Transmission Cost Assignments and Allocations**

Costs of transmission facilities assigned and/or allocated to the Subject Resource hereunder are intended to include only those costs, if any, related to the step-up substation facilities and other transmission facilities directly connected to the Subject Resource and used to deliver the output of the Subject Resource to the transmission grid. In each annual Informational Package, the Owner shall clearly identify and fully describe all transmission facilities which it claims satisfy the foregoing criteria.

**(J) Distribution Cost Assignments and Allocations**

Costs of distribution facilities assigned and/or allocated to the Subject Resource hereunder are intended to include only those costs, if any, related to the step-up substation facilities and other distribution facilities directly connected to the Subject Resource and used to deliver the output of the Subject Resource to the transmission or distribution system. In each annual Informational Package, the Owner shall clearly identify and fully describe all distribution facilities which it claims satisfy the foregoing criteria.

**(K) Inclusion of Certain Costs**

The Owner shall include in its annual Informational Package detailed workpapers and explanations supporting the reasonableness of including in the revenue requirements determined pursuant to this formula any amounts recorded in Accounts 501, 547, 555, 561, 927, 105, and 186. The Owner shall bear the burden of proof, as in a proceeding under Section 205 of the FPA, to affirmatively demonstrate that all such included amounts are directly related to the provisions of service under the RMR Contract and are reasonably assignable or allocable to the Subject Resource. As to Account 105, the requirement for a definitive plan required by the description of Account 105 in the Uniform System of Accounts, and the affirmative demonstration required by this paragraph, shall be deemed to be met upon a showing that the CAISO has approved, in accordance with the provisions of Section 7.4 of the RMR Contract, a plan for the future use of the property.

**(L) Direct Assignments and Allocations**

Where Part B of this Formula provides for the identification and/or assignment of costs incurred directly in connection with a particular facility or facilities (including a Subject Resource), or directly related to such a facility or facilities, the Owner shall bear the burden of demonstrating the reasonableness of each such identification and/or assignment, and each failure to make such an identification and/or assignment. Notwithstanding the foregoing, where this Formula provides for such a direct identification or assignment of costs, the Owner may use an allocation method to apportion such costs among particular facilities; provided, however, that (i) the Owner shall in its Informational Package clearly identify and describe such allocation method and the basis for it, and (ii) the Owner shall bear the burden of demonstrating the reasonableness of the method. It is recognized that such allocation methods may, for example, be appropriate for apportioning certain types of costs between individual generating units at a multi-unit generating station. Such allocations of costs between individual generating units at a plant site shall be consistent with the requirements for such allocations, if any, provided in the RMR Contract.

**(M) No Adverse Distinction**

In applying this Formula and in maintaining its books and records insofar as they affect the results of applying this Formula, the Owner shall not make an adverse distinction between the Subject Resource and any other facility or facilities owned or operated by the Owner; e.g., the Owner shall assign certain costs directly to the Subject Resource only if, and to the extent that, the Owner directly assigns such costs to other, similar facilities.

**Section 2. General Definitions**

Except as may be expressly stated otherwise, the following terms have the followings meanings as used herein:

**(A) Account**

"Account" refers to a particular account for "major" utilities as prescribed by the Uniform System of Accounts.

**(B) FERC**

"FERC" means the Federal Energy Regulatory Commission or its successor.

**(C) Uniform System of Accounts**

"Uniform System of Accounts" means the FERC's "Uniform System of Accounts Prescribed For Public Utilities and Licensees Subject to the Provisions of the Federal Power Act," as such uniform system of accounts was in effect as of the first effective date of the RMR Contract.

**(D) RMR Contract**

"RMR Contract" means the contract to which this Formula is attached and made a part thereof.

**(E) Subject Resource**

"Subject Resource" means any particular generating unit to which this Formula is applied for purposes of determining the annual costs thereof.

**(F) Cost Year**

"Cost Year" means the twelve-month period ended June 30 to which this Formula is applied to determine the Annual Fixed Revenue Requirements and Variable O&M Rate for a Subject Resource to be applicable during the next succeeding calendar year.

**(G) Owner**

"Owner" means the entity, other than the CAISO, that is a party to the RMR Contract.

**(H) CAISO**

The "CAISO" means the California Independent System Operator Corporation.

CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION  
FERC ELECTRIC TARIFF  
AMENDED AND RESTATED SECOND REPLACEMENT VOLUME NO. I Original Sheet No. 793GGGGG

**Exhibit A - Initial Variable O&M Rates<sup>9</sup>**

Line	RMR Facility	Unit	Initial Variable O&M Rate (\$/MWh)

<sup>9</sup> Exhibit A for each owner is filed in Appendix to the Stipulation and Agreement.

**Exhibit B - Depreciation Rate and Mortality Characteristics<sup>10 11</sup>**

Line	RMR Facility	Unit	Plant Account	Depreciation Rate (%)	Mortality Characteristics			
					Retirement Date	Average Service Life	Salvage Value or Rate	Interim Retirements Rate

**Exhibit C - 1998 Cost Information**

Pursuant to Article IV.E of the Stipulation and Agreement filed with the FERC on April 2, 1999, the Owner shall file with the FERC in Docket No. ER98-441-000, et. al., a superceding Exhibit C, setting forth the following information for each unit for the period ending December 31, 1998:

- (1) Name of the facility and unit;
- (2) Gross Plant In Service, *i.e.* the original cost plus plant additions minus retirements, by major plant function (*i.e.* production, transmission, distribution and general);
- (3) Net Plant In Service Gross Plant, *i.e.* gross plant minus depreciation reserve, by major plant function;
- (4) Rate Base, *i.e.* net plant and other components of Net Investment as defined in the Formula, such as working capital, Accumulated Deferred Income Taxes (ADIT), etc.

This Exhibit C shall be for informational purposes only and shall be initially filed with FERC by June 1, 1999.

<sup>10</sup> Exhibit B for each owner is filed in Appendix B to the Stipulation and Agreement.  
<sup>11</sup> Effective as of the effective date of the Settlement.

**Schedule G**

**Charge for Service in Excess of  
 Contract Service Limits**

Payment for service in excess of the Maximum Annual MWh, Maximum Annual Service Hours or Maximum Annual Start-ups shall be determined in accordance with Option A or Option B. Payment for service from hydroelectric Units in excess of the Maximum Monthly MWh shall be determined in accordance with Option A only. Owner shall make a one-time election between Option A or Option B. Owner must choose Option A for both Billable MWh and Start-ups or Option B for both Billable MWh and Start-ups. This election shall be applicable to all of the Owner's Units under this Agreement and all other Reliability Must-Run Units subject to a "reliability must-run contract" as defined in the CAISO Tariff with Owner or any of its affiliates as defined in 18 C.F.R. Section 161.2.

**1. Option A**

- A. For all Billable MWh Delivered after the Counted MWh for the Contract Year equals the Maximum Annual MWh, the Counted Service Hours equals the Maximum Annual Service Hours or, for hydroelectric Units, the Counted MWh for the Month equals the Maximum Monthly MWh ("Schedule G Billable MWh"):

Fossil Fuel Units

In addition to the Variable Cost Payment computed in accordance with Schedule C, the CAISO shall pay the Option A Variable Cost Payment, which shall be calculated in accordance with Equation G-1:

**Equation G-1**

$$\text{Option A Variable Cost Payment} = \frac{0.5 * (\text{Variable Cost Payment for the Billing Month})}{\text{Billable MWh for the Billing Month}} * \text{Schedule G Billable MWh}$$

Pumped Storage Hydroelectric Facilities

In addition to the Variable Cost Payment computed in accordance with Schedule C, CAISO shall pay the product of (a) the Schedule G Billable MWh, (b) 0.5, and (c) YTD Pumping Costs divided by YTD Energy Produced as computed in accordance with Equation C4-2 in Schedule C.

Conventional Hydroelectric Facilities

In addition to the Variable Cost Payment computed in accordance with Schedule C, CAISO shall pay the sum of the products for each hour in the Billing Month of (a) the Hourly Fuel Price for natural gas for the hour calculated in accordance with Equation C1-8 of Schedule C, (b) 12,000 Btu/kWh, (c) the Schedule G Billable MWh for that hour, and (d) 0.5.

- B. For all Service Hours provided after the Counted Service Hours for the Contract Year equals the Maximum Annual Service Hours.

Synchronous Condensers

In addition to the Motoring Charge computed in accordance with Schedule E, CAISO shall pay the product of (a) the Motoring Charges calculated in accordance with Schedule E, and (b) 0.5.

- C. For all Start-ups required to comply with a Dispatch Notice after the Counted Start-ups for the Unit equals the Maximum Annual Start-ups ("Schedule G Start-ups"), the CAISO shall pay:

Fossil Fuel Units and Geothermal Units

Two times (a) the Start-up Payment computed in accordance with Equation D-1 in Schedule D, or (b) if the Schedule G Start-up is initiated under a Dispatch Notice but is not successfully completed because it is canceled or rescinded by the CAISO, the Start-up Payment for Canceled Start-up is computed in accordance with Equation D-4 in Schedule D.

Conventional Hydroelectric Facilities and Units Capable Only of Synchronous Condenser Operation

The Start-up Payment computed in accordance with Schedule D, plus (a) (0.00338) \* the Unit's Annual Fixed Revenue Requirement stated in Section 7 of Schedule B, divided by (b) the Unit's Maximum Annual Start-ups.

Pumped Storage Hydroelectric Facilities

The Start-up Payment computed in accordance with Equation D-1 in Schedule D, plus (a) 0.00167 \* the Unit's Annual Fixed Revenue Requirement stated in Section 7 of Schedule B, divided by (b) the Unit's Maximum Annual Start-ups.

**2. Option B**

- A. For all Schedule G Billable MWh Delivered in the Billing Month, the CAISO shall pay the Variable Cost Payment computed in accordance with Schedule C. Since Schedule G Billable MWh are included in calculating the Variable Cost Payment for Billable MWh for the Billing Month under Schedule C, there is no additional payment for Schedule G Billable MWh under Option B.
- B. For all Service Hours provided after the Counted Service Hours for the Contract Year equals the Maximum Annual Service Hours:

Synchronous Condensers

In addition to the Motoring Charge computed in accordance with Schedule E, CAISO shall pay the product of (a) the Motoring Charges calculated in accordance with Schedule E, and (b) 0.5.



- C. For all Schedule G Start-ups in the Billing Month, the CAISO pay:

Units Capable Only of Synchronous Condenser Operation

The Start-up Payment computed in accordance with Schedule D, plus (a) (0.00338) \* the Unit's Annual Fixed Revenue Requirement stated in Section 7 of Schedule B, divided by (b) the Unit's Maximum Annual Start-ups.

Fossil Fuel Units and Geothermal Units

Three times (a) the Start-up Payment computed in accordance with Equation D-1 in Schedule D, or (b) if the Schedule G Start-up is initiated under a Dispatch Notice but is not successfully completed because it is canceled or rescinded by the CAISO, the Start-up Payment for Canceled Start-up is computed in accordance with Equation D-4 in Schedule D.

**3. Owner's Election**

Option A \_\_\_\_\_

Option B \_\_\_\_\_

**Schedule H**

***Fuel Oil Service***

The following is a description of existing capability of the Facility to burn fuel oil in lieu of or addition to natural gas:

**Schedule I**

***Insurance Requirements***

**Owner - Obtained Insurance**

*Commercial General Liability*

Commercial general liability insurance covering personal injury and property damage to third parties in connection with the activities at the Facility. The coverage will have a limit of not less than \$ \_\_\_\_\_ per occurrence, and will include coverage for sudden and accidental pollution losses. The CAISO will be added as an additional insured under the terms of this coverage to the per-occurrence limit above.

*Property*

Property Insurance for direct physical loss or damage to the Facility, in an amount not less than the probable maximum loss at the Facility.

**CAISO – Obtained Insurance**

*Errors and Omissions Insurance and Directors & Officers Insurance*

Errors and omissions insurance and directors and officers insurance coverage will have a combined limit of not less than \$150 million for the shorter of (i) until the termination of this Agreement or (ii) until January 1, 2002.

**Schedule J  
Notices**

Owner

Name:  
Title:  
Address:  
Telephone:  
Facsimile:  
E-mail:

With a copy to: Owner's Representative:

CAISO:

Nancy Traweek  
Director, Operations Support  
California ISO Corporation  
151 Blue Ravine Road  
Folsom, CA 95630  
Telephone: (916) 351-2113  
Facsimile: (916) 351-2267  
Email: [ntraweek@caiso.com](mailto:ntraweek@caiso.com)

With a copy to:

Sidney Mannheim Davies  
Assistant General Counsel  
Tariff and Tariff Compliance  
California ISO Corporation  
151 Blue Ravine Road  
Folsom, CA 95630  
Telephone: (916) 608-7144  
Facsimile: (916) 608-7222  
Email: [sdavies@caiso.com](mailto:sdavies@caiso.com)

**SCHEDULE K  
DISPUTE RESOLUTION**

**Applicability**

**1.1 General Applicability.**

Except as limited below or otherwise as limited by law (including the rights of any party to file a complaint with FERC under the relevant provisions of the Federal Power Act (FPA)), these ADR Procedures shall apply to (a) all disputes between parties which arise under this Agreement and (b) disputes between CAISO and a Responsible Utility relating to a Responsible Utility Invoice, "Final Estimated RMR Invoice, Final Adjusted RMR Invoice" as defined in the CAISO Tariff, or RMR Charge or RMR Refund as defined in Section 11.13 in the CAISO Tariff. The foregoing shall not impair the applicability of the CAISO Tariff ADR procedures to other disputes between the parties that do not arise under this Agreement. All alternative dispute resolution proceedings hereunder shall be administered by the American Arbitration Association ("AAA"). The Owner, Responsible Utility and the CAISO shall enter into such arrangements with the AAA as are necessary to provide for AAA administration of this Schedule K.

1.1.2 This Schedule K shall not apply to disputes as to whether rates and charges under the Agreement are just and reasonable under the Federal Power Act except as provided in Schedule F. Nothing herein shall limit the right of the FERC to initiate or adjudicate complaints or other proceedings in accordance with applicable statutes or regulations or to compel FERC to exceed its statutory authority as defined by any applicable federal statutes, regulations or orders lawfully promulgated thereunder.

## **1.2 Disputes Involving Government Agencies.**

If a party to a dispute is a government agency the procedures herein which provide for the resolution of claims and arbitration of disputes are subject to any limitations imposed on the agency by law, including but not limited to the authority of the agency to effect a remedy. If the governmental agency is a federal entity, the procedures herein shall not apply to disputes involving issues arising under the United States Constitution.

## **1.3 Injunctive and Declaratory Relief.**

Where the court having jurisdiction so determines, use of the ADR Procedures shall not be a condition precedent to a court action for injunctive relief nor shall the provisions of California Code of Civil Procedure sections 1281 *et seq.* apply to such court actions.

## **1.4 Negotiation and Mediation.**

### **1.4.1 Negotiation.**

CAISO, Responsible Utility and Owner ("Parties") shall make good-faith efforts to negotiate and resolve any dispute between them arising under this Agreement prior to invoking the ADR Procedures herein. Each Party shall designate an individual with authority to negotiate the matter in dispute to participate in such negotiations. The Responsible Utility may participate in the ADR proceedings arising under this Agreement to the extent the dispute involves billing or payment obligations, in which case CAISO or the Responsible Utility, but not both shall be the disputing party. In addition, to the extent Article 7 or other provisions of this Agreement provide the Responsible Utility third-party beneficiary rights, the Responsible Utility may also participate in the ADR as a Party.

The Owner may participate in the ADR proceedings relating to a Responsible Utility Invoice, "Final Estimated RMR Invoice, Final Adjusted RMR Invoice" as defined in the CAISO Tariff or RMR Charge or RMR Refund as defined in Section 11.13, in which case, CAISO or the Owner, but not both, shall be the disputing party. In addition, to the extent the CAISO Tariff provides the Owner third-party beneficiary rights, the Owner may also participate in the ADR as a Party.

### **1.4.2 Statement of Claim.**

In the event a dispute is not resolved through such good-faith negotiations, any party may submit a statement of claim, in writing, to each other disputing party, which submission shall commence the ADR Procedures. The statement of claim shall set forth in reasonable detail (i) each claim, (ii) the relief sought, including the proposed award, if applicable, (iii) a summary of the grounds for such relief and the basis for each claim, (iv) the parties to the dispute, and (v) the individuals having knowledge of each claim. The other parties to the dispute shall similarly submit their respective statements of claim within 14 days of the date of the initial statement of claim or such longer period as the

AAA may permit following an application by the responding party. If any responding party wishes to submit a counterclaim in response to the statement of claim, it shall be included in such party's responsive statement of claim. No party shall be considered as having received notice of a claim decided or relief granted by a decision made under these procedures unless the statement of claim includes such claim or relief.

#### **1.4.3 Selection of Mediator.**

After submission of the statements of claim, the parties may request mediation, if the disputing parties so agree. If the parties agree to mediate, the AAA shall distribute to the parties by facsimile or other electronic means a list containing the names of at least seven prospective mediators with mediation experience, or with technical or business experience in the electric power industry, or both, as he or she shall deem appropriate to the dispute. The parties shall either agree upon a mediator from the list provided or from any alternative source, or alternate in striking names from the list with the last name on the list becoming the mediator. The first party to strike off a name from the list shall be determined by lot. The parties shall have seven days from the date of receipt of the AAA's list of prospective mediators to complete the mediator selection process and appoint the mediator, unless the time is extended by mutual agreement. The mediator shall comply with the requirements of Section 1.5.2.

#### **1.4.4 Mediation.**

The mediator and representatives of the disputing parties, with authority to settle the dispute, shall within 14 days after the mediator's date of appointment schedule a date to mediate the dispute. Matters discussed during the mediation shall be confidential and shall not be referred to in any subsequent proceeding. With the consent of all disputing parties, a resolution may include referring the dispute directly to a technical body (such as a WSCC technical advisory panel) for resolution or an advisory opinion, or referring the dispute directly to FERC.

#### **1.4.5 Demand for Arbitration.**

If the disputing parties have not succeeded in negotiating a resolution of the dispute within 30 days of the initial statement of claim or, if within that period the parties agreed to mediate, within 30 days of the parties' first meeting with the mediator, such parties shall be deemed to be at impasse and any such disputing party may then commence the arbitration process, unless the parties by mutual agreement agree to extend the time. A party seeking arbitration shall provide notice of its demand for arbitration to the other disputing parties.

### **1.5 Arbitration.**

#### **1.5.1 Selection of Arbitrator.**

**1.5.1.1 Disputes Under \$1,000,000.** Where the total amount of claims and counterclaims in controversy is less than \$1,000,000 (exclusive of costs and interest), the disputing parties shall select an arbitrator from a list containing the names of at least 10 qualified individuals supplied by AAA, within 14 days following submission of the demand for arbitration. If the disputing parties cannot agree upon an arbitrator within the stated time, they shall take turns striking names from the list of proposed arbitrators. The first party to strike off a name shall be determined by lot. This process shall be repeated until one name remains on the list, and that individual shall be the designated arbitrator.

**1.5.1.2 Disputes of \$1,000,000 or Over.** Where the total amount of claims and counterclaims in controversy is \$1,000,000 or more (exclusive of interest and costs), the disputing parties may agree on any person to serve as a single arbitrator, or shall endeavor in good faith to agree on a single arbitrator from a list of ten qualified individuals provided by the AAA, 14 days following submission of the demand for arbitration. If the disputing parties are unable to agree on a single arbitrator within the stated time, the party or parties demanding arbitration, and the party or parties responding to the demand for arbitration, shall each designate an arbitrator. Each designation shall be from the AAA list of arbitrators, as applicable, no later than the tenth day thereafter. The two arbitrators so chosen shall then choose a third arbitrator.

**1.5.2 Disclosures Required of Arbitrators.**

The designated arbitrator(s) shall be required to disclose to the parties any circumstances that might preclude him or her from rendering an objective and impartial determination. Each designated arbitrator shall disclose:

**1.5.2.1** Any direct financial or personal interest in the outcome of the arbitration;

**1.5.2.2** Any information required to be disclosed by California Code of Civil Procedure Section 1281.9.; and

**1.5.2.3** Any existing or past financial, business, professional, or personal interest that are likely to affect impartiality or might reasonably create an appearance of partiality or bias. The designated arbitrator shall disclose any such relationships that he or she personally has with any party or its counsel, or with any individual whom they have been told will be a witness. They should also disclose any such relationship involving members of their families or their current employers, partners, or business associates. All designated arbitrators shall make a reasonable effort to inform themselves of any interests or relationships described above. The obligation to disclose interests, relationships, or circumstances that might preclude an arbitrator from rendering an objective and impartial determination is a continuing duty that requires the arbitrator to disclose, at any stage of the arbitration, any such interests, relationships, or circumstances that arise, or are recalled or discovered.

**1.5.2.4** If, as a result of the continuing disclosure duty, an arbitrator makes a disclosure which is likely to affect his or her partiality, or might reasonably create an appearance of partiality or bias or if a party independently discovers the existence of such circumstances, a party wishing to object to the continuing use of the arbitrator must provide written notice of its objection to the other parties within ten days of receipt of the arbitrator's disclosure or the date of a party's discovery of the circumstances giving rise to that party's objection. Failure to provide such notice shall be deemed a waiver of such objection. If a party timely provides a notice of objection to the continuing use of the arbitrator the parties shall attempt to agree whether the arbitrator should be dismissed and replaced in the manner described in Section 1.5.1. If within ten days of a party's objection notice the parties have not agreed how to proceed the matter shall be referred to the AAA for resolution.

### **1.5.3 Arbitration Procedures.**

The AAA shall compile and make available to the arbitrator and the parties standard procedures for the arbitration of disputes, which procedures (i) shall conform to the requirements specified herein, and (ii) may be modified or adopted for use in a particular proceeding as the arbitrator deems appropriate, in accordance with Section 1.5.4. The procedures shall be based on the latest edition of the American Arbitration Association Commercial Arbitration Rules, to the extent such rules are not inconsistent with this Schedule K. Except as provided herein, all parties shall be bound by such procedures.

### **1.5.4 Modification of Arbitration Procedures.**

In determining whether to modify the standard procedures for use in the pending matter, the arbitrator shall consider (i) the complexity of the dispute, (ii) the extent to which facts are disputed, (iii) the extent to which the credibility of witnesses is relevant to a resolution, (iv) the amount in controversy, and (v) any representations made by the parties. Alternatively, the parties may, by mutual agreement, modify the standard procedures. In the event of a disagreement between the arbitrator and the agreement of the parties regarding arbitration procedures to be utilized, the parties' agreement shall prevail.

### **1.5.5 Remedies.**

**1.5.5.1 Arbitrator's Discretion.** The arbitrator shall have the discretion to grant the relief sought by a party, or determine such other remedy as is appropriate, unless the parties agree to conduct the arbitration "baseball" style. Unless otherwise expressly limited herein, the arbitrator shall have the authority to award any remedy or relief available from FERC, or any court of competent jurisdiction. Where this Agreement leaves any matter to be agreed between the parties at some future time and provides that in default of agreement the matter shall be referred to the ADR, the arbitrator shall have authority to decide upon the terms of the agreement which, in the arbitrator's opinion, it is reasonable that the parties should reach, having regard to the other terms this Agreement concerned and the arbitrator's opinion as to what is fair and reasonable in all the circumstances.

**1.5.5.2 "Baseball" Arbitration.** If the parties agree to conduct the arbitration "baseball" style, the parties shall submit to the arbitrator and exchange with each other their last best offers in the form of the award they consider the arbitrator should make, not less than seven days in advance of the date fixed for the hearing, or such later date as the arbitrator may decide. If a party fails to submit its last best offer in accordance with this Section, that party shall be deemed to have accepted the offer proposed by the other party. The arbitrator shall be limited to awarding only one of the proposed offers, and may not determine an alternative or compromise remedy.

### **1.5.6 Summary Disposition.**

The procedures for arbitration of a dispute shall provide a means for summary disposition of a demand for arbitration, or a response to a demand for arbitration, that in the reasoned opinion of the arbitrator does not have a good faith basis in either law or fact. If the arbitrator determines that a demand for arbitration or response to a demand for arbitration does not have a good faith basis in either law or fact, the arbitrator shall have discretion to award the costs of the time, expenses, and other charges of the arbitrator to the prevailing party. A determination made under this Section is subject to appeal pursuant to Section 1.6.

**1.5.7 Discovery Procedures.**

The procedures for the arbitration of a dispute shall include adequate provision for the discovery of relevant facts, including the taking of testimony under oath, production of documents and other things, the presentation of evidence, the taking of samples, conducting of tests, and inspection of land and tangible items. The nature and extent of such discovery shall be determined as provided herein and shall take into account (i) the complexity of the dispute, (ii) the extent to which facts are disputed, (iii) the extent to which the credibility of witnesses is relevant to a resolution, and (iv) the amount in controversy. The forms and methods for taking such discovery shall be as described in the Federal Rules of Civil Procedure, except as modified pursuant to Section 1.5.4.

**1.5.8 Evidentiary Hearing.**

The arbitration procedures shall provide for an evidentiary hearing, with provision for the cross-examination of witnesses, unless all parties consent to the resolution of the matter on the basis of a written record. The forms and methods for taking evidence shall be determined by the arbitrator(s) and modified pursuant to Section 1.5.4. The arbitrator may require such written or other submissions from the parties as he or she may deem appropriate, including submission of direct and rebuttal testimony of witnesses in written form. The arbitrator may exclude any evidence that is irrelevant, immaterial, unduly repetitious or prejudicial, or privileged. The arbitrator shall compile a complete evidentiary record of the arbitration that shall be available to the parties on its completion upon request.

**1.5.9 Confidentiality.**

Subject to the other provisions of this Agreement, any party may claim that information contained in a document otherwise subject to discovery is "Confidential" if such information would be so characterized under the Federal Rules of Evidence or the provisions of the Agreement. The party making such claim shall provide to the arbitrator in writing the basis for its assertion. If the claim of confidentiality is confirmed by the arbitrator, he or she shall establish requirements for the protection of such documents or other information designated as "Confidential" as may be reasonable and necessary to protect the confidentiality and commercial value of such information. Any party disclosing information in violation of these provisions or requirements established by the arbitrator, unless such disclosure is required by federal or state law or by a court order, shall thereby waive any right to introduce or otherwise use such information in any judicial, regulatory, or other legal or dispute resolution proceeding, including the proceeding in which the information was obtained.

**1.5.10 Timetable.**

Promptly after the appointment of the arbitrator, the arbitrator shall set a date for the issuance of the arbitration decision, which shall be no later than six months (or such earlier date as the parties and the arbitrator may agree) from the date of the appointment of the arbitrator, with other dates, including the dates for an evidentiary hearing or other final submissions of evidence, set in light of this date. The date for the evidentiary hearing or other final submission of evidence shall not be changed, absent extraordinary circumstances. The arbitrator shall have the power to impose sanctions, including dismissal of the proceeding, for dilatory tactics or undue delay in completing the arbitration proceedings.

**1.5.11 Decision.**

**1.5.11.1** Except as provided below with respect to "baseball" style arbitration, the arbitrator shall issue a written decision granting the relief requested by one of the parties, or such other remedy as is appropriate, if any, and shall include findings of fact and law. The arbitration decision shall be based on (i) the evidence in the record, (ii) the terms of this Agreement and to the extent relevant, the CAISO Tariff and Protocols, (iii) applicable United States federal law, including the Federal Power Act and any applicable FERC regulations and decisions, and international treaties or agreements as applicable, and (iv) applicable state law. Additionally, the arbitrator may consider relevant decisions in previous arbitration proceedings involving this Agreement. To the extent it may do so without violating confidentiality requirements, a summary of the disputed matter and the arbitrator's decision may be published in an CAISO newsletter on CAISO Website.

**1.5.11.2** In arbitration conducted "baseball" style, the arbitrator shall issue a written decision adopting one of the awards proposed by the parties, and shall include findings of fact and law. The arbitration decision shall be based on (i) the evidence in the record, (ii) the terms of this Agreement and to the extent relevant, the CAISO Tariff and Protocols, (iii) applicable United States federal law, including the Federal Power Act and any applicable FERC regulations and decisions, and international treaties or agreements as applicable, and (iv) applicable state law. If the arbitrator concludes that no proposed award is consistent with the factors enumerated in (i) through (iv) above, or addresses all of the issues in dispute, the arbitrator shall specify how each proposed award is deficient and direct that the parties submit new proposed awards that cure the identified deficiencies. To the extent it may do so without violating confidentiality requirements, a summary of the disputed matter and the arbitrator's decision may be published in an CAISO newsletter on CAISO Website.

**1.5.11.3** Where a panel of arbitrators is appointed pursuant to Section 1.5.1.2, a majority of the arbitrators must agree on the decision. An award shall not be deemed to be precedent except in so far as a future dispute between the parties involves the same issue.

**1.5.12 Compliance.**

Unless the arbitrator's decision is appealed under Section 1.6, the disputing parties shall, upon receipt of the decision, immediately take whatever action is required to comply with the award to the extent the award does not require regulatory action. An award that is not appealed shall be deemed to have the same force and effect as an order entered by FERC or any court of competent jurisdiction.

**1.5.13 Enforcement.**

Following the expiration of the time for appeal of an award pursuant to Section 1.6.3, any party may apply to FERC or any court of competent jurisdiction for entry and enforcement of judgment based on the award.

**1.5.14 Costs.**

The costs of the time, expenses, and other charges of the arbitrator shall be borne by the parties to the dispute, with each side on an arbitrated issue bearing its pro-rata share of such costs, and each party to an arbitration proceeding bearing its own costs and fees. If the arbitrator determines that a demand for arbitration or response to a demand for arbitration was made in bad faith, the arbitrator shall have discretion to award the costs of the time, expenses, and other charges of the arbitrator to the prevailing party.



**1.6 Appeal of Award.**

**1.6.1 Basis for Appeal.**

A party may apply to the FERC or any court of competent jurisdiction to hear an appeal of an arbitration decision only upon the grounds that the decision is contrary to or beyond the scope of this Agreement and to the extent relevant, the CAISO Tariff and Protocols, United States federal law, including, without limitation, the Federal Power Act, and any applicable FERC regulations and decisions, or state law. Appeals shall, unless otherwise ordered by FERC or the court of competent jurisdiction, conform to the procedural limitations set forth in this Section 1.6.

**1.6.2 Appellate Record.**

The parties intend that FERC or a court of competent jurisdiction should afford substantial deference to the factual findings of the arbitrator. No party shall seek to expand the record before FERC or a court of competent jurisdiction beyond that assembled by the arbitrator, except (i) by making reference to legal authority which did not exist at the time of the arbitrator's decision, or (ii) if such party contends the decision was based upon or affected by fraud, collusion, corruption, misconduct or misrepresentation.

**1.6.3 Procedures for Appeals.**

**1.6.3.1** If a party to an arbitration desires to appeal a decision, it shall provide a notice of appeal to all parties and the arbitrator(s) within 14 days following the date of the decision. Within ten days of the filing of the notice of appeal, the appealing party must file an appropriate application, petition or motion with FERC for review under the Federal Power Act or with a court of competent jurisdiction. Such filing shall state that the subject matter has been the subject of an arbitration pursuant to this Agreement and, to the extent relevant, the CAISO Tariff and protocols.

**1.6.3.2** Within 30 days of filing the notice of appeal (or such period as FERC or the court of competent jurisdiction may specify) the appellant shall file the complete evidentiary record of the arbitration and a copy of the decision with FERC or with the court. The appellant shall serve on all parties to the arbitration copies of a description of all materials included in the submitted evidentiary record.

**1.6.4 Award Implementation.**

Implementation of the decision shall be deemed stayed pending an appeal unless and until, at the request of a party, FERC or the court of competent jurisdiction with which an appeal has been filed, issues an order dissolving, shortening, or extending such stay.

A summary of each appeal shall be published in a CAISO newsletter on the CAISO Website.

**1.6.5 Judicial Review of FERC Orders.**

FERC orders resulting from appeals shall be subject to judicial review pursuant to the Federal Power Act.

**SCHEDULE L-1  
 REQUEST FOR APPROVAL OF CAPITAL ITEMS OR REPAIRS**

This form should be used to request CAISO approval of Planned Capital Items, Unplanned Repairs or Unplanned Capital Items pursuant to Sections 7.4, 7.5 or 7.6 of the Agreement.

CALIFORNIA INDEPENDENT SYSTEM OPERATOR  
 RELIABILITY MUST-RUN UNIT  
 CAPITAL ITEM AND REPAIR PROJECT REQUEST

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**Date:** \_\_\_\_\_ **CAISO Project Number:** \_\_\_\_\_  
**Facility:** \_\_\_\_\_ **Unit:** \_\_\_\_\_  
**Owner:** \_\_\_\_\_ **Location:** \_\_\_\_\_

**This request covers:**

- ( ) Capital Items for the next Contract Year (preliminary)
- ( ) Capital Items for the next Contract Year (final)
- ( ) Unplanned Repairs
- ( ) Unplanned Capital Items

**If this request covers Capital Items for the next Contract Year, provide:**

**Small Project Estimate (reliability)**

**Small Project Estimate (other)**

Identify separately each Capital Item included in a small project estimate projected to cost more than \$50,000.

**If this request covers Unplanned Repairs, or Capital Items projected to cost more than \$500,000, provide the information in the remainder of this form for each project.**

**Project Description:** (describe the project and its major scope items – materials, new systems, modifications to existing systems, etc.)

**If the project is required because of loss or damage to a Unit, describe the cause and nature of the loss or damage and all repairs performed or required for all Units during the year:**

**Project Budget:**

Year	Labor	Material	Contract	Int Svc	Other	Material	Over head AEGE	Total Cost	AD VAL TAX	Total Expenditu res	Total Financi al Costs

**Describe any work or repairs performed relating to this project in the last five years:**

**As applicable, state the proposed depreciation life, Annual Capital Item Cost, Surcharge Payment Factor or Repair Payment Factor (percentage owed by CAISO) of the Capital Item or Repair:**

**Describe why this project is required (justification):**

**Is this project required to comply with any laws, regulations or permits? If so, please list them and explain requirement.**

**Provide a cost/benefit analysis summary for this project:**

Include all assumptions including changes to unit performance [efficiency, aux. power loads, etc.], impact on Maximum Net Dependable Capacity, grid interconnection/metering impacts, etc.

**Describe the impacts on the Unit's ability to perform its obligations under this Agreement if this project is not approved:**

**Describe alternatives to this project that were evaluated and the projected costs of those alternatives:**

Describe alternatives along with their major scope items. Also, compare the projected cost of these alternatives with the selected alternative, and compare the unit performance impacts (efficiency, auxiliary power demands, Maximum Net Dependable Capacity effects, etc.) of these alternatives against the chosen alternative.

**List any proceeds received or expected to be received by Owner from insurers or other third parties pursuant to applicable insurance, warranties and other contracts in connection with the project.**

**Provide the schedule for implementing this project:**

Event	Begin	Complete

**Describe any outages required to implement this project:**

**Other comments:**

## SCHEDULE L-2

### CAPITAL ITEM AND REPAIR PROGRESS REPORT

CALIFORNIA INDEPENDENT SYSTEM OPERATOR  
RELIABILITY MUST-RUN UNIT  
CAPITAL ITEM AND REPAIR PROGRESS REPORT

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**Date:** CAISO Project Number:  
**Facility:** Unit:  
**Owner:** Location:  
**Capital Item or Repair:**  
**Original In-Service Date:** Current In-Service Date:

**If Current In-Service Date has changed, describe the reason why:**

**Describe any additional costs or savings resulting from the change in the Current In-Service Date:**

Describe what portion of any additional costs Owner is requesting CAISO to pay, and why Owner believes that CAISO should be obligated to pay those additional costs:

**SCHEDULE M  
 Mandatory Market Bid for Condition 2 Units  
 When Dispatched by the CAISO**

**Energy Bid**

The bid the Owner of a Condition 2 Fossil Fuel Unit must submit into Energy markets when dispatched by the CAISO is given in Equation M-1a (for Units with input/output data in polynomial form) or Equation M-1b (for Units with input/output data in exponential form):

**Equation M-1a**

$$\text{Energy Bid (\$/MWh)} = \frac{(AX^3 + BX^2 + CX + D)}{X} * P * E$$

+ [Variable O&M Rate + Emissions Rates + Scheduling Coordinator Charge + ACA Charge]

**Equation M-1b**

$$\text{Energy Bid (\$/MWh)} = \frac{A * (B + CX + De^{FX})}{X} * P * E$$

+ [Variable O&M Rate + Emissions Rate + Scheduling Coordinator Charge + ACA Charge]

Where:

- for Equation M-1a, A, B, C, D and E are the coefficients given in Table C1-7a;
- for Equation M-1b, A, B, C, D, E and F are the coefficients given in Table C1-7b;
- X is the Unit Availability Limit, MW;
- P is the Hourly Fuel Price as calculated by Equation C1-8 in Schedule C using the Commodity Prices most recently published before the day the bid is submitted.

- Scheduling Coordinator Charge (\$/MWh): \$0.31.
- ACA Charge (\$/MWh): The applicable annual charge for short-term sales under 18 CFR Section 382.201 of the FERC Regulations.
- Variable O&M Rate (\$/MWh): as shown on Table C1-18

For Units in the SCAQMD only

Emissions Rate (\$/MWh) = Emissions Cost / Unit Availability Limit

Emissions Cost = (a) RECLAIM Cost + (b) NOx Emissions Cost + (c) Organic Gases Cost + (d) Sulfur Oxides Cost + (e) Particulate Matter Cost + (f) Carbon Monoxide Cost

(a) RECLAIM Cost =  $((AX^2+BX+C) * \text{RECLAIM NOx Trading Credit Rate})$

(b) NOx Emissions Cost =  $\frac{(AX^2+BX+C)}{2000} * \text{NOx Emissions Fee}$

Where:

A, B and C are the coefficients from Table C1-13;

X = Unit Availability Limit;

(c) Organic Gases Cost =

$4.76 \times 10^{-7} * (\text{Gas Fuel}) * \text{Associated Emission Factor for Organic Gases} * \text{Associated Emissions Fee for Organic Gases}$

(d) Sulfur Oxides Cost =

$4.76 \times 10^{-7} * (\text{Gas Fuel}) * \text{Associated Emission Factor for Sulfur Oxides} * \text{Associated Emissions Fee for Sulfur Oxides}$

(e) Particulate Matter Oxides Cost =

$4.76 \times 10^{-7} * (\text{Gas Fuel}) * \text{Associated Emission Factor for Particulate Matter} * \text{Associated Emission Fee for Particulate Matter}$

(f) Carbon Monoxide Cost =

$4.76 \times 10^{-7} * (\text{Gas Fuel}) * \text{Associated Emission Factor for Carbon Monoxide} * \text{Associated Emission Fee for Carbon Monoxide}$

Where:

Gas Fuel =  $AX^3 + BX^2 + CX + D$  or  $A * (B + CX + De^{FX})$ , depending on the form of heat input the Owner is using

- A, B, C, D are the coefficients from C1-7a or C1-7b;
- F is the coefficient from C1-7b;
- X = Unit Availability Limit;

- Factors and Associated Emission fees are determined in Schedule C, Section D.3.

The bid the Owner of a geothermal Condition 2 Unit must submit into Energy markets when dispatched by the CAISO is given in Equation M-2.

**Equation M-2**

Energy Bid (\$/MWh) = Fuel Cost + [Variable O&M Rate + Scheduling Coordinator Charge + ACA Charge]

Where:

- The Fuel Cost is the Steam Price identified in Equation C2-1 in Schedule C. However, for purposes of this mandatory market bid, the value for the Steam Price will be zero for Geysers Main Units until the cumulative Hourly Metered Total Net Generation during the Contract Year from all Units exceeds the Minimum Annual Generation given in Equation C2-2.
- Variable O&M Cost (\$/MWh): the cost shall be as shown on Table C2-1.
- Scheduling Coordinator Charge: \$0.31.
- ACA Charge (\$/MWh): The applicable annual charge for short-term sales under 18 C.F.R. Section 382.201 of the FERC Regulations.

**Ancillary Services Bid**

The bid the Owner of a Condition 2 Unit must submit into Ancillary Service markets when dispatched by CAISO is as follows:

$$\text{Ancillary Services Bid (\$/MW per hr)} = \frac{\left[ \left( \begin{array}{l} \text{30 minutes x} \\ \text{Unit's} \\ \text{Highest Ramp} \\ \text{Rate} \\ \text{from Schedule} \\ \text{A,} \\ \text{MW/min} \end{array} \right) * \left( \begin{array}{l} \text{Target} \\ \text{Availabl} \\ \text{e} \\ \text{Hours} \end{array} \right) \right]}{2} + \left[ \left( \begin{array}{l} \text{Maximum} \\ \text{Net} \\ \text{Dependa} \\ \text{ble} \\ \text{Capacity} \end{array} \right) * \left( \begin{array}{l} \text{Target} \\ \text{Availabl} \\ \text{e} \\ \text{Hours} \end{array} \right) \right]$$

Annual Fixed Revenue Requirement is shown in Schedule B.  
 Target Available Hours is shown in Schedule B.  
 The product of 30 minutes times the Unit's highest Ramp Rate in Schedule A shall not exceed the Unit's Maximum Net Dependable Capacity.

**Schedule N-1**  
**NON-DISCLOSURE and CONFIDENTIALITY AGREEMENT**  
**for RESPONSIBLE UTILITY**

**[Name of Responsible Utility]** (the "Responsible Utility") acknowledges that **[Name of Owner]** ("Owner") and the California Independent System Operator Corporation ("CAISO") (jointly, the "Providing Parties" and severally, the "Providing Party") have agreed to provide certain information to the Responsible Utility pursuant to certain provisions of the Must-Run Service Agreement ("MRSA") between Owner and CAISO and as required for settlement and billing of charges under Article 9 of such Agreement. In order to permit the Responsible Utility to receive such Confidential Information from Owner or CAISO pursuant to the above-referenced provisions of the MRSA, the Responsible Utility and the Providing Parties hereby agree as follows:

- (1) For purposes of this Non-Disclosure and Confidentiality Agreement, the term "Confidential Information" shall have the same meaning it has in Section 12.5 of the MRSA, a copy of which is appended;
- (2) The Providing Parties shall provide such Confidential Information pursuant to the terms of this Non-Disclosure and Confidentiality Agreement;
- (3) The Responsible Utility shall keep such Confidential Information confidential, shall use it only for the purposes related to the MRSA, and shall limit the disclosure of any such Confidential Information to only those personnel within its organization with responsibility for using such information in connection with the MRSA. Such personnel may not include any person whose duties include (i) the marketing or sale of electric power or natural gas or gas transportation capacity at wholesale or retail, (ii) the purchase of electric power or natural gas or gas transportation capacity at wholesale or retail, (iii) the direct supervision of any employee with such responsibilities, or (iv) the provision of electricity or natural gas marketing consulting services to any employee with such responsibilities;
- (4) The Responsible Utility shall assure that personnel within its organization read and comply with the provisions of this Non-Disclosure and Confidentiality Agreement;
- (5) The Responsible Utility shall use all reasonable efforts to maintain the confidentiality of the Confidential Information in any litigation, and shall promptly notify the providing Party of any attempt by a third party to obtain the Confidential Information through legal process or otherwise;
- (6) The Responsible Utility may use Confidential Information in litigation or regulatory proceedings related to the Must-Run Service Agreement between Owner and CAISO but only after notice to the Providing Party and affording the Providing Party an opportunity to obtain a protective order or other relief to prevent or limit disclosure of the Confidential Information.

The Responsible Utility agrees to be bound by the terms of Section 12.5 of the MRSA in the same manner and to the same extent as the Providing Parties. The person signing on behalf of the Responsible Utility represents that he/she is authorized to bind the Responsible Utility to the terms of this Non-Disclosure and Confidentiality Agreement.

The undersigned signatory represents that he/she is authorized to bind the Responsible Utility, to the terms of this Non-Disclosure and Confidentiality Agreement.

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Responsible Utility: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Owner: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
California Independent System Operator Corporation  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_



**SCHEDULE N-2**

**NON-DISCLOSURE and CONFIDENTIALITY AGREEMENT  
for PERSONS OTHER THAN THE RESPONSIBLE UTILITY**

**[Name of]** (the "Receiving Party") acknowledges (a) that **[Name of Owner]** ("Owner") has agreed to provide Confidential Information to the California Agency pursuant to certain provisions of the Must-Run Service Agreement ("MRSA") between Owner and the California Independent System Operator Corporation ("CAISO"), and (b) that Owner and CAISO (jointly, the "Providing Parties" and severally, the "Providing Party") may provide Confidential Information on a need-to-know basis to Owner's Scheduling Coordinator, financial institutions, agents and potential purchasers of interests in a Unit; and, as required for settlement and billing, to Scheduling Coordinators responsible for paying for services provided under the MRSA between Owner and CAISO. In order to permit the Receiving Party to receive such Confidential Information from Owner or CAISO, the Receiving Party and the Providing Parties hereby agree as follows:

- (1) For purposes of this Non-Disclosure and Confidentiality Agreement, the term "Confidential Information" shall have the same meaning it has in Section 12.5 of the MRSA between Owner and CAISO, a copy of which is appended;
- (2) The Providing Parties shall provide such Confidential Information pursuant to the terms of this Non-Disclosure and Confidentiality Agreement;
- (3) The Receiving Party shall keep such Confidential Information confidential, shall use it only for the purposes related to the MRSA, and shall limit the disclosure of any such Confidential Information to only those personnel within its organization with responsibility for using such information in connection with the MRSA upon their execution of this Non-Disclosure and Confidentiality Agreement. Such personnel may not include any person whose duties include (i) the marketing or sale of electric power or natural gas or gas transportation capacity at wholesale or retail, (ii) the purchase of electric power or natural gas or gas transportation capacity at wholesale or retail, (iii) the direct supervision of any employee with such responsibilities, or (iv) the provision of electricity or natural gas marketing consulting services to any employee with such responsibilities;
- (4) The Receiving Party shall assure that personnel within its organization authorized to receive Confidential Information read and comply with the provisions of this Non-Disclosure and Confidentiality Agreement;
- (5) The Receiving Party shall use all reasonable efforts to maintain the confidentiality of the Confidential Information in any litigation, and shall promptly notify the providing Party of any attempt by a third party to obtain the Confidential Information through legal process or otherwise;

CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION  
FERC ELECTRIC TARIFF  
AMENDED AND RESTATED SECOND REPLACEMENT VOLUME NO. I Original Sheet No. 793BBBBBB

The Receiving Party agrees to be bound by the terms of Section 12.5 of the MRSA in the same manner and to the same extent as the Providing Parties. The person signing on behalf of the Receiving Party represents that he/she is authorized to bind the Receiving Party to the terms of this Non-Disclosure and Confidentiality Agreement.

Signature: \_\_\_\_\_

Name: \_

Company: \_\_\_\_\_

Title: \_\_

Receiving Party: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Telephone: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_

Owner: \_

Title: \_\_

Address: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Telephone: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_

California Independent System Operator Corporation

Title: \_\_

Address: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Telephone: \_\_\_\_\_

## SCHEDULE O

### RMR Owner's Invoice Process

The following principles and practices shall govern the submission of invoices to the CAISO for Energy and Ancillary Services provided under this Agreement ("RMR services"):

1. Invoices submitted by Owner to the CAISO for RMR services shall be clear, understandable and complete.
2. The CAISO, all RMR Owners and Responsible Utilities shall agree on the RMR invoice template, which agreement shall not be unreasonably withheld, prior to its implementation. The CAISO shall publish the current version of the RMR invoice template by including it on the CAISO Website. The CAISO will specifically tell each Owner and Responsible Utility where on the CAISO Website this RMR invoice template can be found. Each Owner shall use the then current RMR invoice template for invoicing RMR services for each Facility. The RMR invoice template may change from time to time. The CAISO shall notify the California Agency, all RMR Owners and Responsible Utilities when a new agreed upon RMR invoice template has been placed on the CAISO Website.
3. Subject to the provisions of paragraph 4 below, a Completed RMR invoice based on the version of the RMR invoice template posted on the CAISO Website seven days prior to submission of the invoice shall be deemed to satisfy the requirements of this Agreement. As used herein, the term "Completed RMR invoice" means that: (a) all of the raw data required to calculate debits and credits have been included; (b) all calculations have been performed in accordance with the formulae in the current RMR invoice template, or in the event that Owner believes a conflict exists between one or more formula(s) in the RMR Owner's invoice and the corresponding formula in the RMR invoice template, such conflict has been identified and substitute equations have been documented and used at the appropriate location(s) in the invoice; (c) linkages between invoice levels are identified; (d) all billing and service assumptions, data inputs and formulae reasonably necessary to understand the derivation of each charge on the invoice has been included; and (e) the invoice has been provided to the CAISO and the Responsible Utility.
4. The Estimated RMR invoice or the Adjusted RMR invoice timeline set forth in the CAISO's RMR Payments Calendar (for the appropriate invoice) shall not commence, payments shall not be made and interest shall not begin to accrue until a Completed RMR invoice has been submitted to the CAISO and Responsible Utility.
5. In the event of any conflict between the RMR invoice template and this Agreement, this Agreement shall govern. The Owner or Responsible Utility detecting the conflict shall promptly give notice to the CAISO. The CAISO shall notify all RMR Owners and all Responsible Utilities as soon as practicable after a conflict has been identified.
6. If Owner identifies a conflict, Owner shall identify the conflict in its letter transmitting its completed Estimated or Adjusted RMR invoice to the CAISO and include therein Owner's revised formula, which will be effective until agreement has been reached among the CAISO, Owner, the other RMR Owners and the Responsible Utilities on the correct formula, or a decision has been rendered through ADR from which no further appeal is possible.

7. An RMR Invoice Task Force has been formed with representatives from each of the RMR Owners, the Responsible Utilities and the CAISO. When a conflict has been identified, the CAISO, Owner, the other RMR Owners and the Responsible Utility will participate in meetings of the RMR Invoice Task Force to reach agreement on a revised RMR invoice template. The RMR Invoice Task Force shall meet at least monthly until all conflicts are resolved. Once all conflicts have been resolved, the RMR Invoice Task Force will meet approximately every six months to address invoicing and payment issues.
8. The RMR Invoice Task Force also shall be responsible for simplifying the RMR invoices so that they are easier to process and less burdensome to prepare.
9. To the extent that the Owner, the CAISO and the Responsible Utility have agreed, certain columns in the Owner's RMR invoice template shall be standard for the Facility and shall not change. The Owner shall not be required to complete such columns each month on its invoice for it to be considered a Completed RMR invoice, unless the underlying information requirements change.
10. Owner shall supply monthly RMR Level 0-3 invoice information in accordance with the RMR invoice template for each Responsible Utility service territory as follows:
  1. Level 0: the summary invoice for Owner's total amount invoiced to the CAISO for all of Owner's Facilities;
  2. Level 1: the summary invoice for all RMR Units at a Facility;
  3. Level 2: the detailed calculated information for individual RMR Units at the Facility; and
  4. Level 3: the detailed hourly data for individual RMR Units at each Facility.

Each invoice shall contain such other information as is necessary to perform the calculations, including indicated netted meter reads, CAISO Dispatch Notice information (both day-ahead, real time, and adjustments), Owner's Availability Notice information and final market schedule information. No quantities shall be left blank. Each assumption made by the Owner to perform a calculation shall be listed and explained either in the appropriate Level 0-3 template under Notes or in a transmittal letter accompanying the invoice.

The methods described shall be used to calculate quantities such as Hourly Fuel Price, Hourly Emissions Cost and Start-up calculations used as input data in the RMR invoice template.

Owner shall indicate any data appearing on the invoice which it considers confidential. Responsible Utility may use the data in accordance with Section 12.5 and Schedule N of this Agreement.

**SCHEDULE P**

**Reserved Energy for Air Emissions Limitations**

This Schedule P applies only to Units located within the San Diego Air Quality Control Basin ("Basin").

1. For purposes of this Schedule P, the term Emission Limitation means present or future limitations on the discharge of air pollutants or contaminants into the atmosphere specified by any federal, state, regional or local law ("Clean Air Law"), by any regulation, air quality implementation plan, or permit condition promulgated or imposed by any agency authorized under any such Clean Air Law or by the judgment of any court of competent jurisdiction.
2.
  - (a) Except as set out in Sections 2 (b) and (c), if a Facility is located in the Basin and is subject to an Emission Limitation that would limit the MWh that can be produced from the Facility during the Contract Year or part thereof (such Contract Year or part being referred to as the "Limitation Period"), Owner shall, so long as some or all of the Units at the Facility are operating under Condition 1, reserve for the Facility for each Month of the Limitation Period for dispatch under this Agreement, a quantity of MWh equal to the average monthly Requested MWh for the Facility for that Month in the 36 Months preceding the next Contract Year (the "Monthly Reserved MWh").
  - (b) If there are less than 36 Months of Requested MWh preceding the next Contract Year, the Monthly Reserved MWh for the Limitation Period shall be determined by agreement between CAISO and Owner. If Owner and CAISO are unable to reach agreement by October 31 preceding the next Contract Year, Owner or CAISO may refer the matter to ADR under a schedule (specified by the arbitrator if the participants cannot agree) requiring a decision within 30 days following appointment of the arbitrator.
  - (c)
    - (i) If the Monthly Reserved MWh has been determined in accordance with Section 2(a) and this Agreement terminates as to a Unit at the Facility, the Monthly Reserved MWh shall be adjusted downward to the average of the Requested MWh for the Units that remain subject to this Agreement for the same 36 Month period previously used to calculate the Monthly Reserved MWh.
    - (ii) If the Monthly Reserved MWh has been determined in accordance with Section 2 (b) and the Agreement terminates as to a Unit at the Facility, the adjustment shall be determined by agreement of Owner and CAISO. If the Parties are unable to reach agreement at least 45 days before the Agreement terminates as to the Unit, Owner or CAISO may refer the matter to ADR under a schedule (specified by the arbitrator if the participants cannot agree) requiring a decision within 30 days following appointment of the arbitrator
3. The Monthly Reserved MWh are set forth on Schedule A. No less than 15 days before the beginning of each Contract Year, Owner shall make a Section 205 filing limited to changing the terms of Schedule A to revise the Monthly Reserved MWh determined in accordance with Section 2. The revised Monthly Reserved MWh shall be effective from the first day of the Contract Year.
4. If the sum of the Billable MWh and Hybrid MWh during a Month is less than the Monthly Reserved MWh, CAISO may:
  - (a) carry forward into the following Months of the Limitation Period all unused Monthly Reserved MWh, provided the cumulative unused MWh that are carried forward into the following Months may not exceed 20% of the aggregate Monthly Reserved MWh for the remainder of the Limitation Period including the Monthly Reserved MWh for the Months into which unused Monthly Reserved MWh are to be carried forward, or

(b) carry forward less than all unused Monthly Reserved MWh and release to Owner the Monthly Unused Reserved MWh not carried forward.

CAISO shall notify Owner of the amount of unused Monthly Reserved MWh to be carried forward within 3 Business Days after the beginning of the next Month.

5. CAISO may elect to reduce the aggregate Monthly Reserved MWh for the remainder of the Limitation Period by notifying Owner not less than 5 days prior to the beginning of the Month in which the reduction is to be effective. Notwithstanding the foregoing, if CAISO or Owner forecasts that usage will approach the Emission Limitation in the last Month of the Limitation Period, CAISO and Owner shall closely coordinate to release any unused Monthly Reserved MWh as soon as possible.
6. If there are unused Monthly Reserved MWh for the Facility remaining at the end of the Limitation Period, CAISO shall pay the Unused Emission Reserve Payment. The Unused Emission Reserve Payment shall be the product of (a) the Unused Monthly Reserved MWh Payment Rate and (b) the lesser of (i) the unused Monthly Reserved MWh carried forward by the CAISO into the last Month of the Limitation Period and (ii) the unused Monthly Reserved MWh remaining at the end of the Limitation Period. The Unused Monthly Reserved MWh Payment Rate shall be \$10 per MWh. The Unused Emission Reserve Payment shall be included in the invoice for the last Billing Month of the Limitation Period.
7. If the CAISO determines that the Monthly Reserved MWh have become insufficient due to a Force Majeure Event at the Facility or at Reliability Must-Run Units at another facility or because of an outage on the CAISO Controlled Grid or the Distribution Grid due to a Force Majeure Event, CAISO may request Owner to undertake, and if so requested, Owner shall undertake all such necessary and commercially reasonable measures approved in advance by CAISO and the Responsible Utility to (a) obtain, where possible, a modification or variance from applicable Emission Limitations, or (b) procure necessary emission reduction credits or allowances sufficient to offset emissions in excess of Emission Limitations to enable Owner to provide additional MWh dispatched by the CAISO to meet reliability requirements arising by reason of such Force Majeure Event. CAISO shall reimburse Owner for all reasonable costs of procuring such emission reduction credits or allowances.
8. If the CAISO wishes to dispatch a Unit at a Facility that is within 5% of exceeding its Monthly Reserved MWh for the Limitation Period, the CAISO shall first dispatch Units at other Facilities that are not within 5% of the Monthly Reserved MWh during the Limitation Period if the other Unit(s), in the CAISO's sole judgment, provide equivalent reliability benefits.
9. If any Emission Limitation affecting the Facility materially changes, CAISO and Owner promptly shall renegotiate this Schedule P to reflect such change. If CAISO and Owner are unable to agree on revisions to this Schedule P, the Owner may file a revised Schedule P with FERC under Section 205 of the Federal Power Act for the limited purpose of taking such changes in the Emissions Limitation into account. Such filing may be with or without the concurrence of the CAISO, but CAISO reserves its right to protest any such filing.

[NOT USED]

**[NOT USED]**



**[NOT USED]**

**[NOT USED]**

**[NOT USED]**

**[NOT USED]**

**[NOT USED]**

**[NOT USED]**

**[NOT USED]**

**[NOT USED]**



**Attachment B**  
**RMR Contract – Blacklines**  
**MRTU Tariff Section 205 Filing**  
**and**  
**Compliance Filing with Paragraph 417 of September 21, 2006 Order, Docket No. ER06-615**

**October 26, 2007**

\* \* \*

**11.13 Settlements and Billing of Reliability Must-Run Charges and Payments.**

The CAISO shall calculate and levy the charges for Reliability Must-Run Contract costs in accordance with Section 41.5 of this CAISO Tariff.

\* \* \*

**[CAISO TARIFF APPENDIX N]  
[Settlements and Billing]**

\* \* \*

**PART J [NOT USED]  
SETTLEMENT AND BILLING OF RELIABILITY MUST-RUN CHARGES AND PAYMENTS**

**1 Objectives, Definitions and Scope**

**11.13.1 Objectives.**

The objective of this ~~Part J~~Section 11.13 is to inform RMR Owners which are responsible for preparation of invoices, and Responsible Utilities, which are responsible for payment of Reliability Must-Run Charges pursuant to Section 30.6.1.241.7 of the ISO Tariff, of the manner in which the RMR Charges referred to in Section 30.6.1.141.6 of the ISO Tariff shall be verified and settled and of the procedures regarding the billing, invoicing and payment of these RMR Charges.

**1.2 Definitions**

**1.2.1 Master Definitions Supplement**

Unless the context otherwise requires, any word or expression defined in the Master Definitions Supplement to the ISO Tariff shall have the same meaning where used in this Part J. A reference to a paragraph is to a paragraph of this Part J. References to Parts are to Parts of Appendix N.

**1.2.3 Special Definitions for this Part J**

In this Part J the following words and expressions shall have the following meanings:

“Adjusted RMR Invoice” means the monthly invoice issued by the RMR Owner to the ISO for adjustments made to the Revised Estimated RMR Invoice pursuant to the RMR Contract, reflecting actual data for the billing month.

“Business Day” shall have the meaning ascribed to it in the RMR Contract.

“Estimated RMR Invoice” means the monthly invoice issued by the RMR Owner to the ISO for estimated RMR Payments or Refunds pursuant to the RMR Contract.

“Facility Trust Account” means, for each RMR Contract, the account established and operated by the ISO to and from which all payments under this Part J shall be made. Each Facility Trust Account will have two

~~segregated commercial bank accounts, a RMR Owner Facility Trust Account and a Responsible Utility Facility Trust Account.~~

~~“Prior Period Change” means any correction, surcharge, credit, refund or other adjustment pertaining to a billing month which is discovered after the Revised Adjusted RMR Invoice for such billing month has been issued.~~

~~“Prior Period Change Worksheet” means a worksheet prepared by the RMR Owner and submitted to the ISO following discovery of a necessary change to an RMR invoice after the Revised Adjusted RMR Invoice for the billing month has been issued.~~

~~“Responsible Utility Facility Trust Account” means a segregated commercial bank account under the Facility Trust Account containing funds held in trust for the Responsible Utility.~~

~~“RMR Invoice” means any Estimated RMR Invoice, Revised Estimated RMR Invoice, Adjusted RMR Invoice, or Revised Adjusted RMR Invoice.~~

~~“RMR Owner Facility Trust Account” means a segregated commercial bank account under the Facility Trust Account containing funds held in trust for the RMR Owner.~~

~~“RMR Payment” means any amounts which the ISO is obligated to pay to RMR Owners under RMR Contracts, net of any applicable credits under RMR Contracts.~~

~~“RMR Payments Calendar” means the Payments Calendar issued by the ISO pursuant to Section 3 of this Part J.~~

~~“RMR Refund” means any amounts which RMR Owners are obligated to pay the ISO and the ISO is obligated to pay Responsible Utilities under RMR Contracts, or resulting from an order by the Federal Energy Regulatory Commission, for deposit into the Responsible Utility Facility Trust Account.~~

~~“RMR Security” means the form of security provided by a Responsible Utility to cover its liability under this Part J pursuant to Section 30.6.1.1.3 of the ISO Tariff.~~

#### **1.2.4 Rules of Interpretation and Other Terms and Conventions**

~~The rules of interpretation set out in the ISO Tariff.~~

#### **1.3 Scope of Application to Parties**

~~This Part J applies to the RMR Payments owed RMR Owners by the ISO, the RMR Charges owed by the Responsible Utilities to the ISO and the RMR Refunds owed to the ISO by RMR Owners and owed to the Responsible Utilities by the ISO for costs incurred under the RMR Contract.~~

~~For the avoidance of doubt, this Part J shall not apply to charges for Energy or Ancillary Services which are payable by the ISO under Sections 8 and 11 of the ISO Tariff to Scheduling Coordinators representing RMR Owners. Such payments shall be made by the ISO to such Scheduling Coordinators pursuant to Section 11 of the ISO Tariff and the provisions of Appendix N. The RMR Owners shall account for such payments received by or due to their Scheduling Coordinators in each RMR Invoice.~~

#### **1.4 Relationship of this Part J with Appendix N**

~~Parts B, G and H of Appendix N shall apply as appropriate to this Part J. Unless otherwise specified, other provisions of Appendix N shall not apply to this Part J.~~

#### **1.5 Relationship of this Part J with the ISO Tariff**

~~For the avoidance of doubt, Sections 11.3 to 11.24 inclusive of the ISO Tariff shall not apply to this Part J.~~

### **11.13.2 Accounts.**

#### **11.13.2.1 Facility Trust Account.**

The CAISO shall establish a Facility Trust Account for each RMR Contract. Each Facility Trust Account shall consist of two segregated commercial bank accounts: (1) an RMR Owner Facility Trust Account, which will be held in trust for the RMR Owner, and (2) a Responsible Utility Facility Trust Account, which will be held in trust for the Responsible Utility. RMR Charges paid by the Responsible Utility to the

CAISO in connection with the RMR Contract will be deposited into the RMR Owner Facility Trust Account and RMR Payments from the CAISO to the RMR Owner will be withdrawn from such Account, all in accordance with this ~~Part J~~Section 11.13, Section ~~3041.6-1.1 of the ISO Tariff,~~ and the RMR Contract. RMR Refunds received by the CAISO from the RMR Owner in accordance with the RMR Contract will be deposited into the Responsible Utility Facility Trust Account and such RMR Refunds will be withdrawn from such Account and paid to the Responsible Utility in accordance with this ~~Part J~~Section 11.13, Section ~~3041.6-1.1 of the ISO Tariff,~~ and the RMR Contract. The RMR Owner Facility Trust Account and the Responsible Utility Facility Trust Account shall have no other funds commingled in them at any time.

### **11.13.2.2 RMR Owner's Settlement Accounts.**

Each RMR Owner shall establish and maintain a settlement account at a commercial bank located in the United States and reasonably acceptable to the CAISO which can effect money transfers via Fed-Wire where payments to and from the Facility Trust Accounts shall be made in accordance with this ~~Part J~~Section 11.13. Each RMR Owner shall notify the CAISO of its settlement account details upon entering into its RMR Contract with the CAISO and may notify the CAISO from time to time of any changes by giving at least fifteen (15) days notice before the new account becomes operational.

### **11.13.3 RMR Payments Calendar.**

The CAISO shall issue an RMR Payments Calendar for the purposes of this ~~Part J~~Section 11.13 which shall contain those dates set forth in Section 9.1 (b) of the RMR Contract and the following information:

- \_\_\_\_\_ (a) the date on which RMR Owners are required to issue to the CAISO, with a copy to the Responsible Utility, their Estimated RMR Invoice pursuant to their RMR Contract;
- \_\_\_\_\_ (b) the date on which the CAISO is required to initiate proposed adjustments to the Estimated RMR Invoice to the Responsible Utility and to the RMR Owner;
- \_\_\_\_\_ (c) the date by which the RMR Owners are required to issue their Revised Estimated RMR Invoice reflecting appropriate revisions to the original Estimated RMR Invoice agreed upon by the Responsible Utility and the RMR Owner (In the event no revisions are required, the RMR Owner shall submit an e-mail to the CAISO and Responsible Utility

stating there are no revisions and the Estimated RMR Invoice should be deemed as the Revised Estimated RMR Invoice.);

- \_\_\_\_\_ (d) the date on which the CAISO is required to issue to the Responsible Utility or RMR Owner, ~~with an e-mail notification to both parties,~~ the CAISO Invoice based on the Revised Estimated RMR Invoice;
- \_\_\_\_\_ (e) the date on which RMR Owners are required to issue to the CAISO, with a copy to the Responsible Utility, their Adjusted RMR Invoice pursuant to their RMR Contract;
- \_\_\_\_\_ (f) the date on which the CAISO is required to initiate proposed adjustments to the Adjusted RMR Invoice to the Responsible Utility and the RMR Owner;
- \_\_\_\_\_ (g) the date by which the RMR Owners are required to issue their Revised Adjusted RMR Invoice reflecting appropriate revisions to the original Adjusted RMR Invoice agreed upon by the Responsible Utility and the RMR Owner. (In the event no revisions are required, the RMR Owner shall submit an e-mail to the CAISO and Responsible Utility stating there are no revisions and the Adjusted RMR Invoice should be deemed as the Revised Adjusted RMR Invoice.);
- \_\_\_\_\_ (h) the date on which the CAISO is required to issue to the Responsible Utility or the RMR Owner, ~~with an e-mail notification to both parties,~~ the CAISO Invoice based on the Revised Adjusted RMR Invoice;
- \_\_\_\_\_ (i) the dates by which the Responsible Utility and RMR Owner must have notified the CAISO of any dispute in relation to the CAISO Invoice, Estimated RMR Invoice or Adjusted RMR Invoices (including the Revised Estimated RMR Invoice and Revised Adjusted RMR Invoice) or the CAISO's proposed adjustments;
- \_\_\_\_\_ (j) the date and time by which Responsible Utilities or RMR Owners are required to have made payments into the RMR Owner Facility Trust Account or Responsible Utility Facility Trust Account in payment of the CAISO Invoices relating to each Revised Estimated RMR Invoice and each Revised Adjusted RMR Invoice; and

(k) the date and time by which the CAISO is required to have made payments into the RMR Owners' Facility Trust Accounts or Responsible Utilities' Facility Trust Accounts in payment of the Revised Estimated RMR Invoice and the Revised Adjusted RMR Invoice pursuant to their RMR Contract;

If the day on which any CAISO Invoice, any RMR Invoice, or any payment is due, is not a Business Day, such statement or invoice shall be issued or payment shall be due on the next succeeding Business Day.

Information relating to charges for Energy or Ancillary Services which are payable by the CAISO pursuant to Sections 8 and 11 of the ISO Tariff and Appendix N to the Scheduling Coordinators representing the RMR Owners will be contained in the RMR Payments Calendar pursuant to Section 11.24.

**11.13.4 Information to be provided by RMR Owners to the CAISO.**

Each RMR Invoice and any Prior Period Change Worksheet shall include, or be accompanied by, information about RMR Payments and RMR Refunds in sufficient detail to enable the CAISO to verify all RMR Charges and all RMR Refunds, and such information shall be copied to the Responsible Utility.

Each RMR Invoice shall separately show the amounts due for services from each Reliability Must-Run Unit.

This information shall be provided in an electronic form in accordance with the RMR Invoice template developed jointly and agreed to by the CAISO, Responsible Utilities and RMR Owners in accordance with the RMR Contracts and the principles in Schedule O to those RMR Contracts, and maintained on the CAISO Website Home Page.

**11.13.5 Validation of RMR Charges and RMR Refunds.**

The CAISO shall validate, based on information provided by each RMR Owner pursuant to paragraph 4, the amount due ~~from~~ from the relevant Responsible Utility for RMR Charges and the amount due to the relevant Responsible Utility for RMR Refunds applicable to the Reliability Must-Run Generation and Ancillary Services of that RMR Owner, but shall not represent or warrant the accuracy or completeness of the information provided by the RMR Owner. The CAISO shall provide copies of its exception report and information to the relevant Responsible Utility and RMR Owner.

The CAISO shall not be obligated to pay the Responsible Utility any RMR Refunds unless and until the CAISO has received corresponding RMR Refunds into the Responsible Utility Facility Trust Account from the RMR Owner.

**11.13.6 Description of the Billing Process.**

**11.13.6.1 Issuance of RMR Invoices by the RMR Owner.**

Each RMR Owner shall provide any RMR Invoice to the CAISO in the electronic form, mutually agreed by the parties, which may be updated by agreement ~~of~~with the CAISO, Responsible Utilities and RMR Owners from time to time in accordance with the requirements of Schedule O of the RMR Contract, on each of the days specified in the RMR Payments Calendar, and shall send to the relevant Responsible Utility a copy of that invoice on the day of issue.

**11.13.6.2 Review of the RMR Invoice by the CAISO.**

The CAISO shall review each RMR Invoice within the period specified in the RMR Payments Calendar and is required to initiate proposed adjustments to that invoice to the RMR Owner and the relevant Responsible Utility. Once the CAISO initiates proposed adjustments, the RMR Owner shall issue a Revised Estimated RMR Invoice or Revised Adjusted RMR Invoice.

**11.13.6.3 Issuance of CAISO Invoices by the CAISO.**

The CAISO shall provide to the Responsible Utility and the RMR Owner on the dates specified in the RMR Payments Calendar CAISO Invoices showing:

- \_\_\_\_\_ (a) the amounts which, on the basis of the Revised Estimated RMR Invoice or the Revised Adjusted RMR Invoice, as the case may be, and pursuant to ~~paragraph 5 of this Part~~ Section 11.13, are to be paid by or to the relevant Responsible Utility and RMR Owner;
- \_\_\_\_\_ (b) the Payment Date, being the date on which such amounts are to be paid and the time for such payment;
- \_\_\_\_\_ (c) details (including the account number, bank name and Fed-Wire transfer instructions) of the RMR Owner Facility Trust Account to which any amounts owed by the Responsible Utility are to be paid, or of the RMR Responsible Utility Facility Trust Account to which any amounts owed by the RMR Owner are to be paid.

#### **11.13.6.4 Resolving Disputes Relating to Invoices<sub>2</sub>**

##### **11.13.6.4.1 Review of the Invoices by the Responsible Utility<sub>2</sub>**

Each Responsible Utility shall have the review period specified in the RMR Payments Calendar to review RMR Invoices, and CAISO Invoices, validate, and propose adjustments to such invoices, and notify the CAISO of any dispute. Notwithstanding the above, each Responsible Utility shall have the review time specified in ~~ISO Tariff Section 3041.6.1.1~~ to dispute such invoice.

##### **11.13.6.4.2 Dispute Notice<sub>2</sub>**

If a Responsible Utility disputes any item or calculation relating to any ~~Revised~~ RMR Invoice, or any CAISO Invoice, it shall provide the CAISO, with a copy to the RMR Owner, via email or such other communication mode as the parties may mutually agree upon, a notice of dispute at any time from the receipt of the copy of such invoice from the RMR Owner or the CAISO to the expiration of the period for review set out in Section ~~11.136.4.1~~. The CAISO shall initiate a corresponding dispute with the RMR Owner under the RMR Contract.

##### **11.13.6.4.3 Contents of Dispute Notice<sub>2</sub>**

The notice of dispute shall state clearly the Revised Estimated RMR Invoice, Revised Adjusted RMR Invoice, or CAISO Invoice in dispute, the item disputed (identifying specific Reliability Must-Run Units and time periods), the reasons for the dispute, and the proposed amendment (if appropriate) and shall be accompanied by all available evidence reasonably required to support the claim.

##### **11.13.6.4.4 Prior Period Change Agreed to by the RMR Owner<sub>2</sub>**

Subject to ~~paragraph~~ Sections 11.13.6.4.5 or 11.13.6.4.6 of this Part J, if the RMR Owner agrees with the proposed change, the change shall be shown in a Prior Period Change Worksheet and included in the next appropriate May or December Estimated RMR Invoice as specified in Article 9.1 of the RMR Contract.

##### **11.13.6.4.5 Dispute Involving the RMR Owner<sub>2</sub>**

If the dispute relates to an item originating in any RMR Invoice, the applicable provisions of the RMR Contract and Section ~~3041.6.1.1.1~~ of the ~~ISO Tariff~~ shall apply.



**11.13.6.4.6      Dispute Involving an Alleged Error or Breach or Default of the CAISO's Obligations Under Section ~~41.65.2.7~~ of the ISO Tariff.**

If the dispute relates to an alleged error or breach or default of the CAISO's obligations under Section ~~3041.6.1.1~~ of the ISO Tariff, the applicable provisions of the RMR Contract and Section ~~3041.6.1.1~~ of the ISO Tariff shall apply.

**11.13.6.4.7      Payment Pending Dispute.**

Subject to Section ~~3041.6.1.1~~ of the ISO Tariff, if there is any dispute relating to an item originating in an RMR Invoice that is not resolved prior to the Payment Date, the Responsible Utility shall be obligated to pay any amounts shown in the relevant CAISO Invoice on the Payment Date irrespective of whether any such dispute has been resolved or is still pending. The Responsible Utility may notify the CAISO that the payment is made under protest, in which case the CAISO shall notify the RMR Owner that payment is made under protest. In accordance with Section 9.6 of the RMR Contract, if such dispute is subsequently resolved in favor of the Responsible Utility that made the payment under protest, then any amount agreed or determined to be owed by the RMR Owner to the CAISO shall be repaid by the RMR Owner to the CAISO, with interest at the interest rate specified in the RMR Contract from the date of payment by the CAISO to the RMR Owner of the disputed amount to the date of repayment by the RMR Owner, as specified in Section ~~11.13.6.4.4~~ of this Part J. If an RMR Owner does not agree to make the change pursuant to Section ~~11.13.6.4.4~~, then such repayment shall be made by CAISO's deduction of such amount from the next CAISO Invoices until extinguished, or if the RMR Contract has terminated, by paying a RMR Refund in such amount to the Responsible Utility Facility Trust Account, subject to the limitation of Section ~~3041.6.21.1.1~~ of the ISO Tariff.

**11.13.7              Payment Procedures.**

**11.13.7.1            Payment Date.**

The Payment Date for RMR Payments to and RMR Refunds from RMR Owners shall be the ~~Due Date~~ specified in the RMR Contract and in the RMR Payments Calendar and the same shall be the Payment Date for the CAISO and Responsible Utilities in relation to RMR Charges, provided that the RMR Owner has furnished the Responsible Utility and the CAISO with the Revised Estimated RMR Invoice or the

Revised Adjusted RMR Invoice no less than nine (9) calendar days before the ~~D~~ue ~~D~~ate. The Payment Date shall be stated on the CAISO Invoice.

**11.13.7.2      Payment Method.**

All payments and refunds by the CAISO to RMR Owners and Responsible Utilities shall be made via Fed-Wire.

However, if the RMR Owner is also the Responsible Utility, at the discretion of the RMR Owner, payments and refunds may be made by memorandum account instead of wire transfer.

**11.13.7.3      Payment by RMR Owners and Responsible Utilities.**

Each RMR Owner shall remit to the Responsible Utility Facility Trust Account the amount shown on the relevant CAISO Invoice as payable by that RMR Owner not later than 10:00 am on the Payment Date.

Subject to Section ~~3041.6.1.1 of the ISO Tariff~~, each Responsible Utility shall remit to the RMR Owner Facility Trust Account the amount shown on the relevant CAISO Invoice not later than 10:00 am on the Payment Date.

**11.13.7.4      Payment by the CAISO.**

The CAISO shall verify the amounts available for distribution to Responsible Utilities and/or RMR Owners on the Payment Date and shall give instructions to the CAISO Bank to remit from the relevant Facility Trust Account to the relevant settlement account maintained by each Responsible Utility or RMR Owner the amounts determined by the CAISO to be available for payment to each Responsible Utility or RMR Owner.

**11.13.7.5      Payment Default by RMR Owner or Responsible Utility.**

If by 10.00 am on a Payment Date the CAISO, in its reasonable opinion, believes the RMR Default Amount~~that all or any part of any amount due to be remitted to the relevant Facility Trust Account by the RMR Owner or the Responsible Utility will not be or has not been remitted.~~ (“the Default Amount”) the CAISO shall immediately notify the RMR Owner and the Responsible Utility. Where the RMR Default Amount was due from the Responsible Utility, the CAISO and RMR Owner shall proceed as set forth in Section ~~3041.6.1.1 of the ISO Tariff~~ and the applicable provision of the RMR Contract. Where the RMR

Default Amount was due from the RMR Owner, the CAISO and the Responsible Utility shall proceed as set forth in the applicable provision of the RMR Contract.

**11.13.7.5.1      Default rRelating to Market Payments.**

For the avoidance of doubt, non payment to RMR Owners, or their respective Scheduling Coordinators, of charges for Energy or Ancillary Services which are payable by the CAISO to Scheduling Coordinators representing such RMR Owners shall be dealt with pursuant to Sections 11.3 to 11.3024 (inclusive) of the ISO Tariff and the provisions of Appendix N.

**11.13.7.6      Set-off.**

**11.13.7.6.1      Set-off in the eCase of a dDefaulting Responsible Utility.**

The CAISO is authorized to apply any amount to which any defaulting Responsible Utility is or will be entitled from the Responsible Utility Facility Trust Account in or towards the satisfaction of any amount owed by that Responsible Utility to the RMR Owner Facility Trust Account arising under the settlement and billing process set out in this ~~Part J~~ Section 11.13.

For the avoidance of doubt, neither the CAISO nor any Responsible Utility will be authorized to set off any amounts owed by that Responsible Utility in respect of one Facility Trust Account against amounts owed to that Responsible Utility in respect of another Facility Trust Account or any amounts owed by that Responsible Utility under this ~~Part J~~ Section 11.13 against amounts owed to that Responsible Utility except as provided by Section ~~3041.6.1.1~~ 41.6.1.1 of the ISO Tariff.

**11.13.7.6.2      Set-off in the eCase of a dDefaulting RMR Owner.**

The CAISO is authorized to apply any amount to which any defaulting RMR Owner is or will be entitled from the RMR Owner Facility Trust Account in or towards the satisfaction of any amount owed by that RMR Owner to the Responsible Utility Facility Trust Account in accordance with Article 9 of the RMR Contract and Sections ~~3041.6.1.4~~ 41.6.1.4 and ~~11.10.2-8.12~~ 11.10.2-8.12 of the ISO Tariff.

For the avoidance of doubt, neither the CAISO nor any RMR Owner will be authorized to set off any amounts owed by that RMR Owner in respect of one Facility Trust Account against amounts owed to that RMR Owner in respect of another Facility Trust Account or any amounts owed by that RMR Owner under this ~~Part J~~ Section 11.13 against amounts owed to that RMR Owner under the RMR Contract.

**11.13.7.7 Default Interest.**

Responsible Utilities shall pay interest on RMR Default Amounts to the CAISO at the interest rate specified in the RMR Contract for the period from the relevant Payment Date to the date on which the payment is received by the CAISO.

RMR Owners shall pay interest to the CAISO on RMR Default Amounts at the interest rate specified in the RMR Contract for the period from the date on which payment was due to the date on which the payment is received by the CAISO.

The CAISO shall pay interest to RMR Owners at the interest rate specified in the RMR Contract for the period from the date on which payment is due under the RMR Contract to the date on which the payment is received by the RMR Owner.

The CAISO shall pay interest to Responsible Utilities at the interest rate specified in the relevant RMR Contract for the period from the date following the date it received an RMR Refund from the relevant RMR Owner to the date in which the payment is received by the relevant Responsible Utility.

Where payment of an RMR Default Amount is made by exercise of a right of set-off or deduction, payments shall be deemed received when payment of the sum which takes that set-off or deduction into account is made.

**11.13.8 Overpayments.**

The provisions of Sections 11.~~29.19.348.2.a~~ and 11.~~29.19.448.2.b~~ shall apply to RMR Owners and Responsible Utilities which have been overpaid by the CAISO and references to “CAISO Creditors” in these sections and in the relevant Sections of the CAISO Tariff shall be read, for the purposes of this Part ~~J~~Section 11.13, to mean RMR Owners and Responsible Utilities as applicable. Disputed amounts shall not be considered to be overpayments until and unless the dispute is resolved.

**11.13.9 Communications.**

**11.13.9.1 Method of Communication.**

CAISO Invoices will be issued by the CAISO via the CAISO's secure communication system~~Electronic Data Interchange (“EDI”)~~. RMR Invoices and Prior Period Change Worksheets will be issued by the RMR Owner in an electronic form mutually agreed by the parties and maintained on the CAISO's Website~~Home~~

Page. The CAISO shall also post pPrior pPeriod eChange examples and pPrior pPeriod eChange guidelines as specified in Article 9.1 of the RMR Contract.

### **11.13.9.2 Emergency Procedures.**

#### **11.13.9.2.1 Emergency Affecting the CAISO.**

In the event of an emergency or a failure of any of the CAISO software or business systems, the CAISO may deem any Estimated RMR Invoice or any Adjusted RMR Invoice to be correct without thorough verification and may implement any temporary variation of the timing requirements relating to the settlement and billing process contained in this ~~Part J~~Section 11.13.

#### **11.13.9.2.2 Emergency Affecting the RMR Owner.**

In the event of an emergency or a failure of any of the RMR Owner's systems, the RMR Owner may use Estimated RMR Invoices as provided in the applicable section of the RMR Contract or may implement any temporary variation of the timing requirements relating to the settlement and billing process contained in this ~~Part J~~Section 11.13 and its RMR Contract. Details of the variation will be published on the CAISO WebsiteHome Page.

Communications of an emergency nature on a Ddue Ddate or a Payment Date relating to payments shall be made by the fastest practical means including by telephone.

### **11.13.10 Confidentiality.**

The provisions of Sections 11.29, 10.1A, and 20.5, and 44 shall apply to this ~~Part J~~Section 11.13 between and among the RMR Owners, the CAISO and Responsible Utilities.

Except as may otherwise be required by applicable Llaw, all confidential information and data provided by RMR Owner or the CAISO to the Responsible Utility pursuant to the RMR Contract, Section 3041.6.1.1 of the ISO Tariff or this ~~Section 11.13~~Part J ("confidential information") shall be treated as confidential and proprietary to the providing party to the extent required by Section 12.5 and Schedule N of the RMR Contract and will be used by the receiving party only as permitted by such Section 12.5 and Schedule N.

### **11 Amendments to this Part J**

If the ISO determines a need for an amendment to this Part J, the ISO shall follow the requirements as set forth in Section 22.11 of the ISO Tariff, provided that ISO may not modify Part J as it applies to any RMR contract without the consent of the relevant RMR Owner and Responsible Utility.

\* \* \*

## **41. Procurement of RMR.**

### **41.1 Procurement of Reliability Must-Run Generation by the CAISO.**

A Reliability Must-Run Contract is a contract entered into by the CAISO with a Generator which operates a Generating Unit giving the CAISO the right to call on the Generator to generate Energy and, only as provided in this Section 41.1, or as needed for Black Start or Voltage Support required to meet local reliability needs, or to procure Ancillary Services from Potrero or Hunter's Point power plants to meet operating criteria associated with the San Francisco local reliability area, to provide Ancillary Services from the Generating Units as and when this is required to ensure that the reliability of the CAISO Controlled Grid is maintained.

\* \* \*

### **41.6 Reliability Must-Run Charge.**

The CAISO shall prepare and send to each Responsible Utility in accordance with ~~Appendix N, Part J~~ Section 11.13, an CAISO Invoice as provided in the RMR Contract in respect of those costs incurred under each Reliability Must-Run Contract that are payable to the CAISO by such Responsible Utility or payable by the CAISO to such Responsible Utility pursuant to Section 41.7. The CAISO Invoices as provided in the RMR Contract shall reflect all reductions or credits required or allowed under or arising from the Reliability Must-Run Contract or under this Section 41.6. The CAISO Invoice as provided in the RMR Contract shall separately show the amounts due for services from each RMR Owner. Each Responsible Utility shall pay the amount due under each CAISO Invoice as provided in the RMR Contract by the due date specified in the CAISO Invoice as provided in the RMR Contract, in default of which interest shall become payable at the interest rate provided in the Reliability Must-Run Contract from the due date until the date on which the amount is paid in full. For each Reliability Must-Run Contract, the CAISO shall establish two, segregated commercial bank accounts under the "Facility Trust Account" referred to in ~~Appendix N, Part J~~ Section 11.13.2.1 and Article 9 of the Reliability Must-Run Contract. One commercial bank account, the "RMR Owner Facility Trust Account," shall be held in trust by the CAISO for the RMR Owner. The other commercial bank account, the "Responsible Utility Facility Trust Account,"

shall be held in trust by the CAISO for the Responsible Utility. Payments received by the CAISO from the Responsible Utility in connection with the Reliability Must-Run Contract, including payments following termination of the Reliability Must-Run Contract, will be deposited into the RMR Owner Facility Trust Account and payments from the CAISO to the RMR Owner will be withdrawn from such account, in accordance with this Section 41.6, Article 9 of the Reliability Must-Run Contract and ~~Appendix N, Part J~~Section 11.13. Any payments received by the CAISO from the RMR Owner in connection with the Reliability Must-Run Contract will be deposited into the Responsible Utility Facility Trust Account. Any payments due to the Responsible Utility of funds received from the RMR Owner in connection with the Reliability Must-Run Contract will be withdrawn from the Responsible Utility Facility Trust Account, in accordance with this Section 41.6, ~~Appendix N, Part J~~Section 11.13, and Article 9 of the Reliability Must-run Contract. Neither the RMR Owner Facility Trust Account nor the Responsible Utility Facility Trust Account shall have other funds commingled in it at any time. The CAISO shall not modify this Section or ~~Appendix N, Part J~~Section 11.13 as it applies to procedures for the billing, invoicing and payment of charges under Reliability Must-Run Contracts without the Responsible Utility's consent, provided, however, that no such consent shall be required with respect to any change in the method by which costs incurred by the CAISO under RMR Contracts are allocated to or among Responsible Utilities.

**41.6.1** \_\_\_\_\_ Except where the Responsible Utility is also the RMR Owner, the Responsible Utility's payment of the CAISO Invoice as provided in the RMR Contract shall be made without offset, recoupment or deduction of any kind whatsoever. Notwithstanding the foregoing, if the CAISO fails to deduct an amount required to be deducted under Section 41.6.2-, the Responsible Utility may deduct such amount from payment otherwise due under such CAISO Invoice as provided in the RMR Contract.

**41.6.2** \_ If the Responsible Utility disputes an CAISO Invoice as provided in the RMR Contract, Revised Estimated RMR Invoice, or Revised Adjusted RMR Invoice, or Final Invoice, it shall pay the CAISO Invoice as provided in the RMR Contract but may pay under protest and reserve its right to seek a refund, with interest, from the CAISO. If resolution of the dispute results in an amount paid by the Responsible Utility under protest being due from the CAISO to the Responsible Utility and from the RMR Owner to the CAISO, and such amount was paid to the RMR Owner by the CAISO, then such amount, with interest at the interest rate specified in the applicable Reliability Must-Run Contract from the date of

payment until the date on which the amount is repaid in full, shall be refunded by the RMR Owner to the CAISO and from the CAISO to the Responsible Utility, pursuant to Article 9 of the Reliability Must-Run Contract and ~~Appendix N, Part J~~ Section 11.13, by the RMR Owner's inclusion of such refund amount in the appropriate invoice. If the RMR Owner does not include such refund amount (including interest) in the appropriate invoice, then such refund amount shall be deducted by the CAISO from the next succeeding amounts otherwise due from the Responsible Utility to the CAISO and from the next succeeding amounts otherwise due from the CAISO to the RMR Owner with respect to the applicable Reliability Must-Run Contract or, if such RMR Contract has terminated, such amount shall be refunded by the CAISO to the Responsible Utility; provided, however, that if and to the extent that such resolution is based on an error or breach or default of the RMR Owner's obligations to the CAISO under the Reliability Must-Run Contract, then such refund obligation shall extend only to amounts actually collected by the CAISO from the RMR Owner as a result of such resolution. If resolution of the dispute requires the CAISO, but not the RMR Owner, to pay the Responsible Utility, then such award shall be recovered from any applicable insurance proceeds, provided that to the extent sufficient funds are not recoverable through insurance, the amount of the award (whether determined through settlement, or ADR or otherwise) shall be collected by the CAISO pursuant to Section 13.5, and in any event, the award shall be paid by the CAISO to the Responsible Utility pursuant to Section 13.5.

**41.6.3** \_\_\_\_\_ If the Responsible Utility disputes an CAISO Invoice as provided in the RMR Contract, a Revised Estimated Invoice, a Revised Adjusted RMR Invoice, or a Final Invoice, or part thereof, based in whole or in part on an alleged error by the RMR Owner or breach or default of the RMR Owner's obligations to the CAISO under the Reliability Must-Run Contract, the Responsible Utility shall notify the CAISO of such dispute within twelve (12) months of its receipt of the applicable Revised Adjusted RMR Invoice or Final Invoice from the CAISO, except that the Responsible Utility may also dispute a Revised Estimated RMR Invoice, Revised Adjusted RMR Invoice, or Final Invoice for the reasons set forth above in this Section 41.6.3, within sixty (60) days from the issuance of a final report with respect to an audit of the RMR Owner's books and accounts allowed by a Reliability Must-Run Contract.

**41.6.4** \_\_\_\_\_ If the Responsible Utility disputes an CAISO Invoice as provided in the RMR Contract, a Revised Estimated RMR Invoice, a Revised Adjusted RMR Invoice, or a Final Invoice, based in whole or



in part on an alleged error by the CAISO or breach or default of the CAISO's obligations to the Responsible Utility, the Responsible Utility shall notify the CAISO of such dispute prior to the later to occur of: (i) the date twelve (12) months following the date on which the CAISO submitted such invoice to the Responsible Utility for payment or (ii) the date sixty (60) days following the date on which a final report is issued in connection with an operational audit, pursuant to Section 22.1.2.2, of the CAISO's performance of its obligations to Responsible Utilities under this Section 41.6.4 conducted by an independent third party selected by the CAISO Governing Board and covering the period to which such alleged dispute relates. The CAISO or any Responsible Utility shall have the right to request, but not to require, that the CAISO Governing Board arrange for such an operational audit at any time.

**41.6.5** \_\_\_\_\_ Notwithstanding Section 13 ~~of this CAISO Tariff~~, any Responsible Utility dispute relating to an CAISO Invoice as provided in the RMR Contract, a Revised Estimated Invoice, a Revised Adjusted Invoice, a Final Invoice, or a RMR Charge, RMR Payment or RMR Refund ~~as defined in Appendix N, Part J~~, shall be resolved through the dispute resolution process specified in the relevant RMR Contract. If the Responsible Utility fails to notify the CAISO of any dispute as provided above, it shall be deemed to have validated the invoice and waived its right to dispute such invoice.

**41.6.6** \_\_\_\_\_ The RMR Owner shall, to the extent set forth herein, be a third party beneficiary of, and have all rights that the CAISO has under the CAISO Tariff, at law, in equity or otherwise, to enforce the Responsible Utility's obligation to pay all sums invoiced to it in the CAISO Invoices as provided in the RMR Contract but not paid by the Responsible Utility, to the extent that, as a result of the Responsible Utility's failure to pay, the CAISO does not pay the RMR Owner on a timely basis amounts due under the Reliability Must-Run Contract. The RMR Owner's rights as a third party beneficiary shall be no greater than the CAISO's rights and shall be subject to the dispute resolution process specified in the relevant RMR Contract. Either the CAISO or the RMR Owner (but not both) will be entitled to enforce any claim arising from an unpaid CAISO Invoice as provided in the RMR Contract, and only one party will be a "disputing party" under the dispute resolution process specified in the relevant RMR Contract with respect to such claim so that the Responsible Utility will not be subject to duplicative claims or recoveries. The RMR Owner shall have the right to control the disposition of claims against the Responsible Utility for non-payments that result in payment defaults by the CAISO under a Reliability Must-Run Contract. To

that end, in the event of non-payment by the Responsible Utility of amounts due under the CAISO Invoice as provided in the RMR Contract, the CAISO will not take any action to enforce its rights against the Responsible Utility unless the CAISO is requested to do so by the RMR Owner. -The CAISO shall cooperate with the RMR Owner in a timely manner as necessary or appropriate to most fully effectuate the RMR Owner's rights related to such enforcement, including using its best efforts to enforce the Responsible Utility's payment obligations if, as, to the extent, and within the time frame, requested by the RMR Owner. The CAISO shall intervene and participate where procedurally necessary to the assertion of a claim by the RMR Owner.

\* \* \*

### **CAISO TARIFF APPENDIX A**

#### **Master Definitions Supplement**

\* \* \*

#### **Adjusted RMR Invoice**

The monthly invoice issued by the RMR Owner to the CAISO for adjustments made to the Revised Estimated RMR Invoice pursuant to the RMR Contract reflecting actual data for the billing month.

\* \* \*

#### **Estimated RMR Invoice**

The monthly invoice issued by the RMR Owner to the CAISO for estimated RMR Payments or RMR Refunds pursuant to the RMR Contract.

\* \* \*

#### **Facility Trust Account**

For each RMR Contract, the account established and operated by the CAISO to and from which all payments under Section 11.13 shall be made. Each Facility Trust Account will have two segregated commercial bank accounts, an RMR Owner Facility Trust Account and a Responsible Utility Facility Trust Account.

\* \* \*

#### **Manual RMR Dispatch**

An RMR Dispatch Notice issued by the CAISO other than as a result of

the MPM-RRD process.

\* \* \*

**Prior Period Change**

Any correction, surcharge, credit, refund or other adjustment pertaining to a billing month pursuant to an RMR Contract which is discovered after the Revised Adjusted RMR Invoice for such billing month has been issued.

\* \* \*

**Prior Period Change Worksheet**

A worksheet prepared by the RMR Owner and submitted to the CAISO following discovery of a necessary change to an RMR Invoice after the Revised Adjusted RMR Invoice for the billing month has been issued.

\* \* \*

**Responsible Utility Facility Trust Account**

A segregated commercial bank account under the Facility Trust Account containing funds held in trust for the Responsible Utility under an RMR Contract.

\* \* \*

**RMR Default Amount**

Any amount due to be remitted to the relevant Facility Trust Account by the RMR Owner or the Responsible Utility in accordance with an RMR Contract.

\* \* \*

**RMR Dispatch**

The ~~megawatt~~ quantity of Energy or Ancillary Services ~~amount~~ that is mandated by the CAISO to be ~~scheduled~~ delivered in a given market for a resource by an RMR Unit under the an RMR Contract.

\* \* \*

**RMR Invoice**

Any Estimated RMR Invoice, Revised Estimated RMR Invoice, Adjusted RMR Invoice, or Revised Adjusted RMR Invoice under an RMR

Contract.

\* \* \*

**RMR Payment**

Any amounts which the CAISO is obligated to pay to RMR Owners under the RMR Contracts, net of any applicable credits under the RMR Contracts.

\* \* \*

**RMR Payments Calendar**

The payment calendar issued by the CAISO pursuant to Section 11.13.

\* \* \*

**RMR Refund**

Any amounts which RMR Owners are obligated to pay to the CAISO and the CAISO is obligated to pay to the Responsible Utilities under the RMR Contracts, or resulting from any order by the FERC, for deposit into the Responsible Utility Facility Trust Account.

\* \* \*

**RMR Security**

The form of security provided by a Responsible Utility to cover its liability under Section 11.13.

\* \* \*

**CAISO TARIFF APPENDIX G**

**Pro Forma Reliability Must-Run Contract Agreements**

**To be filed upon settlement**

\* \* \*

**PRO FORMA**

**MUST-RUN SERVICE AGREEMENT**

**dated \_\_\_\_\_, 20**

**between**

**[OWNER NAME]**

**and**

**CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION**

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## **MUST-RUN SERVICE AGREEMENT**

THIS MUST-RUN SERVICE AGREEMENT is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, between \_\_\_\_\_, a [corporation/limited liability company/municipal corporation] organized under the laws of the State of \_\_\_\_\_ (the "Owner"), and the CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION, a nonprofit public benefit corporation incorporated under the laws of the State of California (the "CAISO").

### **RECITALS**

- A. Owner is the owner or lessee of, or is otherwise entitled to dispatch and market the Energy and Ancillary Services produced from and provided by, the electrical generating Units located at the Facility described in Schedule A to this Agreement;
- B. Under Section 345 of the California Public Utilities Code, CAISO is responsible for the efficient use and reliable operation of the CAISO Controlled Grid;
- C. CAISO has determined that it needs the ability to dispatch Units under the terms and conditions of this Agreement to have Owner deliver Energy into or provide Ancillary Services to the CAISO Controlled Grid when required by CAISO to ensure the reliability of the CAISO Controlled Grid; and
- D. Each Unit covered by this Agreement has been designated as a Reliability Must-Run Unit. In consideration of the covenants and agreements contained in this Agreement, the Parties agree as follows:

### **ARTICLE 1** **DEFINITIONS**

Terms, when used with initial capitalization in this Agreement and the attached schedules shall have the meanings set out below. The singular shall include the plural and vice versa. "Includes" or "including" shall mean "including without limitation." References to a section, article or schedule shall mean a section, article or schedule of this Agreement, unless another agreement or instrument is specified. Unless the context otherwise requires, references to any law shall be deemed references to such law as amended, replaced or restated from time to time. 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 identity. References to "Owner" or "CAISO" shall, unless the context otherwise requires, mean Owner and CAISO respectively and their permitted assigns and successors. References to sections or provisions of the CAISO Tariff include any succeeding sections or provisions of the CAISO Tariff.

**"Adjusted RMR Invoice"** is defined in Section 9.1(b).

**"ADR"** means alternative dispute resolution pursuant to Section 11.1 and Schedule K.

**"Agreement"** means this Must-Run Service Agreement, including schedules, as amended from time to time.

**"Ancillary Services"** means those ancillary services identified in Schedule E.

**“Applicable UDC Tariff”** means the applicable retail tariff(s), of the utility distribution company in whose service territory the Unit is located, under which the Unit is eligible to purchase power to meet its auxiliary power requirements, whether or not the Unit actually purchases auxiliary power under the tariff(s). The Applicable UDC Tariff for the Facility is set out on Schedule A.

**“Availability”** means, in relation to a Unit, the maximum quantity of Energy or Ancillary Services, measured at the Delivery Point, the Unit is capable of producing at any given time assuming adequate time to ramp the Unit to that maximum quantity. For hydroelectric Units, Availability measures the extent to which the Unit is capable of producing Energy or providing Ancillary Services, given sufficient usable water to produce Energy or provide Ancillary Services. The Availability of a Unit is measured in MW.

**“Availability Deficiency Factor”** is calculated as set forth in Section 8.5.

**“Availability Payment”** means the payment to Owner described in Section 8.1 for Condition 1 and 8.2 for Condition 2.

**“Availability Test”** means a test of a Unit’s Availability requested by CAISO or Owner pursuant to Section 4.9(a).

**“Bid Sufficiency Test”** means the test described in Section 4.1(c).

**“Billable MWh”** is defined in Section 8.3(a).

**“Billing Month”** is defined in Section 9.1(b).

**“Black Start”** means the ability of a Unit to start without an external source of electricity or the process of doing so.

**“Business Day”** means any of Monday through Friday, excluding any day which is a Federal bank holiday.

**“CAISO Availability Notice”** means a notice given by CAISO to Owner modifying the Availability of the Unit under Section 4.9 (a)(vi) or Section 5.4 (b).

**“CAISO Controlled Grid”** means the system of transmission lines and associated facilities that from time to time are under CAISO’s operational control.

**“CAISO Invoice”** is defined in Section 9.1(b).

**“CAISO’s Repair Share”** is defined in Section 7.5 (g).

**“CAISO Settlements Calendar”** is defined in Section 9.1(b).

**“CAISO Tariff”** means the California Independent System Operator Tariff on file with FERC and in effect from time to time.

**“Calculation Hour”** is defined in Section 8.3(c)(i)(A).

**“California Agency”** means the agency or agencies responsible for representing the State of California in FERC proceedings involving the rates, terms and conditions of service under this Agreement.

**“Capital Item”** means an addition or modification to, change in or repair, replacement or renewal of plant, equipment or facilities used by Owner to fulfill Owner’s obligations under this Agreement. A Capital Item does not include Repairs to such plant, equipment or facilities. A Capital Item does not include an Upgrade, unless recovery of costs of the Upgrade has been approved by CAISO. For purposes of this Agreement, Capital Items are “retirement units” or other items the costs of which are properly capitalized in accordance with the FERC Uniform System of Accounts, 18 C.F.R. Part 101.

**“Closed”** is defined in Section 2.5.

**“Collateral”** is defined in Section 9.7.

**“Comparable RMR Unit”** is defined in Section 4.7 (f).

**“Competitive Constraint Run”** is defined in Appendix A to the CAISO Tariff.

**“Condition 1”** means the terms of this Agreement applicable to a Unit providing service under Condition 1 as described in Section 3.1.

**“Condition 2”** means the terms of this Agreement applicable to a Unit providing service under Condition 2 as described in Section 3.1.

**“Confidential Information”** is defined in Section 12.5.

**“Contract Service Limits”** for a given Unit means the Maximum Annual MWh, Maximum Annual Service Hours, Maximum Annual Start-ups, and, if applicable, the Maximum Monthly MWh as stated in Section 13 of Schedule A.

**“Contract Year”** means a calendar year; provided, however, that the initial Contract Year shall commence on the Effective Date and expire at the end of the calendar year in which the Effective Date occurred. If the Agreement terminates during a calendar year, the last Contract Year shall end on the termination date.

**“Counted MWh”** is defined in Section 5.3.

**“Counted Service Hours”** is defined in Section 5.3.

**“Counted Start-ups”** is defined in Section 5.3.

**“Credit Carryforward”** is defined in Section 9.1(e) and Section 9.1(f).

**“Day Ahead Schedule”** is defined in Appendix A to the CAISO Tariff.

**“Deliver”** means to deliver Energy into the CAISO Controlled Grid or Distribution Grid (at the Delivery Point or such other point as the Parties may otherwise agree) or to provide Ancillary Services (whether or not any Energy is Delivered as part of the Ancillary Service) pursuant to a Dispatch Notice (including deliveries for which a Dispatch Notice has been issued under Section 4.5 and deliveries in substitute Market Transactions under Section 5.2) and the terms “Delivered” and “Delivering” shall be construed accordingly.

**“Delivered Ancillary Services”** means the type and, if applicable, the MW of Ancillary Services Delivered by Owner.

**“Delivered MWh”** means the MWh of Energy Delivered by Owner and shall be equal to the sum of Billable MWh, Hybrid MWh, MWh deemed Delivered under Section 5.1 (f); and MWh Delivered from Substitute Units under Section 5.1 (c) or Section 5.1 (d).

**“Delivery Point”** means the point identified in Section 4 of Schedule A where Energy and Ancillary Services are to be Delivered.

**“Direct Contract”** means a contract between Owner and one or more identified persons for the sale of Energy or Ancillary Services other than under this Agreement, and shall in no event include a transaction in a market run by CAISO.

**“Dispatch Notice”** means a notice delivered by CAISO to Owner’s Scheduling Coordinator on a daily, hourly or real-time basis requesting dispatch of one or more Unit(s) to provide Energy or Ancillary Services under this Agreement. Dispatch Notices include: (a) Day-Ahead Schedules and Real-Time Dispatches where the RMR Unit or Units are flagged as RMR Dispatches as a result of the Market-Power Mitigation and Reliability Requirements Determination processes pursuant to the CAISO Tariff, (b) Manual RMR Dispatch Notices, (c) notices deemed to have been given by CAISO for the Energy actually Delivered by a Unit that starts or increases Energy output as a result of a “system emergency” as defined in the CAISO Tariff whether the start or increase occurs automatically (for Units specified in Section 2 of Schedule A as having the ability to Start-up or ramp automatically) or pursuant to a standing written order of the CAISO, and (d) Test Dispatch Notices given by CAISO under Section 4.9 other than Test Dispatch Notices issued at Owner’s request to test Availability or heat input of the Unit.

**“Distribution Grid”** means the radial lines, distribution lines and other facilities used to transmit or distribute Energy from the Facility other than the CAISO Controlled Grid.

**“Due Date”** means the date which is the 30th day after the date on which a Party submits an invoice to the other Party. Notwithstanding the above, the Due Dates for the Revised Estimated RMR Invoice, the Revised Adjusted RMR Invoice, and the CAISO Invoice shall be as specified in Section 9.1(b). If the 30th day, or other Due Date as specified in Section 9.1(b), is not a Business Day, the Due Date shall be the next Business Day.

**“Effective Date”** means the date this Agreement becomes effective pursuant to Section 2.1 thereof.

**“Energy”** means electrical energy.

**“Estimated RMR Invoice”** is defined in Section 9.1(b).

**“Existing Contractual Limitation”** means a contractual limitation on the Start-up or operation of a Unit existing prior to the date the Unit was designated as a Reliability Must-Run Unit. All Existing Contractual Limitations are described in Section 14 of Schedule A.

**“Facility”** means the electrical generating facility described in Schedule A. A hydroelectric facility may include one or more electric generating facilities which are hydraulically linked by a common water system.

**“Facility Trust Account”** is defined in Section 9.2.

**“FERC”** means the Federal Energy Regulatory Commission, any successor agency, or any other agency to whom authority under the Federal Power Act affecting this Agreement has been delegated.

**“Final Invoice”** is defined in Section 9.10(a).

**“Financing Agreement”** means agreements for financing the Facility or any portion of the Facility.

**“Fixed Option Payment Factor”** is set forth in Section 2 of Schedule B.

**“Force Majeure Event”** means any occurrence beyond the reasonable control of a Party which causes the Party to be unable to perform an obligation under this Agreement in whole or in part and which could not have been avoided by the exercise of Good Industry Practice. Force Majeure Event includes an act of God, war, civil disturbance, riot, strike or other labor dispute, acts or failures to act of Governmental Authority, fire, explosion, flood, earthquake, storm, drought, lightning and other natural catastrophes. A Force Majeure Event shall not include lack of finances or the price of fossil fuel.

**“Forced Outage”** means a reduction in Availability of a Unit for which sufficient notice is not given to allow the outage to be factored into CAISO’s day-ahead or hour-head scheduling process.

**“Good Industry Practice”** means any of the practices, methods, and acts engaged in or approved by a significant portion of the electric power industry during the relevant time period, or any of the practices, methods, and acts which, in the exercise of reasonable judgment in the 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 Industry Practice does not require use of the optimum practice, method, or act, but only requires use of practices, methods, or acts generally accepted in the region covered by the Western Systems Coordinating Council.

**“Governmental Authority”** means the government of any nation, any state or other political subdivision thereof, including any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to a government.

**“Hourly Metered Total Net Generation”** means the electric generation in MWh for the Unit in any Settlement Period as measured by the Unit’s electrical meter described in Schedule A.

Section 5, "Metering and Related Arrangements", minus any auxiliary loads metered on the load side of such electrical meter for that Settlement Period in accordance with the CAISO Tariff.

**"Hybrid MWh"** is defined in Section 8.3(b).

**"Hydroelectric Dependable Capacity"** is the amount of MWh forecast to be produced by a hydroelectric Facility in an adverse hydrologic year.

**"Interest Rate"** means the lesser of the rate of interest per annum calculated in accordance with 18 C.F.R. 35.19a of the FERC's Regulations or the maximum rate permitted by law.

**"Local Capacity Area"** is defined in Appendix A to the CAISO Tariff.

**"Long-term Planned Outage"** means a planned interruption, in whole or in part, in the electrical output of a Unit to permit Owner to perform a major equipment overhaul and inspection or for new construction work but only if the outage is scheduled to last 21 consecutive days or more (which may span more than one Contract Year) and either (a) is scheduled in accordance with the CAISO's outage coordination protocol prior to the beginning of the Contract Year or (b) was scheduled as a Long-term Planned Outage for the last quarter of the expiring Contract Year but, with approval of the CAISO Outage Coordination Office, was postponed and rescheduled into the new Contract Year.

**"Manual RMR Dispatch Notice"** is a Dispatch Notice issued other than as a result of the Market Power Mitigation and Reliability Requirements Determination process as described in the CAISO Tariff.

**"Market Power Mitigation and Reliability Requirements Determination" or "MPM-RRD"** is as defined in the CAISO Tariff.

**"Market Schedule"** is defined in Section 8.3(c)(i)(C).

**"Market Transaction"** means a delivery of Energy or provision of Ancillary Services from a Unit pursuant to a Direct Contract or bids into markets run by the, CAISO or any similar entity.

**"Maximum Annual MWh"** means, for each Unit, the maximum MWh of Energy that Owner may be obligated to Deliver from the Unit in each Contract Year without becoming entitled to charges for excess service under Schedule G. The Maximum Annual MWh for each Unit is set out in Section 12 of Schedule A. The rules for counting MWh are set out in Section 5.3.

**"Maximum Annual Service Hours"** means, for each Unit, the maximum Service Hours that Owner may be obligated to provide service from the Unit in each Contract Year without becoming entitled to charges for excess service under Schedule G. The Maximum Annual Service Hours for each Unit is set out in Section 12 of Schedule A. The rules for counting Service Hours are set out in Section 5.3.

**"Maximum Annual Start-ups"** means, for each Unit, the maximum number of times Owner may be obligated to Start-up the Unit in each Contract Year without becoming entitled to charges for Start-ups under Schedule G. The Maximum Annual Start-ups for each Unit is set out in Section 12 of Schedule A. The rules for counting Start-ups are set out in Section 5.3.

**"Maximum Monthly MWh"** means, for each hydroelectric Unit, the maximum MWh of Energy that Owner may be obligated to Deliver from the Unit without becoming entitled to charges for

excess service under Schedule G. The Maximum Monthly MWh for each hydroelectric Unit is set out in Section 12 of Schedule A. The rules for counting MWh are set out in Section 5.3.

**“Maximum Net Dependable Capacity”** means the amount shown in Section 1 of Schedule A as the Maximum Net Dependable Capacity of a Unit.

**“Minimum Load”** means, for each Unit, the higher of (1) the lowest level in MW at which the Unit can maintain stable continuous operations, or (2) the Minimum Load for the Unit as shown in Section 9 of Schedule A.

**“Minimum Off Time”** means, for each Unit, the minimum time following Shutdown that the Unit must remain off line before initiation of the next Start-up. The Minimum Off Time for each Unit is shown in Section 11 of Schedule A.

**“Minimum Run Time”** means, for each Unit, the minimum time the Unit must remain Synchronized following Start-up. The Minimum Run Time for each Unit is shown in Section 10 of Schedule A.

**“Month”** means a calendar month.

**“Monthly Option Payment”** is defined in Section 8.1(a) for Condition 1 and Section 8.2(a) for Condition 2.

**“Motoring Charge”** means the payment in accordance with Schedule E for the Energy required to spin a generator or condenser that is electrically connected to the CAISO Controlled Grid or Distribution Grid to provide Ancillary Services in circumstances where the generator is not producing Energy.

**“MW”** means one megawatt.

**“MWh”** means one megawatt hour.

**“Net Repair Costs”** is defined in Section 7.5(a).

**“New Responsible Utility”** is defined in Section 9.4 (f).

**“Nonmarket Transaction”** means a Delivery of Energy or Ancillary Services other than Hybrid MWh from a Unit pursuant to a Dispatch Notice.

**“Non-Performance Penalty”** means a penalty computed pursuant to Section 8.5.

**“Other Outage”** means any reduction in the Availability of a Unit as reflected in an CAISO Availability Notice or Owner’s Availability Notice (whether characterized by the North American Electric Reliability Council (“NERC”) as a “forced outage”, “planned outage” or “maintenance outage”) other than a Long-term Planned Outage.

**“Owner’s Availability Notice”** means a notice given under Section 4.9(a)(vii) or Section 7.3(b) by Owner to CAISO notifying CAISO of the Availability of a Unit.

**“Owner’s Repair Cost Obligation”** is an allowance for Repairs to be made during the Contract Year calculated pursuant to Section 7.5 (k). Owner’s Repair Cost Obligation is set out in Section 13 of Schedule A.

**“Party”** means either CAISO or Owner, and “Parties” means CAISO and Owner.

**“Penalty Period”** is defined in Section 8.5 (a).

**“Pre-empted Dispatch Payment”** is defined in Schedule E.

**“Prepaid Start-ups”** is defined in Section 8.4.

**“Prepaid Start-up Charge”** means the payment to Owner for Prepaid Start-ups described in Section 8.1.

**“Prepaid Start-up Cost”** is defined in Schedule D.

**“Prior Period Change(s)”** is defined in Section 9.1(g).

**“Prior Period Change Examples”** is defined in Section 9.1(l).

**“Prior Period Change Guidelines”** is defined in Section 9.1(l).

**“Prior Period Change Worksheet”** is defined in Section 9.1(g).

**“Ramp Rate”** is the applicable Ramp Rate as stated in Section 8 of Schedule A.

**“Ramping Constraint”** means the limits on ramping a Unit to higher or lower output as set out in Section 7 of Schedule A.

**“Real-Time Dispatch”** is defined in Appendix A of the CAISO Tariff.

**“Recalculation Settlement Statement”** is defined in Appendix A of the CAISO Tariff.

**“Reliability Must-Run Unit”** means a “reliability must-run unit” as defined in Appendix A of the CAISO Tariff.

**“Repair”** means repairs or replacement required to remedy or prevent any loss or damage that impairs the capability of the Unit to Deliver Energy or Ancillary Services, the cost of which is properly treated as an expense in accordance with the FERC Uniform System of Accounts, 18 C.F.R. Part 101.

**“Repair Payment Factor”** is determined pursuant to Section 7.5(g).

**“Requested Ancillary Services”** means the type and, if applicable, the MW of Ancillary Services CAISO requests Owner to Deliver from a Unit pursuant to a Dispatch Notice.

**“Requested MW”** means the MW of Energy CAISO requests Owner to Deliver pursuant to a Dispatch Notice.

**“Requested MWh”** means the product of the Requested MW of Energy and the time in hours (or fraction thereof) during which the Dispatch Notice requested Delivery of the Requested MW. This includes ramping energy calculated pursuant to the CAISO Tariff.

**“Requested Operation Period”** means the time during which CAISO requests that a Unit Deliver Energy or Ancillary Services pursuant to a Dispatch Notice.

**“Response Notice”** is defined in Section 14.3(b)(ii).

**“Responsible Utility”** is an entity which, under the CAISO Tariff, is responsible for paying all or part of the costs incurred by CAISO under this Agreement.

**“Responsible Utility Facility Trust Account”** is defined in Section 9.2.



**“Revised Adjusted RMR Invoice”** is defined in Section 9.1(b).

**“Revised Estimated RMR Invoice”** is defined in Section 9.1(b).

**“RMR Dispatch”** is as defined in Appendix A of the CAISO Tariff.

**“RMR Invoices”** means the four invoices issued each Billing Month by Owner to CAISO pursuant to Section 9.1 for payment of charges under this Agreement. The four invoices are the Estimated RMR Invoice, Revised Estimated RMR Invoice, Adjusted RMR Invoice, and Revised Adjusted RMR Invoice.

**“RMR Invoice Template”** is defined in Section 9.1(d).

**“RMR Owner Facility Trust Account”** is defined in Section 9.2.

**“RMR Payments Calendar”** means the calendar issued by CAISO pursuant to Section 11.13 of the CAISO Tariff.

**“Scheduling Coordinator”** means an entity certified by CAISO for the purposes of undertaking the functions specified in Section 4.5 of the CAISO Tariff with respect to a unit.

**“Scheduling Coordinator Revenues”** is defined in Section 9.1(f).

**“Service Hours”** means the amount of time (measured in hours or fractions thereof) a Unit is Delivering Energy or Ancillary Services pursuant to a Dispatch Notice.

**“Settlement Period”** means the period beginning at the start of the hour and ending at the end of the hour.

**“Shutdown”** means the condition of a Unit when it is not Synchronized and not in Start-up.

**“Small Project Estimate”** is defined in Section 7.4 (b).

**“Start-up”** means the action of bringing a Unit from Shutdown to Minimum Load and the terms “Starts-up”, “Started-up” and “Starting-up” shall be construed accordingly.

**“Start-up Lead Time”** means, for each Unit, the amount of time required to Start-up the Unit, as shown in Section 6 of Schedule A.

**“Start-up Payment”** is defined in Schedule D.

**“Substitute Unit”** means a generating unit or combination of units, other than the Unit identified in the Dispatch Notice (whether or not located at the Facility, whether or not designated as a Reliability Must-Run Unit and whether or not owned by Owner), which, under the circumstances existing at the time, is capable of providing system reliability benefits equivalent to the system reliability benefits provided by the Unit identified in the Dispatch Notice. In the case of Units providing Ancillary Services, a Substitute Unit must (i) be certified to provide the requested type of Ancillary Service, (ii) provide the same or higher ramp rate and MW of capacity and, (iii) is located in the same Local Capacity Area as the Unit identified in the Dispatch Notice.

**“Surcharge Payment”** means the payment to Owner for Capital Items described in Section 8.1 for Condition 1 and Section 8.2 for Condition 2.

**“Surcharge Payment Factor”** means the percentage of the cost of a Capital Item that CAISO is obligated to pay.

**“Synchronized”** means the condition where a Unit is electrically connected to and capable of delivering Energy to the CAISO Controlled Grid or Distribution Grid.

**“Termination Fee”** means amounts determined pursuant to the termination fee formula contained in Section 2.5(b).

**“Termination Fee Invoice”** is defined in Section 9.9(a).

**“Test Dispatch Notice”** means a notice issued to test a Unit pursuant to Section 4.9.

**“Trading Day”** means the day on which Energy or Ancillary Services are to be Delivered.

**“Unit”** means an individual electricity generating unit which has been designated a Reliability Must-Run Unit and is part of the Facility identified in Schedule A.

**“Unit Availability Limit”** means for any hour the maximum MW which Owner is obligated to make available to CAISO from a Unit. The Unit Availability Limit shall be the lower of (a) the Maximum Net Dependable Capacity of the Unit or (b) the Availability of the Unit as stated in the currently effective Owner’s Availability Notice or CAISO Availability Notice.

**“Unplanned Capital Item Notice”** is defined in Section 7.6(b).

**“Unplanned Repair Notice”** is defined in Section 7.5(b).

**“Upgrade”** means any change or modification to the Facility that increases the nameplate capacity rating of an existing Unit or adds a new unit.

**“Variable Cost Payment”** means the payment to Owner for Billable MWh described in Schedule C.

## **ARTICLE 2** **TERM**

### **2.1 Term**

- (a) This Agreement shall become effective on the later of March 31, 2008, or the date it is permitted to become effective by FERC, and shall continue in effect for one Contract Year.
- (b) CAISO may extend the term of this Agreement for an additional calendar year as to one or more Unit by notice given not later than October 1 of the expiring Contract Year. CAISO may extend the term for less than a full calendar year as to one or more Unit but only if CAISO gives notice not less than 12 months prior to the date to which it proposes to extend the term.

### **2.2 Termination**

- (a) Subject to any necessary authorization from FERC, this Agreement may be terminated as to one or more Unit in accordance with this Section 2.2; provided, however, that if this Agreement applies to a Facility having hydroelectric Unit, this Agreement may be terminated only as to all hydroelectric Units at the Facility. If this Agreement terminates as to fewer than all Units, the Agreement shall remain in effect as to the remaining Units. If this Agreement terminates as to all Units, the Agreement shall terminate.
- (b) This Agreement may be terminated as to one or more Units:
  - (i) by CAISO pursuant to Section 11.4 in the event of default by Owner;
  - (ii) by Owner pursuant to Section 11.4 in the event of default by CAISO;
  - (iii) by Owner pursuant to Section 7.4 (f), 7.5 (i) or 7.6 (h);
  - (iv) by Owner or CAISO, if the Unit is condemned by a Governmental Authority; or

- (v) by Owner or CAISO, if Owner's authorization from a Governmental Authority (including, where applicable, licenses under Part I of the Federal Power Act) that is necessary to site, operate or obtain access to such Unit is terminated or expires or is reissued or modified so that it becomes illegal, uneconomical or otherwise impractical for the Owner to continue operating the Facility. Owner shall be obligated to use its best efforts to renew and keep effective its licenses and authorizations and to oppose conditions or modifications which would make continued operation illegal, uneconomical or otherwise impractical.
- (c) To the extent that Owner transfers the right to control the dispatch of the Facility or Unit which right is necessary to satisfy its obligations under this Agreement, Owner shall assign this Agreement to the transferee in accordance with Section 13.1.
- (d) If CAISO terminates the Agreement or does not extend the term of the Agreement as to a Unit, CAISO shall not redesignate the same Unit, or designate another non-reliability must-run unit at the same Facility, as a Reliability Must-Run Unit during the one year period following termination or expiration of the Agreement as to that Unit unless (i) CAISO demonstrates that the unit is required to maintain the reliability of the CAISO Controlled Grid or any portion thereof and the need to designate the unit as a Reliability Must-Run Unit is caused by an extended outage of a generation or transmission facility not known to CAISO at the time of the termination or expiration or (ii) the unit is selected through an CAISO competitive process in which Owner participated. For purposes of the foregoing, CAISO's need for spinning reserves, nonspinning reserves, replacement reserves or regulation as defined in the CAISO Tariff shall not be grounds for redesignating the Unit or designating another unit at the Facility as a Reliability Must-Run Unit.
- (e) Subject to any necessary authorization from FERC, this Agreement shall terminate as to any Unit leased by Owner in the event that, for any reason, the lease expires or is terminated unless Owner acquires ownership of such Unit upon such expiration or termination. Any termination under this Section 2.2 (e) shall not affect any right CAISO may have thereafter to designate such Unit as a Reliability Must-Run Unit and the conditions in Section 2.2 (d) shall not apply to such redesignation.

### **2.3 Effective Date of Expiration or Termination**

If FERC authorization is required to give effect to expiration or termination of this Agreement as to one or more Units, the effective date of the expiration or termination shall be the date FERC permits the expiration or termination to become effective. Owner shall promptly file for the requisite FERC authorizations to terminate service under this Agreement as of the proposed effective date of expiration or termination; provided, that nothing in this Agreement shall prejudice the right of either Party to contest the other Party's claim that a termination or expiration has occurred. If FERC authorization is not required to terminate service under this Agreement, the effective date of expiration or termination shall be the later of (i) the date specified in CAISO or Owner's notice of termination or (ii) the date that all conditions to the termination or expiration have been satisfied.

### **2.4 Effect of Expiration or Termination**

Expiration or termination of this Agreement shall not affect the accrued rights and obligations of either Party, including either Party's obligations to make all payments to the other Party pursuant to this Agreement or post-termination audit rights under Section 12.2.

### **2.5 Termination Fee**

- (a) CAISO shall pay Owner a Termination Fee calculated pursuant to Section 2.5 (b) if the Unit is Closed within six months after the Unit ceases to be subject to this Agreement as a result of termination pursuant to Sections 2.2 (b) (ii), (iii), (iv) or (v) or because CAISO does not extend the term under Section 2.1 (b). Within 60 days after the Unit is Closed, Owner will send CAISO a notice stating (i) the date the Unit Closed and (ii) the amount of the Termination Fee due Owner pursuant to this Section 2.5 including detailed calculations of each component of the formula in Section 2.5(b) identifying the source of

each input used. For purposes of this Section, "Closed" shall mean that the Unit is not producing Energy or providing capacity and there are no Direct Contracts obligating any entity to deliver Energy or provide capacity from the Unit during the 36 month period beginning at the date the Unit Closed. A Unit shall cease to be Closed if, during the 36 month period beginning at the date the Unit Closed, any entity: (i) sells Energy or capacity; (ii) executes a Direct Contract for service or (iii) obtains a new permit from any Governmental Authority for operations, in each case that would involve use of the Capital Item for which a Termination Fee is being paid.

(b) The Termination Fee shall be determined using the following formula:

$$T = NCI + CWIP - S$$

Where:

T = Termination Fee (\$)

NCI = Undepreciated portion of the cost of Capital Items which constitute part of the Closed Unit which were approved in accordance with Section 7.4 or 7.6 and were in service at the date the Unit Closed with the cost and depreciation rates determined under Section 7.4 or 7.6, as applicable. In calculating NCI, the undepreciated cost of each Capital Item shall be multiplied by the Surcharge Payment Factor applicable to that Capital Item.

CWIP = The actual cost, at the date the Unit Closed, of Capital Items for the Closed Unit which were approved in accordance with Section 7.4 or 7.6, as applicable, but were not in service at the date the Unit Closed, plus the cost to pay or terminate any remaining obligations incurred in connection with installation of the Capital Items. In calculating CWIP, the cost of each Capital Item shall be multiplied by the Surcharge Payment Factor applicable to that Capital Item.

S = The salvage value, if any, of the Capital Items included in the calculation of either NCI or CWIP.

The cost for each Capital Item shall be determined by agreement or ADR pursuant to Section 7.4 or 7.6. Except for those items for which a ten-year depreciation life is specified in Section 7.4 of this Agreement, the depreciation rate for each Capital Item shall be determined by agreement or ADR in connection with the applicable Capital Item approval process under Section 7.4 or 7.6.

(c) The Termination Fee shall be payable in 36 equal monthly installments calculated using the following formula:

$$M = T \left[ \frac{r}{1 - (1 + r)^{-36}} \right]$$

Where

M = the monthly payment,

T = Termination Fee under Section 2.5(b), and

r = an annual discount rate equal to the interest rate used by FERC for the calculation of refunds (as set forth in 18 C.F.R. § 35.19a) in effect on the date that Owner provides notice to the CAISO pursuant to Section 2.5(a) of this Agreement, divided by 12.

(d) If the Unit ceases to be Closed at any time within 36 months following the date the Unit Closed, CAISO shall cease payment of Termination Fee installments as of the Month in which the Unit ceased to be Closed, but Owner shall not be obligated to refund installments for any Month in which the Unit was Closed. Once a Unit has ceased to be Closed, CAISO shall not be required to pay any remaining Termination Fee installments even if the Unit again Closes.

(e) Any dispute regarding an element of the Termination Fee (e.g. salvage value) not resolved at the time the Capital Item was approved shall be subject to ADR. If the

amount of the Termination Fees associated with a single termination or expiration is \$5 million or more as billed by Owner, the Responsible Utility shall have the same rights as CAISO to receive notice that the Unit(s) Closed and to initiate or participate in ADR.

### **ARTICLE 3** **CONDITIONS OF MUST-RUN AGREEMENT**

#### **3.1 Conditions Under Which Units Will Operate**

This Agreement includes two conditions of service under which Owner may provide service from its Unit(s). By way of general description and subject to the specific provisions set forth in this Agreement:

- (i) A Unit under Condition 1 may participate in Market Transactions and Owner will retain all revenues from participation in Market Transactions;
- (ii) A Unit under Condition 2 shall bid in accordance with Section 6.1 (b) to participate in Market Transactions when CAISO has issued a Dispatch Notice for the Unit and Owner will not retain revenues from participation in Market Transactions. A Unit under Condition 2 shall not participate in a Market Transaction when CAISO has not issued a Dispatch Notice for the Unit.

Owner shall begin operating each Unit under the Condition designated by Owner prior to the Effective Date and thereafter may transfer the Unit to a different Condition pursuant to Section 3.2.

#### **3.2 Transfer Between Conditions**

- (a) Except for a hydroelectric Unit, Owner may, from time to time, transfer a Unit from one Condition to the other Condition, provided that it may not do so without CAISO's consent unless, as of the transfer date, the Unit will have been subject to its existing Condition for at least twelve months. If a transfer is to become effective at the beginning of a Contract Year, Owner shall provide CAISO at least 30 days prior notice of the transfer. For a transfer to become effective at any other time, Owner shall give CAISO notice at least 90 days prior to the transfer. If a Unit is transferred from Condition 1 to Condition 2 during a Contract Year, Owner shall credit to CAISO on the first invoice after the transfer is effective an amount computed by multiplying (i) the positive difference, if any, of the Prepaid Start-ups minus the Counted Start-ups by (ii) the Prepaid Start-up Cost. If a Unit is transferred from Condition 2 to Condition 1, CAISO shall not be required to pay a Condition 1 Prepaid Start-up Charge for the remainder of the Contract Year in which the transfer occurred, but shall pay, for each Start-up, the Condition 1 Start-up Payment calculated pursuant to Equation D-1 in Schedule D.
- (b) A hydroelectric Unit may only operate under Condition 1.
- (c) CAISO may not transfer a Unit from one Condition to the other Condition.
- (d) Any transfer of a Unit from one Condition to the other Condition shall be effective on the first day of the Month following expiration of the applicable notice.
- (e) If a Unit is transferred from Condition 1 to Condition 2, Surcharge Payments for Capital Items shall be changed prospectively from the effective date of the transfer to reflect a Surcharge Payment Factor of 1.0. If a Unit is transferred from Condition 2 to Condition 1, Surcharge Payments for Capital Items shall be changed prospectively from the effective date of the transfer to reflect the Condition 1 Surcharge Payment Factor previously determined for the Capital Item, or if the factor was not previously determined, the Surcharge Payment Factor agreed to by CAISO and Owner. If Owner and CAISO do not agree on the Surcharge Payment Factor, the Surcharge Payment Factor shall be determined through ADR in accordance with Schedule B.

**ARTICLE 4**  
**DISPATCH OF UNITS**

**4.1 CAISO's Right to Dispatch**

- (a) Subject to the limitations set forth in this Agreement, CAISO shall direct dispatch of a Unit by delivering a Dispatch Notice to Owner's Scheduling Coordinator in accordance with the CAISO Tariff.
- (b) Dispatch Notices for Energy, other than Energy associated with Ancillary Services, shall be issued solely for purposes of meeting local reliability needs or managing congestion on non-competitive paths. For purposes of dispatching Energy, local reliability needs do not include Energy required to manage congestion on competitive paths. CAISO shall issue Dispatch Notices to meet local reliability needs or manage congestion on non-competitive paths, whenever market bids cannot be used to meet those needs or manage such congestion or such market bids cannot be used to meet those needs or manage such congestion without taking a bid out of merit order or requiring CAISO to decrement another supplier's schedule to accommodate the unit which provided the bid. CAISO may not issue a Dispatch Notice to fill a need for imbalance energy.
- (c) Except as needed for black start or voltage support required to meet local reliability needs, to meet operating criteria associated with the Potrero power plant, or as outlined below, CAISO may issue Dispatch Notices for Ancillary Services only if the available bids in Ancillary Service capacity markets do not provide sufficient capacity to meet CAISO's requirements.
  - (i) If the CAISO determines on a Trading Day that it needs additional Ancillary Service on that Trading Day, CAISO shall use the following procedures:
    - (A) CAISO shall communicate such needs to all Scheduling Coordinators as quickly as possible after such needs are identified.
    - (B) After completing (A), CAISO shall attempt to procure those additional Ancillary Services from the CAISO's Real-Time market (in the appropriate region if CAISO is procuring Ancillary Services on a regional basis) that have not closed, subject to the Bid Sufficiency Test described below.
    - (C) CAISO shall not issue a Dispatch Notice for Ancillary Services for any hour of the Trading Day before the earlier of (a) the time at which the real-time market for that hour closes or (b) if a Start-up would be required to provide the Ancillary Service, such earlier time as is necessary to comply with the applicable Start-up Lead Time and Ramping Constraints on Schedule A.
  - (ii) CAISO shall not be required to accept any bid for an Ancillary Service above applicable bid caps then in effect under the CAISO Tariff before issuing a Dispatch Notice for Ancillary Services.
  - (iii) Bid Sufficiency Test
    - (A) The Bid Sufficiency Test may only be applied:
      - (1) To purchases from the real-time market;
      - (2) If CAISO has fully complied with its obligation to promptly notify Scheduling Coordinators of its need to acquire additional ancillary services from the real-time market; and
      - (3) To the extent that the approved CAISO Tariff does not preclude such a test.
    - (B) The Bid Sufficiency Test shall be applied on an individual hourly basis and for an individual Ancillary Service type. The test result shall be considered "insufficient" in real-time market if, and only if - (1) bids in the real-time market for the particular Ancillary Service (including any bids that can be used to satisfy that particular Ancillary Services requirement under Section 8.2.3.5 of the CAISO Tariff) represent less than two times such remaining Ancillary Service requirement; or (2) there are fewer than

two unaffiliated bidders to provide such remaining Ancillary Service requirement. If the application of the Bid Sufficiency Test results in a determination of "insufficiency", the CAISO may issue a Dispatch Notice to satisfy its needs for that hour and that individual Ancillary Service.

- (C) If the result of the Bid Sufficiency Test is a finding that available bids are "insufficient", CAISO may nonetheless accept available market bids if it determines in its sole discretion that the prices bid and the supply curve created by the bids indicate that the bidders were not attempting to exercise market power.

#### **4.2 Timing of Dispatch Notices**

Subject to the terms and conditions of this Agreement, CAISO shall issue Manual RMR Dispatch Notices promptly after it makes a determination that it will require Energy or Ancillary Services under this Agreement.

#### **4.3 Form and Content of Dispatch Notices**

- (a) All Dispatch Notices shall be in writing if circumstances permit. If circumstances require that a Dispatch Notice be given or changed orally, the Dispatch Notice shall be confirmed in writing within 24 hours after the oral notice or change was given.
- (b) Each Dispatch Notice shall specify the Unit from which CAISO requests Owner to Deliver Energy or Ancillary Services, the time of commencement and termination of the Requested Operation Period and, for each hour of the Requested Operation Period, the Requested MW or the Requested Ancillary Services. A Dispatch Notice for a hydroelectric Facility must request that Owner Deliver Energy from the entire Facility rather than from a specific Unit. However, CAISO may request that Owner Deliver Ancillary Services from specific Units in a hydroelectric Facility; provided that Energy associated with such Ancillary Services shall be Delivered from the Facility and not the specified Units. CAISO may issue Dispatch Notices in real time without specifying the time the Requested Operation Period is to terminate and may adjust the Requested MW or Requested Ancillary Services in real time if CAISO provides all such information in writing as provided in Section 4.3(a).

#### **4.4. Non-complying Dispatch Notices**

Owner shall not be obligated to comply with a Dispatch Notice that does not comply with Section 4.3 or 4.6 and Owner shall not be liable, suffer any penalties or suffer any reduction in payments for failure to comply with a Dispatch Notice which is not in compliance with those Sections, provided that Owner promptly notifies CAISO that the notice does not comply with Section 4.3 or 4.6 and provides the reasons the Dispatch Notice does not comply. Owner may provide such notice after the Requested Operation Period if the notice concerns a Dispatch Notice given during, or less than one-half hour prior to, the Requested Operation Period. Compliance with a Dispatch Notice shall not be deemed a waiver of objections to the Dispatch Notice.

#### **4.5 Intentionally left blank.**

#### **4.6 Limitations on CAISO's Right to Dispatch**

CAISO's Dispatch Notice may not request Owner to, and Owner shall not be obligated to:

- (i) Provide service from a Unit at less than the Minimum Load for the Unit;
- (ii) Provide service from a Unit for less than the Minimum Run Time;
- (iii) Start-up a Unit after less than the Minimum Off Time;
- (iv) Start-up a Unit unless the time between the delivery of the Dispatch Notice requesting such Start-up and the commencement of the applicable Requested Operation Period equals at least the Start-up Lead Time for the Unit and the Dispatch Notice provides sufficient time to satisfy the Ramping Constraint of the Unit;
- (v) Provide service from a Unit in excess of its Unit Availability Limit;

- (vi) Provide service from a Unit when to do so would violate environmental limitations applicable to the Unit as set forth in Section 3 of Schedule A;
- (vii) Start-up or provide service from a Unit in violation of any applicable law, regulation, license or permit; or
- (viii) Start-up or provide service from a Unit to the extent that doing so would cause a breach of an Existing Contractual Limitation; or
- (ix) Deliver Energy or Ancillary Services to the extent such Delivery would cause a breach of a contract for capacity made available through an Upgrade or a Capital Item or Repair for which CAISO is not obligated to make a Surcharge Payment or pay CAISO's Repair Share.

#### **4.7 Dispatch in Excess of Contract Service Limits**

- (a) CAISO shall use its best efforts in accordance with Good Industry Practice not to issue a Dispatch Notice that would cause a Unit's Counted Start-ups, Counted MWh, or Counted Service Hours to exceed any of the Unit's Contract Service Limits.
- (b) CAISO may issue a Dispatch Notice requiring a Unit to Deliver Energy or Ancillary Services after the Unit has exceeded a Contract Service Limit only if the Requested MWh or Requested Ancillary Services cannot be obtained by CAISO either (i) by accepting market bids in accordance with Section 4.1 or (ii) from Comparable RMR Unit(s) without exceeding the contract service limits or violating other operational limitations under CAISO's agreement with the Comparable RMR Unit(s). Owner shall use its best efforts, in accordance with Good Industry Practice, to comply with such Dispatch Notice.
- (c) If Owner of a hydroelectric Facility complies with a request to exceed the Maximum Monthly MWh, Owner may reduce the Maximum Monthly MWh for remaining Months of the Contract Year to reflect the accelerated use of available water. Not later than 15 days after any delivery in excess of Maximum Monthly MWh, Owner shall provide CAISO a notice showing revised Maximum Monthly MWh for remaining Months of the Contract Year.
- (d) If the Owner does not comply with a Dispatch Notice under Section 4.7(b), Owner at CAISO's request shall provide a written explanation.
- (e) If Owner, in compliance with a Dispatch Notice, Starts-up a Unit and the Counted Start-ups for the Contract Year exceed the Maximum Annual Start-ups for the Unit, CAISO shall pay for each such excess Start-up at the rate set out in Schedule G. If Owner, in compliance with a Dispatch Notice, Delivers Energy and the Counted MWh for the Unit for the Contract Year exceeds the Maximum Annual MWh, the Counted Service Hours from the Unit for the Contract Year exceed the Maximum Annual Service Hours, or if applicable, the Counted MWh for the Month exceed the Maximum Monthly MWh, CAISO shall pay for the Billable MWh Delivered in response to such Dispatch Notice and exceeding the Contract Service Limit at the rates set forth in Schedule G.
- (f) For purposes of this Section 4.7:
  - (i) "Best efforts" does not require Owner to provide service inconsistent with the limitations set forth in Section 4.6 or if Owner reasonably believes providing the service might cause significant physical harm to the Unit.
  - (ii) The term "Good Industry Practice" shall not be applied to permit CAISO to consider the relative costs of Comparable RMR Units when determining whether to request dispatch of a Unit in excess of the Contract Service Limits.
  - (iii) "Comparable RMR Unit" means a unit which has been designated a Reliability Must-Run Unit and which, in CAISO's reasonable judgment, is capable of providing system reliability benefits to CAISO equivalent to the system reliability benefits provided by the Unit which otherwise would be subject to the Dispatch Notice. In the case of Units providing Ancillary Services, a Comparable RMR Unit must: (A) be certified to provide the Requested type of Ancillary Service, (B) provide the same or higher ramp rate and MW capacity and (C) is located in the same Local Capacity Area as the Unit which otherwise would be subject to the Dispatch Notice.



- (g) CAISO and Owner shall have the right to dispute the other Party's actions or inactions under this Section 4.7 and any dispute shall be subject to resolution through ADR.

#### **4.8 Air Emissions**

If CAISO determines that it is necessary to reserve MWh to satisfy potential dispatches under this Agreement without violating present or future limitations on the discharge of air pollutants or contaminants into the atmosphere specified by any federal, state, regional or local law by any regulation, air quality implementation plan, or permit condition promulgated or imposed by any Governmental Authority, the terms and conditions of such reservation shall be set out on Schedule P.

#### **4.9 Test Dispatch Notices**

##### (a) Availability Tests

- (i) CAISO may from time to time test the Availability of a Unit by requiring the Unit to Deliver Energy pursuant to a Test Dispatch Notice provided to Owner's Scheduling Coordinator using the procedures described in Section 4.2 and 4.3. CAISO, without cause, may request one Availability Test each Contract Year. CAISO may request additional Availability Tests if the Unit fails to comply fully with a Dispatch Notice. CAISO shall not request an Availability Test for a hydroelectric Unit during periods of constrained water availability. Lack of available water shall not be deemed to result in a failed test and reduction of the Unit Availability Limit for a hydroelectric Unit.
- (ii) Owner may request an Availability Test at any time. CAISO shall issue a Test Dispatch Notice within three days after receipt of Owner's request, but for good cause, CAISO may reschedule the test to a date acceptable to Owner. Owner's request shall state the amount of Energy to be produced. The effect of operations pursuant to such a request is set out in Section 5.3.
- (iii) The Test Dispatch Notice shall be marked "Availability Test Dispatch Notice." The Test Dispatch Notice shall specify a Requested Operation Period of four hours of continuous operations at the requested output plus any applicable Start-up Lead Time, time to satisfy Ramping Constraints and time for Shutdown (or for hydroelectric Units the time sufficient water is available, if that is less).
- (iv) Subject to the other conditions or restrictions expressed in this Agreement, Owner shall provide service from the Unit and Deliver the Requested MWh in accordance with the Availability Test Dispatch Notice; provided, however, that Owner, in response to such Test Dispatch Notice, may deliver all or part of the Requested MWh in a Market Transaction by complying with the procedures set forth in Section 5.2.
- (v) An Availability Test shall be treated as having been successfully completed if the average MW Delivered at the Delivery Point during the Availability Test was not less than 99% of the Requested MW for the Requested Operation Period. The average MW Delivered during the Availability Test shall be computed by dividing (i) the total MWh produced during the four-hour period immediately following completion of the ramp up, multiplied by the appropriate ambient temperature correction factors for the Unit as set out in Section 3 of Schedule A, by (ii) four hours.
- (vi) If a Unit fails an Availability Test, CAISO may issue a CAISO Availability Notice restating the Availability of the Unit to a level not less than the average MW Delivered during the Availability Test. Following the notice, Owner shall not issue an Owner's Availability Notice increasing the Availability of the Unit above the level determined through such failed Availability Test until (A) the Unit has successfully completed a subsequent Availability Test, (B) the Unit has delivered in Market Transactions, pursuant to a Dispatch Notice or in a combination of the two, during a continuous four hour operating period, average MW in excess of those determined in the Availability Test or (C) Owner has otherwise

demonstrated to CAISO's reasonable satisfaction that the Availability of the Unit has been restored.

(vii) If the average MW Delivered during the Availability Test exceed 101% of the Unit Availability Limit in effect prior to the Availability Test, Owner may issue an Owner's Availability Notice setting Availability retroactive to the time the request was received by CAISO to the lesser of (A) the average MW Delivered during the Availability Test or (B) the Maximum Net Dependable Capacity.

(b) Emissions Test

If it is necessary for Owner to operate a Unit to fulfill regulatory requirements for emissions testing, Owner may request CAISO to issue a Dispatch Notice for such operation. Owner shall provide a request specifying the test date at least seven days in advance of the emissions test. CAISO shall issue a Dispatch Notice to schedule the requested operation on the date specified in Owner's request, or for good cause, CAISO may cause the test to be rescheduled to a date acceptable to Owner, provided that CAISO shall not delay the test by more than seven days without Owner's consent. The Test Dispatch Notice shall be marked "Emissions Test Dispatch Notice".

(c) Black Start Test

CAISO may from time to time test Unit(s) designated to provide Black Start service by requiring the Unit to deliver Black Start service pursuant to a Test Dispatch Notice provided to Owner's Scheduling Coordinator using the procedures described in Sections 4.2 and 4.3. Such Test Dispatch Notice shall be marked "Black Start Test Notice." The Black Start Test shall be performed in accordance with the Ancillary Services Requirements Protocol in the CAISO Tariff. CAISO shall not request a Black Start Test for a hydroelectric Unit during periods of constrained water availability.

(d) Heat Input Test

Not more frequently than once each Contract Year, Owner may, by giving at least seven days' prior notice to CAISO, request CAISO to issue a Test Dispatch Notice in order for Owner to determine the heat input of a Unit. CAISO shall not unreasonably refuse to issue a Test Dispatch Notice for a heat input test. The Test Dispatch Notice shall be marked "Heat Input Test Notice." The heat input test shall be conducted in accordance with testing standards and procedures agreed to by CAISO and Owner. In the absence of such agreement, the standards and procedures shall be determined through ADR before such test may be conducted. The arbitrator shall specify procedures for testing which are consistent with Good Industry Practice. Following such a heat input test, Owner shall be permitted to make a filing under Section 205 of the Federal Power Act limited to modifying the heat inputs used in the Variable Cost Payment, Start-up Payment, Preempted Dispatch Payment and Mandatory Energy Bid in Schedules C, D, E and M, respectively, to reflect the results of such test.

#### **4.10 Forecasts Of CAISO's Requirements**

Not later than November 15 of each year, CAISO shall provide Owner and the Responsible Utility with a non-binding forecast representing CAISO's then current best estimate of the monthly MWh, monthly peak day MW, and monthly Service Hours that CAISO will require each Unit to provide each month during the ensuing Contract Year ("Annual Forecast"). In addition, not later than June 15 of each year, CAISO shall provide Owner and with a non-binding forecast ("Update") representing CAISO's then current best estimate of the monthly MWh, monthly peak day MW, and monthly Service Hours that CAISO will require each Unit to provide each month from June through the end of the Contract Year. Each Annual Forecast and Update will take into account the Long-term Planned Outages. The Annual Forecasts and Updates shall be treated as confidential pursuant to Section 12.5 and shall not be binding.

#### **4.11 Determination of Contract Service Limits**

(a) If CAISO has extended the term of this Agreement pursuant to Section 2.1 (b), then not later than October 31 of the expiring Contract Year Owner shall make a filing under Section 205 of the Federal Power Act limited to revising Schedule A to reflect the Contract Service Limits for all Units other than hydroelectric Units for the ensuing

Contract Year. The Contract Service Limits for each year after the initial Contract Year shall be determined through application of the following rules:

- (i) Maximum Annual MWh for each Unit shall be the average annual MWh produced in Market and Nonmarket Transactions by the Unit during the 60 month period ending June 30 of the expiring Contract Year;
- (ii) Maximum Annual Service Hours for each Unit shall be the average annual Service Hours the Unit operated in Market and Nonmarket Transactions during the 60 month period ending June 30 of the expiring Contract Year; and
- (iii) Maximum Annual Start-Ups shall be the number of Start-ups of the Unit for Market and Nonmarket Transactions during the year selected by CAISO. CAISO may select any of the five preceding years to determine Maximum Annual Start-Ups but shall select the same year for all Units at the Facility. For purposes of the foregoing sentence only, a year shall mean a 12-month period ending June 30. Thus, by way of example, CAISO may determine Maximum Annual Start-ups for calendar year 2002 based on the Maximum Annual Start-ups during any of the following five periods: (A) 12 months ended June 30, 2001; (B) 12 months ended June 30, 2000; (C) 12 months ended June 30, 1999; (D) 12 months ended June 30, 1998; or (E) 12 months ended June 30, 1997.

Owner shall provide the information necessary to determine the Contract Service Limits to CAISO and the Responsible Utility not less than 15 days prior to the filing. CAISO shall give notice to Owner and Responsible Utility identifying the year to be used to determine Maximum Annual Start-ups not later than five Business Days after it receives the information from Owner.

- (b) If CAISO has extended the term of this Agreement pursuant to Section 2.1 (b), then not later than 15 days prior to the beginning of the ensuing Contract Year, Owner of a hydroelectric Facility shall make a filing under Section 205 of the Federal Power Act to reflect the revised Contract Service Limits to be in effect during the ensuing Contract Year for the hydroelectric Facility. Such filing shall be based on Owner's current water management forecast and shall reflect the water expected to be available for electric generation above the Hydroelectric Dependable Capacity. Such filing, if accepted or approved, shall set the Maximum Monthly MWh in Schedule A for the ensuing Contract Year, subject to adjustment in accordance with the notice described below giving revised Monthly Maximum MWh. The Maximum Monthly MWh in Schedule A of this Agreement on the Effective Date reflects the Hydroelectric Dependable Capacity. Not later than April 15 of each Contract Year, Owner shall provide notice to CAISO giving revised Maximum Monthly MWh for each remaining Month of the Contract Year based on its then current water management forecast. If, during any Contract Year, Owner determines that drought conditions jeopardize its ability to supply Hydroelectric Dependable Capacity, Owner shall promptly give notice to the CAISO of this determination, including revised Maximum Monthly MWh for each remaining Month of the Contract Year. Following such a determination, Owner shall provide CAISO with weekly updated water management forecasts until the earlier of the end of the Contract Year or Owner's determination that its ability to supply the Hydroelectric Dependable Capacity is no longer jeopardized by such conditions. CAISO acknowledges that the accuracy of a water management forecast may be substantially affected by a Force Majeure Event at any time after the Owner provides the forecast and consequently Owner shall not be liable for the accuracy of the water management forecast or any reliance on it other than a Monthly Maximum MWh amount.

## **ARTICLE 5**

### **DELIVERY OF ENERGY AND ANCILLARY SERVICES BY OWNER**

#### **5.1 Owner's Delivery of Energy and Ancillary Services**

- (a) Subject to the limits in this Agreement, and subject to the CAISO's Real-Time Dispatch instructions whether flagged as an RMR Dispatch or not, Owner shall provide service from the Units and Deliver the Requested MWh or Requested Ancillary Services in

accordance with each Dispatch Notice. To the maximum extent practical, and except for regulation, Owner shall Deliver at each moment of each hour during the Requested Operation Period not less than the Requested MW or Requested Ancillary Services. If Owner has disputed a Dispatch Notice under Section 4.6 (i) (Minimum Load) (ii) (Minimum Run Time) (iii) (Minimum Off Time) (iv) (Start-up Lead Time and Ramping Constraint), or (v) (Unit Availability Limit) and such dispute is not resolved prior to the time for delivery, Owner will use reasonable efforts to comply with the Dispatch Notice, but shall not be liable to CAISO if it is unable to do so and Owner prevails in the dispute.

- (b) If Owner has disputed a Dispatch Notice under Section 4.6 (vi) (environmental), (vii) (violation of law), (viii) (Existing Contractual Limitations) or (ix) (Upgrade Contract), Owner shall not be required to Deliver Energy or Ancillary Services pending resolution of the dispute as to whether the Dispatch Notice violated such Section; provided, however, that Owner shall not be relieved from any liability that it would otherwise have for failure to comply with the disputed Dispatch Notice if it subsequently is determined that the Dispatch Notice did not violate Section 4.6 (vi), (vii), (viii) or (ix).
- (c) Subject to CAISO approval, if Owner cannot Deliver the Requested MWh or Requested Ancillary Services by providing service from the Unit identified in a Dispatch Notice, Owner may Deliver the requested services by providing service from a Substitute Unit. Owner shall provide oral or written notice to CAISO as soon as possible in advance of the first Real-Time Dispatch of the Requested Operation Period stating why it cannot provide the requested service from the Unit identified in the Dispatch Notice, identifying the Substitute Unit, describing the services it will provide from the Substitute Unit and specifying the charges applicable to service from the Substitute Unit. CAISO may deny approval only if the proposed unit does not qualify as a Substitute Unit or if there is insufficient time to accommodate the request prior to the running of the MPM-RRD process and the operator determines that the substitution would affect the MPM-RRD results, in which case the substitution request will be accommodated for any remaining portion of the Requested Operation Period, if the unit is otherwise acceptable. The total cost to CAISO for service from the Substitute Unit shall be at the rate specified by the Owner, provided that the total cost will not exceed the total costs for the same amount of service from the Unit specified in the Dispatch Notice.
- (d) If Owner can Deliver the Requested MWh or Requested Ancillary Services by providing service from the Unit identified in the Dispatch Notice, Owner may Deliver the requested services by providing service from (i) the Unit identified in CAISO's Dispatch Notice or (ii) with CAISO's consent, a Substitute Unit. Owner of a hydroelectric Unit will Deliver the Requested MWh from the Facility and will Deliver the Voltage Support and Black Start requested in a Dispatch Notice from the specified Unit or a Substitute Unit. If Owner proposes to satisfy its delivery obligations by providing service from a Substitute Unit, Owner shall provide oral or written notice to CAISO prior to the Requested Operation Period identifying the Substitute Unit, describing the services it will provide from Substitute Unit and specifying the charges applicable to service from the Substitute Unit. Owner may Deliver the agreed services from the Substitute Unit and will be paid at the agreed rates if CAISO accepts Owner's proposal, or CAISO and Owner otherwise agree on the services and applicable rates for service from a Substitute Unit. CAISO's decision shall not be subject to ADR.
- (e) Owner shall Deliver the Requested MWh or Requested Ancillary Services at the Delivery Point or such other point(s) reasonably acceptable to CAISO and shall comply with the metering and related arrangements set forth in Section 5 of Schedule A to this Agreement or as otherwise specified in Owner's applicable Meter Service Agreement.
- (f) If Owner would have been able to Deliver the Requested MWh or Requested Ancillary Services but for an outage in the CAISO Controlled Grid or Distribution Grid beyond Owner's reasonable control, Owner shall be deemed to have complied with the Dispatch Notice for purposes of Sections 5.4 and 8.5.

## **5.2 Substitution of Market Transactions for Dispatch Notices**

- (a) Owner may satisfy, in whole or in part, its obligation to Deliver Energy, but not Ancillary Services, during a Requested Operation Period by delivering Energy under a Market Transaction from the Unit identified in a Dispatch Notice if Owner complies with the requirements and procedures of this Section 5.2.
- (b) Owner shall give notice of its intent to substitute a Market Transaction through the submission of bids in the CAISO's Markets. Any dispatch level that clears the Competitive Constraint Run of the MPM-RRD process through the submission of Economic Bids or Self-Schedules, and is reflected in the Day-Ahead Schedule or Real-Time Dispatch, shall be deemed a Market Transaction.
- (c) Owner may substitute a Market Transaction only if the deadline for bids into the market selected by Owner has not passed.
- (d) Intentionally left blank.

## **5.3 Rules for Calculating Counted Start-ups, Counted MWh and Counted Service Hours**

- (a) The following rules shall govern calculation of Counted Start-ups:
  - (i) Except as limited below, all Start-ups successfully completed in compliance with a Dispatch Notice shall be included in Counted Start-ups for the Unit for which the Dispatch Notice was issued.
  - (ii) If a Start-up required by a Dispatch Notice is canceled by CAISO after the Start-up is initiated, Counted Start-ups shall include a fractional Start-up computed by dividing (i) the lesser of (a) the time elapsed between initiation of the Start-up and cancellation or (b) the Start-up Lead Time by (ii) the applicable Start-up Lead Time for the Unit.
  - (iii) For Units under Condition 1, if a Dispatch Notice is issued pursuant to Section 4.5 for a period in which the Unit is scheduled to operate or is operating in a Market Transaction for which a Start-up was required, or Owner substitutes a Market Transaction under Section 5.2 for a Requested Operation Period for which a Start-up was required, Counted Start-ups shall include one-half of the Start-up for the Unit for which the Dispatch Notice was issued. No Start-up shall be counted more than once.
  - (iv) For Units under Condition 2, Counted Start-ups shall include each Start-up whether the Energy is Delivered to the CAISO in a Nonmarket Transaction or is delivered in a Market Transaction pursuant to bids made under Section 6.1 (b).
  - (v) If Owner complies with a Dispatch Notice by Delivering the Requested MWh or Ancillary Services from a Substitute Unit, any Start-ups of the Substitute Unit will not be included in Counted Start-ups for the Unit specified in the Dispatch Notice or the Substitute Unit.
  - (vi) Except as provided in Section 5.3(a)(iii), any Start-up not required to comply with a Dispatch Notice will not be included in Counted Start-ups.
- (b) The following rules shall govern calculation of Counted MWh:
  - (i) Except as limited below, all MWh Delivered in compliance with a Dispatch Notice shall be included in Counted MWh for the Unit for which the Dispatch Notice was issued.
  - (ii) For Units under Condition 1, if a Dispatch Notice is issued pursuant to Section 4.5 for a period in which a Unit is scheduled to operate or is operating in a Market Transaction or if Owner, in response to a Dispatch Notice, substitutes a Market Transaction under Section 5.2 for all or part of the Requested MWh, MWh equal to the sum of (A) Billable MWh plus (B) 50% of the Hybrid MWh, will be included in Counted MWh for the Unit for which the Dispatch Notice was issued.
  - (iii) If a Unit operating under Condition 2 sells Energy pursuant to bids made under Section 6.1 (b), the Billable MWh shall be included in Counted MWh for the Unit.
  - (iv) Intentionally left blank.

- (v) If Owner Delivers Requested MWh or Energy associated with Ancillary Services from a Substitute Unit, the MWh Delivered from the Substitute Unit will not be included in Counted MWh for the Unit specified in the Dispatch Notice or the Substitute Unit.
- (c) The following rules shall govern calculation of Counted Service Hours:
  - (i) Except as limited below, all Service Hours expended in compliance with a Dispatch Notice other than Service Hours expended for Ancillary Services during which the Unit is not Synchronized shall be included in Counted Service Hours for the Unit for which the Dispatch Notice was issued.
  - (ii) For Units under Condition 1, if a Dispatch Notice is issued pursuant to Section 4.5 for a period in which a Unit is scheduled to operate or is operating in a Market Transaction or if Owner, in response to a Dispatch Notice, substitutes a Market Transaction under Section 5.2 for all or part of the Requested MWh, one-half of the Requested Operation Period will be included in Counted Service Hours for the Unit for which the Dispatch Notice was issued.
  - (iii) If a Unit operating under Condition 2 sells Energy pursuant to bids made under Section 6.1 (b), each Service Hour expended by the Unit to produce the Energy shall be included in Counted Service Hours.
  - (iv) If Owner Delivers Requested MWh or Ancillary Services from a Substitute Unit, the Service Hours expended by the Substitute Unit will not be included in Counted Service Hours for the Unit specified in the Dispatch Notice or the Substitute Unit.
- (d) Counted MWh, Counted Service Hours and Counted Start-ups for the Contract Year ending December 31, 1999 shall include MWh, Service Hours and Start-ups for the period January 1, 1999 through the Effective Date under the reliability must-run rate schedule which is superseded by this Agreement using the rules set out in this Section 5.3 as if this Agreement had been in effect during that period. Owner's initial report under Section 5.5 shall show the MWh, Service Hours and Start-ups for the period January 1, 1999 through the Effective Date calculated using the rules set out in this Section 5.3.

#### **5.4 Owner's Failure To Deliver Requested MWh or Requested Ancillary Services**

- (a) Owner shall promptly notify CAISO if Owner will not be able to Deliver all or part of the Requested MWh or Requested Ancillary Services from the Unit identified in the Dispatch Notice or from the Substitute Unit previously accepted by CAISO.
- (b) If a Unit fails to Deliver the full amount of Requested MWh or Requested Ancillary Services, CAISO may issue an CAISO Availability Notice restating the Availability to a level not less than the Availability indicated by the actual deliveries. If CAISO has issued an CAISO Availability Notice under this Section 5.4(b), Owner shall not issue an Owner's Availability Notice increasing the Availability of the Unit until (i) the Unit has successfully completed an Availability Test, (ii) the Unit has delivered in Market Transactions or in a combination of Market Transactions and Nonmarket Transactions pursuant to a Dispatch Notice during a continuous four hour operating period, average MW in excess of those shown in the CAISO Availability Notice, or (iii) Owner has otherwise demonstrated to the CAISO's reasonable satisfaction that the Availability of the Unit has been restored. CAISO's only other remedies for Owner's failure to Deliver Requested Ancillary Services or Requested MWh are as set out in Sections 8.5, 11.3 and 12.6.

## **5.5 Reports**

Not less than two days prior to the beginning of every Month during the Contract Year, Owner or Owner's Scheduling Coordinator shall provide CAISO and the Responsible Utility a report for each Unit setting forth as of the day before the date of the report the Counted MWh, Counted Service Hours and Counted Start-ups for the current Contract Year. All reports shall be treated as confidential pursuant to Section 12.5.

## **ARTICLE 6 MARKET TRANSACTIONS**

### **6.1 Right To Engage In Market Transactions**

- (a) In addition to the right to substitute a Market Transaction pursuant to Section 5.2, if a Unit is operating under Condition 1, Owner may enter into Market Transactions for Energy or Ancillary Services at any level outside of a Requested Operation Period. If CAISO has issued a Dispatch Notice for Energy to a Unit under Condition 1, Owner may enter into Market Transactions for Energy at any level during the Requested Operation Period, and may enter into a Market Transaction for Ancillary Services at any level that does not preclude compliance with the Dispatch Notice. If CAISO has issued a Dispatch Notice for Ancillary Services to a Unit under Condition 1, Owner may enter into Market Transactions for Energy or Ancillary Services at any level that does not preclude compliance with the Dispatch Notice.
- (b) If CAISO issues a Dispatch Notice for a Unit operating under Condition 2, Owner shall submit bids in succeeding available Energy and Ancillary Services markets for the Requested Operation Period in accordance with the following requirements:
- (i) If the next available market is an Energy market, Owner shall bid all Energy the Unit can produce, up to the Unit Availability Limit, in excess of the higher of (A) Energy or Ancillary Services capacity cleared in a prior market; or (B) capacity required to Deliver Requested Ancillary Services. Owner shall bid all Energy at the bid price calculated using the formula in Part I of Schedule M.
  - (ii) If the next available market is an Ancillary Services market, Owner shall bid all available capacity, up to the Unit Availability Limit, in excess of the higher of the capacity needed to (A) deliver Energy and Ancillary Services cleared in a prior market or (B) Deliver the Requested MWh or Ancillary Services different from the Requested Ancillary Service.
  - (iii) If the markets are concurrent, Owner shall bid in the Ancillary Services market all available capacity, up to the Unit Availability Limit, in excess of the higher of the capacity needed to (A) deliver Energy and Ancillary Services cleared in a prior market or (B) Deliver the Requested MWh or Ancillary Services different from the Requested Ancillary Service.
  - (iv) Owner shall bid all Ancillary Service capacity at the bid price calculated using the formula in Part II of Schedule M.
  - (v) Owner shall not bid Energy or Ancillary Services in excess of the quantities the Unit can provide during the Requested Operation Period given the Unit's ramp rates, Ramping Constraints and any other applicable operating limitations, with due allowance for a Unit's ability to change output during the Requested Operation Period.
  - (vi) Neither Owner nor Owner's Scheduling Coordinator shall bid Energy or Ancillary Services to the extent that participating in a Market Transaction would conflict with a contract entered into prior to the Effective Date. Owner shall include in Section 14 of Schedule A a description of all contract restrictions affecting Owner's ability to participate in Market Transactions.

CAISO may order Owner not to bid to participate in a Market Transaction if CAISO determines that participation in Market Transactions would cause a Unit to exceed Contract Service Limits or impair CAISO's ability to dispatch the Unit to meet reliability needs at other times during the Contract Year. A Unit operating under Condition 2 shall not otherwise engage in Market Transactions.

## **ARTICLE 7** **OPERATION AND MAINTENANCE**

### **7.1 Owner's Obligation**

Owner shall fuel, operate and maintain each Unit, or cause the Unit to be fueled, operated and maintained, in accordance with applicable law and Good Industry Practice and with due regard for the reliability purpose of this Agreement. Owner is not required to have or maintain fuel oil burning capability, fuel oil inventories, or permits to burn fuel oil and shall not be required to burn fuel oil to respond to a Dispatch Notice unless, and then only to the extent that, the Unit's primary fuel is distillate fuel oil or Schedule H requires Owner to maintain fuel oil capability.

### **7.2 Outages and Overhauls**

- (a) Owner shall be entitled to take a Unit out of operation or reduce the Availability of the Unit to repair and maintain the Unit in accordance with Good Industry Practice and the requirements of the CAISO Tariff. The dates and times of the outages and any changes to those dates and times shall be determined in accordance with the CAISO Tariff. For purposes of complying with the requirements of the CAISO Tariff, Other Outage shall be separated between "maintenance outage" and "forced outage," as defined in the CAISO Tariff.
- (b) Owner shall have the right to curtail or discontinue, in whole or in part, Deliveries of Energy or Ancillary Services from a Unit for so long as, and to the extent that, a Forced Outage affecting the Unit continues or when, in Owner's judgment in accordance with Good Industry Practice, operating conditions at the Unit so require. Curtailment or discontinuance under this Section shall give rise to applicable remedies under Article 8.

### **7.3 Reports and Notices**

- (a) As soon as practical after commencement of a Forced Outage, Owner shall give CAISO notice of the Forced Outage, the expected duration of the outage, and the expected time when the Unit will be available to generate electricity and the expected Availability during and following the Forced Outage. Owner shall keep CAISO informed of any developments that will affect either the duration of the Forced Outage or the Availability of the Unit during or after the end of the Forced Outage.
- (b) Owner shall keep CAISO advised of the Availability of each Unit by promptly issuing Owner's Availability Notices any time Owner becomes aware that the Unit's Availability changed in accordance with Section 9 of the CAISO Tariff. Owner may not reduce a Unit's Availability due to the cost of fuel. An Owner's Availability Notice shall become effective when issued, provided, however, that if Owner becomes subject to a Non-Performance Penalty under Section 8.5, any Owner's Availability Notice given during the Penalty Period shall not become effective until 72 hours after the Owner's Availability Notice is given. An Owner's Availability Notice or CAISO's Availability Notice shall continue in effect until it is superseded by a subsequent Owner's Availability Notice or CAISO's Availability Notice.

### **7.4 Planned Capital Items**

- (a) On or before March 1 of each year, Owner shall provide CAISO a preliminary report in the form required by this Section 7.4 showing Owner's proposed Capital Items for the next Contract Year and a five-year forecast of anticipated Capital Items in the Form attached as Schedule L-1, assuming the Agreement will be extended. Owner shall submit a final report in the form required by this Section 7.4 reflecting updated information by August 1 of each year. Owner may, but shall not be obligated to, include an Upgrade as a proposed Capital Item in either the preliminary or final report.
- (b) The preliminary and final reports for proposed Capital Items for the next Contract Year shall be submitted on the form attached as Schedule L-1. Owner shall provide additional information requested by the CAISO necessary to evaluate the proposal. Each preliminary and final report shall separately list individual projects expected to cost more than \$500,000 and shall include two "Small Project Estimates." One Small Project



Estimate shall identify Capital Items (projected to cost less than \$500,000 each) required to maintain or enhance reliability. The second Small Project Estimate shall identify all other Capital Items projected to cost less than \$500,000 each. Individual Capital Items projected to cost more than \$50,000 shall be identified separately in one of the two Small Project Estimates. All Capital Items covered by the Small Project Estimate will be depreciated over 10 years.

- (c) Within 60 days after submission of the final report, CAISO will notify Owner of the proposed Capital Items CAISO has approved and the Capital Items it has not approved. If CAISO fails to provide notice within such 60 day period, all Capital Items included in the final report shall be deemed approved as proposed by Owner. Approval constitutes CAISO agreement that the CAISO's share of the estimated cost of the Capital Item will be recovered through Surcharge Payment under Article 8 and will be eligible for recovery through a Termination Fee pursuant to Section 2.5. If the actual cost of the Capital Item exceeds the estimated cost, CAISO may initiate ADR to determine whether the additional costs were reasonable and shall not be obligated to pay through Surcharge Payments or as a Termination Fee any portion of the overrun found to be unreasonable in such ADR proceeding. If CAISO contests the additional costs, Owner shall have the burden of proving that the additional costs were reasonable. If CAISO does not initiate ADR or makes a separate agreement with Owner, the additional costs shall be deemed reasonable and CAISO shall be obligated to pay CAISO's share of the actual costs through Surcharge Payments or as a Termination Fee.
- (d) If a proposed Capital Item is not approved, CAISO shall provide Owner a detailed statement of the reasons for the disapproval and, if the proposal would be acceptable with modifications, a detailed list of the proposed modifications. Owner may accept the modifications proposed by CAISO, or CAISO or Owner may initiate an ADR proceeding to review CAISO's rejection or proposed modification if the Capital Item is necessary for Owner to meet its obligations under this Agreement. In such proceeding, CAISO may not support its disapproval on any basis not shown in its detailed statement of the reasons for disapproval. Any Capital Items approved through such ADR proceeding shall be recovered by Owner through Surcharge Payments under Article 8 and will be eligible for recovery through a Termination Fee pursuant to Section 2.5. Owner shall not be obligated to install any Capital Item unless CAISO is obligated to pay a Surcharge Payment for the Capital Item.
- (e) The preliminary and final reports and all additional information about proposed Capital Items provided to CAISO shall be treated as Confidential Information in accordance with Section 12.5.
- (f) If CAISO rejects a proposed Capital Item, such rejection is not reversed by ADR and it would be uneconomical, impractical or illegal to continue operation without the Capital Item, then Owner, subject to obtaining authorization from FERC (if required by law to do so), may terminate this Agreement with respect to the affected Unit without cost or liability therefor, except as provided in Section 2.4.

## **7.5 Unplanned Repairs**

- (a) In the event of any loss or damage to the Facility that impairs the capability of one or more Units to Deliver Energy or Ancillary Services, Owner shall, without additional charge, make necessary Repairs, to the extent that:
- (i) the total cost (net of proceeds received by Owner from Insurers and other third parties pursuant to applicable insurance, warranties and other contracts in connection with all Repairs and excluding costs covered by clause (ii)) of all Repairs for all Units ("Net Repair Costs") during the Contract Year does not exceed Owner's Repair Cost Obligation for the Facility; or
- (ii) the loss or damage impairing the Unit's capability to produce Energy or Ancillary Services was caused by Owner's failure to comply with Good Industry Practice or by any wrongful act or omission by Owner. The reference to "Units" in clause (i) includes all Reliability Must-Run Units located at the Facility, but no other Reliability Must-Run Units. Except as provided above, Owner shall not be

obligated to make any Repairs unless CAISO is obligated to pay CAISO's Repair Share for the Repairs.

- (b) If the Net Repair Costs incurred by Owner for all Repairs since the beginning of the Contract Year exceed Owner's Repair Cost Obligation, then Owner shall provide a notice thereof ("Unplanned Repair Notice") in the form attached as Schedule L-1 to CAISO. Owner shall provide such additional information as CAISO may reasonably require to evaluate such proposed Repairs.
- (c) CAISO shall submit a written acceptance or objection to Owner's proposal within 21 days of receipt of an Unplanned Repair Notice. CAISO shall be deemed to have accepted Owner's proposal in the Unplanned Repair Notice if CAISO does not submit a written objection within 21 days after receipt of the Unplanned Repair Notice, as provided above. Any objection shall be based on one or more of the following grounds:
- (i) the loss or damage was caused by Owner's failure to comply with Good Industry Practice;
  - (ii) the loss or damage was caused by a wrongful act or omission by Owner;
  - (iii) the Repairs are not required or are more extensive than required in order to make good the loss or damage concerned or to comply with applicable law;
  - (iv) the Net Repair Costs for the Contract Year will not exceed or has not exceeded the Owner's Repair Cost Obligation;
  - (v) the estimated cost of Repairs exceeds that which is reasonably necessary to effect such Repairs;
  - (vi) the Repair will not result in benefits to CAISO as compared to alternatives available to CAISO;
  - (vii) Owner's proposals for carrying out the Repairs or the proposed CAISO's Repair Share are unreasonable;
  - (viii) Owner's proposal includes estimated costs which are not properly treated as an expense under FERC's Uniform System of Accounts; or
  - (ix) Owner has not provided sufficient information to evaluate Owner's proposal. In addition to providing the basis of the objection, any objection of CAISO shall include a list of all changes CAISO contends should be made to Owner's proposal and justification of all such changes.
- (d) If CAISO submits an objection to an Unplanned Repair Notice, the Parties shall attempt to reach agreement on changes to Owner's proposal. If the Parties have not reached agreement within 30 days after CAISO's receipt of the Unplanned Repair Notice, Owner or CAISO may refer the matter to ADR under a schedule (specified by the arbitrator if the participants cannot agree) requiring a decision within 30 days following appointment of the arbitrator. The ADR decision will be effective without delay.
- (e) Owner shall proceed with the Repairs if it is agreed or determined pursuant to ADR that CAISO will pay CAISO's Repair Share or that Owner is otherwise obligated to make the Repairs. Owner shall keep full and detailed records of the cost of the Repairs and shall make them available to CAISO for inspection upon reasonable request.
- (f) If the actual cost of the Repairs exceeds the estimated cost, CAISO may initiate ADR to determine whether the additional costs were reasonable and shall not be obligated to pay any portion of the additional cost found to be unreasonable in such ADR proceeding. Owner shall have the burden of proving that the additional costs were reasonable.
- (g) If it is agreed or determined pursuant to ADR that CAISO will pay for a Repair, CAISO shall pay CAISO's Repair Share of the actual cost as a lump sum within 60 days after the later of (i) the completion of the Repair and (ii) the effective date of authorization by FERC, if any is necessary, for Owner to charge such cost to CAISO. "CAISO's Repair Share" means the Repair Payment Factor for the Repair at issue multiplied by the amount by which (i) the agreed or determined cost of Repairs at issue plus the Net Repair Costs of all prior Repairs for the Contract Year minus the cost of all prior Repairs for which CAISO is obligated to pay CAISO's Repair Share during the Contract Year exceeds (ii) Owner's Repair Cost Obligation. The Repair Payment Factor shall be as agreed to by Owner and CAISO. If Owner and CAISO do not agree on the Repair Payment Factor, the Repair Payment Factor shall equal the Fixed Option Payment

- Factor, unless the Owner demonstrates in ADR that it would not have made the proposed Repair in accordance with Good Industry Practice but for its obligations under this Agreement, in which case the Repair Payment Factor shall be as determined in ADR.
- (h) Owner shall use commercially reasonable efforts to recover its full entitlements under applicable insurance policies, warranties and other contracts even after CAISO has paid CAISO's Repair Share. Owner shall keep CAISO informed of the status of such recovery efforts and will refund to CAISO any portions of CAISO's Repair Share payment that is later recovered from any other party as a credit to CAISO on the next invoice with interest at the Interest Rate from the date such proceeds are received by Owner to the Due Date of such next invoice, or if this Agreement is terminated, as a payment upon submission of the Final Invoice.
  - (i) If Owner is not obligated to make a Repair and does not do so, and if it would be uneconomical, impractical or illegal to continue operation without the Repair, then Owner, subject to obtaining authorization from FERC (if required by law to do so), may terminate this Agreement with respect to the affected Unit without cost or liability therefor, except as provided in Section 2.4.
  - (j) If Owner makes a Repair notwithstanding that CAISO is not obligated to pay for the Repair, Owner shall not be entitled to recover the costs of the Repair from CAISO unless FERC approves recovery of the costs.
  - (k) Owner's Repair Cost Obligation shall be an amount computed as follows:
    - (i) Intentionally left blank
    - (ii) The Owner's Repair Cost Obligation shall be equal to 3% of the fixed operation and maintenance costs for all Units at the Facility, underlying the rates in effect at the beginning of the Contract Year.

## **7.6 Unplanned Capital Items**

- (a) To the extent a Capital Item is required to remedy or prevent impairment of the Unit's capability to Deliver Energy or Ancillary Services and the impairment was caused by Owner's failure to comply with Good Industry Practice or by any wrongful act or omission by Owner, Owner shall install such Capital Item at Owner's expense. Otherwise, Owner shall not be obligated to install any Capital Item unless CAISO is obligated to pay a Surcharge Payment for the Capital Item. The issue of whether Owner is obligated to install a Capital Item is subject to ADR.
- (b) If, during the Contract Year, Owner determines it is necessary to install Capital Items not approved under Section 7.4 and Owner has expended all amounts covered by the approved Small Project Estimates under Section 7.4, Owner shall provide a notice thereof ("Unplanned Capital Item Notice") on the form attached as Schedule L-1 to CAISO. Owner shall provide such information as CAISO may reasonably require in order to evaluate the proposed Capital Items.
- (c) CAISO shall submit a written acceptance or objection to Owner's proposal within 21 days after receipt of a complete Unplanned Capital Item Notice provided that if the proposal does not involve either loss or damage to the Facility or a Capital Item required by law or regulation, CAISO shall respond within 60 days. If CAISO fails to provide notice within such period, Owner's proposal in the Unplanned Capital Item Notice shall be deemed approved. Any objection shall be based on one or more of the following grounds:
  - (i) the impairment being remedied or prevented was caused by Owner's failure to comply with Good Industry Practice;
  - (ii) the impairment being remedied or prevented was caused by a wrongful act or omission by Owner;
  - (iii) the Capital Item is not required or is more extensive than required in order to remedy or prevent impairment to the Facility or to comply with applicable law;
  - (iv) the estimated cost of the Capital Item exceeds that which is reasonably necessary;
  - (v) installation of the Capital Item will not result in benefits to CAISO as compared to alternatives available to CAISO;
  - (vi) Owner's proposals for installing or testing the Capital Item are unreasonable;

- (vii) Owner's proposals for depreciation of the cost of the Capital Item or calculation of the Annual Capital Item Cost and Surcharge Payment Factor are unreasonable; or
- (viii) Owner has not provided sufficient information to evaluate Owner's proposal. In addition to providing the basis of the objection, any objection of CAISO shall include a list of all changes CAISO contends should be made to Owner's proposal and justification of all such changes.
- (d) If CAISO submits an objection to an Unplanned Capital Item Notice, the Parties shall attempt to reach agreement on changes to Owner's proposal. If Owner's proposal involves either loss or damage to the Facility or the Capital Item is required by law and the Parties have not reached agreement 30 days after CAISO's receipt of the Unplanned Capital Item Notice, either Owner or CAISO may refer the matter to ADR under a schedule (specified by the arbitrator if the participants cannot agree) requiring a decision within 30 days following appointment of the arbitrator. The ADR decision will be effective without delay. Failure to agree on other proposed Capital Items may also be referred to ADR but without an expedited schedule.
- (e) Owner shall proceed to install the Capital Item if it is agreed or determined pursuant to ADR that CAISO will pay a Surcharge Payment for the Capital Item or that Owner is otherwise required to install the Capital Item. Owner shall keep full and detailed records of the cost of the Capital Item and shall make them available to CAISO for inspection upon reasonable request.
- (f) If the actual cost of the Capital Item exceeds the estimated cost, CAISO may initiate ADR to determine whether the additional costs were reasonable and shall not be obligated to pay any portion of the additional cost found to be unreasonable in such ADR proceeding. Owner shall have the burden of proving that the additional costs were reasonable.
- (g) If it is agreed or determined pursuant to ADR that CAISO will pay for the Capital Item, CAISO shall be deemed to have agreed that the cost of the Capital Item will be recovered through a Surcharge Payment under Article 8 and will be eligible for recovery through a Termination Fee pursuant to Section 2.5. The costs included in Surcharge Payments and Termination Fees to be paid by CAISO shall be net of all proceeds received by Owner from insurers and other third parties pursuant to applicable insurance, warranties and other contracts after deducting all costs Owner incurred to collect the proceeds. Owner shall use commercially reasonable efforts to recover its full entitlements under applicable insurance policies, warranties and other contracts. Owner shall keep CAISO informed of the status of such recovery efforts and will adjust future Surcharge Payments to reflect proceeds later recovered from any other party.
- (h) If the capability or performance of a Unit is impaired, if Owner is not obligated to install a Capital Item to remedy such impairment under Section 7.6(a) and does not do so, and if it would be uneconomical, impractical or illegal to continue operation without the Capital Item, then Owner, subject to obtaining authorization from FERC (if required by law to do so), may terminate this Agreement with respect to the affected Unit without cost or liability therefor except as provided in Section 2.4.
- (i) If Owner installs a Capital Item notwithstanding that CAISO is not obligated to pay for the Capital Item, Owner shall not be entitled to recover the costs of the Capital Item from CAISO unless FERC approves recovery of the costs.
- (j) Notwithstanding any other provision of this Agreement, if a Capital Item is required to remedy impairment of the Facility, the Unit's Monthly Option Payment shall not be decreased for any of the period of time during which Owner is waiting for CAISO's response to an Unplanned Capital Item Notice or during which ADR concerning an Unplanned Capital Item Notice is pending unless it is determined that Owner is required to install the Capital Item pursuant to Section 7.6 (a).

## **7.7 Adjustments to Performance Characteristics**

- (a) If Owner installs any Capital Item or makes any Repairs the costs of which are paid by CAISO under this Agreement, Owner shall modify the Maximum Net Dependable Capacity, Unit Availability Limit, and performance characteristics of the affected Unit to

reflect the resulting changes in operating costs effective as of the date CAISO's payment of CAISO's Repair Share of the Repairs is made, or in the case of a Capital Item, the date the cost of the Capital Item is included in a Surcharge Payment or the rates paid by CAISO.

- (b) If FERC authorization is required to permit Owner to recover the CAISO's Repair Share from CAISO or to include the costs of a Capital Item in a Surcharge Payment or the rates paid by CAISO hereunder, Owner shall make a Section 205 filing limited to recovery of the costs and implementation of related changes to performance characteristics, shall request that the filing become effective as of the date the Capital Item or Repair was placed in service and request expedited consideration of the filing. If CAISO has approved the Capital Item or Repair, CAISO shall intervene in support of such filing including support of requests to place the change in effect without suspension or hearing.
- (c) If Owner makes Repairs or installs a Capital Item when not required to do so and CAISO has not agreed or is not required by ADR to pay for such Repair or Capital Item, Owner may either:
  - (i) make an appropriate adjustment to the Maximum Net Dependable Capacity, Unit Availability Limit and performance characteristics of the affected Unit to reflect the capability the Unit would have had if the Capital Item had not been installed or the Repairs had not been made; or
  - (ii) make appropriate adjustment to the Maximum Net Dependable Capacity, Unit Availability Limit and performance characteristics of the affected Unit to reflect the Repairs or installation of the Capital Item.
- (d) Any adjustment to the Heat Input characteristics of the Unit shall be made in accordance with Section 4.9(d).

## **7.8 Upgrades of Generating Units**

Owner may Upgrade any Unit at the Facility, provided that no Upgrade shall release Owner from Owner's performance obligations under this Agreement. CAISO shall secure no rights under this Agreement to any capacity or services increased or enhanced by any Upgrade unless the Parties agree as to the terms of CAISO's rights and the amount of CAISO's payment for such Upgrade. If the Parties so agree, the Maximum Net Dependable Capacity, Unit Availability Limit and performance characteristics of the affected Unit shall be adjusted to reflect CAISO's agreed upon rights to the Upgrade provided that any adjustment in heat input shall be made in accordance with Section 4.9(d). If FERC authorization is required to permit Owner to recover the portion of the Upgrade cost CAISO has agreed to pay for the agreed revisions to the Unit characteristics, Owner shall make a Section 205 filing limited to recovery of the costs and implementation of related changes to the Maximum Net Dependable Capacity, Unit Availability Limit and performance characteristics, shall request that the filing become effective as of the date CAISO begins paying its agreed portion of the cost of the Upgrade and request expedited consideration of the filing. CAISO shall intervene in support of such filing including support of requests to place the change in effect without suspension or hearing.

## **7.9 Third-Party Participation in CAISO Review Process**

- (a) Subject to fulfillment of the requirements of Section 7.9 (b), CAISO shall consult with the Responsible Utility and the California Agencies prior to approving Capital Items or Repairs. CAISO may approve Capital Items or Repairs aggregating less than \$5,000,000 for the Facility in a Contract Year without approval of the Responsible Utility or the California Agencies. After Capital Items and Repairs aggregating \$5,000,000 for the Facility in a Contract Year have been approved by CAISO, CAISO's approval of all other Capital Items and Repairs for that Contract Year shall not be effective unless the Responsible Utility has consented to such Capital Item or Repair.
- (b) The requirements of Section 7.9 (a) relating to Responsible Utilities shall apply only if and to the extent that the Responsible Utility agrees to waive its right to challenge before the FERC Owner's recovery of approved costs of Repairs or Capital Items. The requirement of Section 7.9 (a) relating to the California Agency shall apply only if and to the extent that each California Agency agrees to waive its right to challenge Owner's recovery of

costs associated with the proposed Repairs or Capital Item on any grounds not set out in written objections provided by the California Agencies to CAISO and Owner within 30 days of the California Agencies' receipt of the preliminary and final reports under Section 7.5 or Section 7.6.

- (c) Provided that the California Agencies and Responsible Utility are bound by the provisions of the Confidentiality and Non-disclosure Agreement attached as Schedule N and make the waivers required in Section 7.9 (b), Owner will provide copies of the required reports and notices under Section 7.4, Section 7.5 or Section 7.6, and any additional information provided to the CAISO pursuant to Sections 7.4, 7.5 and 7.6, as the case may be, to the California Agencies and Responsible Utility at the same time as the reports, notices and information are provided to CAISO, and CAISO will provide copies of all information provided to Owner pursuant to such Sections to the California Agencies and Responsible Utility.

## **ARTICLE 8** **RATES AND CHARGES**

### **8.1 Condition 1**

When a Unit is under Condition 1, CAISO shall pay Owner each Month for each Unit the sum of:

- (a) the Monthly Option Payment which shall be equal to the Monthly Availability Payment plus the Monthly Surcharge Payment, minus the sum of all Non-Performance Penalties for the Month. In no event shall (i) the Monthly Option Payment for any month be less than zero, (ii) the sum of the Monthly Availability Payments for a Contract Year exceed the Annual Fixed Revenue Requirement for the Contract Year, or (iii) the sum of the Monthly Surcharge Payments for the Contract Year exceed the Annual Capital Item Cost (as defined in Schedule B) for the Contract Year. The Monthly Availability Payment and the Monthly Surcharge Payment shall each be computed in accordance with Schedule B. The Non-Performance Penalties for the Month shall be calculated in accordance with Section 8.5;
- (b) the Variable Cost Payment computed in accordance with Schedule C;
- (c) one-twelfth of the Prepaid Start-up Charge as set out on Schedule D;
- (d) the sum of the Start-up Adjustments calculated in accordance with Schedule D for each Start-up during the Month which was a Prepaid Start-up;
- (e) the sum for all Settlement Periods in the Month of the Pre-empted Dispatch Payments and Motoring Charges calculated in accordance with Schedule E;
- (f) once the Counted MWh for the Contract Year equals the Maximum Annual MWh, the Counted Service Hours for the Contract Year equals the Maximum Annual Service Hours, or the Counted MWh for hydroelectric units for the Month equals the Maximum Monthly MWh, a payment for each subsequent Billable MWh at the rate set out on Schedule G;
- (g) once the Counted Start-ups for the Contract Year equals the Maximum Annual Start-ups, a payment for each additional Start-up calculated in accordance with Schedule G; and
- (h) charges for services Delivered from Substitute Units pursuant to Sections 5.1(c) and (d).

### **8.2 Condition 2**

When a Unit is operating under Condition 2, CAISO shall pay Owner the sum of:

- (a) the Monthly Option Payment, which shall be equal to the Monthly Availability Payment plus the Monthly Surcharge Payment, minus the sum of all Non-Performance Penalties for the Month. In no event shall (i) the Monthly Option Payment for any month be less than zero, (ii) the sum of the Monthly Availability Payments for a Contract Year exceed the Annual Fixed Revenue Requirement for the Contract Year or (iii) the sum of the Monthly Surcharge Payments for the Contract Year exceed the Annual Capital Item Cost (as defined in Schedule B) for the Contract Year. The Monthly Availability Payment and the Monthly Surcharge Payment shall each be computed in accordance with Schedule B. The Non-Performance Penalties for the Month shall be calculated in accordance with Section 8.5.

- (b) the Variable Cost Payment computed in accordance with Schedule C;
- (c) the sum of all Start-up Payments for the Month until Counted Start-ups equal Maximum Annual Start-ups computed in accordance with Schedule D;
- (d) the sum for all Settlement Periods in the Month of Motoring Charges calculated in accordance with Schedule E;
- (e) once the Counted MWh for the Contract Year equals the Maximum Annual MWh or the Counted Service Hours for the Contract Year equals the Maximum Annual Service Hours, a payment for each subsequent Billable MWh at the rate set out on Schedule G;
- (f) once the Counted Start-ups for the Contract Year equals the Maximum Annual Start-ups, a payment for each additional Start-up calculated in accordance with Schedule G; and
- (g) charges for services Delivered from Substitute Units pursuant to Section 5.1(c) and (d).

### **8.3 Determination of Billable MWh and Hybrid MWh**

- (a) "Billable MWh" shall be determined by application of the following rules:
  - (i) If a Unit under Condition 1 or Condition 2 Delivers MWh only in Nonmarket Transactions during a Settlement Period, the Billable MWh shall be the lesser of (A) the Hourly Metered Total Net Generation or (B) the Requested MWh.
  - (ii) If a Unit under Condition 1 delivers MWh in both Market and Nonmarket Transactions during a Settlement Period:
    - (A) If the Hourly Metered Total Net Generation during the Settlement Period is equal to or greater than the Requested MWh applicable to the Settlement Period, the Billable MWh shall be (1) the Requested MWh minus (2) the Hybrid MWh, but shall never be less than zero.
    - (B) If the Hourly Metered Total Net Generation during the Settlement Period is less than the Requested MWh applicable to the Settlement Period, the Billable MWh shall be (1) Hourly Metered Total Net Generation minus (2) the Hybrid MWh, but shall never be less than zero.
  - (iii) If a Unit is under Condition 2, the Billable MWh shall be the lesser of (A) the Hourly Metered Total Net Generation or (B) the sum of (1) Requested MWh and (2) the amount, if any, by which the total MWh for which Owner's bids pursuant to Section 6.1 (b) cleared the market exceeds the Requested MWh.
- (b) "Hybrid MWh" shall be the sum of the MWh scheduled in Market Transactions which were substituted for Requested MWh under Section 5.2 and the MWh scheduled in Market Transactions for which CAISO issued a Dispatch Notice pursuant to Section 4.5 provided that Hybrid MWh shall never exceed the Hourly Metered Total Net Generation.

### **8.4 Determination of Prepaid Start-ups**

Prepaid Start-ups for Condition 1 shall be the Maximum Annual Start-ups. There shall be no Prepaid Start-ups for Condition 2.

### **8.5 Non-Performance Penalty**

- (a) If a Unit fails to comply fully with a Dispatch Notice and such failure is not due to a Force Majeure Event under this Agreement, the Unit shall be subject to a Non-Performance Penalty computed in accordance with this Section 8.5.
- (b) The Non-Performance Penalty shall be calculated for each hour of the Penalty Period in which Owner is not deemed to be in full compliance with a Dispatch Notice and is not excused from performance. The Non-Performance Penalty shall be the sum of the amounts calculated for each Settlement Period in the Month by multiplying (i) the Availability Deficiency Factor for the Settlement Period by (ii) the sum of the Hourly Penalty Rate and the Hourly Surcharge Penalty Rate for the Unit as set forth on Schedule B; provided that the Non-Performance Penalty for any Month shall not exceed the sum of the Condition 1 Availability Payment and Condition 1 Surcharge Payment (for Units on Condition 1), or the sum of the Condition 2 Availability Payment and Condition 2 Surcharge Payment (for Units on Condition 2) for the Month. For purposes of this calculation:

- (i) an Availability Deficiency Factor shall be calculated for each hour of the Penalty Period as one minus the number determined by dividing (a) the Delivered MWh for the hour in question by (b) the product of the Unit Availability Limit and the percentage of the hour (up to 100%) that the Unit was subject to a Dispatch Notice;
  - (ii) the Penalty Period shall be the 72 hour period beginning at the time Owner fails to comply fully with a Dispatch Notice, provided that if Owner in accordance with Section 7.2(a) had scheduled an outage to begin during the 72 hour period, the Penalty Period will terminate at the time the outage was scheduled to begin.
  - (iii) the Unit Availability Limit shall be the Unit Availability Limit as it existed at the time CAISO issued the Dispatch Notice with which Owner failed to comply but reduced to eliminate the effect of any Force Majeure Event affecting deliveries during the Penalty Period.
- (c) For purposes of this Section 8.5 and Section 4.9(a)(i), a Unit shall be deemed to be in full compliance with a Dispatch Notice if the Unit Delivers (i) at least 97 percent of the Requested MW or (ii) not more than 2 MW less than the Requested MW.

### **8.6 Long-term Planned Outage Adjustment**

Not later than 60 days after the end of each Contract Year, Owner shall submit to CAISO a statement showing the Long-term Planned Outage Adjustment for the Contract Year. The Long-term Planned Outage Adjustment shall equal (a) the Hourly Availability Charge plus each Hourly Capital Item Charge, as shown in Schedule B, multiplied by (b) the difference, if positive, of (i) the hours scheduled for performance of Long-term Planned Outages minus (ii) the actual hours spent performing Long-term Planned Outages during the Contract Year. Owner shall credit any Long-term Planned Outage Adjustment on the next invoice or, if this Agreement has terminated, shall pay any Long-term Planned Outage Adjustment to the CAISO upon submission of the Final Invoice.

## **ARTICLE 9 STATEMENTS AND PAYMENTS**

### **9.1 Invoicing**

- (a) The billing, invoicing and payment of charges under this Agreement shall be as specified in this Article 9, Schedule O to this Agreement and Section 11.13 of the CAISO Tariff. CAISO shall not modify any provision of Section 41 of the CAISO Tariff or Section 11.13 as they apply to this Agreement without Owner's consent, provided that Owner's consent shall not be required for a change of allocations of RMR costs among market participants under the CAISO Tariff. Notwithstanding anything in this Agreement to the contrary, invoices either due or from the RMR Owner or Responsible Utility for an amount less than \$10.00 will be adjusted to \$0.00 and no amounts will be due to or from that RMR Owner or Responsible Utility for that invoice.
- (b) Owner will submit to CAISO RMR Invoices for each Month during the term of this Agreement, which are defined in this Section 9.1(b) as follows: (i) Estimated RMR Invoice; (ii) Revised Estimated RMR Invoice; (iii) Adjusted RMR Invoice; and (iv) Revised Adjusted RMR Invoice. In the event there are no revisions to the Estimated RMR Invoice or the Adjusted RMR Invoice, Owner shall submit an e-mail to CAISO with a copy to the Responsible Utility indicating that the Estimated RMR Invoice or the Adjusted RMR Invoice shall be deemed to be the Revised Estimated RMR Invoice or the Revised Adjusted RMR Invoice.
  - (i) Within 14 days after the end of each Month during the term of this Agreement (and, if this Agreement does not expire or terminate at the end of a Month, within 14 days after the end of the Month in which the Agreement expires or terminates), Owner shall submit an estimated invoice ("Estimated RMR Invoice") to CAISO for all charges and credits due under this Agreement for the Month ("Billing Month"). Each Estimated RMR Invoice shall reflect actual data for the



Billing Month to the extent actual data is available and shall otherwise reflect estimated data.

- (ii) By the date specified on the RMR Payments Calendar, Owner shall submit a revised estimated invoice ("Revised Estimated RMR Invoice") to CAISO, which will include appropriate revisions based on the CAISO's validation of the Estimated RMR Invoice. The Due Date of the Revised Estimated RMR Invoice shall be the 30th day after the date on which Owner submitted the Estimated RMR Invoice to CAISO, or if such date is not a Business Day, the Due Date shall be the next Business Day.
  - (iii) By the date specified on the RMR Payments Calendar, CAISO shall submit an invoice ("CAISO Invoice") to the Responsible Utility, with an e-mail notification to Owner and the Responsible Utility, which specifies the payment due from the Responsible Utility to CAISO and from CAISO to Owner on the basis of the Revised Estimated RMR Invoice. However, in the event the payment is due from Owner to CAISO and from CAISO to the Responsible Utility, then CAISO shall submit the CAISO Invoice to Owner with an e-mail notification to Owner and the Responsible Utility.
  - (iv) Within 7 days of receipt by Owner of the Recalculation Settlement Statement for the last day of the Billing Month, Owner shall submit an adjusted invoice ("Adjusted RMR Invoice") to CAISO, reflecting actual data for the Billing Month.
  - (v) By the date specified on the RMR Payments Calendar, Owner shall submit to CAISO an invoice reflecting actual data for the Billing Month and including appropriate revisions based on the CAISO's validation of the Adjusted RMR Invoice ("Revised Adjusted RMR Invoice"). The Due Date of the Revised Adjusted RMR Invoice shall be the 30th day after the date on which Owner submitted the Adjusted RMR Invoice to CAISO, or if such date is not a Business Day, the Due Date shall be the next Business Day.
  - (vi) By the date specified on the RMR Payments Calendar, CAISO shall submit an CAISO Invoice to the Responsible Utility, with an e-mail notification to Owner and the Responsible Utility, which specifies the payment due from the Responsible Utility to CAISO and from CAISO to Owner on the basis of the Revised Adjusted RMR Invoice. However, in the event the payment is due from Owner to CAISO and from CAISO to the Responsible Utility, then CAISO shall submit the CAISO Invoice to Owner with an e-mail notification to Owner and the Responsible Utility.
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- (c) If the day on which any RMR Invoice is due to be issued is not a Business Day, such RMR Invoice shall be issued on the next succeeding Business Day.
  - (d) Each RMR Invoice shall use the template posted on the CAISO Website in accordance with Schedule O ("RMR Invoice Template"). Each RMR Invoice shall set out detailed calculations and breakdowns of the amounts due, shall identify the source of each input used in the calculations, and shall identify all relationships among data in different invoice levels.
  - (e) This section 9.1(e) applies to all Condition 1 Units. Any amounts received by or due to Owner's Scheduling Coordinator for Billable MWh and Ancillary Services Delivered in Nonmarket Transactions during the Billing Month shall be subtracted from the amount otherwise due under each RMR Invoice. If subtraction of the Energy and any Ancillary Service amounts for a Unit under Condition 1 results in a credit to CAISO on an RMR Invoice, the credit shall be carried forward ("Credit Carryforward") to the RMR Invoices for each succeeding Billing Month in that Contract Year until extinguished; provided that Owner shall not be required to carry any such credit into a later Contract Year or to pay any part of such credit to CAISO.
  - (f) This section 9.1(f) applies to all Condition 2 Units. All amounts received by or due to Owner's Scheduling Coordinator in connection with Market Transactions and Nonmarket Transactions during the Billing Month ("Scheduling Coordinator Revenues") shall be subtracted from the amount otherwise due under each RMR Invoice. If subtracting the Scheduling Coordinator Revenues results in a credit to CAISO on an RMR Invoice, the credit shall be carried forward ("Credit Carryforward") to the appropriate RMR Invoices for

each succeeding Billing Month in that Contract Year until extinguished. If there is an unextinguished credit balance remaining at the end of the Contract Year, Owner shall refund to CAISO an amount equal to the lesser of (i) the remaining balance of Scheduling Coordinator Revenues or (ii) the total amounts due Owner pursuant to Section 8.2 for the Contract Year minus all Scheduling Coordinator Revenues previously credited to Owner during such Contract Year. Such refund amount will be included on December's Adjusted RMR Invoice, or the Final Invoice if the Agreement is terminated.

- (g) In the event any corrections, surcharges, credits, refunds or other adjustments pertaining to a Billing Month are discovered after the Revised Adjusted RMR Invoice for such Billing Month has been issued ("Prior Period Changes"), then such Prior Period Changes shall be included in a worksheet for the prior period ("Prior Period Change Worksheet") and submitted for payment in the next allowed Billing Month for Prior Period Changes. The allowed Billing Months for Prior Period Changes are as follows. Any Prior Period Changes pertaining to the months of January through June of a Contract Year which are discovered prior to the submission of the December Estimated RMR Invoice for such Contract Year shall be included in a Prior Period Change Worksheet submitted with the December Estimated RMR Invoice. Any Prior Period Changes pertaining to the months of July through December of a Contract year which are discovered prior to the submission of the May Estimated RMR Invoice for the subsequent Contract year shall be included, subject to Section 9.8, in a Prior Period Change Worksheet submitted with the May Estimated RMR Invoice for the subsequent Contract Year. Any Prior Period Changes pertaining to a Billing Month for a prior Contract Year which are discovered after the first opportunity to submit a Prior Period Change Worksheet has passed, shall be included in a Prior Period Change Worksheet submitted with the Estimated RMR Invoice for the next December or May Billing Month, whichever comes first. Any Prior Period Changes pertaining to the time when the Facilities were under a superseded rate schedule using Conditions of Must Run Agreement A, B, and C, shall be calculated through a separate process and not included on RMR Invoices issued under this Agreement unless the Prior Period Changes result from the Revenue Requirements Settlements outlined in the Stipulation and Agreement approved on May 28, 1999, in FERC Docket No. ER98-441-000, et al.
- (h) Owner shall send a copy of each RMR Invoice and any Prior Period Change Worksheet(s) to the Responsible Utility at the time it sends such invoices to CAISO.
- (i) Owner shall provide supporting detail with the Prior Period Change Worksheets to identify the relevant Contract Year and provide clear calculations by Facility, by Billing Month, and such other detail as necessary to support the Prior Period Change(s). This level of detail shall be consistent with the level of detail originally required to perform the computation(s) that are being corrected in the Prior Period Change Worksheet. Prior Period Change Worksheets, when required, shall include all identified Prior Period Changes for each applicable prior Contract Year, and shall be computed as specified in section 9.1(j).
- (j) A Prior Period Change Worksheet shall contain the following information and calculations for each Billing Month in the relevant Contract Year(s), commencing with the Billing Month pertaining to the Prior Period Change(s):
- (i) The Revised Adjusted RMR Invoice for the Billing Month or, if such Billing Month has previously been submitted on a Prior Period Change Worksheet, the most recent revision of such RMR Invoice.
  - (ii) A revision of the RMR Invoice specified in paragraph (1) above which shows the RMR Invoice revised to incorporate the Prior Period Change(s) as if such Prior Period Change(s) had been invoiced in the Billing Month which gave rise to the Prior Period Change(s). Such revision shall incorporate the impact of the Prior Period Change(s) on RMR payments, including any impact resulting from the Credit Carryforward calculation for the current or previous Billing Months in the Contract Year. For Condition 2 Units, such calculation shall include a recalculation of the refund described in Section 9.1(f).

(iii) The difference between the amounts calculated under paragraph (2) above and paragraph (1) above. The amount due to or from Owner as a result of this calculation shall be clearly specified, with interest shown separately from any other amount due. Interest shall be calculated at the Interest Rate from the Due Date of the Revised Estimated RMR Invoice for the Billing Month to the date payment of the amount due is made.

Owner shall total for all Billing Months which are included on the Prior Period Change Worksheet, the amount due as a result of the calculation in paragraph (3) above for each Billing Month. Owner shall also total for all Billing Months which are included on the Prior Period Change Worksheet, the interest due as a result of the calculation in paragraph (3) above for each Billing Month. The total amount due and interest due shall be transferred from the Prior Period Change Worksheet to the appropriate Estimated RMR Invoice, and such amounts shall be due as specified on the Estimated RMR Invoice.

(k) Any time a Unit switches from Condition 1 to Condition 2 or Condition 2 to Condition 1 during a Contract Year, the provisions of Section 9.1(e) shall apply to the months when the unit was on Condition 1 and the provisions of Section 9.1(g) shall apply to the months when the unit was on Condition 2.

(l) CAISO shall separately post on the CAISO Website examples ("Prior Period Change Examples") developed and agreed to by the RMR Invoice Task Force created under Schedule O of the calculations described in Sections 9.1(e), 9.1(f), 9.1(g) and 9.1(j) to provide guidance on the correct treatment of Prior Period Changes and to show the correct preparation of the Prior Period Change Worksheet and transfer of amount due to the appropriate Estimated RMR Invoice. Additionally, the RMR Invoice Task Force shall develop and agree to, and CAISO shall post on the CAISO Website, guidelines ("Prior Period Change Guidelines") underlying the calculations described in Sections 9.1(e), 9.1(f), 9.1(g) and 9.1(j). The Prior Period Change Worksheet shall be prepared, and the amount due shall be calculated and transferred to the Estimated RMR Invoice, in accordance with the RMR Invoice Template, the Prior Period Change Examples, and the Prior Period Change Guidelines posted on the CAISO Website. In the event of a dispute regarding the treatment of Prior Period Changes, all Parties to such dispute shall refer to the Prior Period Change Examples and Prior Period Change Guidelines posted on the CAISO Website for guidance.

## **9.2 Facility Trust Accounts**

CAISO shall establish two segregated commercial bank accounts under the "Facility Trust Account" referred to in Sections 11.13 and 41 of the CAISO Tariff for each Responsible Utility. One commercial bank account, the "RMR Owner Facility Trust Account", shall be held in trust by CAISO for Owner. The other commercial bank account, the "Responsible Utility Facility Trust Account", shall be held in trust by CAISO for the Responsible Utility. Payments received by CAISO from a Responsible Utility in connection with this Agreement, including payments following termination of this Agreement, will be deposited into the RMR Owner Facility Trust Account and payments from CAISO to Owner will be withdrawn from such Account, all in accordance with Sections 11.13 and 41 of the CAISO Tariff and this Article 9. Any payments received by CAISO from Owner in connection with this Agreement, including payments following termination of this Agreement, will be deposited into the Responsible Utility Facility Trust Account. Any payments to a Responsible Utility of funds received from Owner under this Agreement will be withdrawn from the Responsible Utility Facility Trust Account, all in accordance with Section 11.13 and 41 of the CAISO Tariff, and this Agreement. Neither the RMR Owner Facility Trust Account nor the Responsible Utility Facility Trust Account shall have other funds commingled in it at any time.

## **9.3 Payment**

(a) CAISO shall pay Owner all invoiced amounts due on Revised Estimated RMR Invoices, Revised Adjusted RMR Invoices, and Final Invoices whether or not disputed by CAISO or the Responsible Utility except to the extent that CAISO (i) is entitled to a refund on a Revised Estimated or Revised Adjusted RMR Invoice or Final Invoice against such

payment under this Agreement or (ii) is entitled to deduct an amount under Section 9.6. All payments shall be made from the RMR Owner Facility Trust Account on or before the Due Date by wire transfer in accordance with instructions from Owner. If Owner is also the Responsible Utility, at the discretion of Owner payments to it may be made by memorandum account instead of wire transfer. Owner shall establish and maintain a settlement account at a commercial bank located in the United States and reasonably acceptable to CAISO which can effect money transfers via Fed-Wire where payments to and from the Facility Trust Accounts shall be made in accordance with Section 9.2 and Section 11.13 of the CAISO Tariff. Owner shall notify CAISO of its settlement account details prior to the Effective Date. Owner may from time to time change its settlement account details, provided that, Owner shall give CAISO 15 days notice before making changes. In the event there is a refund amount due to CAISO, Owner shall refund the amount due CAISO in accordance with Section 9.2 and Section 11.13 of the CAISO Tariff.

- (b) If a Revised Adjusted RMR Invoice is less than the amount paid by CAISO on the Revised Estimated RMR Invoice, the difference shall be paid by Owner to CAISO with interest at the Interest Rate from the Due Date of the Revised Estimated RMR Invoice to the Due Date of the Revised Adjusted RMR Invoice, or, if the Agreement is terminated, shall be paid to CAISO on submission of the Final Invoice. If a Revised Adjusted RMR Invoice is greater than the amount paid by CAISO under the Revised Estimated RMR Invoice, CAISO shall pay Owner the difference with interest at the Interest Rate from the Due Date of the Revised Estimated RMR Invoice to the Due Date of the Revised Adjusted RMR Invoice by CAISO.

#### **9.4 Payment Default**

- (a) Except as provided in Section 9.4 (b), Owner, in addition to any other remedy it may have, may pursue all claims against CAISO and the Collateral, as defined in Section 9.7 below, if CAISO fails to pay any invoice in full by the Due Date as required under Section 9.3. CAISO, in addition to any other remedy it may have, may pursue all claims against Owner if Owner fails to pay any invoice in full by the Due Date as required under Section 9.3. The parties' remedies shall be subject to the limitations set forth in Article 11.
- (b) If the amounts CAISO has not paid have been invoiced by CAISO to the Responsible Utility and the Responsible Utility has not paid such amounts to CAISO, Owner shall cause execution to issue against, and shall collect solely from the Collateral or the Responsible Utility, and not CAISO, if all of the following conditions have been satisfied:
- (i) The Responsible Utility is **[INSERT SCE, PGE or SDGE, as applicable]**
  - (ii) CAISO has invoiced via the CAISO Invoice **[INSERT SCE, PGE or SDGE, as applicable]** for costs (net of any applicable credits, all as shown on the Revised Estimated or Revised Adjusted RMR Invoice) after deducting only amounts permitted to be deducted under Section 9.6.
  - (iii) The CAISO Tariff expressly requires **[INSERT SCE, PGE or SDGE, as applicable]** to pay all amounts shown on the CAISO Invoices without offset, recoupment or deduction (except to the extent that Section 41 of the CAISO Tariff permits deduction of amounts that are due the Responsible Utility after resolution of a dispute) and, to the extent that **[INSERT SCE, PGE or SDGE, as applicable]** disputes any amounts due under the CAISO Invoices, to pay the disputed amounts under protest and subject to refund with interest; and
  - (iv) **[INSERT SCE, PGE or SDGE, as applicable]** fails to pay all or a portion of the amounts due under the CAISO Invoices and did not have the right to have such amount deducted under Section 41 of the CAISO Tariff.
- (c) Notwithstanding the provisions of Section 9.4 (b), Owner may cause execution to issue against, and collect from, CAISO, the Responsible Utility, the Collateral or insurance maintained by CAISO pursuant to Section 12.1(a), if notwithstanding the requirement to pay CAISO Invoices without offset, recoupment or deduction (except to the extent that Section 41 of the CAISO Tariff permits deduction of amounts that are due the

Responsible Utility after resolution of a dispute), a Responsible Utility nonetheless offsets amounts unrelated to this Agreement or withholds amounts based on a breach or default by CAISO of any of its obligations to the Responsible Utility.

- (d) The CAISO Invoices shall separately show the amounts due for services from each Facility. If the Responsible Utility withholds any portion of the amount due under the CAISO Invoices, CAISO shall inform Owner of the specific Facility and time periods for which the Responsible Utility withheld payments.
- (e) As a condition for Owner's agreement not to seek to recover amounts from CAISO under Section 9.4(b), CAISO agrees to include and retain in the CAISO Tariff provisions expressly recognizing that Owner is a third party beneficiary of, and has all rights that CAISO has under the CAISO Tariff, at law, in equity or otherwise, to enforce the Responsible Utility's obligation to pay all sums invoiced to it in the CAISO Invoices but not paid by the Responsible Utility, to the extent that, as a result of the Responsible Utility's failure to pay, CAISO does not pay Owner on a timely basis amounts due under this Agreement. Owner recognizes that its rights as a third party beneficiary are (i) no greater than CAISO's rights against the Responsible Utility, and (ii) subject to Section 13 of the CAISO Tariff regarding dispute resolution. Either CAISO or Owner (but not both) will be entitled to enforce any claim arising from unpaid CAISO Invoices, and only one party will be a "disputing party" under Section 13 of the CAISO Tariff with respect to such claim so that the Responsible Utility will not be subject to duplicate claims or recoveries. Owner shall have the right to control the disposition of claims against the Responsible Utility for non-payments which result in payment defaults by CAISO under this Agreement. To that end, CAISO agrees that in the event of nonpayment by the Responsible Utility of amounts due under the CAISO Invoices, CAISO will not take any action to enforce its rights against the Responsible Utility unless CAISO is requested to do so by Owner. CAISO shall cooperate with Owner in a timely manner as necessary or appropriate to most fully effectuate Owner's rights related to such enforcement, including using its best efforts to enforce the Responsible Utility's payment obligations if, as, to the extent, and within the time frame, requested by Owner. CAISO shall intervene and participate where procedurally necessary to the assertion of a claim by Owner.
- (f) If a Responsibility Utility was not the Responsible Utility on April 1, 1998 (a "New Responsible Utility") and if:
- (i) The senior unsecured debt of the New Responsible Utility is rated or becomes rated at less than A- from Standard & Poors ("S&P") or A3 from Moody's Investment Services ("Moody's), and
- (ii) Such ratings do not improve to A- or better from S&P or A3 or better from Moody's within 60 days.
- CAISO shall then require the New Responsible Utility to issue and confirm to CAISO an irrevocable and unconditional letter of credit in an amount equal to three times the highest monthly payment invoiced by CAISO to the New Responsible Utility (or the prior Responsible Utility) in connection with services provided under this Agreement during the last 3 months for which invoices have been issued. The letter of credit must be issued by a bank or other financial institution whose senior unsecured debt rating is not less than A from S&P and A2 from Moody's. The letter of credit shall authorize CAISO or Owner to draw on the letter of credit for deposit solely into the RMR Owner Facility Trust Account in an amount equal to any amount due and not paid by the Responsible Utility under the CAISO Invoices.

## **9.5 Interest**

If CAISO or Owner fails to make any payment by the Due Date, the amount due but not paid shall accrue interest at the Interest Rate from the Due Date until the amount is paid.

## **9.6 Disputed Amounts**

- (a) If CAISO or the Responsible Utility disputes a Revised Estimated or Revised Adjusted RMR Invoice or Final Invoice or part thereof submitted by Owner under this Agreement, or if the Responsible Utility disputes an CAISO Invoice or part thereof that relates to an

RMR Invoice or Final Invoice submitted by Owner to CAISO under this Agreement, and if such dispute is based in whole or part on an alleged error or breach or default of Owner's obligations to CAISO under this Agreement, then CAISO promptly shall give written notice to Owner of the reasons for the dispute and the amount in dispute. CAISO shall pay Owner the disputed amount without offset, recoupment or reduction of any kind or nature. Such payment may, however, be made by CAISO under protest with reservation of the right to seek a refund with interest at the Interest Rate from the date of the disputed payment to the date of repayment. If CAISO notifies Owner that CAISO or the Responsible Utility disputes any amount of Owner's RMR Invoice or Final Invoice, Owner shall at its own cost provide CAISO with all information and assistance CAISO reasonably requires to resolve the dispute and shall join with CAISO in any discussions and negotiations with the Responsible Utility to resolve the dispute. The dispute shall be subject to ADR provided that in such ADR proceeding only one entity (CAISO or Responsible Utility) will be the disputing party with respect to such claim. Owner shall be obligated to refund to CAISO as a result of resolution of such dispute only if, and to the extent, the resolution determines the amount invoiced by Owner exceeded the amounts due Owner under this Agreement for the period covered by the RMR Invoice(s) and/or Final Invoice. Any amount agreed or determined to be owed by Owner to CAISO under this Section 9.6 (a) shall be refunded by Owner to CAISO with interest, by Owner's inclusion of such refund (including interest) in a Prior Period Change Worksheet included with the next appropriate May or December Estimated RMR Invoice as specified in Sections 9.1(g) through 9.1(l) of this Agreement. If Owner does not include such refund (including interest) in the appropriate RMR Invoice, then such refund shall be made by CAISO's deduction of such amount from the next Revised Estimated and Revised Adjusted RMR Invoice(s) and Final Invoice submitted by Owner to CAISO under this Agreement until such amount is extinguished, or, if this Agreement has terminated, by paying such amount to CAISO. Interest shall be at the Interest Rate unless it is determined through ADR that the amount invoiced by Owner was submitted without a good faith basis in fact or law, in which case interest shall be at twice the Interest Rate.

(b) It is expressly understood that the Responsible Utility shall, to the extent set forth herein, be a third party beneficiary of, and shall have all rights that CAISO has under this Agreement, at law, in equity and otherwise, to dispute an RMR Invoice or Final Invoice submitted to CAISO by Owner under this Agreement and to enforce Owner's obligation to make any required payment to CAISO under this Agreement to the extent CAISO does not make a related deposit into the Responsible Utility Facility Trust Account as a result of Owner's failure to make the required payment. The rights of the Responsible Utility as third party beneficiary shall be no greater than CAISO's rights against Owner and shall be subject to the ADR provisions of this Agreement. Either CAISO or the Responsible Utility, but not both, will be entitled to enforce any claim arising from a related set of facts, and only one such entity will be a disputing party under Article 11 of this Agreement with respect to any such claim so that Owner shall not be subject to duplicate claims or recoveries. If the Responsible Utility is not the Owner, the Responsible Utility shall control the disposition of all claims against Owner for non-payment described in this Section 9.6, including the choice of disputing party. The CAISO shall have the right to intervene for the purpose of participating in the proceeding even if it is not the disputing party. CAISO shall cooperate with the Responsible Utility in a timely manner as necessary or appropriate to most fully effectuate the Responsible Utility rights related to such enforcement, including using its best efforts to enforce Owner's payment obligations if, as, to the extent, and within the time frame, requested by Responsible Utility. Subject to the foregoing, CAISO shall intervene and participate where procedurally necessary to the assertion of a claim by the Responsible Utility.

## **9.7 Payment Security**

To secure all of CAISO's payment obligations to Owner under this Agreement, CAISO agrees to grant Owner a security interest and lien in the following collateral (collectively, the "Collateral"): (a) all past, present and future accounts and other amounts

Responsible Utility owes CAISO at any time pursuant to Section 41 of the CAISO Tariff attributable to invoices submitted by Owner under this Agreement (collectively, the "Accounts"), (b) the RMR Owner Facility Trust Account, all funds in the RMR Owner Facility Trust Account at any time, and all funds paid on account of any Accounts, (c) all proceeds of the Collateral, if any, and (d) all of CAISO's right, title and interest in the Collateral. CAISO represents and warrants to Owner that (a) CAISO has the authority to grant such security interest, (b) CAISO will have good, marketable and exclusive title to all of the Collateral, (c) such security interest and lien will at all times be a valid, enforceable and first-priority lien on the Collateral, and (d) such security interest will be duly perfected by the filing of a financing statement under the California Uniform Commercial Code describing the Collateral in the office of the Secretary of State of California and the delivery of a written notice of Owner's security interest to the bank with which the RMR Owner Facility Trust Account is maintained. If CAISO defaults on its obligation to pay under this Agreement, Owner shall be entitled to enforce such security interest, to exercise its rights in the Collateral, to collect the Accounts from Responsible Utility, to collect all funds in the RMR Owner Facility Trust Account, and to exercise all other rights and remedies under the California Uniform Commercial Code. CAISO agrees to promptly execute and deliver all financing statements and other documents Owner reasonably requests, including but not limited to a written notice of Owner's security interest in the Collateral to the bank with which the RMR Owner Facility Trust Account is maintained, in order to maintain, perfect and enforce such security interest.

#### **9.8 Errors**

If a Party discovers an error in the amount of an invoice or payment under this Agreement and notifies the other Party within 60 days after discovering the error, the error shall be corrected as specified in Sections 9.1(g) through 9.1(l) of this Agreement; provided that a Party shall not be entitled to have an error corrected unless the Party notifies the other Party within 12 months after the date of the applicable Revised Adjusted RMR Invoice or Final Invoice, or within 60 days after issuance of the final report with respect to an audit pursuant to Section 12.2(g), whichever is later.

#### **9.9 Payment of Termination Fee**

- (a) Within 14 days after the end of each Month during the period in which any Termination Fee is payable under Section 2.5, Owner shall submit an invoice ("Termination Fee Invoice") to CAISO and a copy to the Responsible Utility for all Termination Fee amounts due for the Month. Each Termination Fee Invoice shall: (i) be broken down by Unit and (ii) clearly identify the source of each input used.
- (b) CAISO shall pay Owner amounts invoiced under this Section 9.9 in accordance with Sections 9.3 through 9.8. If CAISO or, if applicable, the Responsible Utility, has disputed the amount of a Termination Fee stated in a Termination Fee Invoice, then neither CAISO nor the Responsible Utility shall be required to give notice of the same disputed amount as to subsequent Termination Fee Invoices.

#### **9.10 Payment of Final Invoice**

- (a) Within 7 days of receipt by Owner of the Recalculation Settlement Statement for market transactions for the effective date of termination of this Agreement, Owner shall submit an invoice ("Final Invoice") to CAISO and a copy to the Responsible Utility for all charges and other amounts then due under this Agreement. Amounts then due shall include: (i) charges for all Billable MWh and Ancillary Services provided under this Agreement and not previously invoiced; (ii) the Long-term Planned Outage Adjustment under Section 8.6, and (iii) refunds described in section 9.1(f) for Condition 2 Units. Calculation of the Long-term Planned Outage Adjustment shall be made by deeming the effective date of termination to be the end of the Contract Year, and by assuming that all Long-term Planned Outages scheduled to occur after the termination date occur as scheduled. The Final Invoice shall not include remaining Monthly payments of a Termination Fee under Section 2.5, which shall continue to be paid monthly until the obligation is extinguished.

- (b) CAISO shall pay Owner the amount stated in the Final Invoice in accordance with Section 9.3 through 9.8.

## **ARTICLE 10** **FORCE MAJEURE EVENTS**

### **10.1 Notice of Force Majeure Events**

If either Party is unable to perform its obligations under this Agreement due to a Force Majeure Event, the Party unable to perform shall notify the other Party of the Force Majeure Event promptly after the occurrence thereof. The Party's notice may be given orally but shall promptly be confirmed in writing or electronically.

### **10.2 Effect of Force Majeure Event**

- (a) If a Force Majeure Event prevents a Party from performing, in whole or in part, its obligations under this Agreement, such Party's obligations, other than obligations to pay money (unless the means of transferring funds is affected), shall be suspended and such Party shall have no liability with respect to such obligations; provided, that the suspension of the Party's obligations is of no greater scope and of no longer duration than is required by the Force Majeure Event.
- (b) If a Force Majeure Event (other than a flood, storm or drought affecting a hydroelectric Unit) reduces the Availability of a Unit, the Availability shall be determined as if the Unit were available up to the Unit Availability Limit in effect prior to the Force Majeure Event through the earlier of the 120th day following the Force Majeure Event or until the Unit's Availability is restored, whichever occurs first. If a flood or storm Force Majeure Event reduces the Availability of a hydroelectric Unit, the Availability shall be determined as if the Unit were available up to its Unit Availability Limit in effect prior to the Force Majeure Event through the earlier of the 120th day following the Force Majeure Event or until the Unit's Availability is restored, and as if the Unit were available up to one-half of such Unit Availability Limit from the 120th day through the earlier of the 240th day or the date on which the Unit's Availability is restored. If a drought Force Majeure Event reduces the Availability of a hydroelectric Unit, the Availability shall be determined as if the Unit were available up to its Unit Availability Limit in effect prior to the Force Majeure Event until the Unit's Availability is restored following the end of the drought Force Majeure Event.

### **10.3 Remedial Efforts**

The Party that is unable to perform by reason of a Force Majeure Event shall use commercially reasonable efforts to remedy its inability to perform and to mitigate the consequences of the Force Majeure Event as soon as reasonably practicable; provided, that no Party shall be required to obtain replacement power or to settle any strike or other labor dispute on terms which, in the Party's sole discretion, are contrary to its interest and, except to the extent that the Unit's primary fuel is distillate fuel oil or Schedule H expressly requires Owner to maintain fuel oil capability for the Unit, Owner shall not be required to obtain or use fuel oil to operate a Unit. The Party unable to perform shall advise the other Party of its efforts to remedy its inability to perform and to mitigate the consequences of the Force Majeure Event, and shall advise the other Party of when it believes it will be able to resume performance of its obligations under this Agreement.

## **ARTICLE 11** **REMEDIES**

### **11.1 Dispute Resolution**

The Parties shall make reasonable efforts to settle all disputes arising out of or in connection with this Agreement. Unless this Agreement expressly provides that a particular type of dispute is not subject to ADR, the Parties shall use ADR procedures to resolve all disputes which are not otherwise settled. Owner and CAISO will promptly join with all other owners of Reliability Must-Run Units and all Responsible Utilities to jointly develop ADR procedures to be used in connection with such disputes. Following unanimous agreement of Owner, CAISO and



Responsible Utilities to the ADR procedures, such procedures shall be posted on CAISO Website. Until there is unanimous agreement on such procedures, the Parties shall use the ADR procedures contained in Schedule K.

## **11.2 Waiver of Damages**

- (a) Except for the obligations set forth in Section 11.4 (Termination for Default) and Section 12.6 (Indemnity), neither Party shall be liable to the other Party for any claim, loss or damage of any nature arising out of or relating to the performance or breach of this Agreement including replacement power costs, loss of revenue, loss of anticipated profits or loss of use of, or damage to, plant or other property, personal injury, or death; provided, however, that this waiver of liability shall not include or cover any claim, damage or loss arising out of the willful misconduct of either Party. Amounts that are specifically payable or reimbursable by the other Party under the terms of this Agreement shall not be considered "claims, losses or damages" for purposes of this Section.
- (b) Neither Party shall be liable to the other for any special, indirect, incidental or consequential damages suffered by the other Party or by third parties arising out of, or relating to, this Agreement or the performance of, or breach of any obligation under, this Agreement, or the negligence of any Party. This limitation shall apply even if the Party is advised of the possibility of these damages.
- (c) Except for the obligations to make or adjust payments or pay penalties expressly provided in Section 2.5 (Termination Fee), Section 7.4 (Planned Capital Items), Section 7.5 (Unplanned Repairs), Section 7.6 (Unplanned Capital Items), Section 7.8 (Upgrades of Generating Units), Article 8 (Rates and Charges) and Article 9 (Statements and Payments), of this Agreement, either Party's maximum aggregate liability for any and all claims arising out of or relating to performance or breach of this Agreement during the Contract Year, whether based upon contract, tort (regardless of degree of fault or negligence), strict liability, warranty, or otherwise, including any liability for Owner's failure to Deliver Requested MWh or Requested Ancillary Services shall not exceed \$20 million.

## **11.3 Injunctive Relief**

In addition to any other remedy to which a Party may be entitled by reason of the other Party's breach of this Agreement, the Party not in default shall be entitled to seek temporary, preliminary and permanent injunctive relief from any court of competent jurisdiction restraining the other Party from committing or continuing any breach of this Agreement.

## **11.4 Termination For Default**

- (a) If either Party shall fail to perform any material obligation imposed on it by this Agreement and that obligation has not been suspended pursuant to Section 10, the other Party, at its option, may terminate this Agreement by giving the Party in default notice setting out specifically the circumstances constituting the default and declaring its intention to terminate this Agreement. If the Party receiving the notice disputes the notice, it shall notify the other Party within 14 days after receipt of the notice setting out specifically the grounds of such disputes. Time is of the essence in remedying a default. If the Party receiving the notice does not, within 30 days after receiving the notice, remedy the default or refer the dispute to ADR, the Party not in default shall be entitled by a further notice to terminate this Agreement. The Party not in default shall have a duty to mitigate damages.
- (b) Termination of this Agreement pursuant to this Section 11.4 shall be without prejudice to the right of Owner or CAISO to collect any amounts due to it prior to the time of termination. If CAISO terminates this Agreement as to any Unit(s) due to Owner's default, Owner shall reimburse to CAISO the amount, if any, by which costs incurred by CAISO as a direct result of the termination through the end of the then current Contract Year exceed the costs which CAISO would have incurred absent such termination.

### **11.5 Cumulative and Nonexclusive**

Except as provided in Section 5.4(b), each remedy provided for in this Agreement shall be cumulative and not exclusive.

### **11.6 Beneficiaries**

Except as is specifically set forth in this Agreement, nothing in this Agreement, whether express or implied, confers any rights or remedies under, or by reason of, this Agreement on any persons other than the Parties and their respective successors and assigns, nor is anything in this Agreement intended to relieve or discharge the obligations or liability of any third party, nor give any third person any rights of subrogation or action against any Party. The owner of title to a Unit that is leased to Owner is an intended beneficiary of Section 2.2(e).

## **ARTICLE 12 COVENANTS OF THE PARTIES**

### **12.1 Insurance**

- (a) The CAISO shall maintain (i) an errors and omissions insurance policy and (ii) director and officer insurance, with combined aggregate coverage of at least \$150 million under the two policies and an operating reserve of at least \$15 million. The CAISO may reduce the level of insurance coverage, but may not do so unless it provides Owner at least 90 days notice of its intent to reduce the insurance coverage. At Owner's request, CAISO shall provide Owner with evidence of the insurance coverage it has in place. This Section 12.1 shall not be construed to require CAISO to maintain any level of coverage for any period after termination of the Agreement.
- (b) Owner and CAISO will secure and maintain in effect during the term of this Agreement the insurance required by Schedule I. Self-insurance may be utilized by mutual agreement. Owner shall name CAISO as an additional insured on its general commercial liability insurance policies. CAISO shall name Owner as an additional insured on its errors and omissions insurance policies. Owner and CAISO will each certify or cause its respective insurance agent to certify that it is insured under a major risk management program, including self-insured retentions, and except for policies covered by Section 12.1 (a), such insurance will remain in effect in amounts meeting the requirements of Schedule I.

### **12.2 Books And Records**

- (a) For a period of 36 months from creation of the records, Owner shall maintain and make available for audit by CAISO complete operations records for each Unit. Such records shall include:
- (i) information for each Settlement Period on the Availability of the Units, Delivered MWh and Delivered Ancillary Services,
  - (ii) outages,
  - (iii) Facility licenses and permits,
  - (iv) copies of operating and maintenance agreements for the Unit,
  - (v) a list of citations filed against the Unit by any environmental, air quality, health and safety, or other regulatory agency in the last 36 months,
  - (vi) a list of any resolved and unresolved WSCC log items from the last 36 months pertaining to the Unit,
  - (vii) maintenance, overhauls and inspections performed, and
  - (viii) books, accounts and all documents required to support Owner's statements, invoices, charges and computations made pursuant to this Agreement.
- CAISO may audit Owner's books, accounts and documents relating to invoices, statements, charges and computations no more frequently than once each Contract Year, and only one time following expiration or termination of this Agreement.
- (b) The Responsible Utility shall have the right to participate jointly with CAISO in auditing books, accounts, documents and operating records of the Facilities to the extent required

to verify the accuracy and correctness of all Owner's statements, invoices, and computations underlying all Owner charges passed through by CAISO to the Responsible Utility in connection with services rendered by Owner under this Agreement.

- (c) For a period of 36 months from the creation of the records, CAISO shall maintain and make available for audit by Owner all operations records required to permit Owner to verify that CAISO has complied with its obligations to Owner under this Agreement.
- (d) In addition to the audit rights under Section 12.2 (a) and (b), if Owner's rates are determined pursuant to the formula contained in Schedule F, representatives of CAISO and the Responsible Utility shall have the right jointly to audit the records, accounts and supporting documents of Owner to verify (i) the accuracy of any arithmetic calculation and (ii) application of the formula.
- (e) If Owner's rates are determined pursuant to the formula contained in Schedule F, the California Agency shall have the right to audit the records, accounts and supporting documents of Owner or CAISO to verify the accuracy of any arithmetic calculation and application of the formula, including the accuracy of allocation to accounts under the FERC Uniform System of Accounts, 18 C.F.R. Part 101. If there is more than one California Agency, only one audit shall be conducted by the California Agencies and such audit shall be binding on all the California Agencies.
- (f) Any entity exercising its right to audit under this Section 12.2 shall give the audited entity not less than 30 days prior written notice of the audit. Books or records requested in any audit shall be available for inspection by the auditing entity at the offices of the entity being audited between 9:00 A.M. and 5:00 P.M. on Business Days. Any audit under this Section 12.2 shall be completed not more than 36 months after the records were created. Any audit right herein shall be limited to the books and accounts of Owner or CAISO and shall not extend to the books and accounts of the parent or any other affiliate of Owner or CAISO. The expense of any audit shall be borne solely by the auditing Party or entity.
- (g) No adjustments to payments shall be required as a result of an audit unless, and then only to the extent that, CAISO, Owner, or another entity making such an audit under this Section 12.2 takes written exception to the books and accounts and makes a claim upon Owner or CAISO for any discrepancies disclosed by such audit within 60 days following issuance of the final audit report.
- (h) All information provided during the course of an audit shall be treated as Confidential Information in accordance with Section 12.5.
- (i) Nothing in this Agreement shall override any obligation Owner or CAISO may have under applicable law to maintain books and records for periods longer than 36 months nor shall this Agreement override any obligation Owner or CAISO may have to make books and records available for audit by FERC or any other entity. Nothing in this Agreement is intended to limit in any manner (i) the authority of FERC to audit the books and records of Owner or CAISO or the manner in which such audit is noticed or conducted or (ii) CAISO's right to audit market participants (including Owner) under the CAISO Tariff.

### **12.3 Representations And Warranties**

- (a) CAISO represents and warrants to Owner as follows:
  - (i) CAISO is a validly existing corporation with full authority to enter into this Agreement.
  - (ii) CAISO has taken all necessary measures to have the execution and delivery of this Agreement authorized, and upon the execution and delivery of this Agreement shall be a legally binding obligation of CAISO.
- (b) Owner represents and warrants to CAISO as follows:
  - (i) Owner is a validly existing [limited liability company][corporation] [municipal corporation] with full authority to enter into this Agreement.
  - (ii) Owner has taken all necessary measures to have the execution and delivery of this Agreement authorized, and upon the execution and delivery this Agreement shall be a legally binding obligation of Owner.

## **12.4 Responsibilities**

Each Party shall be responsible for protecting its facilities from possible damage by reason of electrical disturbances or faults caused by the operation, faulty operation, or non-operation of the other Party's facilities. The other Party shall not be liable for any damages so caused.

## **12.5 Confidentiality**

- (a) Except as may otherwise be required by applicable law, all information and data provided by the Parties to one another pursuant to this Agreement and marked "Confidential" or otherwise identified with specificity in writing as confidential at the time of disclosure ("Confidential Information") shall be treated as confidential and proprietary material of the providing Party and will be kept confidential by the receiving Party and used solely for purposes of this Agreement. Confidential Information will not include information that is or becomes available to the public through no breach of this Agreement, information that was previously known by the receiving Party without any obligation to hold it in confidence, information that the receiving Party receives from a third party who may disclose that information without breach of law or agreement, information that the receiving Party develops independently without using the Confidential Information, and information that the disclosing Party approves for release in writing. The receiving Party shall keep such information confidential and shall limit the disclosure of any such Confidential Information to only those personnel within its organization with responsibility for using such information in connection with this Agreement. The receiving Party shall assure that personnel within its organization read and comply with the provisions of this Section 12.5 and any Confidentiality Agreement implementing this Section 12.5. The Parties shall use all reasonable efforts to maintain the confidentiality of the Confidential Information in any litigation, shall promptly notify the providing Party of any attempt by a third party to obtain the Confidential Information through legal process or otherwise. A Party or third party beneficiary under Article 9 which has received Confidential Information may use that information in litigation or regulatory proceedings related to this Agreement but only after notice to the other Party and affording the other Party an opportunity to obtain a protective order or other relief to prevent or limit disclosure of the Confidential Information.
- (b) The Parties may provide any Confidential Information (i) to the Responsible Utility pursuant to provisions of this Agreement under which information is to be provided to that Responsible Utility and as required for settlement and billing; (ii) to any entity with audit rights under Section 12.2 or review rights specified in other provisions of this Agreement, (iii) on a need-to-know basis, to Owner's Scheduling Coordinator, financial institutions, agents, lessors of the Unit and potential purchasers of interests in a Unit; and, (iv) as required for settlement and billing, to Scheduling Coordinators responsible for paying for services provided under this Agreement. As a condition to receiving any Confidential Information under this Section 12.5, the recipient shall execute a Confidentiality Agreement in the applicable form contained in Schedule N and thereby agree to be subject to the non-disclosure and other obligations contained in this Section 12.5.
- (c) The obligation to provide confidential treatment to Confidential Information shall not be affected by the inadvertent disclosure of Confidential Information by either Party.

## **12.6 Indemnity**

Subject to the limitations in Section 11.2 (b), each Party shall indemnify, defend and hold harmless the other Party and its officers, directors, employees, agents, contractors and sub-contractors, from and against all third party claims, judgments, losses, liabilities, costs, expenses (including reasonable attorneys' fees) and damages for personal injury, death or property damage, caused by the negligence or willful misconduct related to this Agreement or breach of this Agreement of the indemnifying Party, its officers, directors, agents, employees, contractors or sub-contractors, provided that this indemnification shall be only to the extent such personal injury, death or property damage is not attributable to the negligence or willful misconduct related to this Agreement or breach of this Agreement of the Party seeking indemnification, its officers,

directors, agents, employees, contractors or sub-contractors. This indemnification shall not include or cover any claim covered by any workers' compensation law. This indemnification shall be for an amount not exceeding the deductible of the indemnifying Party's commercial general liability insurance in the case of Owner and errors and omission insurance in the case of CAISO. The indemnified Party shall give the other Party prompt notice of any such claim. The indemnifying Party shall have the right to choose competent counsel, control the conduct of any litigation or other proceeding, and settle any claim. The indemnified Party shall provide all documents and assistance reasonably requested by the indemnifying Party. Section 14 of the CAISO Tariff shall not apply to this Agreement.

## **12.7 Owner Financial Requirements**

- (a) Through the term of the Agreement, Owner shall maintain an investment grade rating by Moody's or Standard and Poor's or provide documentation from a financial institution or corporate owner acceptable to the CAISO that there is an equity position described below. The CAISO shall not unreasonably withhold acceptance of the documentation.
- (i) An equity to debt ratio of at least 30%, or
  - (ii) An equity to total asset ratio of at least 30% or
  - (iii) Demonstrate to the CAISO's reasonable satisfaction that other factors, including, without limitations, commercial financing arrangements, and working capital positions, mitigate the risk of Owner failing to meet the performance requirements under this Agreement.
- (b) If the Owner does not possess and maintain an investment grade rating, an equity position or make other arrangements as described in Section 12.7 (a), then it must provide one of the following:
- (i) Proof of insurance to cover the financial exposure to the CAISO for one year of Capital Items, Repairs, fuel and any other operating expenses; or
  - (ii) Security to cover the financial exposure to the CAISO for one year of Capital Items, Repairs, fuel and any other operating expenses in one of the following forms:
    - (A) standby letter of credit;
    - (B) corporate guarantee;
    - (C) cash deposit; or
    - (D) security bond.

## **ARTICLE 13 ASSIGNMENT**

### **13.1 Assignment Rights and Procedures**

Neither Party shall assign its rights or delegate its duties under this Agreement without the prior written consent of the other Party, which shall not be unreasonably withheld. CAISO shall be entitled to deny consent to a proposed assignment by Owner only if the assignee does not meet the financial criteria set out in Section 13.2 (a) or the technical criteria set out in Section 13.2 (b). Notwithstanding the foregoing, if FERC approves an assignment, then the non-assigning Party shall be deemed to have consented to the assignment, subject to the non-assigning Party's right to seek judicial review of a FERC decision. Each Party shall give the other Party prompt notice of any proposed assignment or delegation, together with such information as the other Party may reasonably request with respect to the proposed assignment or assignee. Each Party shall be deemed to consent to the assignment or delegation unless it submits a written objection to the assignment or delegation within 14 days of receiving the notice and all financial and technical information as required in Sections 13.2(a) and 13.2(b). In the event of an assignment of this Agreement pursuant to a Financing Agreement, CAISO will execute for the benefit of the bank, financial institution or other entity with an interest in the Financing Agreement, a consent to such assignment reasonably acceptable to CAISO and Owner. An assignment of this Agreement by Owner in connection with the sale of a Unit shall terminate Owner's rights and obligations under this Agreement prospectively from the effective date of the assignment.

### **13.2 Limitation on Right to Withhold Consent**

- (a) CAISO shall not withhold consent to assignment of this Agreement on financial grounds if the assignee meets the financial requirements in Section 12.7(a) or provides financial security pursuant to Section 12.7(b).
- (b) CAISO shall not withhold consent to an assignment on grounds that the assignee is not technically qualified if the assignee was an Owner of a Reliability Must-Run Unit as of May 1, 1999 or the assignee submits appropriate documentation to the CAISO to establish that it has sufficient resources and expertise to be able to:
  - (i) Secure the necessary fuel and transportation for the fuel for the Facility;
  - (ii) Secure all necessary support services, including water supply, communications, waste disposal, etc. for the Facility;
  - (iii) Provide service from the Facility in compliance with the terms of this Agreement;
  - (iv) Provide the engineering and other technical services required to support operation and maintenance of the Facility;
  - (v) Obtain as necessary, and comply with all permits or licenses required to operate or maintain the Facility; and
  - (vi) Provide environmental services required for the operation and maintenance of the Facility.
- (c) The proposed assignee shall provide the last two years' annual audited financial statements and quarterly financial statements (unaudited) prior to the proposed date of purchase. If the proposed assignee is a new company and there are no historical financial statements, then a financial institution or corporate owner must provide pro forma financial statements in a form acceptable to the CAISO.

### **13.3 Transfer of Conditions Following Assignment**

If this Agreement is assigned to a new Owner pursuant to Section 13.1, the new Owner may transfer one or more Units to a different Condition by giving CAISO at least seven days prior notice provided that such notice is given not later than 30 days after the effective date of the assignment. The transfer shall become effective on the first day of month following the later of (i) seven days after the effective date of the assignment or (ii) seven days after the date CAISO receives the new Owner's transfer notice. This section shall not apply to assignment to a new Owner which is an affiliate of Owner as defined in 18 C.F.R. Section 161.2.

## **ARTICLE 14 MISCELLANEOUS PROVISIONS**

### **14.1 Notices**

Except as otherwise expressly provided in this Agreement or required by law, all notices, consents, requests, demands, approvals, authorizations and other communications provided for in this Agreement shall be in writing and shall be sent by personal delivery, certified mail, return receipt requested, facsimile transmission or by recognized overnight courier service, to the intended Party at such Party's address set forth in Schedule J. Any notices which may be given orally and are given orally shall be confirmed in writing. All such notices shall be deemed to have been duly given and to have become effective: (a) upon receipt if delivered in person or by facsimile; (b) two days after having been delivered to an air courier for overnight delivery; or (c) seven days after having been deposited in the United States mail as certified or registered mail, return receipt requested, all fees pre-paid, addressed to the applicable address(es) set forth in Schedule J.

### **14.2 Effect of Invalidation**

Each covenant, condition, restriction and other term of this Agreement is intended to be, and shall be construed as, independent and severable from each other covenant, condition, restriction and other term. If any covenant, condition, restriction or other term of this Agreement is held to be invalid by any court or regulatory body having jurisdiction, the invalidity of such covenant, condition, restriction or other term shall not affect the validity of the remaining covenants,

conditions, restrictions or other terms hereof unless the invalidity has a material impact upon the rights and obligations of the Parties. If an invalidity has a material impact on the rights and obligations of the Parties, the Parties shall make a good faith effort to renegotiate and restore the benefits and burdens of this Agreement as they existed prior to the determination of an invalidity.

### **14.3 Amendments**

- (a) Any amendments or modifications of this Agreement shall be made only in writing and, except for changes authorized by the FERC under Sections 205 or 206 of the Federal Power Act, shall be duly executed by both Parties. To the extent that any amendments or modifications are subject to FERC approval, such amendments or modifications shall become effective when permitted to be effective by FERC. For purposes of this Agreement, transfer of any Unit from one condition to the other condition or termination of the Agreement as to less than all Units shall not constitute a modification or amendment to this Agreement.
- (b) Where Owner's rates are not subject to FERC jurisdiction, either CAISO or Owner may, not later than 90 days prior to the end of each Contract Year, serve a notice on the other Party and the Responsible Utility stating that it requires a review of the terms of this Agreement, including any rates, prices and charges contained therein ("Review Notice").
  - (i) The Review Notice shall, as a minimum requirement, set forth the following:
    - (A) the precise nature of the proposed revisions (indicating, where possible, the relevant Article, Section and Schedule); and
    - (B) justification for each proposed revision.
  - (ii) The Party in receipt of the Review Notice shall respond to such notice within 30 days of its receipt by issuing a notice in response ("Response Notice"). The Response Notice shall, as a minimum requirement, set forth the following:
    - (A) those revisions set forth in the Review Notice that are accepted as proposed;
    - (B) those revisions set out in the Review Notice that are not accepted;
    - (C) alternative proposals (if any) to the proposed revisions set out in the Review Notice;
    - (D) any revisions required by the responding party not covered by (A) through (C) above; and
    - (E) its justification for any of the matters raised under Sections 14.3 (b) (ii) (B) (C) or (D).
  - (iii) Any Party failing to respond to a Review Notice shall be deemed to have accepted the revisions set out in the Review Notice.
  - (iv) Following receipt of the Response Notice the duly authorized representatives of the Parties shall meet to negotiate in good faith any revisions to this Agreement.
  - (v) In the event that the Parties are unable to reach agreement on the revisions to be made to this Agreement within 60 days of the date of the Review Notice, either Party may refer the matter for resolution through ADR. The arbitrator shall determine the revisions, if any, to the Agreement on the basis that:
    - (A) the purpose of the Agreement is to maintain the reliability of CAISO Controlled Grid; and
    - (B) costs and charges payable by CAISO should reflect the costs of providing services to the CAISO.
  - (vi) In the event that the Parties agree to the revisions, or such matters are determined through ADR, or a Party fails to respond to a Review Notice, the agreed, determined or deemed accepted revisions shall take effect and the rights and obligations of the Parties shall be amended as from the beginning of the ensuing Contract Year or from such other date and time agreed between the Parties or determined through ADR, and following such time the Parties shall act in accordance with the terms and conditions of this Agreement as amended.

#### **14.4 Filings Under Sections 205 or 206 of the Federal Power Act**

Nothing contained in this Agreement shall be construed as affecting the right of Owner unilaterally to make application to FERC for a change in rates, terms and conditions under Section 205 of the Federal Power Act and pursuant to FERC rules and regulations promulgated thereunder. CAISO may challenge such application or may submit complaints concerning Owner's rates, terms and conditions under Section 206 of the Federal Power Act and pursuant to FERC rules and regulations promulgated thereunder.

#### **14.5 Construction**

The language in all parts of this Agreement shall in all cases be construed as a whole and in accordance with its fair meaning, and shall not be construed strictly for or against either of the Parties.

#### **14.6 Governing Law**

This Agreement shall be interpreted and construed under and pursuant to the laws of the State of California, without regard to conflicts of laws principles.

#### **14.7 Parties' Representatives**

Both Parties shall ensure that throughout the term of this Agreement, a duly appointed Representative is available for communications between the Parties. The Representatives shall have full authority to deal with all day-to-day matters arising under this Agreement. If a Party's Representative becomes unavailable, the Party shall promptly appoint another Representative. Acts and omissions of Representatives shall be deemed to be acts and omissions of the Party. Owner and CAISO shall be entitled to assume that the Representative of the other Party is at all times acting within the limits of the authority given by the Representative's Party. Owner's Representatives and CAISO's Representatives shall be identified on Schedule J.

#### **14.8 Merger**

This Agreement and the Stipulation and Agreements filed April 2, 1999 and August 14, 2000 in Docket Nos. ER98-441-000 et al. constitute the full agreement of the Parties with respect to the subject matter hereto and supersede all prior agreements, whether written or oral, with respect to such subject matter.

#### **14.9 Independent Contractors**

Nothing contained in this Agreement shall create any joint venture, partnership or principal/agent relationship between the Parties. Neither Party shall have any right, power or authority to enter into any agreement or commitment, act on behalf of, or otherwise bind the other Party in any way.

#### **14.10 Conflict with CAISO Tariff**

The CAISO Tariff shall govern matters relating to the subject matter of this Agreement which are not set forth in this Agreement. In all other circumstances, this Agreement shall govern. In the event of a conflict between the terms and conditions of this Agreement and any terms and conditions set forth in the CAISO Tariff the terms and conditions of this Agreement shall prevail.

#### **14.11 Waiver**

The failure to exercise any remedy or to enforce any right provided in this Agreement shall not constitute a waiver of such remedy or right or of any other remedy or right provided herein. A Party shall be considered to have waived any remedies or rights hereunder only if such waiver is in writing.

#### **14.12 Assistance**

During the term of this Agreement, each Party shall provide such reasonable assistance and cooperation as the other Party may require in connection with performance of the duties and obligations of each Party under this Agreement, including, but not limited to, assistance in securing any necessary regulatory approvals and in facilitating necessary financing.



**14.13 Headings**

Article and section headings used in this Agreement are inserted for convenience only and are not intended to be a part hereof or in any way to define, limit, describe or to otherwise be used in interpreting the scope and intent of the particular provisions to which they refer.

IN WITNESS WHEREOF, this Agreement has been executed as of the date first above written.

[OWNER]

By: \_\_\_\_\_

Name:

Title:

The California Independent System Operator Corporation

By: \_\_\_\_\_

Name:

Title:

**FERC**  
**RELIABILITY MUST-RUN SCHEDULES**

Schedule A Unit Characteristics, Limitations and Owner Commitments

Schedule B Monthly Option Payment

Schedule C Variable Cost Payment

Part 1 for Thermal Units  
Part 2 for Geothermal Units  
Part 3 for Conventional Hydro Units  
Part 4 for Pumped Storage Hydro Units  
Part 5 for Biomass Generation Units

Schedule D Start-up Payment

Part 1 for Condition 1 Units  
Part 2 for Condition 2 Units

Schedule E Ancillary Services Payment

Part 1 for Condition 1  
Part 2 for Condition 2  
Part 3 for Black Start Services

Schedule F Determination of Annual Revenue Requirements of Must-Run Generating Units

Schedule G Charges for Service in Excess of Contract Service Limits

Schedule H Fuel Oil Service

Schedule I Insurance Requirements

Schedule J Notices

Schedule K Dispute Resolution

Schedule L-1 Request for Approval of Capital Items or Repairs

Schedule L-2 Capital Item and Repair Progress Reports

Schedule M Mandatory Market Bid for Condition 2 Units  
When Dispatched by the CAISO

Schedule N-1 Non-Disclosure and Confidentiality Agreement for Responsible Utilities

Schedule N-2 Non-Disclosure and Confidentiality Agreement for Entities Other than Responsible  
Utilities

Schedule O Owner's Invoice Process

Schedule P Reserved Energy for Air Emissions Limitations

## **Schedule A**

### **Unit Characteristics, Limitations and Owner Commitments**

#### **1. Description of Facility**

Provide the following information for all units at the Facility, regardless of their RMR designation status. Information regarding units not designated as Reliability Must-Run Units is required only if and to the extent that the information is used to allocate Facility costs between Reliability Must-Run Units and other units.

<u>Unit</u>	<u>RMR (Y/N)</u>	<u>Maximum Net Dependable Capacity (includes CAISO-paid Upgrade capacity)*</u>	<u>Fuel Type</u>

For this Facility, the Owner will use [insert either MW, MWhs, or service hours] in Schedule B to allocate Annual Fixed Revenue Requirements to and among Units. This election shall be applicable to all Facilities containing Reliability Must Run Units subject to any "RMR contract" as defined in the CAISO Tariff executed by Owner or any of its affiliates as defined in 18 CFR § 161.2.

\* Maximum Net Dependable Capacity shall reflect any transformer or line loss to the Delivery Point.

**2. Description of RMR Units**

Provide the address(es) of the Units at the Facility and the following tabular information:

	<u>Unit</u>
<u>Type (fossil, combustion turbine, etc.)</u>	
<u>Synchronous Condenser Capability (Y/N)</u>	
<u>Power Factor Range (lead to lag)</u>	
<u>Maximum Reactive Power Leading, MVar</u>	
<u>Maximum Reactive Power Lagging, MVar</u>	
<u>Load at Maximum MVar Lagging, MW</u>	
<u>Load at Maximum MVar Leading, MW</u>	
<u>Black Start Capable (Y/N)</u>	
<u>Automatic Start or Ramp (Y/N)*</u>	
<u>Upgrade Capacity Paid by CAISO, MW</u>	

\* If "Y", describe the conditions under which the Unit will start or ramp automatically.

**3. Operational and Regulatory Limitations of RMR Units:**

Air Emissions Limitations

List applicable NO<sub>x</sub>, CO, SO<sub>2</sub>, particulate, and other appropriate emissions limits; note the name and address of the lead agency; the agency's applicable rule number(s); and note those pollutants for which an emissions cap applies.

**Monthly Reserved MWh for Air Emission Limitations**

Operating Limits related to Ambient Temperatures

Ambient Temperature Correction Factors for Availability Test

Provide a curve or table showing the Ambient Temperature Correction Factors for each Unit (the relationship between Ambient Temperature and Maximum Net Dependable Capability).  
FERC License Conditions (hydroelectric Units)

Other Limits (e.g., cooling water discharge)

**4. Delivery Point**

<u>Unit</u>	<u>Transmission Node (Station Name)</u>	<u>Voltage</u>

**5. Metering and Related Arrangements**

<u>Unit</u>	<u>Meter Location</u>	<u>Meter (Manufacturer &amp; Model No.)</u>

**6. Start-up Lead Times**

Non-hydroelectric Units

<u>Unit</u>	<u>Start-up Segment Number</u>	<u>Generating Unit Down Time (Minutes)</u>	<u>Generating Unit Start-up Time (Minutes)</u>
	<u>1</u>		
	<u>2</u>		
	<u>n</u>		

“X<sub>max</sub>” used in Schedules C and D shall be equal to or less than the hours in the heading of this column. The Start-up Lead Time shall be the Startup time as defined and submitted by the Owner through the process outlined in the CAISO Tariff Schedules and Bids Protocol Section 6.6 or its successor.

Hydroelectric Start-up Lead Times

<u>Unit</u>	<u>Time from notification to Minimum Load - Normal work hours</u>	<u>Time from notification to Minimum Load - Outside Normal Work hours</u>

**7. Ramping Constraint**

Describe any constraints the Unit incurs between Minimum Load and PMax.

**8. Ramp Rate**

<u>Unit</u>	<u>Ramp Rate Segment Number</u>	<u>Output of Point Range (MW)</u>	<u>Minimum Ramp Rate (MW/Minute)</u>	<u>Maximum Ramp Rate (MW/Minute)</u>
	<u>1</u>			
	<u>2</u>			
	<u>n</u>			

Separate Ramp Rates will be shown for each load range and will describe any special restrictions affecting Ramp Rates at various load points, e.g., feed pump operation, heat soaks, etc.

The Ramp Rate shall be the Operational Ramp Rate submitted by the Owner through the process described in the CAISO Tariff. On the Effective Date, the values in the CAISO Master File shall be set equal to the values shown in the table above.

**9. Minimum Load**

<u>Unit</u>	<u>Manual (MW)</u>	<u>AGC (MW)</u>

**10. Minimum Run Time**

<u>Unit</u>	<u>Hours</u>

**11. Minimum Off Time**

<u>Unit</u>	<u>Hours</u>

**12. Contract Service Limits**

<u>Unit</u>	<u>Maximum Annual MWh</u>	<u>Maximum Annual Service Hrs</u>	<u>Maximum Annual Start-ups</u>

Maximum Monthly MWh (Hydroelectric Units only)

MWh

<u>Unit</u>	<u>Jan</u>	<u>Feb</u>	<u>Mar</u>	<u>Apr</u>	<u>May</u>	<u>Jun</u>	<u>Jul</u>	<u>Aug</u>	<u>Sep</u>	<u>Oct</u>	<u>Nov</u>	<u>Dec</u>

**13. Owner's Repair Cost Obligation**

Owner's Repair Cost Obligation for the current Contract Year is \$            .

**14. Existing Contractual Limitations and Other Contract Restrictions on Market Transactions**

**15. Applicable UDC Tariff(s)**

[List each Tariff and schedule to which it applies]

**Schedule B**  
**Monthly Option Payment**

The formulas and values used to compute the Monthly Option Payment in accordance with Section 8.1 and Section 8.2 for each Unit for each Month are set forth in Equation B-1 below:

**Equation B-1**

$$\text{Monthly Option Payment} = \frac{\text{Monthly Availability Payment}}{\text{Availability Payment}} \pm \frac{\text{Monthly Surcharge Payment}}{\text{Surcharge Payment}} = \frac{\text{Monthly Nonperformance Penalty}}{\text{Nonperformance Penalty}}$$

The Monthly Option Payment can never be less than zero.

1. The Monthly Availability Payment is calculated in accordance with Equation B-2 below:

**Equation B-2**

$$\frac{\text{Monthly Availability Payment (\$)}}{\text{Monthly Availability Payment (\$)}} = \text{lesser of } \frac{\text{Current Monthly Availability Payment (\$)}}{\text{Current Monthly Availability Payment (\$)}} \text{ or } \frac{100\% \text{ of AFRR minus Cumulative Monthly Availability Payments Excluding Current Monthly Availability Payment (\$)}}{\text{Cumulative Monthly Availability Payments Excluding Current Monthly Availability Payment (\$)}}$$

2. The Current Monthly Availability Payment is calculated in accordance with Equation B-3 below:

**Equation B-3**

$$\frac{\text{Current Monthly Availability Payment (\$)}}{\text{Current Monthly Availability Payment (\$)}} = \text{Sum for all hours} \left[ \frac{\text{Hourly Availability Charge (\$/hr)}}{\text{Hourly Availability Charge (\$/hr)}} * \frac{\text{Unit Availability Limit (MW)}}{\text{Maximum Net Dependable Capacity (MW)}} \right]$$

Where:

A. Hourly Availability Charge is calculated in accordance with Equation B-4 below:

**Equation B-4**

$$\frac{\text{Hourly Availability Charge}}{\text{Hourly Availability Charge}} = \frac{\text{Hourly Availability Rate}}{\text{Hourly Availability Rate}} * \frac{\text{Fixed Option Payment Factor}}{\text{Fixed Option Payment Factor}}$$

Where:

• Hourly Availability Rate is calculated in accordance with Equation B-5 below.

**Equation B-5**

$$\frac{\text{Hourly Availability Rate}}{\text{Hourly Availability Rate}} = \frac{\text{Annual Fixed Revenue Requirement}}{\text{Target Available Hours}}$$

Annual Fixed Revenue Requirement is set forth in Section 7 below.

Target Available Hours are set forth in Section 6 below.

• For Units under Condition 1, the Fixed Option Payment Factor is set forth in Table B-0 below:

Table B-0

<u>Unit</u>	<u>Fixed Option Payment Factor</u>

For Units under Condition 2, the Fixed Option Payment Factor is 1.

The Hourly Availability Charges for the Contract Year are set forth in Table B-1 below:

<u>Table B-1</u>		
	<u>Condition 1</u>	<u>Condition 2</u>
<u>Unit 1</u>		

B. Unit Availability Limit is defined in Article 1 of the Agreement.

C. Maximum Net Dependable Capacity is shown in Section 1 of Schedule A.

3. The Monthly Surcharge Payment is calculated in accordance with Equation B-6 below:

**Equation B-6**

$$\begin{array}{l}
 \text{Monthly} \\
 \text{Surcharge} \\
 \text{Payment (\$)}
 \end{array}
 = \text{lesser of}
 \begin{array}{l}
 \text{Current} \\
 \text{Monthly} \\
 \text{Surcharge} \\
 \text{Payment (\$)}
 \end{array}
 \text{ or }
 \begin{array}{l}
 100\% \text{ of} \\
 \text{Sum of all Annual} \\
 \text{Capital Item Costs} \\
 \text{minus} \\
 \text{Cumulative Monthly} \\
 \text{Surcharge Payments} \\
 \text{Excluding Current} \\
 \text{Monthly Surcharge} \\
 \text{Payment (\$)}
 \end{array}$$

4. The Current Monthly Surcharge Payment is calculated in accordance with Equation B-7 below:

**Equation B-7**

$$\begin{array}{l}
 \text{Current Monthly} \\
 \text{Surcharge} \\
 \text{Payment} \\
 \text{(\$)}
 \end{array}
 = \frac{\text{Sum for all hours}}{\left[ \begin{array}{l} \text{Sum of all} \\ \text{Hourly Capital} \\ \text{Item Charges} \\ \text{(\$/hr)} \end{array} * \frac{\text{Unit Availability Limit (MW)}}{\text{Maximum Net Dependable Capacity (MW)}} \right]}$$

Where:

A. The Hourly Capital Item Charge for each Capital Item approved pursuant to Sections 7.4 or 7.6 is calculated in accordance with Equation B-8 below:

**Equation B-8**

$$\begin{array}{l}
 \text{Hourly Capital} \\
 \text{Item Charge}
 \end{array}
 = \frac{\text{Hourly Capital Item Rate}}{* \text{Surcharge Payment Factor}}$$

Where:

- Hourly Capital Item Rate is calculated in accordance with Equation B-9 below:

Equation B-9

$$\frac{\text{Hourly Capital Item Rate}}{\text{Rate}} = \frac{\text{Annual Capital Item Cost}}{\text{Target Available Hours}}$$

- Annual Capital Item Cost is the amount recoverable by Owner under this Agreement in a Contract Year for each Capital Item approved pursuant to Section 7.4 or Section 7.6.
- Target Available Hours are shown in Section 6 below.
- For Units under Condition 1, the Surcharge Payment Factor for all Capital Items covered by the Small Project Budget shall be the Fixed Option Payment Factor. For all other Capital Items, the Surcharge Payment Factor shall be as agreed to by Owner and CAISO. If the Owner and CAISO do not agree on the Surcharge Payment Factor, the Surcharge Payment Factor shall equal the Fixed Option Payment Factor, unless the Owner demonstrates in ADR that it would not have installed the proposed Capital Item in accordance with Good Industry Practice but for its obligations to the CAISO under this Agreement, in which case the Surcharge Payment Factor shall be as determined in ADR.
- For Units under Condition 2, the Surcharge Payment Factor is 1.

The Hourly Capital Item Charges for the Contract Year are set forth in Table B-2 below:

<u>Table B-2</u>					
<u>Unit</u>	<u>Capital Item Project No.</u>	<u>Annual Capital Item Cost</u>	<u>Condition 1 Surcharge Payment Factor</u>	<u>Condition 1 Hourly Capital Item Charge</u>	<u>Condition 2 Hourly Capital Item Charge</u>

- B. Unit Availability Limit is defined in Article 1 of the Agreement.
- C. Maximum Net Dependable Capacity is shown in Section 1 of Schedule A.

5. The Monthly Nonperformance Penalty is calculated pursuant to Section 8.5 using the following variables:

- A. Hourly Penalty Rate  
A Unit's Hourly Penalty Rate for each Contract Year is the lesser of (a) the Unit's Hourly Availability Rate for the Contract Year (calculated pursuant to Item 2.A above), or (b) three times the Unit's Hourly Availability Charge for the Contract Year (as shown in Table B-1 above).  
The Hourly Penalty Rates for the Contract Year are set forth in Table B-3 below:

<u>Table B-3</u>		
<u>Unit</u>	<u>Condition 1</u>	<u>Condition 2</u>
<u>Unit 1</u>		

- B. Hourly Surcharge Penalty Rate  
A Unit's Hourly Surcharge Penalty Rate for each Capital Item for each Contract Year is the lesser of (a) the corresponding Hourly Capital Item Rate for the Contract Year (calculated pursuant to Item 4.A above), or (b) three times the applicable Hourly Capital Item Charge for the Contract Year (as shown in Table B-2 above). The Hourly Surcharge Penalty Rates for the Contract Year are set forth in Table B-4 below:



<u>Table B-4</u>				
<u>Unit</u>	<u>Capital Item Project No.</u>	<u>Hourly Capital Item Rate</u>	<u>Condition 1 Hourly Surcharge Penalty Rate</u>	<u>Condition 2 Hourly Surcharge Penalty Rate</u>

6. Target Available Hours

A Unit's Target Available Hours for each Contract Year are calculated in accordance with the Equation B-10 below:

Equation B-10

$$\text{Target Available Hours (TAH)} = \frac{\text{Hours in the Calendar Year} - (\text{Average Other Outage Hours} + \text{Long-Term Planned Outage Hours})}{1}$$

Average Other Outage Hours means the average annual Other Outage Hours for the Unit during the 60-month period ending June 30 of the previous calendar year.

Long-term Planned Outage Hours means the Long-term Planned Outage Hours for the Contract Year scheduled with CAISO pursuant to Section 7.2(a). For periods prior to December 31, 1998, Other Outage Hours shall exclude a planned interruption, in whole or in part, in the electrical output of a Unit to permit Owner to perform a major equipment overhaul or inspection or for new construction work, but only if the outage lasted 21 or more consecutive days.

Long-term Planned Outage Hours scheduled for a Contract Year shall be subject to the Long-term Scheduled Outage Adjustment pursuant to Section 8.6 of the Agreement.

The Average Other Outage Hours, Long-term Planned Outage Hours and Target Available Hours for each Unit for the Contract Year are shown in Table B-5 below:

<b><u>Table B-5</u></b>			
<u>Unit</u>	<u>Average Other Outage Hours</u>	<u>Long-term Planned Outage Hours</u>	<u>TAH</u>

For the purposes of calculating Target Available Hours for the Contract Year ending December 31, 1999, (a) Average Other Outage Hours shall be calculated using the average annual Other Outage Hours for the Unit during the 60-month period ending December 31, 1998, and (b) Long-term Planned Outage Hours shall be calculated using the hours scheduled for performing Long-term Planned Outages as if the Agreement had become effective on January 1, 1999.

7. Annual Fixed Revenue Requirement (AFRR)

The Annual Fixed Revenue Requirement for each Unit is set forth in Table B-6 below. For any Contract Year commencing on or after January 1, 2002, the Annual Fixed Revenue Requirement shall be determined by the Formula Rate set forth in Schedule F, unless Owner files a superseding rate schedule under Section 205 of the Federal Power Act.

<u>Table B-6</u>	
<u>Unit</u>	<u>Annual Fixed Revenue Requirement</u>

8. Limited Section 205 Filing for an Extension of Contract Term

If CAISO has extended the term of this Agreement pursuant to Section 2.1(b), then not later than October 31 of the expiring Contract Year, Owner shall make a filing with FERC under Section 205 of the Federal Power Act containing the values in Tables B-1 through B-6 for the ensuing Contract Year.

In the event that a Long-term Planned Outage that is scheduled for the last quarter of the expiring Contract Year is postponed or rescheduled after October 31 of such year to the ensuing Contract Year, Owner shall make an additional Section 205 filing to revise the values in Tables B-1 through B-5 to reflect such rescheduled Long-term Planned Outage Hours.

**SCHEDULE C**

**Variable Cost Payment**  
**Part 1 for Thermal Units**

The Variable Cost Payment for each Unit for the Billing Month shall be the amount calculated in accordance with the following formula:

$$\begin{aligned} \text{Variable Cost Payment} = & \text{A. } \underline{\text{CAISO Unit Monthly Billed Fuel Cost}} + \\ & \text{B. } \underline{\text{CAISO Unit Monthly Fuel Imbalance}} \\ & \text{C. } \underline{\text{Charge}} + \\ & \text{D. } \underline{\text{CAISO Monthly Other Fuel Related Cost}} + \\ & \text{E. } \underline{\text{CAISO Monthly Emissions Cost}} + \\ & \text{F. } \underline{\text{CAISO Monthly Variable O\&M Cost}} + \\ & \text{G. } \underline{\text{CAISO Scheduling Coordinator Charge}} + \\ & \underline{\text{CAISO ACA Charge}} \end{aligned}$$

Each component of the Variable Cost Payment for thermal Units will be calculated as described below:

**A. CAISO Unit Monthly Billed Fuel Cost**

The CAISO Unit Monthly Billed Fuel Cost is calculated in accordance with Equation C1-0.

Equation C1-0

$$\left( \begin{array}{l} \text{CAISO} \\ \text{Unit} \\ \text{Monthly} \\ \text{Billed} \\ \text{Fuel Cost} \\ (\$) \end{array} \right) = \frac{\text{Monthly sum of the CAISO Unit Hourly Cap Heat Input for this Unit (MMBtu)}}{\text{Monthly sum of the CAISO Unit Hourly Cap Heat Input for all Units at the Facility (MMBtu)}} * \left( \begin{array}{l} \text{CAISO} \\ \text{Facility} \\ \text{Monthly} \\ \text{Billed} \\ \text{Fuel Cost} \end{array} \right)$$

Where:

- CAISO Unit Hourly Cap Heat Input for each Unit is calculated in accordance with Equation C1-6;
- The CAISO Facility Monthly Billed Fuel Cost is calculated in accordance with Equation C1-1.

**1. The CAISO Facility Monthly Billed Fuel Cost**

The CAISO Facility Monthly Billed Fuel Cost is calculated in accordance with Equation C1-1.

**Equation C1-1**

$$\left( \begin{array}{l} \text{CAISO} \\ \text{Facility} \\ \text{Monthly} \\ \text{Billed} \\ \text{Fuel Cost} \\ (\$) \end{array} \right) = \text{Lesser of} \left( \begin{array}{l} \text{CAISO} \\ \text{Facility} \\ \text{Cumulative} \\ \text{Actual} \\ \text{Fuel Cost} \\ (\$) \end{array} \right) \text{ or } \left( \begin{array}{l} \text{CAISO} \\ \text{Facility} \\ \text{Cumulative} \\ \text{Cap} \\ \text{Fuel Cost} \\ (\$) \end{array} \right) = \left( \begin{array}{l} \text{CAISO Facility} \\ \text{Cumulative} \\ \text{Billed} \\ \text{Fuel Cost} \\ (\$) \end{array} \right)$$

Where:

- The CAISO Facility Cumulative Actual Fuel Cost is the sum of all CAISO Unit Monthly Actual Fuel Costs for all Units at the Facility since the start of the Contract Year, including the current Month. CAISO Unit Monthly Actual Fuel Costs for each Unit is calculated in accordance with Equation C1-2.
- The CAISO Facility Cumulative Cap Fuel Cost is the sum of all CAISO Unit Monthly Cap Fuel Costs for all Units at the Facility since the start of the Contract Year, including the current Month. CAISO Unit Monthly Cap Fuel Costs is the sum of the CAISO Unit Hourly Cap Fuel Cost (calculated pursuant to Equation C1-5) for each hour of the Month for each Unit.
- The CAISO Facility Cumulative Billed Fuel Cost is the sum of all CAISO Unit Monthly Billed Fuel Costs for all Units at the Facility since the start of the Contract Year, excluding the current Month. CAISO Unit Monthly Billed Fuel Cost for each Unit is calculated in accordance with Equation C1-0.

**2. CAISO Unit Monthly Actual Fuel Cost**

The CAISO Unit Monthly Actual Fuel Cost is calculated in accordance with Equation C1-2.

**Equation C1-2**

$$\left( \begin{array}{l} \text{CAISO} \\ \text{Unit} \\ \text{Monthly} \\ \text{Actual} \\ \text{Fuel Cost} \\ (\$) \end{array} \right) = \frac{\text{Monthly sum of the CAISO Unit Hourly Cap Heat Input for the Unit (MMBtu)}}{\text{Monthly sum of the Unit Hourly Cap Heat Inputs for all units at the Facility metered by the Fuel Meter (MMBtu)}} * \left[ \left( \begin{array}{l} \text{Monthly} \\ \text{Metered} \\ \text{Fuel} \\ \text{MMBtu} \end{array} \right) * \left( \begin{array}{l} \text{CAISO} \\ \text{Monthly} \\ \text{Fuel} \\ \text{Price} \\ (\$/\text{MMBtu}) \end{array} \right) \right] = \left( \begin{array}{l} \text{Monthly} \\ \text{Start-up} \\ \text{Fuel Cost} \\ (\$) \end{array} \right)$$

Where:

- CAISO Unit Hourly Cap Heat Input is calculated in accordance with Equation C1-6.
- Unit Hourly Cap Heat Input is calculated in accordance with either Equation C1-7a or C1-7b.
- Monthly Metered Fuel is the non-duplicative sum of the quantities of fuel for the Month as measured by all gas metering systems or fuel oil measuring systems, as applicable (“Fuel Meters”), for the Unit.  
(a) If the fuel is natural gas, the Owner may select from one of three options for the Fuel Meter:

- (i) the revenue meter used by the entity providing natural gas to measure gas delivered to one or more Units (“Fuel Custody Meter”);
- (ii) a gas metering system installed at the Facility to measure gas used in one or more Units that meets the measurement accuracy standard in the tariff of the local gas distribution company in whose service area the Facility is located and the measurement accuracy standards set forth below, and is subject to an annual accuracy test performed under the CAISO’s direction, as described below; or
- (iii) a gas metering system installed at the Facility by the local gas distribution company in whose service area the Facility is located and maintained by the local gas distribution company to the same standards as revenue meters of the local gas distribution company.

For the selected Fuel Meter option, the Owner shall provide the required information for all Units, both RMR and non-RMR, connected to the specific Fuel Custody Meter.

If the Owner selects option (ii), the Owner shall assure the overall accuracy of the gas metering systems<sup>1</sup> in use for the Units are within acceptable industry and regulatory standards.<sup>2</sup> Gas metering systems shall be designed, installed, calibrated and maintained according to standards set forth by the American Gas Association (AGA), the American National Standards Institute (ANSI) and the California Public Utilities Commission (CPUC). An audit trail of all calibration records and measurement parameters used in volume and heating-value calculations as recorded electronically by the flow computer shall be maintained and all data shall be in no-longer-than-hourly intervals. All equations and calculations performed by the flow computer may be reviewed for accuracy and completeness, including compressibility, volumetric flow and energy flow, by the CAISO or its agent. A consistent base pressure (14.73 psi) and base temperature (60 ° F) shall be used at all times. If the Facility has multiple sources of fuel gas, a gas chromatograph (“GC”) shall be installed which analyzes all constituents of the blended gas, with the sampling point downstream of the individual supplies such that proper mixing occurs prior to sampling. The GC speed loop shall permit analysis of the gas in “real time”.

In order to ensure the accuracy of a gas metering system selected under option (ii), an initial acceptance test shall be conducted by Owner and shall be witnessed by the CAISO or its agent to assure the installation meets applicable industry standards. Such a test shall be conducted at five load points (maximum load, minimum load, and three evenly spaced load points), under steady state conditions (i.e., off Automatic Generation Control), and for a minimum of one hour at each load point. Analysis of the test results shall consist of a side-by-side comparison of volumetric flow, energy flow, gas-specific gravity and mole percents, and other factors mutually agreed to by the CAISO and Owner for the Fuel Custody Meter and the meter installed at the Facility under option (ii). The gas metering system installed under option (ii) shall be deemed acceptable if the side-by-side energy flow comparison for the period shall be within +1 percent to –2 percent. The gas-metering system shall meet the required accuracy throughout the entire operating range of the RMR Unit. Following CAISO acceptance, an annual routine test shall be conducted at a time chosen by the CAISO to verify and confirm the performance of Owner’s gas-metering system. With the exception that the test shall be conducted at one load point specified by the CAISO, such a test shall be conducted in a similar fashion to the initial acceptance test and shall include

<sup>1</sup> The gas metering system includes the primary measurement element (orifice, turbine meter, etc.); secondary elements such as pressure, temperature and heating-value measurement devices; the gas chromatograph, the flow computer or other data-collection and storage device; and the communication or output system.

<sup>2</sup> The American Gas Association (AGA) and the American National Standards Institute (ANSI) publish industry standards that gas utilities and gas transportation companies use for gas metering. Applicable standards include: AGA Report No. 3, Orifice Metering of Natural Gas; AGA Report No. 7, Measurement of Gas by Turbine Meters, AGA Report No. 8, Compressibility Factors of Natural Gas; AGA Report No. 9, Measurement of Gas by Multipath Ultrasonic Meters; ANSI B109.2, Diaphragm Type Gas Displacement Meters; and ANSI B109.3 Rotary Type Gas Displacement Meters. Also, CPUC General Order 58-A requires customer meters to register accurately to within – 2% to 1%.

inspection of the primary flow element; instrument end-to-end calibration; confirmation of integrity of sensing lines (meaning there shall be no leaks); confirmation of proper GC operation; and proper flow-computer operation and data handling. All systems and sub-systems utilized during the initial acceptance test, including, but not limited to, (a) all primary devices, including the differential producing device of the gas metering system, the GC, and differential pressure (“dP”) and temperature instruments; (b) all secondary devices and circuits, including dP and temperature transmitters and circuits, sensing lines, GC sampling line and secondary circuits; and (c) all electronic devices, flow computers and devices, shall be sealed with an CAISO-certified seal and no maintenance work or modifications and changes, including making any changes to flow computer programming, shall be permitted without prior approval by the CAISO.

If any part of the option (ii) gas-metering system requires either routine or emergency maintenance, the Owner shall notify the CAISO immediately by telephone or other means specified by the CAISO. The Owner shall inform the CAISO of the time period during which such maintenance is expected to occur. The CAISO may, at its discretion, require gas-metering systems which are changed or modified during maintenance or repair to undergo re-certification, including acceptance testing. If the maintenance activity is necessary due to concerns that the gas-metering system is not operating in accordance with the required accuracy standards, such maintenance work shall be completed within 2 business days from the time when the concern was first noted.

A V-cone meter may not be used under option (ii), unless the meter was installed prior to January 1, 1997.

If, as a result of a change in the use of fuel gas from a supplier other than the local distribution company, the properties of the fuel gas change materially (Higher Heating Value (HHV) or Specific Gravity (SG) varies more than –3 percent to +3 percent due to the addition of new gas constituents) following the installation of a gas metering system under option (ii) or option (iii), Owner shall notify the CAISO within twenty-four (24) hours. Acceptance testing shall be conducted to verify the metering accuracy due to the change in fuel gas supply and to test whether Owner’s gas metering system meets the technical requirements of this specification. Owner shall be obligated to install any equipment necessary to bring its gas metering system into compliance. Owner shall not enter into any third-party agreements for non-pipeline grade fuel gas without the prior approval of the CAISO. Such approval shall not be granted until the CAISO has evaluated Owner’s gas metering system, including the effect of the non-pipeline grade fuel gas on metering accuracy.

If an Owner selects option (iii) and the Facility has multiple sources of fuel gas, the local gas distribution company shall install a GC which analyzes all constituents of the blended gas, with the sampling point downstream of the individual supplies such that proper mixing occurs prior to sampling. The GC speed loop should permit analysis of the gas in “real time”.

(b) If the fuel is other than natural gas, the Fuel Meter value shall be determined monthly by measuring the fuel oil consumed during the month using, at Owner’s one-time election, either (i) a metering process which is acceptable to the Owner and CAISO or (ii) a calculation acceptable to the Owner and CAISO based on a tank-volume measurement process performed on the day immediately prior to the beginning of the Month and the last day of the Month and fuel oil deliveries during the Month. The metering or measurement process adopted shall comply with, or be comparable to, one or more applicable American Petroleum Institute (“API”) Manual of Petroleum Measurement Standards.<sup>3</sup> If Owner and CAISO cannot agree on an acceptable process, it shall be determined through ADR pursuant to Schedule K to this Agreement. Owner shall be permitted to change its election between metering as

<sup>3</sup> The applicable API Manual of Petroleum Measurement Standards are: Chapter 2.2A (Measurement and Calibration of Upright Cylindrical Tanks by the Manual Strapping Method); Chapter 3.1B (Standard Practice for Level Measurement of Liquid Hydrocarbons in Stationary Tanks by Automatic Tank Gauging); Chapter 3.3 (Level Measurement of Liquid Hydrocarbons in Stationary Pressurized Storage Tanks by Automatic Tank Gauging); Chapter 5.2 (Measurement of Liquid Hydrocarbons by Displacement Meters); and Chapter 5.3 (Measurement of Liquid Hydrocarbons by Turbine Meters).

described in (i) above or tank volume measurement described in (ii) above only to reflect changes in the physical circumstances of the Unit or a change in the type of fuel burned at the Unit.

During any period in which the Fuel Meter fails to accurately measure gas flow, the Owner shall provide information to the CAISO sufficient to estimate the gas flow during such failure. This information may include unit electric-generating history, accurate recorded gas flow based on another meter and heat input characteristics of all Units served by the failed meter. This information will be used to estimate the gas flow during the failure period to the mutual satisfaction of the CAISO, the Responsible Utility and the Owner.

If a Fuel Meter serves RMR Units as well as other units, the heat input characteristics of the other units will be included in Table C1-7a or C1-7b, as applicable, and the Monthly sum of the Unit Hourly Cap Heat Inputs for all units at the Facility metered by the Fuel Meter used in Equation C1-2 will include Hourly Cap Heat Inputs for such other units calculated using Equation C1-7a or C1-7b, whichever is applicable.

- CAISO Monthly Fuel Price is calculated in accordance with Equation C1-3.
- Monthly Start-Up Fuel Cost is the sum of the Start-Up Fuel Costs for all Start-ups (for Market and Nonmarket Transactions) in the Month for all units metered by the Fuel Meter with the Start-up Fuel Costs for each Unit calculated in accordance with Equations D-1a or D-1b in Schedule D, as applicable. If a Start-up is initiated but is not successfully completed, the Start-up Fuel Costs shall be adjusted in accordance with Equation C1-2a:

**Equation C1-2a**

$$\frac{\text{Adjusted Start-up Fuel Cost for Canceled Starts (\$)}}{\text{Number of hours committed to the Start-up Applicable Start-up Lead Time in hours shown in Section 6 of Schedule A}} = \text{Start-up Fuel Costs (\$)}$$

Where:

- The “number of hours committed to the Start-up” is the lesser of (a) time elapsed between the initiation of the Start-up and the cancellation or (b) the Applicable Start-up Lead Time as shown in Section 6 of Schedule A.

**3. CAISO Monthly Fuel Price**

The CAISO Monthly Fuel Price is calculated in accordance with Equation C1-3.

**Equation C1-3**

$$\frac{\text{CAISO Monthly Fuel Price (\$/MMBtu)}}{\text{Monthly sum of CAISO Unit Hourly Cap Fuel Cost (\$)}} = \frac{\text{Monthly sum of CAISO Unit Hourly Cap Heat Input (MMBtu)}}{\text{Monthly sum of CAISO Unit Hourly Cap Heat Input (MMBtu)}}$$

Where:

- CAISO Unit Hourly Cap Fuel Cost (\$) is calculated in accordance with Equation C1-5;
- CAISO Unit Hourly Cap Heat Input (MMBtu) is calculated in accordance with Equation C1-6.

**4. Intentionally Omitted** (There is no Equation C1-4.)

**5. CAISO Unit Hourly Cap Fuel Cost**

For each hour, the CAISO Unit Hourly Cap Fuel Cost is calculated in accordance with Equation C1-5.

**Equation C1-5**

$$\text{CAISO Unit Hourly Cap Fuel Cost (\$)} = \text{CAISO Unit Hourly Cap Heat Input (MMBtu)} \times \text{Hourly Fuel Price (\$/MMBtu)}$$

Where:

- The Hourly Fuel Price is calculated in accordance with Equation C1-8:
- The CAISO Unit Hourly Cap Heat Input (MMBtu) is calculated in accordance with Equation C1-6.

**6. CAISO Unit Hourly Cap Heat Input**

For each hour, the CAISO Unit Hourly Cap Heat Input is calculated in accordance with Equation C1-6.

**Equation C1-6**

$$\frac{\text{CAISO Unit Hourly Cap Heat Input}}{\text{Heat Input}} = \frac{\text{Unit Hourly Cap Heat Input (MMBtu)}}{\text{MMBtu}} \star \frac{\text{Billable MWh}}{\text{Hourly Metered Total Net Generation (MWh)}}$$

Where:

- Unit Hourly Cap Heat Input is calculated in accordance with either Equation C1-7a or C1-7b.

**7. Unit Hourly Cap Heat Input (MMBtu)**

The Unit Hourly Cap Heat Input to a Unit for any load is given by the following equations and shall be determined either by a polynomial equation (C1-7a) or exponential equation (C1-7b):

**Equation C1-7a**

$$\frac{\text{Unit Hourly Cap Heat Input}}{\text{Heat Input}} = 1.02 \star (AX^3 + BX^2 + CX + D) \star E$$

**Equation C1-7b**

$$\frac{\text{Unit Hourly Cap Heat Input}}{\text{Heat Input}} = 1.02 \star \frac{(A \star (B + CX + De^{FX})) \star E}{E}$$

Where:

- X is Unit's Hourly Metered Total Net Generation, MWh;
- e is the base of natural logarithms;
- A, B, C, D are coefficients given for Equation C1-7a in Table C1-7a and given for Equation C1-7b in Table C1-7b;
- The coefficient E is applicable only when burning fuel oil. At all other times, it shall be set to 1.0.
- F is a coefficient given in Table C1-7b.

<b>Table C1-7a</b>					
	<u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>	<u>E</u>

<b>Table C1-7b</b>						
	<u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>	<u>E</u>	<u>F</u>

## **8. Hourly Fuel Price**

The Hourly Fuel Price for Units shall be the same for each hour of a given day and is calculated in accordance with Equation C1-8.

### **Equation C1-8 (Gas)**

Hourly Fuel Price (\$/MMBtu) = Commodity Price (\$/MMBtu) + Intrastate Transportation Rate (\$/MMBtu)

### **Equation C1-8 (Oil)**

Hourly Fuel Price (\$/MMBtu) = Commodity Price (\$/MMBtu) + Transportation Rate (\$/MMBtu)

## **Commodity Price for Natural Gas**

For the Facilities within the service area of SCE or SDG&E, the Commodity Price shall be the product of 1.02 and the simple average of the following indices:

Gas Daily, SoCal Gas, Large Packages index (midpoint)  
BTU Daily Gas Wire, SoCal Border index, Topock  
NGI Daily Gas Price Index, Southern California Border (average)

For the Facilities within the service territory of PG&E, the Commodity Price shall be the product of 1.02 and the simple average of the following indices:

Gas Daily, PG&E Citygate index (midpoint)  
NGI Daily Gas Price Index, PG&E Citygate (average)



The indices to be used for each Settlement Period in a given day are shown in Table C1-8. Where more than one day's index is shown for a Trading Day, the average of the two daily indices should be used. If an applicable index for a day, which is used to compute the index's average for a Trading Day, is not published, then that index will not be used to compute the Commodity Price for that trading day. If no index for a day is published, then the average of applicable indices on the Index Publication Date preceding and the Index Publication Date following such day will be substituted for the Index Publication Date index for that day in Table C1-8. In the event that an index ceases to be published, Parties shall agree on a replacement index.

Table C1-8  
Natural Gas Price Indices

	<u>Index Publication Date*</u>		
<u>Trading Day</u>	<u>Gas Daily **</u>	<u>Btu Daily **</u> <u>Gas Wire</u>	<u>NGI Daily **</u> <u>Price Index</u>
<u>Tuesday</u>	<u>Tuesday/</u> <u>Wednesday</u>	<u>Monday/</u> <u>Tuesday</u>	<u>Tuesday/</u> <u>Wednesday</u>
<u>Wednesday</u>	<u>Wednesday/</u> <u>Thursday</u>	<u>Tuesday/</u> <u>Wednesday</u>	<u>Wednesday/</u> <u>Thursday</u>
<u>Thursday</u>	<u>Thursday/</u> <u>Friday</u>	<u>Wednesday/</u> <u>Thursday</u>	<u>Thursday/</u> <u>Friday</u>
<u>Friday</u>	<u>Friday/</u> <u>Monday</u>	<u>Thursday/</u> <u>Friday</u>	<u>Friday/</u> <u>Monday</u>
<u>Saturday</u>	<u>Monday/</u> <u>Tuesday</u>	<u>Friday/</u> <u>Monday</u>	<u>Monday/</u> <u>Tuesday</u>
<u>Sunday</u>	<u>Monday/</u> <u>Tuesday</u>	<u>Friday/</u> <u>Monday</u>	<u>Monday/</u> <u>Tuesday</u>
<u>Monday</u>	<u>Monday/</u> <u>Tuesday</u>	<u>Friday/</u> <u>Monday</u>	<u>Monday/</u> <u>Tuesday</u>

\* The Index Publication Date is the date of the publication which contains the prices for the applicable Trading Day.

\*\* Where more than one day's index is shown for a Trading Day, the average of the two daily indices should be used.

Gas Daily: The "Flow Date(s)" column should match the Trading Day.

Btu Daily: The Index Publication Date should be the day prior to the Trading Date in the Table above, except for Sunday and Monday, where Friday should be used as the Index Publication Date.

NGI Daily: The Index Publication Date should be the same as the Trading Date in the tables above, except for Saturday and Sunday, where Monday should be used as the Index Publication Date.

### **Commodity Price for Distillate Fuel Oil**

The Commodity Price for Distillate Fuel Oil shall be the simple average of the midpoint of the ranges for CARB No. 2 Diesel and for Jet as published in Platt's Oilgram United States West Coast Product Assessments (page 22). If the Unit can burn only Jet, the Commodity Price shall be the midpoint of the range for Jet.

In an event the index ceases to be published, the Parties shall agree on a replacement index.

For distillate fuel, the index will be for the last day prior to the RMR Transaction Day.

### **Commodity Price for No. 6 Residual Fuel Oil**

The fuel price shall be the prudent actual replacement cost of the fuel consumed, or, if the fuel is consumed and not replaced, then the fuel price will be "last-in-first-out" (LIFO) inventory price of the fuel consumed.

Where conversion from barrels of Fuel to MMBtu is required, the following conversion coefficients shall be used:

- No. 1 Distillate Fuel Oil - 5.754 MMBtu per barrel;
- No. 2 Distillate Fuel Oil - 5.796 MMBtu per barrel;
- Jet Fuel - 5.650 MMBtu per barrel;
- No. 6 Residual Fuel Oil - 6.258 MMBtu per barrel.

### **Intrastate Transportation Rate for Gas**

The Intrastate Transportation Rate for Gas shall be the applicable intrastate transportation rate determined as follows:

Units served by SDG&E: The Southern California Gas Company intrastate transportation rate (currently GT-SD) plus the volumetric component of the SDG&E gas transportation rate for electric generation service, including the ITCS<sup>4</sup> (currently GTUEG - SD), or any successor rate for electric generation service applicable to deliveries to the Facility, divided by one minus the applicable in-kind shrinkage allowance, if any.

Units served by Southern California Gas: The Southern California Gas Company intrastate transportation rate for firm electric generation service, including the ITCS (GT-F) plus the G-ITC Wheeler Ridge Interconnection Access fee, if applicable, or any successor rate for firm electric generation service applicable to deliveries to the Facility, divided by one minus the applicable in-kind shrinkage allowance, if any.

Units served by PG&E: The PG&E intrastate transportation charge stated in Rate Schedule G-EG, or any successor rate for electric generation service applicable to deliveries to the Facility, divided by one minus the applicable in-kind shrinkage allowance, if any.<sup>5</sup>

### **Transportation Rate for Distillate Fuel Oil**

<sup>4</sup> ITCS means Interstate Transition Cost Surcharges.

<sup>5</sup> If the Facility does not qualify for service under Rate Schedule G-EG, the applicable rate shall be given by Rate Schedule G-NT.

The Transportation Rate for Distillate Fuel Oil shall be [REDACTED]. There shall be no Transportation Rate for No. 6 Residual Fuel Oil.

**B. CAISO Monthly Fuel Imbalance Charge**

**Levels of Responsibility**

Each month, the Owner is responsible for all Nonmarket fuel imbalance charges incurred up to and including 2.25 percent of the CAISO Facility Monthly Billed Fuel Cost.

The Monthly Fuel Imbalance Charge is equal to 75% of 1st Tier Imbalance plus 100% of 2nd Tier Imbalances;

Where:

The **1st Tier Imbalances** is that portion of the Monthly Sum of Daily Imbalance Charges which exceeds 2.25 percent of the CAISO Facility Monthly Billed Fuel Cost for the Month and is less than or equal to 10.0 percent of the CAISO Facility Monthly Billed Fuel Cost for the Month.

The **2nd Tier Imbalances** is that portion of the Monthly Sum of Daily Imbalance Charges which is greater than 10.0 percent of the CAISO Facility Monthly Billed Fuel Cost for the Month.

The Monthly Sum of Daily Imbalance Charges is the sum for all days in the month of imbalance charges and similar fees and penalties imposed on Owner (or its fuel supplier and paid by Owner) by transportation providers delivering gas to the Units because deliveries were in excess of or less than scheduled for a given day, but only to the extent that (i) the imbalance was caused by Owner compliance with a Dispatch Notice issued after (or less than 30 minutes prior) to the Transporter's deadline for scheduling transportation, and (ii) Owner issued a notice to the CAISO as soon as possible after the Owner became aware it might incur imbalance charges advising CAISO of such possible charges.

In any month in which Owner incurs a 1<sup>st</sup> Tier or 2<sup>nd</sup> Tier Imbalance charge, Owner will provide the CAISO with a report showing the allocation of the imbalance charges between Market Transactions and Nonmarket Transactions. If CAISO or the Responsible Utility disagree on allocation, the dispute will be resolved through ADR.

To receive payment for a 2nd Tier Imbalance, Owner must document in an informational filing with FERC that the charges were appropriately allocated to Nonmarket Transactions and it was commercially reasonable to incur them. As used in this context and for purposes of calculating imbalance charges, "commercially reasonable" does not mean that Owner is required to acquire storage to avoid imbalances. If either the CAISO or Responsible Utility disagree with the imbalance charges, desires a formal review and gives such notice to the Owner within 30 days of the informational filing, the Owner must file under Section 205 of the Federal Power Act to collect any 2<sup>nd</sup> Tier Imbalance charges.

Pursuant to the above, the Monthly Fuel Imbalance Charge is calculated in accordance with Equation C1-9.

**Equation C1-9**

$$\text{Monthly Fuel Imbalance Charge} = 0.75 * \left[ \text{Monthly Sum of Daily Imbalance Charges} - 0.0225 * \frac{\text{CAISO Facility Monthly Billed Fuel Cost}}{\text{CAISO Facility Monthly Billed Fuel Cost}} \right] + 0.25 * \left[ \text{Monthly Sum of Daily Imbalance Charges} - 0.10 * \frac{\text{CAISO Facility Monthly Billed Fuel Cost}}{\text{CAISO Facility Monthly Billed Fuel Cost}} \right]$$

Note that if either of the two bracketed portions of the equation yields a value less than or equal to zero, then that portion of the equation is set to zero.

**C. CAISO Monthly Other Fuel Related Cost**

The CAISO Monthly Other Fuel Related Cost is calculated in accordance with Equation C1-10.

**Equation C1-10**

$$\text{CAISO Monthly Other Fuel Related Cost} = \frac{\text{Monthly sum of Billable MWh}}{\text{Monthly sum of Total Hourly Metered Net Generation}} * \left[ \text{Other Gas Tariff Charges} + \text{Applicable Taxes} \right]$$

Where:

- Other Gas Tariff Charges are those intrastate gas transportation tariff charges not included in Transportation Rate Charges set forth in Section A.8 of this Schedule listed below:

[Insert applicable charges]

- Applicable taxes and fees are:

1. [Insert applicable local utility user taxes]

2. [Insert applicable G-SUR fee]

All other fuel related taxes and fees are intended to be covered by the two percent adder in Hourly Fuel Cost and are the Owner's responsibility.

**D. CAISO Monthly Emissions Cost**

**Part 1 for SCAQMD-Jurisdictional Thermal Units**

The CAISO Monthly Emissions Cost for each Unit shall be the sum, for all hours in the month, of the CAISO Hourly Emissions Cost. These costs apply to a Facility within the South Coast Air Quality Management District (SCAQMD).

**The CAISO Hourly Emissions Cost shall be calculated in accordance with Equation C1-11.**

**Equation C1-11**

$$\begin{aligned} \text{CAISO Hourly Emissions Cost} &= \text{a. CAISO Hourly RECLAIM Trading Credit Cost (\$/hr) +} \\ (\$/hr) &= \text{b. CAISO Hourly NOx Emissions Cost (\$/hr) +} \\ &= \text{c. CAISO Hourly Organic Gases Emissions Cost (\$/hr) +} \\ &= \text{d. CAISO Hourly Sulfur Oxides Emissions Cost (\$/hr) +} \\ &= \text{e. CAISO Hourly Particulate Matter Emissions Cost} \\ &= \text{f. (\$/hr) +} \\ &= \text{g. CAISO Hourly Carbon Monoxide Emissions Cost} \\ &= \text{(\$/hr) +} \\ &= \text{CAISO Hourly Sulfur Dioxides Trading Credit Costs} \\ &= \text{(\$/hr)} \end{aligned}$$

**a. CAISO Hourly RECLAIM Trading Credit Cost**

For each hour, the CAISO Hourly RECLAIM Trading Credit (“RTC”) Cost for NOx emissions required for the Unit to generate the Billable MWh is calculated in accordance with Equation C1-12.

**Equation C1-12**

$$\begin{aligned} \text{CAISO Hourly RECLAIM} &= \text{Hourly NO}_x & \text{RECLAIM NO}_x & \text{Billable MWh} \\ \text{Trading Credit Cost (\$/hr)} & \text{Emissions} & \text{Trading} & \text{Hourly Metered} \\ & \text{(lbs/hr)} & \text{Credit Rate} & \text{Total Net} \\ & & \text{(\$/lb)} & \text{Generation} \end{aligned}$$

**Where:**

- Hourly NOx Emissions is calculated in accordance with Equation C1-13.

**Equation C-13**

$$\text{Hourly NOx Emissions (lbs/hr)} = AX^2 + BX + C$$

**Where:**

- X is the Hourly Metered Total Net Generation for the hour.
- Coefficients A, B, and C are given in Table C1-13 for each Unit.

<b>Table C1-13</b>			
<b>Description of Unit</b>	<b>A</b>	<b>B</b>	<b>C</b>

The RECLAIM NOx Trading Credit Rate (\\$/lb) will be equal to the 13-week sales-weighted average sales price for RTCs calculated as of the last day of the Month from sales records available from the SCAQMD for all actual sales in the SCAQMD during the thirteen preceding weeks, including the Settlement Period.

**b. CAISO Hourly NOx Emissions Cost**

For each hour, the CAISO Hourly NOx Emissions Cost for the Billable MWh is calculated in accordance with Equation C1-14.

**Equation C1-14**

$$\frac{\text{CAISO Hourly Nox Emissions Cost (\$/hr)}}{\text{Emissions Cost (\$/hr)}} = (5 * 10^{-4}) * \frac{\text{Hourly Nox Emissions (lbs/hr)}}{\text{Emissions (lbs/hr)}} * \frac{\text{NOx Emissions Fee (\$/ton)}}{\text{Emissions Fee (\$/ton)}} * \frac{\text{Billable MWh Hourly Metered Total Net Generation}}{\text{Hourly Metered Total Net Generation}}$$

**Where:**

- (5 × 10<sup>-4</sup>) is the conversion factor from lbs to tons.
- Hourly NOx Emissions is calculated in accordance with Equation C1-13.
- NOx Emissions Fee is obtained from Table III of SCAQMD Rule 301(e). The fee is dependent upon the Cumulative Tons of Pollutant (NOx), which is calculated in accordance with Equation C1-15. The Cumulative Tons of Pollutant is reset to zero each July 1st.

**Equation C1-15**

$$\frac{\text{Cumulative Tons of Pollutant (tons/hr)}}{\text{Pollutant (tons/hr)}} = \frac{\text{Tons of Pollutant From the prior July 1<sup>st</sup> to the Previous Hour}}{\text{From the prior July 1<sup>st</sup> to the Previous Hour}} \pm \frac{\text{Tons of Pollutant For Current Hour}}{\text{For Current Hour}}$$

**Where:**

- Tons of Pollutant for Current Hour is in accordance with Equation C1-16.

**Equation C1-16**

$$\frac{\text{Tons of Pollutant for Current Hour (tons/hr)}}{\text{for Current Hour (tons/hr)}} = (4.76 * 10^{-7}) * (AX^3 + BX^2 + CX + D) * \frac{\text{Pollutant Emissions Amount for Natural Gas}}{\text{Pollutant Emissions Amount for Natural Gas}}$$

**Where:**

- (4.76 \* 10<sup>-7</sup>) is the conversion factor from lbs. to tons (1 ton/2000 lbs.) and from mmcf to MMBtu (1 mmcf/1050 MMBtu).
- X is the Hourly Metered Total Net Generation, MWh.
- Coefficients A, B, C, and D are the coefficients of the hourly heat rate curve given in Table C1-16 for each Unit.

Table C1-16			
Description of Unit	A	B	C

Pollutant Emissions Amount For Natural Gas is the applicable pollutant from SCAQMD General Instruction Book (for the latest year), Annual Emissions Reporting Program, Appendix A - Common Emission Factors For Combustion Equipment, Table 1 - Common Emission Factors For Combustion Equipment for Forms B1 and B1U.

**c. - f. CAISO Hourly Organic Gases Emissions Cost, CAISO Hourly Sulfur Oxides Emissions Cost, CAISO Hourly Particulate Matter Emissions Cost, and CAISO Hourly Carbon Monoxide Emissions Cost**

The CAISO Hourly Organic Gases (OG) Emissions Cost, CAISO Hourly Sulfur Oxides (SOx) Emissions Cost, CAISO Hourly Particulate Matter (PM) Emissions Cost, and CAISO Hourly Carbon Monoxide (CO) Emissions Cost are each calculated in accordance with Equation C1-17.

**Equation C1-17**

$$\text{CAISO Hourly Applicable Emissions Cost (\$/hr)} = (4.76 * 10^{-7}) * \text{CAISO Unit Hourly Cap Heat Input (MMBtu/hr)} * \text{Associated Emissions Factor (lbs/mmcf)} * \text{Associated Emissions Fee (\$/ton)}$$

Where:

- CAISO Hourly Applicable Emissions Cost is the CAISO Hourly OG Emissions Cost, CAISO Hourly SOx Emissions Cost, CAISO Hourly PM Emissions Cost, or CAISO Hourly CO Emissions Cost.
- (4.76 \* 10<sup>-7</sup>) is the conversion factor from lbs. to tons (1 ton/2000 lbs.) and from mmcf to MMBtu (1 mmcf/1050 MMBtu).
- Associated Emissions Factor is the associated OG Emissions Factor, SOx Emissions Factor, PM Emissions Factor or CO Emissions Factor from Table 1 from General Instruction Book for the SCAQMD (for the latest year) Annual Emissions Reporting Program.
- Associated Emissions Fee is the associated OG Emissions Fee, SOx Emissions Fee, PM Emissions Fee, or CO Emissions Fee from Table III of SCAQMD Rule 301(e), and is dependent upon the Cumulative Tons of Pollutant pursuant to Equation C1-15.

**g. CAISO Hourly Sulfur Dioxides Trading Credit Costs**

Beginning in the year 2000, certain Units will be subject to Title IV of the Federal Clean Air Act for providing SO<sub>2</sub> Allowances to cover related trading costs. Prior to 2000, the CAISO Hourly Sulfur Dioxides Trading Credit Cost will be zero. The Owner may make a filing under Section 205 of the Federal Power Act limited to recovering applicable CAISO Hourly Sulfur Dioxides Trading Credit Costs when such costs are incurred.

**Part 2 for Ventura County Air Pollution Control District<sup>6</sup>**

Beginning in the year 2000, certain Units will be subject to Title IV of the Federal Clean Air Act for providing SO<sub>2</sub> Allowances to cover related trading costs. Prior to 2000, the CAISO Hourly Sulfur Dioxides Trading Credit Cost will be zero. The Owner may make a filing under Section 205 of the Federal Power Act limited to recovering applicable CAISO Hourly Sulfur Dioxides Trading Credit Costs when such costs are incurred.

<sup>6</sup> Ventura County APCD, where Mandalay Generating Station is located, does not require payment of emissions fees, but rather permit renewal fees. The permit renewal fees are included in the fixed O&M costs.

**E. CAISO Monthly Variable O&M Cost**

The CAISO Monthly Variable O&M Cost for each Unit shall be the product of the Unit's Billable MWh for the Billing Month and the Unit's Variable O&M Rate. Variable O&M Rate for each Unit shall be:

Table C1-18	
Unit	Variable O&M Rate (\$/MWh)

**F. CAISO Scheduling Coordinator Charge**

The CAISO Scheduling Coordinator Charge for each Unit shall be the product of \$0.31 and the Unit's Billable MWh for the Billing Month.

**F. CAISO ACA Charge**

The CAISO ACA Charge is the product of the Unit's Billable MWh for the Billing Month and the applicable annual charge for short-term sales under 18 CFR Section 382.201 of the FERC Regulations.

**SCHEDULE C**

**Variable Cost Payment for All Conditions  
Part 2 for Geothermal Units**

For each Unit each Month, the Variable Cost Payment for Billable MWh from the Unit pursuant to Nonmarket Transactions during that Month shall be the amount calculated in accordance with the following formula:

$$\text{Variable Cost Payment} = \begin{matrix} \text{A.} & \text{CAISO Monthly Billed Fuel Cost} & + \\ \text{B.} & \text{CAISO Monthly Variable O\&M Cost} & + \\ \text{C.} & \text{CAISO Scheduling Coordinator Charge} & \\ \text{D.} & + & \\ & \text{CAISO ACA Charge} & \end{matrix}$$

Each component of the Variable Cost Payment for geothermal Units is calculated as described below:

**A. CAISO Monthly Billed Fuel Cost [for Geysers Main only]**

The CAISO Monthly Billed Fuel Cost is given by Equation C2-1.

**Equation C2-1**

$$\text{CAISO Monthly Billed Fuel Cost} = \text{Billable MWh} * \text{Steam Price (\$/MWh)}$$

Where:

- Steam Price is \$16.34/MWh.
- For purposes of Equation C2-1, Billable MWh is all Billable MWh Delivered after cumulative Hourly Metered Total Net Generation during the Contract Year from all Units



exceeds the Minimum Annual Generation given by Equation C2-2.

**Equation C2-2**

$$\text{Minimum Annual Generation} = (\text{Annual Average Field Capacity} * 8760 \text{ hours} * 0.4) - (A+B+C)$$

Where:

- Annual Average Field Capacity is the arithmetic average of the two Field Capacities in MW for each Contract Year, determined as described below.

Field Capacity shall be determined for each six-month period from July 1 through December 31 of the preceding calendar year and January 1 through June 30 of the Contract Year. Field Capacity shall be the average of the five highest amounts of net generation (in MWh) simultaneously achieved by all Units during eight-hour periods within the six-month period. The capacity simultaneously achieved by all Units during each eight-hour period shall be the sum of Hourly Metered Total Net Generation for all Units during such eight-hour period, divided by eight hours. Such eight-hour periods shall not overlap or be counted more than once but may be consecutive.

Within 30 days after the end of each six-month period, Owner shall provide CAISO and the Responsible Utility with its determination of Field Capacity, including all information necessary to validate that determination.

- A is the amount of Energy that cannot be produced (as defined below) due to the curtailment of a Unit during a test of the Facility, a Unit or the steam field agreed to by CAISO and Owner.
- B is the amount of Energy that cannot be produced (as defined below) due to the retirement of a Unit or due to a Unit's Availability remaining at zero after a period of ten Months during which the Unit's Availability has been zero.
- C is the amount of Energy that cannot be produced (as defined below) because a Force Majeure Event reduces a Unit's Availability to zero for at least thirty (30) days or because a Force Majeure Event reduces a Unit's Availability for at least one hundred eighty (180) days to a level below the Unit Availability Limit immediately prior to the Force Majeure Event.
- The amount of Energy that cannot be produced is the sum, for each Settlement Period during which the condition applicable to A, B or C above exists, of the difference between the Unit Availability Limit immediately prior to the condition and the Unit Availability Limit during the condition.

**A. CAISO Monthly Billed Fuel Cost [for Geysers Units 13 & 16 only]**

The CAISO Monthly Billed Fuel Cost is given by Equation C2-1.

**Equation C2-1**

$$\frac{\text{CAISO Monthly Billed Fuel Cost}}{\text{Cost}} = \text{Billable MWh} * \text{Steam Price (\$/MWh)}$$

Where:

- Steam Price is \$11.25/MWh, which includes the cost of steam condensate re-injection.

**B. CAISO Monthly Variable O&M Cost**

The CAISO Monthly Variable O&M Cost for each Unit is given by Equation C2-3 and is the product of the sum of Billable MWh for the Billing Month and the Unit's Variable O&M Rate. Variable O&M Rate for each Unit is shown in Table C2-1:

**Equation C2-3**

$$\text{CAISO Monthly Variable O\&M Cost} = \text{Monthly sum of Billable MWh} * \text{Variable O\&M Rate}$$

<u>Table C2-1</u>	
<u>Unit</u>	<u>Variable O&amp;M Rate (\$/MWh)</u>

**C. CAISO Scheduling Coordinator Charge**

The CAISO Scheduling Coordinator Charge for each Unit shall be the product of \$0.31 and the Unit's of Billable MWh for the Billing Month.

**D. CAISO ACA Charge**

The CAISO ACA Charge is the product of the Unit's Billable MWh for the Billing Month and the applicable annual charge for short-term sales under 18 CFR Section 382.201 of the FERC Regulations, to the extent payable by Owner for Billable MWh.

**SCHEDULE C**

**Variable Cost Payment for All Conditions  
Part 3 for Conventional Hydro Units**

For each month and each Unit, the Variable Cost Payment for Billable MWh from the Unit pursuant to Nonmarket Transactions during that Month shall be the amount calculated in accordance with the following formula:

$$\text{Variable Cost Payment} = \text{A. CAISO Scheduling Coordinator Charge} + \text{CAISO ACA Charge}$$

**A. CAISO Scheduling Coordinator Charge**

The CAISO Scheduling Coordinator Charge for each Unit shall be the product of \$0.31 and the Unit's Billable MWh for the Billing Month.

**B. CAISO ACA Charge**

The CAISO ACA Charge is the product of the Unit's Billable MWh for the Billing Month and the applicable annual charge for short-term sales under 18 CFR Section 382.201 of the FERC Regulations.

**SCHEDULE C**

**Variable Cost Payment for All Conditions**  
**Part 4 for Pumped Storage Hydro Units**

For each month and each Unit, the Variable Cost Payment for Billable MWh from the Unit pursuant to Nonmarket Transactions during that Month shall be the amount calculated in accordance with the following formula:

$$\text{Variable Cost Payment} = \begin{array}{l} \text{A. CAISO Monthly Billed Fuel Cost +} \\ \text{B. CAISO Scheduling Coordinator} \\ \text{C. Charge +} \\ \text{CAISO ACA Charge} \end{array}$$

**A. CAISO Monthly Billed Fuel Cost**

The CAISO Monthly Billed Fuel Cost is given by Equation C4-1:

**Equation C4-1**

$$\text{CAISO Monthly Billed Fuel Cost} = \text{Year-to-Date CAISO Fuel Cost} - \text{Sum of Previous Months' CAISO Monthly Billed Fuel Cost in the Contract Year}$$

Where:

- Year-to-Date CAISO Fuel Cost is given by Equation C4-2.
- Sum of Previous Months' CAISO Monthly Billed Fuel Cost in the Contract Year shall be the sum of the CAISO Monthly billed Fuel Cost for each Month from January 1 of the Contract Year<sup>7</sup> through the end of the Month in the Contract Year before the Billing Month.

**Equation C4-2**

$$\text{Year-to-Date CAISO Fuel Cost} = (\text{YTD Pumping Cost} / \text{YTD Energy Produced}) * \text{Variable O\&M Rate}$$

Where:

- YTD Pumping Cost = Total cost of Energy purchased by Owner for pumping, including transmission charges, from January 1 of the Contract Year through the end of the Billing Month.
- YTD Energy Produced = Total Energy produced by the Facility for Market and Nonmarket Transactions from January 1 of the Contract Year through the end of the Billing Month.
- YTD Billable MWh = Total Billable MWh from January 1 of the Contract Year through the end of the Billing Month.

**B. CAISO Scheduling Coordinator Charge**

The CAISO Scheduling Coordinator Charge for each Unit shall be the product of \$0.31 and the Unit's Billable MWh for the Billing Month.

<sup>7</sup> For purposes of Equations C4-1 and C4-2 as applied in 1999, Contract Year includes those months in the year, beginning in January 1999, when the same services as under this Agreement were provided to ISO under a predecessor rate schedule, as well as months when such services are provided under this Agreement.

**C. CAISO ACA Charge**

The CAISO ACA Charge is the product of the Unit's Billable MWh for the Billing Month and the applicable annual charge for short-term sales under 18 CFR Section 382.201 of the FERC Regulations.

**Schedule C**

**Variable Cost Payment for All Conditions  
Part 5 for Biomass Generation Units**

For each month and each Unit, the Variable Cost Payment for Billable MWh from the Unit pursuant to Nonmarket Transaction during that Month shall be the amount calculated in accordance with the following formula:

$$\text{Variable Cost Payment} = \begin{array}{l} \text{A. CAISO Monthly Billed Fuel Cost +} \\ \text{B. CAISO Variable O\&M Cost +} \\ \text{C. CAISO Scheduling Coordinator} \\ \text{Charge} \end{array}$$

**A. CAISO Monthly Billed Fuel Cost**

The CAISO Monthly Billed Fuel Cost is given by Equation C5-1:

**Equation C4-1**

$$\text{CAISO Monthly Billed Fuel Cost} = \text{Billable MWh} * \text{Monthly Average Fuel Cost (\$/MWh)}$$

Where:

- Monthly Average Fuel Cost (\\$/MWh) = Negotiated Cost Based Amount.

**B. CAISO Monthly Variable O&M Cost**

The CAISO ACA Charge is the product of the Unit's Billable MWh for the Billing Month and the applicable annual charge for short-term sales under 18 CFR Section 382.201 of the FERC Regulations.

**Equation C5-2**

$$\text{CAISO Monthly Variable O\&M Cost} = \text{Monthly Sum of billable MWh} * \text{Variable O\&M Rate}$$

<u>Table C5-1</u>	
<u>Unit</u>	<u>Variable O&amp;M Rate (\\$/MWh)</u>

**C. CAISO Scheduling Coordinator Charge**

The CAISO Scheduling Coordinator Charge for each Unit shall be the product of \$0.31 and the Unit's Billable MWh for the Billing Month.

## **SCHEDULE D**

### **Part 1**

#### **Start-up Payment for Condition 1 Units**

##### **1. Prepaid Start-up Charge**

Prepaid Start-up Charge for each Unit operating under Condition 1 for each Contract Year will be calculated as the Prepaid Start-up Cost times the number of Prepaid Start-ups. The number of Prepaid Start-up equals the Maximum Annual Start-ups per Unit. The Prepaid Start-up Cost will be calculated in accordance with Equation D-1 for Start-up Cost with the following assumptions:

- a. Hourly Fuel Price: For the initial Contract Year the Hourly Fuel Price shall be the simple average of the applicable index prices from Table C1-8 of Schedule C for the period beginning on the later of the initial publication date of such indices or January 1, 1998 and ending December 31, 1998, plus the applicable Transportation Rate under Equation C1-8 as in effect on April 1, 1999. For each subsequent Contract Year, the Hourly Fuel Price shall be agreed upon by CAISO and Owner; if there is no agreement, the Hourly Fuel Price shall be the simple average of the Hourly Fuel Prices for the twelve months ending the prior June 30 as calculated in accordance with Equation C1-8 of Schedule C;
- b. Energy Price shall be based on the [insert Applicable UDC Tariff rate], including applicable demand charges, provided that the Applicable UDC Tariff rate shall only be the energy charge rate at those Facilities where Units have the capability to use Energy from other units at the same Facility to effect Start-ups or where generation from other units is otherwise permitted under the CAISO Tariff to be netted against auxiliary power needed to effect Start-up of the Unit. For the initial Contract Year, the Energy Price shall be calculated as the total auxiliary power (including Energy for Start-ups) costs charged to the Facility by its supplier of end-use Energy for the six-month period ending December 31, 1998 divided by the auxiliary power (including Energy for Start-ups) consumed at the Facility for that same time period. For Facilities that have not been charged for auxiliary power for the six-month period ending December 31, 1998, the Energy Price for the Initial Contract Year shall be the simple average of the prices for Energy for varying times of day shown in the Applicable UDC Tariff. For each subsequent Contract Year, the Energy Price shall be calculated as the total auxiliary power (including Energy for Start-ups) costs charged to the Facility by its supplier of end-use Energy for the twelve months ending the prior June 30 divided by the auxiliary power (including Energy for Start-ups) consumed at the Facility for that same twelve-month period;
- c. All Start-ups are assumed to be from maximum time off line as shown by value XMax in Table D-1, and
- d. Other Start-up Costs shall be zero (\$0) for non-hydroelectric Units; for hydroelectric Units, other Start-up costs shall be the cost shown in Table D-2 for Normal Work Hours.

The Prepaid Start-up Cost and Prepaid Start-up Charge for the current Contract Year are set forth in Table D-0:

Table D-0
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<u>Unit</u>	<u>Number of Prepaid Start-ups</u>	<u>Prepaid Start-up Cost</u>	<u>Prepaid Start-up Charge</u>
<u>Unit</u>			

## **2. Start-up Cost**

The cost for a Start-up shall be calculated in accordance with Equation D-1:

### **Equation D-1**

$$\begin{array}{r} \text{Start-up} \\ \text{Cost} \\ (\$) \end{array} = \begin{array}{r} \text{Start-up} \\ \text{Fuel Cost} \\ (\$) \end{array} + \begin{array}{r} \text{Start-up} \\ \text{Power Cost} \\ (\$) \end{array} + \begin{array}{r} \text{Other} \\ \text{Start-up Costs} \\ (\$) \end{array} + \begin{array}{r} \text{Shutdown} \\ \text{Power Cost} \\ (\$) \end{array}$$

Each component of the Start-up Cost in Equation D-1 is set forth below.

### **a. Start-up Fuel Costs**

The Start-up Fuel Cost shall be calculated in accordance with Equation D-1a:

### **Equation D-1a**

$$\begin{array}{r} \text{Start-up} \\ \text{Fuel Cost} \\ (\$) \end{array} = \left[ \frac{A}{(\text{MMBtu/hr})} * \frac{x}{(\text{hrs})} + \frac{B}{(\text{MMBtu})} \right] * \begin{array}{r} \text{Hourly} \\ \text{Fuel Price} \\ (\$/\text{MMBtu}) \end{array}$$

Where:

- "x" equals the number of hours since the Unit ceased operation and cannot exceed "x<sub>Max</sub>".
- The Hourly Fuel Price is calculated pursuant to Schedule C Equation C1-8 for the hour in which the Start-up began.
- The values A, B and x<sub>Max</sub> for each Unit are given in Table D-1 below.

### **b. Start-up Power Costs**

The Start-up Power Cost shall be calculated in accordance with Equation D-1b:

### **Equation D-1b**

$$\begin{array}{r} \text{Start-up} \\ \text{Power Cost} \\ (\$) \end{array} = \left( \frac{C}{(\text{MWh/hr})} * x + \frac{D}{(\text{MWh})} \right) * \begin{array}{r} \text{Energy} \\ \text{Price} \\ (\$/\text{MWh}) \end{array}$$

Where:

- "x" is equal to the hours since the Unit ceased operation and cannot exceed "x<sub>Max</sub>".
- The Energy Price shall be equal to the total auxiliary power (including Energy for Start-ups) costs charged to the Facility by its supplier of end-use Energy for the billing cycle in which the Start-up was initiated divided by the total auxiliary power (including Energy for

Start-ups) consumed at the Facility during such billing cycle.

- The values C, D and xMax are given in Table D-1 below.

**c. Shutdown Power Costs**

The Shutdown Power Cost shall be calculated in accordance with Equation D-1c:

**Equation D-1c**

$$\begin{array}{l} \text{Shutdown} \\ \text{Power Cost} \\ (\$) \end{array} \quad \equiv \quad \begin{array}{l} \text{Shutdown Power} \\ \text{Requirement} \\ (\text{MWh}) \end{array} \quad \begin{array}{l} \text{Energy} \\ \text{Price} \\ (\$/\text{MWh}) \end{array}$$

The Energy Price shall be equal to the total auxiliary power (including Energy for Shutdowns) costs charged to the Facility by its supplier of end-use Energy for the billing cycle in which the Shutdown was initiated divided by the total auxiliary power (including Energy for Shutdowns) consumed at the Facility during such billing cycle. The Shutdown Power Requirement is given in Table D-1 below.

**d. Other Start-up Costs for Hydroelectric Only**

Other Start-up Costs are the cost of labor to start hydroelectric Units that require an operator to manually parallel, and reflect the labor costs to travel to the site. If the Start-up of a hydroelectric Unit occurs outside normal work hours, the Start-up Costs include the minimum work hours and labor rates as set by the applicable collective bargaining agreement(s).

The Other Start-up Costs shall be calculated in accordance with Equation D1-d. The values for E are provided in Table D-2 for normal work hour and outside of normal work hour situations.

**Equation D-1d**

$$\text{Other Start-up Costs } (\$) \quad \equiv \quad E$$

Once a Unit has been given a Dispatch Notice to Start-up, other Start-up Costs are incurred.

<b><u>Table D-1, Start-Up Costs</u></b>						
	<u>X<sub>Max</sub></u>	<u>A</u>	<u>B<sup>8</sup></u>	<u>C</u>	<u>D</u>	<u>Shutdown Power Requirement</u>
<u>Unit</u>	<u>(Hrs)</u>	<u>(mmBtu)/hr</u>	<u>(mmBtu)</u>	<u>(MWh)/hr</u>	<u>(MWh)</u>	<u>(MWh)</u>

**Table D-2, Other Start-Up Costs – Hydroelectric Units**

<sup>8</sup> Includes fuel consumed from the time Unit reaches Synchronization to the time Unit reaches Minimum Load.

Unit	E (Normal Work Hours) (\$)	E (Outside Normal Work Hours) (\$)

### **3. Monthly Start-up Adjustment**

For each Start-up successfully completed in compliance with a Dispatch Notice during the Billing Month, and each Start-up initiated in compliance with a Dispatch Notice but not successfully completed because it is canceled or rescinded by CAISO, until the total Counted Start-ups for the Contract Year equals the number of Prepaid Start-ups for the Contract Year, the Monthly Start-up Adjustment, which shall be a credit or payment, is the sum of Prepaid Start-up Adjustments, and Prepaid Start-up Adjustments for Canceled Start-ups calculated in accordance with Equations D-2 and D-3:

#### **Equation D2**

$$\text{Prepaid Start-up Adjustment} = \text{Prepaid Start-up Cost calculated in accordance with Section 1 minus the actual Start-up Cost calculated in accordance with Equation D-1.}$$

#### **Equation D-3**

$$\text{Prepaid Start-up Adjustment for Canceled Start-up} = \frac{\text{Number of hours committed to the Start-up applicable Start-up Lead Time (hrs) as shown in Schedule A, Section 6}}{\text{Prepaid Start-up Adjustment calculated in accordance with Equation D-2}} *$$

Where:

- The “number of hours committed to the Start-up” is the lesser of (a) time elapsed between the initiation of the Start-up and the cancellation and (b) the applicable Start-up Lead Time.

## **SCHEDULE D**

### **Part 2**

#### **Start-up Payment for Condition 2 Units**

##### **1. Start-up Payment**

The Start-up Payment for each Start-up successfully completed for each Unit operating under Condition 2 equals the Start-up Cost calculated using Equation D-1.

##### **2. Payment for Canceled Start-up**

If Start-up is initiated under a Dispatch Notice but is not successfully completed because it is canceled or rescinded by the CAISO, the Start-up Payment is calculated in accordance with Equation D-4:



**Equation D-4**

$$\begin{array}{l} \text{Start-up} \\ \text{Payment for} \\ \text{Canceled Start-up} \\ \text{(\$)} \end{array} = \frac{\begin{array}{l} \text{Number of hours} \\ \text{committed to the} \\ \text{Start-up} \\ \text{applicable Start-up} \\ \text{Lead Time (hrs)} \\ \text{as shown in} \\ \text{Schedule A, Section 6} \end{array}}{\text{Start-up Cost}} * \begin{array}{l} \text{calculated in} \\ \text{accordance with} \\ \text{Equation D-1 (\$)} \end{array}$$

The "number of hours committed to the Start-up" is the lesser of (a) time elapsed between the initiation of the Start-up and the cancellation or (b) the applicable Start-up Lead Time.

**SCHEDULE E**

**Ancillary Services**  
**Part 1 for Condition 1**

The CAISO may call upon the Unit to provide the following Ancillary Services as defined in the CAISO Tariff:

- Regulation
- Spinning Reserve
- Nonspinning Reserve
- Replacement Reserve
- Voltage Support (including synchronous condenser operation)
- Black Start

If the Unit is otherwise generating, the Owner shall be required to operate the Unit within the Power Factor range of the Unit specified in Schedule A to provide Ancillary Services without additional compensation.

Certain Units (hydroelectric and synchronous condensers) can provide Ancillary Services without generating Energy. Under this Condition, Owner will be compensated for Motoring Charges if the Unit is providing Ancillary Services while synchronized without generating Energy.

**Motoring Charge**

When Units are operated as synchronous condensers (i.e., motored using electric power) to provide Ancillary Services, if applicable, the payment for that service is given by the following formula:

$$\text{Motoring Charge} = \frac{\text{(Power consumption rate)}}{\text{(MWh/hr)}} * \text{(hours operated)} * \text{(Energy Price)}$$

Where the Power consumption rate is given by the following table:

<u>Unit</u>	<u>Power consumption rate (MWh/hour)</u>
-------------	------------------------------------------

The Energy Price shall be equal to the total power costs charged to the Facility by its supplier of end-use Energy under the Applicable UDC Tariff for the billing cycle in which the Motoring Charge was incurred divided by the total power consumed at the Facility under such tariff during such billing cycle.

**Pre-empted Dispatch Payment**

If the CAISO issues a Dispatch Notice to:

- (i) decrease a Unit's scheduled output of Energy in a Market Transaction to provide Ancillary Services;
- (ii) decrease a Unit's scheduled provision of Ancillary Services capacity in a Market Transaction in order to provide Regulation, Spinning Reserve, Nonspinning Reserve, or Replacement Reserve pursuant to a Dispatch Notice.
- (iii) decrease a Unit's scheduled provision of Ancillary Service capacity in a Market Transaction in order to provide Energy pursuant to a Dispatch Notice, the CAISO shall pay the appropriate Pre-empted Dispatch Payment described below. The Pre-empted Dispatch Payments are intended to make an Owner whole with respect to the original Market Transaction.

**A. For Pre-empted Energy Market Transactions:**

Pre-empted Dispatch Payment = Imbalance Energy Charge – Cost Savings

- Imbalance Energy Charge =  $(X_o - X_n) \square$  Penalty Price
- Penalty Price = Unrestricted Imbalance Energy Price + additional penalties (per MWh) imposed by the CAISO for failure to comply with Market Schedules due to compliance with Dispatch Notice.
- Cost Savings = Fuel Cost Savings + Emissions Savings + Other Savings

Where:

- $X_o$  = Original Total Schedule in Market and Nonmarket Transactions;
- $X_n$  = New Total Schedule in Market and Nonmarket Transactions;

For fossil fuel Units, the Fuel Cost Savings is calculated as follows:

- Fuel Cost Savings = Fuel Savings x Hourly Fuel Price
- Fuel Savings =  $( (AX_o^3 + BX_o^2 + CX_o + D) - (AX_n^3 + BX_n^2 + CX_n + D) ) \star E$
- or
- Fuel Savings =  $[ ( A \star (B + CX_o + De^{FX_o}) ) - ( A \star (B + CX_n + De^{FX_n}) ) ] \star E$
- A, B, C, D, E and F are the coefficients from Table C1-7a or C1-7b, as applicable;
- Hourly Fuel Price is calculated in Equation C1-8.

For geothermal Units, the Fuel Cost Savings is calculated by the following formula:

$$\text{Fuel Cost Savings} = (X_o - X_n) \star \text{Hourly Fuel Price}$$

Where:

- Hourly Fuel Price is the Steam Price identified in Equation C2-1 in Schedule C. However, for purposes of this Pre-empted Dispatch Payment calculation, the value for the Steam Price will be set to zero for Geysers Main Units until the cumulative Hourly Metered Total Net Generation for the Contract Year from all Units exceeds the Minimum Annual Generation given in Equation C2-2.

For pumped storage hydroelectric Units, the Fuel Cost Savings is calculated by the following formula:

$$\text{Fuel Cost Savings} = (X_o - X_n) * \text{Hourly Fuel Price}$$

Where:

- Hourly Fuel Price is YTD Pumping Cost / YTD Energy Produced; and YTD Pumping Cost and YTD Energy Produced are as defined in Equation C4-2.

For conventional hydroelectric Units, the Fuel Cost Savings is zero.

Other Savings =  $((X_o - X_n) * (\text{Variable O\&M Rate} + \text{applicable annual charge for short-term sales under 18 CFR 382.201 of the FERC Regulations}))$

Emissions Savings = RECLAIM Savings + NOx Emissions Fee Savings + Organic Gases Fee Savings + Sulfur Oxides Fee Savings + Particulate Matter Savings + Carbon Monoxide Fee Savings

$$\text{RECLAIM Savings} = ((AX_o^2 + BX_o + C) - (AX_n^2 + BX_n + C)) * \text{RECLAIM NOx Trading Credit Rate}$$

Where:

- A, B and C are the coefficients from Table C1-13;
- Xo = Original Total Schedule in Market and Nonmarket Transactions;
- Xn = New Total Schedule in Market and Nonmarket Transactions;

$$\text{NOx Emissions Fee Savings} = \frac{((AX_o^2 + BX_o + C) - (AX_n^2 + BX_n + C))}{2000} * \text{NO}_x \text{ Emissions Fee;}$$

Where:

- A, B and C are the coefficients from Table C1-13;
- Xo = Original Total Schedule in Market and Nonmarket Transactions;
- Xn = New Total Schedule in Market and Nonmarket Transactions;

Organic Gases Fee Savings =

$$4.76 * 10^{-7} * \text{Gas Fuel Savings} * \text{Associated Emission Factor for Organic Gases} * \text{Associated Emissions Fee for Organic Gases}$$

Sulfur Oxides Fee Savings =

$4.76 * 10^{-7} * \text{Gas Fuel Savings} * \text{Associated Emission Factor for Sulfur Oxides} * \text{Associated Emissions Fee for Sulfur Oxides}$

Particulate Matter Oxides Fee Savings =

$4.76 * 10^{-7} * \text{Gas Fuel Savings} * \text{Associated Emission Factor for Particulate Matter} * \text{Associated Emission Fee for Particulate Matter}$

Carbon Monoxide Fee Savings =

$4.76 * 10^{-7} * \text{Gas Fuel Savings} * \text{Associated Emission Factor for Carbon Monoxide} * \text{Associated Emission Fee for Carbon Monoxide}$

All Emissions Fees and Emission Factors are determined in accordance with Schedule C.

[If applicable, insert emission cost savings formula for fuel other than natural gas.]

The Owner will be entitled to retain all payments received from the Owner's Scheduling Coordinator for the Unit's scheduled output.

**B. For Pre-empted Ancillary Services Market Transactions:**

CAISO shall pay Owner the product of (i) the difference between the MW of the Ancillary Service Owner had scheduled to provide in a Market Transaction and the MW of Ancillary Services Owner is able to provide after complying with the Dispatch Notice and (ii) the Market Clearing Price the Owner pays to buy back its commitment to deliver the preempted MW of Ancillary Services (if the Owner actually incurs such a cost), or the penalty the Owner pays for failure to deliver the preempted MW of Ancillary Services (if the Owner actually incurs such a cost) for the applicable Ancillary Service, market, and hour. In addition, if compliance with the Dispatch Notice causes reduction of a market regulation transaction, the CAISO shall also pay the Owner the product of the Regulation Energy Payment Adjustment (REPA) amount, if applicable, and the MW of Regulation which Owner had scheduled but is unable to provide because of its compliance with the Dispatch Notice.

**Schedule E**

**Ancillary Services  
Part 2 for Condition 2**

The CAISO may call upon the Unit to provide the following Ancillary Services as defined in the CAISO Tariff:

Regulation  
Spinning Reserve  
Nonspinning Reserve  
Replacement Reserve  
Voltage Support (including synchronous condenser operation)  
Black Start

The Owner shall be required to operate the Unit within the Power Factor range of the Unit specified in Schedule A to provide Voltage Support without additional compensation.

The Owner shall receive no payment for any Ancillary Services Capacity provided. However, operation of a Unit in synchronous condenser mode will be compensated as shown below.

**Motoring Charge**

When Units are operated as synchronous condensers (i.e., motored using electric power) to provide Ancillary Services, if applicable, the payment for that service is given by the following formula:

$$\text{Motoring Charge} = (\text{Power consumption rate (MWh/hr)}) * (\text{hours operated}) * (\text{Energy Price})$$

Where the Power consumption rate is given by the following table:

<u>Unit</u>	<u>Power consumption rate (MWh/hour)</u>
-------------	------------------------------------------

The Energy Price shall be equal to the total power costs charged to the Facility by its supplier of end-use Energy under the Applicable UDC Tariff for the billing cycle in which the Motoring Charge was incurred divided by the total power consumed at the Facility under such tariff during such billing cycle.

**Schedule E**  
**Ancillary Services**  
**Part 3 for Black Start Services**

For those Units with Black Start capability, the cost of maintaining such capability is included in this Agreement and no additional costs shall be charged to the CAISO for maintaining such capability. The CAISO will pay for Black Start service, including for a Black Start Test Dispatch Notice, at the rates and prices in this Agreement for Start-Ups and Delivery of Energy in connection with the Black Start service. Owner shall maintain the Black Start capability of the Unit and the Facility and provide Black Starts in accordance with the CAISO Ancillary Services Requirements Protocol and the CAISO Dispatch Protocol, which shall be deemed incorporated by reference into this Agreement.

When the CAISO first gives written notice to the Owner that it has obtained adequate Black Start service through an auction or a separate agreement with Owner or other Generators and Black Start service under this Agreement is no longer required, the CAISO shall not be entitled to call upon this Unit to provide Black Start service. Once the CAISO has given this notice, the Owner may remove Black Start service from this Agreement by filing unilaterally a change in rate schedule with FERC. Such filing shall not be required to include any reduction in rate or revenue solely because Black Start service is removed. The CAISO shall not oppose the absence of any rate or revenue reduction that results solely from removing such service.

**Schedule F**

**Determination of Annual Revenue Requirements**  
**of Must-Run Generating Units**

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**Article I. Purpose and General Procedures**

**Part A. Determination of Rates and Charges**

This Schedule F establishes the procedures and methodology for determining the Annual Fixed Revenue Requirements (in dollars) and Variable O&M Rates (in \$/MWh) for facilities designated for must-run service for purposes of calculating certain charges for such service under the RMR Contract.

The Annual Fixed Revenue Requirements and the Variable O&M Rate for each designated must-run generating facility shall be determined annually. The Annual Fixed Revenue Requirements and the Variable O&M Rate for each such facility that shall be used for calculating charges to the CAISO during each calendar year shall be determined by application of the Formula set forth in Article II hereof to the Owner's costs incurred during the twelve-month period ended on June 30 of the prior calendar year. Each twelve-month period ending on June 30 of each year is hereinafter referred to as the "Cost Year" relating to the rates and charges that are effective during the succeeding calendar year.

**Part B. Informational Filings**

In connection with the determination of rates and charges for each calendar year, reflecting costs incurred during the June 30 Cost Year as described in the foregoing Part A of this Article I, the Owner shall provide to the CAISO an Information Package detailing and supporting all calculations involved in such determination. A single Information Package may contain all such informational materials pertaining to all of the Owner's designated must-run facilities. On or before October 1, 2001, the Owner shall provide to the CAISO the Information Package relating to the rates and charges to become effective on January 1, 2002. Thereafter, on November 1 of each year, the Owner shall provide to the CAISO the Information Package relating to the rates and charges to be effective during the calendar year beginning on the following January 1.

Each such Information Package shall be in a clear and readable format and shall contain:

1. detailed workpapers showing the derivation of costs under the Formula for the relevant Cost Year along with supporting schedules showing the data used in applying the formula, presented in a format consistent with the presentation of information in the FERC Form No. 1;
2. a clear identification of the depreciation rates reflected in claimed costs for the Cost Year and the rate of return and every other stated item (i.e., any item which appears as a numerical value in the Formula and which only may be changed by a filing with the FERC);
3. a comparison of the major components of the resulting revenue requirements for the relevant Cost Year with the corresponding components of the revenue requirements that result from the application of the Formula using costs from the Owner's FERC Form No. 1 relating to the preceding calendar year;
4. such additional documentation as to specific items of costs required by the Formula.

The Owner shall provide each Information Package to the CAISO in printed form and a suitable electronic format. The CAISO shall post the Information Package on its website. A suitable electronic format shall be any format that the FERC permits for electronic filings.

Coincident with providing each such Information Package to the CAISO, the Owner shall also submit the Information Package to the FERC in an informational filing so as to allow for review of the related rates

and charges by the FERC staff and affected parties. As to the informational filing relating to rates and charges to be effective during calendar year 2002, (i) discovery requests by the FERC staff and affected parties shall be made within 45 days of the filing, with responses by the Owner due within 60 days of the filing, and (ii) protests, if any, by affected parties shall be filed with the FERC within 75 days of the filing. As to each subsequent informational filing, (i) discovery requests by the FERC staff and affected parties shall be made within 20 days of the filing, with responses by the Owner due within 35 days of the filing, and (ii) protests, if any, by affected parties shall be filed with the FERC within 45 days of the filing. In the event that the need arises during the discovery process for the nondisclosure or confidentiality of information, the Owner and affected parties, other than FERC Staff and state regulatory agencies, shall utilize the procedures contained in Schedules N-1 and N-2 of the RMR Contract. If the Owner seeks the confidentiality or nondisclosure of information provided to FERC or state regulatory agencies, it shall follow the applicable rules, regulations and statutory provisions of those agencies.

Protests to the Information Package challenging arithmetic calculations or conformity to the Rate Formula, not resolved by summary disposition of the FERC, shall be resolved by the use of the Alternative Dispute Resolution procedures in Schedule K of the RMR contract. In such a proceeding, the Owner will bear the burden of proof as in a proceeding under Section 205 of the Federal Power Act (FPA). If it is found that an erroneous calculation or non-conforming formula element has been used, refunds shall be ordered. The amount of refunds shall restore the parties to the positions they would have occupied had the erroneous calculations or non-conforming formula elements not been used, with interest calculated pursuant to Section 35.19a of the Commission's regulations, 18 C.F.R. Section 35.19a.

If a matter is set for hearing, additional discovery shall be permitted in accordance with the Commission's Rules of Practice and Procedure. Under hearings established pursuant to this provision, refund rights will be as in a proceeding under Section 205 of the FPA. Any refunds due as the result of a final Commission order will be credited or paid to the CAISO with interest in accordance with 18 C.F.R. 35.19a.

In addition to the discovery provided above, affected parties shall have the ability to audit the Owner's books and records as provided in Section 12.2 of the RMR Contract. To the extent that an audit discloses that the formula was not correctly applied for a particular year, the affected prior billings shall be corrected, and appropriate refunds or credits shall be provided to the CAISO, with interest determined in accordance with 18 C.F.R. 35.19a.

Notwithstanding the above procedures, all parties retain full rights to make filings at any time under Sections 205 and 206 of the FPA, as appropriate.

## **Article II. Formula for Determination of Annual Revenue Requirements**

### **Part A. Purpose and Overview**

The purpose of this Formula For Determination of Annual Revenue Requirements ("Formula") is to specify the method for determining the Annual Revenue Requirements, and certain components thereof, of particular must-run generating units for each Cost Year.

Part B of this Formula contains the specifications for the components of costs that may be included in the Annual Revenue Requirements of individual designated must-run generating units (*i.e.*, for each "Subject Resource").

Part C of this Formula sets forth (i) general instructions for the use and application of the Formula, and (ii) certain general definitions of terms used herein.

### **Part B. Determination of Annual Revenue Requirements**

#### **Section 1. Annual Fixed Revenue Requirements and Variable O&M Rate**

##### **(A) Annual Fixed Revenue Requirements**



The "Annual Fixed Revenue Requirements" for the Subject Resource is the amount determined as the following difference:

1. Total Annual Revenue Requirements, as defined below; less
2. Total Annual Variable Costs, as defined below.

**(B) Variable O&M Rate**

The "Variable O&M Rate" for the Subject Resource is the rate (in \$/MWh) determined as the follows:

$$\text{Variable O\&M Rate} = \frac{\text{Annual Variable O\&M Expenses}}{\text{Annual Net Generation}}$$

where "Annual Variable O&M Expenses" is defined hereinbelow, and "Annual Net Generation" is the net generation (in MWh) of the Subject Resource during the Cost Year.

Notwithstanding the foregoing, whenever the Annual Net Generation of the Subject Resource is zero or negative, the Variable O&M Rate shall be deemed to be zero.

**(C) Total Annual Revenue Requirements**

The "Total Annual Revenue Requirements" for the Subject Resource is the amount that is the sum of the following amounts:

1. Operating Expenses, determined pursuant to Section 2 below; and
2. Return and Income Tax Allowance, determined pursuant to Section 3 below.

**Section 2. Operating Expenses**

"Operating Expenses" for the Subject Resource is the quantity that is the sum of the following amounts:

1. Total O&M Expenses, as defined below;
2. Depreciation Expenses, as defined below;
3. Taxes Other Than Income Taxes, as defined below; and
4. Revenue Credits, as defined below.

**(A) Total O&M Expenses**

"Total O&M Expenses" is the amount of expenses arising from the operation and maintenance of the Subject Resource, including Production O&M Expenses, Transmission O&M Expenses, Distribution O&M Expenses, and Administrative & General Expenses, all as defined below.

**(1) Production O&M Expenses:** Expenses incurred directly in operating and maintaining the Subject Resource:

**(a) Steam Production O&M:** For steam units only, amounts properly recorded in Accounts 500-515.

- (b) Hydro Production O&M:** For hydro units only, amounts properly recorded in Accounts 535-545.
- (c) Other Power Generation O&M:** For other types of units, amounts properly recorded in Accounts 546-554.
- (d) Other Power Supply Expenses:** Amounts properly recorded in Accounts 555-557, if any, that are reasonably assignable or allocable to the Subject Resource.

**(2) Transmission O&M Expenses:** Expenses incurred directly in operating and maintaining the transmission facilities associated with the Subject Resource, as properly recorded in Accounts 560-573 and reasonably assignable or allocable to the Subject Resource.

**(3) Distribution O&M Expenses:** Expenses incurred directly in operating and maintaining the distribution facilities associated with the Subject Resource, as properly recorded in Accounts 580-598 and reasonably assignable or allocable to the Subject Resource.

**(4) Administrative and General (A&G) Expenses:** Those portions, if any, of administrative and general expenses, as properly recorded in Accounts 920-935, that are reasonably related to the operation of the Subject Resource, determined from appropriate direct assignment or reasonable allocation. Such expenses shall exclude (i) franchise fees related solely to the Owner's retail sales, (ii) retail regulatory expenses, (iii) assessments under 18 CFR Section 382.201 of the FERC Regulations, (iv) association dues, and (v) general advertising expenses.

Notwithstanding the foregoing, O&M Expenses hereunder shall exclude all Scheduling Coordinator Charges as charged under the CAISO Tariff, irrespective of in which Account or Accounts such charges are included.

**(B) Depreciation Expenses**

"Depreciation Expenses" are provisions for depreciation and amortization for the Subject Resource, as properly recorded in Accounts 403, 404, 405, 406, and 407, including only:

- (1) Production Plant Depreciation:** Depreciation and amortization, if any, of investment in the Subject Resource;
- (2) Transmission Plant Depreciation:** Depreciation and amortization, if any, of investment in the transmission facilities associated with the Subject Resource, as reasonably assignable or allocable to the Subject Resource;
- (3) Distribution Plant Depreciation:** Depreciation and amortization, if any, of investment in the distribution facilities associated with the Subject Resource, as reasonably assignable or allocable to the Subject Resource;
- (4) General and Intangible Plant Depreciation:** Depreciation and amortization, if any, of general and intangible plant investments that are reasonably assignable or allocable to the Subject Resource.

Notwithstanding the foregoing, costs recorded in Accounts 405, 406 and 407 shall be included hereunder only if, and to the extent that, FERC shall have permitted the inclusion of such costs for ratemaking purposes for the Owner under the RMR Contract.

**(C) Taxes Other Than Income Taxes**

"Taxes Other Than Income Taxes" are taxes other than income and revenue taxes, as properly recorded in Account 408.1, that are reasonably assignable and allocable to the Subject Resource, including for example:

1. Property and Property-Related Taxes;
2. Payroll and Labor-Related Taxes;
3. Other Taxes, if any, identifiable as reasonably assignable or allocable to the Subject Resource.

Taxes Other Than Income Taxes assignable and allocable to the Subject Resource shall not include any taxes related solely to, or arising solely from, the Owner's retail sales.

**(D) Revenue Credits**

"Revenue Credits" are those revenues, if any, that are (i) properly recorded in Account 451 (Miscellaneous Service Revenues), Account 453 (Sales of Water and Water Power), Account 454 (Rent From Electric Property), Account 455 (Interdepartmental Sales), and Account 456 (Other Electric Revenues), and (ii) directly related to, or reasonably allocable to, the Subject Resource. Such Revenue Credits shall be treated as negative values hereunder.

**(E) Treatment of Capital Leases**

The foregoing components of Operating Expenses may include expenses associated with capital leases as approved by the Commission, as set forth more fully under Article II, Part B, Section 4(A) of this Formula.

**Section 3. Return and Income Tax Allowance**

"Return and Income Tax Allowance" is the quantity that is the sum of:

1. the product of:
  - a. Allowable Pre-Tax Rate of Return, and
  - b. Net Investment,as both such quantities are hereinafter defined; and
2. the quantity equal to:

$$\frac{[ITC Amortization]}{(1-t)}$$

where:

- a. "t" is the effective, combined state and federal income tax rate.
- b. "ITC Amortization," is amortization, if any, of investment tax credits, as properly recorded in Account 411.4, that are reasonably assignable or allocable to the Subject Resource and to those portions of general and intangible plant investments that are reasonably assignable or allocable to the Subject Resource. Notwithstanding the foregoing, this term shall include only those amounts of

amortization of investment tax credits which the Owner shall have elected to receive under Section 46(f)(1) of the Internal Revenue Code. ITC Amortization amounts that reduce net income shall be treated as negative values hereunder, while ITC Amortization amounts, if any, that increase net income shall be treated as positive values hereunder.

#### **Section 4. Net Investment**

"Net Investment" is the quantity that is determined as follows:

$$\text{Net Investment} = \text{Gross Plant Investment} - \text{Depreciation Reserve} + \text{CWIP} + \text{PHFU} - \text{ADIT} + \text{Working Capital}$$

where the quantities appearing in the foregoing equation are defined hereinafter below.

In determining Net Investment hereunder, each component thereof, other than Cash Allowance, shall be determined as the end-of-year balances in the Accounts specified for the relevant Cost Year.

#### **(A) Gross Plant Investment**

"Gross Plant Investment" is gross original cost plant investment as properly recorded in Accounts 101, 102, 106, and 114, including only the following amounts:

- (1) Production Plant Investment:** investment in the generating unit itself and in common facilities associated with the unit, as recorded in Accounts 310-316, 330-336, or 340-346, 106 and 114;
- (2) Transmission Plant Investment:** investment in transmission facilities associated with the Subject Resource, as properly recorded in Accounts 350-359, 106, and 114, and reasonably assignable or allocable to the Subject Resource;
- (3) Distribution Plant Investment:** investment in distribution facilities associated with the Subject Resource, as properly recorded in Accounts 360-373, 106, and 114, and reasonably assignable or allocable to the Subject Resource; and
- (4) General and Intangible Plant Investment:** reasonably assignable and allocable portions, if any, of general and intangible plant investment, recorded in Accounts 389-399 and 301-303, 106 and 114.

Subject to the limitations detailed in this paragraph, when the Owner has a capital lease in lieu of gross plant investment, it may include Account 101.1 hereunder. A lease may be capitalized and the costs included for ratemaking purposes if the Owner demonstrates that the lease qualifies as a capital lease under 18 C.F.R. Part 101, General Instruction No. 19 (1998), and the Owner has obtained, prior to the informational filing, approval to include such costs for ratemaking purposes from the FERC under the FPA. Capital leases shall be accounted for in accordance with 18 C.F.R. Part 101, General Instruction No. 20 (1998).

#### **(B) Depreciation Reserve**

"Depreciation Reserve" is accumulated provision for depreciation and amortization, as properly recorded in Accounts 108, 111, and 115, related to the Subject Resource, including the following amounts:

- (1) Production Plant Depreciation Reserve:** amounts of Depreciation Reserve for the investment in the unit itself and in common facilities associated with the unit;
- (2) Transmission Plant Depreciation Reserve:** amounts of Depreciation Reserve for the investment in transmission facilities associated with the Subject Resource, as reasonably assignable or allocable to the Subject Resource;
- (3) Distribution Plant Depreciation Reserve:** amounts of Depreciation Reserve for the investment in distribution facilities associated with the Subject Resource, as reasonably assignable or allocable to the Subject Resource;
- (4) General and Intangible Plant Reserve:** amounts of Depreciation Reserve for the portions, if any, of general and intangible plant investments reasonably assignable and allocable to the Subject Resource.

Credit balances in the aforementioned accounts shall be treated as positive values hereunder, and debit balances in such accounts shall be treated as negative values.

**(C) CWIP**

"CWIP" is the amount of construction work in progress, as properly recorded in Account 107 for construction projects associated with the Subject Resource related solely and directly to pollution control for the Subject Resource.

**(D) PHFU**

"PHFU" is the cost of plant held for future use, as properly recorded in Account 105 that is reasonably assignable or allocable to the Subject Resource.

**(E) ADIT**

"ADIT" is accumulated provision for deferred income taxes, as properly recorded in Accounts 190, 281, 282, 283, and 255, that are reasonably assignable or allocable to the investment in, or operation of, the Subject Resource, including the following amounts:

- (1) Production Plant ADIT:** amounts of ADIT arising directly from the investment in, or operation of, the Subject Resource itself and common facilities associated with the Subject Resource;
- (2) Transmission Plant ADIT:** amounts of ADIT arising directly from the investment in, or operation of, the transmission facilities, if any, associated with the Subject Resource;
- (3) Distribution Plant ADIT:** amounts of ADIT arising directly from the investment in, or operation of, distribution facilities, if any, associated with the Subject Resource; and
- (4) General and Intangible Plant ADIT:** amounts of ADIT arising from the portions, if any, of general and intangible plant investments reasonably assignable and allocable to the Subject Resource.

For purposes of this Formula, ADIT means accumulated provision for deferred income taxes, as properly recorded in the aforementioned Accounts, *including* amounts previously recorded in such accounts and reclassified as a result of the adoption of SFAS No. 109, but *excluding* amounts recorded in such accounts as a result of the adoption of

SFAS No. 109, such that the required adoption of SFAS No. 109 will have no effect on the costs determined hereunder.

Notwithstanding the foregoing, as to Account 255, ADIT hereunder shall include only those amounts, if any, related to investment tax credits which the Owner shall have elected to receive under Section 46(f)(2) of the Internal Revenue Code.

ADIT balances that are credit balances shall be treated as positive values hereunder, while ADIT balances that are debit balances shall be treated as negative values hereunder.

Owner shall support all amounts of ADIT included and not included hereunder in the manner described in sections 35.13(h)(6) and (7) of the Commission's regulations (Statements AF and AG, respectively), except that the time period for the relevant data for the informational package will be consistent with the requirements of this formula, rather than the "Periods" referenced in those regulations.

**(F) Working Capital**

"Working Capital" is the sum of the portions, if any, of the following items that are reasonably assignable or allocable to the Subject Resource:

- (1) Fuel Stocks**, which is the amount of fossil fuel stock, if any, maintained for the Subject Resource, as properly recorded in Account 151;
- (2) Plant Materials and Supplies**, consisting of the value of plant materials and supplies reasonably assignable or allocable to the Subject Resource, as properly recorded in Accounts 154 and 163;
- (3) Prepayments**, consisting of the amount, if any, of prepayments reasonably assignable or allocable to the Subject Resource, as properly recorded in Account 165;
- (4) Working Cash Allowance**, which is one-eighth of O&M Expenses (as defined herein), less (a) Total Annual Fuel Costs (as defined hereinbelow), and (b) all amounts or portions, if any, of Account 555 (Purchased Power) that may be included in such O&M Expenses; and

**Unamortized Deferred Costs**, which shall be that portion, if any, of Account 186 directly related to, or reasonably allocable to, the Subject Resource.

**Section 5. Allowable Pre-Tax Rate of Return**

The Allowable Pre-Tax Rate of Return shall be the sum of:

- (a) 12.25%, and
- (b) 30% of the amount, if any, by which (a) the latest available 6-month average of yields on 10-year U.S. Treasury Bonds, as of the date of the first Informational Filing, exceeds (b) the latest available 6-month average of yields on 10-year U.S. Treasury Bonds as of [the effective date of the settlement].

Notwithstanding the foregoing, the Owner may make application to the FERC, prior to or in conjunction with the first Informational Filing, in a limited proceeding to seek to establish a different Allowable Pre-Tax Rate of Return under Section 205 of the Federal Power Act.

## **Section 6. Additional Quantities**

### **(A) Annual Variable O&M Expenses**

"Annual Variable O&M Expenses" is the sum of the following quantities:

- (1) Variable Production O&M Expenses:** those portions of Production O&M Expenses, as defined above, other than fuel expenses, that are reasonably determined to be variable expenses, in the sense that they are incurred as a result of, or otherwise are reasonably associated with, the production of energy by the Subject Resource.
- (2) Variable A&G Expenses:** that portion of A&G Expenses that is related or allocable to the foregoing Variable Production O&M Expenses.

Notwithstanding the foregoing, starting with the first information filing hereunder and continuing until the Owner elects to use a different method to determine its Annual Variable O&M Expenses, the Owner may compute Annual Variable O&M Expenses as the amount equal to the product of (a) the Initial Variable O&M Rate, in \$/MWh, for the Subject Resource, as set forth in Exhibit A hereto (Exhibit A can be found in Appendix B to the Stipulation and Agreement), times (b) the Net Generation of the Subject Resource (as defined hereinabove). Whenever the Owner does not compute Annual Variable O&M Expenses based on the Initial Variable O&M Rate in the foregoing manner, the Owner shall include in each of Informational Package a detailed explanation of the method or methods used to classify O&M expenses as between fixed (i.e., capacity-related) expenses and variable (i.e., energy-related) expenses and the reason(s) such method results in just and reasonable rates.

### **(B) Annual Fixed O&M Expenses**

"Annual Fixed O&M Expenses" is the quantity that is equal to the following:

- (1) Total O&M Expenses, as defined hereinabove, less**
- (2) the sum of:**
  - a. Annual Variable O&M Expenses, as defined hereinabove, and
  - b. Annual Variable Fuel Costs, as defined hereinbelow,
  - c. Annual Emissions Costs, as defined hereinbelow, and
  - d. Annual Non-Fuel Start-Up Costs, as defined hereinbelow.

### **(C) Fuel Expenses**

#### **(1) Total Annual Fuel Costs**

"Total Annual Fuel Costs" is the total fuel expense for the Subject Resource for the Cost Year properly recorded in Account 501 or Account 547, as appropriate depending on the nature of the Subject Resource.

#### **(2) Annual Fixed Fuel Costs**

"Annual Fixed Fuel Costs" is that portion, if any, of Total Annual Fuel Costs related to fuel handling and administration of fuel planning, procurement and transportation which do not vary with the amount of fuel purchased.

**(3) Annual Variable Fuel Costs**

"Annual Variable Fuel Costs" is the quantity that is the following difference:

1. Total Annual Fuel Costs, less
2. Annual Fixed Fuel Costs.

**(D) Annual Emissions Costs**

"Annual Emissions Costs" is the total emissions costs that are related to the operation of the Subject Resource during the Cost Year.

**(E) Annual Non-Fuel Start-Up Costs**

"Annual Non-Fuel Start-Up Costs" is the aggregate sum of costs, other than fuel costs, attributable to start-ups of the Subject Resource during the Cost Year, consisting of start-up power costs, shut-down power costs, and other non-fuel start-up costs, all as determined pursuant to the applicable sections of Schedule D of the RMR Contract, as applied to all start-ups of the Subject Resource during the Cost Year.

**(F) Total Annual Variable Costs**

"Total Annual Variable Costs" is the sum of:

1. Annual Variable O&M Expenses,
2. Annual Variable Fuel Costs, and
3. Annual Emissions Costs.

**Part C. General Instructions and Explanatory Notes**

**Section 1. General Instructions**

In applying this Formula to a Subject Resource, the following instructions and explanations shall be followed:

**(A) No Duplicative Charges**

The costs determined and referenced by this Formula shall exclude costs that are recoverable, or that are actually recovered, elsewhere under the applicable contract or agreement between the Owner and the CAISO. There shall be no double counting of costs hereunder.

**(B) Determination of Depreciation Expenses**

Depreciation Expenses, Depreciation Reserve, and Deferred Income Taxes reflected in the revenue requirements determined pursuant to this Formula shall be computed using either fixed depreciation rates or depreciation rates determined annually from fixed mortality characteristics (i.e., service lives, net salvage ratios, etc.). Such depreciation rates and/or mortality characteristics, which may differ for particular assets or groups of



assets comprising, or related to, the Subject Resource, are set forth on Exhibit B, which is attached hereto and made a part hereof. Such depreciation rates and/or mortality characteristics may not be changed except pursuant to Section 205 or Section 206 of the FPA. Nothing herein shall be construed as affecting any requirements of the FERC regarding the use by the Owner of depreciation rates for financial reporting purposes.

**(C) Costs in Excess of Original Cost**

The components of rate base and the costs reflected under the Formula shall not include an acquisition adjustment or costs associated with an acquisition adjustment unless the Owner shall have obtained approval from the FERC to include under the Formula such an adjustment or such costs for ratemaking purposes under the FPA. The effective date for the inclusion of such costs shall be as set forth in the FERC order.

**(D) Use of FERC Accounting**

The costs determined and referenced by this Formula shall reflect only FERC-basis accounting, and shall not reflect any accounting for costs approved by any state regulatory commission or other body if not approved or accepted by the FERC for use in connection with the RMR Contract. Except as otherwise provided herein, the accounting for costs for purposes of applying this Formula shall be consistent with the requirements of the Uniform System of Accounts.

**(E) Accounting Methods**

The costs determined and referenced by this Formula shall reflect only such accounting methods prescribed by such authorities as AICPA and FASB that shall have been approved or accepted by the FERC for use in connection with the RMR Contract. The Owner shall be required to seek and gain such approval or acceptance from the FERC prior to reflecting any changed accounting methods in the determination of costs in connection with this Formula.

The Owner shall carry the burden of demonstrating that its accounting methods and entries reflected in the costs determined and referenced by this Formula produce just, reasonable, and nondiscriminatory rates for its customers.

**(F) Out-of-Period Adjustments**

The costs determined and referenced by this Formula shall not reflect any accounting entries the purpose of which is to adjust or correct for accounting entries in years other than the Cost Year if such adjusting or correcting entries would have an unjust, unreasonable, or discriminatory effect on the CAISO.

**(G) Extraordinary Costs**

Extraordinary costs included in the costs determined and referenced by this Formula shall be subject to amortization over a reasonable period of time. In determining how costs should be amortized, the parties shall also determine how the costs being amortized should be recovered in the event that the plant closes and does not reopen.

As used herein, "extraordinary costs" mean costs arising from events and transactions that are of an unusual nature and infrequent occurrence, the effects of which are abnormal and significantly different from the ordinary and typical activities of the Owner, and would not reasonably be expected to recur in the foreseeable future. In determining significance, items should be considered individually and not in the aggregate. However, the effects of a series of related transactions arising from a single specific and identifiable

event or plan of action should be considered in the aggregate. An item can be extraordinary even if it is less than five (5) percent of income computed before the extraordinary item. In its annual Information Package, the Owner shall identify and provide explanations for all extraordinary costs which it seeks to include in the rates and charges determined pursuant to this Formula, and the Owner shall bear the burden of proof, as in a proceeding under Section 205 of the FPA, that its proposed treatment of extraordinary costs is just and reasonable.

**(H) Imprudently Incurred Costs**

The costs determined and referenced by this Formula shall not include any costs which have been determined by the FERC in a proceeding under Section 206 of the FPA to have been imprudently incurred by the Owner.

**(I) Transmission Cost Assignments and Allocations**

Costs of transmission facilities assigned and/or allocated to the Subject Resource hereunder are intended to include only those costs, if any, related to the step-up substation facilities and other transmission facilities directly connected to the Subject Resource and used to deliver the output of the Subject Resource to the transmission grid. In each annual Informational Package, the Owner shall clearly identify and fully describe all transmission facilities which it claims satisfy the foregoing criteria.

**(J) Distribution Cost Assignments and Allocations**

Costs of distribution facilities assigned and/or allocated to the Subject Resource hereunder are intended to include only those costs, if any, related to the step-up substation facilities and other distribution facilities directly connected to the Subject Resource and used to deliver the output of the Subject Resource to the transmission or distribution system. In each annual Informational Package, the Owner shall clearly identify and fully describe all distribution facilities which it claims satisfy the foregoing criteria.

**(K) Inclusion of Certain Costs**

The Owner shall include in its annual Informational Package detailed workpapers and explanations supporting the reasonableness of including in the revenue requirements determined pursuant to this formula any amounts recorded in Accounts 501, 547, 555, 561, 927, 105, and 186. The Owner shall bear the burden of proof, as in a proceeding under Section 205 of the FPA, to affirmatively demonstrate that all such included amounts are directly related to the provisions of service under the RMR Contract and are reasonably assignable or allocable to the Subject Resource. As to Account 105, the requirement for a definitive plan required by the description of Account 105 in the Uniform System of Accounts, and the affirmative demonstration required by this paragraph, shall be deemed to be met upon a showing that the CAISO has approved, in accordance with the provisions of Section 7.4 of the RMR Contract, a plan for the future use of the property.

**(L) Direct Assignments and Allocations**

Where Part B of this Formula provides for the identification and/or assignment of costs incurred directly in connection with a particular facility or facilities (including a Subject Resource), or directly related to such a facility or facilities, the Owner shall bear the burden of demonstrating the reasonableness of each such identification and/or assignment, and each failure to make such an identification and/or assignment. Notwithstanding the foregoing, where this Formula provides for such a direct identification

or assignment of costs, the Owner may use an allocation method to apportion such costs among particular facilities; provided, however, that (i) the Owner shall in its Informational Package clearly identify and describe such allocation method and the basis for it, and (ii) the Owner shall bear the burden of demonstrating the reasonableness of the method. It is recognized that such allocation methods may, for example, be appropriate for apportioning certain types of costs between individual generating units at a multi-unit generating station. Such allocations of costs between individual generating units at a plant site shall be consistent with the requirements for such allocations, if any, provided in the RMR Contract.

**(M) No Adverse Distinction**

In applying this Formula and in maintaining its books and records insofar as they affect the results of applying this Formula, the Owner shall not make an adverse distinction between the Subject Resource and any other facility or facilities owned or operated by the Owner; e.g., the Owner shall assign certain costs directly to the Subject Resource only if, and to the extent that, the Owner directly assigns such costs to other, similar facilities.

**Section 2. General Definitions**

Except as may be expressly stated otherwise, the following terms have the followings meanings as used herein:

**(A) Account**

"Account" refers to a particular account for "major" utilities as prescribed by the Uniform System of Accounts.

**(B) FERC**

"FERC" means the Federal Energy Regulatory Commission or its successor.

**(C) Uniform System of Accounts**

"Uniform System of Accounts" means the FERC's "Uniform System of Accounts Prescribed For Public Utilities and Licensees Subject to the Provisions of the Federal Power Act," as such uniform system of accounts was in effect as of the first effective date of the RMR Contract.

**(D) RMR Contract**

"RMR Contract" means the contract to which this Formula is attached and made a part thereof.

**(E) Subject Resource**

"Subject Resource" means any particular generating unit to which this Formula is applied for purposes of determining the annual costs thereof.

**(F) Cost Year**

"Cost Year" means the twelve-month period ended June 30 to which this Formula is applied to determine the Annual Fixed Revenue Requirements and Variable O&M Rate for a Subject Resource to be applicable during the next succeeding calendar year.

**(G) Owner**

"Owner" means the entity, other than the CAISO, that is a party to the RMR Contract.

**(H) CAISO**

The "CAISO" means the California Independent System Operator Corporation.

**Exhibit A - Initial Variable O&M Rates**<sup>9</sup>

<u>Line</u>	<u>RMR Facility</u>	<u>Unit</u>	<u>Initial Variable O&amp;M Rate (\$/MWh)</u>

**Exhibit B - Depreciation Rate and Mortality Characteristics**<sup>10 11</sup>

<u>Line</u>	<u>RMR Facility</u>	<u>Unit</u>	<u>Plant Account</u>	<u>Depreciation Rate (%)</u>	<u>Mortality Characteristics</u>			
					<u>Retirement Date</u>	<u>Average Service Life</u>	<u>Salvage Value or Rate</u>	<u>Interim Retirements Rate</u>

<sup>9</sup> Exhibit A for each owner is filed in Appendix to the Stipulation and Agreement.

<sup>10</sup> Exhibit B for each owner is filed in Appendix B to the Stipulation and Agreement.

<sup>11</sup> Effective as of the effective date of the Settlement.


**Exhibit C - 1998 Cost Information**

Pursuant to Article IV.E of the Stipulation and Agreement filed with the FERC on April 2, 1999, the Owner shall file with the FERC in Docket No. ER98-441-000, et. al., a superceding Exhibit C, setting forth the following information for each unit for the period ending December 31, 1998:

- (1) Name of the facility and unit;
- (2) Gross Plant In Service, i.e. the original cost plus plant additions minus retirements, by major plant function (i.e. production, transmission, distribution and general);
- (3) Net Plant In Service Gross Plant, i.e. gross plant minus depreciation reserve, by major plant function;
- (4) Rate Base, i.e. net plant and other components of Net Investment as defined in the Formula, such as working capital, Accumulated Deferred Income Taxes (ADIT), etc.

This Exhibit C shall be for informational purposes only and shall be initially filed with FERC by June 1, 1999.

**Schedule G**

**Charge for Service in Excess of Contract Service Limits**

Payment for service in excess of the Maximum Annual MWh, Maximum Annual Service Hours or Maximum Annual Start-ups shall be determined in accordance with Option A or Option B. Payment for service from hydroelectric Units in excess of the Maximum Monthly MWh shall be determined in accordance with Option A only. Owner shall make a one-time election between Option A or Option B. Owner must choose Option A for both Billable MWh and Start-ups or Option B for both Billable MWh and Start-ups. This election shall be applicable to all of the Owner's Units under this Agreement and all other Reliability Must-Run Units subject to a "reliability must-run contract" as defined in the CAISO Tariff with Owner or any of its affiliates as defined in 18 C.F.R. Section 161.2.

**1. Option A**

- A. For all Billable MWh Delivered after the Counted MWh for the Contract Year equals the Maximum Annual MWh, the Counted Service Hours equals the Maximum Annual Service Hours or, for hydroelectric Units, the Counted MWh for the Month equals the Maximum Monthly MWh ("Schedule G Billable MWh");

Fossil Fuel Units

In addition to the Variable Cost Payment computed in accordance with Schedule C, the CAISO shall pay the Option A Variable Cost Payment, which shall be calculated in accordance with Equation G-1:

**Equation G-1**

$$\text{Option A Variable Cost Payment} = \frac{0.5 * (\text{Variable Cost Payment for the Billing Month})}{\text{Billable MWh for the Billing Month}} * \text{Schedule G Billable MWh}$$

Pumped Storage Hydroelectric Facilities

In addition to the Variable Cost Payment computed in accordance with Schedule C, CAISO shall pay the product of (a) the Schedule G Billable MWh, (b) 0.5, and (c) YTD Pumping Costs divided by YTD Energy Produced as computed in accordance with Equation C4-2 in Schedule C.

Conventional Hydroelectric Facilities

In addition to the Variable Cost Payment computed in accordance with Schedule C, CAISO shall pay the sum of the products for each hour in the Billing Month of (a) the Hourly Fuel Price for natural gas for the hour calculated in accordance with Equation C1-8 of Schedule C, (b) 12,000 Btu/kWh, (c) the Schedule G Billable MWh for that hour, and (d) 0.5.

- B. For all Service Hours provided after the Counted Service Hours for the Contract Year equals the Maximum Annual Service Hours.

Synchronous Condensers

In addition to the Motoring Charge computed in accordance with Schedule E, CAISO shall pay the product of (a) the Motoring Charges calculated in accordance with Schedule E, and (b) 0.5.

- C. For all Start-ups required to comply with a Dispatch Notice after the Counted Start-ups for the Unit equals the Maximum Annual Start-ups ("Schedule G Start-ups"), the CAISO shall pay:

Fossil Fuel Units and Geothermal Units

Two times (a) the Start-up Payment computed in accordance with Equation D-1 in Schedule D, or (b) if the Schedule G Start-up is initiated under a Dispatch Notice but is not successfully completed because it is canceled or rescinded by the CAISO, the Start-up Payment for Canceled Start-up is computed in accordance with Equation D-4 in Schedule D.

Conventional Hydroelectric Facilities and Units Capable Only of Synchronous Condenser Operation

The Start-up Payment computed in accordance with Schedule D, plus (a) (0.00338) \* the Unit's Annual Fixed Revenue Requirement stated in Section 7 of Schedule B, divided by (b) the Unit's Maximum Annual Start-ups.

Pumped Storage Hydroelectric Facilities

The Start-up Payment computed in accordance with Equation D-1 in Schedule D, plus (a) 0.00167 \* the Unit's Annual Fixed Revenue Requirement stated in Section 7 of Schedule B), divided by (b) the Unit's Maximum Annual Start-ups.

**2. Option B**

A. For all Schedule G Billable MWh Delivered in the Billing Month, the CAISO shall pay the Variable Cost Payment computed in accordance with Schedule C. Since Schedule G Billable MWh are included in calculating the Variable Cost Payment for Billable MWh for the Billing Month under Schedule C, there is no additional payment for Schedule G Billable MWh under Option B.

B. For all Service Hours provided after the Counted Service Hours for the Contract Year equals the Maximum Annual Service Hours:

Synchronous Condensers

In addition to the Motoring Charge computed in accordance with Schedule E, CAISO shall pay the product of (a) the Motoring Charges calculated in accordance with Schedule E, and (b) 0.5.

C. For all Schedule G Start-ups in the Billing Month, the CAISO pay:

Units Capable Only of Synchronous Condenser Operation

The Start-up Payment computed in accordance with Schedule D, plus (a) (0.00338) \* the Unit's Annual Fixed Revenue Requirement stated in Section 7 of Schedule B, divided by (b) the Unit's Maximum Annual Start-ups.

Fossil Fuel Units and Geothermal Units

Three times (a) the Start-up Payment computed in accordance with Equation D-1 in Schedule D, or (b) if the Schedule G Start-up is initiated under a Dispatch Notice but is not successfully completed because it is canceled or rescinded by the CAISO, the Start-up Payment for Canceled Start-up is computed in accordance with Equation D-4 in Schedule D.

**3. Owner's Election**

Option A

Option B

**Schedule H**

**Fuel Oil Service**

The following is a description of existing capability of the Facility to burn fuel oil in lieu of or addition to natural gas:

**Schedule I**

**Insurance Requirements**

**Owner - Obtained Insurance**

Commercial General Liability

Commercial general liability insurance covering personal injury and property damage to third parties in connection with the activities at the Facility. The coverage will have a limit of not less than \$ [redacted] per occurrence, and will include coverage for sudden and accidental pollution losses. The CAISO will be added as an additional insured under the terms of this coverage to the per-occurrence limit above.

Property

Property Insurance for direct physical loss or damage to the Facility, in an amount not less than the probable maximum loss at the Facility.

**CAISO – Obtained Insurance**

Errors and Omissions Insurance and Directors & Officers Insurance

Errors and omissions insurance and directors and officers insurance coverage will have a combined limit of not less than \$150 million for the shorter of (i) until the termination of this Agreement or (ii) until January 1, 2002.

**Schedule J**  
**Notices**

Owner

Name:  
Title:  
Address:  
Telephone:  
Facsimile:  
E-mail:

With a copy to: Owner's Representative:

CAISO:

Nancy Traweek  
Director, Operations Support  
California ISO Corporation  
151 Blue Ravine Road  
Folsom, CA 95630  
Telephone: (916) 351-2113  
Facsimile: (916) 351-2267  
Email: ntraweek@caiso.com

With a copy to:

Sidney Mannheim Davies  
Assistant General Counsel  
Tariff and Tariff Compliance  
California ISO Corporation  
151 Blue Ravine Road  
Folsom, CA 95630  
Telephone: (916) 608-7144  
Facsimile: (916) 608-7222  
Email: sdavies@caiso.com



## **SCHEDULE K** **DISPUTE RESOLUTION**

### **Applicability**

#### **1.1 General Applicability.**

Except as limited below or otherwise as limited by law (including the rights of any party to file a complaint with FERC under the relevant provisions of the Federal Power Act (FPA)), these ADR Procedures shall apply to (a) all disputes between parties which arise under this Agreement and (b) disputes between CAISO and a Responsible Utility relating to a Responsible Utility Invoice, "Final Estimated RMR Invoice, Final Adjusted RMR Invoice" as defined in the CAISO Tariff, or RMR Charge or RMR Refund as defined in Section 11.13 in the CAISO Tariff. The foregoing shall not impair the applicability of the CAISO Tariff ADR procedures to other disputes between the parties that do not arise under this Agreement. All alternative dispute resolution proceedings hereunder shall be administered by the American Arbitration Association ("AAA"). The Owner, Responsible Utility and the CAISO shall enter into such arrangements with the AAA as are necessary to provide for AAA administration of this Schedule K.

1.1.2 This Schedule K shall not apply to disputes as to whether rates and charges under the Agreement are just and reasonable under the Federal Power Act except as provided in Schedule F. Nothing herein shall limit the right of the FERC to initiate or adjudicate complaints or other proceedings in accordance with applicable statutes or regulations or to compel FERC to exceed its statutory authority as defined by any applicable federal statutes, regulations or orders lawfully promulgated thereunder.

#### **1.2 Disputes Involving Government Agencies.**

If a party to a dispute is a government agency the procedures herein which provide for the resolution of claims and arbitration of disputes are subject to any limitations imposed on the agency by law, including but not limited to the authority of the agency to effect a remedy. If the governmental agency is a federal entity, the procedures herein shall not apply to disputes involving issues arising under the United States Constitution.

#### **1.3 Injunctive and Declaratory Relief.**

Where the court having jurisdiction so determines, use of the ADR Procedures shall not be a condition precedent to a court action for injunctive relief nor shall the provisions of California Code of Civil Procedure sections 1281 *et seq.* apply to such court actions.

#### **1.4 Negotiation and Mediation.**

##### **1.4.1 Negotiation.**

CAISO, Responsible Utility and Owner ("Parties") shall make good-faith efforts to negotiate and resolve any dispute between them arising under this Agreement prior to invoking the ADR Procedures herein. Each Party shall designate an individual with authority to negotiate the matter in dispute to participate in such negotiations. The Responsible Utility may participate in the ADR proceedings arising under this Agreement to the extent the dispute involves billing or payment obligations, in which case CAISO or the Responsible Utility, but not both shall be the disputing party. In addition, to the extent Article 7 or other provisions of this Agreement provide the Responsible Utility third-party beneficiary rights, the Responsible Utility may also participate in the ADR as a Party.

The Owner may participate in the ADR proceedings relating to a Responsible Utility Invoice, "Final Estimated RMR Invoice, Final Adjusted RMR Invoice" as defined in the CAISO Tariff or RMR Charge or RMR Refund as defined in Section 11.13, in which case, CAISO or the Owner, but not both, shall be the disputing party. In addition, to the extent the CAISO Tariff provides the Owner third-party beneficiary rights, the Owner may also participate in the ADR as a Party.

#### **1.4.2 Statement of Claim.**

In the event a dispute is not resolved through such good-faith negotiations, any party may submit a statement of claim, in writing, to each other disputing party, which submission shall commence the ADR Procedures. The statement of claim shall set forth in reasonable detail (i) each claim, (ii) the relief sought, including the proposed award, if applicable, (iii) a summary of the grounds for such relief and the basis for each claim, (iv) the parties to the dispute, and (v) the individuals having knowledge of each claim. The other parties to the dispute shall similarly submit their respective statements of claim within 14 days of the date of the initial statement of claim or such longer period as the AAA may permit following an application by the responding party. If any responding party wishes to submit a counterclaim in response to the statement of claim, it shall be included in such party's responsive statement of claim. No party shall be considered as having received notice of a claim decided or relief granted by a decision made under these procedures unless the statement of claim includes such claim or relief.

#### **1.4.3 Selection of Mediator.**

After submission of the statements of claim, the parties may request mediation, if the disputing parties so agree. If the parties agree to mediate, the AAA shall distribute to the parties by facsimile or other electronic means a list containing the names of at least seven prospective mediators with mediation experience, or with technical or business experience in the electric power industry, or both, as he or she shall deem appropriate to the dispute. The parties shall either agree upon a mediator from the list provided or from any alternative source, or alternate in striking names from the list with the last name on the list becoming the mediator. The first party to strike off a name from the list shall be determined by lot. The parties shall have seven days from the date of receipt of the AAA's list of prospective mediators to complete the mediator selection process and appoint the mediator, unless the time is extended by mutual agreement. The mediator shall comply with the requirements of Section 1.5.2.

#### **1.4.4 Mediation.**

The mediator and representatives of the disputing parties, with authority to settle the dispute, shall within 14 days after the mediator's date of appointment schedule a date to mediate the dispute. Matters discussed during the mediation shall be confidential and shall not be referred to in any subsequent proceeding. With the consent of all disputing parties, a resolution may include referring the dispute directly to a technical body (such as a WSCC technical advisory panel) for resolution or an advisory opinion, or referring the dispute directly to FERC.

#### **1.4.5 Demand for Arbitration.**

If the disputing parties have not succeeded in negotiating a resolution of the dispute within 30 days of the initial statement of claim or, if within that period the parties agreed to mediate, within 30 days of the parties' first meeting with the mediator, such parties shall be deemed to be at impasse and any such disputing party may then commence the arbitration process, unless the parties by mutual agreement agree to extend the time. A

party seeking arbitration shall provide notice of its demand for arbitration to the other disputing parties.

## **1.5 Arbitration.**

### **1.5.1 Selection of Arbitrator.**

**1.5.1.1 Disputes Under \$1,000,000.** Where the total amount of claims and counterclaims in controversy is less than \$1,000,000 (exclusive of costs and interest), the disputing parties shall select an arbitrator from a list containing the names of at least 10 qualified individuals supplied by AAA, within 14 days following submission of the demand for arbitration. If the disputing parties cannot agree upon an arbitrator within the stated time, they shall take turns striking names from the list of proposed arbitrators. The first party to strike off a name shall be determined by lot. This process shall be repeated until one name remains on the list, and that individual shall be the designated arbitrator.

**1.5.1.2 Disputes of \$1,000,000 or Over.** Where the total amount of claims and counterclaims in controversy is \$1,000,000 or more (exclusive of interest and costs), the disputing parties may agree on any person to serve as a single arbitrator, or shall endeavor in good faith to agree on a single arbitrator from a list of ten qualified individuals provided by the AAA, 14 days following submission of the demand for arbitration. If the disputing parties are unable to agree on a single arbitrator within the stated time, the party or parties demanding arbitration, and the party or parties responding to the demand for arbitration, shall each designate an arbitrator. Each designation shall be from the AAA list of arbitrators, as applicable, no later than the tenth day thereafter. The two arbitrators so chosen shall then choose a third arbitrator.

### **1.5.2 Disclosures Required of Arbitrators.**

The designated arbitrator(s) shall be required to disclose to the parties any circumstances that might preclude him or her from rendering an objective and impartial determination. Each designated arbitrator shall disclose:

**1.5.2.1** Any direct financial or personal interest in the outcome of the arbitration;

**1.5.2.2** Any information required to be disclosed by California Code of Civil Procedure Section 1281.9.; and

**1.5.2.3** Any existing or past financial, business, professional, or personal interest that are likely to affect impartiality or might reasonably create an appearance of partiality or bias. The designated arbitrator shall disclose any such relationships that he or she personally has with any party or its counsel, or with any individual whom they have been told will be a witness. They should also disclose any such relationship involving members of their families or their current employers, partners, or business associates. All designated arbitrators shall make a reasonable effort to inform themselves of any interests or relationships described above. The obligation to disclose interests, relationships, or circumstances that might preclude an arbitrator from rendering an objective and impartial determination is a continuing duty that requires the arbitrator to disclose, at any stage of the arbitration, any such interests, relationships, or circumstances that arise, or are recalled or discovered.

**1.5.2.4** If, as a result of the continuing disclosure duty, an arbitrator makes a disclosure which is likely to affect his or her partiality, or might reasonably create an appearance of partiality or bias or if a party independently discovers the existence of such circumstances, a party wishing to object to the continuing use of the arbitrator must provide written notice of its objection to the other parties within ten days of receipt of the

arbitrator's disclosure or the date of a party's discovery of the circumstances giving rise to that party's objection. Failure to provide such notice shall be deemed a waiver of such objection. If a party timely provides a notice of objection to the continuing use of the arbitrator the parties shall attempt to agree whether the arbitrator should be dismissed and replaced in the manner described in Section 1.5.1. If within ten days of a party's objection notice the parties have not agreed how to proceed the matter shall be referred to the AAA for resolution.

### **1.5.3 Arbitration Procedures.**

The AAA shall compile and make available to the arbitrator and the parties standard procedures for the arbitration of disputes, which procedures (i) shall conform to the requirements specified herein, and (ii) may be modified or adopted for use in a particular proceeding as the arbitrator deems appropriate, in accordance with Section 1.5.4. The procedures shall be based on the latest edition of the American Arbitration Association Commercial Arbitration Rules, to the extent such rules are not inconsistent with this Schedule K. Except as provided herein, all parties shall be bound by such procedures.

### **1.5.4 Modification of Arbitration Procedures.**

In determining whether to modify the standard procedures for use in the pending matter, the arbitrator shall consider (i) the complexity of the dispute, (ii) the extent to which facts are disputed, (iii) the extent to which the credibility of witnesses is relevant to a resolution, (iv) the amount in controversy, and (v) any representations made by the parties. Alternatively, the parties may, by mutual agreement, modify the standard procedures. In the event of a disagreement between the arbitrator and the agreement of the parties regarding arbitration procedures to be utilized, the parties' agreement shall prevail.

### **1.5.5 Remedies.**

**1.5.5.1 Arbitrator's Discretion.** The arbitrator shall have the discretion to grant the relief sought by a party, or determine such other remedy as is appropriate, unless the parties agree to conduct the arbitration "baseball" style. Unless otherwise expressly limited herein, the arbitrator shall have the authority to award any remedy or relief available from FERC, or any court of competent jurisdiction. Where this Agreement leaves any matter to be agreed between the parties at some future time and provides that in default of agreement the matter shall be referred to the ADR, the arbitrator shall have authority to decide upon the terms of the agreement which, in the arbitrator's opinion, it is reasonable that the parties should reach, having regard to the other terms this Agreement concerned and the arbitrator's opinion as to what is fair and reasonable in all the circumstances.

**1.5.5.2 "Baseball" Arbitration.** If the parties agree to conduct the arbitration "baseball" style, the parties shall submit to the arbitrator and exchange with each other their last best offers in the form of the award they consider the arbitrator should make, not less than seven days in advance of the date fixed for the hearing, or such later date as the arbitrator may decide. If a party fails to submit its last best offer in accordance with this Section, that party shall be deemed to have accepted the offer proposed by the other party. The arbitrator shall be limited to awarding only one of the proposed offers, and may not determine an alternative or compromise remedy.

### **1.5.6 Summary Disposition.**

The procedures for arbitration of a dispute shall provide a means for summary disposition of a demand for arbitration, or a response to a demand for arbitration, that in the reasoned opinion of the arbitrator does not have a good faith basis in either law or fact. If

the arbitrator determines that a demand for arbitration or response to a demand for arbitration does not have a good faith basis in either law or fact, the arbitrator shall have discretion to award the costs of the time, expenses, and other charges of the arbitrator to the prevailing party. A determination made under this Section is subject to appeal pursuant to Section 1.6.

#### **1.5.7 Discovery Procedures.**

The procedures for the arbitration of a dispute shall include adequate provision for the discovery of relevant facts, including the taking of testimony under oath, production of documents and other things, the presentation of evidence, the taking of samples, conducting of tests, and inspection of land and tangible items. The nature and extent of such discovery shall be determined as provided herein and shall take into account (i) the complexity of the dispute, (ii) the extent to which facts are disputed, (iii) the extent to which the credibility of witnesses is relevant to a resolution, and (iv) the amount in controversy. The forms and methods for taking such discovery shall be as described in the Federal Rules of Civil Procedure, except as modified pursuant to Section 1.5.4.

#### **1.5.8 Evidentiary Hearing.**

The arbitration procedures shall provide for an evidentiary hearing, with provision for the cross-examination of witnesses, unless all parties consent to the resolution of the matter on the basis of a written record. The forms and methods for taking evidence shall be determined by the arbitrator(s) and modified pursuant to Section 1.5.4. The arbitrator may require such written or other submissions from the parties as he or she may deem appropriate, including submission of direct and rebuttal testimony of witnesses in written form. The arbitrator may exclude any evidence that is irrelevant, immaterial, unduly repetitious or prejudicial, or privileged. The arbitrator shall compile a complete evidentiary record of the arbitration that shall be available to the parties on its completion upon request.

#### **1.5.9 Confidentiality.**

Subject to the other provisions of this Agreement, any party may claim that information contained in a document otherwise subject to discovery is "Confidential" if such information would be so characterized under the Federal Rules of Evidence or the provisions of the Agreement. The party making such claim shall provide to the arbitrator in writing the basis for its assertion. If the claim of confidentiality is confirmed by the arbitrator, he or she shall establish requirements for the protection of such documents or other information designated as "Confidential" as may be reasonable and necessary to protect the confidentiality and commercial value of such information. Any party disclosing information in violation of these provisions or requirements established by the arbitrator, unless such disclosure is required by federal or state law or by a court order, shall thereby waive any right to introduce or otherwise use such information in any judicial, regulatory, or other legal or dispute resolution proceeding, including the proceeding in which the information was obtained.

#### **1.5.10 Timetable.**

Promptly after the appointment of the arbitrator, the arbitrator shall set a date for the issuance of the arbitration decision, which shall be no later than six months (or such earlier date as the parties and the arbitrator may agree) from the date of the appointment of the arbitrator, with other dates, including the dates for an evidentiary hearing or other final submissions of evidence, set in light of this date. The date for the evidentiary hearing or other final submission of evidence shall not be changed, absent extraordinary circumstances. The arbitrator shall have the power to impose sanctions, including

dismissal of the proceeding, for dilatory tactics or undue delay in completing the arbitration proceedings.

#### **1.5.11 Decision.**

**1.5.11.1** Except as provided below with respect to "baseball" style arbitration, the arbitrator shall issue a written decision granting the relief requested by one of the parties, or such other remedy as is appropriate, if any, and shall include findings of fact and law. The arbitration decision shall be based on (i) the evidence in the record, (ii) the terms of this Agreement and to the extent relevant, the CAISO Tariff and Protocols, (iii) applicable United States federal law, including the Federal Power Act and any applicable FERC regulations and decisions, and international treaties or agreements as applicable, and (iv) applicable state law. Additionally, the arbitrator may consider relevant decisions in previous arbitration proceedings involving this Agreement. To the extent it may do so without violating confidentiality requirements, a summary of the disputed matter and the arbitrator's decision may be published in an CAISO newsletter on CAISO Website.

**1.5.11.2** In arbitration conducted "baseball" style, the arbitrator shall issue a written decision adopting one of the awards proposed by the parties, and shall include findings of fact and law. The arbitration decision shall be based on (i) the evidence in the record, (ii) the terms of this Agreement and to the extent relevant, the CAISO Tariff and Protocols, (iii) applicable United States federal law, including the Federal Power Act and any applicable FERC regulations and decisions, and international treaties or agreements as applicable, and (iv) applicable state law. If the arbitrator concludes that no proposed award is consistent with the factors enumerated in (i) through (iv) above, or addresses all of the issues in dispute, the arbitrator shall specify how each proposed award is deficient and direct that the parties submit new proposed awards that cure the identified deficiencies. To the extent it may do so without violating confidentiality requirements, a summary of the disputed matter and the arbitrator's decision may be published in an CAISO newsletter on CAISO Website.

**1.5.11.3** Where a panel of arbitrators is appointed pursuant to Section 1.5.1.2, a majority of the arbitrators must agree on the decision. An award shall not be deemed to be precedent except in so far as a future dispute between the parties involves the same issue.

#### **1.5.12 Compliance.**

Unless the arbitrator's decision is appealed under Section 1.6, the disputing parties shall, upon receipt of the decision, immediately take whatever action is required to comply with the award to the extent the award does not require regulatory action. An award that is not appealed shall be deemed to have the same force and effect as an order entered by FERC or any court of competent jurisdiction.

#### **1.5.13 Enforcement.**

Following the expiration of the time for appeal of an award pursuant to Section 1.6.3, any party may apply to FERC or any court of competent jurisdiction for entry and enforcement of judgment based on the award.

#### **1.5.14 Costs.**

The costs of the time, expenses, and other charges of the arbitrator shall be borne by the parties to the dispute, with each side on an arbitrated issue bearing its pro-rata share of such costs, and each party to an arbitration proceeding bearing its own costs and fees. If the arbitrator determines that a demand for arbitration or response to a demand for

arbitration was made in bad faith, the arbitrator shall have discretion to award the costs of the time, expenses, and other charges of the arbitrator to the prevailing party.

## **1.6 Appeal of Award.**

### **1.6.1 Basis for Appeal.**

A party may apply to the FERC or any court of competent jurisdiction to hear an appeal of an arbitration decision only upon the grounds that the decision is contrary to or beyond the scope of this Agreement and to the extent relevant, the CAISO Tariff and Protocols, United States federal law, including, without limitation, the Federal Power Act, and any applicable FERC regulations and decisions, or state law. Appeals shall, unless otherwise ordered by FERC or the court of competent jurisdiction, conform to the procedural limitations set forth in this Section 1.6.

### **1.6.2 Appellate Record.**

The parties intend that FERC or a court of competent jurisdiction should afford substantial deference to the factual findings of the arbitrator. No party shall seek to expand the record before FERC or a court of competent jurisdiction beyond that assembled by the arbitrator, except (i) by making reference to legal authority which did not exist at the time of the arbitrator's decision, or (ii) if such party contends the decision was based upon or affected by fraud, collusion, corruption, misconduct or misrepresentation.

### **1.6.3 Procedures for Appeals.**

**1.6.3.1** If a party to an arbitration desires to appeal a decision, it shall provide a notice of appeal to all parties and the arbitrator(s) within 14 days following the date of the decision. Within ten days of the filing of the notice of appeal, the appealing party must file an appropriate application, petition or motion with FERC for review under the Federal Power Act or with a court of competent jurisdiction. Such filing shall state that the subject matter has been the subject of an arbitration pursuant to this Agreement and, to the extent relevant, the CAISO Tariff and protocols.

**1.6.3.2** Within 30 days of filing the notice of appeal (or such period as FERC or the court of competent jurisdiction may specify) the appellant shall file the complete evidentiary record of the arbitration and a copy of the decision with FERC or with the court. The appellant shall serve on all parties to the arbitration copies of a description of all materials included in the submitted evidentiary record.

### **1.6.4 Award Implementation.**

Implementation of the decision shall be deemed stayed pending an appeal unless and until, at the request of a party, FERC or the court of competent jurisdiction with which an appeal has been filed, issues an order dissolving, shortening, or extending such stay.

A summary of each appeal shall be published in a CAISO newsletter on the CAISO Website.

**1.6.5 Judicial Review of FERC Orders.**

FERC orders resulting from appeals shall be subject to judicial review pursuant to the Federal Power Act.

**SCHEDULE L-1**  
**REQUEST FOR APPROVAL OF CAPITAL ITEMS OR REPAIRS**

This form should be used to request CAISO approval of Planned Capital Items, Unplanned Repairs or Unplanned Capital Items pursuant to Sections 7.4, 7.5 or 7.6 of the Agreement.

CALIFORNIA INDEPENDENT SYSTEM OPERATOR  
RELIABILITY MUST-RUN UNIT  
CAPITAL ITEM AND REPAIR PROJECT REQUEST

---

**Date:**

**CAISO Project Number:**

**Facility:**

**Unit:**

**Owner:**

**Location:**

**This request covers:**

- Capital Items for the next Contract Year (preliminary)
- Capital Items for the next Contract Year (final)
- Unplanned Repairs
- Unplanned Capital Items

**If this request covers Capital Items for the next Contract Year, provide:**

**Small Project Estimate (reliability)**

**Small Project Estimate (other)**

Identify separately each Capital Item included in a small project estimate projected to cost more than \$50,000.

**If this request covers Unplanned Repairs, or Capital Items projected to cost more than \$500,000, provide the information in the remainder of this form for each project.**

**Project Description:** (describe the project and its major scope items – materials, new systems, modifications to existing systems, etc.)

**If the project is required because of loss or damage to a Unit, describe the cause and nature of the loss or damage and all repairs performed or required for all Units during the year:**



**Project Budget:**

<u>Year</u>	<u>Labor</u>	<u>Material</u>	<u>Contract</u>	<u>Int Svc</u>	<u>Other</u>	<u>Material</u>	<u>Overhead AEGE</u>	<u>Total Cost</u>	<u>AD VAL TAX</u>	<u>Total Expenditu res</u>	<u>Total Financi al Costs</u>

**Describe any work or repairs performed relating to this project in the last five years:**

**As applicable, state the proposed depreciation life, Annual Capital Item Cost, Surcharge Payment Factor or Repair Payment Factor (percentage owed by CAISO) of the Capital Item or Repair:**

**Describe why this project is required (justification):**

**Is this project required to comply with any laws, regulations or permits? If so, please list them and explain requirement.**

**Provide a cost/benefit analysis summary for this project:**

Include all assumptions including changes to unit performance [efficiency, aux. power loads, etc.], impact on Maximum Net Dependable Capacity, grid interconnection/metering impacts, etc.

**Describe the impacts on the Unit's ability to perform its obligations under this Agreement if this project is not approved:**

**Describe alternatives to this project that were evaluated and the projected costs of those alternatives:**

Describe alternatives along with their major scope items. Also, compare the projected cost of these alternatives with the selected alternative, and compare the unit performance impacts (efficiency, auxiliary power demands, Maximum Net Dependable Capacity effects, etc.) of these alternatives against the chosen alternative.

**List any proceeds received or expected to be received by Owner from insurers or other third parties pursuant to applicable insurance, warranties and other contracts in connection with the project.**

**Provide the schedule for implementing this project:**

<u>Event</u>	<u>Begin</u>	<u>Complete</u>

**Describe any outages required to implement this project:**

**Other comments:**

**SCHEDULE L-2**

**CAPITAL ITEM AND REPAIR PROGRESS REPORT**

CALIFORNIA INDEPENDENT SYSTEM OPERATOR  
RELIABILITY MUST-RUN UNIT

CAPITAL ITEM AND REPAIR PROGRESS REPORT

**Date:** **CAISO Project Number:**  
**Facility:** **Unit:**  
**Owner:** **Location:**  
**Capital Item or Repair:**  
**Original In-Service Date:** **Current In-Service Date:**

**If Current In-Service Date has changed, describe the reason why:**

**Describe any additional costs or savings resulting from the change in the Current In-Service Date:**

Describe what portion of any additional costs Owner is requesting CAISO to pay, and why Owner believes that CAISO should be obligated to pay those additional costs:

**SCHEDULE M**  
**Mandatory Market Bid for Condition 2 Units**  
**When Dispatched by the CAISO**

**Energy Bid**

The bid the Owner of a Condition 2 Fossil Fuel Unit must submit into Energy markets when dispatched by the CAISO is given in Equation M-1a (for Units with input/output data in polynomial form) or Equation M-1b (for Units with input/output data in exponential form):

**Equation M-1a**

$$\text{Energy Bid (\$/MWh)} = \frac{(AX^3 + BX^2 + CX + D)}{X} * P * E$$

+ [Variable O&M Rate + Emissions Rates + Scheduling Coordinator Charge + ACA Charge]

**Equation M-1b**

$$\text{Energy Bid (\$/MWh)} = \frac{A * (B + CX + De^{FX})}{X} * P * E$$

+ [Variable O&M Rate + Emissions Rate + Scheduling Coordinator Charge + ACA Charge]

Where:

- for Equation M-1a, A, B, C, D and E are the coefficients given in Table C1-7a;
- for Equation M-1b, A, B, C, D, E and F are the coefficients given in Table C1-7b;
- X is the Unit Availability Limit, MW;
- P is the Hourly Fuel Price as calculated by Equation C1-8 in Schedule C using the

Commodity Prices most recently published before the day the bid is submitted.

- Scheduling Coordinator Charge (\$/MWh): \$0.31.
- ACA Charge (\$/MWh): The applicable annual charge for short-term sales under 18 CFR Section 382.201 of the FERC Regulations.
- Variable O&M Rate (\$/MWh): as shown on Table C1-18

For Units in the SCAQMD only

Emissions Rate (\$/MWh) = Emissions Cost / Unit Availability Limit

Emissions Cost = (a) RECLAIM Cost + (b) NOx Emissions Cost + (c) Organic Gases Cost + (d) Sulfur Oxides Cost + (e) Particulate Matter Cost + (f) Carbon Monoxide Cost

(a) RECLAIM Cost = ((AX<sup>2</sup>+BX+C) \* RECLAIM NOx Trading Credit Rate

(b) NOx Emissions Cost = (AX<sup>2</sup>+BX+C) \* NOx Emissions Fee  
2000

Where:

A, B and C are the coefficients from Table C1-13;

X = Unit Availability Limit;

(c) Organic Gases Cost =

4.76 x 10<sup>-7</sup> \* (Gas Fuel) \* Associated Emission Factor for Organic Gases \* Associated Emissions Fee for Organic Gases

(d) Sulfur Oxides Cost =

4.76 x 10<sup>-7</sup> \* (Gas Fuel) \* Associated Emission Factor for Sulfur Oxides \* Associated Emissions Fee for Sulfur Oxides

(e) Particulate Matter Oxides Cost =

4.76 x 10<sup>-7</sup> \* (Gas Fuel) \* Associated Emission Factor for Particulate Matter \* Associated Emission Fee for Particulate Matter

(f) Carbon Monoxide Cost =

4.76 x 10<sup>-7</sup> \* (Gas Fuel) \* Associated Emission Factor for Carbon Monoxide \* Associated Emission Fee for Carbon Monoxide

Where:

Gas Fuel = AX<sup>3</sup> + BX<sup>2</sup> + CX + D or A \* (B + CX + De<sup>FX</sup>), depending on the form of heat input the Owner is using

- A, B, C, D are the coefficients from C1-7a or C1-7b;
- F is the coefficient from C1-7b;
- X = Unit Availability Limit;

- Factors and Associated Emission fees are determined in Schedule C, Section D.3.

The bid the Owner of a geothermal Condition 2 Unit must submit into Energy markets when dispatched by the CAISO is given in Equation M-2.

**Equation M-2**

Energy Bid (\$/MWh) = Fuel Cost + [Variable O&M Rate + Scheduling Coordinator Charge + ACA Charge]

Where:

- The Fuel Cost is the Steam Price identified in Equation C2-1 in Schedule C. However, for purposes of this mandatory market bid, the value for the Steam Price will be zero for Geysers Main Units until the cumulative Hourly Metered Total Net Generation during the Contract Year from all Units exceeds the Minimum Annual Generation given in Equation C2-2.
- Variable O&M Cost (\$/MWh): the cost shall be as shown on Table C2-1.
- Scheduling Coordinator Charge: \$0.31.
- ACA Charge (\$/MWh): The applicable annual charge for short-term sales under 18 C.F.R. Section 382.201 of the FERC Regulations.

**Ancillary Services Bid**

The bid the Owner of a Condition 2 Unit must submit into Ancillary Service markets when dispatched by CAISO is as follows:

$$\begin{array}{l}
 \text{Ancillary Services Bid (\$/MW per hr)} \\
 \text{= } \left[ \frac{\text{Annual Fixed Revenue Requirement (\$)}}{\text{30 minutes x Unit's Highest Ramp Rate from Schedule A, MW/min}} * \frac{\text{Target Available Hours}}{\text{Hours}} \right] + \left[ \frac{\text{Annual Fixed Revenue Requirement (\$)}}{\text{Maximum Net Dependable Capacity}} * \frac{\text{Target Available Hours}}{\text{Hours}} \right]
 \end{array}$$

**2**

Annual Fixed Revenue Requirement is shown in Schedule B.

Target Available Hours is shown in Schedule B.

The product of 30 minutes times the Unit's highest Ramp Rate in Schedule A shall not exceed the Unit's Maximum Net Dependable Capacity.

**Schedule N-1**  
**NON-DISCLOSURE and CONFIDENTIALITY AGREEMENT**  
**for RESPONSIBLE UTILITY**

**[Name of Responsible Utility]** (the "Responsible Utility") acknowledges that **[Name of Owner]** ("Owner") and the California Independent System Operator Corporation ("CAISO") (jointly, the "Providing Parties" and severally, the "Providing Party") have agreed to provide certain information to the Responsible Utility

pursuant to certain provisions of the Must-Run Service Agreement ("MRSA") between Owner and CAISO and as required for settlement and billing of charges under Article 9 of such Agreement. In order to permit the Responsible Utility to receive such Confidential Information from Owner or CAISO pursuant to the above-referenced provisions of the MRSA, the Responsible Utility and the Providing Parties hereby agree as follows:

- (1) For purposes of this Non-Disclosure and Confidentiality Agreement, the term "Confidential Information" shall have the same meaning it has in Section 12.5 of the MRSA, a copy of which is appended;
- (2) The Providing Parties shall provide such Confidential Information pursuant to the terms of this Non-Disclosure and Confidentiality Agreement;
- (3) The Responsible Utility shall keep such Confidential Information confidential, shall use it only for the purposes related to the MRSA, and shall limit the disclosure of any such Confidential Information to only those personnel within its organization with responsibility for using such information in connection with the MRSA. Such personnel may not include any person whose duties include (i) the marketing or sale of electric power or natural gas or gas transportation capacity at wholesale or retail, (ii) the purchase of electric power or natural gas or gas transportation capacity at wholesale or retail, (iii) the direct supervision of any employee with such responsibilities, or (iv) the provision of electricity or natural gas marketing consulting services to any employee with such responsibilities;
- (4) The Responsible Utility shall assure that personnel within its organization read and comply with the provisions of this Non-Disclosure and Confidentiality Agreement;
- (5) The Responsible Utility shall use all reasonable efforts to maintain the confidentiality of the Confidential Information in any litigation, and shall promptly notify the providing Party of any attempt by a third party to obtain the Confidential Information through legal process or otherwise;
- (6) The Responsible Utility may use Confidential Information in litigation or regulatory proceedings related to the Must-Run Service Agreement between Owner and CAISO but only after notice to the Providing Party and affording the Providing Party an opportunity to obtain a protective order or other relief to prevent or limit disclosure of the Confidential Information.

The Responsible Utility agrees to be bound by the terms of Section 12.5 of the MRSA in the same manner and to the same extent as the Providing Parties. The person signing on behalf of the Responsible Utility represents that he/she is authorized to bind the Responsible Utility to the terms of this Non-Disclosure and Confidentiality Agreement.

The undersigned signatory represents that he/she is authorized to bind the Responsible Utility, to the terms of this Non-Disclosure and Confidentiality Agreement.

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Responsible Utility: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_

Title:

Owner:

Address:

\_\_\_\_\_

\_\_\_\_\_

Telephone:

\_\_\_\_\_

Signature:

Name:

Title:

California Independent System Operator Corporation

Address:

\_\_\_\_\_

\_\_\_\_\_

Telephone:

\_\_\_\_\_

**SCHEDULE N-2**

**NON-DISCLOSURE and CONFIDENTIALITY AGREEMENT  
for PERSONS OTHER THAN THE RESPONSIBLE UTILITY**

**[Name of]** (the "Receiving Party") acknowledges (a) that **[Name of Owner]** ("Owner") has agreed to provide Confidential Information to the California Agency pursuant to certain provisions of the Must-Run Service Agreement ("MRSA") between Owner and the California Independent System Operator Corporation ("CAISO"), and (b) that Owner and CAISO (jointly, the "Providing Parties" and severally, the "Providing Party") may provide Confidential Information on a need-to-know basis to Owner's Scheduling Coordinator, financial institutions, agents and potential purchasers of interests in a Unit; and, as required for settlement and billing, to Scheduling Coordinators responsible for paying for services provided under the MRSA between Owner and CAISO. In order to permit the Receiving Party to receive such Confidential Information from Owner or CAISO, the Receiving Party and the Providing Parties hereby agree as follows:

- (1) For purposes of this Non-Disclosure and Confidentiality Agreement, the term "Confidential Information" shall have the same meaning it has in Section 12.5 of the MRSA between Owner and CAISO, a copy of which is appended;
- (2) The Providing Parties shall provide such Confidential Information pursuant to the terms of this Non-Disclosure and Confidentiality Agreement;
- (3) The Receiving Party shall keep such Confidential Information confidential, shall use it only for the purposes related to the MRSA, and shall limit the disclosure of any such Confidential Information to only those personnel within its organization with responsibility for using such information in connection with the MRSA upon their execution of this Non-Disclosure and Confidentiality Agreement. Such personnel may not include any person whose duties include (i) the marketing or sale of electric power or natural gas or gas transportation capacity at wholesale or retail, (ii) the purchase of electric power or natural gas or gas transportation capacity at wholesale or retail, (iii) the direct supervision of any employee with such responsibilities, or (iv) the provision of electricity or natural gas marketing consulting services to any employee with such responsibilities;
- (4) The Receiving Party shall assure that personnel within its organization authorized to receive Confidential Information read and comply with the provisions of this Non-Disclosure and Confidentiality Agreement;
- (5) The Receiving Party shall use all reasonable efforts to maintain the confidentiality of the Confidential Information in any litigation, and shall promptly notify the providing Party of any attempt by a third party to obtain the Confidential Information through legal process or otherwise;

The Receiving Party agrees to be bound by the terms of Section 12.5 of the MRSA in the same manner and to the same extent as the Providing Parties. The person signing on behalf of the Receiving Party represents that he/she is authorized to bind the Receiving Party to the terms of this Non-Disclosure and Confidentiality Agreement.

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Company: \_\_\_\_\_

Title: \_\_\_\_\_

Receiving Party: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Telephone: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Owner: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Telephone: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

California Independent System Operator Corporation

Title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Telephone: \_\_\_\_\_

## **SCHEDULE O**

### **RMR Owner's Invoice Process**

The following principles and practices shall govern the submission of invoices to the CAISO for Energy and Ancillary Services provided under this Agreement ("RMR services"):

1. Invoices submitted by Owner to the CAISO for RMR services shall be clear, understandable and complete.
2. The CAISO, all RMR Owners and Responsible Utilities shall agree on the RMR invoice template, which agreement shall not be unreasonably withheld, prior to its implementation. The CAISO shall publish the current version of the RMR invoice template by including it on the CAISO Website. The CAISO will specifically tell each Owner and Responsible Utility where on the CAISO Website this RMR invoice template can be found. Each Owner shall use the then current RMR invoice template for invoicing RMR services for each Facility. The RMR invoice template may change from time to time. The CAISO shall notify the California Agency, all RMR Owners



and Responsible Utilities when a new agreed upon RMR invoice template has been placed on the CAISO Website.

3. Subject to the provisions of paragraph 4 below, a Completed RMR invoice based on the version of the RMR invoice template posted on the CAISO Website seven days prior to submission of the invoice shall be deemed to satisfy the requirements of this Agreement. As used herein, the term "Completed RMR invoice" means that: (a) all of the raw data required to calculate debits and credits have been included; (b) all calculations have been performed in accordance with the formulae in the current RMR invoice template, or in the event that Owner believes a conflict exists between one or more formula(s) in the RMR Owner's invoice and the corresponding formula in the RMR invoice template, such conflict has been identified and substitute equations have been documented and used at the appropriate location(s) in the invoice; (c) linkages between invoice levels are identified; (d) all billing and service assumptions, data inputs and formulae reasonably necessary to understand the derivation of each charge on the invoice has been included; and (e) the invoice has been provided to the CAISO and the Responsible Utility.
4. The Estimated RMR invoice or the Adjusted RMR invoice timeline set forth in the CAISO's RMR Payments Calendar (for the appropriate invoice) shall not commence, payments shall not be made and interest shall not begin to accrue until a Completed RMR invoice has been submitted to the CAISO and Responsible Utility.
5. In the event of any conflict between the RMR invoice template and this Agreement, this Agreement shall govern. The Owner or Responsible Utility detecting the conflict shall promptly give notice to the CAISO. The CAISO shall notify all RMR Owners and all Responsible Utilities as soon as practicable after a conflict has been identified.
6. If Owner identifies a conflict, Owner shall identify the conflict in its letter transmitting its completed Estimated or Adjusted RMR invoice to the CAISO and include therein Owner's revised formula, which will be effective until agreement has been reached among the CAISO, Owner, the other RMR Owners and the Responsible Utilities on the correct formula, or a decision has been rendered through ADR from which no further appeal is possible.
7. An RMR Invoice Task Force has been formed with representatives from each of the RMR Owners, the Responsible Utilities and the CAISO. When a conflict has been identified, the CAISO, Owner, the other RMR Owners and the Responsible Utility will participate in meetings of the RMR Invoice Task Force to reach agreement on a revised RMR invoice template. The RMR Invoice Task Force shall meet at least monthly until all conflicts are resolved. Once all conflicts have been resolved, the RMR Invoice Task Force will meet approximately every six months to address invoicing and payment issues.
8. The RMR Invoice Task Force also shall be responsible for simplifying the RMR invoices so that they are easier to process and less burdensome to prepare.
9. To the extent that the Owner, the CAISO and the Responsible Utility have agreed, certain columns in the Owner's RMR invoice template shall be standard for the Facility and shall not change. The Owner shall not be required to complete such columns each month on its invoice for it to be considered a Completed RMR invoice, unless the underlying information requirements change.
10. Owner shall supply monthly RMR Level 0-3 invoice information in accordance with the RMR invoice template for each Responsible Utility service territory as follows:
  1. Level 0: the summary invoice for Owner's total amount invoiced to the CAISO for all of Owner's Facilities;
  2. Level 1: the summary invoice for all RMR Units at a Facility;

3. Level 2: the detailed calculated information for individual RMR Units at the Facility; and
4. Level 3: the detailed hourly data for individual RMR Units at each Facility.

Each invoice shall contain such other information as is necessary to perform the calculations, including indicated netted meter reads, CAISO Dispatch Notice information (both day-ahead, real time, and adjustments), Owner's Availability Notice information and final market schedule information. No quantities shall be left blank. Each assumption made by the Owner to perform a calculation shall be listed and explained either in the appropriate Level 0-3 template under Notes or in a transmittal letter accompanying the invoice.

The methods described shall be used to calculate quantities such as Hourly Fuel Price, Hourly Emissions Cost and Start-up calculations used as input data in the RMR invoice template.

Owner shall indicate any data appearing on the invoice which it considers confidential. Responsible Utility may use the data in accordance with Section 12.5 and Schedule N of this Agreement.

## **SCHEDULE P**

### **Reserved Energy for Air Emissions Limitations**

This Schedule P applies only to Units located within the San Diego Air Quality Control Basin ("Basin").

1. For purposes of this Schedule P, the term Emission Limitation means present or future limitations on the discharge of air pollutants or contaminants into the atmosphere specified by any federal, state, regional or local law ("Clean Air Law"), by any regulation, air quality implementation plan, or permit condition promulgated or imposed by any agency authorized under any such Clean Air Law or by the judgment of any court of competent jurisdiction.
2.
  - (a) Except as set out in Sections 2 (b) and (c), if a Facility is located in the Basin and is subject to an Emission Limitation that would limit the MWh that can be produced from the Facility during the Contract Year or part thereof (such Contract Year or part being referred to as the "Limitation Period"), Owner shall, so long as some or all of the Units at the Facility are operating under Condition 1, reserve for the Facility for each Month of the Limitation Period for dispatch under this Agreement, a quantity of MWh equal to the average monthly Requested MWh for the Facility for that Month in the 36 Months preceding the next Contract Year (the "Monthly Reserved MWh").
  - (b) If there are less than 36 Months of Requested MWh preceding the next Contract Year, the Monthly Reserved MWh for the Limitation Period shall be determined by agreement between CAISO and Owner. If Owner and CAISO are unable to reach agreement by October 31 preceding the next Contract Year, Owner or CAISO may refer the matter to ADR under a schedule (specified by the arbitrator if the participants cannot agree) requiring a decision within 30 days following appointment of the arbitrator.
  - (c)
    - (i) If the Monthly Reserved MWh has been determined in accordance with Section 2(a) and this Agreement terminates as to a Unit at the Facility, the Monthly Reserved MWh shall be adjusted downward to the average of the Requested MWh for the Units that remain subject to this Agreement for the same 36 Month period previously used to calculate the Monthly Reserved MWh.
    - (ii) If the Monthly Reserved MWh has been determined in accordance with Section 2 (b) and the Agreement terminates as to a Unit at the Facility, the adjustment shall be determined by agreement of Owner and CAISO. If the Parties are unable to

reach agreement at least 45 days before the Agreement terminates as to the Unit, Owner or CAISO may refer the matter to ADR under a schedule (specified by the arbitrator if the participants cannot agree) requiring a decision within 30 days following appointment of the arbitrator

3. The Monthly Reserved MWh are set forth on Schedule A. No less than 15 days before the beginning of each Contract Year, Owner shall make a Section 205 filing limited to changing the terms of Schedule A to revise the Monthly Reserved MWh determined in accordance with Section 2. The revised Monthly Reserved MWh shall be effective from the first day of the Contract Year.
4. If the sum of the Billable MWh and Hybrid MWh during a Month is less than the Monthly Reserved MWh, CAISO may:
  - (a) carry forward into the following Months of the Limitation Period all unused Monthly Reserved MWh, provided the cumulative unused MWh that are carried forward into the following Months may not exceed 20% of the aggregate Monthly Reserved MWh for the remainder of the Limitation Period including the Monthly Reserved MWh for the Months into which unused Monthly Reserved MWh are to be carried forward, or
  - (b) carry forward less than all unused Monthly Reserved MWh and release to Owner the Monthly Unused Reserved MWh not carried forward.

CAISO shall notify Owner of the amount of unused Monthly Reserved MWh to be carried forward within 3 Business Days after the beginning of the next Month.
5. CAISO may elect to reduce the aggregate Monthly Reserved MWh for the remainder of the Limitation Period by notifying Owner not less than 5 days prior to the beginning of the Month in which the reduction is to be effective. Notwithstanding the foregoing, if CAISO or Owner forecasts that usage will approach the Emission Limitation in the last Month of the Limitation Period, CAISO and Owner shall closely coordinate to release any unused Monthly Reserved MWh as soon as possible.
6. If there are unused Monthly Reserved MWh for the Facility remaining at the end of the Limitation Period, CAISO shall pay the Unused Emission Reserve Payment. The Unused Emission Reserve Payment shall be the product of (a) the Unused Monthly Reserved MWh Payment Rate and (b) the lesser of (i) the unused Monthly Reserved MWh carried forward by the CAISO into the last Month of the Limitation Period and (ii) the unused Monthly Reserved MWh remaining at the end of the Limitation Period. The Unused Monthly Reserved MWh Payment Rate shall be \$10 per MWh. The Unused Emission Reserve Payment shall be included in the invoice for the last Billing Month of the Limitation Period.
7. If the CAISO determines that the Monthly Reserved MWh have become insufficient due to a Force Majeure Event at the Facility or at Reliability Must-Run Units at another facility or because of an outage on the CAISO Controlled Grid or the Distribution Grid due to a Force Majeure Event, CAISO may request Owner to undertake, and if so requested, Owner shall undertake all such necessary and commercially reasonable measures approved in advance by CAISO and the Responsible Utility to (a) obtain, where possible, a modification or variance from applicable Emission Limitations, or (b) procure necessary emission reduction credits or allowances sufficient to offset emissions in excess of Emission Limitations to enable Owner to provide additional MWh dispatched by the CAISO to meet reliability requirements arising by reason of such Force Majeure Event. CAISO shall reimburse Owner for all reasonable costs of procuring such emission reduction credits or allowances.
8. If the CAISO wishes to dispatch a Unit at a Facility that is within 5% of exceeding its Monthly Reserved MWh for the Limitation Period, the CAISO shall first dispatch Units at other Facilities

that are not within 5% of the Monthly Reserved MWh during the Limitation Period if the other Unit(s), in the CAISO's sole judgment, provide equivalent reliability benefits.

9. If any Emission Limitation affecting the Facility materially changes, CAISO and Owner promptly shall renegotiate this Schedule P to reflect such change. If CAISO and Owner are unable to agree on revisions to this Schedule P, the Owner may file a revised Schedule P with FERC under Section 205 of the Federal Power Act for the limited purpose of taking such changes in the Emissions Limitation into account. Such filing may be with or without the concurrence of the CAISO, but CAISO reserves its right to protest any such filing.

\* \* \*



**Attachment C – Informational Only**

**Blacklines of Existing Pro Forma Must-Run Service Agreement**

**MRTU Tariff**

**Compliance Filing with Paragraph 417 of September 21, 2006 Order, Docket No. ER06-615**

**October 26, 2007**

**CAISO TARIFF APPENDIX G**  
**Pro Forma Must-Run Agreements**

PRO FORMA

MUST-RUN SERVICE AGREEMENT

dated \_\_\_\_\_, 1920

between

[OWNER NAME]

and

CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION



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## MUST-RUN SERVICE AGREEMENT

THIS MUST-RUN SERVICE AGREEMENT is made as of the \_\_\_ day of \_\_\_\_\_, 19\_\_\_, between \_\_\_\_\_, a [corporation/limited liability company/municipal corporation] organized under the laws of the State of \_\_\_\_\_ (the "Owner"), and the CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION, a ~~not-for-profit~~ nonprofit public benefit corporation incorporated under the laws of the State of California (the "ISOCALISO").

### RECITALS

- A. Owner is the owner or lessee of, or is otherwise entitled to dispatch and market the Energy and Ancillary Services produced from and provided by, the electrical generating Units located at the Facility described in Schedule A to this Agreement;
- B. Under Section 345 of the California Public Utilities Code, ISOCALISO is responsible for the efficient use and reliable operation of the ISOCALISO Controlled Grid;
- C. ISOCALISO has determined that it needs the ability to dispatch Units under the terms and conditions of this Agreement to have Owner deliver Energy into or provide Ancillary Services to the ISOCALISO Controlled Grid when required by ISOCALISO to ensure the reliability of the ISOCALISO Controlled Grid; and
- D. Each Unit covered by this Agreement has been designated as a Reliability Must-Run Unit.

In consideration of the covenants and agreements contained in this Agreement, the Parties agree as follows:

## ARTICLE 1

### DEFINITIONS

Terms, when used with initial capitalization in this Agreement and the attached schedules shall have the meanings set out below. The singular shall include the plural and vice versa.

“Includes” or “including” shall mean “including without limitation.” References to a section, article or schedule shall mean a section, article or schedule of this Agreement, unless another agreement or instrument is specified. Unless the context otherwise requires, references to any law shall be deemed references to such law as amended, replaced or restated from time to time.

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 identity. References to “Owner” or

“ISOCAISO” shall, unless the context otherwise requires, mean Owner and ISOCAISO respectively and their permitted assigns and successors. References to sections or provisions of the ISOCAISO Tariff include any succeeding sections or provisions of the ISOCAISO Tariff.

“**Adjusted RMR Invoice**” is defined in Section 9.1(b).

“**ADR**” means alternative dispute resolution pursuant to Section 11.1 and Schedule K.

“**Agreement**” means this Must-Run Service Agreement, including schedules, as amended from time to time.

“**Ancillary Services**” means those ancillary services identified in Schedule E.

“**Applicable UDC Tariff**” means the applicable retail tariff(s), of the utility distribution company in whose service territory the Unit is located, under which the Unit is eligible to purchase power to meet its auxiliary power requirements, whether or not the Unit actually

purchases auxiliary power under the tariff(s). The Applicable UDC Tariff for the Facility is set out on Schedule A.

**“Availability”** means, in relation to a Unit, the maximum quantity of Energy or Ancillary Services, measured at the Delivery Point, the Unit is capable of producing at any given time assuming adequate time to ramp the Unit to that maximum quantity. For hydroelectric Units, Availability measures the extent to which the Unit is capable of producing Energy or providing Ancillary Services, given sufficient usable water to produce Energy or provide Ancillary Services. The Availability of a Unit is measured in MW.

**“Availability Deficiency Factor”** is calculated as set forth in Section 8.5.

**“Availability Payment”** means the payment to Owner described in Section 8.1 for Condition 1 and 8.2 for Condition 2.

**“Availability Test”** means a test of a Unit’s Availability requested by ISO/CAISO or Owner pursuant to Section 4.9(a).

**“Bid Sufficiency Test”** means the test described in Section 4.1(c).

**“Billable MWh”** is defined in Section 8.3(a).

**“Billing Month”** is defined in Section 9.1(b).

**“Black Start”** means the ability of a Unit to start without an external source of electricity or the process of doing so.

**“Business Day”** means any of Monday through Friday, excluding any day which is a Federal bank holiday.

**“CAISO Availability Notice”** means a notice given by CAISO to Owner modifying the Availability of the Unit under Section 4.9 (a)(vi) or Section 5.4 (b).

“CAISO Controlled Grid” means the system of transmission lines and associated facilities that from time to time are under CAISO’s operational control.

“CAISO Invoice” is defined in Section 9.1(b).

“CAISO’s Repair Share” is defined in Section 7.5 (g).

“CAISO Settlements Calendar” is defined in Section 9.1(b).

“CAISO Tariff” means the California Independent System Operator Tariff on file with FERC and in effect from time to time.

“Calculation Hour” is defined in Section 8.3(c)(i)(A).

“California Agency” means the agency or agencies responsible for representing the State of California in FERC proceedings involving the rates, terms and conditions of service under this Agreement.

“Capital Item” means an addition or modification to, change in or repair, replacement or renewal of plant, equipment or facilities used by Owner to fulfill Owner’s obligations under this Agreement. A Capital Item does not include Repairs to such plant, equipment or facilities. A Capital Item does not include an Upgrade, unless recovery of costs of the Upgrade has been approved by ISOCAISO. For purposes of this Agreement, Capital Items are “retirement units” or other items the costs of which are properly capitalized in accordance with the FERC Uniform System of Accounts, 18 C.F.R. Part 101.

“Closed” is defined in Section 2.5.

“Collateral” is defined in Section 9.7.

“Comparable RMR Unit” is defined in Section 4.7 (f).

“Competitive Constraint Run” is defined in Appendix A to the CAISO Tariff.

**“Condition 1”** means the terms of this Agreement applicable to a Unit providing service under Condition 1 as described in Section 3.1.

**“Condition 2”** means the terms of this Agreement applicable to a Unit providing service under Condition 2 as described in Section 3.1.

**“Confidential Information”** is defined in Section 12.5.

**“Contract Service Limits”** for a given Unit means the Maximum Annual MWh, Maximum Annual Service Hours, Maximum Annual Start-ups, and, if applicable, the Maximum Monthly MWh as stated in Section 13 of Schedule A.

**“Contract Year”** means a calendar year; provided, however, that the initial Contract Year shall commence on the Effective Date and expire at the end of the calendar year in which the Effective Date occurred. If the Agreement terminates during a calendar year, the last Contract Year shall end on the termination date.

**“Counted MWh”** is defined in Section 5.3.

**“Counted Service Hours”** is defined in Section 5.3.

**“Counted Start-ups”** is defined in Section 5.3.

**“Credit Carryforward”** is defined in Section 9.1(e) and Section 9.1(f).

**“Day Ahead Schedule”** is defined in Appendix A to the CAISO Tariff.

**“Deliver”** means to deliver Energy into the ISO/CAISO Controlled Grid or Distribution Grid (at the Delivery Point or such other point as the Parties may otherwise agree) or to provide Ancillary Services (whether or not any Energy is Delivered as part of the Ancillary Service) pursuant to a Dispatch Notice (including deliveries for which a Dispatch Notice has been issued under Section 4.5 and deliveries in substitute Market



Transactions under Section 5.2) and the terms “Delivered” and “Delivering” shall be construed accordingly.

“**Delivered Ancillary Services**” means the type and, if applicable, the MW of Ancillary Services Delivered by Owner.

“**Delivered MWh**” means the MWh of Energy Delivered by Owner, ~~including any Ramping Energy,~~ and shall be equal to the sum of Billable MWh, Hybrid MWh, MWh deemed Delivered under Section 5.1 (f); and MWh Delivered from Substitute Units under Section 5.1 (c) or Section 5.1 (d).

“**Delivery Point**” means the point identified in Section 4 of Schedule A where Energy and Ancillary Services are to be Delivered.

“**Direct Contract**” means a contract between Owner and one or more identified persons for the sale of Energy or Ancillary Services other than under this Agreement, and shall in no event include a transaction in a market run by ISO/CAISO ~~or the PX.~~

“**Dispatch Notice**” means a notice delivered by ISO/CAISO to Owner’s Scheduling Coordinator on a daily, hourly or real-time basis requesting dispatch of one or more Unit(s) to provide Energy or Ancillary Services under this Agreement. Dispatch Notices include: (a) Day-Ahead Schedules and Real-Time Dispatches where the RMR Unit or Units are flagged as RMR Dispatches as a result of the Market-Power Mitigation and Reliability Requirements Determination processes pursuant to the CAISO Tariff, (b) Manual RMR Dispatch Notices ~~A Dispatch Notice shall include a notice~~ (c) notices deemed to have been given by ISO/CAISO for the Energy actually Delivered by a Unit that starts or increases Energy output as a result of a “system emergency” as defined in the ISO/CAISO Tariff whether the start or increase occurs automatically (for Units

specified in Section 2 of Schedule A as having the ability to Start-up or ramp automatically) or pursuant to a standing written order of the ISOCAISO. ~~A Dispatch Notice shall also include a (d) Test Dispatch Notices~~ given by ISOCAISO under Section 4.9 other than ~~a Test Dispatch Notices~~ issued at Owner's request to test Availability or heat input of the Unit.

**"Distribution Grid"** means the radial lines, distribution lines and other facilities used to transmit or distribute Energy from the Facility other than the ISOCAISO Controlled Grid.

**"Due Date"** means the date which is the 30th day after the date on which a Party submits an invoice to the other Party. Notwithstanding the above, the Due Dates for the Revised Estimated RMR Invoice, the Revised Adjusted RMR Invoice, and the ISOCAISO Invoice shall be as specified in Section 9.1(b). If the 30th day, or other Due Date as specified in Section 9.1(b), is not a Business Day, the Due Date shall be the next Business Day.

**"Effective Date"** means the date this Agreement becomes effective pursuant to Section 2.1 thereof.

**"Energy"** means electrical energy.

**"Estimated RMR Invoice"** is defined in Section 9.1(b).

**"Existing Contractual Limitation"** means a contractual limitation on the Start-up or operation of a Unit existing prior to the date the Unit was designated as a Reliability Must-Run Unit. All Existing Contractual Limitations are described in Section 14 of Schedule A.

**“Facility”** means the electrical generating facility described in Schedule A. A hydroelectric facility may include one or more electric generating facilities which are hydraulically linked by a common water system.

**“Facility Trust Account”** is defined in Section 9.2.

**“FERC”** means the Federal Energy Regulatory Commission, any successor agency, or any other agency to whom authority under the Federal Power Act affecting this Agreement has been delegated.

**“Final Invoice”** is defined in Section 9.10(a).

~~**“Final Settlement Statement”** is defined in the ISO tariff master definitions.~~

**“Financing Agreement”** means agreements for financing the Facility or any portion of the Facility.

**“Fixed Option Payment Factor”** is set forth in Section 2 of Schedule B.

**“Force Majeure Event”** means any occurrence beyond the reasonable control of a Party which causes the Party to be unable to perform an obligation under this Agreement in whole or in part and which could not have been avoided by the exercise of Good Industry Practice. Force Majeure Event includes an act of God, war, civil disturbance, riot, strike or other labor dispute, acts or failures to act of Governmental Authority, fire, explosion, flood, earthquake, storm, drought, lightning and other natural catastrophes. A Force Majeure Event shall not include lack of finances or the price of fossil fuel.

**“Forced Outage”** means a reduction in Availability of a Unit for which sufficient notice is not given to allow the outage to be factored into ~~ISO~~ISOCAISO's day-ahead or hour-head scheduling process.

**“Good Industry Practice”** means any of the practices, methods, and acts engaged in or approved by a significant portion of the electric power industry during the relevant time period, or any of the practices, methods, and acts which, in the exercise of reasonable judgment in the 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 Industry Practice does not require use of the optimum practice, method, or act, but only requires use of practices, methods, or acts generally accepted in the region covered by the Western Systems Coordinating Council.

**“Governmental Authority”** means the government of any nation, any state or other political subdivision thereof, including any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to a government.

**“Hourly Metered Total Net Generation”** means the electric generation in MWh for the Unit in any Settlement Period as measured by the Unit’s electrical meter described in Schedule A, Section 5, “Metering and Related Arrangements”, minus any auxiliary loads metered on the load side of such electrical meter for that Settlement Period in accordance with the ISOCAISO Tariff.

**“Hybrid MWh”** is defined in Section 8.3(b).

**“Hydroelectric Dependable Capacity”** is the amount of MWh forecast to be produced by a hydroelectric Facility in an adverse hydrologic year.

**“Interest Rate”** means the lesser of the rate of interest per annum calculated in accordance with 18 C.F.R. 35.19a of the FERC’s Regulations or the maximum rate permitted by law.

~~“ISO Availability Notice” means a notice given by ISO to Owner modifying the Availability of the Unit under Section 4.9 (a)(vi) or Section 5.4 (b).~~

~~“ISO Controlled Grid” means the system of transmission lines and associated facilities that from time to time are under ISO’s operational control.~~

~~“ISO Invoice” is defined in Section 9.1(b).~~

~~“ISO’s Repair Share” is defined in Section 7.5 (g).~~

~~“ISO Settlements Calendar” is defined in Section 9.1(b).~~

~~“ISO Tariff” means the California Independent System Operator Tariff on file with FERC and in effect from time to time.~~

“Local Capacity Area” is defined in Appendix A to the CAISO Tariff.

“Long-term Planned Outage” means a planned interruption, in whole or in part, in the electrical output of a Unit to permit Owner to perform a major equipment overhaul and inspection or for new construction work but only if the outage is scheduled to last 21 consecutive days or more (which may span more than one Contract Year) and either (a) is scheduled in accordance with the ISOCAISO’s outage coordination protocol prior to the beginning of the Contract Year or (b) was scheduled as a Long-term Planned Outage for the last quarter of the expiring Contract Year but, with approval of the ISOCAISO Outage Coordination Office, was postponed and rescheduled into the new Contract Year.

“Manual RMR Dispatch Notice” is a Dispatch Notice issued other than as a result of the Market Power Mitigation and Reliability Requirements Determination process as described in the CAISO Tariff.

“Market Power Mitigation and Reliability Requirements Determination” or “MPM-RRD:” is as defined in the CAISO Tariff.

~~“Market Ramping Energy” is defined in Section 8.3.~~

“Market Schedule” is defined in Section 8.3(c)(i)(C).

“Market Transaction” means a delivery of Energy or provision of Ancillary Services from a Unit pursuant to a Direct Contract or bids into markets run by the PX, ISOCAISO or any similar entity.

“Maximum Annual MWh” means, for each Unit, the maximum MWh of Energy that Owner may be obligated to Deliver from the Unit in each Contract Year without becoming entitled to charges for excess service under Schedule G. The Maximum Annual MWh for each Unit is set out in Section 12 of Schedule A. The rules for counting MWh are set out in Section 5.3.

“Maximum Annual Service Hours” means, for each Unit, the maximum Service Hours that Owner may be obligated to provide service from the Unit in each Contract Year without becoming entitled to charges for excess service under Schedule G. The Maximum Annual Service Hours for each Unit is set out in Section 12 of Schedule A. The rules for counting Service Hours are set out in Section 5.3.

“Maximum Annual Start-ups” means, for each Unit, the maximum number of times Owner may be obligated to Start-up the Unit in each Contract Year without becoming entitled to charges for Start-ups under Schedule G. The Maximum Annual Start-ups for each Unit is set out in Section 12 of Schedule A. The rules for counting Start-ups are set out in Section 5.3.

“Maximum Monthly MWh” means, for each hydroelectric Unit, the maximum MWh of Energy that Owner may be obligated to Deliver from the Unit without becoming entitled to charges for excess service under Schedule G. The Maximum Monthly MWh for each

hydroelectric Unit is set out in Section 12 of Schedule A. The rules for counting MWh are set out in Section 5.3.

**“Maximum Net Dependable Capacity”** means the amount shown in Section 1 of Schedule A as the Maximum Net Dependable Capacity of a Unit.

**“Minimum Load”** means, for each Unit, the higher of (1) the lowest level in MW at which the Unit can maintain stable continuous operations, or (2) the Minimum Load for the Unit as shown in Section 9 of Schedule A.

**“Minimum Off Time”** means, for each Unit, the minimum time following Shutdown that the Unit must remain off line before initiation of the next Start-up. The Minimum Off Time for each Unit is shown in Section 11 of Schedule A.

**“Minimum Run Time”** means, for each Unit, the minimum time the Unit must remain Synchronized following Start-up. The Minimum Run Time for each Unit is shown in Section 10 of Schedule A.

**“Month”** means a calendar month.

**“Monthly Option Payment”** is defined in Section 8.1(a) for Condition 1 and Section 8.2(a) for Condition 2.

**“Motoring Charge”** means the payment in accordance with Schedule E for the Energy required to spin a generator or condenser that is electrically connected to the ISOCAISO Controlled Grid or Distribution Grid to provide Ancillary Services in circumstances where the generator is not producing Energy.

**“MW”** means one megawatt.

**“MWh”** means one megawatt hour.

**“Net Repair Costs”** is defined in Section 7.5(a).

**“New Responsible Utility”** is defined in Section 9.4 (f).

**“Nonmarket Transaction”** means a Delivery of Energy or Ancillary Services other than Hybrid MWh from a Unit pursuant to a Dispatch Notice.

**“Non-Performance Penalty”** means a penalty computed pursuant to Section 8.5.

**“Other Outage”** means any reduction in the Availability of a Unit as reflected in an ISOCAISO Availability Notice or Owner’s Availability Notice (whether characterized by the North American Electric Reliability Council (“NERC”) as a “forced outage”, “planned outage” or “maintenance outage”) other than a Long-term Planned Outage.

**“Owner’s Availability Notice”** means a notice given under Section 4.9(a)(vii) or Section 7.3(b) by Owner to ISOCAISO notifying ISOCAISO of the Availability of a Unit.

**“Owner’s Repair Cost Obligation”** is an allowance for Repairs to be made during the Contract Year calculated pursuant to Section 7.5 (k). Owner’s Repair Cost Obligation is set out in Section 13 of Schedule A.

**“Party”** means either ISOCAISO or Owner, and “Parties” means ISOCAISO and Owner.

**“Penalty Period”** is defined in Section 8.5 (a).

**“Pre-empted Dispatch Payment”** is defined in Schedule E.

**“Prepaid Start-ups”** is defined in Section 8.4.

**“Prepaid Start-up Charge”** means the payment to Owner for Prepaid Start-ups described in Section 8.1.

**“Prepaid Start-up Cost”** is defined in Schedule D.

**“Prior Period Change(s)”** is defined in Section 9.1(g).

**“Prior Period Change Examples”** is defined in Section 9.1(l).



**“Prior Period Change Guidelines”** is defined in Section 9.1(l).

**“Prior Period Change Worksheet”** is defined in Section 9.1(g).

~~“PX” means the California Power Exchange Corporation, a non-profit, public benefit corporation incorporated under the laws of the State of California or any successor to the PX~~

**“Ramp Rate”** is the applicable Ramp Rate as stated in Section 8 of Schedule A.

**“Ramping Constraint”** means the limits on ramping a Unit to higher or lower output as set out in Section 7 of Schedule A.

~~“Ramping Energy” is defined in Section 8.3.~~

~~“Ramp Rate” is the applicable Ramp Rate as stated in Section 8 of Schedule A.~~

**“Real-Time Dispatch”** is defined in Appendix A of the CAISO Tariff.

**“Recalculation Settlement Statement”** is defined in Appendix A of the CAISO Tariff.

**“Reliability Must-Run Unit”** means a “reliability must-run unit” as defined in Appendix A of the ISOCAISO Tariff.

**“Repair”** means repairs or replacement required to remedy or prevent any loss or damage that impairs the capability of the Unit to Deliver Energy or Ancillary Services, the cost of which is properly treated as an expense in accordance with the FERC Uniform System of Accounts, 18 C.F.R. Part 101.

**“Repair Payment Factor”** is determined pursuant to Section 7.5(g).

**“Requested Ancillary Services”** means the type and, if applicable, the MW of Ancillary Services ISOCAISO requests Owner to Deliver from a Unit pursuant to a Dispatch Notice.

**“Requested MW”** means the MW of Energy ISOCAISO requests Owner to Deliver pursuant to a Dispatch Notice.

**“Requested MWh”** means the product of the Requested MW of Energy and the time in hours (or fraction thereof) during which the Dispatch Notice requested Delivery of the Requested MW. This includes ramping energy calculated pursuant to the CAISO Tariff.

**“Requested Operation Period”** means the time during which ISOCAISO requests that a Unit Deliver Energy or Ancillary Services pursuant to a Dispatch Notice.

**“Response Notice”** is defined in Section 14.3(b)(ii).

**“Responsible Utility”** is an entity which, under the ISOCAISO Tariff, is responsible for paying all or part of the costs incurred by ISOCAISO under this Agreement.

**“Responsible Utility Facility Trust Account”** is defined in Section 9.2.

**“Revised Adjusted RMR Invoice”** is defined in Section 9.1(b).

**“Revised Estimated RMR Invoice”** is defined in Section 9.1(b).

**“RMR Dispatch”** is as defined in Appendix A of the CAISO Tariff.

**“RMR Invoices”** means the four invoices issued each Billing Month by Owner to ISOCAISO pursuant to Section 9.1 for payment of charges under this Agreement. The four invoices are the Estimated RMR Invoice, Revised Estimated RMR Invoice, Adjusted RMR Invoice, and Revised Adjusted RMR Invoice.

**“RMR Invoice Template”** is defined in Section 9.1(d).

**“RMR Owner Facility Trust Account”** is defined in Section 9.2.

**“RMR Payments Calendar”** means the calendar issued by ISOCAISO pursuant to Article 3 of Annex 1 of the Settlement and Billing Protocol Section 11.13 of the ISOCAISO Tariff.

~~“RMR Ramping Energy” is defined in Section 8.3~~

“**Scheduling Coordinator**” means an entity certified by ISOCAISO for the purposes of undertaking the functions specified in Section ~~2.2.64.5~~ of the ISOCAISO Tariff with respect to a unit.

“**Scheduling Coordinator Revenues**” is defined in Section 9.1(f).

“**Service Hours**” means the amount of time (measured in hours or fractions thereof) a Unit is Delivering Energy or Ancillary Services pursuant to a Dispatch Notice.

“**Settlement Period**” means the period beginning at the start of the hour and ending at the end of the hour.

“**Shutdown**” means the condition of a Unit when it is not Synchronized and not in Start-up.

“**Small Project Estimate**” is defined in Section 7.4 (b).

“**Start-up**” means the action of bringing a Unit from Shutdown to ~~being~~ Synchronized Minimum Load and the terms “Starts-up”, “Started-up” and “Starting-up” shall be construed accordingly.

“**Start-up Lead Time**” means, for each Unit, the amount of time required to Start-up the Unit, as shown in Section 6 of Schedule A.

“**Start-up Payment**” is defined in Schedule D.

“**Substitute Unit**” means a generating unit or combination of units, other than the Unit identified in the Dispatch Notice (whether or not located at the Facility, whether or not designated as a Reliability Must-Run Unit and whether or not owned by Owner), which, under the circumstances existing at the time, is capable of providing system reliability benefits equivalent to the system reliability benefits provided by the Unit identified in the

Dispatch Notice. In the case of Units providing Ancillary Services, a Substitute Unit must (i) be certified to provide the requested type of Ancillary Service, (ii) provide the same or higher ramp rate and MW of capacity and, (iii) ~~if there is inter-zonal congestion, be located in the same zone~~ is located in the same Local Capacity Area as the Unit identified in the Dispatch Notice.

**“Surcharge Payment”** means the payment to Owner for Capital Items described in Section 8.1 for Condition 1 and Section 8.2 for Condition 2.

**“Surcharge Payment Factor”** means the percentage of the cost of a Capital Item that ISOCAISO is obligated to pay.

**“Synchronized”** means the condition where a Unit is electrically connected to and capable of delivering Energy to the ISOCAISO Controlled Grid or Distribution Grid.

**“Termination Fee”** means amounts determined pursuant to the termination fee formula contained in Section 2.5(b).

**“Termination Fee Invoice”** is defined in Section 9.9(a).

**“Test Dispatch Notice”** means a notice issued to test a Unit pursuant to Section 4.9.

**“Trading Day”** means the day on which Energy or Ancillary Services are to be Delivered.

**“Unit”** means an individual electricity generating unit which has been designated a Reliability Must-Run Unit and is part of the Facility identified in Schedule A.

**“Unit Availability Limit”** means for any hour the maximum MW which Owner is obligated to make available to ISOCAISO from a Unit. The Unit Availability Limit shall be the lower of (a) the Maximum Net Dependable Capacity of the Unit or (b) the

Availability of the Unit as stated in the currently effective Owner's Availability Notice or ISOCAISO Availability Notice.

**"Unplanned Capital Item Notice"** is defined in Section 7.6(b).

**"Unplanned Repair Notice"** is defined in Section 7.5(b).

**"Upgrade"** means any change or modification to the Facility that increases the nameplate capacity rating of an existing Unit or adds a new unit.

**"Variable Cost Payment"** means the payment to Owner for Billable MWh described in Schedule C.

## ARTICLE 2

### TERM

#### 2.1 Term

- (a) This Agreement shall become effective on the later of ~~June 1, 1999~~ March 31, 2008, or the date it is permitted to become effective by FERC, and shall continue in effect for one Contract Year.
- (b) ISOCAISO may extend the term of this Agreement for an additional calendar year as to one or more Unit by notice given not later than October 1 of the expiring Contract Year. ISOCAISO may extend the term for less than a full calendar year as to one or more Unit but only if ISOCAISO gives notice not less than 12 months prior to the date to which it proposes to extend the term.

#### 2.2 Termination

- (a) Subject to any necessary authorization from FERC, this Agreement may be terminated as to one or more Unit in accordance with this Section 2.2; provided, however, that if this Agreement applies to a Facility having hydroelectric Unit,

this Agreement may be terminated only as to all hydroelectric Units at the Facility. If this Agreement terminates as to fewer than all Units, the Agreement shall remain in effect as to the remaining Units. If this Agreement terminates as to all Units, the Agreement shall terminate.

- (b) This Agreement may be terminated as to one or more Units:
- (i) by ISOCAISO pursuant to Section 11.4 in the event of default by Owner;
  - (ii) by Owner pursuant to Section 11.4 in the event of default by ISOCAISO;
  - (iii) by Owner pursuant to Section 7.4 (f), 7.5 (i) or 7.6 (h);
  - (iv) by Owner or ISOCAISO, if the Unit is condemned by a Governmental Authority; or
  - (v) by Owner or ISOCAISO, if Owner's authorization from a Governmental Authority (including, where applicable, licenses under Part I of the Federal Power Act) that is necessary to site, operate or obtain access to such Unit is terminated or expires or is reissued or modified so that it becomes illegal, uneconomical or otherwise impractical for the Owner to continue operating the Facility. Owner shall be obligated to use its best efforts to renew and keep effective its licenses and authorizations and to oppose conditions or modifications which would make continued operation illegal, uneconomical or otherwise impractical.
- (c) To the extent that Owner transfers the right to control the dispatch of the Facility or Unit which right is necessary to satisfy its obligations under this Agreement, Owner shall assign this Agreement to the transferee in accordance with Section 13.1.

- (d) If ISOCAISO terminates the Agreement or does not extend the term of the Agreement as to a Unit, ISOCAISO shall not redesignate the same Unit, or designate another non-reliability must-run unit at the same Facility, as a Reliability Must-Run Unit during the one year period following termination or expiration of the Agreement as to that Unit unless (i) ISOCAISO demonstrates that the unit is required to maintain the reliability of the ISOCAISO Controlled Grid or any portion thereof and the need to designate the unit as a Reliability Must-Run Unit is caused by an extended outage of a generation or transmission facility not known to ISOCAISO at the time of the termination or expiration or (ii) the unit is selected through an ISOCAISO competitive process in which Owner participated. For purposes of the foregoing, ISOCAISO's need for spinning reserves, nonspinning reserves, replacement reserves or regulation as defined in the ISOCAISO Tariff shall not be grounds for redesignating the Unit or designating another unit at the Facility as a Reliability Must-Run Unit.
- (e) Subject to any necessary authorization from FERC, this Agreement shall terminate as to any Unit leased by Owner in the event that, for any reason, the lease expires or is terminated unless Owner acquires ownership of such Unit upon such expiration or termination. Any termination under this Section 2.2 (e) shall not affect any right ISOCAISO may have thereafter to designate such Unit as a Reliability Must-Run Unit and the conditions in Section 2.2 (d) shall not apply to such redesignation.

### 2.3 Effective Date of Expiration or Termination

If FERC authorization is required to give effect to expiration or termination of this Agreement as to one or more Units, the effective date of the expiration or termination shall be the date FERC permits the expiration or termination to become effective. Owner shall promptly file for the requisite FERC authorizations to terminate service under this Agreement as of the proposed effective date of expiration or termination; provided, that nothing in this Agreement shall prejudice the right of either Party to contest the other Party's claim that a termination or expiration has occurred. If FERC authorization is not required to terminate service under this Agreement, the effective date of expiration or termination shall be the later of (i) the date specified in ISOCAISO or Owner's notice of termination or (ii) the date that all conditions to the termination or expiration have been satisfied.

### 2.4 Effect of Expiration or Termination

Expiration or termination of this Agreement shall not affect the accrued rights and obligations of either Party, including either Party's obligations to make all payments to the other Party pursuant to this Agreement or post-termination audit rights under Section 12.2.

### 2.5 Termination Fee

- (a) ISOCAISO shall pay Owner a Termination Fee calculated pursuant to Section 2.5
- (b) if the Unit is Closed within six months after the Unit ceases to be subject to this Agreement as a result of termination pursuant to Sections 2.2 (b) (ii), (iii), (iv) or (v) or because ISOCAISO does not extend the term under Section 2.1 (b).  
Within 60 days after the Unit is Closed, Owner will send ISOCAISO a notice



stating (i) the date the Unit Closed and (ii) the amount of the Termination Fee due Owner pursuant to this Section 2.5 including detailed calculations of each component of the formula in Section 2.5(b) identifying the source of each input used. For purposes of this Section, "Closed" shall mean that the Unit is not producing Energy or providing capacity and there are no Direct Contracts obligating any entity to deliver Energy or provide capacity from the Unit during the 36 month period beginning at the date the Unit Closed. A Unit shall cease to be Closed if, during the 36 month period beginning at the date the Unit Closed, any entity: (i) sells Energy or capacity; (ii) executes a Direct Contract for service or (iii) obtains a new permit from any Governmental Authority for operations, in each case that would involve use of the Capital Item for which a Termination Fee is being paid.

(b) The Termination Fee shall be determined using the following formula:

$$T = NCI + CWIP - S$$

Where:

$$T = \text{Termination Fee (\$)}$$

$$NCI = \text{Undepreciated portion of the cost of Capital Items which constitute part of the Closed Unit which were approved in accordance with Section 7.4 or 7.6 and were in service at the date the Unit Closed with the cost and depreciation rates determined under Section 7.4 or 7.6, as applicable. In calculating NCI, the undepreciated cost of each Capital}$$

Item shall be multiplied by the Surcharge Payment Factor applicable to that Capital Item.

CWIP = The actual cost, at the date the Unit Closed, of Capital Items for the Closed Unit which were approved in accordance with Section 7.4 or 7.6, as applicable, but were not in service at the date the Unit Closed, plus the cost to pay or terminate any remaining obligations incurred in connection with installation of the Capital Items. In calculating CWIP, the cost of each Capital Item shall be multiplied by the Surcharge Payment Factor applicable to that Capital Item.

S = The salvage value, if any, of the Capital Items included in the calculation of either NCI or CWIP.

The cost for each Capital Item shall be determined by agreement or ADR pursuant to Section 7.4 or 7.6. Except for those items for which a ten-year depreciation life is specified in Section 7.4 of this Agreement, the depreciation rate for each Capital Item shall be determined by agreement or ADR in connection with the applicable Capital Item approval process under Section 7.4 or 7.6.

- (c) The Termination Fee shall be payable in 36 equal monthly installments calculated using the following formula:

$$M = T \left[ \frac{r}{1 - (1 + r)^{-36}} \right]$$

Where

M = the monthly payment,

T = Termination Fee under Section 2.5(b), and

r = an annual discount rate equal to the interest rate used by FERC for the calculation of refunds (as set forth in 18 C.F.R. § 35.19a) in effect on the date that Owner provides notice to the ISOCAISO pursuant to Section 2.5(a) of this Agreement, divided by 12.

- (d) If the Unit ceases to be Closed at any time within 36 months following the date the Unit Closed, ISOCAISO shall cease payment of Termination Fee installments as of the Month in which the Unit ceased to be Closed, but Owner shall not be obligated to refund installments for any Month in which the Unit was Closed. Once a Unit has ceased to be Closed, ISOCAISO shall not be required to pay any remaining Termination Fee installments even if the Unit again Closes.
- (e) Any dispute regarding an element of the Termination Fee (e.g. salvage value) not resolved at the time the Capital Item was approved shall be subject to ADR. If the amount of the Termination Fees associated with a single termination or expiration is \$5 million or more as billed by Owner, the Responsible Utility shall have the same rights as ISOCAISO to receive notice that the Unit(s) Closed and to initiate or participate in ADR.

## ARTICLE 3

### CONDITIONS OF MUST-RUN AGREEMENT

#### 3.1 Conditions Under Which Units Will Operate

This Agreement includes two conditions of service under which Owner may provide service from its Unit(s). By way of general description and subject to the specific provisions set forth in this Agreement:

- (i) A Unit under Condition 1 may participate in Market Transactions and Owner will retain all revenues from participation in Market Transactions;
- (ii) A Unit under Condition 2 shall bid in accordance with Section 6.1 (b) to participate in Market Transactions when ISOCAISO has issued a Dispatch Notice for the Unit and Owner will not retain revenues from participation in Market Transactions. A Unit under Condition 2 shall not participate in a Market Transaction when ISOCAISO has not issued a Dispatch Notice for the Unit.

Owner shall begin operating each Unit under the Condition designated by Owner prior to the Effective Date and thereafter may transfer the Unit to a different Condition pursuant to Section 3.2.

#### 3.2 Transfer Between Conditions

- (a) Except for a hydroelectric Unit, Owner may, from time to time, transfer a Unit from one Condition to the other Condition, provided that it may not do so without ISOCAISO's consent unless, as of the transfer date, the Unit will have been subject to its existing Condition for at least twelve months. If a transfer is to become effective at the beginning of a Contract Year, Owner shall provide ISOCAISO at least 30 days prior notice of the transfer. For a transfer to become

effective at any other time, Owner shall give ISOCAISO notice at least 90 days prior to the transfer. If a Unit is transferred from Condition 1 to Condition 2 during a Contract Year, Owner shall credit to ISOCAISO on the first invoice after the transfer is effective an amount computed by multiplying (i) the positive difference, if any, of the Prepaid Start-ups minus the Counted Start-ups by (ii) the Prepaid Start-up Cost. If a Unit is transferred from Condition 2 to Condition 1, ISOCAISO shall not be required to pay a Condition 1 Prepaid Start-up Charge for the remainder of the Contract Year in which the transfer occurred, but shall pay, for each Start-up, the Condition 1 Start-up Payment calculated pursuant to Equation D-1 in Schedule D.

- (b) A hydroelectric Unit may only operate under Condition 1.
- (c) ISOCAISO may not transfer a Unit from one Condition to the other Condition.
- (d) Any transfer of a Unit from one Condition to the other Condition shall be effective on the first day of the Month following expiration of the applicable notice.
- (e) If a Unit is transferred from Condition 1 to Condition 2, Surcharge Payments for Capital Items shall be changed prospectively from the effective date of the transfer to reflect a Surcharge Payment Factor of 1.0. If a Unit is transferred from Condition 2 to Condition 1, Surcharge Payments for Capital Items shall be changed prospectively from the effective date of the transfer to reflect the Condition 1 Surcharge Payment Factor previously determined for the Capital Item, or if the factor was not previously determined, the Surcharge Payment Factor agreed to by ISOCAISO and Owner. If Owner and ISOCAISO do not

agree on the Surcharge Payment Factor, the Surcharge Payment Factor shall be determined through ADR in accordance with Schedule B.

## ARTICLE 4

### DISPATCH OF UNITS

#### 4.1 ISOCAISO's Right to Dispatch

- (a) Subject to the limitations set forth in this Agreement, ISOCAISO shall direct dispatch of a Unit by delivering a Dispatch Notice to Owner's Scheduling Coordinator in accordance with the ISOCAISO Tariff.
- (b) Dispatch Notices for Energy, other than Energy associated with Ancillary Services, shall be issued solely for purposes of meeting local reliability needs or managing ~~intra-zonal congestion~~ congestion on non-competitive paths. For purposes of dispatching Energy, local reliability needs do not include Energy required to manage ~~inter-zonal congestion~~ congestion on competitive paths. ISOCAISO shall issue Dispatch Notices to meet local reliability needs or manage ~~intra-zonal congestion~~ congestion on non-competitive paths whenever market bids cannot be used to meet those needs or manage such congestion or such market bids cannot be used to meet those needs or manage such congestion without taking a bid out of merit order or requiring ISOCAISO to decrement another supplier's schedule to accommodate the unit which provided the bid. ISOCAISO may not issue a Dispatch Notice to fill a need for imbalance energy.
- (c) Except as needed for black start or voltage support required to meet local reliability needs, to meet operating criteria associated with the Potrero and Hunters Point power plants, or as outlined below, ISOCAISO may issue Dispatch

Notices for Ancillary Services only if the available bids in Ancillary Service capacity markets do not provide sufficient capacity to meet ISO/CAISO's requirements.

(i) If the CAISO determines on a Trading Day that it needs additional ~~The ISO may elect to procure from the day-ahead market less than the amount of an Ancillary Service on that Trading Day, CAISO shall use the following procedures; that it knows to be needed as of the close of that market and instead procure the balance from the hour-ahead markets. Before doing so, the ISO must communicate to all Scheduling Coordinators its intention to procure a portion of its needs from the hour-ahead market. Such communication shall state the projected hourly megawatt amounts of each Ancillary Service it has shifted from day-ahead to hour-ahead procurement. Amounts shifted under this provision are not subject to the Bid Sufficiency Test described below.~~

~~(i) If, after the close of the day-ahead market for a Trading Day, but before ISO issues final hour-ahead schedules for the first hour of the Trading Day, ISO determines it needs additional Ancillary Services for the Trading Day, ISO shall use unused, available day-ahead market bids for Ancillary Services for the Trading Day in merit order (and in the appropriate zone, if ISO is procuring Ancillary Services on a zonal basis) to fill its Ancillary Services needs before issuing a Dispatch Notice for Ancillary Services.~~

~~(ii) If unused day-ahead Ancillary Services bids are not sufficient to meet the ISO's Ancillary Service needs for the Trading Day, or if ISO determines~~

~~on the Trading Day that it needs additional Ancillary Services on the Trading Day, ISO shall use the following procedures:~~

- (A) ISOCAISO shall communicate such needs to all Scheduling Coordinators as quickly as possible after such needs are identified.
- (B) After completing (A), ISOCAISO shall attempt to procure those additional Ancillary Services from the ~~hour-ahead Ancillary Services markets~~ CAISO's Real-Time markets (in the appropriate ~~zone~~ region if ISOCAISO is procuring Ancillary Services on a ~~zonal~~ regional basis) that have not closed, subject to the Bid Sufficiency Test described below.
- (C) ISOCAISO shall not issue a Dispatch Notice for Ancillary Services for any hour of the Trading Day before the earlier of (a) the time at which the ~~hour-ahead market~~ real-time market for that hour closes or (b) if a Start-up would be required to provide the Ancillary Service, such earlier time as is necessary to comply with the applicable Start-up Lead Time and Ramping Constraints on Schedule A.

~~(iv)~~(ii) ISOCAISO shall not be required to accept any bid for an Ancillary Service above applicable bid caps then in effect under the ISOCAISO Tariff before issuing a Dispatch Notice for Ancillary Services.



~~(v)~~(iii) Bid Sufficiency Test

(A) The Bid Sufficiency Test may only be applied:

- (1) To purchases from the ~~hour-ahead Ancillary Services market~~ real-time market;
- (2) If ISOCAISO has fully complied with its obligation to promptly notify Scheduling Coordinators of its need to acquire additional ancillary services from the ~~hour-ahead~~ real-time market; and
- (3) To the extent that the approved ISOCAISO Tariff does not preclude such a test.

~~(B) The Bid Sufficiency Test may not be applied to Ancillary Service requirements that have been shifted from the day-ahead market to the hour-ahead market at the discretion of the ISO~~

~~(C)~~(B) The Bid Sufficiency Test shall be applied on an individual hourly basis and for an individual Ancillary Service type. The test result shall be considered "insufficient" in ~~an hour-ahead market~~ real-time market if, and only if - (1) bids in the ~~hour-ahead market~~ real-time market for the particular Ancillary Service (including any ~~unused~~ bids that can be used to satisfy that particular Ancillary Services requirement under Section ~~2.5.3.68.2.3.5~~ of the ISOCAISO Tariff) ~~that remain after first procuring the megawatts of the Ancillary Service that the ISO had notified Scheduling Coordinators it would procure in the hour-ahead market pursuant~~

to Section 4.1(e)(i) (“~~remaining Ancillary Service requirement~~”) ~~represent, in the aggregate, represent~~ less than two times such remaining Ancillary Service requirement; or (2) there are fewer than two unaffiliated bidders to provide such remaining Ancillary Service requirement. If the application of the Bid Sufficiency Test results in a determination of “insufficiency”, the ISOCAISO may issue a Dispatch Notice to satisfy its needs for that hour and that individual Ancillary Service.

~~(D)~~(C) If the result of the Bid Sufficiency Test is a finding that available bids are “insufficient”, ISOCAISO may nonetheless accept available market bids if it determines in its sole discretion that the prices bid and the supply curve created by the bids indicate that the bidders were not attempting to exercise market power.

#### 4.2 Timing of Dispatch Notices

4.3 Subject to the terms and conditions of this Agreement, ISOCAISO shall issue all ~~Dispatch Notice~~ Manual RMR Dispatch Notices promptly after it makes a determination that it will require Energy or Ancillary Services under this Agreement, ~~but ISO shall not issue Dispatch Notices earlier than establishment of the “final schedule” (as defined in the ISO Tariff) for the day-ahead market unless the ISO Tariff is revised to permit ISO to dispatch Reliability Must-Run Units prior to such establishment.~~

#### 4.3 Form and Content of Dispatch Notices

- (a) All Dispatch Notices shall be in writing if circumstances permit. If circumstances require that a Dispatch Notice be given or changed orally, the Dispatch Notice shall be confirmed in writing within 24 hours after the oral notice or change was given.
- (b) Each Dispatch Notice shall specify the Unit from which ISOCAISO requests Owner to Deliver Energy or Ancillary Services, the time of commencement and termination of the Requested Operation Period and, for each hour of the Requested Operation Period, the Requested MW or the Requested Ancillary Services. A Dispatch Notice for a hydroelectric Facility must request that Owner Deliver Energy from the entire Facility rather than from a specific Unit. However, ISOCAISO may request that Owner Deliver Ancillary Services from specific Units in a hydroelectric Facility; provided that Energy associated with such Ancillary Services shall be Delivered from the Facility and not the specified Units. ISOCAISO may issue Dispatch Notices in real time without specifying the time the Requested Operation Period is to terminate and may adjust the Requested MW or Requested Ancillary Services in real time if ISOCAISO provides all such information in writing as provided in Section 4.3(a).

#### 4.4 Non-complying Dispatch Notices

Owner shall not be obligated to comply with a Dispatch Notice that does not comply with Section 4.3 or 4.6 and Owner shall not be liable, suffer any penalties or suffer any reduction in payments for failure to comply with a Dispatch Notice which is not in compliance with those Sections, provided that Owner promptly notifies ISOCAISO that

the notice does not comply with Section 4.3 or 4.6 and provides the reasons the Dispatch Notice does not comply. Owner may provide such notice after the Requested Operation Period if the notice concerns a Dispatch Notice given during, or less than one-half hour prior to, the Requested Operation Period. Compliance with a Dispatch Notice shall not be deemed a waiver of objections to the Dispatch Notice.

#### ~~4.4 Dispatch Notices to a Unit Scheduled in Market Transactions~~

~~Notwithstanding Section 4.1, ISO shall issue a Dispatch Notice for all Energy required from a Unit for reliability purposes even if the Unit is scheduled to operate at or above the required level in a Market Transaction.~~

#### 4.5 Intentionally left blank.

#### 4.6 Limitations on ISO/CAISO's Right to Dispatch

ISO/CAISO's Dispatch Notice may not request Owner to, and Owner shall not be obligated to:

- (i) Provide service from a Unit at less than the Minimum Load for the Unit;
- (ii) Provide service from a Unit for less than the Minimum Run Time;
- (iii) Start-up a Unit after less than the Minimum Off Time;
- (iv) Start-up a Unit unless the time between the delivery of the Dispatch Notice requesting such Start-up and the commencement of the applicable Requested Operation Period equals at least the Start-up Lead Time for the Unit and the Dispatch Notice provides sufficient time to satisfy the Ramping Constraint of the Unit;
- (v) Provide service from a Unit in excess of its Unit Availability Limit;

- (vi) Provide service from a Unit when to do so would violate environmental limitations applicable to the Unit as set forth in Section 3 of Schedule A;
- (vii) Start-up or provide service from a Unit in violation of any applicable law, regulation, license or permit; or
- (viii) Start-up or provide service from a Unit to the extent that doing so would cause a breach of an Existing Contractual Limitation; or
- (ix) Deliver Energy or Ancillary Services to the extent such Delivery would cause a breach of a contract for capacity made available through an Upgrade or a Capital Item or Repair for which ISOCAISO is not obligated to make a Surcharge Payment or pay ISOCAISO's Repair Share.

#### 4.7 Dispatch in Excess of Contract Service Limits

- (a) ISOCAISO shall use its best efforts in accordance with Good Industry Practice not to issue a Dispatch Notice that would cause a Unit's Counted Start-ups, Counted MWh, or Counted Service Hours to exceed any of the Unit's Contract Service Limits.
- (b) ISOCAISO may issue a Dispatch Notice requiring a Unit to Deliver Energy or Ancillary Services after the Unit has exceeded a Contract Service Limit only if the Requested MWh or Requested Ancillary Services cannot be obtained by ISOCAISO either (i) by accepting market bids in accordance with Section 4.1 or (ii) from Comparable RMR Unit(s) without exceeding the contract service limits or violating other operational limitations under ISOCAISO's agreement with the Comparable RMR Unit(s). Owner shall use its best efforts, in accordance with Good Industry Practice, to comply with such Dispatch Notice.

- (c) If Owner of a hydroelectric Facility complies with a request to exceed the Maximum Monthly MWh, Owner may reduce the Maximum Monthly MWh for remaining Months of the Contract Year to reflect the accelerated use of available water. Not later than 15 days after any delivery in excess of Maximum Monthly MWh, Owner shall provide ISOCAISO a notice showing revised Maximum Monthly MWh for remaining Months of the Contract Year.
- (d) If the Owner does not comply with a Dispatch Notice under Section 4.7(b), Owner at ISOCAISO's request shall provide a written explanation.
- (e) If Owner, in compliance with a Dispatch Notice, Starts-up a Unit and the Counted Start-ups for the Contract Year exceed the Maximum Annual Start-ups for the Unit, ISOCAISO shall pay for each such excess Start-up at the rate set out in Schedule G. If Owner, in compliance with a Dispatch Notice, Delivers Energy and the Counted MWh for the Unit for the Contract Year exceeds the Maximum Annual MWh, the Counted Service Hours from the Unit for the Contract Year exceed the Maximum Annual Service Hours, or if applicable, the Counted MWh for the Month exceed the Maximum Monthly MWh, ISOCAISO shall pay for the Billable MWh Delivered in response to such Dispatch Notice and exceeding the Contract Service Limit at the rates set forth in Schedule G.
- (f) For purposes of this Section 4.7:
  - (i) "Best efforts" does not require Owner to provide service inconsistent with the limitations set forth in Section 4.6 or if Owner reasonably believes providing the service might cause significant physical harm to the Unit.

- (ii) The term “Good Industry Practice” shall not be applied to permit ISOCAISO to consider the relative costs of Comparable RMR Units when determining whether to request dispatch of a Unit in excess of the Contract Service Limits.
- (iii) “Comparable RMR Unit” means a unit which has been designated a Reliability Must-Run Unit and which, in ISOCAISO’s reasonable judgment, is capable of providing system reliability benefits to ISOCAISO equivalent to the system reliability benefits provided by the Unit which otherwise would be subject to the Dispatch Notice. In the case of Units providing Ancillary Services, a Comparable RMR Unit must: (A) be certified to provide the Requested type of Ancillary Service, (B) provide the same or higher ramp rate and MW capacity and (C) is located in the same Local Capacity Area ~~if there is interzonal congestion, be located in the same zone~~ as the Unit which otherwise would be subject to the Dispatch Notice.
- (g) ISOCAISO and Owner shall have the right to dispute the other Party’s actions or inactions under this Section 4.7 and any dispute shall be subject to resolution through ADR.

#### 4.8 Air Emissions

If ISOCAISO determines that it is necessary to reserve MWh to satisfy potential dispatches under this Agreement without violating present or future limitations on the discharge of air pollutants or contaminants into the atmosphere specified by any federal, state, regional or local law by any regulation, air quality implementation plan, or permit condition promulgated or imposed by any Governmental Authority, the terms and conditions of such reservation shall be set out on Schedule P.

#### 4.9 Test Dispatch Notices

##### (a) Availability Tests

- (i) ISOCAISO may from time to time test the Availability of a Unit by requiring the Unit to Deliver Energy pursuant to a Test Dispatch Notice provided to Owner's Scheduling Coordinator using the procedures described in Section 4.2 and 4.3. ISOCAISO, without cause, may request one Availability Test each Contract Year. ISOCAISO may request additional Availability Tests if the Unit fails to comply fully with a Dispatch Notice. ISOCAISO shall not request an Availability Test for a hydroelectric Unit during periods of constrained water availability. Lack of available water shall not be deemed to result in a failed test and reduction of the Unit Availability Limit for a hydroelectric Unit.
- (ii) Owner may request an Availability Test at any time. ISOCAISO shall issue a Test Dispatch Notice within three days after receipt of Owner's request, but for good cause, ISOCAISO may reschedule the test to a date acceptable to Owner. Owner's request shall state the amount of Energy to



be produced. The effect of operations pursuant to such a request is set out in Section 5.3.

- (iii) The Test Dispatch Notice shall be marked "Availability Test Dispatch Notice." The Test Dispatch Notice shall specify a Requested Operation Period of four hours of continuous operations at the requested output plus any applicable Start-up Lead Time, time to satisfy Ramping Constraints and time for Shutdown (or for hydroelectric Units the time sufficient water is available, if that is less).
- (iv) Subject to the other conditions or restrictions expressed in this Agreement, Owner shall provide service from the Unit and Deliver the Requested MWh in accordance with the Availability Test Dispatch Notice; provided, however, that Owner, in response to such Test Dispatch Notice, may deliver all or part of the Requested MWh in a Market Transaction by complying with the procedures set forth in Section 5.2.
- (v) An Availability Test shall be treated as having been successfully completed if the average MW Delivered at the Delivery Point during the Availability Test was not less than 99% of the Requested MW for the Requested Operation Period. The average MW Delivered during the Availability Test shall be computed by dividing (i) the total MWh produced during the four- hour period immediately following completion of the ramp up, multiplied by the appropriate ambient temperature correction factors for the Unit as set out in Section 3 of Schedule A, by (ii) four hours.

- (vi) If a Unit fails an Availability Test, ISOCAISO may issue an ISOCAISO Availability Notice restating the Availability of the Unit to a level not less than the average MW Delivered during the Availability Test. Following the notice, Owner shall not issue an Owner's Availability Notice increasing the Availability of the Unit above the level determined through such failed Availability Test until (A) the Unit has successfully completed a subsequent Availability Test, (B) the Unit has delivered in Market Transactions, pursuant to a Dispatch Notice or in a combination of the two, during a continuous four hour operating period, average MW in excess of those determined in the Availability Test or (C) Owner has otherwise demonstrated to ISOCAISO's reasonable satisfaction that the Availability of the Unit has been restored.
- (vii) If the average MW Delivered during the Availability Test exceed 101% of the Unit Availability Limit in effect prior to the Availability Test, Owner may issue an Owner's Availability Notice setting Availability retroactive to the time the request was received by ISOCAISO to the lesser of (A) the average MW Delivered during the Availability Test or (B) the Maximum Net Dependable Capacity.

(b) Emissions Test

If it is necessary for Owner to operate a Unit to fulfill regulatory requirements for emissions testing, Owner may request ISOCAISO to issue a Dispatch Notice for such operation. Owner shall provide a request specifying the test date at least seven days in advance of the emissions test. ISOCAISO shall issue a Dispatch

Notice to schedule the requested operation on the date specified in Owner's request, or for good cause, ISOCAISO may cause the test to be rescheduled to a date acceptable to Owner, provided that ISOCAISO shall not delay the test by more than seven days without Owner's consent. The Test Dispatch Notice shall be marked "Emissions Test Dispatch Notice".

(c) Black Start Test

ISOCAISO may from time to time test Unit(s) designated to provide Black Start service by requiring the Unit to deliver Black Start service pursuant to a Test Dispatch Notice provided to Owner's Scheduling Coordinator using the procedures described in Sections 4.2 and 4.3. Such Test Dispatch Notice shall be marked "Black Start Test Notice." The Black Start Test shall be performed in accordance with the Ancillary Services Requirements Protocol in the ISOCAISO Tariff. ISOCAISO shall not request a Black Start Test for a hydroelectric Unit during periods of constrained water availability.

(d) Heat Input Test

Not more frequently than once each Contract Year, Owner may, by giving at least seven days' prior notice to ISOCAISO, request ISOCAISO to issue a Test Dispatch Notice in order for Owner to determine the heat input of a Unit. ISOCAISO shall not unreasonably refuse to issue a Test Dispatch Notice for a heat input test. The Test Dispatch Notice shall be marked "Heat Input Test Notice." The heat input test shall be conducted in accordance with testing standards and procedures agreed to by ISOCAISO and Owner. In the absence of such agreement, the standards and procedures shall be determined through ADR

before such test may be conducted. The arbitrator shall specify procedures for testing which are consistent with Good Industry Practice. Following such a heat input test, Owner shall be permitted to make a filing under Section 205 of the Federal Power Act limited to modifying the heat inputs used in the Variable Cost Payment, Start-up Payment, Preempted Dispatch Payment and Mandatory Energy Bid in Schedules C, D, E and M, respectively, to reflect the results of such test.

#### 4.10 Forecasts Of ISOCAISO's Requirements

Not later than November 15 of each year, ISOCAISO shall provide Owner and the Responsible Utility with a non-binding forecast representing ISOCAISO's then current best estimate of the monthly MWh, monthly peak day MW, and monthly Service Hours that ISOCAISO will require each Unit to provide each month during the ensuing Contract Year ("Annual Forecast"). In addition, not later than June 15 of each year, ISOCAISO shall provide Owner and with a non-binding forecast ("Update") representing ISOCAISO's then current best estimate of the monthly MWh, monthly peak day MW, and monthly Service Hours that ISOCAISO will require each Unit to provide each month from June through the end of the Contract Year. Each Annual Forecast and Update will take into account the Long-term Planned Outages. The Annual Forecasts and Updates shall be treated as confidential pursuant to Section 12.5 and shall not be binding.

#### 4.11 Determination of Contract Service Limits

- (a) If ISOCAISO has extended the term of this Agreement pursuant to Section 2.1
- (b), then not later than October 31 of the expiring Contract Year Owner shall make a filing under Section 205 of the Federal Power Act limited to revising Schedule A to reflect the Contract Service Limits for all Units other than

hydroelectric Units for the ensuing Contract Year. The Contract Service Limits for each year after the initial Contract Year shall be determined through application of the following rules:

- (i) Maximum Annual MWh for each Unit shall be the average annual MWh produced in Market and Nonmarket Transactions by the Unit during the 60 month period ending June 30 of the expiring Contract Year;
- (ii) Maximum Annual Service Hours for each Unit shall be the average annual Service Hours the Unit operated in Market and Nonmarket Transactions during the 60 month period ending June 30 of the expiring Contract Year; and
- (iii) Maximum Annual Start-Ups shall be the number of Start-ups of the Unit for Market and Nonmarket Transactions during the year selected by ISOCAISO. ISOCAISO may select any of the five preceding years to determine Maximum Annual Start-Ups but shall select the same year for all Units at the Facility. For purposes of the foregoing sentence only, a year shall mean a 12-month period ending June 30. Thus, by way of example, ISOCAISO may determine Maximum Annual Start-ups for calendar year 2002 based on the Maximum Annual Start-ups during any of the following five periods: (A) 12 months ended June 30, 2001; (B) 12 months ended June 30, 2000; (C) 12 months ended June 30, 1999; (D) 12 months ended June 30, 1998; or (E) 12 months ended June 30, 1997.

Owner shall provide the information necessary to determine the Contract Service Limits to ISOCAISO and the Responsible Utility not less than 15 days prior to the

filing. ISOCAISO shall give notice to Owner and Responsible Utility identifying the year to be used to determine Maximum Annual Start-ups not later than five Business Days after it receives the information from Owner.

- (b) If ISOCAISO has extended the term of this Agreement pursuant to Section 2.1 (b), then not later than 15 days prior to the beginning of the ensuing Contract Year, Owner of a hydroelectric Facility shall make a filing under Section 205 of the Federal Power Act to reflect the revised Contract Service Limits to be in effect during the ensuing Contract Year for the hydroelectric Facility. Such filing shall be based on Owner's current water management forecast and shall reflect the water expected to be available for electric generation above the Hydroelectric Dependable Capacity. Such filing, if accepted or approved, shall set the Maximum Monthly MWh in Schedule A for the ensuing Contract Year, subject to adjustment in accordance with the notice described below giving revised Monthly Maximum MWh. The Maximum Monthly MWh in Schedule A of this Agreement on the Effective Date reflects the Hydroelectric Dependable Capacity. Not later than April 15 of each Contract Year, Owner shall provide notice to ISOCAISO giving revised Maximum Monthly MWh for each remaining Month of the Contract Year based on its then current water management forecast. ~~For the Contract Year ending December 31, 1999, Owner shall provide ISO with such notice prior to the Effective Date.~~ If, during any Contract Year, Owner determines that drought conditions jeopardize its ability to supply Hydroelectric Dependable Capacity, Owner shall promptly give notice to the ISOCAISO of this determination, including revised Maximum Monthly MWh for each remaining

Month of the Contract Year. Following such a determination, Owner shall provide ISOCAISO with weekly updated water management forecasts until the earlier of the end of the Contract Year or Owner's determination that its ability to supply the Hydroelectric Dependable Capacity is no longer jeopardized by such conditions. ISOCAISO acknowledges that the accuracy of a water management forecast may be substantially affected by a Force Majeure Event at any time after the Owner provides the forecast and consequently Owner shall not be liable for the accuracy of the water management forecast or any reliance on it other than a Monthly Maximum MWh amount.

## ARTICLE 5

### DELIVERY OF ENERGY AND ANCILLARY SERVICES BY OWNER

#### 5.1 Owner's Delivery of Energy and Ancillary Services

- (a) Subject to the limits in this Agreement, and subject to the CAISO's Real-Time Dispatch instructions whether flagged as an RMR Dispatch or not, Owner shall provide service from the Units and Deliver the Requested MWh or Requested Ancillary Services in accordance with each Dispatch Notice. To the maximum extent practical, and except for regulation, Owner shall Deliver at each moment of each hour during the Requested Operation Period not less than the Requested MW or Requested Ancillary Services. If Owner has disputed a Dispatch Notice under Section 4.6 (i) (Minimum Load) (ii) (Minimum Run Time) (iii) (Minimum Off Time) (iv) (Start-up Lead Time and Ramping Constraint), or (v) (Unit Availability Limit) and such dispute is not resolved prior to the time for delivery, Owner will use reasonable efforts to comply with the Dispatch Notice, but shall

not be liable to ISOCAISO if it is unable to do so and Owner prevails in the dispute.

- (b) If Owner has disputed a Dispatch Notice under Section 4.6 (vi) (environmental), (vii) (violation of law), (viii) (Existing Contractual Limitations) or (ix) (Upgrade Contract), Owner shall not be required to Deliver Energy or Ancillary Services pending resolution of the dispute as to whether the Dispatch Notice violated such Section; provided, however, that Owner shall not be relieved from any liability that it would otherwise have for failure to comply with the disputed Dispatch Notice if it subsequently is determined that the Dispatch Notice did not violate Section 4.6 (vi), (vii), (viii) or (ix).
- (c) Subject to ISOCAISO approval, if Owner cannot Deliver the Requested MWh or Requested Ancillary Services by providing service from the Unit identified in a Dispatch Notice, Owner may Deliver the requested services by providing service from a Substitute Unit. Owner shall provide oral or written notice to ISOCAISO as soon as possible in advance of the ~~prior to the~~ first Real-Time Dispatch of the Requested Operation Period, stating why it cannot provide the requested service from the Unit identified in the Dispatch Notice, identifying the Substitute Unit, describing the services it will provide from the Substitute Unit and specifying the charges applicable to service from the Substitute Unit. ISOCAISO may deny approval only if the proposed unit does not qualify as a Substitute Unit or if there is insufficient time to accommodate the request prior to the running of the MPM-RRD process and the operator determines that the substitution would affect the MPM-RRD results, in which case the substitution request will be accommodated



for any remaining portion of the Requested Operation Period, if the unit is otherwise acceptable. The total cost to ISOCAISO for service from the Substitute Unit shall be at the rate specified by the Owner, provided that the total cost will not exceed the total costs for the same amount of service from the Unit specified in the Dispatch Notice.

- (d) If Owner can Deliver the Requested MWh or Requested Ancillary Services by providing service from the Unit identified in the Dispatch Notice, Owner may Deliver the requested services by providing service from (i) the Unit identified in ISOCAISO's Dispatch Notice or (ii) with ISOCAISO's consent, a Substitute Unit. Owner of a hydroelectric Unit will Deliver the Requested MWh from the Facility and will Deliver the Voltage Support and Black Start requested in a Dispatch Notice from the specified Unit or a Substitute Unit. If Owner proposes to satisfy its delivery obligations by providing service from a Substitute Unit, Owner shall provide oral or written notice to ISOCAISO prior to the Requested Operation Period identifying the Substitute Unit, describing the services it will provide from Substitute Unit and specifying the charges applicable to service from the Substitute Unit. Owner may Deliver the agreed services from the Substitute Unit and will be paid at the agreed rates if ISOCAISO accepts Owner's proposal, or ISOCAISO and Owner otherwise agree on the services and applicable rates for service from a Substitute Unit. ISOCAISO's decision shall not be subject to ADR.
- (e) Owner shall Deliver the Requested MWh or Requested Ancillary Services at the Delivery Point or such other point(s) reasonably acceptable to ISOCAISO and

shall comply with the metering and related arrangements set forth in Section 5 of Schedule A to this Agreement or as otherwise specified in Owner's applicable Meter Service Agreement.

- (f) If Owner would have been able to Deliver the Requested MWh or Requested Ancillary Services but for an outage in the ISO/CAISO Controlled Grid or Distribution Grid beyond Owner's reasonable control, Owner shall be deemed to have complied with the Dispatch Notice for purposes of Sections 5.4 and 8.5.

## 5.2 Substitution of Market Transactions for Dispatch Notices

- (a) Owner may satisfy, in whole or in part, its obligation to Deliver Energy, but not Ancillary Services, during a Requested Operation Period by delivering Energy under a Market Transaction from the Unit identified in a Dispatch Notice if Owner complies with the requirements and procedures of this Section 5.2.
- (b) ~~Within 30 minutes after receipt of the Dispatch Notice, Owner shall give notice of its intent to substitute a Market Transaction through the submission of bids in the CAISO's Markets. Any dispatch level that clears the Competitive Constraint Run of the MPM-RRD process through the submission of Economic Bids or Self-Schedules, and is reflected in the Day-Ahead Schedule or Real-Time Dispatch, shall be deemed a Market Transaction. , designate the amount of MWh for each hour to be substituted in the market (hour-ahead, day-ahead or real-time imbalance market) and the Direct Contracts in which it will participate. All substitute MWh (except substitute MWh to be delivered under Direct Contracts) must be in the same market (i.e. hour-ahead, day-ahead or real-time imbalance).~~

- (c) ~~Owner may substitute a Market Transaction (other than a Direct Contract) only if the deadline for bids into the market selected by Owner has not passed. If Owner intends to substitute a Market Transaction in the hour-ahead or real-time markets, Owner shall submit a bid of zero dollars to ISO or PX, as applicable, to provide not less than the MWh it has proposed to substitute. If Owner's bid is not successful, Owner will nonetheless Deliver the MWh requested in the Dispatch Notice and will be paid the applicable price under the ISO Tariff for additional generation resulting from "uninstructed imbalance energy" as defined in the ISO Tariff.~~
- (d) ~~Owner may substitute deliveries under a Direct Contract for Requested MWh only by including the Direct Contract in the initial preferred or revised preferred schedules for the applicable market with the result that its Scheduling Coordinator's schedule remains balanced Intentionally left blank.~~

### 5.3 Rules for Calculating Counted Start-ups, Counted MWh and Counted Service Hours

- (a) The following rules shall govern calculation of Counted Start-ups:
- (i) Except as limited below, all Start-ups successfully completed in compliance with a Dispatch Notice shall be included in Counted Start-ups for the Unit for which the Dispatch Notice was issued.
- (ii) If a Start-up required by a Dispatch Notice is canceled by ~~ISO~~CAISO after the Start-up is initiated, Counted Start-ups shall include a fractional Start-up computed by dividing (i) the lesser of (a) the time elapsed between initiation of the Start-up and cancellation or (b) the Start-up Lead Time by (ii) the applicable Start-up Lead Time for the Unit.

- (iii) For Units under Condition 1, if a Dispatch Notice is issued pursuant to Section 4.5 for a period in which the Unit is scheduled to operate or is operating in a Market Transaction for which a Start-up was required, or Owner substitutes a Market Transaction under Section 5.2 for a Requested Operation Period for which a Start-up was required, Counted Start-ups shall include one-half of the Start-up for the Unit for which the Dispatch Notice was issued. No Start-up shall be counted more than once.
  - (iv) For Units under Condition 2, Counted Start-ups shall include each Start-up whether the Energy is Delivered to the ISOCAISO in a Nonmarket Transaction or is delivered in a Market Transaction pursuant to bids made under Section 6.1 (b).
  - (v) If Owner complies with a Dispatch Notice by Delivering the Requested MWh or Ancillary Services from a Substitute Unit, any Start-ups of the Substitute Unit will not be included in Counted Start-ups for the Unit specified in the Dispatch Notice or the Substitute Unit.
  - (vi) Except as provided in Section 5.3(a)(iii), any Start-up not required to comply with a Dispatch Notice will not be included in Counted Start-ups.
- (b) The following rules shall govern calculation of Counted MWh:
- (i) Except as limited below, all MWh Delivered in compliance with a Dispatch Notice shall be included in Counted MWh for the Unit for which the Dispatch Notice was issued.
  - (ii) For Units under Condition 1, if a Dispatch Notice is issued pursuant to Section 4.5 for a period in which a Unit is scheduled to operate or is

operating in a Market Transaction or if Owner, in response to a Dispatch Notice, substitutes a Market Transaction under Section 5.2 for all or part of the Requested MWh, MWh equal to the sum of (A) Billable MWh plus (B) 50% of the Hybrid MWh, will be included in Counted MWh for the Unit for which the Dispatch Notice was issued.

(iii) If a Unit operating under Condition 2 sells Energy pursuant to bids made under Section 6.1 (b), the Billable MWh shall be included in Counted MWh for the Unit.

(iv) ~~50% of all RMR Ramping Energy not included in Billable MWh will be included in Counted MWh for the Unit specified in the Dispatch Notice~~Intentionally left blank.

(v) If Owner Delivers Requested MWh or Energy associated with Ancillary Services from a Substitute Unit, the MWh Delivered from the Substitute Unit will not be included in Counted MWh for the Unit specified in the Dispatch Notice or the Substitute Unit.

(c) The following rules shall govern calculation of Counted Service Hours:

(i) Except as limited below, all Service Hours expended in compliance with a Dispatch Notice other than Service Hours expended for Ancillary Services during which the Unit is not Synchronized shall be included in Counted Service Hours for the Unit for which the Dispatch Notice was issued.

(ii) For Units under Condition 1, if a Dispatch Notice is issued pursuant to Section 4.5 for a period in which a Unit is scheduled to operate or is operating in a Market Transaction or if Owner, in response to a Dispatch

Notice, substitutes a Market Transaction under Section 5.2 for all or part of the Requested MWh, one-half of the Requested Operation Period will be included in Counted Service Hours for the Unit for which the Dispatch Notice was issued.

(iii) If a Unit operating under Condition 2 sells Energy pursuant to bids made under Section 6.1 (b), each Service Hour expended by the Unit to produce the Energy shall be included in Counted Service Hours.

(iv) If Owner Delivers Requested MWh or Ancillary Services from a Substitute Unit, the Service Hours expended by the Substitute Unit will not be included in Counted Service Hours for the Unit specified in the Dispatch Notice or the Substitute Unit.

(d) Counted MWh, Counted Service Hours and Counted Start-ups for the Contract Year ending December 31, 1999 shall include MWh, Service Hours and Start-ups for the period January 1, 1999 through the Effective Date under the reliability must-run rate schedule which is superseded by this Agreement using the rules set out in this Section 5.3 as if this Agreement had been in effect during that period. Owner's initial report under Section 5.5 shall show the MWh, Service Hours and Start-ups for the period January 1, 1999 through the Effective Date calculated using the rules set out in this Section 5.3.

#### 5.4 Owner's Failure To Deliver Requested MWh or Requested Ancillary Services

- (a) Owner shall promptly notify ISOCAISO if Owner will not be able to Deliver all or part of the Requested MWh or Requested Ancillary Services from the Unit identified in the Dispatch Notice or from the Substitute Unit previously accepted by ISOCAISO.
- (b) If a Unit fails to Deliver the full amount of Requested MWh or Requested Ancillary Services, ISOCAISO may issue an ISOCAISO Availability Notice restating the Availability to a level not less than the Availability indicated by the actual deliveries. If ISOCAISO has issued an ISOCAISO Availability Notice under this Section 5.4(b), Owner shall not issue an Owner's Availability Notice increasing the Availability of the Unit until (i) the Unit has successfully completed an Availability Test, (ii) the Unit has delivered in Market Transactions or in a combination of Market Transactions and Nonmarket Transactions pursuant to a Dispatch Notice during a continuous four hour operating period, average MW in excess of those shown in the ISOCAISO Availability Notice, or (iii) Owner has otherwise demonstrated to the ISOCAISO's reasonable satisfaction that the Availability of the Unit has been restored. ISOCAISO's only other remedies for Owner's failure to Deliver Requested Ancillary Services or Requested MWh are as set out in Sections 8.5, 11.3 and 12.6.

## 5.5 Reports

Not less than two days prior to the beginning of every Month during the Contract Year, Owner or Owner's Scheduling Coordinator shall provide ISOCAISO and the Responsible Utility a report for each Unit setting forth as of the day before the date of the report the Counted MWh, Counted Service Hours and Counted Start-ups for the current Contract Year. All reports shall be treated as confidential pursuant to Section 12.5.

## ARTICLE 6

### MARKET TRANSACTIONS

#### 6.1 Right To Engage In Market Transactions

- (a) In addition to the right to substitute a Market Transaction pursuant to Section 5.2, if a Unit is operating under Condition 1, Owner may enter into Market Transactions for Energy or Ancillary Services at any level outside of a Requested Operation Period. If ISOCAISO has issued a Dispatch Notice for Energy to a Unit under Condition 1, Owner may enter into Market Transactions for Energy at any level during the Requested Operation Period, and may enter into a Market Transaction for Ancillary Services at any level that does not preclude compliance with the Dispatch Notice. If ISOCAISO has issued a Dispatch Notice for Ancillary Services to a Unit under Condition 1, Owner may enter into Market Transactions for Energy or Ancillary Services at any level that does not preclude compliance with the Dispatch Notice.
- (b) If ISOCAISO issues a Dispatch Notice for a Unit operating under Condition 2, Owner shall submit bids in succeeding available Energy and Ancillary Services



markets for the Requested Operation Period in accordance with the following requirements:

- (i) If the next available market is an Energy market, Owner shall bid all Energy the Unit can produce, up to the Unit Availability Limit, in excess of the higher of (A) Energy or Ancillary Services capacity cleared in a prior market; or (B) capacity required to Deliver Requested Ancillary Services. Owner shall bid all Energy at the bid price calculated using the formula in Part I of Schedule M.
- (ii) If the next available market is an Ancillary Services market, Owner shall bid all available capacity, up to the Unit Availability Limit, in excess of the higher of the capacity needed to (A) deliver Energy and Ancillary Services cleared in a prior market or (B) Deliver the Requested MWh or Ancillary Services different from the Requested Ancillary Service.
- (iii) If the markets are concurrent, Owner shall bid in the Ancillary Services market all available capacity, up to the Unit Availability Limit, in excess of the higher of the capacity needed to (A) deliver Energy and Ancillary Services cleared in a prior market or (B) Deliver the Requested MWh or Ancillary Services different from the Requested Ancillary Service.
- (iv) Owner shall bid all Ancillary Service capacity at the bid price calculated using the formula in Part II of Schedule M.
- (v) Owner shall not bid Energy or Ancillary Services in excess of the quantities the Unit can provide during the Requested Operation Period given the Unit's ramp rates, Ramping Constraints and any other applicable

operating limitations, with due allowance for a Unit's ability to change output during the Requested Operation Period.

- (vi) Neither Owner nor Owner's Scheduling Coordinator shall bid Energy or Ancillary Services to the extent that participating in a Market Transaction would conflict with a contract entered into prior to the Effective Date. Owner shall include in Section 14 of Schedule A a description of all contract restrictions affecting Owner's ability to participate in Market Transactions.

ISOCAISO may order Owner not to bid to participate in a Market Transaction if ISOCAISO determines that participation in Market Transactions would cause a Unit to exceed Contract Service Limits or impair ISOCAISO's ability to dispatch the Unit to meet reliability needs at other times during the Contract Year. A Unit operating under Condition 2 shall not otherwise engage in Market Transactions.

## ARTICLE 7

### OPERATION AND MAINTENANCE

#### 7.1 Owner's Obligation

Owner shall fuel, operate and maintain each Unit, or cause the Unit to be fueled, operated and maintained, in accordance with applicable law and Good Industry Practice and with due regard for the reliability purpose of this Agreement. Owner is not required to have or maintain fuel oil burning capability, fuel oil inventories, or permits to burn fuel oil and shall not be required to burn fuel oil to respond to a Dispatch Notice unless, and then only to the extent that, the Unit's primary fuel is distillate fuel oil or Schedule H requires Owner to maintain fuel oil capability.

## 7.2 Outages and Overhauls

- (a) Owner shall be entitled to take a Unit out of operation or reduce the Availability of the Unit to repair and maintain the Unit in accordance with Good Industry Practice and the requirements of the ISOCAISO Tariff. The dates and times of the outages and any changes to those dates and times shall be determined in accordance with the ISOCAISO Tariff. For purposes of complying with the requirements of the ISOCAISO Tariff, Other Outage shall be separated between “maintenance outage” and “forced outage,” as defined in the ISOCAISO Tariff.
- (b) Owner shall have the right to curtail or discontinue, in whole or in part, Deliveries of Energy or Ancillary Services from a Unit for so long as, and to the extent that, a Forced Outage affecting the Unit continues or when, in Owner’s judgment in accordance with Good Industry Practice, operating conditions at the Unit so require. Curtailment or discontinuance under this Section shall give rise to applicable remedies under Article 8.

## 7.3 Reports and Notices

- (a) As soon as practical after commencement of a Forced Outage, Owner shall give ISOCAISO notice of the Forced Outage, the expected duration of the outage, and the expected time when the Unit will be available to generate electricity and the expected Availability during and following the Forced Outage. Owner shall keep ISOCAISO informed of any developments that will affect either the duration of the Forced Outage or the Availability of the Unit during or after the end of the Forced Outage.

- (b) Owner shall keep ISOCAISO advised of the Availability of each Unit by promptly issuing Owner's Availability Notices any time Owner becomes aware that the Unit's Availability changed in accordance with Section 9 of the CAISO Tariff. Owner may not reduce a Unit's Availability due to the cost of fuel. An Owner's Availability Notice shall become effective when issued, provided, however, that if Owner becomes subject to a Non-Performance Penalty under Section 8.5, any Owner's Availability Notice given during the Penalty Period shall not become effective until 72 hours after the Owner's Availability Notice is given. An Owner's Availability Notice or ISOCAISO's Availability Notice shall continue in effect until it is superseded by a subsequent Owner's Availability Notice or ISOCAISO's Availability Notice.

#### 7.4 Planned Capital Items

- (a) On or before March 1 of each year, Owner shall provide ISOCAISO a preliminary report in the form required by this Section 7.4 showing Owner's proposed Capital Items for the next Contract Year and a five-year forecast of anticipated Capital Items in the Form attached as Schedule L-1, assuming the Agreement will be extended. Owner shall submit a final report in the form required by this Section 7.4 reflecting updated information by August 1 of each year. Owner may, but shall not be obligated to, include an Upgrade as a proposed Capital Item in either the preliminary or final report.
- (b) The preliminary and final reports for proposed Capital Items for the next Contract Year shall be submitted on the form attached as Schedule L-1. Owner shall provide additional information requested by the ISOCAISO necessary to evaluate

the proposal. Each preliminary and final report shall separately list individual projects expected to cost more than \$500,000 and shall include two "Small Project Estimates." One Small Project Estimate shall identify Capital Items (projected to cost less than \$500,000 each) required to maintain or enhance reliability. The second Small Project Estimate shall identify all other Capital Items projected to cost less than \$500,000 each. Individual Capital Items projected to cost more than \$50,000 shall be identified separately in one of the two Small Project Estimates. ~~If the Facility did not include any Reliability Must-Run Units on September 1, 1998, the initial report shall show amounts spent on each category (reliability and other) of small (less than \$500,000) Capital Items during each of the three years prior to designation of a unit at the Facility as a Reliability Must-Run Unit.~~ All Capital Items covered by the Small Project Estimate will be depreciated over 10 years.

- (c) Within 60 days after submission of the final report, ISOCAISO will notify Owner of the proposed Capital Items ISOCAISO has approved and the Capital Items it has not approved. If ISOCAISO fails to provide notice within such 60 day period, all Capital Items included in the final report shall be deemed approved as proposed by Owner. Approval constitutes ISOCAISO agreement that the ISOCAISO's share of the estimated cost of the Capital Item will be recovered through Surcharge Payment under Article 8 and will be eligible for recovery through a Termination Fee pursuant to Section 2.5. If the actual cost of the Capital Item exceeds the estimated cost, ISOCAISO may initiate ADR to determine whether the additional costs were reasonable and shall not be obligated

to pay through Surcharge Payments or as a Termination Fee any portion of the overrun found to be unreasonable in such ADR proceeding. If ISOCAISO contests the additional costs, Owner shall have the burden of proving that the additional costs were reasonable. If ISOCAISO does not initiate ADR or makes a separate agreement with Owner, the additional costs shall be deemed reasonable and ISOCAISO shall be obligated to pay ISOCAISO's share of the actual costs through Surcharge Payments or as a Termination Fee.

- (d) If a proposed Capital Item is not approved, ISOCAISO shall provide Owner a detailed statement of the reasons for the disapproval and, if the proposal would be acceptable with modifications, a detailed list of the proposed modifications. Owner may accept the modifications proposed by ISOCAISO, or ISOCAISO or Owner may initiate an ADR proceeding to review ISOCAISO's rejection or proposed modification if the Capital Item is necessary for Owner to meet its obligations under this Agreement. In such proceeding, ISOCAISO may not support its disapproval on any basis not shown in its detailed statement of the reasons for disapproval. Any Capital Items approved through such ADR proceeding shall be recovered by Owner through Surcharge Payments under Article 8 and will be eligible for recovery through a Termination Fee pursuant to Section 2.5. Owner shall not be obligated to install any Capital Item unless ISOCAISO is obligated to pay a Surcharge Payment for the Capital Item.
- (e) The preliminary and final reports and all additional information about proposed Capital Items provided to ISOCAISO shall be treated as Confidential Information in accordance with Section 12.5.

- (f) If ISOCAISO rejects a proposed Capital Item, such rejection is not reversed by ADR and it would be uneconomical, impractical or illegal to continue operation without the Capital Item, then Owner, subject to obtaining authorization from FERC (if required by law to do so), may terminate this Agreement with respect to the affected Unit without cost or liability therefor, except as provided in Section 2.4.

#### 7.5 Unplanned Repairs

- (a) In the event of any loss or damage to the Facility that impairs the capability of one or more Units to Deliver Energy or Ancillary Services, Owner shall, without additional charge, make necessary Repairs, to the extent that:
- (i) the total cost (net of proceeds received by Owner from Insurers and other third parties pursuant to applicable insurance, warranties and other contracts in connection with all Repairs and excluding costs covered by clause (ii)) of all Repairs for all Units ("Net Repair Costs") during the Contract Year does not exceed Owner's Repair Cost Obligation for the Facility; or
- (ii) the loss or damage impairing the Unit's capability to produce Energy or Ancillary Services was caused by Owner's failure to comply with Good Industry Practice or by any wrongful act or omission by Owner.

~~If the Units are not hydroelectric Units, then for all Contract Years through and including the Contract Year ending December 31, 2001, the reference to "Units" in clause (i) above includes all Reliability Must Run Units (except hydroelectric Units), whether or not located at the Facility, (A) covered by a reliability must run~~

~~agreement with Owner or its affiliates as defined in 18 C.F.R. Section 161.2 and (B) the costs of which are allocated in whole or in part to the Responsible Utility under Section 5.2.8 of the ISO Tariff. If the Units are hydroelectric Units, then for all Contract Years through and including the Contract Year ending December 31, 2001, the reference to "Units" in clause (i) above includes all hydroelectric Reliability Must-Run Units, whether or not located at the Facility, covered by a reliability must-run agreement with Owner or its affiliates as defined in 18 C.F.R. Section 161.2 and located within the service area of the entity which is the Responsible Utility for costs arising under this Agreement. For all subsequent Contract Years, ~~t~~The reference to "Units" in clause (i) includes all Reliability Must-Run Units located at the Facility, but no other Reliability Must-Run Units. Except as provided above, Owner shall not be obligated to make any Repairs unless ISOCAISO is obligated to pay ISOCAISO's Repair Share for the Repairs.~~

- (b) If the Net Repair Costs incurred by Owner for all Repairs since the beginning of the Contract Year exceed Owner's Repair Cost Obligation, then Owner shall provide a notice thereof ("Unplanned Repair Notice") in the form attached as Schedule L-1 to ISOCAISO. Owner shall provide such additional information as ISOCAISO may reasonably require to evaluate such proposed Repairs.
- (c) ISOCAISO shall submit a written acceptance or objection to Owner's proposal within 21 days of receipt of an Unplanned Repair Notice. ISOCAISO shall be deemed to have accepted Owner's proposal in the Unplanned Repair Notice if ISOCAISO does not submit a written objection within 21 days after receipt of the



Unplanned Repair Notice, as provided above. Any objection shall be based on one or more of the following grounds:

- (i) the loss or damage was caused by Owner's failure to comply with Good Industry Practice;
- (ii) the loss or damage was caused by a wrongful act or omission by Owner;
- (iii) the Repairs are not required or are more extensive than required in order to make good the loss or damage concerned or to comply with applicable law;
- (iv) the Net Repair Costs for the Contract Year will not exceed or has not exceeded the Owner's Repair Cost Obligation;
- (v) the estimated cost of Repairs exceeds that which is reasonably necessary to effect such Repairs;
- (vi) the Repair will not result in benefits to ISOCAISO as compared to alternatives available to ISOCAISO;
- (vii) Owner's proposals for carrying out the Repairs or the proposed ISOCAISO's Repair Share are unreasonable;
- (viii) Owner's proposal includes estimated costs which are not properly treated as an expense under FERC's Uniform System of Accounts; or
- (ix) Owner has not provided sufficient information to evaluate Owner's proposal. In addition to providing the basis of the objection, any objection of ISOCAISO shall include a list of all changes ISOCAISO contends should be made to Owner's proposal and justification of all such changes.

- (d) If ISOCAISO submits an objection to an Unplanned Repair Notice, the Parties shall attempt to reach agreement on changes to Owner's proposal. If the Parties have not reached agreement within 30 days after ISOCAISO's receipt of the Unplanned Repair Notice, Owner or ISOCAISO may refer the matter to ADR under a schedule (specified by the arbitrator if the participants cannot agree) requiring a decision within 30 days following appointment of the arbitrator. The ADR decision will be effective without delay.
- (e) Owner shall proceed with the Repairs if it is agreed or determined pursuant to ADR that ISOCAISO will pay ISOCAISO's Repair Share or that Owner is otherwise obligated to make the Repairs. Owner shall keep full and detailed records of the cost of the Repairs and shall make them available to ISOCAISO for inspection upon reasonable request.
- (f) If the actual cost of the Repairs exceeds the estimated cost, ISOCAISO may initiate ADR to determine whether the additional costs were reasonable and shall not be obligated to pay any portion of the additional cost found to be unreasonable in such ADR proceeding. Owner shall have the burden of proving that the additional costs were reasonable.
- (g) If it is agreed or determined pursuant to ADR that ISOCAISO will pay for a Repair, ISOCAISO shall pay ISOCAISO's Repair Share of the actual cost as a lump sum within 60 days after the later of (i) the completion of the Repair and (ii) the effective date of authorization by FERC, if any is necessary, for Owner to charge such cost to ISOCAISO. "ISOCAISO's Repair Share" means the Repair Payment Factor for the Repair at issue multiplied by the amount by which (i) the

agreed or determined cost of Repairs at issue plus the Net Repair Costs of all prior Repairs for the Contract Year minus the cost of all prior Repairs for which ISOCAISO is obligated to pay ISOCAISO's Repair Share during the Contract Year exceeds (ii) Owner's Repair Cost Obligation. The Repair Payment Factor shall be as agreed to by Owner and ISOCAISO. If Owner and ISOCAISO do not agree on the Repair Payment Factor, the Repair Payment Factor shall equal the Fixed Option Payment Factor, unless the Owner demonstrates in ADR that it would not have made the proposed Repair in accordance with Good Industry Practice but for its obligations under this Agreement, in which case the Repair Payment Factor shall be as determined in ADR.

- (h) Owner shall use commercially reasonable efforts to recover its full entitlements under applicable insurance policies, warranties and other contracts even after ISOCAISO has paid ISOCAISO's Repair Share. Owner shall keep ISOCAISO informed of the status of such recovery efforts and will refund to ISOCAISO any portions of ISOCAISO's Repair Share payment that is later recovered from any other party as a credit to ISOCAISO on the next invoice with interest at the Interest Rate from the date such proceeds are received by Owner to the Due Date of such next invoice, or if this Agreement is terminated, as a payment upon submission of the Final Invoice.
- (i) If Owner is not obligated to make a Repair and does not do so, and if it would be uneconomical, impractical or illegal to continue operation without the Repair, then Owner, subject to obtaining authorization from FERC (if required by law to

do so), may terminate this Agreement with respect to the affected Unit without cost or liability therefor, except as provided in Section 2.4.

(j) If Owner makes a Repair notwithstanding that ISOCAISO is not obligated to pay for the Repair, Owner shall not be entitled to recover the costs of the Repair from ISOCAISO unless FERC approves recovery of the costs.

(k) Owner's Repair Cost Obligation shall be an amount computed as follows:

(i) ~~For all Contract Years through and including the Contract Year ending December 31, 2001, Owner's Repair Cost Obligation shall be equal to 7% of the sum of the fixed operation and maintenance costs underlying the as-filed rates applicable to all of the Reliability Must-Run Units of Owner and its affiliates, as defined in 18 C.F.R. § 161.2, that are allocated in whole or in part to the Responsible Utility under Section 5.2.8 of the ISO Tariff. The only repair costs that may be considered in determining whether, and to what extent, an Owner has exceeded its Owner Repair Cost Obligation during the period ending December 31, 2001 are costs that (1) are the result of a Force Majeure Event, (2) are not the result of ordinary wear and tear, and (3) cannot be capitalized under the FERC's Uniform System of Accounts. If the Units covered by this Agreement are hydroelectric Units, Owner's Repair Cost Obligation will include only costs of other hydroelectric Units. If the Units covered by this Agreement are not hydroelectric Units, Owner's Repair Cost Obligation will include only costs of other non-hydroelectric Units. The reference to "as-filed rates" refers to rates filed by Owner, or its predecessor and in effect on~~

~~July 1, 1998 or, if Owner or its predecessors did not have rates in effect on such date, rates filed by Owner and in effect on the Effective Date.~~ Intentionally left blank

- (ii) ~~For all subsequent Contract Years,~~ The Owner's Repair Cost Obligation shall be equal to 3% of the fixed operation and maintenance costs for all Units at the Facility, underlying the rates in effect at the beginning of the Contract Year.

#### 7.6 Unplanned Capital Items

- (a) To the extent a Capital Item is required to remedy or prevent impairment of the Unit's capability to Deliver Energy or Ancillary Services and the impairment was caused by Owner's failure to comply with Good Industry Practice or by any wrongful act or omission by Owner, Owner shall install such Capital Item at Owner's expense. Otherwise, Owner shall not be obligated to install any Capital Item unless ~~ISO~~CAISO is obligated to pay a Surcharge Payment for the Capital Item. The issue of whether Owner is obligated to install a Capital Item is subject to ADR.
- (b) If, during the Contract Year, Owner determines it is necessary to install Capital Items not approved under Section 7.4 and Owner has expended all amounts covered by the approved Small Project Estimates under Section 7.4, Owner shall provide a notice thereof ("Unplanned Capital Item Notice") on the form attached as Schedule L-1 to ~~ISO~~CAISO. Owner shall provide such information as ISOCAISO may reasonably require in order to evaluate the proposed Capital Items.

- (c) ISOCAISO shall submit a written acceptance or objection to Owner's proposal within 21 days after receipt of a complete Unplanned Capital Item Notice provided that if the proposal does not involve either loss or damage to the Facility or a Capital Item required by law or regulation, ISOCAISO shall respond within 60 days. If ISOCAISO fails to provide notice within such period, Owner's proposal in the Unplanned Capital Item Notice shall be deemed approved. Any objection shall be based on one or more of the following grounds:
- (i) the impairment being remedied or prevented was caused by Owner's failure to comply with Good Industry Practice;
  - (ii) the impairment being remedied or prevented was caused by a wrongful act or omission by Owner;
  - (iii) the Capital Item is not required or is more extensive than required in order to remedy or prevent impairment to the Facility or to comply with applicable law;
  - (iv) the estimated cost of the Capital Item exceeds that which is reasonably necessary;
  - (v) installation of the Capital Item will not result in benefits to ISOCAISO as compared to alternatives available to ISOCAISO;
  - (vi) Owner's proposals for installing or testing the Capital Item are unreasonable;
  - (vii) Owner's proposals for depreciation of the cost of the Capital Item or calculation of the Annual Capital Item Cost and Surcharge Payment Factor are unreasonable; or

- (viii) Owner has not provided sufficient information to evaluate Owner's proposal. In addition to providing the basis of the objection, any objection of ISOCAISO shall include a list of all changes ISOCAISO contends should be made to Owner's proposal and justification of all such changes.
- (d) If ISOCAISO submits an objection to an Unplanned Capital Item Notice, the Parties shall attempt to reach agreement on changes to Owner's proposal. If Owner's proposal involves either loss or damage to the Facility or the Capital Item is required by law and the Parties have not reached agreement 30 days after ISOCAISO's receipt of the Unplanned Capital Item Notice, either Owner or ISOCAISO may refer the matter to ADR under a schedule (specified by the arbitrator if the participants cannot agree) requiring a decision within 30 days following appointment of the arbitrator. The ADR decision will be effective without delay. Failure to agree on other proposed Capital Items may also be referred to ADR but without an expedited schedule.
- (e) Owner shall proceed to install the Capital Item if it is agreed or determined pursuant to ADR that ISOCAISO will pay a Surcharge Payment for the Capital Item or that Owner is otherwise required to install the Capital Item. Owner shall keep full and detailed records of the cost of the Capital Item and shall make them available to ISOCAISO for inspection upon reasonable request.
- (f) If the actual cost of the Capital Item exceeds the estimated cost, ISOCAISO may initiate ADR to determine whether the additional costs were reasonable and shall not be obligated to pay any portion of the additional cost found to be unreasonable

in such ADR proceeding. Owner shall have the burden of proving that the additional costs were reasonable.

- (g) If it is agreed or determined pursuant to ADR that ISOCAISO will pay for the Capital Item, ISOCAISO shall be deemed to have agreed that the cost of the Capital Item will be recovered through a Surcharge Payment under Article 8 and will be eligible for recovery through a Termination Fee pursuant to Section 2.5. The costs included in Surcharge Payments and Termination Fees to be paid by ISOCAISO shall be net of all proceeds received by Owner from insurers and other third parties pursuant to applicable insurance, warranties and other contracts after deducting all costs Owner incurred to collect the proceeds. Owner shall use commercially reasonable efforts to recover its full entitlements under applicable insurance policies, warranties and other contracts. Owner shall keep ISOCAISO informed of the status of such recovery efforts and will adjust future Surcharge Payments to reflect proceeds later recovered from any other party.
- (h) If the capability or performance of a Unit is impaired, if Owner is not obligated to install a Capital Item to remedy such impairment under Section 7.6(a) and does not do so, and if it would be uneconomical, impractical or illegal to continue operation without the Capital Item, then Owner, subject to obtaining authorization from FERC (if required by law to do so), may terminate this Agreement with respect to the affected Unit without cost or liability therefor except as provided in Section 2.4.



- (i) If Owner installs a Capital Item notwithstanding that ISOCAISO is not obligated to pay for the Capital Item, Owner shall not be entitled to recover the costs of the Capital Item from ISOCAISO unless FERC approves recovery of the costs.
- (j) Notwithstanding any other provision of this Agreement, if a Capital Item is required to remedy impairment of the Facility, the Unit's Monthly Option Payment shall not be decreased for any of the period of time during which Owner is waiting for ISOCAISO's response to an Unplanned Capital Item Notice or during which ADR concerning an Unplanned Capital Item Notice is pending unless it is determined that Owner is required to install the Capital Item pursuant to Section 7.6 (a).

#### 7.7 Adjustments to Performance Characteristics

- (a) If Owner installs any Capital Item or makes any Repairs the costs of which are paid by ISOCAISO under this Agreement, Owner shall modify the Maximum Net Dependable Capacity, Unit Availability Limit, and performance characteristics of the affected Unit to reflect the resulting changes in operating costs effective as of the date ISOCAISO's payment of ISOCAISO's Repair Share of the Repairs is made, or in the case of a Capital Item, the date the cost of the Capital Item is included in a Surcharge Payment or the rates paid by ISOCAISO.
- (b) If FERC authorization is required to permit Owner to recover the ISOCAISO's Repair Share from ISOCAISO or to include the costs of a Capital Item in a Surcharge Payment or the rates paid by ISOCAISO hereunder, Owner shall make a Section 205 filing limited to recovery of the costs and implementation of related changes to performance characteristics, shall request that the filing become

effective as of the date the Capital Item or Repair was placed in service and request expedited consideration of the filing. If ISOCAISO has approved the Capital Item or Repair, ISOCAISO shall intervene in support of such filing including support of requests to place the change in effect without suspension or hearing.

- (c) If Owner makes Repairs or installs a Capital Item when not required to do so and ISOCAISO has not agreed or is not required by ADR to pay for such Repair or Capital Item, Owner may either:
- (i) make an appropriate adjustment to the Maximum Net Dependable Capacity, Unit Availability Limit and performance characteristics of the affected Unit to reflect the capability the Unit would have had if the Capital Item had not been installed or the Repairs had not been made; or
  - (ii) make appropriate adjustment to the Maximum Net Dependable Capacity, Unit Availability Limit and performance characteristics of the affected Unit to reflect the Repairs or installation of the Capital Item.
- (d) Any adjustment to the Heat Input characteristics of the Unit shall be made in accordance with Section 4.9(d).

#### 7.8 Upgrades of Generating Units

Owner may Upgrade any Unit at the Facility, provided that no Upgrade shall release Owner from Owner's performance obligations under this Agreement. ISOCAISO shall secure no rights under this Agreement to any capacity or services increased or enhanced by any Upgrade unless the Parties agree as to the terms of ISOCAISO's rights and the amount of ISOCAISO's payment for such Upgrade. If the Parties so agree, the

Maximum Net Dependable Capacity, Unit Availability Limit and performance characteristics of the affected Unit shall be adjusted to reflect ISOCAISO's agreed upon rights to the Upgrade provided that any adjustment in heat input shall be made in accordance with Section 4.9(d). If FERC authorization is required to permit Owner to recover the portion of the Upgrade cost ISOCAISO has agreed to pay for the agreed revisions to the Unit characteristics, Owner shall make a Section 205 filing limited to recovery of the costs and implementation of related changes to the Maximum Net Dependable Capacity, Unit Availability Limit and performance characteristics, shall request that the filing become effective as of the date ISOCAISO begins paying its agreed portion of the cost of the Upgrade and request expedited consideration of the filing. ISOCAISO shall intervene in support of such filing including support of requests to place the change in effect without suspension or hearing.

#### 7.9 Third-Party Participation in ISOCAISO Review Process

- (a) Subject to fulfillment of the requirements of Section 7.9 (b), ISOCAISO shall consult with the Responsible Utility and the California Agencies prior to approving Capital Items or Repairs. ISOCAISO may approve Capital Items or Repairs aggregating less than \$5,000,000 for the Facility in a Contract Year without approval of the Responsible Utility or the California Agencies. After Capital Items and Repairs aggregating \$5,000,000 for the Facility in a Contract Year have been approved by ISOCAISO, ISOCAISO's approval of all other Capital Items and Repairs for that Contract Year shall not be effective unless the Responsible Utility has consented to such Capital Item or Repair.

- (b) The requirements of Section 7.9 (a) relating to Responsible Utilities shall apply only if and to the extent that the Responsible Utility agrees to waive its right to challenge before the FERC Owner's recovery of approved costs of Repairs or Capital Items. The requirement of Section 7.9 (a) relating to the California Agency shall apply only if and to the extent that each California Agency agrees to waive its right to challenge Owner's recovery of costs associated with the proposed Repairs or Capital Item on any grounds not set out in written objections provided by the California Agencies to ISOCAISO and Owner within 30 days of the California Agencies' receipt of the preliminary and final reports under Section 7.5 or Section 7.6.
- (c) Provided that the California Agencies and Responsible Utility are bound by the provisions of the Confidentiality and Non-disclosure Agreement attached as Schedule N and make the waivers required in Section 7.9 (b), Owner will provide copies of the required reports and notices under Section 7.4, Section 7.5 or Section 7.6, and any additional information provided to the ISOCAISO pursuant to Sections 7.4, 7.5 and 7.6, as the case may be, to the California Agencies and Responsible Utility at the same time as the reports, notices and information are provided to ISOCAISO, and ISOCAISO will provide copies of all information provided to Owner pursuant to such Sections to the California Agencies and Responsible Utility.

## ARTICLE 8

### RATES AND CHARGES

#### 8.1 Condition 1

When a Unit is under Condition 1, ISOCAISO shall pay Owner each Month for each Unit the sum of:

- (a) the Monthly Option Payment which shall be equal to the Monthly Availability Payment plus the Monthly Surcharge Payment, minus the sum of all Non-Performance Penalties for the Month. In no event shall (i) the Monthly Option Payment for any month be less than zero, (ii) the sum of the Monthly Availability Payments for a Contract Year exceed the Annual Fixed Revenue Requirement for the Contract Year, or (iii) the sum of the Monthly Surcharge Payments for the Contract Year exceed the Annual Capital Item Cost (as defined in Schedule B) for the Contract Year. The Monthly Availability Payment and the Monthly Surcharge Payment shall each be computed in accordance with Schedule B. The Non-Performance Penalties for the Month shall be calculated in accordance with Section 8.5;
- (b) the Variable Cost Payment computed in accordance with Schedule C;
- (c) one-twelfth of the Prepaid Start-up Charge as set out on Schedule D;
- (d) the sum of the Start-up Adjustments calculated in accordance with Schedule D for each Start-up during the Month which was a Prepaid Start-up;
- (e) the sum for all Settlement Periods in the Month of the Pre-empted Dispatch Payments and Motoring Charges calculated in accordance with Schedule E;

- (f) once the Counted MWh for the Contract Year equals the Maximum Annual MWh, the Counted Service Hours for the Contract Year equals the Maximum Annual Service Hours, or the Counted MWh for hydroelectric units for the Month equals the Maximum Monthly MWh, a payment for each subsequent Billable MWh at the rate set out on Schedule G;
- (g) once the Counted Start-ups for the Contract Year equals the Maximum Annual Start-ups, a payment for each additional Start-up calculated in accordance with Schedule G; and
- (h) charges for services Delivered from Substitute Units pursuant to Sections 5.1(c) and (d).

## 8.2 Condition 2

When a Unit is operating under Condition 2, ISOCAISO shall pay Owner the sum of:

- (a) the Monthly Option Payment, which shall be equal to the Monthly Availability Payment plus the Monthly Surcharge Payment, minus the sum of all Non-Performance Penalties for the Month. In no event shall (i) the Monthly Option Payment for any month be less than zero, (ii) the sum of the Monthly Availability Payments for a Contract Year exceed the Annual Fixed Revenue Requirement for the Contract Year or (iii) the sum of the Monthly Surcharge Payments for the Contract Year exceed the Annual Capital Item Cost (as defined in Schedule B) for the Contract Year. The Monthly Availability Payment and the Monthly Surcharge Payment shall each be computed in accordance with Schedule B. The Non-Performance Penalties for the Month shall be calculated in accordance with Section 8.5.

- (b) the Variable Cost Payment computed in accordance with Schedule C;
- (c) the sum of all Start-up Payments for the Month until Counted Start-ups equal Maximum Annual Start-ups computed in accordance with Schedule D;
- (d) the sum for all Settlement Periods in the Month of Motoring Charges calculated in accordance with Schedule E;
- (e) once the Counted MWh for the Contract Year equals the Maximum Annual MWh or the Counted Service Hours for the Contract Year equals the Maximum Annual Service Hours, a payment for each subsequent Billable MWh at the rate set out on Schedule G;
- (f) once the Counted Start-ups for the Contract Year equals the Maximum Annual Start-ups, a payment for each additional Start-up calculated in accordance with Schedule G; and
- (g) charges for services Delivered from Substitute Units pursuant to Section 5.1(c) and (d).

### 8.3 Determination of Billable MWh and Hybrid MWh

- (a) "Billable MWh" shall be determined by application of the following rules:
  - (i) If a Unit under Condition 1 or Condition 2 Delivers MWh only in Nonmarket Transactions during a Settlement Period, the Billable MWh shall be the lesser of (A) the Hourly Metered Total Net Generation or (B) the Requested MWh ~~plus the Ramping Energy~~.
  - (ii) If a Unit under Condition 1 delivers MWh in both Market and Nonmarket Transactions during a Settlement Period:

- (A) If the Hourly Metered Total Net Generation during the Settlement Period is equal to or greater than the ~~sum of Requested MWh plus Ramping Energy~~ applicable to the Settlement Period, the Billable MWh shall be (1) the Requested MWh ~~plus (2) the Ramping Energy~~ minus (3) the Hybrid MWh, but shall never be less than zero.
- (B) If the Hourly Metered Total Net Generation during the Settlement Period is less than the ~~sum of Requested MWh plus Ramping Energy~~ applicable to the Settlement Period, the Billable MWh shall be (1) Hourly Metered Total Net Generation minus (2) the Hybrid MWh, but shall never be less than zero.
- (iii) If a Unit is under Condition 2, the Billable MWh shall be the lesser of (A) the Hourly Metered Total Net Generation or (B) the sum of (1) Requested MWh, (2) ~~Ramping Energy~~ and (3) the amount, if any, by which the total MWh for which Owner's bids pursuant to Section 6.1 (b) cleared the market exceeds ~~the sum of the Requested MWh and Ramping Energy~~.
- (b) "Hybrid MWh" shall be the sum of the MWh scheduled in Market Transactions which were substituted for Requested MWh under Section 5.2 and the MWh scheduled in Market Transactions for which ISOCAISO issued a Dispatch Notice pursuant to Section 4.5 provided that Hybrid MWh shall never exceed the Hourly Metered Total Net Generation.



(e) Ramping Energy shall be calculated as follows:

(i) If a Unit is not providing Regulation under Schedule E during a given hour,

"Ramping Energy" for that hour shall be the lesser of the (i) Actual Ramping Energy or (ii) the RMR Ramping Energy minus Market Ramping Energy.

(A) "Actual Ramping Energy" means the MWh calculated using the

following formula:

$$\text{Actual Ramping Energy} = \frac{(\text{Output 2} - \text{Output 1})^2}{(2 \times \text{RR} \times 60)}$$

Where:

Output 1 is the Hourly Metered Total Net Generation for the hour for which Ramping Energy is being calculated ("Calculation Hour");

Output 2 is (i) the Hourly Metered Total Net Generation in the prior hour if the Hourly Metered Total Net Generation in the prior hour was greater than the Hourly Metered Total Net Generation in the Calculation Hour and (ii) the Hourly Metered Total Net Generation in the succeeding hour if the Hourly Metered Total Net Generation in the succeeding hour was greater than the Hourly Metered Total Net Generation in the Calculation Hour. If both clauses (i) and (ii) apply during a Calculation Hour, the Actual Ramping Energy for that hour shall be the sum of the Actual Ramping Energy calculated using clause (i) and the Actual Ramping Energy calculated using clause (ii);

RR is the Unit's Ramp Rate as stated in Section 8 of Schedule A applicable to the operating range at which the Unit was operating at the end of the Calculation Hour.

(B) "RMR Ramping Energy" means the MWh calculated using the

following formula:

$$\text{RMR Ramping Energy} = \frac{(\text{RMRMW2} - \text{RMRMW1})^2}{(2 \times \text{RR} \times 60)}$$

Where:

RMRMW1 is the Requested MW for the Calculation Hour;

RMRMW2 is (i) the Requested MWh in the prior hour if the Requested MWh in the prior hour was greater than the Requested MWh in the Calculation Hour or (ii) the Requested MWh in the succeeding hour if the Requested MWh in the succeeding hour was greater than the Requested MWh in the Calculation Hour. If both clauses (i) and (ii) apply during a Calculation Hour, the RMR Ramping Energy for that hour shall be the sum of the RMR Ramping Energy calculated using clause (i) and the RMR Ramping Energy calculated using clause (ii).

RR is the Unit's Ramp Rate as stated in Section 8 of Schedule A applicable to the operating range at which the Unit was operating at the end of the Calculation Hour.

(C) "Market Ramping Energy" means the MWh calculated using the

following formula:

$$\text{Market Ramping Energy} = \frac{(\text{MKTMW2} - \text{MKTMW1})^2}{(2 \times \text{RR} \times 60)}$$

Where:

MKTMW1 is the total MWh scheduled for delivery during the Calculation Hour in day-ahead or hour-ahead Market Transactions ("Market Schedule");

MKTMW2 is (i) the Market Schedule during the prior hour if the Market Schedule in the prior hour was greater than the Market Schedule in the Calculation Hour or (ii) the Market Schedule in the succeeding hour if the Market Schedule in the succeeding hour was greater than the Market Schedule in the Calculation Hour. If both clauses (i) and (ii) apply during a Calculation Hour, the Market Ramping Energy for that hour shall be the sum of the Market

~~Ramping Energy calculated using clause (i) and the Market Ramping Energy calculated using clause (ii).~~

~~RR is the Unit's Ramp Rate as stated in Section 8 of Schedule A applicable to the operating range at which the Unit was operating at the end of the Calculation Hour.~~

~~(ii) For Units which are providing Regulation under Schedule E, "Ramping Energy" for the last hour in which the Unit provides Regulation shall be calculated using the following formula but shall never be less than zero:~~

$$\text{Ramping Energy} = \frac{(\text{Output} - \text{MKTMW})^2}{(2 \times \text{RR} \times 60)}$$

~~Where:~~

~~Output is the Hourly Metered Total Net Generation for the Calculation Hour;~~

~~MKTMW is the Market Schedule during the Calculation Hour;~~

~~RR is the Unit's Ramp Rate as stated in Section 8 of Schedule A applicable to the operating range at which the Unit was operating at the end of the Calculation Hour.~~

~~(iii) Ramping Energy and RMR Ramping Energy shall be zero in any hour that Requested MWh are equal to or less than the Market Schedule for that hour. Ramping Energy and RMR Ramping Energy shall also be zero if (i) the Unit's Hourly Metered Total Net Generation is less than the Hourly Metered Total Net Generation for the succeeding hour and the Requested MWh in the succeeding hour are equal to or less than the Market Schedule for such succeeding hour or (ii) the Unit's Hourly Metered Total Net Generation is greater than the Hourly Metered Total Net Generation for~~

~~the succeeding hour and the Requested MWh in the prior hour are equal to or less than Market Schedule for such prior hour.~~

~~(iv) Ramping Energy shall never be less than zero.~~

#### 8.4 Determination of Prepaid Start-ups

Prepaid Start-ups for Condition 1 shall be the Maximum Annual Start-ups. There shall be no Prepaid Start-ups for Condition 2.

#### 8.5 Non-Performance Penalty

- (a) If a Unit fails to comply fully with a Dispatch Notice and such failure is not due to a Force Majeure Event under this Agreement, the Unit shall be subject to a Non-Performance Penalty computed in accordance with this Section 8.5.
- (b) The Non-Performance Penalty shall be calculated for each hour of the Penalty Period in which Owner is not deemed to be in full compliance with a Dispatch Notice and is not excused from performance. The Non-Performance Penalty shall be the sum of the amounts calculated for each Settlement Period in the Month by multiplying (i) the Availability Deficiency Factor for the Settlement Period by (ii) the sum of the Hourly Penalty Rate and the Hourly Surcharge Penalty Rate for the Unit as set forth on Schedule B; provided that the Non-Performance Penalty for any Month shall not exceed the sum of the Condition 1 Availability Payment and Condition 1 Surcharge Payment (for Units on Condition 1), or the sum of the Condition 2 Availability Payment and Condition 2 Surcharge Payment (for Units on Condition 2) for the Month. For purposes of this calculation:
  - (i) an Availability Deficiency Factor shall be calculated for each hour of the Penalty Period as one minus the number determined by dividing (a) the

Delivered MWh for the hour in question by (b) the product of the Unit Availability Limit and the percentage of the hour (up to 100%) that the Unit was subject to a Dispatch Notice;

- (ii) the Penalty Period shall be the 72 hour period beginning at the time Owner fails to comply fully with a Dispatch Notice, provided that if Owner in accordance with Section 7.2(a) had scheduled an outage to begin during the 72 hour period, the Penalty Period will terminate at the time the outage was scheduled to begin.
  - (iii) the Unit Availability Limit shall be the Unit Availability Limit as it existed at the time ISOCAISO issued the Dispatch Notice with which Owner failed to comply but reduced to eliminate the effect of any Force Majeure Event affecting deliveries during the Penalty Period.
- (c) For purposes of this Section 8.5 and Section 4.9(a)(i), a Unit shall be deemed to be in full compliance with a Dispatch Notice if the Unit Delivers (i) at least 97 percent of the Requested MW or (ii) not more than 2 MW less than the Requested MW.

#### 8.6 Long-term Planned Outage Adjustment

Not later than 60 days after the end of each Contract Year, Owner shall submit to ISOCAISO a statement showing the Long-term Planned Outage Adjustment for the Contract Year. The Long-term Planned Outage Adjustment shall equal (a) the Hourly Availability Charge plus each Hourly Capital Item Charge, as shown in Schedule B, multiplied by (b) the difference, if positive, of (i) the hours scheduled for performance of Long-term Planned Outages minus (ii) the actual hours spent performing Long-term

Planned Outages during the Contract Year. Owner shall credit any Long-term Planned Outage Adjustment on the next invoice or, if this Agreement has terminated, shall pay any Long-term Planned Outage Adjustment to the ISOCAISO upon submission of the Final Invoice. ~~The Long term Planned Outage Adjustment for the Contract Year ending December 31, 1999, shall be computed by including, in addition to scheduled and actual hours for Long term Planned Outages after the Effective Date, the hours scheduled for performance of Long term Planned Outages during the period from January 1, 1999 through the Effective Date and the actual hours spent performing such Long term Planned Outages during such period as if the Agreement had become effective on January 1, 1999~~

## ARTICLE 9

### STATEMENTS AND PAYMENTS

#### 9.1 Invoicing

- (a) The billing, invoicing and payment of charges under this Agreement shall be as specified in this Article 9, Schedule O to this Agreement and ~~Annex 1 to ISO's Settlement and Billing Protocol~~ Section 11.13 of the CAISO Tariff. ~~ISO~~ CAISO shall not modify any provision of ~~Section 5.2.741~~ of the ISO CAISO Tariff or ~~Annex 1 to the Settlement and Billing Protocol~~ Section 11.13 as they apply to this Agreement without Owner's consent, provided that Owner's consent shall not be required for a change of allocations of RMR costs among market participants under the ISO CAISO Tariff. Notwithstanding anything in this Agreement to the contrary, invoices either due or from the RMR Owner or Responsible Utility for an amount less than \$10.00 will be adjusted to \$0.00 and no amounts will be due to or from that RMR Owner or Responsible Utility for that invoice.
- (b) Owner will submit to ~~ISO~~ CAISO RMR Invoices for each Month during the term of this Agreement, which are defined in this Section 9.1(b) as follows: (i) Estimated RMR Invoice; (ii) Revised Estimated RMR Invoice; (iii) Adjusted RMR Invoice; and (iv) Revised Adjusted RMR Invoice. In the event there are no revisions to the Estimated RMR Invoice or the Adjusted RMR Invoice, Owner shall submit an e-mail to ISO CAISO with a copy to the Responsible Utility indicating that the Estimated RMR Invoice or the Adjusted RMR Invoice shall be deemed to be the Revised Estimated RMR Invoice or the Revised Adjusted RMR Invoice.

- (i) Within 14 days after the end of each Month during the term of this Agreement (and, if this Agreement does not expire or terminate at the end of a Month, within 14 days after the end of the Month in which the Agreement expires or terminates), Owner shall submit an estimated invoice (“Estimated RMR Invoice”) to ISOCAISO for all charges and credits due under this Agreement for the Month (“Billing Month”). Each Estimated RMR Invoice shall reflect actual data for the Billing Month to the extent actual data is available and shall otherwise reflect estimated data.
- (ii) By the date specified on the RMR Payments Calendar, Owner shall submit a revised estimated invoice (“Revised Estimated RMR Invoice”) to ISOCAISO, which will include appropriate revisions based on the ISOCAISO’s validation of the Estimated RMR Invoice. The Due Date of the Revised Estimated RMR Invoice shall be the 30th day after the date on which Owner submitted the Estimated RMR Invoice to ISOCAISO, or if such date is not a Business Day, the Due Date shall be the next Business Day.
- (iii) By the date specified on the RMR Payments Calendar, ISOCAISO shall submit an invoice (“ISOCAISO Invoice”) to the Responsible Utility, with an e-mail notification to Owner and the Responsible Utility, which specifies the payment due from the Responsible Utility to ISOCAISO and from ISOCAISO to Owner on the basis of the Revised Estimated RMR Invoice. However, in the event the payment is due from Owner to



ISOCAISO and from ISOCAISO to the Responsible Utility, then ISOCAISO shall submit the ISOCAISO Invoice to Owner with an e-mail notification to Owner and the Responsible Utility.

- (iv) Within 7 days of receipt by Owner of the ~~Final Settlement Statement~~Recalculation Settlement Statement for the last day of the Billing Month, Owner shall submit an adjusted invoice (“Adjusted RMR Invoice”) to ISOCAISO, reflecting actual data for the Billing Month.
- (v) By the date specified on the RMR Payments Calendar, Owner shall submit to ISOCAISO an invoice reflecting actual data for the Billing Month and including appropriate revisions based on the ISOCAISO’s validation of the Adjusted RMR Invoice (“Revised Adjusted RMR Invoice”). The Due Date of the Revised Adjusted RMR Invoice shall be the 30th day after the date on which Owner submitted the Adjusted RMR Invoice to ISOCAISO, or if such date is not a Business Day, the Due Date shall be the next Business Day.
- (vi) By the date specified on the RMR Payments Calendar, ISOCAISO shall submit an ISOCAISO Invoice to the Responsible Utility, with an e-mail notification to Owner and the Responsible Utility, which specifies the payment due from the Responsible Utility to ISOCAISO and from ISOCAISO to Owner on the basis of the Revised Adjusted RMR Invoice. However, in the event the payment is due from Owner to ISOCAISO and from ISOCAISO to the Responsible Utility, then ISOCAISO shall submit

the ISOCAISO Invoice to Owner with an e-mail notification to Owner and the Responsible Utility.

- (c) If the day on which any RMR Invoice is due to be issued is not a Business Day, such RMR Invoice shall be issued on the next succeeding Business Day.
- (d) Each RMR Invoice shall use the template posted on the ISOCAISO Home Page Website in accordance with Schedule O ("RMR Invoice Template"). Each RMR Invoice shall set out detailed calculations and breakdowns of the amounts due, shall identify the source of each input used in the calculations, and shall identify all relationships among data in different invoice levels.
- (e) This section 9.1(e) applies to all Condition 1 Units. Any amounts received by or due to Owner's Scheduling Coordinator for Billable MWh and Ancillary Services Delivered in Nonmarket Transactions during the Billing Month shall be subtracted from the amount otherwise due under each RMR Invoice. If subtraction of the Energy and any Ancillary Service amounts for a Unit under Condition 1 results in a credit to ISOCAISO on an RMR Invoice, the credit shall be carried forward ("Credit Carryforward") to the RMR Invoices for each succeeding Billing Month in that Contract Year until extinguished; provided that Owner shall not be required to carry any such credit into a later Contract Year or to pay any part of such credit to ISOCAISO.
- (f) This section 9.1(f) applies to all Condition 2 Units. All amounts received by or due to Owner's Scheduling Coordinator in connection with Market Transactions and Nonmarket Transactions during the Billing Month ("Scheduling Coordinator Revenues") shall be subtracted from the amount otherwise due under each RMR

Invoice. If subtracting the Scheduling Coordinator Revenues results in a credit to ISOCAISO on an RMR Invoice, the credit shall be carried forward ("Credit Carryforward") to the appropriate RMR Invoices for each succeeding Billing Month in that Contract Year until extinguished. If there is an unextinguished credit balance remaining at the end of the Contract Year, Owner shall refund to ISOCAISO an amount equal to the lesser of (i) the remaining balance of Scheduling Coordinator Revenues or (ii) the total amounts due Owner pursuant to Section 8.2 for the Contract Year minus all Scheduling Coordinator Revenues previously credited to Owner during such Contract Year. Such refund amount will be included on December's Adjusted RMR Invoice, or the Final Invoice if the Agreement is terminated.

- (g) In the event any corrections, surcharges, credits, refunds or other adjustments pertaining to a Billing Month are discovered after the Revised Adjusted RMR Invoice for such Billing Month has been issued ("Prior Period Changes"), then such Prior Period Changes shall be included in a worksheet for the prior period ("Prior Period Change Worksheet") and submitted for payment in the next allowed Billing Month for Prior Period Changes. The allowed Billing Months for Prior Period Changes are as follows. Any Prior Period Changes pertaining to the months of January through June of a Contract Year which are discovered prior to the submission of the December Estimated RMR Invoice for such Contract Year shall be included in a Prior Period Change Worksheet submitted with the December Estimated RMR Invoice. Any Prior Period Changes pertaining to the months of July through December of a Contract year which are discovered prior

to the submission of the May Estimated RMR Invoice for the subsequent Contract year shall be included, subject to Section 9.8, in a Prior Period Change Worksheet submitted with the May Estimated RMR Invoice for the subsequent Contract Year. Any Prior Period Changes pertaining to a Billing Month for a prior Contract Year which are discovered after the first opportunity to submit a Prior Period Change Worksheet has passed, shall be included in a Prior Period Change Worksheet submitted with the Estimated RMR Invoice for the next December or May Billing Month, whichever comes first. Any Prior Period Changes pertaining to the time when the Facilities were under a superseded rate schedule using Conditions of Must Run Agreement A, B, and C, shall be calculated through a separate process and not included on RMR Invoices issued under this Agreement unless the Prior Period Changes result from the Revenue Requirements Settlements outlined in the Stipulation and Agreement approved on May 28, 1999, in FERC Docket No. ER98-441-000, et al.

- (h) Owner shall send a copy of each RMR Invoice and any Prior Period Change Worksheet(s) to the Responsible Utility at the time it sends such invoices to ISOCAISO.
- (i) Owner shall provide supporting detail with the Prior Period Change Worksheets to identify the relevant Contract Year and provide clear calculations by Facility, by Billing Month, and such other detail as necessary to support the Prior Period Change(s). This level of detail shall be consistent with the level of detail originally required to perform the computation(s) that are being corrected in the Prior Period Change Worksheet. Prior Period Change Worksheets, when

required, shall include all identified Prior Period Changes for each applicable prior Contract Year, and shall be computed as specified in section 9.1(j).

- (j) A Prior Period Change Worksheet shall contain the following information and calculations for each Billing Month in the relevant Contract Year(s), commencing with the Billing Month pertaining to the Prior Period Change(s):
  - (i) The Revised Adjusted RMR Invoice for the Billing Month or, if such Billing Month has previously been submitted on a Prior Period Change Worksheet, the most recent revision of such RMR Invoice.
  - (ii) A revision of the RMR Invoice specified in paragraph (1) above which shows the RMR Invoice revised to incorporate the Prior Period Change(s) as if such Prior Period Change(s) had been invoiced in the Billing Month which gave rise to the Prior Period Change(s). Such revision shall incorporate the impact of the Prior Period Change(s) on RMR payments, including any impact resulting from the Credit Carryforward calculation for the current or previous Billing Months in the Contract Year. For Condition 2 Units, such calculation shall include a recalculation of the refund described in Section 9.1(f).
  - (iii) The difference between the amounts calculated under paragraph (2) above and paragraph (1) above. The amount due to or from Owner as a result of this calculation shall be clearly specified, with interest shown separately from any other amount due. Interest shall be calculated at the Interest Rate from the Due Date of the Revised Estimated RMR Invoice for the Billing Month to the date payment of the amount due is made.

Owner shall total for all Billing Months which are included on the Prior Period Change Worksheet, the amount due as a result of the calculation in paragraph (3) above for each Billing Month. Owner shall also total for all Billing Months which are included on the Prior Period Change Worksheet, the interest due as a result of the calculation in paragraph (3) above for each Billing Month. The total amount due and interest due shall be transferred from the Prior Period Change Worksheet to the appropriate Estimated RMR Invoice, and such amounts shall be due as specified on the Estimated RMR Invoice.

- (k) Any time a Unit switches from Condition 1 to Condition 2 or Condition 2 to Condition 1 during a Contract Year, the provisions of Section 9.1(e) shall apply to the months when the unit was on Condition 1 and the provisions of Section 9.1(g) shall apply to the months when the unit was on Condition 2.
- (l) ISOCAISO shall separately post on the ISOCAISO Home Page Website examples (“Prior Period Change Examples”) developed and agreed to by the RMR Invoice Task Force created under Schedule O of the calculations described in sSections 9.1(e), 9.1 (f), 9.1(g) and 9.1(j) to provide guidance on the correct treatment of Prior Period Changes and to show the correct preparation of the Prior Period Change Worksheet and transfer of amount due to the appropriate Estimated RMR Invoice. Additionally, the RMR Invoice Task Force shall develop and agree to, and ISOCAISO shall post on the ISOCAISO Home Page Website, guidelines (“Prior Period Change Guidelines”) underlying the calculations described in sSections 9.1(e), 9.1(f), 9.1(g) and 9.1(j). The Prior Period Change Worksheet shall be prepared, and the amount due shall be calculated and transferred to the

Estimated RMR Invoice, in accordance with the RMR Invoice Template, the Prior Period Change Examples, and the Prior Period Change Guidelines posted on the ISOCAISO Home Page Website. In the event of a dispute regarding the treatment of Prior Period Changes, all Parties to such dispute shall refer to the Prior Period Change Examples and Prior Period Change Guidelines posted on the ISOCAISO Home Page Website for guidance.

## 9.2 Facility Trust Accounts

ISOCAISO shall establish two segregated commercial bank accounts under the “Facility Trust Account” referred to in ~~Annex 1 Appendix N Part J to ISOCAISO’s Settlement and Billing Protocol~~ and Sections 5.2.711.13 and 41 of the ISOCAISO Tariff for each Responsible Utility. One commercial bank account, the “RMR Owner Facility Trust Account”, shall be held in trust by ISOCAISO for Owner. The other commercial bank account, the “Responsible Utility Facility Trust Account”, shall be held in trust by ISOCAISO for the Responsible Utility. Payments received by ISOCAISO from a Responsible Utility in connection with this Agreement, including payments following termination of this Agreement, will be deposited into the RMR Owner Facility Trust Account and payments from ISOCAISO to Owner will be withdrawn from such Account, all in accordance with Sections 11.13 and 5.2.741 of the ISOCAISO Tariff, ~~Annex 1 to ISOCAISO’s Settlement and Billing Protocol~~ and this Article 9. Any payments received by ISOCAISO from Owner in connection with this Agreement, including payments following termination of this Agreement, will be deposited into the Responsible Utility Facility Trust Account. Any payments to a Responsible Utility of funds received from Owner under this Agreement will be withdrawn from the Responsible Utility Facility

Trust Account, all in accordance with Section ~~5.2.711.13~~ and 41 of the ISOCAISO Tariff, ~~Annex 1 to ISO's Settlement and Billing Protocol~~ Appendix N Part J and this Agreement. Neither the RMR Owner Facility Trust Account nor the Responsible Utility Facility Trust Account shall have other funds commingled in it at any time.

### 9.3 Payment

- (a) ISOCAISO shall pay Owner all invoiced amounts due on Revised Estimated RMR Invoices, Revised Adjusted RMR Invoices, and Final Invoices whether or not disputed by ISOCAISO or the Responsible Utility except to the extent that ISOCAISO (i) is entitled to a refund on a Revised Estimated or Revised Adjusted RMR Invoice or Final Invoice against such payment under this Agreement or (ii) is entitled to deduct an amount under Section 9.6. All payments shall be made from the RMR Owner Facility Trust Account on or before the Due Date by wire transfer in accordance with instructions from Owner. If Owner is also the Responsible Utility, at the discretion of Owner payments to it may be made by memorandum account instead of wire transfer. Owner shall establish and maintain a settlement account at a commercial bank located in the United States and reasonably acceptable to ISOCAISO which can effect money transfers via Fed-Wire where payments to and from the Facility Trust Accounts shall be made in accordance with Section 9.2 and ~~Annex 1~~ Section 11.13 of the ISOCAISO Tariff. Owner shall notify ISOCAISO of its settlement account details prior to the Effective Date. Owner may from time to time change its settlement account details, provided that, Owner shall give ISOCAISO 15 days notice before making changes. In the event there is a refund amount due to ISOCAISO, Owner shall



refund the amount due ISOCAISO in accordance with Section 9.2 and ~~Annex~~  
~~Section 11.13~~ of the ISOCAISO Tariff.

- (b) If a Revised Adjusted RMR Invoice is less than the amount paid by ISOCAISO on the Revised Estimated RMR Invoice, the difference shall be paid by Owner to ISOCAISO with interest at the Interest Rate from the Due Date of the Revised Estimated RMR Invoice to the Due Date of the Revised Adjusted RMR Invoice, or, if the Agreement is terminated, shall be paid to ISOCAISO on submission of the Final Invoice. If a Revised Adjusted RMR Invoice is greater than the amount paid by ISOCAISO under the Revised Estimated RMR Invoice, ISOCAISO shall pay Owner the difference with interest at the Interest Rate from the Due Date of the Revised Estimated RMR Invoice to the Due Date of the Revised Adjusted RMR Invoice by ISOCAISO.

#### 9.4 Payment Default

- (a) Except as provided in Section 9.4 (b), Owner, in addition to any other remedy it may have, may pursue all claims against ISOCAISO and the Collateral, as defined in Section 9.7 below, if ISOCAISO fails to pay any invoice in full by the Due Date as required under Section 9.3. ISOCAISO, in addition to any other remedy it may have, may pursue all claims against Owner if Owner fails to pay any invoice in full by the Due Date as required under Section 9.3. The parties' remedies shall be subject to the limitations set forth in Article 11.
- (b) If the amounts ISOCAISO has not paid have been invoiced by ISOCAISO to the Responsible Utility and the Responsible Utility has not paid such amounts to ISOCAISO, Owner shall cause execution to issue against, and shall collect solely

from the Collateral or the Responsible Utility, and not ISOCAISO, if all of the following conditions have been satisfied:

- (i) The Responsible Utility is **[INSERT SCE, PGE or SDGE, as applicable]**
  - (ii) ISOCAISO has invoiced via the ISOCAISO Invoice **[INSERT SCE, PGE or SDGE, as applicable]** for costs (net of any applicable credits, all as shown on the Revised Estimated or Revised Adjusted RMR Invoice) after deducting only amounts permitted to be deducted under Section 9.6.
  - (iii) The ISOCAISO Tariff expressly requires **[INSERT SCE, PGE or SDGE, as applicable]** to pay all amounts shown on the ISOCAISO Invoices without offset, recoupment or deduction (except to the extent that Section 5-2.741 of the ISOCAISO Tariff permits deduction of amounts that are due the Responsible Utility after resolution of a dispute) and, to the extent that **[INSERT SCE, PGE or SDGE, as applicable]** disputes any amounts due under the ISOCAISO Invoices, to pay the disputed amounts under protest and subject to refund with interest; and
  - (iv) **[INSERT SCE, PGE or SDGE, as applicable]** fails to pay all or a portion of the amounts due under the ISOCAISO Invoices and did not have the right to have such amount deducted under Section 5-2.741 of the ISOCAISO Tariff.
- (c) Notwithstanding the provisions of Section 9.4 (b), Owner may cause execution to issue against, and collect from, ISOCAISO, the Responsible Utility, the Collateral or insurance maintained by ISOCAISO pursuant to Section 12.1(a), if

notwithstanding the requirement to pay ISOCAISO Invoices without offset, recoupment or deduction (except to the extent that Section ~~5.2.741~~ of the ISOCAISO Tariff permits deduction of amounts that are due the Responsible Utility after resolution of a dispute), a Responsible Utility nonetheless offsets amounts unrelated to this Agreement or withholds amounts based on a breach or default by ISOCAISO of any of its obligations to the Responsible Utility.

- (d) The ISOCAISO Invoices shall separately show the amounts due for services from each Facility. If the Responsible Utility withholds any portion of the amount due under the ISOCAISO Invoices, ISOCAISO shall inform Owner of the specific Facility and time periods for which the Responsible Utility withheld payments.
- (e) As a condition for Owner's agreement not to seek to recover amounts from ISOCAISO under Section 9.4(b), ISOCAISO agrees to include and retain in the ISOCAISO Tariff provisions expressly recognizing that Owner is a third party beneficiary of, and has all rights that ISOCAISO has under the ISOCAISO Tariff, at law, in equity or otherwise, to enforce the Responsible Utility's obligation to pay all sums invoiced to it in the ISOCAISO Invoices but not paid by the Responsible Utility, to the extent that, as a result of the Responsible Utility's failure to pay, ISOCAISO does not pay Owner on a timely basis amounts due under this Agreement. Owner recognizes that its rights as a third party beneficiary are (i) no greater than ISOCAISO's rights against the Responsible Utility, and (ii) subject to Section 13 of the ISOCAISO Tariff regarding dispute resolution. Either ISOCAISO or Owner (but not both) will be entitled to enforce any claim arising from unpaid ISOCAISO Invoices, and only one party will be a

“disputing party” under Section 13 of the ISOCAISO Tariff with respect to such claim so that the Responsible Utility will not be subject to duplicate claims or recoveries. Owner shall have the right to control the disposition of claims against the Responsible Utility for non-payments which result in payment defaults by ISOCAISO under this Agreement. To that end, ISOCAISO agrees that in the event of nonpayment by the Responsible Utility of amounts due under the ISOCAISO Invoices, ISOCAISO will not take any action to enforce its rights against the Responsible Utility unless ISOCAISO is requested to do so by Owner. ISOCAISO shall cooperate with Owner in a timely manner as necessary or appropriate to most fully effectuate Owner’s rights related to such enforcement, including using its best efforts to enforce the Responsible Utility’s payment obligations if, as, to the extent, and within the time frame, requested by Owner. ISOCAISO shall intervene and participate where procedurally necessary to the assertion of a claim by Owner.

- (f) If a Responsibility Utility was not the Responsible Utility on April 1, 1998 (a “New Responsible Utility”) and if:
- (i) The senior unsecured debt of the New Responsible Utility is rated or becomes rated at less than A- from Standard & Poors (“S&P”) or A3 from Moody’s Investment Services (“Moody’s), and
  - (ii) Such ratings do not improve to A- or better from S&P or A3 or better from Moody’s within 60 days,

ISOCAISO shall then require the New Responsible Utility to issue and confirm to ISOCAISO an irrevocable and unconditional letter of credit in an amount equal to

three times the highest monthly payment invoiced by ISOCAISO to the New Responsible Utility (or the prior Responsible Utility) in connection with services provided under this Agreement during the last 3 months for which invoices have been issued. The letter of credit must be issued by a bank or other financial institution whose senior unsecured debt rating is not less than A from S&P and A2 from Moody's. The letter of credit shall authorize ISOCAISO or Owner to draw on the letter of credit for deposit solely into the RMR Owner Facility Trust Account in an amount equal to any amount due and not paid by the Responsible Utility under the ISOCAISO Invoices.

#### 9.5 Interest

If ISOCAISO or Owner fails to make any payment by the Due Date, the amount due but not paid shall accrue interest at the Interest Rate from the Due Date until the amount is paid.

#### 9.6 Disputed Amounts

- (a) If ISOCAISO or the Responsible Utility disputes a Revised Estimated or Revised Adjusted RMR Invoice or Final Invoice or part thereof submitted by Owner under this Agreement, or if the Responsible Utility disputes an ISOCAISO Invoice or part thereof that relates to an RMR Invoice or Final Invoice submitted by Owner to ISOCAISO under this Agreement, and if such dispute is based in whole or part on an alleged error or breach or default of Owner's obligations to ISOCAISO under this Agreement, then ISOCAISO promptly shall give written notice to Owner of the reasons for the dispute and the amount in dispute. ISOCAISO shall pay Owner the disputed amount without offset, recoupment or reduction of any

kind or nature. Such payment may, however, be made by ISOCAISO under protest with reservation of the right to seek a refund with interest at the Interest Rate from the date of the disputed payment to the date of repayment. If ISOCAISO notifies Owner that ISOCAISO or the Responsible Utility disputes any amount of Owner's RMR Invoice or Final Invoice, Owner shall at its own cost provide ISOCAISO with all information and assistance ISOCAISO reasonably requires to resolve the dispute and shall join with ISOCAISO in any discussions and negotiations with the Responsible Utility to resolve the dispute. The dispute shall be subject to ADR provided that in such ADR proceeding only one entity (ISOCAISO or Responsible Utility) will be the disputing party with respect to such claim. Owner shall be obligated to refund to ISOCAISO as a result of resolution of such dispute only if, and to the extent, the resolution determines the amount invoiced by Owner exceeded the amounts due Owner under this Agreement for the period covered by the RMR Invoices(s) and/or Final Invoice. Any amount agreed or determined to be owed by Owner to ISOCAISO under this Section 9.6 (a) shall be refunded by Owner to ISOCAISO with interest, by Owner's inclusion of such refund (including interest) in a Prior Period Change Worksheet included with the next appropriate May or December Estimated RMR Invoice as specified in Sections 9.1(g) through 9.1(l) of this Agreement. If Owner does not include such refund (including interest) in the appropriate RMR Invoice, then such refund shall be made by ISOCAISO's deduction of such amount from the next Revised Estimated and Revised Adjusted RMR Invoice(s) and Final Invoice submitted by Owner to ISOCAISO under this Agreement until such

amount is extinguished, or, if this Agreement has terminated, by paying such amount to ISOCAISO. Interest shall be at the Interest Rate unless it is determined through ADR that the amount invoiced by Owner was submitted without a good faith basis in fact or law, in which case interest shall be at twice the Interest Rate.

- (b) It is expressly understood that the Responsible Utility shall, to the extent set forth herein, be a third party beneficiary of, and shall have all rights that ISOCAISO has under this Agreement, at law, in equity and otherwise, to dispute an RMR Invoice or Final Invoice submitted to ISOCAISO by Owner under this Agreement and to enforce Owner's obligation to make any required payment to ISOCAISO under this Agreement to the extent ISOCAISO does not make a related deposit into the Responsible Utility Facility Trust Account as a result of Owner's failure to make the required payment. The rights of the Responsible Utility as third party beneficiary shall be no greater than ISOCAISO's rights against Owner and shall be subject to the ADR provisions of this Agreement. Either ISOCAISO or the Responsible Utility, but not both, will be entitled to enforce any claim arising from a related set of facts, and only one such entity will be a disputing party under Article 11 of this Agreement with respect to any such claim so that Owner shall not be subject to duplicate claims or recoveries. If the Responsible Utility is not the Owner, the Responsible Utility shall control the disposition of all claims against Owner for non-payment described in this Section 9.6, including the choice of disputing party. The ISOCAISO shall have the right to intervene for the purpose of participating in the proceeding even if it is not the disputing party. ISOCAISO shall cooperate with the Responsible Utility in a timely manner as

necessary or appropriate to most fully effectuate the Responsible Utility rights related to such enforcement, including using its best efforts to enforce Owner's payment obligations if, as, to the extent, and within the time frame, requested by Responsible Utility. Subject to the foregoing, ISOCAISO shall intervene and participate where procedurally necessary to the assertion of a claim by the Responsible Utility.

#### 9.7 Payment Security

To secure all of ISOCAISO's payment obligations to Owner under this Agreement, ISOCAISO agrees to grant Owner a security interest and lien in the following collateral (collectively, the "Collateral"): (a) all past, present and future accounts and other amounts Responsible Utility owes ISOCAISO at any time pursuant to Section 5.2.741 of the ISOCAISO Tariff attributable to invoices submitted by Owner under this Agreement (collectively, the "Accounts"), (b) the RMR Owner Facility Trust Account, all funds in the RMR Owner Facility Trust Account at any time, and all funds paid on account of any Accounts, (c) all proceeds of the Collateral, if any, and (d) all of ISOCAISO's right, title and interest in the Collateral. ISOCAISO represents and warrants to Owner that (a) ISOCAISO has the authority to grant such security interest, (b) ISOCAISO will have good, marketable and exclusive title to all of the Collateral, (c) such security interest and lien will at all times be a valid, enforceable and first-priority lien on the Collateral, and (d) such security interest will be duly perfected by the filing of a financing statement under the California Uniform Commercial Code describing the Collateral in the office of the Secretary of State of California and the delivery



of a written notice of Owner's security interest to the bank with which the RMR Owner Facility Trust Account is maintained. If ISOCAISO defaults on its obligation to pay under this Agreement, Owner shall be entitled to enforce such security interest, to exercise its rights in the Collateral, to collect the Accounts from Responsible Utility, to collect all funds in the RMR Owner Facility Trust Account, and to exercise all other rights and remedies under the California Uniform Commercial Code. ISOCAISO agrees to promptly execute and deliver all financing statements and other documents Owner reasonably requests, including but not limited to a written notice of Owner's security interest in the Collateral to the bank with which the RMR Owner Facility Trust Account is maintained, in order to maintain, perfect and enforce such security interest.

#### 9.8 Errors

If a Party discovers an error in the amount of an invoice or payment under this Agreement and notifies the other Party within 60 days after discovering the error, the error shall be corrected as specified in Sections 9.1(g) through 9.1(l) of this Agreement; provided that a Party shall not be entitled to have an error corrected unless the Party notifies the other Party within 12 months after the date of the applicable Revised Adjusted RMR Invoice or Final Invoice, or within 60 days after issuance of the final report with respect to an audit pursuant to Section 12.2(g), whichever is later.

#### 9.9 Payment of Termination Fee

- (a) Within 14 days after the end of each Month during the period in which any Termination Fee is payable under Section 2.5, Owner shall submit an invoice ("Termination Fee Invoice") to ISOCAISO and a copy to the Responsible Utility

for all Termination Fee amounts due for the Month. Each Termination Fee Invoice shall: (i) be broken down by Unit and (ii) clearly identify the source of each input used.

- (b) ISOCAISO shall pay Owner amounts invoiced under this Section 9.9 in accordance with Sections 9.3 through 9.8. If ISOCAISO or, if applicable, the Responsible Utility, has disputed the amount of a Termination Fee stated in a Termination Fee Invoice, then neither ISOCAISO nor the Responsible Utility shall be required to give notice of the same disputed amount as to subsequent Termination Fee Invoices.

#### 9.10 Payment of Final Invoice

- (a) Within 7 days of receipt by Owner of the ~~Final~~ Recalculation Settlement Statement for market transactions for the effective date of termination of this Agreement, Owner shall submit an invoice ("Final Invoice") to ISOCAISO and a copy to the Responsible Utility for all charges and other amounts then due under this Agreement. Amounts then due shall include: (i) charges for all Billable MWh and Ancillary Services provided under this Agreement and not previously invoiced; (ii) the Long-term Planned Outage Adjustment under Section 8.6. and (iii) refunds described in section 9.1(f) for Condition 2 Units. Calculation of the Long-term Planned Outage Adjustment shall be made by deeming the effective date of termination to be the end of the Contract Year, and by assuming that all Long-term Planned Outages scheduled to occur after the termination date occur as scheduled. The Final Invoice shall not include remaining Monthly payments of a

Termination Fee under Section 2.5, which shall continue to be paid monthly until the obligation is extinguished.

- (b) ISOCAISO shall pay Owner the amount stated in the Final Invoice in accordance with Section 9.3 through 9.8.

## ARTICLE 10

### FORCE MAJEURE EVENTS

#### 10.1 Notice of Force Majeure Events

If either Party is unable to perform its obligations under this Agreement due to a Force Majeure Event, the Party unable to perform shall notify the other Party of the Force Majeure Event promptly after the occurrence thereof. The Party's notice may be given orally but shall promptly be confirmed in writing or electronically.

#### 10.2 Effect of Force Majeure Event

- (a) If a Force Majeure Event prevents a Party from performing, in whole or in part, its obligations under this Agreement, such Party's obligations, other than obligations to pay money (unless the means of transferring funds is affected), shall be suspended and such Party shall have no liability with respect to such obligations; provided, that the suspension of the Party's obligations is of no greater scope and of no longer duration than is required by the Force Majeure Event.
- (b) If a Force Majeure Event (other than a flood, storm or drought affecting a hydroelectric Unit) reduces the Availability of a Unit, the Availability shall be determined as if the Unit were available up to the Unit Availability Limit in effect prior to the Force Majeure Event through the earlier of the 120th day following

the Force Majeure Event or until the Unit's Availability is restored, whichever occurs first. If a flood or storm Force Majeure Event reduces the Availability of a hydroelectric Unit, the Availability shall be determined as if the Unit were available up to its Unit Availability Limit in effect prior to the Force Majeure Event through the earlier of the 120th day following the Force Majeure Event or until the Unit's Availability is restored, and as if the Unit were available up to one-half of such Unit Availability Limit from the 120th day through the earlier of the 240th day or the date on which the Unit's Availability is restored. If a drought Force Majeure Event reduces the Availability of a hydroelectric Unit, the Availability shall be determined as if the Unit were available up to its Unit Availability Limit in effect prior to the Force Majeure Event until the Unit's Availability is restored following the end of the drought Force Majeure Event.

### 10.3 Remedial Efforts

The Party that is unable to perform by reason of a Force Majeure Event shall use commercially reasonable efforts to remedy its inability to perform and to mitigate the consequences of the Force Majeure Event as soon as reasonably practicable; provided, that no Party shall be required to obtain replacement power or to settle any strike or other labor dispute on terms which, in the Party's sole discretion, are contrary to its interest and, except to the extent that the Unit's primary fuel is distillate fuel oil or Schedule H expressly requires Owner to maintain fuel oil capability for the Unit, Owner shall not be required to obtain or use fuel oil to operate a Unit. The Party unable to perform shall advise the other Party of its efforts to remedy its inability to perform and to mitigate the

consequences of the Force Majeure Event, and shall advise the other Party of when it believes it will be able to resume performance of its obligations under this Agreement.

## ARTICLE 11

### REMEDIES

#### 11.1 Dispute Resolution

The Parties shall make reasonable efforts to settle all disputes arising out of or in connection with this Agreement. Unless this Agreement expressly provides that a particular type of dispute is not subject to ADR, the Parties shall use ADR procedures to resolve all disputes which are not otherwise settled. Owner and ISOCAISO will promptly join with all other owners of Reliability Must-Run Units and all Responsible Utilities to jointly develop ADR procedures to be used in connection with such disputes. Following unanimous agreement of Owner, ISOCAISO and Responsible Utilities to the ADR procedures, such procedures shall be posted on ISOCAISO's Home Page Website. Until there is unanimous agreement on such procedures, the Parties shall use the ADR procedures contained in Schedule K.

#### 11.2 Waiver of Damages

- (a) Except for the obligations set forth in Section 11.4 (Termination for Default) and Section 12.6 (Indemnity), neither Party shall be liable to the other Party for any claim, loss or damage of any nature arising out of or relating to the performance or breach of this Agreement including replacement power costs, loss of revenue, loss of anticipated profits or loss of use of, or damage to, plant or other property, personal injury, or death; provided, however, that this waiver of liability shall not include or cover any claim, damage or loss arising out of the willful misconduct

of either Party. Amounts that are specifically payable or reimbursable by the other Party under the terms of this Agreement shall not be considered "claims, losses or damages" for purposes of this Section.

- (b) Neither Party shall be liable to the other for any special, indirect, incidental or consequential damages suffered by the other Party or by third parties arising out of, or relating to, this Agreement or the performance of, or breach of any obligation under, this Agreement, or the negligence of any Party. This limitation shall apply even if the Party is advised of the possibility of these damages.
- (c) Except for the obligations to make or adjust payments or pay penalties expressly provided in Section 2.5 (Termination Fee), Section 7.4 (Planned Capital Items), Section 7.5 (Unplanned Repairs), Section 7.6 (Unplanned Capital Items), Section 7.8 (Upgrades of Generating Units), Article 8 (Rates and Charges) and Article 9 (Statements and Payments), of this Agreement, either Party's maximum aggregate liability for any and all claims arising out of or relating to performance or breach of this Agreement during the Contract Year, whether based upon contract, tort (regardless of degree of fault or negligence), strict liability, warranty, or otherwise, including any liability for Owner's failure to Deliver Requested MWh or Requested Ancillary Services shall not exceed \$20 million.

### 11.3 Injunctive Relief

In addition to any other remedy to which a Party may be entitled by reason of the other Party's breach of this Agreement, the Party not in default shall be entitled to seek temporary, preliminary and permanent injunctive relief from any court of competent

jurisdiction restraining the other Party from committing or continuing any breach of this Agreement.

#### 11.4 Termination For Default

- (a) If either Party shall fail to perform any material obligation imposed on it by this Agreement and that obligation has not been suspended pursuant to Section 10, the other Party, at its option, may terminate this Agreement by giving the Party in default notice setting out specifically the circumstances constituting the default and declaring its intention to terminate this Agreement. If the Party receiving the notice disputes the notice, it shall notify the other Party within 14 days after receipt of the notice setting out specifically the grounds of such disputes. Time is of the essence in remedying a default. If the Party receiving the notice does not, within 30 days after receiving the notice, remedy the default or refer the dispute to ADR, the Party not in default shall be entitled by a further notice to terminate this Agreement. The Party not in default shall have a duty to mitigate damages.
- (b) Termination of this Agreement pursuant to this Section 11.4 shall be without prejudice to the right of Owner or ISOCAISO to collect any amounts due to it prior to the time of termination. If ISOCAISO terminates this Agreement as to any Unit(s) due to Owner's default, Owner shall reimburse to ISOCAISO the amount, if any, by which costs incurred by ISOCAISO as a direct result of the termination through the end of the then current Contract Year exceed the costs which ISOCAISO would have incurred absent such termination.

#### 11.5 Cumulative and Nonexclusive

Except as provided in Section 5.4(b), each remedy provided for in this Agreement shall be cumulative and not exclusive.

#### 11.6 Beneficiaries

Except as is specifically set forth in this Agreement, nothing in this Agreement, whether express or implied, confers any rights or remedies under, or by reason of, this Agreement on any persons other than the Parties and their respective successors and assigns, nor is anything in this Agreement intended to relieve or discharge the obligations or liability of any third party, nor give any third person any rights of subrogation or action against any Party. The owner of title to a Unit that is leased to Owner is an intended beneficiary of Section 2.2(e).

### ARTICLE 12

#### COVENANTS OF THE PARTIES

#### 12.1 Insurance

- (a) ~~At all times prior to January 1, 2002, The ISO~~CAISO shall maintain (i) an errors and omissions insurance policy and (ii) director and officer insurance, with combined aggregate coverage of at least \$150 million under the two policies and an operating reserve of at least \$15 million. ~~Effective on or after January 1, 2002,~~ ~~ISO~~The CAISO may reduce the level of insurance coverage, but may not do so unless it provides Owner at least 90 days notice of its intent to reduce the insurance coverage. At Owner's request, ~~ISO~~CAISO shall provide Owner with evidence of the insurance coverage it has in place. This Section 12.1 shall not be



construed to require ISOCAISO to maintain any level of coverage for any period after termination of the Agreement.

- (b) Owner and ISOCAISO will secure and maintain in effect during the term of this Agreement the insurance required by Schedule I. Self-insurance may be utilized by mutual agreement. Owner shall name ISOCAISO as an additional insured on its general commercial liability insurance policies. ISOCAISO shall name Owner as an additional insured on its errors and omissions insurance policies. Owner and ISOCAISO will each certify or cause its respective insurance agent to certify that it is insured under a major risk management program, including self-insured retentions, and except for policies covered by Section 12.1 (a), such insurance will remain in effect in amounts meeting the requirements of Schedule I.

## 12.2 Books And Records

- (a) For a period of 36 months from creation of the records, Owner shall maintain and make available for audit by ISOCAISO complete operations records for each Unit. Such records shall include:
- (i) information for each Settlement Period on the Availability of the Units, Delivered MWh and Delivered Ancillary Services,
  - (ii) outages,
  - (iii) Facility licenses and permits,
  - (iv) copies of operating and maintenance agreements for the Unit,
  - (v) a list of citations filed against the Unit by any environmental, air quality, health and safety, or other regulatory agency in the last 36 months,

- (vi) a list of any resolved and unresolved WSCC log items from the last 36 months pertaining to the Unit,
- (vii) maintenance, overhauls and inspections performed, and
- (viii) books, accounts and all documents required to support Owner's statements, invoices, charges and computations made pursuant to this Agreement.

ISOCAISO may audit Owner's books, accounts and documents relating to invoices, statements, charges and computations no more frequently than once each Contract Year, and only one time following expiration or termination of this Agreement.

- (b) The Responsible Utility shall have the right to participate jointly with ISOCAISO in auditing books, accounts, documents and operating records of the Facilities to the extent required to verify the accuracy and correctness of all Owner's statements, invoices, and computations underlying all Owner charges passed through by ISOCAISO to the Responsible Utility in connection with services rendered by Owner under this Agreement.
- (c) For a period of 36 months from the creation of the records, ISOCAISO shall maintain and make available for audit by Owner all operations records required to permit Owner to verify that ISOCAISO has complied with its obligations to Owner under this Agreement.
- (d) In addition to the audit rights under Section 12.2 (a) and (b), if Owner's rates are determined pursuant to the formula contained in Schedule F, representatives of ISOCAISO and the Responsible Utility shall have the right jointly to audit the

records, accounts and supporting documents of Owner to verify (i) the accuracy of any arithmetic calculation and (ii) application of the formula.

- (e) If Owner's rates are determined pursuant to the formula contained in Schedule F, the California Agency shall have the right to audit the records, accounts and supporting documents of Owner or ISOCAISO to verify the accuracy of any arithmetic calculation and application of the formula, including the accuracy of allocation to accounts under the FERC Uniform System of Accounts, 18 C.F.R. Part 101. If there is more than one California Agency, only one audit shall be conducted by the California Agencies and such audit shall be binding on all the California Agencies.
- (f) Any entity exercising its right to audit under this Section 12.2 shall give the audited entity not less than 30 days prior written notice of the audit. Books or records requested in any audit shall be available for inspection by the auditing entity at the offices of the entity being audited between 9:00 A.M. and 5:00 P.M. on Business Days. Any audit under this Section 12.2 shall be completed not more than 36 months after the records were created. Any audit right herein shall be limited to the books and accounts of Owner or ISOCAISO and shall not extend to the books and accounts of the parent or any other affiliate of Owner or ISOCAISO. The expense of any audit shall be borne solely by the auditing Party or entity.
- (g) No adjustments to payments shall be required as a result of an audit unless, and then only to the extent that, ISOCAISO, Owner, or another entity making such an audit under this Section 12.2 takes written exception to the books and accounts

and makes a claim upon Owner or ISOCAISO for any discrepancies disclosed by such audit within 60 days following issuance of the final audit report.

- (h) All information provided during the course of an audit shall be treated as Confidential Information in accordance with Section 12.5.
- (i) Nothing in this Agreement shall override any obligation Owner or ISOCAISO may have under applicable law to maintain books and records for periods longer than 36 months nor shall this Agreement override any obligation Owner or ISOCAISO may have to make books and records available for audit by FERC or any other entity. Nothing in this Agreement is intended to limit in any manner (i) the authority of FERC to audit the books and records of Owner or ISOCAISO or the manner in which such audit is noticed or conducted or (ii) ISOCAISO's right to audit market participants (including Owner) under the ISOCAISO Tariff.

### 12.3 Representations And Warranties

- (a) ISOCAISO represents and warrants to Owner as follows:
  - (i) ISOCAISO is a validly existing corporation with full authority to enter into this Agreement.
  - (ii) ISOCAISO has taken all necessary measures to have the execution and delivery of this Agreement authorized, and upon the execution and delivery of this Agreement shall be a legally binding obligation of ISOCAISO.
- (b) Owner represents and warrants to ISOCAISO as follows:
  - (i) Owner is a validly existing [limited liability company][corporation] [municipal corporation] with full authority to enter into this Agreement.

- (ii) Owner has taken all necessary measures to have the execution and delivery of this Agreement authorized, and upon the execution and delivery this Agreement shall be a legally binding obligation of Owner.

#### 12.4 Responsibilities

Each Party shall be responsible for protecting its facilities from possible damage by reason of electrical disturbances or faults caused by the operation, faulty operation, or non-operation of the other Party's facilities. The other Party shall not be liable for any damages so caused.

#### 12.5 Confidentiality

- (a) Except as may otherwise be required by applicable law, all information and data provided by the Parties to one another pursuant to this Agreement and marked "Confidential" or otherwise identified with specificity in writing as confidential at the time of disclosure ("Confidential Information") shall be treated as confidential and proprietary material of the providing Party and will be kept confidential by the receiving Party and used solely for purposes of this Agreement. Confidential Information will not include information that is or becomes available to the public through no breach of this Agreement, information that was previously known by the receiving Party without any obligation to hold it in confidence, information that the receiving Party receives from a third party who may disclose that information without breach of law or agreement, information that the receiving Party develops independently without using the Confidential Information, and information that the disclosing Party approves for release in writing. The receiving Party shall keep such information confidential and shall limit the

disclosure of any such Confidential Information to only those personnel within its organization with responsibility for using such information in connection with this Agreement. The receiving Party shall assure that personnel within its organization read and comply with the provisions of this Section 12.5 and any Confidentiality Agreement implementing this Section 12.5. The Parties shall use all reasonable efforts to maintain the confidentiality of the Confidential Information in any litigation, shall promptly notify the providing Party of any attempt by a third party to obtain the Confidential Information through legal process or otherwise. A Party or third party beneficiary under Article 9 which has received Confidential Information may use that information in litigation or regulatory proceedings related to this Agreement but only after notice to the other Party and affording the other Party an opportunity to obtain a protective order or other relief to prevent or limit disclosure of the Confidential Information.

- (b) The Parties may provide any Confidential Information (i) to the Responsible Utility pursuant to provisions of this Agreement under which information is to be provided to that Responsible Utility and as required for settlement and billing; (ii) to any entity with audit rights under Section 12.2 or review rights specified in other provisions of this Agreement, (iii) on a need-to-know basis, to Owner's Scheduling Coordinator, financial institutions, agents, lessors of the Unit and potential purchasers of interests in a Unit; and, (iv) as required for settlement and billing, to Scheduling Coordinators responsible for paying for services provided under this Agreement. As a condition to receiving any Confidential Information under this Section 12.5, the recipient shall execute a Confidentiality Agreement in

the applicable form contained in Schedule N and thereby agree to be subject to the non-disclosure and other obligations contained in this Section 12.5.

- (c) The obligation to provide confidential treatment to Confidential Information shall not be affected by the inadvertent disclosure of Confidential Information by either Party.

## 12.6 Indemnity

Subject to the limitations in Section 11.2 (b), each Party shall indemnify, defend and hold harmless the other Party and its officers, directors, employees, agents, contractors and sub-contractors, from and against all third party claims, judgments, losses, liabilities, costs, expenses (including reasonable attorneys' fees) and damages for personal injury, death or property damage, caused by the negligence or willful misconduct related to this Agreement or breach of this Agreement of the indemnifying Party, its officers, directors, agents, employees, contractors or sub-contractors, provided that this indemnification shall be only to the extent such personal injury, death or property damage is not attributable to the negligence or willful misconduct related to this Agreement or breach of this Agreement of the Party seeking indemnification, its officers, directors, agents, employees, contractors or sub-contractors. This indemnification shall not include or cover any claim covered by any workers' compensation law. This indemnification shall be for an amount not exceeding the deductible of the indemnifying Party's commercial general liability insurance in the case of Owner and errors and omission insurance in the case of ISOCAISO. The indemnified Party shall give the other Party prompt notice of any such claim. The indemnifying Party shall have the right to choose competent counsel, control the conduct of any litigation or other proceeding, and settle any claim.

The indemnified Party shall provide all documents and assistance reasonably requested by the indemnifying Party. Section 14.314 of the ISOCAISO Tariff shall not apply to this Agreement.

#### 12.7 Owner Financial Requirements

- (a) Through the term of the Agreement, Owner shall maintain an investment grade rating by Moody's or Standard and Poor's or provide documentation from a financial institution or corporate owner acceptable to the ISOCAISO that there is an equity position described below. The ISOCAISO shall not unreasonably withhold acceptance of the documentation.
- (i) An equity to debt ratio of at least 30%, or
  - (ii) An equity to total asset ratio of at least 30% or
  - (iii) Demonstrate to the ISOCAISO's reasonable satisfaction that other factors, including, without limitations, commercial financing arrangements, and working capital positions, mitigate the risk of Owner failing to meet the performance requirements under this Agreement.
- (b) If the Owner does not possess and maintain an investment grade rating, an equity position or make other arrangements as described in Section 12.7 (a), then it must provide one of the following:
- (i) Proof of insurance to cover the financial exposure to the ISOCAISO for one year of Capital Items, Repairs, fuel and any other operating expenses;
- or



(ii) Security to cover the financial exposure to the ISOCAISO for one year of Capital Items, Repairs, fuel and any other operating expenses in one of the following forms:

- (A) standby letter of credit;
- (B) corporate guarantee;
- (C) cash deposit; or
- (D) security bond.

## ARTICLE 13

### ASSIGNMENT

#### 13.1 Assignment Rights and Procedures

Neither Party shall assign its rights or delegate its duties under this Agreement without the prior written consent of the other Party, which shall not be unreasonably withheld.

ISOCAISO shall be entitled to deny consent to a proposed assignment by Owner only if the assignee does not meet the financial criteria set out in Section 13.2 (a) or the technical criteria set out in Section 13.2 (b). Notwithstanding the foregoing, if FERC approves an assignment, then the non-assigning Party shall be deemed to have consented to the assignment, subject to the non-assigning Party's right to seek judicial review of a FERC decision. Each Party shall give the other Party prompt notice of any proposed assignment or delegation, together with such information as the other Party may reasonably request with respect to the proposed assignment or assignee. Each Party shall be deemed to consent to the assignment or delegation unless it submits a written objection to the assignment or delegation within 14 days of receiving the notice and all financial and technical information as required in Sections 13.2(a) and 13.2(b). In the event of an

assignment of this Agreement pursuant to a Financing Agreement, ISOCAISO will execute for the benefit of the bank, financial institution or other entity with an interest in the Financing Agreement, a consent to such assignment reasonably acceptable to ISOCAISO and Owner. An assignment of this Agreement by Owner in connection with the sale of a Unit shall terminate Owner's rights and obligations under this Agreement prospectively from the effective date of the assignment.

### 13.2 Limitation on Right to Withhold Consent

- (a) ISOCAISO shall not withhold consent to assignment of this Agreement on financial grounds if the assignee meets the financial requirements in Section 12.7(a) or provides financial security pursuant to Section 12.7(b).
- (b) ISOCAISO shall not withhold consent to an assignment on grounds that the assignee is not technically qualified if the assignee was an Owner of a Reliability Must-Run Unit as of May 1, 1999 or the assignee submits appropriate documentation to the ISOCAISO to establish that it has sufficient resources and expertise to be able to:
  - (i) Secure the necessary fuel and transportation for the fuel for the Facility;
  - (ii) Secure all necessary support services, including water supply, communications, waste disposal, etc. for the Facility;
  - (iii) Provide service from the Facility in compliance with the terms of this Agreement;
  - (iv) Provide the engineering and other technical services required to support operation and maintenance of the Facility;

- (v) Obtain as necessary, and comply with all permits or licenses required to operate or maintain the Facility; and
  - (vi) Provide environmental services required for the operation and maintenance of the Facility.
- (c) The proposed assignee shall provide the last two years' annual audited financial statements and quarterly financial statements (unaudited) prior to the proposed date of purchase. If the proposed assignee is a new company and there are no historical financial statements, then a financial institution or corporate owner must provide pro forma financial statements in a form acceptable to the ISOCAISO.

### 13.3 Transfer of Conditions Following Assignment

If this Agreement is assigned to a new Owner pursuant to Section 13.1, the new Owner may transfer one or more Units to a different Condition by giving ISOCAISO at least seven days prior notice provided that such notice is given not later than 30 days after the effective date of the assignment. The transfer shall become effective on the first day of month following the later of (i) seven days after the effective date of the assignment or (ii) seven days after the date ISOCAISO receives the new Owner's transfer notice. This section shall not apply to assignment to a new Owner which is an affiliate of Owner as defined in 18 C.F.R. Section 161.2.

## ARTICLE 14

### MISCELLANEOUS PROVISIONS

#### 14.1 Notices

Except as otherwise expressly provided in this Agreement or required by law, all notices, consents, requests, demands, approvals, authorizations and other communications

provided for in this Agreement shall be in writing and shall be sent by personal delivery, certified mail, return receipt requested, facsimile transmission or by recognized overnight courier service, to the intended Party at such Party's address set forth in Schedule J. Any notices which may be given orally and are given orally shall be confirmed in writing. All such notices shall be deemed to have been duly given and to have become effective: (a) upon receipt if delivered in person or by facsimile; (b) two days after having been delivered to an air courier for overnight delivery; or (c) seven days after having been deposited in the United States mail as certified or registered mail, return receipt requested, all fees pre-paid, addressed to the applicable address(es) set forth in Schedule J.

#### 14.2 Effect of Invalidation

Each covenant, condition, restriction and other term of this Agreement is intended to be, and shall be construed as, independent and severable from each other covenant, condition, restriction and other term. If any covenant, condition, restriction or other term of this Agreement is held to be invalid by any court or regulatory body having jurisdiction, the invalidity of such covenant, condition, restriction or other term shall not affect the validity of the remaining covenants, conditions, restrictions or other terms hereof unless the invalidity has a material impact upon the rights and obligations of the Parties. If an invalidity has a material impact on the rights and obligations of the Parties, the Parties shall make a good faith effort to renegotiate and restore the benefits and burdens of this Agreement as they existed prior to the determination of an invalidity.

### 14.3 Amendments

- (a) Any amendments or modifications of this Agreement shall be made only in writing and, except for changes authorized by the FERC under Sections 205 or 206 of the Federal Power Act, shall be duly executed by both Parties. To the extent that any amendments or modifications are subject to FERC approval, such amendments or modifications shall become effective when permitted to be effective by FERC. For purposes of this Agreement, transfer of any Unit from one condition to the other condition or termination of the Agreement as to less than all Units shall not constitute a modification or amendment to this Agreement.
- (b) Where Owner's rates are not subject to FERC jurisdiction, either ISOCAISO or Owner may, not later than 90 days prior to the end of each Contract Year, serve a notice on the other Party and the Responsible Utility stating that it requires a review of the terms of this Agreement, including any rates, prices and charges contained therein ("Review Notice").
  - (i) The Review Notice shall, as a minimum requirement, set forth the following:
    - (A) the precise nature of the proposed revisions (indicating, where possible, the relevant Article, Section and Schedule); and
    - (B) justification for each proposed revision.
  - (ii) The Party in receipt of the Review Notice shall respond to such notice within 30 days of its receipt by issuing a notice in response ("Response Notice"). The Response Notice shall, as a minimum requirement, set forth the following:

- (A) those revisions set forth in the Review Notice that are accepted as proposed;
  - (B) those revisions set out in the Review Notice that are not accepted;
  - (C) alternative proposals (if any) to the proposed revisions set out in the Review Notice;
  - (D) any revisions required by the responding party not covered by (A) through (C) above; and
  - (E) its justification for any of the matters raised under Sections 14.3 (b) (ii) (B) (C) or (D).
- (iii) Any Party failing to respond to a Review Notice shall be deemed to have accepted the revisions set out in the Review Notice.
- (iv) Following receipt of the Response Notice the duly authorized representatives of the Parties shall meet to negotiate in good faith any revisions to this Agreement.
- (v) In the event that the Parties are unable to reach agreement on the revisions to be made to this Agreement within 60 days of the date of the Review Notice, either Party may refer the matter for resolution through ADR. The arbitrator shall determine the revisions, if any, to the Agreement on the basis that:
- (A) the purpose of the Agreement is to maintain the reliability of ISOCAISO Controlled Grid; and
  - (B) costs and charges payable by ISOCAISO should reflect the costs of providing services to the ISOCAISO.

(vi) In the event that the Parties agree to the revisions, or such matters are determined through ADR, or a Party fails to respond to a Review Notice, the agreed, determined or deemed accepted revisions shall take effect and the rights and obligations of the Parties shall be amended as from the beginning of the ensuing Contract Year or from such other date and time agreed between the Parties or determined through ADR, and following such time the Parties shall act in accordance with the terms and conditions of this Agreement as amended.

#### 14.4 Filings Under Sections 205 or 206 of the Federal Power Act

Nothing contained in this Agreement shall be construed as affecting the right of Owner unilaterally to make application to FERC for a change in rates, terms and conditions under Section 205 of the Federal Power Act and pursuant to FERC rules and regulations promulgated thereunder. ISOCAISO may challenge such application or may submit complaints concerning Owner's rates, terms and conditions under Section 206 of the Federal Power Act and pursuant to FERC rules and regulations promulgated thereunder.

#### 14.5 Construction

The language in all parts of this Agreement shall in all cases be construed as a whole and in accordance with its fair meaning, and shall not be construed strictly for or against either of the Parties.

#### 14.6 Governing Law

This Agreement shall be interpreted and construed under and pursuant to the laws of the State of California, without regard to conflicts of laws principles.

#### 14.7 Parties' Representatives

Both Parties shall ensure that throughout the term of this Agreement, a duly appointed Representative is available for communications between the Parties. The Representatives shall have full authority to deal with all day-to-day matters arising under this Agreement. If a Party's Representative becomes unavailable, the Party shall promptly appoint another Representative. Acts and omissions of Representatives shall be deemed to be acts and omissions of the Party. Owner and ISOCAISO shall be entitled to assume that the Representative of the other Party is at all times acting within the limits of the authority given by the Representative's Party. Owner's Representatives and ISOCAISO's Representatives shall be identified on Schedule J.

#### 14.8 Merger

This Agreement and the Stipulation and Agreements filed April 2, 1999 and August 14, 2000 in Docket Nos. ER98-441-000 et al. constitute the full agreement of the Parties with respect to the subject matter hereto and supersede all prior agreements, whether written or oral, with respect to such subject matter.

#### 14.9 Independent Contractors

Nothing contained in this Agreement shall create any joint venture, partnership or principal/agent relationship between the Parties. Neither Party shall have any right, power or authority to enter into any agreement or commitment, act on behalf of, or otherwise bind the other Party in any way.

#### 14.10 Conflict with ISOCAISO Tariff

The ISOCAISO Tariff shall govern matters relating to the subject matter of this Agreement which are not set forth in this Agreement. In all other circumstances, this



Agreement shall govern. In the event of a conflict between the terms and conditions of this Agreement and any terms and conditions set forth in the ISO/CAISO Tariff the terms and conditions of this Agreement shall prevail. ~~Provided however, if the ISO Tariff is revised after September 30, 1999, in accordance with the Stipulation and Agreement dated April 2, 1999 in FERC Docket Nos. ER98-441-000 et al. to permit ISO to issue Dispatch Notices before establishment of the "final schedule" (as defined in the ISO Tariff) for the day-ahead market, such revision is an exception to the precedence of this Agreement over the ISO Tariff.~~

#### 14.11 Waiver

The failure to exercise any remedy or to enforce any right provided in this Agreement shall not constitute a waiver of such remedy or right or of any other remedy or right provided herein. A Party shall be considered to have waived any remedies or rights hereunder only if such waiver is in writing.

#### 14.12 Assistance

During the term of this Agreement, each Party shall provide such reasonable assistance and cooperation as the other Party may require in connection with performance of the duties and obligations of each Party under this Agreement, including, but not limited to, assistance in securing any necessary regulatory approvals and in facilitating necessary financing.

#### 14.13 Headings

Article and section headings used in this Agreement are inserted for convenience only and are not intended to be a part hereof or in any way to define, limit, describe or to

otherwise be used in interpreting the scope and intent of the particular provisions to which they refer.

IN WITNESS WHEREOF, this Agreement has been executed as of the date first  
above written.

[OWNER]

By: \_\_\_\_\_

Name:

Title:

The California Independent System  
Operator Corporation

By: \_\_\_\_\_

Name:

Title:

# FERC

## RELIABILITY MUST-RUN SCHEDULES

Schedule A Unit Characteristics, Limitations and Owner Commitments

Schedule B Monthly Option Payment

Schedule C Variable Cost Payment

Part 1 for Thermal Units  
Part 2 for Geothermal Units  
Part 3 for Conventional Hydro Units  
Part 4 for Pumped Storage Hydro Units  
Part 5 for Biomass Generation Units

Schedule D Start-up Payment

Part 1 for Condition 1 Units  
Part 2 for Condition 2 Units

Schedule E Ancillary Services Payment

Part 1 for Condition 1  
Part 2 for Condition 2  
Part 3 for Black Start Services

Schedule F Determination of Annual Revenue Requirements of Must-Run Generating Units

Schedule G Charges for Service in Excess of Contract Service Limits

Schedule H Fuel Oil Service

Schedule I Insurance Requirements

Schedule J Notices

Schedule K Dispute Resolution

Schedule L-1 Request for Approval of Capital Items or Repairs

Schedule L-2 Capital Item and Repair Progress Reports

Schedule M Mandatory Market Bid for Condition 2 Units  
When Dispatched by the ISOCAISO

Schedule N-1 Non-Disclosure and Confidentiality Agreement for Responsible Utilities

Schedule N-2 Non-Disclosure and Confidentiality Agreement for Entities Other than Responsible  
Utilities

Schedule O Owner's Invoice Process

Schedule P Reserved Energy for Air Emissions Limitations

**ARTICLE 15 SCHEDULE A**

Unit Characteristics, Limitations and Owner Commitments

**1. Description of Facility**

Provide the following information for all units at the Facility, regardless of their RMR designation status. Information regarding units not designated as Reliability Must-Run Units is required only if and to the extent that the information is used to allocate Facility costs between Reliability Must-Run Units and other units.

Unit	RMR (Y/N)	Maximum Net Dependable Capacity (includes <del>ISO</del> CAISO-paid Upgrade capacity)*	Fuel Type

For this Facility, the Owner will use \_\_\_\_\_ [insert either MW, MWs, or service hours] in Schedule B to allocate Annual Fixed Revenue Requirements to and among Units. This election shall be applicable to all Facilities containing Reliability Must Run Units subject to any "RMR contract" as defined in the ~~ISO~~CAISO Tariff executed by Owner or any of its affiliates as defined in 18 CFR § 161.2.

\* Maximum Net Dependable Capacity shall reflect any transformer or line loss to the Delivery Point.

**2. Description of RMR Units**

Provide the address(es) of the Units at the Facility and the following tabular information:

	Unit
Type (fossil, combustion turbine, etc.)	
Synchronous Condenser Capability (Y/N)	
Power Factor Range (lead to lag)	
Maximum Reactive Power Leading, MVar	
Maximum Reactive Power Lagging, MVar	
Load at Maximum MVar Lagging, MW	
Load at Maximum MVar Leading, MW	
Black Start Capable (Y/N)	
Automatic Start or Ramp (Y/N)*	
Upgrade Capacity Paid by ISO/CAISO, MW	

\* If "Y", describe the conditions under which the Unit will start or ramp automatically.

**3. Operational and Regulatory Limitations of RMR Units:**

Air Emissions Limitations

List applicable NO<sub>x</sub>, CO, SO<sub>2</sub>, particulate, and other appropriate emissions limits; note the name and address of the lead agency; the agency's applicable rule number(s); and note those pollutants for which an emissions cap applies.

15.1 Monthly Reserved MWh for Air Emission Limitations

Operating Limits related to Ambient Temperatures

Ambient Temperature Correction Factors for Availability Test

Provide a curve or table showing the Ambient Temperature Correction Factors for each Unit (the relationship between Ambient Temperature and Maximum Net Dependable Capability).

FERC License Conditions (hydroelectric Units)

Other Limits (e.g., cooling water discharge)

**4. Delivery Point**

Unit	Transmission Node (Station Name)	Voltage

**5. Metering and Related Arrangements**

Unit	Meter Location	Meter (Manufacturer & Model No.)

**6. Start-up Lead Times**

Non-hydroelectric Units

Unit	Time from notification to synchronization for a Unit that has been off line more than <u>      </u> hours*	Time from notification to synchronization for a Unit that has been off line more than <u>      </u> hours but less than <u>      </u> hours	Time from notification to synchronization for a Unit that has been off line <u>      </u> hours or less

\*"X<sub>max</sub>" used in Schedules C and D shall be equal to or less than the hours in the heading of this column.

Unit	Start-up Segment Number	Generating Unit Down Time (Minutes)	Generating Unit Start-up Time (Minutes)
	1		
	2		
	n		

"X<sub>max</sub>" used in Schedules C and D shall be equal to or less than the hours in the heading of this column. The Start-up Lead Time shall be the Startup time as defined and submitted by the Owner through the process outlined in the CAISO Tariff Schedules and Bids Protocol Section 6.6 or its successor.

Hydroelectric Start-up Lead Times

Unit	Time from notification to synchronization - Normal work hours	Time from notification to synchronization - Outside Normal Work hours

Unit	Time from notification to Minimum Load - Normal work hours	Time from notification to Minimum Load - Outside Normal Work hours

**7. Ramping Constraint**

Describe any constraints the Unit incurs between synchronization and release for full operation.  
Describe any constraints the Unit incurs between Minimum Load and PMax.



**8. Ramp Rate**

Unit	Manual Ramp Rate (normal)	AGC Ramp Rate

Separate Ramp Rates will be shown for each load range and will describe any special restrictions affecting Ramp Rates at various load points, e.g., feed pumps.

Unit	Ramp Rate Segment Number	Output of Point Range (MW)	Minimum Ramp Rate (MW/Minute)	Maximum Ramp Rate (MW/Minute)
	1			
	2			
	n			

Separate Ramp Rates will be shown for each load range and will describe any special restrictions affecting Ramp Rates at various load points, e.g., feed pump operation, heat soaks, etc.

The Ramp Rate shall be the Operational Ramp Rate submitted by the Owner through the process described in the CAISO Tariff. On the Effective Date, the values in the CAISO Master File shall be set equal to the values shown in the table above.

**9. Minimum Load**

Unit	Manual (MW)	AGC (MW)

**10. Minimum Run Time**

Unit	Hours

**11. Minimum Off Time**

Unit	Hours

**12. Contract Service Limits**

Unit	Maximum Annual MWh	Maximum Annual Service Hrs	Maximum Annual Start-ups

Maximum Monthly MWh (Hydroelectric Units only)

MWh

Unit	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec

**13. Owner's Repair Cost Obligation**

Owner's Repair Cost Obligation for the current Contract Year is \$~~0.00~~.

**14. Existing Contractual Limitations and Other Contract Restrictions on Market Transactions**

**15. Applicable UDC Tariff(s)**

[List each Tariff and schedule to which it applies]

**ARTICLE 16 SCHEDULE B**

**Monthly Option Payment**

The formulas and values used to compute the Monthly Option Payment in accordance with Section 8.1 and Section 8.2 for each Unit for each Month are set forth in Equation B-1 below:

**Equation B-1**

$$\text{Monthly Option Payment} = \text{Monthly Availability Payment} + \text{Monthly Surcharge Payment} - \text{Monthly Nonperformance Penalty}$$

The Monthly Option Payment can never be less than zero.

1. The Monthly Availability Payment is calculated in accordance with Equation B-2 below:

**Equation B-2**

$$\text{Monthly Availability Payment (\$)} = \text{lesser of } \left[ \begin{array}{l} \text{Current} \\ \text{Monthly} \\ \text{Availability} \\ \text{Payment (\$)} \end{array} \right] \text{ or } \left[ \begin{array}{l} 100\% \text{ of AFRR} \\ \text{minus} \\ \text{Cumulative Monthly} \\ \text{Availability Payments} \\ \text{Excluding Current} \\ \text{Monthly Availability} \\ \text{Payment (\$)} \end{array} \right]$$

2. The Current Monthly Availability Payment is calculated in accordance with Equation B-3 below:

**Equation B-3**

$$\text{Current Monthly Availability Payment (\$)} = \text{Sum for all hours} \left[ \begin{array}{l} \text{Hourly} \\ \text{Availability} \\ \text{Charge} \\ \text{(\$/hr)} \end{array} \right] * \left[ \begin{array}{l} \text{Unit Availability} \\ \text{Limit (MW)} \\ \hline \text{Maximum} \\ \text{Net Dependable} \\ \text{Capacity (MW)} \end{array} \right]$$

Where:

- A. Hourly Availability Charge is calculated in accordance with Equation B-4 below:

Equation B-4

$$\text{Hourly Availability Charge} = \text{Hourly Availability Rate} * \text{Fixed Option Payment Factor}$$

Where:

- Hourly Availability Rate is calculated in accordance with Equation B-5 below.

Equation B-5

$$\text{Hourly Availability Rate} = \frac{\text{Annual Fixed Revenue Requirement}}{\text{Target Available Hours}}$$

Annual Fixed Revenue Requirement is set forth in Section 7 below.

Target Available Hours are set forth in Section 6 below.

- For Units under Condition 1, the Fixed Option Payment Factor is set forth in Table B-0 below:

Table B-0	
Unit	Fixed Option Payment Factor

For Units under Condition 2, the Fixed Option Payment Factor is 1.

The Hourly Availability Charges for the Contract Year are set forth in Table B-1 below:

Table B-1		
	Condition 1	Condition 2
Unit 1		

- B. Unit Availability Limit is defined in Article 1 of the Agreement.
  - C. Maximum Net Dependable Capacity is shown in Section 1 of Schedule A.
3. The Monthly Surcharge Payment is calculated in accordance with Equation B-6 below:

Equation B-6

$$\text{Monthly Surcharge Payment (\$)} = \text{lesser of } \left[ \begin{array}{l} \text{Current Monthly Surcharge Payment (\$)} \\ \text{or} \\ 100\% \text{ of Sum of all Annual Capital Item Costs minus Cumulative Monthly Surcharge Payments Excluding Current Monthly Surcharge Payment (\$)} \end{array} \right]$$

4. The Current Monthly Surcharge Payment is calculated in accordance with Equation B-7 below:

Equation B-7

$$\text{Current Monthly Surcharge Payment (\$)} = \text{Sum for all hours} \left[ \begin{array}{l} \text{Sum of all Hourly Capital Item Charges (\$/hr)} * \frac{\text{Unit Availability Limit (MW)}}{\text{Maximum Net Dependable Capacity (MW)}} \end{array} \right]$$

Where:

A. The Hourly Capital Item Charge for each Capital Item approved pursuant to Sections 7.4 or 7.6 is calculated in accordance with Equation B-8 below:

Equation B-8

$$\text{Hourly Capital Item Charge} = \text{Hourly Capital Item Rate} * \text{Surcharge Payment Factor}$$

Where:

- Hourly Capital Item Rate is calculated in accordance with Equation B-9 below:

Equation B-9

$$\text{Hourly Capital Item Rate} = \frac{\text{Annual Capital Item Cost}}{\text{Target Available Hours}}$$

- Annual Capital Item Cost is the amount recoverable by Owner under this Agreement in a Contract Year for each Capital Item approved pursuant to Section 7.4 or Section 7.6.
- Target Available Hours are shown in Section 6 below.
- For Units under Condition 1, the Surcharge Payment Factor for all Capital Items covered by the Small Project Budget shall be the Fixed Option Payment Factor. For all other Capital Items, the

Surcharge Payment Factor shall be as agreed to by Owner and ISOCAISO. If the Owner and ISOCAISO do not agree on the Surcharge Payment Factor, the Surcharge Payment Factor shall equal the Fixed Option Payment Factor, unless the Owner demonstrates in ADR that it would not have installed the proposed Capital Item in accordance with Good Industry Practice but for its obligations to the ISOCAISO under this Agreement, in which case the Surcharge Payment Factor shall be as determined in ADR.

- For Units under Condition 2, the Surcharge Payment Factor is 1.

The Hourly Capital Item Charges for the Contract Year are set forth in Table B-2 below:

Table B-2					
Unit	Capital Item Project No.	Annual Capital Item Cost	Condition 1 Surcharge Payment Factor	Condition 1 Hourly Capital Item Charge	Condition 2 Hourly Capital Item Charge

- B. Unit Availability Limit is defined in Article 1 of the Agreement.
- C. Maximum Net Dependable Capacity is shown in Section 1 of Schedule A.

5. The Monthly Nonperformance Penalty is calculated pursuant to Section 8.5 using the following variables:

A. Hourly Penalty Rate

A Unit's Hourly Penalty Rate for each Contract Year is the lesser of (a) the Unit's Hourly Availability Rate for the Contract Year (calculated pursuant to Item 2.A above), or (b) three times the Unit's Hourly Availability Charge for the Contract Year (as shown in Table B-1 above).

The Hourly Penalty Rates for the Contract Year are set forth in Table B-3 below:

Table B-3		
Unit	Condition 1	Condition 2
Unit 1		

B. Hourly Surcharge Penalty Rate

A Unit's Hourly Surcharge Penalty Rate for each Capital Item for each Contract Year is the lesser of (a) the corresponding Hourly Capital Item Rate for the Contract Year (calculated pursuant to Item 4.A above), or (b) three times the applicable Hourly Capital Item Charge for the Contract Year (as shown in Table B-2 above). The Hourly Surcharge Penalty Rates for the Contract Year are set forth in Table B-4 below:

Table B-4				
Unit	Capital Item Project No.	Hourly Capital Item Rate	Condition 1 Hourly Surcharge Penalty Rate	Condition 2 Hourly Surcharge Penalty Rate

--	--	--	--	--

6. Target Available Hours

A Unit's Target Available Hours for each Contract Year are calculated in accordance with the Equation B-10 below:

Equation B-10

$$\text{Target Available Hours (TAH)} = \text{Hours in the Calendar Year} - (\text{Average Other Outage Hours} + \text{Long-Term Planned Outage Hours})$$

Average Other Outage Hours means the average annual Other Outage Hours for the Unit during the 60-month period ending June 30 of the previous calendar year.

Long-term Planned Outage Hours means the Long-term Planned Outage Hours for the Contract Year scheduled with ISOCALISO pursuant to Section 7.2(a). For periods prior to December 31, 1998, Other Outage Hours shall exclude a planned interruption, in whole or in part, in the electrical output of a Unit to permit Owner to perform a major equipment overhaul or inspection or for new construction work, but only if the outage lasted 21 or more consecutive days.

Long-term Planned Outage Hours scheduled for a Contract Year shall be subject to the Long-term Scheduled Outage Adjustment pursuant to Section 8.6 of the Agreement.

The Average Other Outage Hours, Long-term Planned Outage Hours and Target Available Hours for each Unit for the Contract Year are shown in Table B-5 below:

Table B-5			
Unit	Average Other Outage Hours	Long-term Planned Outage Hours	TAH

For the purposes of calculating Target Available Hours for the Contract Year ending December 31, 1999, (a) Average Other Outage Hours shall be calculated using the average annual Other Outage Hours for the Unit during the 60-month period ending December 31, 1998, and (b) Long-term Planned Outage Hours shall be calculated using the hours scheduled for performing Long-term Planned Outages as if the Agreement had become effective on January 1, 1999.

7. Annual Fixed Revenue Requirement (AFRR)

The Annual Fixed Revenue Requirement for each Unit is set forth in Table B-6 below. For any Contract Year commencing on or after January 1, 2002, the Annual Fixed Revenue Requirement shall be determined by the Formula Rate set forth in Schedule F, unless Owner files a superseding rate schedule under Section 205 of the Federal Power Act.

Table B-6
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Unit	Annual Fixed Revenue Requirement

8. Limited Section 205 Filing for an Extension of Contract Term

If ISOCAISO has extended the term of this Agreement pursuant to Section 2.1(b), then not later than October 31 of the expiring Contract Year, Owner shall make a filing with FERC under Section 205 of the Federal Power Act containing the values in Tables B-1 through B-6 for the ensuing Contract Year.

In the event that a Long-term Planned Outage that is scheduled for the last quarter of the expiring Contract Year is postponed or rescheduled after October 31 of such year to the ensuing Contract Year, Owner shall make an additional Section 205 filing to revise the values in Tables B-1 through B-5 to reflect such rescheduled Long-term Planned Outage Hours.



## SCHEDULE C

### Variable Cost Payment Part 1 for Thermal Units

The Variable Cost Payment for each Unit for the Billing Month shall be the amount calculated in accordance with the following formula:

$$\text{Variable Cost Payment} = \begin{array}{l} \text{A. } \text{ISOCAISO Unit Monthly Billed Fuel Cost} + \\ \text{B. } \text{ISOCAISO Unit Monthly Fuel Imbalance} \\ \text{C. } \text{Charge} + \\ \text{D. } \text{ISOCAISO Monthly Other Fuel Related} \\ \text{E. } \text{Cost} + \\ \text{F. } \text{ISOCAISO Monthly Emissions Cost} + \\ \text{G. } \text{ISOCAISO Monthly Variable O\&M Cost} + \\ \text{ISOCAISO Scheduling Coordinator Charge} \\ + \\ \text{ISOCAISO ACA Charge} \end{array}$$

Each component of the Variable Cost Payment for thermal Units will be calculated as described below:

#### A. ISOCAISO Unit Monthly Billed Fuel Cost

The ISOCAISO Unit Monthly Billed Fuel Cost is calculated in accordance with Equation C1-0.

Equation C1-0

$$\left( \begin{array}{c} \text{ISOCAISO} \\ \text{Unit} \\ \text{Monthly} \\ \text{Billed} \\ \text{Fuel Cost} \\ (\$) \end{array} \right) = \frac{\begin{array}{c} \text{Monthly sum of the} \\ \text{ISOCAISO Unit Hourly Cap Heat} \\ \text{Input} \\ \text{for this Unit} \\ \text{(MMBtu)} \end{array}}{\begin{array}{c} \text{Monthly sum of the ISOCAISO} \\ \text{Unit Hourly Cap Heat Input} \\ \text{for all Units at the Facility} \\ \text{(MMBtu)} \end{array}} * \left( \begin{array}{c} \text{ISOCAISO} \\ \text{Facility} \\ \text{Monthly} \\ \text{Billed} \\ \text{Fuel Cost} \end{array} \right)$$

Where:

- ISOCAISO Unit Hourly Cap Heat Input for each Unit is calculated in accordance with Equation C1-6;
- The ISOCAISO Facility Monthly Billed Fuel Cost is calculated in accordance with Equation C1-1.

#### 1. The ISOCAISO Facility Monthly Billed Fuel Cost

The ISOCAISO Facility Monthly Billed Fuel Cost is calculated in accordance with Equation C1-1.

**Equation C1-1**

$$\left( \begin{array}{c} \text{ISOCAISO} \\ \text{Facility} \\ \text{Monthly} \\ \text{Billed} \\ \text{Fuel Cost} \\ (\$) \end{array} \right) = \text{Lesser of} \left( \begin{array}{c} \text{ISOCAISO} \\ \text{Facility} \\ \text{Cumulative} \\ \text{Actual} \\ \text{Fuel Cost} \\ (\$) \end{array} \right) \text{ or } \left( \begin{array}{c} \text{ISOCAISO} \\ \text{Facility} \\ \text{Cumulative} \\ \text{Cap} \\ \text{Fuel Cost} \\ (\$) \end{array} \right) - \left( \begin{array}{c} \text{ISOCAISO} \\ \text{Facility} \\ \text{Cumulative} \\ \text{Billed} \\ \text{Fuel Cost} \\ (\$) \end{array} \right)$$

Where:

- The ISOCAISO Facility Cumulative Actual Fuel Cost is the sum of all ISOCAISO Unit Monthly Actual Fuel Costs for all Units at the Facility since the start of the Contract Year, including the current Month. ISOCAISO Unit Monthly Actual Fuel Costs for each Unit is calculated in accordance with Equation C1-2.
- The ISOCAISO Facility Cumulative Cap Fuel Cost is the sum of all ISOCAISO Unit Monthly Cap Fuel Costs for all Units at the Facility since the start of the Contract Year, including the current Month. ISOCAISO Unit Monthly Cap Fuel Costs is the sum of the ISOCAISO Unit Hourly Cap Fuel Cost (calculated pursuant to Equation C1-5) for each hour of the Month for each Unit.
- The ISOCAISO Facility Cumulative Billed Fuel Cost is the sum of all ISOCAISO Unit Monthly Billed Fuel Costs for all Units at the Facility since the start of the Contract Year, excluding the current Month. ISOCAISO Unit Monthly Billed Fuel Cost for each Unit is calculated in accordance with Equation C1-0.

**2. ISOCAISO Unit Monthly Actual Fuel Cost**

The ISOCAISO Unit Monthly Actual Fuel Cost is calculated in accordance with Equation C1-2.

**Equation C1-2**

$$\left( \begin{array}{c} \text{ISOCAISO} \\ \text{Unit} \\ \text{Monthly} \\ \text{Actual} \\ \text{Fuel Cost} \\ (\$) \end{array} \right) = \frac{\text{Monthly sum of the ISOCAISO Unit Hourly Cap Heat Input for the Unit (MMBtu)}}{\text{Monthly sum of the Unit Hourly Cap Heat Inputs for all units at the Facility metered by the Fuel Meter (MMBtu)}} * \left[ \left( \begin{array}{c} \text{Monthly} \\ \text{Metered} \\ \text{Fuel} \\ \text{MMBtu} \end{array} \right) * \left( \begin{array}{c} \text{ISOCAISO} \\ \text{Monthly} \\ \text{Fuel} \\ \text{Price} \\ (\$/\text{MMBtu}) \end{array} \right) - \left( \begin{array}{c} \text{Monthly} \\ \text{Start-up} \\ \text{Fuel Cost} \\ (\$) \end{array} \right) \right]$$

Where:

- ISOCAISO Unit Hourly Cap Heat Input is calculated in accordance with Equation C1-6.
- Unit Hourly Cap Heat Input is calculated in accordance with either Equation C1-7a or C1-7b.

- Monthly Metered Fuel is the non-duplicative sum of the quantities of fuel for the Month as measured by all gas metering systems or fuel oil measuring systems, as applicable ("Fuel Meters"), for the Unit.

(a) If the fuel is natural gas, the Owner may select from one of three options for the Fuel Meter:

- (i) the revenue meter used by the entity providing natural gas to measure gas delivered to one or more Units ("Fuel Custody Meter");
- (ii) a gas metering system installed at the Facility to measure gas used in one or more Units that meets the measurement accuracy standard in the tariff of the local gas distribution company in whose service area the Facility is located and the measurement accuracy standards set forth below, and is subject to an annual accuracy test performed under the ISOCAISO's direction, as described below; or
- (iii) a gas metering system installed at the Facility by the local gas distribution company in whose service area the Facility is located and maintained by the local gas distribution company to the same standards as revenue meters of the local gas distribution company.

For the selected Fuel Meter option, the Owner shall provide the required information for all Units, both RMR and non-RMR, connected to the specific Fuel Custody Meter.

If the Owner selects option (ii), the Owner shall assure the overall accuracy of the gas metering systems<sup>1</sup> in use for the Units are within acceptable industry and regulatory standards.<sup>2</sup> Gas metering systems shall be designed, installed, calibrated and maintained according to standards set forth by the American Gas Association (AGA), the American National Standards Institute (ANSI) and the California Public Utilities Commission (CPUC). An audit trail of all calibration records and measurement parameters used in volume and heating-value calculations as recorded electronically by the flow computer shall be maintained and all data shall be in no-longer-than-hourly intervals. All equations and calculations performed by the flow computer may be reviewed for accuracy and completeness, including compressibility, volumetric flow and energy flow, by the ISOCAISO or its agent. A consistent base pressure (14.73 psi) and base temperature (60° F) shall be used at all times. If the Facility has multiple sources of fuel gas, a gas chromatograph ("GC") shall be installed which analyzes all constituents of the blended gas, with the sampling point downstream of the individual supplies such that proper mixing occurs prior to sampling. The GC speed loop shall permit analysis of the gas in "real time".

In order to ensure the accuracy of a gas metering system selected under option (ii), an initial acceptance test shall be conducted by Owner and shall be witnessed by the

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<sup>1</sup> The gas metering system includes the primary measurement element (orifice, turbine meter, etc.); secondary elements such as pressure, temperature and heating-value measurement devices; the gas chromatograph, the flow computer or other data-collection and storage device; and the communication or output system.

<sup>2</sup> The American Gas Association (AGA) and the American National Standards Institute (ANSI) publish industry standards that gas utilities and gas transportation companies use for gas metering. Applicable standards include: AGA Report No. 3, Orifice Metering of Natural Gas; AGA Report No. 7, Measurement of Gas by Turbine Meters, AGA Report No. 8, Compressibility Factors of Natural Gas; AGA Report No. 9, Measurement of Gas by Multipath Ultrasonic Meters; ANSI B109.2, Diaphragm Type Gas Displacement Meters; and ANSI B109.3 Rotary Type Gas Displacement Meters. Also, CPUC General Order 58-A requires customer meters to register accurately to within - 2% to 1%.

ISOCAISO or its agent to assure the installation meets applicable industry standards. Such a test shall be conducted at five load points (maximum load, minimum load, and three evenly spaced load points), under steady state conditions (i.e., off Automatic Generation Control), and for a minimum of one hour at each load point. Analysis of the test results shall consist of a side-by-side comparison of volumetric flow, energy flow, gas-specific gravity and mole percents, and other factors mutually agreed to by the ISOCAISO and Owner for the Fuel Custody Meter and the meter installed at the Facility under option (ii). The gas metering system installed under option (ii) shall be deemed acceptable if the side-by-side energy flow comparison for the period shall be within +1 percent to -2 percent. The gas-metering system shall meet the required accuracy throughout the entire operating range of the RMR Unit. Following ISOCAISO acceptance, an annual routine test shall be conducted at a time chosen by the ISOCAISO to verify and confirm the performance of Owner's gas-metering system. With the exception that the test shall be conducted at one load point specified by the ISOCAISO, such a test shall be conducted in a similar fashion to the initial acceptance test and shall include inspection of the primary flow element; instrument end-to-end calibration; confirmation of integrity of sensing lines (meaning there shall be no leaks); confirmation of proper GC operation; and proper flow-computer operation and data handling. All systems and sub-systems utilized during the initial acceptance test, including, but not limited to, (a) all primary devices, including the differential producing device of the gas metering system, the GC, and differential pressure ("dP") and temperature instruments; (b) all secondary devices and circuits, including dP and temperature transmitters and circuits, sensing lines, GC sampling line and secondary circuits; and (c) all electronic devices, flow computers and devices, shall be sealed with an ISOCAISO-certified seal and no maintenance work or modifications and changes,

including making any changes to flow computer programming, shall be permitted without prior approval by the ISOCAISO.

If any part of the option (ii) gas-metering system requires either routine or emergency maintenance, the Owner shall notify the ISOCAISO immediately by telephone or other means specified by the ISOCAISO. The Owner shall inform the ISOCAISO of the time period during which such maintenance is expected to occur. The ISOCAISO may, at its discretion, require gas-metering systems which are changed or modified during maintenance or repair to undergo re-certification, including acceptance testing. If the maintenance activity is necessary due to concerns that the gas-metering system is not operating in accordance with the required accuracy standards, such maintenance work shall be completed within 2 business days from the time when the concern was first noted.

A V-cone meter may not be used under option (ii), unless the meter was installed prior to January 1, 1997.

If, as a result of a change in the use of fuel gas from a supplier other than the local distribution company, the properties of the fuel gas change materially (Higher Heating Value (HHV) or Specific Gravity (SG) varies more than -3 percent to +3 percent due to the addition of new gas constituents) following the installation of a gas metering system under option (ii) or option (iii), Owner shall notify the ISOCAISO within twenty-four (24) hours. Acceptance testing shall be conducted to verify the metering accuracy due to the change in fuel gas supply and to test whether Owner's gas metering system meets the technical requirements of this specification. Owner shall be obligated to install any equipment necessary to bring its gas metering system into compliance. Owner shall not enter into any third-party agreements for non-pipeline grade fuel gas without the prior approval of the ISOCAISO. Such approval shall not be granted until the ISOCAISO has evaluated Owner's gas metering system, including the effect of the non-pipeline grade fuel gas on metering accuracy.

If an Owner selects option (iii) and the Facility has multiple sources of fuel gas, the local gas distribution company shall install a GC which analyzes all constituents of the blended gas, with the sampling point downstream of the individual supplies such that proper mixing occurs prior to sampling. The GC speed loop should permit analysis of the gas in "real time".

(b) If the fuel is other than natural gas, the Fuel Meter value shall be determined monthly by measuring the fuel oil consumed during the month using, at Owner's one-time election, either (i) a metering process which is acceptable to the Owner and ISOCAISO or (ii) a calculation acceptable to the Owner and ISOCAISO based on a tank-volume measurement process performed on the day immediately prior to the beginning of the Month and the last day of the Month and fuel oil deliveries during the Month. The metering or measurement process adopted shall comply with, or be comparable to, one or more applicable American Petroleum Institute ("API") Manual of Petroleum Measurement Standards.<sup>3</sup> If Owner and ISOCAISO cannot agree on an acceptable process, it shall be determined through ADR pursuant to Schedule K to this Agreement. Owner shall be permitted to change its election between metering as described in (i) above or tank volume measurement described in (ii) above only to reflect changes in the physical circumstances of the Unit or a change in the type of fuel burned at the Unit.

During any period in which the Fuel Meter fails to accurately measure gas flow, the Owner shall

<sup>3</sup> The applicable API Manual of Petroleum Measurement Standards are: Chapter 2.2A (Measurement and Calibration of Upright Cylindrical Tanks by the Manual Strapping Method); Chapter 3.1B (Standard Practice for Level Measurement of Liquid Hydrocarbons in Stationary Tanks by Automatic Tank Gauging); Chapter 3.3 (Level Measurement of Liquid Hydrocarbons in Stationary Pressurized Storage Tanks by Automatic Tank Gauging); Chapter 5.2 (Measurement of Liquid Hydrocarbons by Displacement Meters); and Chapter 5.3 (Measurement of Liquid Hydrocarbons by Turbine Meters).

provide information to the ISOCAISO sufficient to estimate the gas flow during such failure. This information may include unit electric-generating history, accurate recorded gas flow based on another meter and heat input characteristics of all Units served by the failed meter. This information will be used to estimate the gas flow during the failure period to the mutual satisfaction of the ISOCAISO, the Responsible Utility and the Owner.

If a Fuel Meter serves RMR Units as well as other units, the heat input characteristics of the other units will be included in Table C1-7a or C1-7b, as applicable, and the Monthly sum of the Unit Hourly Cap Heat Inputs for all units at the Facility metered by the Fuel Meter used in Equation C1-2 will include Hourly Cap Heat Inputs for such other units calculated using Equation C1-7a or C1-7b, whichever is applicable.

- ISOCAISO Monthly Fuel Price is calculated in accordance with Equation C1-3.
- Monthly Start-Up Fuel Cost is the sum of the Start-Up Fuel Costs for all Start-ups (for Market and Nonmarket Transactions) in the Month for all units metered by the Fuel Meter with the Start-up Fuel Costs for each Unit calculated in accordance with Equations D-1a or D-1b in Schedule D, as applicable. If a Start-up is initiated but is not successfully completed, the Start-up Fuel Costs shall be adjusted in accordance with Equation C1-2a:

$$\begin{array}{rcccl}
 & & \text{Equation C1-2a} & & \\
 & & \text{Number of hours} & & \\
 & & \text{committed to the} & & \\
 & & \text{Start-up} & & \\
 \text{Adjusted} & & \text{-----} & & \text{Start-up} \\
 \text{Start-up} & & & & \text{Fuel Costs} \\
 \text{Fuel Cost} & = & \text{Applicable} & * & \text{(\$)} \\
 \text{for Canceled} & & \text{Start-up Lead Time} & & \\
 \text{Starts} & & \text{in hours shown in} & & \\
 \text{(\$)} & & \text{Section 6 of} & & \\
 & & \text{Schedule A} & & 
 \end{array}$$

Where:

- The “number of hours committed to the Start-up” is the lesser of (a) time elapsed between the initiation of the Start-up and the cancellation or (b) the Applicable Start-up Lead Time as shown in Section 6 of Schedule A.

### 3. ISOCAISO Monthly Fuel Price

The ISOCAISO Monthly Fuel Price is calculated in accordance with Equation C1-3.

$$\begin{array}{rcc}
 & \text{Equation C1-3} & \\
 \text{ISOCAISO Monthly Fuel Price} & = & \frac{\text{Monthly sum of ISOCAISO Unit Hourly Cap Fuel Cost (\$)}}{\text{Monthly sum of ISOCAISO Unit Hourly Cap Heat Input (MMBtu)}} \\
 \text{(\$/MMBtu)} & & 
 \end{array}$$

Where:

- ISOCAISO Unit Hourly Cap Fuel Cost (\$) is calculated in accordance with Equation C1-5;
- ISOCAISO Unit Hourly Cap Heat Input (MMBtu) is calculated in accordance with Equation C1-6.

4. **Intentionally Omitted** (There is no Equation C1-4.)

5. **ISOCAISO Unit Hourly Cap Fuel Cost**

For each hour, the ISOCAISO Unit Hourly Cap Fuel Cost is calculated in accordance with Equation C1-5.

**Equation C1-5**

$$\text{ISOCAISO Unit Hourly Cap Fuel Cost (\$)} = \text{ISOCAISO Unit Hourly Cap Heat Input (MMBtu)} \times \text{Hourly Fuel Price (\$/MMBtu)}$$

Where:

- The Hourly Fuel Price is calculated in accordance with Equation C1-8;
- The ISOCAISO Unit Hourly Cap Heat Input (MMBtu) is calculated in accordance with Equation C1-6.

6. **ISOCAISO Unit Hourly Cap Heat Input**

For each hour, the ISOCAISO Unit Hourly Cap Heat Input is calculated in accordance with Equation C1-6.

**Equation C1-6**

$$\text{ISOCAISO Unit Hourly Cap Heat Input} = \text{Unit Hourly Cap Heat Input (MMBtu)} * \frac{\text{Billable MWh}}{\text{Hourly Metered Total Net Generation (MWh)}}$$

Where:

- Unit Hourly Cap Heat Input is calculated in accordance with either Equation C1-7a or C1-7b.

7. **Unit Hourly Cap Heat Input (MMBtu)**

The Unit Hourly Cap Heat Input to a Unit for any load is given by the following equations and shall be determined either by a polynomial equation (C1-7a) or exponential equation (C1-7b):

**Equation C1-7a**

$$\text{Unit Hourly Cap Heat Input} = 1.02 * (AX^3 + BX^2 + CX + D) * E$$

**Equation C1-7b**

$$\text{Unit Hourly Cap Heat Input} = 1.02 * (A * (B + CX + De^{FX})) * E$$

Where:

- X is Unit's Hourly Metered Total Net Generation, MWh;
- e is the base of natural logarithms;
- A, B, C, D are coefficients given for Equation C1-7a in Table C1-7a and given for Equation C1-7b in Table C1-7b;
- The coefficient E is applicable only when burning fuel oil. At all other times, it shall be set to 1.0.
- F is a coefficient given in Table C1-7b.

Table C1-7a					
	A	B	C	D	E

Table C1-7b						
	A	B	C	D	E	F

**8. Hourly Fuel Price**

The Hourly Fuel Price for Units shall be the same for each hour of a given day and is calculated in accordance with Equation C1-8.

**Equation C1-8 (Gas)**

$$\text{Hourly Fuel Price (\$/MMBtu)} = \text{Commodity Price (\$/MMBtu)} + \text{Intrastate Transportation Rate (\$/MMBtu)}$$

**Equation C1-8 (Oil)**

$$\text{Hourly Fuel Price (\$/MMBtu)} = \text{Commodity Price (\$/MMBtu)} + \text{Transportation Rate (\$/MMBtu)}$$

**Commodity Price for Natural Gas**

For the Facilities within the service area of SCE or SDG&E, the Commodity Price shall be the product of 1.02 and the simple average of the following indices:

- Gas Daily, SoCal Gas, Large Packages index (midpoint)
- BTU Daily Gas Wire, SoCal Border index, Topock
- NGI Daily Gas Price Index, Southern California Border (average)



For the Facilities within the service territory of PG&E, the Commodity Price shall be the product of 1.02 and the simple average of the following indices:

- Gas Daily, PG&E Citygate index (midpoint)
- NGI Daily Gas Price Index, PG&E Citygate (average)

The indices to be used for each Settlement Period in a given day are shown in Table C1-8. Where more than one day's index is shown for a Trading Day, the average of the two daily indices should be used. If an applicable index for a day, which is used to compute the index's average for a Trading Day, is not published, then that index will not be used to compute the Commodity Price for that trading day. If no index for a day is published, then the average of applicable indices on the Index Publication Date preceding and the Index Publication Date following such day will be substituted for the Index Publication Date index for that day in Table C1-8. In the event that an index ceases to be published, Parties shall agree on a replacement index.

Table C1-8

Natural Gas Price Indices

Trading Day	Index Publication Date*		
	Gas Daily **	Btu Daily ** Gas Wire	NGI Daily ** Price Index
Tuesday	Tuesday/ Wednesday	Monday/ Tuesday	Tuesday/ Wednesday
Wednesday	Wednesday/ Thursday	Tuesday/ Wednesday	Wednesday/ Thursday
Thursday	Thursday/ Friday	Wednesday/ Thursday	Thursday/ Friday
Friday	Friday/ Monday	Thursday/ Friday	Friday/ Monday
Saturday	Monday/ Tuesday	Friday/ Monday	Monday/ Tuesday
Sunday	Monday/ Tuesday	Friday/ Monday	Monday/ Tuesday
Monday	Monday/ Tuesday	Friday/ Monday	Monday/ Tuesday

\* The Index Publication Date is the date of the publication which contains the prices for the applicable Trading Day.

\*\* Where more than one day's index is shown for a Trading Day, the average of the two daily indices should be used.

Gas Daily: The "Flow Date(s)" column should match the Trading Day.

Btu Daily: The Index Publication Date should be the day prior to the Trading Date in the Table above, except for Sunday and Monday, where Friday should be used as the Index Publication Date.

NGI Daily: The Index Publication Date should be the same as the Trading Date in the tables above, except for Saturday and Sunday, where Monday should be used as the Index Publication Date.

#### **Commodity Price for Distillate Fuel Oil**

The Commodity Price for Distillate Fuel Oil shall be the simple average of the midpoint of the ranges for CARB No. 2 Diesel and for Jet as published in Platt's Oilgram United States West Coast Product Assessments (page 22). If the Unit can burn only Jet, the Commodity Price shall be the midpoint of the range for Jet.

In an event the index ceases to be published, the Parties shall agree on a replacement index.

For distillate fuel, the index will be for the last day prior to the RMR Transaction Day.

#### **Commodity Price for No. 6 Residual Fuel Oil**

The fuel price shall be the prudent actual replacement cost of the fuel consumed, or, if the fuel is consumed and not replaced, then the fuel price will be "last-in-first-out" (LIFO) inventory price of the fuel consumed.

Where conversion from barrels of Fuel to MMBtu is required, the following conversion coefficients shall be used:

- No. 1 Distillate Fuel Oil - 5.754 MMBtu per barrel;
- No. 2 Distillate Fuel Oil - 5.796 MMBtu per barrel;
- Jet Fuel - 5.650 MMBtu per barrel;
- No. 6 Residual Fuel Oil - 6.258 MMBtu per barrel.

#### **Intrastate Transportation Rate for Gas**

The Intrastate Transportation Rate for Gas shall be the applicable intrastate transportation rate determined as follows:

Units served by SDG&E: The Southern California Gas Company intrastate transportation rate (currently GT-SD) plus the volumetric component of the SDG&E gas transportation rate for electric generation service, including the ITCS<sup>4</sup> (currently GTUEG - SD), or any successor rate for electric generation service applicable to deliveries to the Facility, divided by one minus the applicable in-kind shrinkage allowance, if any.

Units served by Southern California Gas: The Southern California Gas Company intrastate transportation rate for firm electric generation service, including the ITCS (GT-F) plus the G-ITC Wheeler Ridge Interconnection Access fee, if applicable, or any successor rate for firm electric generation service applicable to deliveries to the Facility, divided by one minus the applicable in-kind shrinkage allowance, if any.

Units served by PG&E: The PG&E intrastate transportation charge stated in Rate Schedule G-EG, or any successor rate for electric generation service applicable to deliveries to the Facility, divided

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<sup>4</sup> ITCS means Interstate Transition Cost Surcharges.

by one minus the applicable in-kind shrinkage allowance, if any.<sup>5</sup>

### **Transportation Rate for Distillate Fuel Oil**

The Transportation Rate for Distillate Fuel Oil shall be [REDACTED]. There shall be no Transportation Rate for No. 6 Residual Fuel Oil.

### **B. ISOCAISO Monthly Fuel Imbalance Charge**

#### **Levels of Responsibility**

Each month, the Owner is responsible for all Nonmarket fuel imbalance charges incurred up to and including 2.25 percent of the ISOCAISO Facility Monthly Billed Fuel Cost.

The Monthly Fuel Imbalance Charge is equal to 75% of 1st Tier Imbalance plus 100% of 2nd Tier Imbalances;

Where:

The **1st Tier Imbalances** is that portion of the Monthly Sum of Daily Imbalance Charges which exceeds 2.25 percent of the ISOCAISO Facility Monthly Billed Fuel Cost for the Month and is less than or equal to 10.0 percent of the ISOCAISO Facility Monthly Billed Fuel Cost for the Month.

The **2nd Tier Imbalances** is that portion of the Monthly Sum of Daily Imbalance Charges which is greater than 10.0 percent of the ISOCAISO Facility Monthly Billed Fuel Cost for the Month.

The Monthly Sum of Daily Imbalance Charges is the sum for all days in the month of imbalance charges and similar fees and penalties imposed on Owner (or its fuel supplier and paid by Owner) by transportation providers delivering gas to the Units because deliveries were in excess of or less than scheduled for a given day, but only to the extent that (i) the imbalance was caused by Owner compliance with a Dispatch Notice issued after (or less than 30 minutes prior) to the Transporter's deadline for scheduling transportation, and (ii) Owner issued a notice to the ISOCAISO as soon as possible after the Owner became aware it might incur imbalance charges advising ISOCAISO of such possible charges.

In any month in which Owner incurs a 1<sup>st</sup> Tier or 2<sup>nd</sup> Tier Imbalance charge, Owner will provide the ISOCAISO with a report showing the allocation of the imbalance charges between Market Transactions and Nonmarket Transactions. If ISOCAISO or the Responsible Utility disagree on allocation, the dispute will be resolved through ADR.

To receive payment for a 2nd Tier Imbalance, Owner must document in an informational filing with FERC that the charges were appropriately allocated to Nonmarket Transactions and it was commercially reasonable to incur them. As used in this context and for purposes of calculating imbalance charges, "commercially reasonable" does not mean that Owner is required to acquire storage to avoid imbalances. If either the ISOCAISO or Responsible Utility disagree with the imbalance charges, desires a formal review and gives such notice to the Owner within 30 days of the informational filing, the Owner must file under Section 205 of the Federal Power Act to collect any 2<sup>nd</sup> Tier Imbalance charges.

Pursuant to the above, the Monthly Fuel Imbalance Charge is calculated in accordance with Equation C1-9.

<sup>5</sup> If the Facility does not qualify for service under Rate Schedule G-EG, the applicable rate shall be given by Rate Schedule G-NT.

**Equation C1-9**

$$\text{Monthly Fuel Imbalance Charge} = 0.75 * \left[ \begin{array}{l} \text{Monthly Sum of Daily Imbalance Charges} \\ \text{IS\text{O}CAISO} \\ \text{O} \\ \text{Facility Monthly Billed Fuel Cost} \end{array} \right] - 0.0225 * \left[ \begin{array}{l} \text{Monthly Sum of Daily Imbalance Charges} \\ \text{IS\text{O}CAISO} \\ \text{O} \\ \text{Facility Monthly Billed Fuel Cost} \end{array} \right] + 0.25 * \left[ \begin{array}{l} \text{Monthly Sum of Daily Imbalance Charges} \\ \text{IS\text{O}CAISO} \\ \text{O} \\ \text{Facility Monthly Billed Fuel Cost} \end{array} \right] - 0.10 * \left[ \begin{array}{l} \text{Monthly Sum of Daily Imbalance Charges} \\ \text{IS\text{O}CAISO} \\ \text{O} \\ \text{Facility Monthly Billed Fuel Cost} \end{array} \right]$$

Note that if either of the two bracketed portions of the equation yields a value less than or equal to zero, then that portion of the equation is set to zero.

**C. IS\text{O}CAISO Monthly Other Fuel Related Cost**

The IS\text{O}CAISO Monthly Other Fuel Related Cost is calculated in accordance with Equation C1-10.

**Equation C1-10**

$$\text{IS\text{O}CAISO Monthly Other Fuel Related Cost} = \frac{\text{Monthly sum of Billable MWh}}{\text{Monthly sum of Total Hourly Metered Net Generation}} * \left[ \begin{array}{l} \text{Other Gas Tariff Charges} \\ \text{Applicable Taxes} \end{array} \right]$$

Where:

- Other Gas Tariff Charges are those intrastate gas transportation tariff charges not included in Transportation Rate Charges set forth in Section A.8 of this Schedule listed below:

[Insert applicable charges]

- Applicable taxes and fees are:
  1. [Insert applicable local utility user taxes]
  2. [Insert applicable G-SUR fee]

All other fuel related taxes and fees are intended to be covered by the two percent adder in Hourly Fuel Cost and are the Owner's responsibility.

**D. IS\text{O}CAISO Monthly Emissions Cost**

**Part I for SCAQMD-Jurisdictional Thermal Units**

The IS\text{O}CAISO Monthly Emissions Cost for each Unit shall be the sum, for all hours in the month, of the IS\text{O}CAISO Hourly Emissions Cost. These costs apply to a Facility within the South Coast Air Quality Management District (SCAQMD).

The IS\text{O}CAISO Hourly Emissions Cost shall be calculated in accordance with Equation C1-11.

**Equation C1-11**

$$\begin{aligned} \text{ISOCAISO Hourly Emissions Cost} \\ (\$/\text{hr}) = & \text{a. ISOCAISO Hourly RECLAIM Trading Credit Cost} \\ & \text{b. } (\$/\text{hr}) + \\ & \text{c. ISOCAISO Hourly NOx Emissions Cost } (\$/\text{hr}) + \\ & \text{d. ISOCAISO Hourly Organic Gases Emissions Cost} \\ & \text{e. } (\$/\text{hr}) + \\ & \text{f. ISOCAISO Hourly Sulfur Oxides Emissions Cost } (\$/\text{hr}) \\ & \text{g. } + \\ & \text{ISOCAISO Hourly Particulate Matter Emissions Cost} \\ & (\$/\text{hr}) + \\ & \text{ISOCAISO Hourly Carbon Monoxide Emissions Cost} \\ & (\$/\text{hr}) + \\ & \text{ISOCAISO Hourly Sulfur Dioxides Trading Credit} \\ & \text{Costs } (\$/\text{hr}) \end{aligned}$$

**a. ISOCAISO Hourly RECLAIM Trading Credit Cost**

For each hour, the ISOCAISO Hourly RECLAIM Trading Credit ("RTC") Cost for NOx emissions required for the Unit to generate the Billable MWh is calculated in accordance with Equation C1-12.

**Equation C1-12**

$$\begin{aligned} \text{ISOCAISO Hourly} \\ \text{RECLAIM} \\ \text{Trading Credit Cost } (\$/\text{hr}) = & \text{Hourly NO}_x \\ & \text{Emissions} \\ & (\text{lbs}/\text{hr}) * \\ & \text{RECLAIM NO}_x \\ & \text{Trading} \\ & \text{Credit Rate} \\ & (\$/\text{lb}) * \\ & \frac{\text{Billable MWh}}{\text{Hourly Metered} \\ \text{Total Net} \\ \text{Generation}} \end{aligned}$$

**Where:**

- Hourly NOx Emissions is calculated in accordance with Equation C1-13.

**Equation C-13**

$$\text{Hourly NO}_x \text{ Emissions (lbs/hr)} = AX^2 + BX + C$$

**Where:**

- X is the Hourly Metered Total Net Generation for the hour.
- Coefficients A, B, and C are given in Table C1-13 for each Unit.

Table C1-13			
Description of Unit	A	B	C

The RECLAIM NOx Trading Credit Rate (\$/lb) will be equal to the 13-week sales-weighted average sales price for RTCs calculated as of the last day of the Month from sales records available from the SCAQMD for all actual sales in the SCAQMD during the thirteen preceding weeks, including the Settlement Period.

b. **ISOCAISO Hourly NOx Emissions Cost**

For each hour, the ISOCAISO Hourly NOx Emissions Cost for the Billable MWh is calculated in accordance with Equation C1-14.

**Equation C1-14**

$$\text{ISOCAISO Hourly NOx Emissions Cost (\$/hr)} = (5 * 10^{-4}) * \text{Hourly NOx Emissions (lbs/hr)} * \text{NOx Emissions Fee (\$/ton)} * \frac{\text{Billable MWh}}{\text{Hourly Metered Total Net Generation}}$$

**Where:**

- $(5 \times 10^{-4})$  is the conversion factor from lbs to tons.
- Hourly NOx Emissions is calculated in accordance with Equation C1-13.
- NOx Emissions Fee is obtained from Table III of SCAQMD Rule 301(e). The fee is dependent upon the Cumulative Tons of Pollutant (NOx), which is calculated in accordance with Equation C1-15. The Cumulative Tons of Pollutant is reset to zero each July 1st.

**Equation C1-15**

$$\text{Cumulative Tons of Pollutant (tons/hr)} = \text{Tons of Pollutant From the prior July 1<sup>st</sup> to the Previous Hour} + \text{Tons of Pollutant For Current Hour}$$

**Where:**

- Tons of Pollutant for Current Hour is in accordance with Equation C1-16.

**Equation C1-16**

$$\text{Tons of Pollutant for Current Hour (tons/hr)} = (4.76 * 10^{-7}) * (AX^3 + BX^2 + CX + D) * \text{Pollutant Emissions Amount for Natural Gas}$$

**Where:**

- $(4.76 * 10^{-7})$  is the conversion factor from lbs. to tons (1 ton/2000 lbs.) and from mmcf to MMBtu (1 mmcf/1050 MMBtu).
- X is the Hourly Metered Total Net Generation, MWh.
- Coefficients A, B, C, and D are the coefficients of the hourly heat rate curve given in Table C1-16 for each Unit.



**Part 2 for Ventura County Air Pollution Control District<sup>6</sup>**

Beginning in the year 2000, certain Units will be subject to Title IV of the Federal Clean Air Act for providing SO<sub>2</sub> Allowances to cover related trading costs. Prior to 2000, the ISOCAISO Hourly Sulfur Dioxides Trading Credit Cost will be zero. The Owner may make a filing under Section 205 of the Federal Power Act limited to recovering applicable ISOCAISO Hourly Sulfur Dioxides Trading Credit Costs when such costs are incurred.

**E. ISOCAISO Monthly Variable O&M Cost**

The ISOCAISO Monthly Variable O&M Cost for each Unit shall be the product of the Unit's Billable MWh for the Billing Month and the Unit's Variable O&M Rate. Variable O&M Rate for each Unit shall be:

Table C1-18	
Unit	Variable O&M Rate (\$/MWh)

**F. ISOCAISO Scheduling Coordinator Charge**

The ISOCAISO Scheduling Coordinator Charge for each Unit shall be the product of \$0.31 ~~the product of PX Administration Charge as charged under the PX Tariff~~ and the Unit's Billable MWh for the Billing Month.

**GE. ISOCAISO ACA Charge**

The ISOCAISO ACA Charge is the product of the Unit's Billable MWh for the Billing Month and the applicable annual charge for short-term sales under 18 CFR Section 382.201 of the FERC Regulations.

<sup>6</sup> Ventura County APCD, where Mandalay Generating Station is located, does not require payment of emissions fees, but rather permit renewal fees. The permit renewal fees are included in the fixed O&M costs.



## SCHEDULE C

### Variable Cost Payment for All Conditions

#### Part 2 for Geothermal Units

For each Unit each Month, the Variable Cost Payment for Billable MWh from the Unit pursuant to Nonmarket Transactions during that Month shall be the amount calculated in accordance with the following formula:

$$\begin{aligned} \text{Variable Cost Payment} = & \text{A. } \underline{\text{ISOCAISO}} \text{ Monthly Billed Fuel Cost} + \\ & \text{B. } \underline{\text{ISOCAISO}} \text{ Monthly Variable O\&M Cost} + \\ & \text{C. } \underline{\text{ISOCAISO}} \text{ Scheduling Coordinator Charge} \\ & \text{D. } + \\ & \quad \underline{\text{ISOCAISO}} \text{ ACA Charge} \end{aligned}$$

Each component of the Variable Cost Payment for geothermal Units is calculated as described below:

**A. ISOCAISO Monthly Billed Fuel Cost [for Geysers Main only]**

The ISOCAISO Monthly Billed Fuel Cost is given by Equation C2-1.

#### Equation C2-1

$$\frac{\underline{\text{ISOCAISO}} \text{ Monthly Billed Fuel Cost}}{\text{Cost}} = \text{Billable MWh} * \text{Steam Price (\$/MWh)}$$

Where:

- Steam Price is \$16.34/MWh.
- For purposes of Equation C2-1, Billable MWh is all Billable MWh Delivered after cumulative Hourly Metered Total Net Generation during the Contract Year from all Units exceeds the Minimum Annual Generation given by Equation C2-2.

#### Equation C2-2

$$\text{Minimum Annual Generation} = (\text{Annual Average Field Capacity} * 8760 \text{ hours} * 0.4) - (A+B+C)$$

Where:

- Annual Average Field Capacity is the arithmetic average of the two Field Capacities in MW for each Contract Year, determined as described below.

Field Capacity shall be determined for each six-month period from July 1 through December 31 of the preceding calendar year and January 1 through June 30 of the Contract Year. Field Capacity shall be the average of the five highest amounts of net generation (in MWh) simultaneously achieved by all Units during eight-hour periods within the six-month period. The capacity simultaneously achieved by all Units during each eight-hour period shall be the sum of Hourly Metered Total Net Generation for all Units during such eight-hour period, divided by eight hours.

Such eight-hour periods shall not overlap or be counted more than once but may be consecutive.

Within 30 days after the end of each six-month period, Owner shall provide ISOCAISO and the Responsible Utility with its determination of Field Capacity, including all information necessary to validate that determination.

- A is the amount of Energy that cannot be produced (as defined below) due to the curtailment of a Unit during a test of the Facility, a Unit or the steam field agreed to by ISOCAISO and Owner.
- B is the amount of Energy that cannot be produced (as defined below) due to the retirement of a Unit or due to a Unit's Availability remaining at zero after a period of ten Months during which the Unit's Availability has been zero.
- C is the amount of Energy that cannot be produced (as defined below) because a Force Majeure Event reduces a Unit's Availability to zero for at least thirty (30) days or because a Force Majeure Event reduces a Unit's Availability for at least one hundred eighty (180) days to a level below the Unit Availability Limit immediately prior to the Force Majeure Event.
- The amount of Energy that cannot be produced is the sum, for each Settlement Period during which the condition applicable to A, B or C above exists, of the difference between the Unit Availability Limit immediately prior to the condition and the Unit Availability Limit during the condition.

**A. ISOCAISO Monthly Billed Fuel Cost [for Geysers Units 13 & 16 only]**

The ISOCAISO Monthly Billed Fuel Cost is given by Equation C2-1.

**Equation C2-1**

$$\text{ISOCAISO Monthly Billed Fuel Cost} = \text{Billable MWh} * \text{Steam Price (\$/MWh)}$$

Where:

- Steam Price is \$11.25/MWh, which includes the cost of steam condensate re-injection.

**B. ISOCAISO Monthly Variable O&M Cost**

The ISOCAISO Monthly Variable O&M Cost for each Unit is given by Equation C2-3 and is the product of the sum of Billable MWh for the Billing Month and the Unit's Variable O&M Rate. Variable O&M Rate for each Unit is shown in Table C2-1:

**Equation C2-3**

$$\text{ISOCAISO Monthly Variable O\&M Cost} = \text{Monthly sum of Billable MWh} * \text{Variable O\&M Rate}$$

Table C2-1

Unit	Variable O&M Rate (\$/MWh)

C. ISOCAISO Scheduling Coordinator Charge

The ISOCAISO Scheduling Coordinator Charge for each Unit shall be ~~the product of \$0.31 the product of PX Administration Charge as charged under the PX Tariff~~ and the Unit's of Billable MWh for the Billing Month.

D. ISOCAISO ACA Charge

The ISOCAISO ACA Charge is the product of the Unit's Billable MWh for the Billing Month and the applicable annual charge for short-term sales under 18 CFR Section 382.201 of the FERC Regulations, to the extent payable by Owner for Billable MWh.

## SCHEDULE C

### Variable Cost Payment for All Conditions

#### Part 3 for Conventional Hydro Units

For each month and each Unit, the Variable Cost Payment for Billable MWh from the Unit pursuant to Nonmarket Transactions during that Month shall be the amount calculated in accordance with the following formula:

$$\text{Variable Cost Payment} = \begin{array}{l} \text{A. } \text{ISOCAISO Scheduling Coordinator} \\ \text{B. } \text{Charge} + \\ \text{ISOCAISO ACA Charge} \end{array}$$

**A. ISOCAISO Scheduling Coordinator Charge**

The ISOCAISO Scheduling Coordinator Charge for each Unit shall be ~~the product of PX Administration Charge as charged under the PX Tariff~~ the product of \$0.31 and the Unit's Billable MWh for the Billing Month.

**B. ISOCAISO ACA Charge**

The ISOCAISO ACA Charge is the product of the Unit's Billable MWh for the Billing Month and the applicable annual charge for short-term sales under 18 CFR Section 382.201 of the FERC Regulations.

~~ARTICLE 17~~

~~ARTICLE 18~~ SCHEDULE C

Variable Cost Payment for All Conditions

Part 4 for Pumped Storage Hydro Units

For each month and each Unit, the Variable Cost Payment for Billable MWh from the Unit pursuant to Nonmarket Transactions during that Month shall be the amount calculated in accordance with the following formula:

$$\text{Variable Cost Payment} = \begin{array}{l} \text{A. } \text{ISOCAISO Monthly Billed Fuel Cost} + \\ \text{B. } \text{ISOCAISO Scheduling Coordinator} \\ \text{C. } \text{Charge} + \\ \text{ISOCAISO ACA Charge} \end{array}$$

A. ISOCAISO Monthly Billed Fuel Cost

The ISOCAISO Monthly Billed Fuel Cost is given by Equation C4-1:

**Equation C4-1**

ISOCAISO Monthly Billed Fuel Cost = Year-to-Date ISOCAISO Fuel Cost – Sum of Previous Months' ISOCAISO Monthly Billed Fuel Cost in the Contract Year

Where:

- Year-to-Date ISOCAISO Fuel Cost is given by Equation C4-2.
- Sum of Previous Months' ISOCAISO Monthly Billed Fuel Cost in the Contract Year shall be the sum of the ISOCAISO Monthly billed Fuel Cost for each Month from January 1 of the Contract Year<sup>7</sup> through the end of the Month in the Contract Year before the Billing Month.

**Equation C4-2**

$$\text{Year-to-Date } \frac{\text{ISOCAISO Fuel Cost}}{\text{Cost}} = (\text{YTD Pumping Cost/YTD Energy Produced}) * \text{Variable O\&M Rate}$$

Where:

- YTD Pumping Cost = Total cost of Energy purchased by Owner for pumping, including transmission charges, from January 1 of the Contract Year through the end of the Billing Month.
- YTD Energy Produced = Total Energy produced by the Facility for Market and Nonmarket

<sup>7</sup> For purposes of Equations C4-1 and C4-2 as applied in 1999, Contract Year includes those months in the year, beginning in January 1999, when the same services as under this Agreement were provided to ISO under a predecessor rate schedule, as well as months when such services are provided under this Agreement.

Transactions from January 1 of the Contract Year through the end of the Billing Month.

- YTD Billable MWh = Total Billable MWh from January 1 of the Contract Year through the end of the Billing Month.

**B. ISOCAISO Scheduling Coordinator Charge**

The ISOCAISO Scheduling Coordinator Charge for each Unit shall be ~~the product of PX Administration Charge as charged under the PX Tariff~~ the product of \$0.31 and the Unit's Billable MWh for the Billing Month.

**C. ISOCAISO ACA Charge**

The ISOCAISO ACA Charge is the product of the Unit's Billable MWh for the Billing Month and the applicable annual charge for short-term sales under 18 CFR Section 382.201 of the FERC Regulations.

**SCHEDULE C**

**Variable Cost Payment for All Conditions**  
**Part 5 for Biomass Generation Units**

For each month and each Unit, the Variable Cost Payment for Billable MWh from the Unit pursuant to Nonmarket Transaction during that Month shall be the amount calculated in accordance with the following formula:

$$\text{Variable Cost Payment} = \begin{array}{l} \text{A. CAISO Monthly Billed Fuel Cost +} \\ \text{B. CAISO Variable O\&M Cost +} \\ \text{C. CAISO Scheduling Coordinator Charge} \end{array}$$

**A. CAISO Monthly Billed Fuel Cost**

The CAISO Monthly Billed Fuel Cost is given by Equation C5-1:

**Equation C4-1**

$$\text{CAISO Monthly Billed Fuel Cost} = \text{Billable MWh} * \text{Monthly Average Fuel Cost (\$/MWh)}$$

Where:

- Monthly Average Fuel Cost (\\$/MWh) = Negotiated Cost Based Amount.

**B. CAISO Monthly Variable O&M Cost**

The CAISO ACA Charge is the product of the Unit's Billable MWh for the Billing Month and the applicable annual charge for short-term sales under 18 CFR Section 382.201 of the FERC Regulations.

**Equation C5-2**

$$\text{CAISO Monthly Variable O\&M Cost} = \text{Monthly Sum of billable MWh} * \text{Variable O\&M Rate}$$

<u>Table C5-1</u>	
<u>Unit</u>	<u>Variable O&amp;M Rate (\\$/MWh)</u>

**C. CAISO Scheduling Coordinator Charge**

The CAISO Scheduling Coordinator Charge for each Unit shall be the product of \$0.31 and the Unit's Billable MWh

| for the Billing Month.



**ARTICLE 19 SCHEDULE D**

**Part 1**

**Start-up Payment for Condition 1 Units**

**1. Prepaid Start-up Charge**

Prepaid Start-up Charge for each Unit operating under Condition 1 for each Contract Year will be calculated as the Prepaid Start-up Cost times the number of Prepaid Start-ups. The number of Prepaid Start-up equals the Maximum Annual Start-ups per Unit. The Prepaid Start-up Cost will be calculated in accordance with Equation D-1 for Start-up Cost with the following assumptions:

- a. Hourly Fuel Price: For the initial Contract Year the Hourly Fuel Price shall be the simple average of the applicable index prices from Table C1-8 of Schedule C for the period beginning on the later of the initial publication date of such indices or January 1, 1998 and ending December 31, 1998, plus the applicable Transportation Rate under Equation C1-8 as in effect on April 1, 1999. For each subsequent Contract Year, the Hourly Fuel Price shall be agreed upon by ISOCAISO and Owner; if there is no agreement, the Hourly Fuel Price shall be the simple average of the Hourly Fuel Prices for the twelve months ending the prior June 30 as calculated in accordance with Equation C1-8 of Schedule C;
- b. Energy Price shall be based on the [insert Applicable UDC Tariff rate], including applicable demand charges, provided that the Applicable UDC Tariff rate shall only be the energy charge rate at those Facilities where Units have the capability to use Energy from other units at the same Facility to effect Start-ups or where generation from other units is otherwise permitted under the ISOCAISO Tariff to be netted against auxiliary power needed to effect Start-up of the Unit. For the initial Contract Year, the Energy Price shall be calculated as the total auxiliary power (including Energy for Start-ups) costs charged to the Facility by its supplier of end-use Energy for the six-month period ending December 31, 1998 divided by the auxiliary power (including Energy for Start-ups) consumed at the Facility for that same time period. For Facilities that have not been charged for auxiliary power for the six-month period ending December 31, 1998, the Energy Price for the Initial Contract Year shall be the simple average of the prices for Energy for varying times of day shown in the Applicable UDC Tariff. For each subsequent Contract Year, the Energy Price shall be calculated as the total auxiliary power (including Energy for Start-ups) costs charged to the Facility by its supplier of end-use Energy for the twelve months ending the prior June 30 divided by the auxiliary power (including Energy for Start-ups) consumed at the Facility for that same twelve-month period;
- c) All Start-ups are assumed to be from maximum time off line as shown by value XMax in Table D-1, and
- d) Other Start-up Costs shall be zero (\$0) for non-hydroelectric Units; for hydroelectric Units, other Start-up costs shall be the cost shown in Table D-2 for Normal Work Hours.

The Prepaid Start-up Cost and Prepaid Start-up Charge for the current Contract Year are set forth in Table D-0:

Table D-0
-----------

Unit	Number of Prepaid Start-ups	Prepaid Start-up Cost	Prepaid Start-up Charge
Unit			

2. **Start-up Cost**

The cost for a Start-up shall be calculated in accordance with Equation D-1:

**Equation D-1**

$$\begin{array}{r} \text{Start-up} \\ \text{Cost} \\ (\$) \end{array} = \begin{array}{r} \text{Start-up} \\ \text{Fuel Cost} \\ (\$) \end{array} + \begin{array}{r} \text{Start-up} \\ \text{Power Cost} \\ (\$) \end{array} + \begin{array}{r} \text{Other} \\ \text{Start-up Costs} \\ (\$) \end{array} + \begin{array}{r} \text{Shutdown} \\ \text{Power Cost} \\ (\$) \end{array}$$

Each component of the Start-up Cost in Equation D-1 is set forth below.

a. **Start-up Fuel Costs**

The Start-up Fuel Cost shall be calculated in accordance with Equation D-1a:

**Equation D-1a**

$$\begin{array}{r} \text{Start-up} \\ \text{Fuel Cost} \\ (\$) \end{array} = \left[ \begin{array}{r} \text{A} \\ \text{(MMBtu/hr)} \end{array} * \begin{array}{r} \text{x} \\ \text{(hrs)} \end{array} + \begin{array}{r} \text{B} \\ \text{(MMBtu)} \end{array} \right] * \begin{array}{r} \text{Hourly} \\ \text{Fuel Price} \\ (\$ \text{MMBtu}) \end{array}$$

Where:

- "x" equals the number of hours since the Unit ceased operation and cannot exceed "x<sub>Max</sub>".
- The Hourly Fuel Price is calculated pursuant to Schedule C Equation C1-8 for the hour in which the Start-up began.
- The values A, B and x<sub>Max</sub> for each Unit are given in Table D-1 below.

b. **Start-up Power Costs**

The Start-up Power Cost shall be calculated in accordance with Equation D-1b:

**Equation D-1b**

$$\begin{array}{r} \text{Start-up} \\ \text{Power Cost} \\ (\$) \end{array} = \left( \left[ \begin{array}{r} \text{C} \\ \text{(MWh/hr)} \end{array} * \begin{array}{r} \text{x} \\ \text{(hrs)} \end{array} \right] + \begin{array}{r} \text{D} \\ \text{(MWh)} \end{array} \right) * \begin{array}{r} \text{Energy} \\ \text{Price} \\ (\$/\text{MWh}) \end{array}$$

Where:

- "x" is equal to the hours since the Unit ceased operation and cannot exceed "x<sub>Max</sub>".

- The Energy Price shall be equal to the total auxiliary power (including Energy for Start-ups) costs charged to the Facility by its supplier of end-use Energy for the billing cycle in which the Start-up was initiated divided by the total auxiliary power (including Energy for Start-ups) consumed at the Facility during such billing cycle.
- The values C, D and xMax are given in Table D-1 below.

**c. Shutdown Power Costs**

The Shutdown Power Cost shall be calculated in accordance with Equation D-1c:

**Equation D-1c**

$$\begin{array}{rcl} \text{Shutdown} & & \text{Shutdown Power} \\ \text{Power Cost} & = & \text{Requirement} \\ (\$) & & (\text{MWh}) \end{array} * \begin{array}{r} \text{Energy} \\ \text{Price} \\ (\$/\text{MWh}) \end{array}$$

The Energy Price shall be equal to the total auxiliary power (including Energy for Shutdowns) costs charged to the Facility by its supplier of end-use Energy for the billing cycle in which the Shutdown was initiated divided by the total auxiliary power (including Energy for Shutdowns) consumed at the Facility during such billing cycle. The Shutdown Power Requirement is given in Table D-1 below.

**d. Other Start-up Costs for Hydroelectric Only**

Other Start-up Costs are the cost of labor to start hydroelectric Units that require an operator to manually parallel, and reflect the labor costs to travel to the site. If the Start-up of a hydroelectric Unit occurs outside normal work hours, the Start-up Costs include the minimum work hours and labor rates as set by the applicable collective bargaining agreement(s).

The Other Start-up Costs shall be calculated in accordance with Equation D-1d. The values for E are provided in Table D-2 for normal work hour and outside of normal work hour situations.

**Equation D-1d**

$$\text{Other Start-up Costs (\$)} = E$$

Once a Unit has been given a Dispatch Notice to Start-up, other Start-up Costs are incurred.

Table D-1, Start-Up Costs						
	x <sub>Max</sub>	A	B <sup>8</sup>	C	D	Shutdown Power Requirement
Unit	(Hrs)	(mmBtu)/hr	(mmBtu)	(MWh)/hr	(MWh)	(MWh)

<sup>8</sup> Includes fuel consumed from the time Unit reaches Synchronization to the time Unit reaches Minimum Load.

Table D-2, Other Start-Up Costs – Hydroelectric Units		
Unit	E (Normal Work Hours) (\$)	E (Outside Normal Work Hours) (\$)

3. **Monthly Start-up Adjustment**

For each Start-up successfully completed in compliance with a Dispatch Notice during the Billing Month, and each Start-up initiated in compliance with a Dispatch Notice but not successfully completed because it is canceled or rescinded by ISOCAISO, until the total Counted Start-ups for the Contract Year equals the number of Prepaid Start-ups for the Contract Year, the Monthly Start-up Adjustment, which shall be a credit or payment, is the sum of Prepaid Start-up Adjustments, and Prepaid Start-up Adjustments for Canceled Start-ups calculated in accordance with Equations D-2 and D-3:

Equation D2

Prepaid Start-up Adjustment = Prepaid Start-up Cost calculated in accordance with Section 1 minus the actual Start-up Cost calculated in accordance with Equation D-1.

Equation D-3

Prepaid Start-up Adjustment for Canceled Start-up =  $\frac{\text{Number of hours committed to the Start-up applicable Start-up Lead Time (hrs) as shown in Schedule A, Section 6}}{\text{Prepaid Start-up Adjustment calculated in accordance with Equation D-2}}$  \*

Where:

- The “number of hours committed to the Start-up” is the lesser of (a) time elapsed between the initiation of the Start-up and the cancellation and (b) the applicable Start-up Lead Time.

## SCHEDULE D

### Part 2

#### Start-up Payment for Condition 2 Units

1. **Start-up Payment**

The Start-up Payment for each Start-up successfully completed for each Unit operating under Condition 2 equals the Start-up Cost calculated using Equation D-1.

2. **Payment for Canceled Start-up**

If Start-up is initiated under a Dispatch Notice but is not successfully completed because it is canceled or rescinded by the ISOCAISO, the Start-up Payment is calculated in accordance with Equation D-4:

Equation D-4

$$\begin{array}{r} \text{Start-up} \\ \text{Payment for} \\ \text{Canceled Start-up (\$)} \end{array} = \frac{\begin{array}{c} \text{Number of hours} \\ \text{committed to the} \\ \text{Start-up} \\ \text{applicable Start-up} \\ \text{Lead Time (hrs)} \\ \text{as shown in} \\ \text{Schedule A, Section 6} \end{array}}{\quad} * \begin{array}{c} \text{Start-up Cost} \\ \text{calculated in} \\ \text{accordance with} \\ \text{Equation D-1 (\$)} \end{array}$$

The "number of hours committed to the Start-up" is the lesser of (a) time elapsed between the initiation of the Start-up and the cancellation or (b) the applicable Start-up Lead Time.

## SCHEDULE E

### Ancillary Services Part 1 for Condition 1

The ISOCAISO may call upon the Unit to provide the following Ancillary Services as defined in the ISOCAISO Tariff:

Regulation  
Spinning Reserve  
Nonspinning Reserve  
Replacement Reserve  
Voltage Support (including synchronous condenser operation)  
Black Start

If the Unit is otherwise generating, the Owner shall be required to operate the Unit within the Power Factor range of the Unit specified in Schedule A to provide Ancillary Services without additional compensation.

Certain Units (hydroelectric and synchronous condensers) can provide Ancillary Services without generating Energy. Under this Condition, Owner will be compensated for Motoring Charges if the Unit is providing Ancillary Services while synchronized without generating Energy.

#### Motoring Charge

When Units are operated as synchronous condensers (i.e., motored using electric power) to provide Ancillary Services, if applicable, the payment for that service is given by the following formula:

$$\text{Motoring Charge} = (\text{Power consumption rate (MWh/hr)}) * (\text{hours operated}) * (\text{Energy Price})$$

Where the Power consumption rate is given by the following table:

Unit	Power consumption rate (MWh/hour)
------	-----------------------------------

The Energy Price shall be equal to the total power costs charged to the Facility by its supplier of end-use Energy under the Applicable UDC Tariff for the billing cycle in which the Motoring Charge was incurred divided by the total power consumed at the Facility under such tariff during such billing cycle.

#### Pre-empted Dispatch Payment

If the ISOCAISO issues a Dispatch Notice to:

- (i) decrease a Unit's scheduled output of Energy in a Market Transaction to provide Ancillary Services;
- (ii) decrease a Unit's scheduled provision of Ancillary Services capacity in a Market Transaction in order to provide Regulation, Spinning Reserve, Nonspinning Reserve, or Replacement Reserve pursuant to a Dispatch Notice,

- (iii) decrease a Unit's scheduled provision of Ancillary Service capacity in a Market Transaction in order to provide Energy pursuant to a Dispatch Notice, the ISOCAISO shall pay the appropriate Pre-empted Dispatch Payment described below. The Pre-empted Dispatch Payments are intended to make an Owner whole with respect to the original Market Transaction.

**A. For Pre-empted Energy Market Transactions:**

Pre-empted Dispatch Payment = Imbalance Energy Charge – Cost Savings

- Imbalance Energy Charge =  $(X_o - X_n) \square$  Penalty Price
- Penalty Price = Unrestricted Imbalance Energy Price + additional penalties (per MWh) imposed by the ISOCAISO for failure to comply with Market Schedules due to compliance with Dispatch Notice.
- Cost Savings = Fuel Cost Savings + Emissions Savings + Other Savings

Where:

- $X_o$  = Original Total Schedule in Market and Nonmarket Transactions;
- $X_n$  = New Total Schedule in Market and Nonmarket Transactions;

For fossil fuel Units, the Fuel Cost Savings is calculated as follows:

- Fuel Cost Savings = Fuel Savings x Hourly Fuel Price
- Fuel Savings =  $( (AX_o^3 + BX_o^2 + CX_o + D) - (AX_n^3 + BX_n^2 + CX_n + D) ) * E$
- or  
• Fuel Savings =  $[ ( A * (B + CX_o + De^{FX_o}) ) - ( A * (B + CX_n + De^{FX_n}) ) ] * E$
- A, B, C, D, E and F are the coefficients from Table C1-7a or C1-7b, as applicable;
- Hourly Fuel Price is calculated in Equation C1-8.

For geothermal Units, the Fuel Cost Savings is calculated by the following formula:

$$\text{Fuel Cost Savings} = (X_o - X_n) * \text{Hourly Fuel Price}$$

Where:

- Hourly Fuel Price is the Steam Price identified in Equation C2-1 in Schedule C. However, for purposes of this Pre-empted Dispatch Payment calculation, the value for the Steam Price will be set to zero for Geysers Main Units until the cumulative Hourly Metered Total Net Generation for the Contract Year from all Units exceeds the Minimum Annual Generation given in Equation C2-2.

For pumped storage hydroelectric Units, the Fuel Cost Savings is calculated by the following formula:

$$\text{Fuel Cost Savings} = (X_o - X_n) * \text{Hourly Fuel Price}$$

Where:

- Hourly Fuel Price is YTD Pumping Cost / YTD Energy Produced; and YTD Pumping Cost and YTD Energy Produced are as defined in Equation C4-2.

For conventional hydroelectric Units, the Fuel Cost Savings is zero.

Other Savings =  $((X_o - X_n) * (\text{Variable O\&M Rate} + \text{applicable annual charge for short-term sales under 18 CFR 382.201 of the FERC Regulations} + \text{PX Administration Charge as charged under the PX Tariff}))$

Emissions Savings = RECLAIM Savings + NOx Emissions Fee Savings + Organic Gases Fee Savings + Sulfur Oxides Fee Savings + Particulate Matter Savings + Carbon Monoxide Fee Savings

RECLAIM Savings =  $((AX_o^2 + BX_o + C) - (AX_n^2 + BX_n + C)) * \text{RECLAIM NOx Trading Credit Rate}$

Where:

- A, B and C are the coefficients from Table C1-13;
- X<sub>o</sub> = Original Total Schedule in Market and Nonmarket Transactions;
- X<sub>n</sub> = New Total Schedule in Market and Nonmarket Transactions;

NOx Emissions Fee Savings =  $\frac{((AX_o^2 + BX_o + C) - (AX_n^2 + BX_n + C))}{2000} * \text{NO}_x \text{ Emissions Fee};$

Where:

- A, B and C are the coefficients from Table C1-13;
- X<sub>o</sub> = Original Total Schedule in Market and Nonmarket Transactions;
- X<sub>n</sub> = New Total Schedule in Market and Nonmarket Transactions;

Organic Gases Fee Savings =

$4.76 * 10^{-7} * \text{Gas Fuel Savings} * \text{Associated Emission Factor for Organic Gases} * \text{Associated Emissions Fee for Organic Gases}$

Sulfur Oxides Fee Savings =

$4.76 * 10^{-7} * \text{Gas Fuel Savings} * \text{Associated Emission Factor for Sulfur Oxides} * \text{Associated Emissions Fee for Sulfur Oxides}$

Particulate Matter Oxides Fee Savings =

$4.76 * 10^{-7} * \text{Gas Fuel Savings} * \text{Associated Emission Factor for Particulate Matter} * \text{Associated Emission Fee for Particulate Matter}$



Carbon Monoxide Fee Savings =

$4.76 * 10^{-7} \square \text{ Gas Fuel Savings} * \text{Associated Emission Factor for Carbon Monoxide} * \text{Associated Emission Fee for Carbon Monoxide}$

All Emissions Fees and Emission Factors are determined in accordance with Schedule C.

[If applicable, insert emission cost savings formula for fuel other than natural gas.]

The Owner will be entitled to retain all payments received from the Owner's Scheduling Coordinator for the Unit's scheduled output.

**B. For Pre-empted Ancillary Services Market Transactions:**

ISOCAISO shall pay Owner the product of (i) the difference between the MW of the Ancillary Service Owner had scheduled to provide in a Market Transaction and the MW of Ancillary Services Owner is able to provide after complying with the Dispatch Notice and (ii) the Market Clearing Price the Owner pays to buy back its commitment to deliver the preempted MW of Ancillary Services (if the Owner actually incurs such a cost), or the penalty the Owner pays for failure to deliver the preempted MW of Ancillary Services (if the Owner actually incurs such a cost) for the applicable Ancillary Service, market, and hour. In addition, if compliance with the Dispatch Notice causes reduction of a market regulation transaction, the ISOCAISO shall also pay the Owner the product of the Regulation Energy Payment Adjustment (REPA) amount, if applicable, and the MW of Regulation which Owner had scheduled but is unable to provide because of its compliance with the Dispatch Notice.

## ARTICLE 20 SCHEDULE E

### Ancillary Services Part 2 for Condition 2

The ISOCAISO may call upon the Unit to provide the following Ancillary Services as defined in the ISOCAISO Tariff:

- Regulation
- Spinning Reserve
- Nonspinning Reserve
- Replacement Reserve
- Voltage Support (including synchronous condenser operation)
- Black Start

The Owner shall be required to operate the Unit within the Power Factor range of the Unit specified in Schedule A to provide Voltage Support without additional compensation.

The Owner shall receive no payment for any Ancillary Services Capacity provided. However, operation of a Unit in synchronous condenser mode will be compensated as shown below.

#### Motoring Charge

When Units are operated as synchronous condensers (i.e., motored using electric power) to provide Ancillary Services, if applicable, the payment for that service is given by the following formula:

$$\text{Motoring Charge} = (\text{Power consumption rate (MWh/hr)}) * (\text{hours operated}) * (\text{Energy Price})$$

Where the Power consumption rate is given by the following table:

Unit	<u>Power consumption rate (MWh/hour)</u>
------	------------------------------------------

The Energy Price shall be equal to the total power costs charged to the Facility by its supplier of end-use Energy under the Applicable UDC Tariff for the billing cycle in which the Motoring Charge was incurred divided by the total power consumed at the Facility under such tariff during such billing cycle.

## **ARTICLE 21 SCHEDULE E**

### **Ancillary Services Part 3 for Black Start Services**

For those Units with Black Start capability, the cost of maintaining such capability is included in this Agreement and no additional costs shall be charged to the ISOCAISO for maintaining such capability. The ISOCAISO will pay for Black Start service, including for a Black Start Test Dispatch Notice, at the rates and prices in this Agreement for Start-Ups and Delivery of Energy in connection with the Black Start service. Owner shall maintain the Black Start capability of the Unit and the Facility and provide Black Starts in accordance with the ISOCAISO Ancillary Services Requirements Protocol and the ISOCAISO Dispatch Protocol, which shall be deemed incorporated by reference into this Agreement.

When the ISOCAISO first gives written notice to the Owner that it has obtained adequate Black Start service through an auction or a separate agreement with Owner or other Generators and Black Start service under this Agreement is no longer required, the ISOCAISO shall not be entitled to call upon this Unit to provide Black Start service. Once the ISOCAISO has given this notice, the Owner may remove Black Start service from this Agreement by filing unilaterally a change in rate schedule with FERC. Such filing shall not be required to include any reduction in rate or revenue solely because Black Start service is removed. The ISOCAISO shall not oppose the absence of any rate or revenue reduction that results solely from removing such service.

**ARTICLE 22 SCHEDULE F**

**Determination of Annual Revenue Requirements  
of Must-Run Generating Units**

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## Article I. Purpose and General Procedures

### Part A. Determination of Rates and Charges

This Schedule F establishes the procedures and methodology for determining the Annual Fixed Revenue Requirements (in dollars) and Variable O&M Rates (in \$/MWh) for facilities designated for must-run service for purposes of calculating certain charges for such service under the RMR Contract.

The Annual Fixed Revenue Requirements and the Variable O&M Rate for each designated must-run generating facility shall be determined annually. The Annual Fixed Revenue Requirements and the Variable O&M Rate for each such facility that shall be used for calculating charges to the ISOCAISO during each calendar year shall be determined by application of the Formula set forth in Article II hereof to the Owner's costs incurred during the twelve-month period ended on June 30 of the prior calendar year. Each twelve-month period ending on June 30 of each year is hereinafter referred to as the "Cost Year" relating to the rates and charges that are effective during the succeeding calendar year.

### Part B. Informational Filings

In connection with the determination of rates and charges for each calendar year, reflecting costs incurred during the June 30 Cost Year as described in the foregoing Part A of this Article I, the Owner shall provide to the ISOCAISO an Information Package detailing and supporting all calculations involved in such determination. A single Information Package may contain all such informational materials pertaining to all of the Owner's designated must-run facilities. On or before October 1, 2001, the Owner shall provide to the ISOCAISO the Information Package relating to the rates and charges to become effective on January 1, 2002. Thereafter, on November 1 of each year, the Owner shall provide to the ISOCAISO the Information Package relating to the rates and charges to be effective during the calendar year beginning on the following January 1.

Each such Information Package shall be in a clear and readable format and shall contain:

1. detailed workpapers showing the derivation of costs under the Formula for the relevant Cost Year along with supporting schedules showing the data used in applying the formula, presented in a format consistent with the presentation of information in the FERC Form No. 1;
2. a clear identification of the depreciation rates reflected in claimed costs for the Cost Year and the rate of return and every other stated item (i.e., any item which appears as a numerical value in the Formula and which only may be changed by a filing with the FERC);
3. a comparison of the major components of the resulting revenue requirements for the relevant Cost Year with the corresponding components of the revenue requirements that result from the application of the Formula using costs from the Owner's FERC Form No. 1 relating to the preceding calendar year;
4. such additional documentation as to specific items of costs required by the Formula.

The Owner shall provide each Information Package to the ISOCAISO in printed form and a suitable electronic format. The ISOCAISO shall post the Information Package on its web-site. A suitable electronic format shall be any format that the FERC permits for electronic filings.

Coincident with providing each such Information Package to the ISOCAISO, the Owner shall also submit the Information Package to the FERC in an informational filing so as to allow for review of the related rates and charges by the FERC staff and affected parties. As to the informational filing relating to rates and charges to be effective during calendar year 2002, (i) discovery requests by the FERC staff and affected parties shall be made within 45 days of the filing, with responses by the Owner due within 60 days of the filing, and (ii) protests, if any, by affected

parties shall be filed with the FERC within 75 days of the filing. As to each subsequent informational filing, (i) discovery requests by the FERC staff and affected parties shall be made within 20 days of the filing, with responses by the Owner due within 35 days of the filing, and (ii) protests, if any, by affected parties shall be filed with the FERC within 45 days of the filing. In the event that the need arises during the discovery process for the nondisclosure or confidentiality of information, the Owner and affected parties, other than FERC Staff and state regulatory agencies, shall utilize the procedures contained in Schedules N-1 and N-2 of the RMR Contract. If the Owner seeks the confidentiality or nondisclosure of information provided to FERC or state regulatory agencies, it shall follow the applicable rules, regulations and statutory provisions of those agencies.

Protests to the Information Package challenging arithmetic calculations or conformity to the Rate Formula, not resolved by summary disposition of the FERC, shall be resolved by the use of the Alternative Dispute Resolution procedures in Schedule K of the RMR contract. In such a proceeding, the Owner will bear the burden of proof as in a proceeding under Section 205 of the Federal Power Act (FPA). If it is found that an erroneous calculation or non-conforming formula element has been used, refunds shall be ordered. The amount of refunds shall restore the parties to the positions they would have occupied had the erroneous calculations or non-conforming formula elements not been used, with interest calculated pursuant to Section 35.19a of the Commission's regulations, 18 C.F.R. Section 35.19a.

If a matter is set for hearing, additional discovery shall be permitted in accordance with the Commission's Rules of Practice and Procedure. Under hearings established pursuant to this provision, refund rights will be as in a proceeding under Section 205 of the FPA. Any refunds due as the result of a final Commission order will be credited or paid to the ISOCAISO with interest in accordance with 18 C.F.R. 35.19a.

In addition to the discovery provided above, affected parties shall have the ability to audit the Owner's books and records as provided in Section 12.2 of the RMR Contract. To the extent that an audit discloses that the formula was not correctly applied for a particular year, the affected prior billings shall be corrected, and appropriate refunds or credits shall be provided to the ISOCAISO, with interest determined in accordance with 18 C.F.R. 35.19a.

Notwithstanding the above procedures, all parties retain full rights to make filings at any time under Sections 205 and 206 of the FPA, as appropriate.

## **Article II. Formula for Determination of Annual Revenue Requirements**

### **Part A. Purpose and Overview**

The purpose of this Formula For Determination of Annual Revenue Requirements ("Formula") is to specify the method for determining the Annual Revenue Requirements, and certain components thereof, of particular must-run generating units for each Cost Year.

Part B of this Formula contains the specifications for the components of costs that may be included in the Annual Revenue Requirements of individual designated must-run generating units (*i.e.*, for each "Subject Resource").

Part C of this Formula sets forth (i) general instructions for the use and application of the Formula, and (ii) certain general definitions of terms used herein.

### **Part B. Determination of Annual Revenue Requirements**

#### **Section 1. Annual Fixed Revenue Requirements and Variable O&M Rate**

##### **(A) Annual Fixed Revenue Requirements**

The "Annual Fixed Revenue Requirements" for the Subject Resource is the amount determined as the following difference:

1. Total Annual Revenue Requirements, as defined below; less
2. Total Annual Variable Costs, as defined below.

**(B) Variable O&M Rate**

The "Variable O&M Rate" for the Subject Resource is the rate (in \$/MWh) determined as the follows:

$$\text{Variable O\&M Rate} = [\text{Annual Variable O\&M Expenses}]/[\text{Annual Net Generation}]$$

where "Annual Variable O&M Expenses" is defined hereinbelow, and "Annual Net Generation" is the net generation (in MWh) of the Subject Resource during the Cost Year.

Notwithstanding the foregoing, whenever the Annual Net Generation of the Subject Resource is zero or negative, the Variable O&M Rate shall be deemed to be zero.

**(C) Total Annual Revenue Requirements**

The "Total Annual Revenue Requirements" for the Subject Resource is the amount that is the sum of the following amounts:

1. Operating Expenses, determined pursuant to Section 2 below; and
2. Return and Income Tax Allowance, determined pursuant to Section 3 below.

**Section 2. Operating Expenses**

"Operating Expenses" for the Subject Resource is the quantity that is the sum of the following amounts:

1. Total O&M Expenses, as defined below;
2. Depreciation Expenses, as defined below;
3. Taxes Other Than Income Taxes, as defined below; and
4. Revenue Credits, as defined below.

**(A) Total O&M Expenses**

"Total O&M Expenses" is the amount of expenses arising from the operation and maintenance of the Subject Resource, including Production O&M Expenses, Transmission O&M Expenses, Distribution O&M Expenses, and Administrative & General Expenses, all as defined below.

- (1) **Production O&M Expenses:** Expenses incurred directly in operating and maintaining the Subject Resource:
  - (a) **Steam Production O&M:** For steam units only, amounts properly recorded in Accounts 500-515.
  - (b) **Hydro Production O&M:** For hydro units only, amounts properly recorded in Accounts 535-545.
  - (c) **Other Power Generation O&M:** For other types of units, amounts properly recorded in Accounts 546-554.



- (d) **Other Power Supply Expenses:** Amounts properly recorded in Accounts 555-557, if any, that are reasonably assignable or allocable to the Subject Resource.
- (2) **Transmission O&M Expenses:** Expenses incurred directly in operating and maintaining the transmission facilities associated with the Subject Resource, as properly recorded in Accounts 560-573 and reasonably assignable or allocable to the Subject Resource.
- (3) **Distribution O&M Expenses:** Expenses incurred directly in operating and maintaining the distribution facilities associated with the Subject Resource, as properly recorded in Accounts 580-598 and reasonably assignable or allocable to the Subject Resource.
- (4) **Administrative and General (A&G) Expenses:** Those portions, if any, of administrative and general expenses, as properly recorded in Accounts 920-935, that are reasonably related to the operation of the Subject Resource, determined from appropriate direct assignment or reasonable allocation. Such expenses shall exclude (i) franchise fees related solely to the Owner's retail sales, (ii) retail regulatory expenses, (iii) assessments under 18 CFR Section 382.201 of the FERC Regulations, (iv) association dues, and (v) general advertising expenses.

Notwithstanding the foregoing, O&M Expenses hereunder shall exclude all Scheduling Coordinator Charges ~~PX Administration charges~~ as charged under the ~~PX~~ CAISO Tariff, irrespective of in which Account or Accounts such charges are included.

**(B) Depreciation Expenses**

"Depreciation Expenses" are provisions for depreciation and amortization for the Subject Resource, as properly recorded in Accounts 403, 404, 405, 406, and 407, including only:

- (1) **Production Plant Depreciation:** Depreciation and amortization, if any, of investment in the Subject Resource;
- (2) **Transmission Plant Depreciation:** Depreciation and amortization, if any, of investment in the transmission facilities associated with the Subject Resource, as reasonably assignable or allocable to the Subject Resource;
- (3) **Distribution Plant Depreciation:** Depreciation and amortization, if any, of investment in the distribution facilities associated with the Subject Resource, as reasonably assignable or allocable to the Subject Resource;
- (4) **General and Intangible Plant Depreciation:** Depreciation and amortization, if any, of general and intangible plant investments that are reasonably assignable or allocable to the Subject Resource.

Notwithstanding the foregoing, costs recorded in Accounts 405, 406 and 407 shall be included hereunder only if, and to the extent that, FERC shall have permitted the inclusion of such costs for ratemaking purposes for the Owner under the RMR Contract.

**(C) Taxes Other Than Income Taxes**

"Taxes Other Than Income Taxes" are taxes other than income and revenue taxes, as properly recorded in Account 408.1, that are reasonably assignable and allocable to the Subject Resource, including for example:

1. Property and Property-Related Taxes;

2. Payroll and Labor-Related Taxes;
3. Other Taxes, if any, identifiable as reasonably assignable or allocable to the Subject Resource.

Taxes Other Than Income Taxes assignable and allocable to the Subject Resource shall not include any taxes related solely to, or arising solely from, the Owner's retail sales.

**(D) Revenue Credits**

"Revenue Credits" are those revenues, if any, that are (i) properly recorded in Account 451 (Miscellaneous Service Revenues), Account 453 (Sales of Water and Water Power), Account 454 (Rent From Electric Property), Account 455 (Interdepartmental Sales), and Account 456 (Other Electric Revenues), and (ii) directly related to, or reasonably allocable to, the Subject Resource. Such Revenue Credits shall be treated as negative values hereunder.

**(E) Treatment of Capital Leases**

The foregoing components of Operating Expenses may include expenses associated with capital leases as approved by the Commission, as set forth more fully under Article II, Part B, Section 4(A) of this Formula.

**Section 3. Return and Income Tax Allowance**

"Return and Income Tax Allowance" is the quantity that is the sum of:

1. the product of:
  - a. Allowable Pre-Tax Rate of Return, and
  - b. Net Investment,as both such quantities are hereinafter defined; and
2. the quantity equal to:

$$[ITC Amortization]/(1-t)$$

where:

- a. "t" is the effective, combined state and federal income tax rate.
- b. "ITC Amortization," is amortization, if any, of investment tax credits, as properly recorded in Account 411.4, that are reasonably assignable or allocable to the Subject Resource and to those portions of general and intangible plant investments that are reasonably assignable or allocable to the Subject Resource. Notwithstanding the foregoing, this term shall include only those amounts of amortization of investment tax credits which the Owner shall have elected to receive under Section 46(f)(1) of the Internal Revenue Code. ITC Amortization amounts that reduce net income shall be treated as negative values hereunder, while ITC Amortization amounts, if any, that increase net income shall be treated as positive values hereunder.

**Section 4. Net Investment**

"Net Investment" is the quantity that is determined as follows:

$$\text{Net Investment} = \text{Gross Plant Investment} - \text{Depreciation Reserve} + \text{CWIP} + \text{PHFU} - \text{ADIT} + \text{Working Capital}$$

where the quantities appearing in the foregoing equation are defined hereinafter below.

In determining Net Investment hereunder, each component thereof, other than Cash Allowance, shall be determined as the end-of-year balances in the Accounts specified for the relevant Cost Year.

**(A) Gross Plant Investment**

"Gross Plant Investment" is gross original cost plant investment as properly recorded in Accounts 101, 102, 106, and 114, including only the following amounts:

- (1) **Production Plant Investment:** investment in the generating unit itself and in common facilities associated with the unit, as recorded in Accounts 310-316, 330-336, or 340-346, 106 and 114;
- (2) **Transmission Plant Investment:** investment in transmission facilities associated with the Subject Resource, as properly recorded in Accounts 350-359, 106, and 114, and reasonably assignable or allocable to the Subject Resource;
- (3) **Distribution Plant Investment:** investment in distribution facilities associated with the Subject Resource, as properly recorded in Accounts 360-373, 106, and 114, and reasonably assignable or allocable to the Subject Resource; and
- (4) **General and Intangible Plant Investment:** reasonably assignable and allocable portions, if any, of general and intangible plant investment, recorded in Accounts 389-399 and 301-303, 106 and 114.

Subject to the limitations detailed in this paragraph, when the Owner has a capital lease in lieu of gross plant investment, it may include Account 101.1 hereunder. A lease may be capitalized and the costs included for ratemaking purposes if the Owner demonstrates that the lease qualifies as a capital lease under 18 C.F.R. Part 101, General Instruction No. 19 (1998), and the Owner has obtained, prior to the informational filing, approval to include such costs for ratemaking purposes from the FERC under the FPA. Capital leases shall be accounted for in accordance with 18 C.F.R. Part 101, General Instruction No. 20 (1998).

**(B) Depreciation Reserve**

"Depreciation Reserve" is accumulated provision for depreciation and amortization, as properly recorded in Accounts 108, 111, and 115, related to the Subject Resource, including the following amounts:

- (1) **Production Plant Depreciation Reserve:** amounts of Depreciation Reserve for the investment in the unit itself and in common facilities associated with the unit;
- (2) **Transmission Plant Depreciation Reserve:** amounts of Depreciation Reserve for the investment in transmission facilities associated with the Subject Resource, as reasonably assignable or allocable to the Subject Resource;
- (3) **Distribution Plant Depreciation Reserve:** amounts of Depreciation Reserve for the investment in distribution facilities associated with the Subject Resource, as reasonably assignable or allocable to the Subject Resource;
- (4) **General and Intangible Plant Reserve:** amounts of Depreciation Reserve for the

portions, if any, of general and intangible plant investments reasonably assignable and allocable to the Subject Resource.

Credit balances in the aforementioned accounts shall be treated as positive values hereunder, and debit balances in such accounts shall be treated as negative values.

**(C) CWIP**

"CWIP" is the amount of construction work in progress, as properly recorded in Account 107 for construction projects associated with the Subject Resource related solely and directly to pollution control for the Subject Resource.

**(D) PHFU**

"PHFU" is the cost of plant held for future use, as properly recorded in Account 105 that is reasonably assignable or allocable to the Subject Resource.

**(E) ADIT**

"ADIT" is accumulated provision for deferred income taxes, as properly recorded in Accounts 190, 281, 282, 283, and 255, that are reasonably assignable or allocable to the investment in, or operation of, the Subject Resource, including the following amounts:

- (1) Production Plant ADIT:** amounts of ADIT arising directly from the investment in, or operation of, the Subject Resource itself and common facilities associated with the Subject Resource;
- (2) Transmission Plant ADIT:** amounts of ADIT arising directly from the investment in, or operation of, the transmission facilities, if any, associated with the Subject Resource;
- (3) Distribution Plant ADIT:** amounts of ADIT arising directly from the investment in, or operation of, distribution facilities, if any, associated with the Subject Resource; and
- (4) General and Intangible Plant ADIT:** amounts of ADIT arising from the portions, if any, of general and intangible plant investments reasonably assignable and allocable to the Subject Resource.

For purposes of this Formula, ADIT means accumulated provision for deferred income taxes, as properly recorded in the aforementioned Accounts, *including* amounts previously recorded in such accounts and reclassified as a result of the adoption of SFAS No. 109, but *excluding* amounts recorded in such accounts as a result of the adoption of SFAS No. 109, such that the required adoption of SFAS No. 109 will have no effect on the costs determined hereunder.

Notwithstanding the foregoing, as to Account 255, ADIT hereunder shall include only those amounts, if any, related to investment tax credits which the Owner shall have elected to receive under Section 46(f)(2) of the Internal Revenue Code.

ADIT balances that are credit balances shall be treated as positive values hereunder, while ADIT balances that are debit balances shall be treated as negative values hereunder.

Owner shall support all amounts of ADIT included and not included hereunder in the manner described in sections 35.13(h)(6) and (7) of the Commission's regulations (Statements AF and AG, respectively), except that the time period for the relevant data for the informational package will be consistent with the requirements of this formula, rather than the "Periods" referenced in those regulations.

(F) **Working Capital**

"Working Capital" is the sum of the portions, if any, of the following items that are reasonably assignable or allocable to the Subject Resource:

- (1) **Fuel Stocks**, which is the amount of fossil fuel stock, if any, maintained for the Subject Resource, as properly recorded in Account 151;
- (2) **Plant Materials and Supplies**, consisting of the value of plant materials and supplies reasonably assignable or allocable to the Subject Resource, as properly recorded in Accounts 154 and 163;
- (3) **Prepayments**, consisting of the amount, if any, of prepayments reasonably assignable or allocable to the Subject Resource, as properly recorded in Account 165;
- (4) **Working Cash Allowance**, which is one-eighth of O&M Expenses (as defined herein), less (a) Total Annual Fuel Costs (as defined hereinbelow), and (b) all amounts or portions, if any, of Account 555 (Purchased Power) that may be included in such O&M Expenses; and

**Unamortized Deferred Costs**, which shall be that portion, if any, of Account 186 directly related to, or reasonably allocable to, the Subject Resource.

**Section 5. Allowable Pre-Tax Rate of Return**

The Allowable Pre-Tax Rate of Return shall be the sum of:

- (a) 12.25%, and
- (b) 30% of the amount, if any, by which (a) the latest available 6-month average of yields on 10-year U.S. Treasury Bonds, as of the date of the first Informational Filing, exceeds (b) the latest available 6-month average of yields on 10-year U.S. Treasury Bonds as of *[the effective date of the settlement]*.

Notwithstanding the foregoing, the Owner may make application to the FERC, prior to or in conjunction with the first Informational Filing, in a limited proceeding to seek to establish a different Allowable Pre-Tax Rate of Return under Section 205 of the Federal Power Act.

**Section 6. Additional Quantities**

(A) **Annual Variable O&M Expenses**

"Annual Variable O&M Expenses" is the sum of the following quantities:

- (1) **Variable Production O&M Expenses**: those portions of Production O&M Expenses, as defined above, other than fuel expenses, that are reasonably determined to be variable expenses, in the sense that they are incurred as a result of, or otherwise are reasonably associated with, the production of energy by the Subject Resource.
- (2) **Variable A&G Expenses**: that portion of A&G Expenses that is related or allocable to the foregoing Variable Production O&M Expenses.

Notwithstanding the foregoing, starting with the first information filing hereunder and continuing until the Owner elects to use a different method to determine its Annual Variable O&M Expenses,

the Owner may compute Annual Variable O&M Expenses as the amount equal to the product of (a) the Initial Variable O&M Rate, in \$/MWh, for the Subject Resource, as set forth in Exhibit A hereto (Exhibit A can be found in Appendix B to the Stipulation and Agreement), times (b) the Net Generation of the Subject Resource (as defined hereinabove). Whenever the Owner does not compute Annual Variable O&M Expenses based on the Initial Variable O&M Rate in the foregoing manner, the Owner shall include in each of Informational Package a detailed explanation of the method or methods used to classify O&M expenses as between fixed (*i.e.*, capacity-related) expenses and variable (*i.e.*, energy-related) expenses and the reason(s) such method results in just and reasonable rates.

**(B) Annual Fixed O&M Expenses**

"Annual Fixed O&M Expenses" is the quantity that is equal to the following:

- (1) Total O&M Expenses, as defined hereinabove, less
- (2) the sum of:
  - a. Annual Variable O&M Expenses, as defined hereinabove, and
  - b. Annual Variable Fuel Costs, as defined hereinbelow,
  - c. Annual Emissions Costs, as defined hereinbelow, and
  - d. Annual Non-Fuel Start-Up Costs, as defined hereinbelow.

**(C) Fuel Expenses**

**(1) Total Annual Fuel Costs**

"Total Annual Fuel Costs" is the total fuel expense for the Subject Resource for the Cost Year properly recorded in Account 501 or Account 547, as appropriate depending on the nature of the Subject Resource.

**(2) Annual Fixed Fuel Costs**

"Annual Fixed Fuel Costs" is that portion, if any, of Total Annual Fuel Costs related to fuel handling and administration of fuel planning, procurement and transportation which do not vary with the amount of fuel purchased.

**(3) Annual Variable Fuel Costs**

"Annual Variable Fuel Costs" is the quantity that is the following difference:

1. Total Annual Fuel Costs, less
2. Annual Fixed Fuel Costs.

**(D) Annual Emissions Costs**

"Annual Emissions Costs" is the total emissions costs that are related to the operation of the Subject Resource during the Cost Year.

**(E) Annual Non-Fuel Start-Up Costs**

"Annual Non-Fuel Start-Up Costs" is the aggregate sum of costs, other than fuel costs, attributable to start-ups of the Subject Resource during the Cost Year, consisting of start-up power costs, shut-down power costs, and other non-fuel start-up costs, all as determined pursuant to the applicable sections of Schedule D of the RMR Contract, as applied to all start-ups of the Subject Resource during the Cost Year.

**(F) Total Annual Variable Costs**

"Total Annual Variable Costs" is the sum of:

1. Annual Variable O&M Expenses,
2. Annual Variable Fuel Costs, and
3. Annual Emissions Costs.

**Part C. General Instructions and Explanatory Notes**

**Section 1. General Instructions**

In applying this Formula to a Subject Resource, the following instructions and explanations shall be followed:

**(A) No Duplicative Charges**

The costs determined and referenced by this Formula shall exclude costs that are recoverable, or that are actually recovered, elsewhere under the applicable contract or agreement between the Owner and the ISOCAISO. There shall be no double counting of costs hereunder.

**(B) Determination of Depreciation Expenses**

Depreciation Expenses, Depreciation Reserve, and Deferred Income Taxes reflected in the revenue requirements determined pursuant to this Formula shall be computed using either fixed depreciation rates or depreciation rates determined annually from fixed mortality characteristics (i.e., service lives, net salvage ratios, etc.). Such depreciation rates and/or mortality characteristics, which may differ for particular assets or groups of assets comprising, or related to, the Subject Resource, are set forth on Exhibit B, which is attached hereto and made a part hereof. Such depreciation rates and/or mortality characteristics may not be changed except pursuant to Section 205 or Section 206 of the FPA. Nothing herein shall be construed as affecting any requirements of the FERC regarding the use by the Owner of depreciation rates for financial reporting purposes.

**(C) Costs in Excess of Original Cost**

The components of rate base and the costs reflected under the Formula shall not include an acquisition adjustment or costs associated with an acquisition adjustment unless the Owner shall have obtained approval from the FERC to include under the Formula such an adjustment or such costs for ratemaking purposes under the FPA. The effective date for the inclusion of such costs shall be as set forth in the FERC order.

**(D) Use of FERC Accounting**

The costs determined and referenced by this Formula shall reflect only FERC-basis accounting, and shall not reflect any accounting for costs approved by any state regulatory commission or other body if not approved or accepted by the FERC for use in connection with the RMR Contract.

Except as otherwise provided herein, the accounting for costs for purposes of applying this Formula shall be consistent with the requirements of the Uniform System of Accounts.

**(E) Accounting Methods**

The costs determined and referenced by this Formula shall reflect only such accounting methods prescribed by such authorities as AICPA and FASB that shall have been approved or accepted by the FERC for use in connection with the RMR Contract. The Owner shall be required to seek and gain such approval or acceptance from the FERC prior to reflecting any changed accounting methods in the determination of costs in connection with this Formula.

The Owner shall carry the burden of demonstrating that its accounting methods and entries reflected in the costs determined and referenced by this Formula produce just, reasonable, and nondiscriminatory rates for its customers.

**(F) Out-of-Period Adjustments**

The costs determined and referenced by this Formula shall not reflect any accounting entries the purpose of which is to adjust or correct for accounting entries in years other than the Cost Year if such adjusting or correcting entries would have an unjust, unreasonable, or discriminatory effect on the ~~ISO~~CAISO.

**(G) Extraordinary Costs**

Extraordinary costs included in the costs determined and referenced by this Formula shall be subject to amortization over a reasonable period of time. In determining how costs should be amortized, the parties shall also determine how the costs being amortized should be recovered in the event that the plant closes and does not reopen.

As used herein, "extraordinary costs" mean costs arising from events and transactions that are of an unusual nature and infrequent occurrence, the effects of which are abnormal and significantly different from the ordinary and typical activities of the Owner, and would not reasonably be expected to recur in the foreseeable future. In determining significance, items should be considered individually and not in the aggregate. However, the effects of a series of related transactions arising from a single specific and identifiable event or plan of action should be considered in the aggregate. An item can be extraordinary even if it is less than five (5) percent of income computed before the extraordinary item. In its annual Information Package, the Owner shall identify and provide explanations for all extraordinary costs which it seeks to include in the rates and charges determined pursuant to this Formula, and the Owner shall bear the burden of proof, as in a proceeding under Section 205 of the FPA, that its proposed treatment of extraordinary costs is just and reasonable.

**(H) Imprudently Incurred Costs**

The costs determined and referenced by this Formula shall not include any costs which have been determined by the FERC in a proceeding under Section 206 of the FPA to have been imprudently incurred by the Owner.

**(I) Transmission Cost Assignments and Allocations**



Costs of transmission facilities assigned and/or allocated to the Subject Resource hereunder are intended to include only those costs, if any, related to the step-up substation facilities and other transmission facilities directly connected to the Subject Resource and used to deliver the output of the Subject Resource to the transmission grid. In each annual Informational Package, the Owner shall clearly identify and fully describe all transmission facilities which it claims satisfy the foregoing criteria.

**(J) Distribution Cost Assignments and Allocations**

Costs of distribution facilities assigned and/or allocated to the Subject Resource hereunder are intended to include only those costs, if any, related to the step-up substation facilities and other distribution facilities directly connected to the Subject Resource and used to deliver the output of the Subject Resource to the transmission or distribution system. In each annual Informational Package, the Owner shall clearly identify and fully describe all distribution facilities which it claims satisfy the foregoing criteria.

**(K) Inclusion of Certain Costs**

The Owner shall include in its annual Informational Package detailed workpapers and explanations supporting the reasonableness of including in the revenue requirements determined pursuant to this formula any amounts recorded in Accounts 501, 547, 555, 561, 927, 105, and 186. The Owner shall bear the burden of proof, as in a proceeding under Section 205 of the FPA, to affirmatively demonstrate that all such included amounts are directly related to the provisions of service under the RMR Contract and are reasonably assignable or allocable to the Subject Resource. As to Account 105, the requirement for a definitive plan required by the description of Account 105 in the Uniform System of Accounts, and the affirmative demonstration required by this paragraph, shall be deemed to be met upon a showing that the ISOCAISO has approved, in accordance with the provisions of Section 7.4 of the RMR Contract, a plan for the future use of the property.

**(L) Direct Assignments and Allocations**

Where Part B of this Formula provides for the identification and/or assignment of costs incurred directly in connection with a particular facility or facilities (including a Subject Resource), or directly related to such a facility or facilities, the Owner shall bear the burden of demonstrating the reasonableness of each such identification and/or assignment, and each failure to make such an identification and/or assignment. Notwithstanding the foregoing, where this Formula provides for such a direct identification or assignment of costs, the Owner may use an allocation method to apportion such costs among particular facilities; provided, however, that (i) the Owner shall in its Informational Package clearly identify and describe such allocation method and the basis for it, and (ii) the Owner shall bear the burden of demonstrating the reasonableness of the method. It is recognized that such allocation methods may, for example, be appropriate for apportioning certain types of costs between individual generating units at a multi-unit generating station. Such allocations of costs between individual generating units at a plant site shall be consistent with the requirements for such allocations, if any, provided in the RMR Contract.

**(M) No Adverse Distinction**

In applying this Formula and in maintaining its books and records insofar as they affect the results of applying this Formula, the Owner shall not make an adverse distinction between the Subject Resource and any other facility or facilities owned or operated by the Owner; *e.g.*, the Owner shall assign certain costs directly to the Subject Resource only if, and to the extent that, the Owner directly assigns such costs to other, similar facilities.

## Section 2. General Definitions

Except as may be expressly stated otherwise, the following terms have the followings meanings as used herein:

**(A) Account**

"Account" refers to a particular account for "major" utilities as prescribed by the Uniform System of Accounts.

**(B) FERC**

"FERC" means the Federal Energy Regulatory Commission or its successor.

**(C) Uniform System of Accounts**

"Uniform System of Accounts" means the FERC's "Uniform System of Accounts Prescribed For Public Utilities and Licensees Subject to the Provisions of the Federal Power Act," as such uniform system of accounts was in effect as of the first effective date of the RMR Contract.

**(D) RMR Contract**

"RMR Contract" means the contract to which this Formula is attached and made a part thereof.

**(E) Subject Resource**

"Subject Resource" means any particular generating unit to which this Formula is applied for purposes of determining the annual costs thereof.

**(F) Cost Year**

"Cost Year" means the twelve-month period ended June 30 to which this Formula is applied to determine the Annual Fixed Revenue Requirements and Variable O&M Rate for a Subject Resource to be applicable during the next succeeding calendar year.

**(G) Owner**

"Owner" means the entity, other than the ISOCAISO, that is a party to the RMR Contract.

**(H) ISOCAISO**

The "ISOCAISO" means the California Independent System Operator Corporation.

**Exhibit A - Initial Variable O&M Rates<sup>9</sup>**

Line	RMR Facility	Unit	Initial Variable O&M Rate (\$/MWh)

<sup>9</sup> Exhibit A for each owner is filed in Appendix to the Stipulation and Agreement.



### Exhibit C - 1998 Cost Information

Pursuant to Article IV.E of the Stipulation and Agreement filed with the FERC on April 2, 1999, the Owner shall file with the FERC in Docket No. ER98-441-000, et. al., a superceding Exhibit C, setting forth the following information for each unit for the period ending December 31, 1998:

- (1) Name of the facility and unit;
- (2) Gross Plant In Service, *i.e.* the original cost plus plant additions minus retirements, by major plant function (*i.e.* production, transmission, distribution and general);
- (3) Net Plant In Service Gross Plant, *i.e.* gross plant minus depreciation reserve, by major plant function;
- (4) Rate Base, *i.e.* net plant and other components of Net Investment as defined in the Formula, such as working capital, Accumulated Deferred Income Taxes (ADIT), etc.

This Exhibit C shall be for informational purposes only and shall be initially filed with FERC by June 1, 1999.

**ARTICLE 23 SCHEDULE G**

**Charge for Service in Excess of  
Contract Service Limits**

Payment for service in excess of the Maximum Annual MWh, Maximum Annual Service Hours or Maximum Annual Start-ups shall be determined in accordance with Option A or Option B. Payment for service from hydroelectric Units in excess of the Maximum Monthly MWh shall be determined in accordance with Option A only. Owner shall make a one-time election between Option A or Option B. Owner must choose Option A for both Billable MWh and Start-ups or Option B for both Billable MWh and Start-ups. This election shall be applicable to all of the Owner's Units under this Agreement and all other Reliability Must-Run Units subject to a "reliability must-run contract" as defined in the ISOCAISO Tariff with Owner or any of its affiliates as defined in 18 C.F.R. Section 161.2.

**1. Option A**

- A. For all Billable MWh Delivered after the Counted MWh for the Contract Year equals the Maximum Annual MWh, the Counted Service Hours equals the Maximum Annual Service Hours or, for hydroelectric Units, the Counted MWh for the Month equals the Maximum Monthly MWh ("Schedule G Billable MWh"):

Fossil Fuel Units

In addition to the Variable Cost Payment computed in accordance with Schedule C, the ISOCAISO shall pay the Option A Variable Cost Payment, which shall be calculated in accordance with Equation G-1:

**Equation G-1**

$$\text{Option A Variable Cost Payment} = \frac{0.5 * (\text{Variable Cost Payment for the Billing Month})}{\text{Billable MWh for the Billing Month}} * \text{Schedule G Billable MWh}$$

Pumped Storage Hydroelectric Facilities

In addition to the Variable Cost Payment computed in accordance with Schedule C, ISOCAISO shall pay the product of (a) the Schedule G Billable MWh, (b) 0.5, and (c) YTD Pumping Costs divided by YTD Energy Produced as computed in accordance with Equation C4-2 in Schedule C.

Conventional Hydroelectric Facilities

In addition to the Variable Cost Payment computed in accordance with Schedule C, ISOCAISO shall pay the sum of the products for each hour in the Billing Month of (a) the Hourly Fuel Price for natural gas for the hour calculated in accordance with Equation C1-8 of Schedule C, (b) 12,000 Btu/kWh, (c) the Schedule G Billable MWh for that hour, and (d) 0.5.

- B. For all Service Hours provided after the Counted Service Hours for the Contract Year equals the Maximum Annual Service Hours.

Synchronous Condensers

In addition to the Motoring Charge computed in accordance with Schedule E, ISOCAISO shall pay the product of (a) the Motoring Charges calculated in accordance with Schedule E, and (b) 0.5.

- C. For all Start-ups required to comply with a Dispatch Notice after the Counted Start-ups for the Unit equals the Maximum Annual Start-ups ("Schedule G Start-ups"), the ISOCAISO shall pay:

Fossil Fuel Units and Geothermal Units

Two times (a) the Start-up Payment computed in accordance with Equation D-1 in Schedule D, or (b) if the Schedule G Start-up is initiated under a Dispatch Notice but is not successfully completed because it is canceled or rescinded by the ISOCAISO, the Start-up Payment for Canceled Start-up is computed in accordance with Equation D-4 in Schedule D.

Conventional Hydroelectric Facilities and Units Capable Only of Synchronous Condenser Operation

The Start-up Payment computed in accordance with Schedule D, plus (a) (0.00338) \* the Unit's Annual Fixed Revenue Requirement stated in Section 7 of Schedule B, divided by (b) the Unit's Maximum Annual Start-ups.

Pumped Storage Hydroelectric Facilities

The Start-up Payment computed in accordance with Equation D-1 in Schedule D, plus (a) 0.00167 \* the Unit's Annual Fixed Revenue Requirement stated in Section 7 of Schedule B, divided by (b) the Unit's Maximum Annual Start-ups.

**2. Option B**

- A. For all Schedule G Billable MWh Delivered in the Billing Month, the ISOCAISO shall pay the Variable Cost Payment computed in accordance with Schedule C. Since Schedule G Billable MWh are included in calculating the Variable Cost Payment for Billable MWh for the Billing Month under Schedule C, there is no additional payment for Schedule G Billable MWh under Option B.
- B. For all Service Hours provided after the Counted Service Hours for the Contract Year equals the Maximum Annual Service Hours:

Synchronous Condensers

In addition to the Motoring Charge computed in accordance with Schedule E, ISOCAISO shall pay the product of (a) the Motoring Charges calculated in accordance with Schedule E, and (b) 0.5.

- C. For all Schedule G Start-ups in the Billing Month, the ISOCAISO pay:

Units Capable Only of Synchronous Condenser Operation

The Start-up Payment computed in accordance with Schedule D, plus (a) (0.00338) \* the Unit's Annual Fixed Revenue Requirement stated in Section 7 of Schedule B, divided by (b) the Unit's Maximum Annual Start-ups.

Fossil Fuel Units and Geothermal Units

Three times (a) the Start-up Payment computed in accordance with Equation D-1 in Schedule D, or (b) if the Schedule G Start-up is initiated under a Dispatch Notice but is not successfully completed because it is canceled or rescinded by the ISO/CAISO, the Start-up Payment for Canceled Start-up is computed in accordance with Equation D-4 in Schedule D.

**3. Owner's Election**

Option A \_\_\_\_\_

Option B \_\_\_\_\_



**ARTICLE 24 SCHEDULE H**

**Fuel Oil Service**

The following is a description of existing capability of the Facility to burn fuel oil in lieu of or addition to natural gas:

**ARTICLE 25 SCHEDULE I**

**Insurance Requirements**

**Owner - Obtained Insurance**

*Commercial General Liability*

Commercial general liability insurance covering personal injury and property damage to third parties in connection with the activities at the Facility. The coverage will have a limit of not less than \$ [REDACTED] per occurrence, and will include coverage for sudden and accidental pollution losses. The ISOCAISO will be added as an additional insured under the terms of this coverage to the per-occurrence limit above.

*Property*

Property Insurance for direct physical loss or damage to the Facility, in an amount not less than the probable maximum loss at the Facility.

**ISOCAISO – Obtained Insurance**

*Errors and Omissions Insurance and Directors & Officers Insurance*

Errors and omissions insurance and directors and officers insurance coverage will have a combined limit of not less than \$150 million for the shorter of (i) until the termination of this Agreement or (ii) until January 1, 2002.

**ARTICLE 26 SCHEDULE J**

**Notices**

Owner

Name:  
Title:  
Address:  
Telephone:  
Facsimile:  
E-mail:

With a copy to: Owner's Representative:

**ISOCAISO:**

Nancy Traweek  
Director, Operations Support  
California ISO Corporation  
151 Blue Ravine Road  
Folsom, CA 95630  
Telephone: (916) 351-2113  
Facsimile: (916) 351-2267  
Email: [ntraweek@caiso.com](mailto:ntraweek@caiso.com)

With a copy to:

Sidney Mannheim Davies  
Assistant General Counsel  
Tariff and Tariff Compliance  
California ISO Corporation  
151 Blue Ravine Road  
Folsom, CA 95630  
Telephone: (916) 608-7144  
Facsimile: (916) 608-7222  
Email: [sdavies@caiso.com](mailto:sdavies@caiso.com)

## ARTICLE 27 SCHEDULE K

### DISPUTE RESOLUTION

#### Applicability

##### 1.1 General Applicability.

Except as limited below or otherwise as limited by law (including the rights of any party to file a complaint with FERC under the relevant provisions of the Federal Power Act (FPA)), these ADR Procedures shall apply to (a) all disputes between parties which arise under this Agreement and (b) disputes between ISOCAISO and a Responsible Utility relating to a Responsible Utility Invoice, "Final Estimated RMR Invoice, Final Adjusted RMR Invoice" as defined in the ISOCAISO Tariff, or RMR Charge or RMR Refund as defined in ~~Annex 1 of the Settlement and Billing Protocol~~ Section 11.13 in the ISOCAISO Tariff. The foregoing shall not impair the applicability of the ISOCAISO Tariff ADR procedures to other disputes between the parties that do not arise under this Agreement. All alternative dispute resolution proceedings hereunder shall be administered by the American Arbitration Association ("AAA"). The Owner, Responsible Utility and the ISOCAISO shall enter into such arrangements with the AAA as are necessary to provide for AAA administration of this Schedule K.

1.1.2 This Schedule K shall not apply to disputes as to whether rates and charges under the Agreement are just and reasonable under the Federal Power Act except as provided in Schedule F. Nothing herein shall limit the right of the FERC to initiate or adjudicate complaints or other proceedings in accordance with applicable statutes or regulations or to compel FERC to exceed its statutory authority as defined by any applicable federal statutes, regulations or orders lawfully promulgated thereunder.

##### 1.2 Disputes Involving Government Agencies.

If a party to a dispute is a government agency the procedures herein which provide for the resolution of claims and arbitration of disputes are subject to any limitations imposed on the agency by law, including but not limited to the authority of the agency to effect a remedy. If the governmental agency is a federal entity, the procedures herein shall not apply to disputes involving issues arising under the United States Constitution.

##### 1.3 Injunctive and Declaratory Relief.

Where the court having jurisdiction so determines, use of the ADR Procedures shall not be a condition precedent to a court action for injunctive relief nor shall the provisions of California Code of Civil Procedure sections 1281 *et seq.* apply to such court actions.

##### 1.4 Negotiation and Mediation.

###### 1.4.1 Negotiation.

ISOCAISO, Responsible Utility and Owner ("Parties") shall make good-faith efforts to negotiate and resolve any dispute between them arising under this Agreement prior to invoking the ADR Procedures herein. Each Party shall designate an individual with authority to negotiate the matter in dispute to participate in such negotiations. The Responsible Utility may participate in the ADR proceedings arising under this Agreement to the extent the dispute involves billing or payment obligations, in which case ISOCAISO or the Responsible Utility, but not both shall be the

disputing party. In addition, to the extent Article 7 or other provisions of this Agreement provide the Responsible Utility third-party beneficiary rights, the Responsible Utility may also participate in the ADR as a Party.

The Owner may participate in the ADR proceedings relating to a Responsible Utility Invoice, "Final Estimated RMR Invoice, Final Adjusted RMR Invoice" as defined in the ISOCAISO Tariff or RMR Charge or RMR Refund as defined in ~~Annex 1 of the Settlement and Billing Protocol~~ Section 11.13, in which case, ISOCAISO or the Owner, but not both, shall be the disputing party. In addition, to the extent the ISOCAISO Tariff provides the Owner third-party beneficiary rights, the Owner may also participate in the ADR as a Party.

#### **1.4.2 Statement of Claim.**

In the event a dispute is not resolved through such good-faith negotiations, any party may submit a statement of claim, in writing, to each other disputing party, which submission shall commence the ADR Procedures. The statement of claim shall set forth in reasonable detail (i) each claim, (ii) the relief sought, including the proposed award, if applicable, (iii) a summary of the grounds for such relief and the basis for each claim, (iv) the parties to the dispute, and (v) the individuals having knowledge of each claim. The other parties to the dispute shall similarly submit their respective statements of claim within 14 days of the date of the initial statement of claim or such longer period as the AAA may permit following an application by the responding party. If any responding party wishes to submit a counterclaim in response to the statement of claim, it shall be included in such party's responsive statement of claim. No party shall be considered as having received notice of a claim decided or relief granted by a decision made under these procedures unless the statement of claim includes such claim or relief.

#### **1.4.3 Selection of Mediator.**

After submission of the statements of claim, the parties may request mediation, if the disputing parties so agree. If the parties agree to mediate, the AAA shall distribute to the parties by facsimile or other electronic means a list containing the names of at least seven prospective mediators with mediation experience, or with technical or business experience in the electric power industry, or both, as he or she shall deem appropriate to the dispute. The parties shall either agree upon a mediator from the list provided or from any alternative source, or alternate in striking names from the list with the last name on the list becoming the mediator. The first party to strike off a name from the list shall be determined by lot. The parties shall have seven days from the date of receipt of the AAA's list of prospective mediators to complete the mediator selection process and appoint the mediator, unless the time is extended by mutual agreement. The mediator shall comply with the requirements of Section 1.5.2.

#### **1.4.4 Mediation.**

The mediator and representatives of the disputing parties, with authority to settle the dispute, shall within 14 days after the mediator's date of appointment schedule a date to mediate the dispute. Matters discussed during the mediation shall be confidential and shall not be referred to in any subsequent proceeding. With the consent of all disputing parties, a resolution may include referring the dispute directly to a technical body (such as a WSCC technical advisory panel) for resolution or an advisory opinion, or referring the dispute directly to FERC.

#### **1.4.5 Demand for Arbitration.**

If the disputing parties have not succeeded in negotiating a resolution of the dispute within 30 days of the initial statement of claim or, if within that period the parties agreed to mediate, within 30 days of the parties' first meeting with the mediator, such parties shall be deemed to be at impasse and any such disputing party may then commence the arbitration process, unless the

parties by mutual agreement agree to extend the time. A party seeking arbitration shall provide notice of its demand for arbitration to the other disputing parties.

## **1.5 Arbitration.**

### **1.5.1 Selection of Arbitrator.**

**1.5.1.1 Disputes Under \$1,000,000.** Where the total amount of claims and counterclaims in controversy is less than \$1,000,000 (exclusive of costs and interest), the disputing parties shall select an arbitrator from a list containing the names of at least 10 qualified individuals supplied by AAA, within 14 days following submission of the demand for arbitration. If the disputing parties cannot agree upon an arbitrator within the stated time, they shall take turns striking names from the list of proposed arbitrators. The first party to strike off a name shall be determined by lot. This process shall be repeated until one name remains on the list, and that individual shall be the designated arbitrator.

**1.5.1.2 Disputes of \$1,000,000 or Over.** Where the total amount of claims and counterclaims in controversy is \$1,000,000 or more (exclusive of interest and costs), the disputing parties may agree on any person to serve as a single arbitrator, or shall endeavor in good faith to agree on a single arbitrator from a list of ten qualified individuals provided by the AAA, 14 days following submission of the demand for arbitration. If the disputing parties are unable to agree on a single arbitrator within the stated time, the party or parties demanding arbitration, and the party or parties responding to the demand for arbitration, shall each designate an arbitrator. Each designation shall be from the AAA list of arbitrators, as applicable, no later than the tenth day thereafter. The two arbitrators so chosen shall then choose a third arbitrator.

### **1.5.2 Disclosures Required of Arbitrators.**

The designated arbitrator(s) shall be required to disclose to the parties any circumstances that might preclude him or her from rendering an objective and impartial determination. Each designated arbitrator shall disclose:

**1.5.2.1** Any direct financial or personal interest in the outcome of the arbitration;

**1.5.2.2** Any information required to be disclosed by California Code of Civil Procedure Section 1281.9.; and

**1.5.2.3** Any existing or past financial, business, professional, or personal interest that are likely to affect impartiality or might reasonably create an appearance of partiality or bias. The designated arbitrator shall disclose any such relationships that he or she personally has with any party or its counsel, or with any individual whom they have been told will be a witness. They should also disclose any such relationship involving members of their families or their current employers, partners, or business associates. All designated arbitrators shall make a reasonable effort to inform themselves of any interests or relationships described above. The obligation to disclose interests, relationships, or circumstances that might preclude an arbitrator from rendering an objective and impartial determination is a continuing duty that requires the arbitrator to disclose, at any stage of the arbitration, any such interests, relationships, or circumstances that arise, or are recalled or discovered.

**1.5.2.4** If, as a result of the continuing disclosure duty, an arbitrator makes a disclosure which is likely to affect his or her impartiality, or might reasonably create an appearance of partiality or bias or if a party independently discovers the existence of such circumstances, a party wishing to object to the continuing use of the arbitrator must provide written notice of its objection to the other parties within ten days of receipt of the arbitrator's disclosure or the date of a party's discovery of the circumstances giving rise to that party's objection. Failure to provide such notice shall be deemed a waiver of such objection. If a party timely provides a notice of objection to the

continuing use of the arbitrator the parties shall attempt to agree whether the arbitrator should be dismissed and replaced in the manner described in Section 1.5.1. If within ten days of a party's objection notice the parties have not agreed how to proceed the matter shall be referred to the AAA for resolution.

### **1.5.3 Arbitration Procedures.**

The AAA shall compile and make available to the arbitrator and the parties standard procedures for the arbitration of disputes, which procedures (i) shall conform to the requirements specified herein, and (ii) may be modified or adopted for use in a particular proceeding as the arbitrator deems appropriate, in accordance with Section 1.5.4. The procedures shall be based on the latest edition of the American Arbitration Association Commercial Arbitration Rules, to the extent such rules are not inconsistent with this Schedule K. Except as provided herein, all parties shall be bound by such procedures.

### **1.5.4 Modification of Arbitration Procedures.**

In determining whether to modify the standard procedures for use in the pending matter, the arbitrator shall consider (i) the complexity of the dispute, (ii) the extent to which facts are disputed, (iii) the extent to which the credibility of witnesses is relevant to a resolution, (iv) the amount in controversy, and (v) any representations made by the parties. Alternatively, the parties may, by mutual agreement, modify the standard procedures. In the event of a disagreement between the arbitrator and the agreement of the parties regarding arbitration procedures to be utilized, the parties' agreement shall prevail.

### **1.5.5 Remedies.**

**1.5.5.1 Arbitrator's Discretion.** The arbitrator shall have the discretion to grant the relief sought by a party, or determine such other remedy as is appropriate, unless the parties agree to conduct the arbitration "baseball" style. Unless otherwise expressly limited herein, the arbitrator shall have the authority to award any remedy or relief available from FERC, or any court of competent jurisdiction. Where this Agreement leaves any matter to be agreed between the parties at some future time and provides that in default of agreement the matter shall be referred to the ADR, the arbitrator shall have authority to decide upon the terms of the agreement which, in the arbitrator's opinion, it is reasonable that the parties should reach, having regard to the other terms this Agreement concerned and the arbitrator's opinion as to what is fair and reasonable in all the circumstances.

**1.5.5.2 "Baseball" Arbitration.** If the parties agree to conduct the arbitration "baseball" style, the parties shall submit to the arbitrator and exchange with each other their last best offers in the form of the award they consider the arbitrator should make, not less than seven days in advance of the date fixed for the hearing, or such later date as the arbitrator may decide. If a party fails to submit its last best offer in accordance with this Section, that party shall be deemed to have accepted the offer proposed by the other party. The arbitrator shall be limited to awarding only one of the proposed offers, and may not determine an alternative or compromise remedy.

### **1.5.6 Summary Disposition.**

The procedures for arbitration of a dispute shall provide a means for summary disposition of a demand for arbitration, or a response to a demand for arbitration, that in the reasoned opinion of the arbitrator does not have a good faith basis in either law or fact. If the arbitrator determines that a demand for arbitration or response to a demand for arbitration does not have a good faith basis in either law or fact, the arbitrator shall have discretion to award the costs of the time, expenses, and other charges of the arbitrator to the prevailing party. A determination made under this Section is subject to appeal pursuant to Section 1.6.

### **1.5.7 Discovery Procedures.**

The procedures for the arbitration of a dispute shall include adequate provision for the discovery of relevant facts, including the taking of testimony under oath, production of documents and other things, the presentation of evidence, the taking of samples, conducting of tests, and inspection of land and tangible items. The nature and extent of such discovery shall be determined as provided herein and shall take into account (i) the complexity of the dispute, (ii) the extent to which facts are disputed, (iii) the extent to which the credibility of witnesses is relevant to a resolution, and (iv) the amount in controversy. The forms and methods for taking such discovery shall be as described in the Federal Rules of Civil Procedure, except as modified pursuant to Section 1.5.4.

### **1.5.8 Evidentiary Hearing.**

The arbitration procedures shall provide for an evidentiary hearing, with provision for the cross-examination of witnesses, unless all parties consent to the resolution of the matter on the basis of a written record. The forms and methods for taking evidence shall be determined by the arbitrator(s) and modified pursuant to Section 1.5.4. The arbitrator may require such written or other submissions from the parties as he or she may deem appropriate, including submission of direct and rebuttal testimony of witnesses in written form. The arbitrator may exclude any evidence that is irrelevant, immaterial, unduly repetitious or prejudicial, or privileged. The arbitrator shall compile a complete evidentiary record of the arbitration that shall be available to the parties on its completion upon request.

### **1.5.9 Confidentiality.**

Subject to the other provisions of this Agreement, any party may claim that information contained in a document otherwise subject to discovery is "Confidential" if such information would be so characterized under the Federal Rules of Evidence or the provisions of the Agreement. The party making such claim shall provide to the arbitrator in writing the basis for its assertion. If the claim of confidentiality is confirmed by the arbitrator, he or she shall establish requirements for the protection of such documents or other information designated as "Confidential" as may be reasonable and necessary to protect the confidentiality and commercial value of such information. Any party disclosing information in violation of these provisions or requirements established by the arbitrator, unless such disclosure is required by federal or state law or by a court order, shall thereby waive any right to introduce or otherwise use such information in any judicial, regulatory, or other legal or dispute resolution proceeding, including the proceeding in which the information was obtained.

### **1.5.10 Timetable.**

Promptly after the appointment of the arbitrator, the arbitrator shall set a date for the issuance of the arbitration decision, which shall be no later than six months (or such earlier date as the parties and the arbitrator may agree) from the date of the appointment of the arbitrator, with other dates, including the dates for an evidentiary hearing or other final submissions of evidence, set in light of this date. The date for the evidentiary hearing or other final submission of evidence shall not be changed, absent extraordinary circumstances. The arbitrator shall have the power to impose sanctions, including dismissal of the proceeding, for dilatory tactics or undue delay in completing the arbitration proceedings.



### **1.5.11 Decision.**

**1.5.11.1** Except as provided below with respect to "baseball" style arbitration, the arbitrator shall issue a written decision granting the relief requested by one of the parties, or such other remedy as is appropriate, if any, and shall include findings of fact and law. The arbitration decision shall be based on (i) the evidence in the record, (ii) the terms of this Agreement and to the extent relevant, the ISOCAISO Tariff and Protocols, (iii) applicable United States federal law, including the Federal Power Act and any applicable FERC regulations and decisions, and international treaties or agreements as applicable, and (iv) applicable state law. Additionally, the arbitrator may consider relevant decisions in previous arbitration proceedings involving this Agreement. To the extent it may do so without violating confidentiality requirements, a summary of the disputed matter and the arbitrator's decision may be published in an ISOCAISO newsletter on ISOCAISO's Home Page Website.

**1.5.11.2** In arbitration conducted "baseball" style, the arbitrator shall issue a written decision adopting one of the awards proposed by the parties, and shall include findings of fact and law. The arbitration decision shall be based on (i) the evidence in the record, (ii) the terms of this Agreement and to the extent relevant, the ISOCAISO Tariff and Protocols, (iii) applicable United States federal law, including the Federal Power Act and any applicable FERC regulations and decisions, and international treaties or agreements as applicable, and (iv) applicable state law. If the arbitrator concludes that no proposed award is consistent with the factors enumerated in (i) through (iv) above, or addresses all of the issues in dispute, the arbitrator shall specify how each proposed award is deficient and direct that the parties submit new proposed awards that cure the identified deficiencies. To the extent it may do so without violating confidentiality requirements, a summary of the disputed matter and the arbitrator's decision may be published in an ISOCAISO newsletter on ISOCAISO's Home Page Website.

**1.5.11.3** Where a panel of arbitrators is appointed pursuant to Section 1.5.1.2, a majority of the arbitrators must agree on the decision. An award shall not be deemed to be precedent except in so far as a future dispute between the parties involves the same issue.

### **1.5.12 Compliance.**

Unless the arbitrator's decision is appealed under Section 1.6, the disputing parties shall, upon receipt of the decision, immediately take whatever action is required to comply with the award to the extent the award does not require regulatory action. An award that is not appealed shall be deemed to have the same force and effect as an order entered by FERC or any court of competent jurisdiction.

### **1.5.13 Enforcement.**

Following the expiration of the time for appeal of an award pursuant to Section 1.6.3, any party may apply to FERC or any court of competent jurisdiction for entry and enforcement of judgment based on the award.

### **1.5.14 Costs.**

The costs of the time, expenses, and other charges of the arbitrator shall be borne by the parties to the dispute, with each side on an arbitrated issue bearing its pro-rata share of such costs, and each party to an arbitration proceeding bearing its own costs and fees. If the arbitrator determines that a demand for arbitration or response to a demand for arbitration was made in bad faith, the arbitrator shall have discretion to award the costs of the time, expenses, and other charges of the arbitrator to the prevailing party.

## **1.6 Appeal of Award.**

### **1.6.1 Basis for Appeal.**

A party may apply to the FERC or any court of competent jurisdiction to hear an appeal of an arbitration decision only upon the grounds that the decision is contrary to or beyond the scope of this Agreement and to the extent relevant, the ISOCAISO Tariff and Protocols, United States federal law, including, without limitation, the Federal Power Act, and any applicable FERC regulations and decisions, or state law. Appeals shall, unless otherwise ordered by FERC or the court of competent jurisdiction, conform to the procedural limitations set forth in this Section 1.6.

### **1.6.2 Appellate Record.**

The parties intend that FERC or a court of competent jurisdiction should afford substantial deference to the factual findings of the arbitrator. No party shall seek to expand the record before FERC or a court of competent jurisdiction beyond that assembled by the arbitrator, except (i) by making reference to legal authority which did not exist at the time of the arbitrator's decision, or (ii) if such party contends the decision was based upon or affected by fraud, collusion, corruption, misconduct or misrepresentation.

### **1.6.3 Procedures for Appeals.**

**1.6.3.1** If a party to an arbitration desires to appeal a decision, it shall provide a notice of appeal to all parties and the arbitrator(s) within 14 days following the date of the decision. Within ten days of the filing of the notice of appeal, the appealing party must file an appropriate application, petition or motion with FERC for review under the —Federal Power Act or with a court of competent jurisdiction. Such filing shall state that the subject matter has been the subject of an arbitration pursuant to this Agreement and, to the extent relevant, the ISOCAISO Tariff and protocols.

**1.6.3.2** Within 30 days of filing the notice of appeal (or such period as FERC or the court of competent jurisdiction may specify) the appellant shall file the complete evidentiary record of the arbitration and a copy of the decision with FERC or with the court. The appellant shall serve on all parties to the arbitration copies of a description of all materials included in the submitted evidentiary record.

### **1.6.4 Award Implementation.**

Implementation of the decision shall be deemed stayed pending an appeal unless and until, at the request of a party, FERC or the court of competent jurisdiction with which an appeal has been filed, issues an order dissolving, shortening, or extending such stay.

A summary of each appeal shall be published in an ISOCAISO newsletter on the ISOCAISO Home Page Website.

### **1.6.5 Judicial Review of FERC Orders.**

FERC orders resulting from appeals shall be subject to judicial review pursuant to the Federal Power Act.

**ARTICLE 28 SCHEDULE L-1**

**REQUEST FOR APPROVAL OF CAPITAL ITEMS OR REPAIRS**

This form should be used to request ISOCAISO approval of Planned Capital Items, Unplanned Repairs or Unplanned Capital Items pursuant to Sections 7.4, 7.5 or 7.6 of the Agreement.

CALIFORNIA INDEPENDENT SYSTEM OPERATOR  
RELIABILITY MUST-RUN UNIT  
CAPITAL ITEM AND REPAIR PROJECT REQUEST

---

**Date:** \_\_\_\_\_ **CA-ISO Project Number:** \_\_\_\_\_  
**Facility:** \_\_\_\_\_ **Unit:** \_\_\_\_\_  
**Owner:** \_\_\_\_\_ **Location:** \_\_\_\_\_

**This request covers:**

- Capital Items for the next Contract Year (preliminary)
- Capital Items for the next Contract Year (final)
- Unplanned Repairs
- Unplanned Capital Items

**If this request covers Capital Items for the next Contract Year, provide:**

**Small Project Estimate (reliability)**

**Small Project Estimate (other)**

Identify separately each Capital Item included in a small project estimate projected to cost more than \$50,000.

**If this request covers Unplanned Repairs, or Capital Items projected to cost more than \$500,000, provide the information in the remainder of this form for each project.**

**Project Description:** (describe the project and its major scope items – materials, new systems, modifications to existing systems, etc.)

**If the project is required because of loss or damage to a Unit, describe the cause and nature of the loss or damage and all repairs performed or required for all Units during the year:**

**Project Budget:**

Year	Labor	Material	Contract	Int Svc	Other	Material	Over head AEGE	Total Cost	AD VAL TAX	Total Expenditures	Total Financial Costs

**Describe any work or repairs performed relating to this project in the last five years:**

**As applicable, state the proposed depreciation life, Annual Capital Item Cost, Surcharge Payment Factor or Repair Payment Factor (percentage owed by ISOCAISO) of the Capital Item or Repair:**

**Describe why this project is required (justification):**

**Is this project required to comply with any laws, regulations or permits? If so, please list them and explain requirement.**

**Provide a cost/benefit analysis summary for this project:**

Include all assumptions including changes to unit performance [efficiency, aux. power loads, etc.], impact on Maximum Net Dependable Capacity, grid interconnection/metering impacts, etc.

**Describe the impacts on the Unit's ability to perform its obligations under this Agreement if this project is not approved:**

**Describe alternatives to this project that were evaluated and the projected costs of those alternatives:**

Describe alternatives along with their major scope items. Also, compare the projected cost of these alternatives with the selected alternative, and compare the unit performance impacts (efficiency, auxiliary power demands, Maximum Net Dependable Capacity effects, etc.) of these alternatives against the chosen alternative.

**List any proceeds received or expected to be received by Owner from insurers or other third parties pursuant to applicable insurance, warranties and other contracts in connection with the project.**

**Provide the schedule for implementing this project:**

Event	Begin	Complete

**Describe any outages required to implement this project:**

**Other comments:**

**SCHEDULE L-2**

**CAPITAL ITEM AND REPAIR PROGRESS REPORT**

CALIFORNIA INDEPENDENT SYSTEM OPERATOR  
RELIABILITY MUST-RUN UNIT  
CAPITAL ITEM AND REPAIR PROGRESS REPORT

---

**Date:**

**CA-ISO Project Number:**

**Facility:**

**Unit:**

**Owner:**

**Location:**

**Capital Item or Repair:**

**Original In-Service Date:**

**Current In-Service Date:**

**If Current In-Service Date has changed, describe the reason why:**

**Describe any additional costs or savings resulting from the change in the Current In-Service Date:**

**Describe what portion of any additional costs Owner is requesting ISOCAISO to pay, and why Owner believes that ISOCAISO should be obligated to pay those additional costs:**

## ARTICLE 29 SCHEDULE M

### Mandatory Market Bid for Condition 2 Units When Dispatched by the ISOCAISO

#### Energy Bid

The bid the Owner of a Condition 2 Fossil Fuel Unit must submit into Energy markets when dispatched by the ISOCAISO is given in Equation M-1a (for Units with input/output data in polynomial form) or Equation M-1b (for Units with input/output data in exponential form):

#### Equation M-1a

$$\text{Energy Bid (\$/MWh)} = \frac{(AX^3 + BX^2 + CX + D)}{X} * P * E$$

+ [Variable O&M Rate + Emissions Rates + Scheduling Coordinator Charge  
+ ACA Charge]

#### Equation M-1b

$$\text{Energy Bid (\$/MWh)} = \frac{A * (B + CX + De^{FX})}{X} * P * E$$

+ [Variable O&M Rate + Emissions Rate + Scheduling Coordinator Charge + ACA Charge]

Where:

- for Equation M-1a, A, B, C, D and E are the coefficients given in Table C1-7a;
- for Equation M-1b, A, B, C, D, E and F are the coefficients given in Table C1-7b;
- X is the Unit Availability Limit, MW;
- P is the Hourly Fuel Price as calculated by Equation C1-8 in Schedule C using the Commodity Prices most recently published before the day the bid is submitted.
- Scheduling Coordinator Charge (\$/MWh): ~~The PX Administration Charge under the PX Tariff, \$0.31.~~
- ACA Charge (\$/MWh): The applicable annual charge for short-term sales under 18 CFR Section 382.201 of the FERC Regulations.
- Variable O&M Rate (\$/MWh): as shown on Table C1-18

#### For Units in the SCAQMD only

Emissions Rate (\$/MWh) = Emissions Cost / Unit Availability Limit

Emissions Cost = (a) RECLAIM Cost + (b) NOx Emissions Cost + (c) Organic Gases Cost + (d) Sulfur Oxides Cost + (e) Particulate Matter Cost + (f) Carbon Monoxide Cost

(a) RECLAIM Cost =  $((AX^2+BX+C) * \text{RECLAIM NOx Trading Credit Rate})$

(b) NOx Emissions Cost =  $\frac{(AX^2+BX+C) * \text{NOx Emissions Fee}}{2000}$

Where:

A, B and C are the coefficients from Table C1-13;

X = Unit Availability Limit;

(c) Organic Gases Cost =

$4.76 \times 10^{-7} * (\text{Gas Fuel}) * \text{Associated Emission Factor for Organic Gases} * \text{Associated Emissions Fee for Organic Gases}$

(d) Sulfur Oxides Cost =

$4.76 \times 10^{-7} * (\text{Gas Fuel}) * \text{Associated Emission Factor for Sulfur Oxides} * \text{Associated Emissions Fee for Sulfur Oxides}$

(e) Particulate Matter Oxides Cost =

$4.76 \times 10^{-7} * (\text{Gas Fuel}) * \text{Associated Emission Factor for Particulate Matter} * \text{Associated Emission Fee for Particulate Matter}$

(f) Carbon Monoxide Cost =

$4.76 \times 10^{-7} * (\text{Gas Fuel}) * \text{Associated Emission Factor for Carbon Monoxide} * \text{Associated Emission Fee for Carbon Monoxide}$

Where:

Gas Fuel =  $AX^3 + BX^2 + CX + D$  or  $A * (B + CX + De^{FX})$ , depending on the form of heat input the Owner is using

- A, B, C, D are the coefficients from C1-7a or C1-7b;
- F is the coefficient from C1-7b;
- X = Unit Availability Limit;
- Factors and Associated Emission fees are determined in Schedule C, Section D.3.

The bid the Owner of a geothermal Condition 2 Unit must submit into Energy markets when dispatched by the ISOCAISO is given in Equation M-2.

**Equation M-2**

Energy Bid (\$/MWh) = Fuel Cost + [Variable O&M Rate + Scheduling Coordinator Charge + ACA Charge]

Where:

- The Fuel Cost is the Steam Price identified in Equation C2-1 in Schedule C. However, for purposes of this mandatory market bid, the value for the Steam Price will be zero for Geysers Main Units until the cumulative Hourly Metered Total Net Generation during the Contract Year from all Units exceeds the Minimum Annual Generation given in Equation C2-2.
- Variable O&M Cost (\$/MWh): the cost shall be as shown on Table C2-1.
- Scheduling Coordinator Charge: ~~The PX Administration Charge under the PX Tariff \$0.31.~~
- ACA Charge (\$/MWh): The applicable annual charge for short-term sales under 18 C.F.R. Section 382.201 of the FERC Regulations.

**Ancillary Services Bid**

The bid the Owner of a Condition 2 Unit must submit into Ancillary Service markets when dispatched by ISOCAISO is as follows:

$$\text{Ancillary Services Bid (\$/MW per hr)} = \frac{\left[ \frac{\text{Annual Fixed Revenue Requirement (\$)}}{30 \text{ minutes} \times \text{Unit's Highest Ramp Rate from Schedule A, MW/min}} * \text{Target Available Hours} \right] + \left[ \frac{\text{Annual Fixed Revenue Requirement (\$)}}{\text{Maximum Net Dependable Capacity}} * \text{Target Available Hours} \right]}{2}$$

Annual Fixed Revenue Requirement is shown in Schedule B.

Target Available Hours is shown in Schedule B.

The product of 30 minutes times the Unit's highest Ramp Rate in Schedule A shall not exceed the Unit's Maximum Net Dependable Capacity.



**ARTICLE 30 SCHEDULE N-1**

**NON-DISCLOSURE and CONFIDENTIALITY AGREEMENT  
for RESPONSIBLE UTILITY**

[Name of Responsible Utility] (the "Responsible Utility") acknowledges that [Name of Owner] ("Owner") and the California Independent System Operator Corporation ("ISOCAISO") (jointly, the "Providing Parties" and severally, the "Providing Party") have agreed to provide certain information to the Responsible Utility pursuant to certain provisions of the Must-Run Service Agreement ("MRSA") between Owner and ISOCAISO and as required for settlement and billing of charges under Article 9 of such Agreement. In order to permit the Responsible Utility to receive such Confidential Information from Owner or ISOCAISO pursuant to the above-referenced provisions of the MRSA, the Responsible Utility and the Providing Parties hereby agree as follows:

- (1) For purposes of this Non-Disclosure and Confidentiality Agreement, the term "Confidential Information" shall have the same meaning it has in Section 12.5 of the MRSA, a copy of which is appended;
- (2) The Providing Parties shall provide such Confidential Information pursuant to the terms of this Non-Disclosure and Confidentiality Agreement;
- (3) The Responsible Utility shall keep such Confidential Information confidential, shall use it only for the purposes related to the MRSA, and shall limit the disclosure of any such Confidential Information to only those personnel within its organization with responsibility for using such information in connection with the MRSA. Such personnel may not include any person whose duties include (i) the marketing or sale of electric power or natural gas or gas transportation capacity at wholesale or retail, (ii) the purchase of electric power or natural gas or gas transportation capacity at wholesale or retail, (iii) the direct supervision of any employee with such responsibilities, or (iv) the provision of electricity or natural gas marketing consulting services to any employee with such responsibilities;
- (4) The Responsible Utility shall assure that personnel within its organization read and comply with the provisions of this Non-Disclosure and Confidentiality Agreement;
- (5) The Responsible Utility shall use all reasonable efforts to maintain the confidentiality of the Confidential Information in any litigation, and shall promptly notify the providing Party of any attempt by a third party to obtain the Confidential Information through legal process or otherwise;
- (6) The Responsible Utility may use Confidential Information in litigation or regulatory proceedings related to the Must-Run Service Agreement between Owner and ISOCAISO but only after notice to the Providing Party and affording the Providing Party an opportunity to obtain a protective order or other relief to prevent or limit disclosure of the Confidential Information.

The Responsible Utility agrees to be bound by the terms of Section 12.5 of the MRSA in the same manner and to the same extent as the Providing Parties. The person signing on behalf of the Responsible Utility represents that he/she is authorized to bind the Responsible Utility to the terms of this Non-Disclosure and Confidentiality Agreement.

The undersigned signatory represents that he/she is authorized to bind the Responsible Utility, to the terms of this Non-Disclosure and Confidentiality Agreement.

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Responsible Utility: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Owner: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

California Independent System Operator Corporation

Address: \_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_

## SCHEDULE N-2

### NON-DISCLOSURE and CONFIDENTIALITY AGREEMENT for PERSONS OTHER THAN THE RESPONSIBLE UTILITY

[Name of] (the "Receiving Party") acknowledges (a) that [Name of Owner] ("Owner") has agreed to provide Confidential Information to the California Agency pursuant to certain provisions of the Must-Run Service Agreement ("MRSA") between Owner and the California Independent System Operator Corporation ("ISOCAISO"), and (b) that Owner and ISOCAISO (jointly, the "Providing Parties" and severally, the "Providing Party") may provide Confidential Information on a need-to-know basis to Owner's Scheduling Coordinator, financial institutions, agents and potential purchasers of interests in a Unit; and, as required for settlement and billing, to Scheduling Coordinators responsible for paying for services provided under the MRSA between Owner and ISOCAISO. In order to permit the Receiving Party to receive such Confidential Information from Owner or ISOCAISO, the Receiving Party and the Providing Parties hereby agree as follows:

- (1) For purposes of this Non-Disclosure and Confidentiality Agreement, the term "Confidential Information" shall have the same meaning it has in Section 12.5 of the MRSA between Owner and ISOCAISO, a copy of which is appended;
- (2) The Providing Parties shall provide such Confidential Information pursuant to the terms of this Non-Disclosure and Confidentiality Agreement;
- (3) The Receiving Party shall keep such Confidential Information confidential, shall use it only for the purposes related to the MRSA, and shall limit the disclosure of any such Confidential Information to only those personnel within its organization with responsibility for using such information in connection with the MRSA upon their execution of this Non-Disclosure and Confidentiality Agreement. Such personnel may not include any person whose duties include (i) the marketing or sale of electric power or natural gas or gas transportation capacity at wholesale or retail, (ii) the purchase of electric power or natural gas or gas transportation capacity at wholesale or retail, (iii) the direct supervision of any employee with such responsibilities, or (iv) the provision of electricity or natural gas marketing consulting services to any employee with such responsibilities;
- (4) The Receiving Party shall assure that personnel within its organization authorized to receive Confidential Information read and comply with the provisions of this Non-Disclosure and Confidentiality Agreement;
- (5) The Receiving Party shall use all reasonable efforts to maintain the confidentiality of the Confidential Information in any litigation, and shall promptly notify the providing Party of any attempt by a third party to obtain the Confidential Information through legal process or otherwise;

The Receiving Party agrees to be bound by the terms of Section 12.5 of the MRSA in the same manner and to the same extent as the Providing Parties. The person signing on behalf of the Receiving Party represents that he/she is authorized to bind the Receiving Party to the terms of this Non-Disclosure and Confidentiality Agreement.

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Company: \_\_\_\_\_  
Title: \_\_\_\_\_  
Receiving Party: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Owner: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

California Independent System Operator Corporation

Title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_

## SCHEDULE O

### RMR Owner's Invoice Process

The following principles and practices shall govern the submission of invoices to the ISOCAISO for Energy and Ancillary Services provided under this Agreement ("RMR services"):

1. Invoices submitted by Owner to the ISOCAISO for RMR services shall be clear, understandable and complete.
2. The ISOCAISO, all RMR Owners and Responsible Utilities shall agree on the RMR invoice template, which agreement shall not be unreasonably withheld, prior to its implementation. The ISOCAISO shall publish the current version of the RMR invoice template by including it on the ISOCAISO Home Page Website. The ISOCAISO will specifically tell each Owner and Responsible Utility where on the ISOCAISO Home Page Website this RMR invoice template can be found. Each Owner shall use the then current RMR invoice template for invoicing RMR services for each Facility. The RMR invoice template may change from time to time. The ISOCAISO shall notify the California Agency, all RMR Owners and Responsible Utilities when a new agreed upon RMR invoice template has been placed on the ISOCAISO Home Page Website.
3. Subject to the provisions of paragraph 4 below, a Completed RMR invoice based on the version of the RMR invoice template posted on the ISOCAISO's Home Page Website seven days prior to submission of the invoice shall be deemed to satisfy the requirements of this Agreement. As used herein, the term "Completed RMR invoice" means that: (a) all of the raw data required to calculate debits and credits have been included; (b) all calculations have been performed in accordance with the formulae in the current RMR invoice template, or in the event that Owner believes a conflict exists between one or more formula(s) in the RMR Owner's invoice and the corresponding formula in the RMR invoice template, such conflict has been identified and substitute equations have been documented and used at the appropriate location(s) in the invoice; (c) linkages between invoice levels are identified; (d) all billing and service assumptions, data inputs and formulae reasonably necessary to understand the derivation of each charge on the invoice has been included; and (e) the invoice has been provided to the ISOCAISO and the Responsible Utility.
4. The Estimated RMR invoice or the Adjusted RMR invoice timeline set forth in the ISOCAISO's RMR Payments Calendar (for the appropriate invoice) shall not commence, payments shall not be made and interest shall not begin to accrue until a Completed RMR invoice has been submitted to the ISOCAISO and Responsible Utility.
5. In the event of any conflict between the RMR invoice template and this Agreement, this Agreement shall govern. The Owner or Responsible Utility detecting the conflict shall promptly give notice to the ISOCAISO. The ISOCAISO shall notify all RMR Owners and all Responsible Utilities as soon as practicable after a conflict has been identified.
6. If Owner identifies a conflict, Owner shall identify the conflict in its letter transmitting its completed Estimated or Adjusted RMR invoice to the ISOCAISO and include therein Owner's revised formula, which will be effective until agreement has been reached among the ISOCAISO, Owner, the other RMR Owners and the Responsible Utilities on the correct formula, or a decision has been rendered through ADR from which no further appeal is possible.
7. An RMR Invoice Task Force has been formed with representatives from each of the RMR Owners, the Responsible Utilities and the ISOCAISO. When a conflict has been identified, the ISOCAISO, Owner, the other RMR Owners and the Responsible Utility will participate in meetings of the RMR Invoice Task Force to reach agreement on a revised RMR invoice template. The RMR Invoice Task Force shall meet at least monthly until all conflicts are resolved. Once all conflicts have been resolved, the RMR Invoice Task

Force will meet approximately every six months to address invoicing and payment issues.

8. The RMR Invoice Task Force also shall be responsible for simplifying the RMR invoices so that they are easier to process and less burdensome to prepare.
9. To the extent that the Owner, the ISOCAISO and the Responsible Utility have agreed, certain columns in the Owner's RMR invoice template shall be standard for the Facility and shall not change. The Owner shall not be required to complete such columns each month on its invoice for it to be considered a Completed RMR invoice, unless the underlying information requirements change.
10. Owner shall supply monthly RMR Level 0-3 invoice information in accordance with the RMR invoice template for each Responsible Utility service territory as follows:
  1. Level 0: the summary invoice for Owner's total amount invoiced to the ISOCAISO for all of Owner's Facilities;
  2. Level 1: the summary invoice for all RMR Units at a Facility;
  3. Level 2: the detailed calculated information for individual RMR Units at the Facility; and
  4. Level 3: the detailed hourly data for individual RMR Units at each Facility.

Each invoice shall contain such other information as is necessary to perform the calculations, including indicated netted meter reads, ISOCAISO Dispatch Notice information (both day-ahead, real time, and adjustments), Owner's Availability Notice information and final market schedule information. No quantities shall be left blank. Each assumption made by the Owner to perform a calculation shall be listed and explained either in the appropriate Level 0-3 template under Notes or in a transmittal letter accompanying the invoice.

The methods described shall be used to calculate quantities such as Hourly Fuel Price, Hourly Emissions Cost and Start-up calculations used as input data in the RMR invoice template.

Owner shall indicate any data appearing on the invoice which it considers confidential. Responsible Utility may use the data in accordance with Section 12.5 and Schedule N of this Agreement.

## SCHEDULE P

### Reserved Energy for Air Emissions Limitations

This Schedule P applies only to Units located within the San Diego Air Quality Control Basin ("Basin").

1. For purposes of this Schedule P, the term Emission Limitation means present or future limitations on the discharge of air pollutants or contaminants into the atmosphere specified by any federal, state, regional or local law ("Clean Air Law"), by any regulation, air quality implementation plan, or permit condition promulgated or imposed by any agency authorized under any such Clean Air Law or by the judgment of any court of competent jurisdiction.
2.
  - (a) Except as set out in Sections 2 (b) and (c), if a Facility is located in the Basin and is subject to an Emission Limitation that would limit the MWh that can be produced from the Facility during the Contract Year or part thereof (such Contract Year or part being referred to as the "Limitation Period"), Owner shall, so long as some or all of the Units at the Facility are operating under Condition 1, reserve for the Facility for each Month of the Limitation Period for dispatch under this Agreement, a quantity of MWh equal to the average monthly Requested MWh for the Facility for that Month in the 36 Months preceding the next Contract Year (the "Monthly Reserved MWh").
  - (b) If there are less than 36 Months of Requested MWh preceding the next Contract Year, the Monthly Reserved MWh for the Limitation Period shall be determined by agreement between ISOCAISO and Owner. If Owner and ISOCAISO are unable to reach agreement by October 31 preceding the next Contract Year, Owner or ISOCAISO may refer the matter to ADR under a schedule (specified by the arbitrator if the participants cannot agree) requiring a decision within 30 days following appointment of the arbitrator.
  - (c)
    - (i) If the Monthly Reserved MWh has been determined in accordance with Section 2(a) and this Agreement terminates as to a Unit at the Facility, the Monthly Reserved MWh shall be adjusted downward to the average of the Requested MWh for the Units that remain subject to this Agreement for the same 36 Month period previously used to calculate the Monthly Reserved MWh.
    - (ii) If the Monthly Reserved MWh has been determined in accordance with Section 2 (b) and the Agreement terminates as to a Unit at the Facility, the adjustment shall be determined by agreement of Owner and ISOCAISO. If the Parties are unable to reach agreement at least 45 days before the Agreement terminates as to the Unit, Owner or ISOCAISO may refer the matter to ADR under a schedule (specified by the arbitrator if the participants cannot agree) requiring a decision within 30 days following appointment of the arbitrator
3. The Monthly Reserved MWh are set forth on Schedule A. No less than 15 days before the beginning of each Contract Year, Owner shall make a Section 205 filing limited to changing the terms of Schedule A to revise the Monthly Reserved MWh determined in accordance with Section 2. The revised Monthly Reserved MWh shall be effective from the first day of the Contract Year.
4. If the sum of the Billable MWh and Hybrid MWh during a Month is less than the Monthly Reserved MWh, ISOCAISO may:
  - (a) carry forward into the following Months of the Limitation Period all unused Monthly Reserved MWh, provided the cumulative unused MWh that are carried forward

into the following Months may not exceed 20% of the aggregate Monthly Reserved MWh for the remainder of the Limitation Period including the Monthly Reserved MWh for the Months into which unused Monthly Reserved MWh are to be carried forward, or

- (b) carry forward less than all unused Monthly Reserved MWh and release to Owner the Monthly Unused Reserved MWh not carried forward.

ISOCAISO shall notify Owner of the amount of unused Monthly Reserved MWh to be carried forward within 3 Business Days after the beginning of the next Month.

5. ISOCAISO may elect to reduce the aggregate Monthly Reserved MWh for the remainder of the Limitation Period by notifying Owner not less than 5 days prior to the beginning of the Month in which the reduction is to be effective. Notwithstanding the foregoing, if ISOCAISO or Owner forecasts that usage will approach the Emission Limitation in the last Month of the Limitation Period, ISOCAISO and Owner shall closely coordinate to release any unused Monthly Reserved MWh as soon as possible.
6. If there are unused Monthly Reserved MWh for the Facility remaining at the end of the Limitation Period, ISOCAISO shall pay the Unused Emission Reserve Payment. The Unused Emission Reserve Payment shall be the product of (a) the Unused Monthly Reserved MWh Payment Rate and (b) the lesser of (i) the unused Monthly Reserved MWh carried forward by the ISOCAISO into the last Month of the Limitation Period and (ii) the unused Monthly Reserved MWh remaining at the end of the Limitation Period. The Unused Monthly Reserved MWh Payment Rate shall be \$10 per MWh. The Unused Emission Reserve Payment shall be included in the invoice for the last Billing Month of the Limitation Period.
7. If the ISOCAISO determines that the Monthly Reserved MWh have become insufficient due to a Force Majeure Event at the Facility or at Reliability Must-Run Units at another facility or because of an outage on the ISOCAISO Controlled Grid or the Distribution Grid due to a Force Majeure Event, ISOCAISO may request Owner to undertake, and if so requested, Owner shall undertake all such necessary and commercially reasonable measures approved in advance by ISOCAISO and the Responsible Utility to (a) obtain, where possible, a modification or variance from applicable Emission Limitations, or (b) procure necessary emission reduction credits or allowances sufficient to offset emissions in excess of Emission Limitations to enable Owner to provide additional MWh dispatched by the ISOCAISO to meet reliability requirements arising by reason of such Force Majeure Event. ISOCAISO shall reimburse Owner for all reasonable costs of procuring such emission reduction credits or allowances.
8. If the ISOCAISO wishes to dispatch a Unit at a Facility that is within 5% of exceeding its Monthly Reserved MWh for the Limitation Period, the ISOCAISO shall first dispatch Units at other Facilities that are not within 5% of the Monthly Reserved MWh during the Limitation Period if the other Unit(s), in the ISOCAISO's sole judgment, provide equivalent reliability benefits.
9. If any Emission Limitation affecting the Facility materially changes, ISOCAISO and Owner promptly shall renegotiate this Schedule P to reflect such change. If ISOCAISO and Owner are unable to agree on revisions to this Schedule P, the Owner may file a revised Schedule P with FERC under Section 205 of the Federal Power Act for the limited purpose of taking such changes in the Emissions Limitation into account. Such filing may be with or without the concurrence of the ISOCAISO, but ISOCAISO reserves its right to protest any such filing.



**Attachment D**  
**CAISO Market Notices**  
**MRTU Tariff Section 205 Filing**  
**and**  
**Compliance Filing with Paragraph 417 of September 21, 2006 Order, Docket No. ER06-615**

**October 26, 2007**

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**From:** CAISO Communications [CAISOCcommunications@caiso.com]

**Sent:** Thursday, September 06, 2007 1:47 PM

**Subject:** Draft Reliability Must-Run Contract for MRTU Posted

## CALIFORNIA ISO MARKET NOTICE

**Requested Client Action:** Mark Your Calendar, Request for Comment

**Date of Distribution:** September 6, 2007

**Categories:** Legal/ Regulatory, Market Rules and Market Design

**Subject:** Draft Reliability Must-Run Contract for MRTU Posted

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**Summary:** The CAISO has posted a draft Reliability Must-Run Contract for MRTU for stakeholder comment. Please submit comments to the [MRTUTariff@caiso.com](mailto:MRTUTariff@caiso.com) by close of business September 19, 2007. The CAISO will hold a conference call on September 25, 2007 to respond to stakeholder comments or questions.

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**Main Text:** The California ISO (CAISO) is proposing revisions to the current *pro forma* Reliability Must-Run (RMR) Contract to be consistent with the Market Redesign and Technology Upgrade (MRTU) tariff. The proposed revisions comply with Paragraph 417 of the September 21, 2006 MRTU Order. The draft RMR Contract for MRTU is located on the MRTU Tariff and FERC Filings page at: <http://www.caiso.com/17ba/17ba873e19350.html>, under the grouping RMR Contract Agreement.

The CAISO will hold a conference call on **September 25** to respond to stakeholder comments or questions.

### **Conference Call Details**

Date: Tuesday, September 25, 2007

Time: 1:00 p.m. to 3:00 p.m. (PDT)

Call-In Number: (877) 209-0397

### **Web Conference Information**

Web Address (URL): [www.webmeeting.att.com](http://www.webmeeting.att.com)

Meeting Number: 1-866 205-4243

Access Code: 6305743

Please submit comments to [MRTUTariff@caiso.com](mailto:MRTUTariff@caiso.com) by close of business September 19, 2007.

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**For More Information Contact:** Daune Kirrene at [dkirrene@caiso.com](mailto:dkirrene@caiso.com) or 918.608.7058



**California ISO**  
Your Link to Power

The California ISO strives to be a world-class electric transmission organization built around a globally recognized and inspired team providing cost-effective and reliable service, well-balanced energy market mechanisms, and high-quality information for the benefit of our customers.

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**From:** CAISO Communications [CAISOCommunications@caiso.com]  
**Sent:** Monday, September 24, 2007 1:27 PM  
**Subject:** RMR Contract Agreement Conference Call Rescheduled

## CALIFORNIA ISO MARKET NOTICE

**Requested Client Action:** Mark Your Calendar

**Date of Distribution:** September 24, 2007

**Categories:** Legal/ Regulatory, Market Rules and Market Design

**Subject:** RMR Contract Agreement Conference Call Rescheduled

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**Summary:** The California ISO has rescheduled the RMR Contract Agreement conference call from Tuesday, September 25, 2007 to Tuesday, October 2, 2007 from 12:00 p.m. to 1:30 p.m. (PDT).

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**Summary:** The California ISO has rescheduled the Reliability Must-Run (RMR) Contract Agreement conference call from Tuesday, September 25, 2007 to Tuesday, October 2, 2007 due to the Federal Energy Regulatory Commission's technical conference being held this week in Washington, D.C.

### Conference Call Details

Date: Tuesday, October 2, 2007  
Time: 12:00 p.m. to 1:30 p.m. (PDT)  
Call-In Number: 800-260-0702  
Conference ID: 888751  
Name of Call: RMR Contracts

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**For More Information Contact:** Daune Kirrene at [dkirrene@caiso.com](mailto:dkirrene@caiso.com) or 918.608.7058



**California ISO**  
Your Link to Power

The California ISO strives to be a world-class electric transmission organization built around a globally recognized and inspired team providing cost-effective and reliable service, well-balanced energy market mechanisms, and high-quality information for the benefit of our customers.

## CALIFORNIA ISO MARKET NOTICE

**Requested Client Action:** Request for Comment

**Date of Distribution:** October 15, 2007

**Categories:** Legal/ Regulatory, Market Rules and Market Design

**Subject:** Revised Draft Reliability Must-Run Contract for MRTU and Related Tariff Language

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**Summary:** The CAISO has posted a revised draft Reliability Must-Run Contract for MRTU and related tariff language in response to stakeholder comments and discussion following the conference call held on September 25. Please submit comments to [MRTUTariff@caiso.com](mailto:MRTUTariff@caiso.com) by close of business Friday, October 19.

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**Main Text:** In response to stakeholder comments and discussion following the conference call held on September 25, the California ISO (CAISO) has posted to its website:

- A revised draft Reliability Must-Run Contract for Market Redesign and Technology Upgrade (MRTU)
- A new Section 11.25 (a revised version Appendix N of Part J adapted for MRTU)
- A related definitions to be included in Appendix A

The CAISO has also posted a document explaining incremental changes made since the original posting. The proposed revisions comply with Paragraph 417 of the September 21, 2006 MRTU Order. The CAISO will be filing the revised RMR Contract for MRTU and related Tariff language with the Federal Energy Regulatory Commission (FERC) on or about October 26, 2007.

The documents are located on the MRTU Tariff and FERC Filings web page at:  
<http://www.caiso.com/17ba/17ba873e19350.html>, under the grouping RMR Contract Agreement.

Please submit comments to [MRTUTariff@caiso.com](mailto:MRTUTariff@caiso.com) by close of business Friday, October 19, 2007.

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**For More Information Contact:** Ean O'Neill at [eonell@caiso.com](mailto:eonell@caiso.com) or 916.608.7007



**California ISO**  
Your Link to Power

The California ISO strives to be a world-class electric transmission organization built around a globally recognized and inspired team providing cost-effective and reliable service, well-balanced energy market mechanisms, and high-quality information for the benefit of our customers.

151 Blue Ravine Road, Folsom, CA 95630

Click [here](#) to update your profile or unsubscribe.

## CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing document upon all of the parties listed in that document as receiving service, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated this 26<sup>th</sup> day of October, 2007, at Folsom, California.

*Sidney M. Davies* <sup>BRM</sup>  
Sidney M. Davies