

## **12 CREDITWORTHINESS.**

### **12.1 Credit Requirements.**

The creditworthiness requirements in this section apply to the CAISO's acceptance of, any transaction in a CAISO Market, to the payment of charges pursuant to the CAISO Tariff (including the Grid Management Charge), and to establish credit limits for participation in any CAISO auction of CRRs and to CRR Holders for the holding of CRRs. Each Market Participant (including each Scheduling Coordinator, UDC, MSS, CRR Holder, or Candidate CRR Holder) shall secure its financial transactions with the CAISO (including its participation in any auction of CRRs and for the holding of CRRs) by maintaining an Unsecured Credit Limit and/or by posting Financial Security, the level of which constitutes the Market Participant's Financial Security Amount. For each Market Participant, the sum of its Unsecured Credit Limit and its Financial Security Amount shall represent its Aggregate Credit Limit. Each Market Participant shall have the responsibility to maintain an Aggregate Credit Limit that is at least equal to its Estimated Aggregate Liability.

#### **12.1.1 Unsecured Credit Limit.**

Each Market Participant requesting an Unsecured Credit Limit shall submit an application to the CAISO in the form specified on the CAISO Website. The CAISO shall determine the Unsecured Credit Limit for each Market Participant in accordance with the procedures set forth in the applicable Business Practice Manual. The maximum Unsecured Credit Limit for any Market Participant shall be \$250 million. In accordance with the procedures described in the applicable Business Practice Manual, each Market Participant requesting or maintaining an Unsecured Credit Limit is required to submit to the CAISO or its agent financial statements and other information related to its overall financial health as directed by the CAISO. Each Market Participant is responsible for the timely submission of its latest financial statements as well as other information that may be reasonably necessary for the CAISO to conduct its evaluation. The CAISO shall determine the Unsecured Credit Limit for each Market Participant as described in Sections 12.1.1.1, 12.1.1.1.1, and 12.1.1.1.2.

As a result of the CAISO's credit evaluation, a Market Participant may be given an Unsecured Credit Limit by the CAISO or denied an Unsecured Credit Limit with the CAISO. Following the initial application and the establishment of an Unsecured Credit limit, the CAISO will review each Market Participant's Unsecured Credit Limit on a quarterly basis, unless that entity does not prepare quarterly statements, in which case the review will occur on an annual basis, and no entity shall be required to submit a new application. In addition, the CAISO may review the Unsecured Credit Limit for any Market Participant whenever the CAISO becomes aware of information that could indicate a Material Change in Financial Condition. In the event the CAISO determines that the Unsecured Credit Limit of a Market Participant must be reduced as a result of a subsequent review, the CAISO shall notify the Market Participant of the reduction, and shall, upon request, also provide the Market Participant with a written explanation of why the reduction was made.

**12.1.1.1 Unsecured Credit Limit Calculation.**

An Unsecured Credit Limit (UCL) for each Market Participant that is a Rated or Unrated Public/Private Corporation, a Rated or Unrated Governmental Entity, or a Local Publicly Owned Electric Utility and that requests an Unsecured Credit Limit is calculated as follows:

1. For each Rated Public/Private Corporation, the Unsecured Credit Limit is the lesser of \$250 million or an amount equal to the Market Participant's Tangible Net Worth (TNW) multiplied by a calculated percentage of TNW. The TNW percentage is comprised of fifty percent (50%) of the Market Participant's Credit Rating Default Probability (CRDP) and fifty percent (50%) of the MKMV Default Probability, *if reasonably applicable*.

2. For each Unrated Public/Private Corporation, the Unsecured Credit Limit is the lesser of \$250 million or an amount equal to the Market Participant's TNW multiplied by a calculated percentage of TNW. The TNW percentage is comprised of one hundred percent (100%) of the MKMV Default Probability.
3. For each Rated Governmental Entity, the Unsecured Credit Limit is the lesser of \$250 million or an amount equal to the Market Participant's Net Assets (NA) multiplied by a calculated percentage of NA. The NA percentage is comprised of one hundred percent (100%) of the Market Participant's Credit Rating Default Probability.
4. (a) For each Unrated Governmental Entity other than one that receives appropriations from the federal government or a state government, the Unsecured Credit Limit is the lesser of \$250 million or an amount equal to a specified percentage of the Market Participant's Net Assets if the Market Participant has a minimum of \$25 million in Net Assets and its Times Interest Earned, Debt Service Coverage and Equity to Assets ratios (as those ratios are defined in the applicable Business Practice Manual) meet or exceed minimums specified in the applicable Business Practice Manual.  
  
(b) For each Unrated Governmental Entity that receives appropriations from the federal government or a state government, the Unsecured Credit Limit is the lesser of \$250 million or the amount appropriated by the federal or relevant state government for the purpose of procuring Energy and Energy-related products and services for the applicable fiscal year. The Unrated Governmental Entity seeking to establish an Unsecured Credit Limit pursuant to this section shall provide documentation establishing its annual appropriations.

5. A Local Publicly Owned Electric Utility with a governing body having ratemaking authority that has submitted an application for an Unsecured Credit Limit shall be entitled to an Unsecured Credit Limit of \$1 million without regard to its Net Assets. Such Local Publicly Owned Electric Utility shall be entitled to request an Unsecured Credit Limit based on Net Assets as provided in Section 12.1.1.1(3) or 12.1.1.1(4) in order to establish an Unsecured Credit Limit as the greater of \$1 million or the amount determined as provided in this Section 12.1.1.1(5). A public entity that is not a Local Publicly Owned Electric Utility is not entitled to an Unsecured Credit Limit of \$1 million under this Section 12.1.1.1(5) but may seek to establish an Unsecured Credit Limit as provided in any other provision of the CAISO Tariff that may apply.

Public entities, including Local Publicly Owned Electric Utilities, that operate through a Joint Powers Agreement, or a similar agreement acceptable to the CAISO with the same legal force and effect, shall be entitled to aggregate or assign their Unsecured Credit Limits subject to the following limitations and requirements. A public entity that is a party to a Joint Powers Agreement or similar agreement and that is also participating independently in the CAISO Markets with an established Unsecured Credit Limit shall not be entitled to assign or aggregate any portion of its Unsecured Credit Limit that the public entity is using to support financial liabilities associated with its individual participation in the CAISO Markets. A Local Publicly Owned Electric Utility that operates through a Joint Powers Agreement or similar agreement that desires to aggregate a portion of its Unsecured Credit Limit that is equal to or less than \$1

million with one or more other Local Publicly Owned Electric Utilities that operate through that Joint Powers Agreement or similar agreement or to assign a portion of its Unsecured Credit Limit that is equal to or less than \$1 million to the Joint Powers Authority shall be entitled to do so. A Local Publicly Owned Electric Utility that operates through a Joint Powers Agreement or similar agreement that desires to aggregate its Unsecured Credit Limit with one or more other Local Publicly Owned Electric Utilities that operate through that Joint Powers Agreement or similar agreement or to assign a portion of its Unsecured Credit Limit to the Joint Powers Authority that exceeds \$1 million, and any public entity that is not a Local Publicly Owned Electric Utility that operates through a Joint Powers Agreement or similar agreement that desires to aggregate its Unsecured Credit Limit with one or more other Local Publicly Owned Electric Utilities that operate through that Joint Powers Agreement or similar agreement or to assign any portion of its Unsecured Credit Limit to the Joint Powers Authority, shall provide documentation that is acceptable to the CAISO and that demonstrates the Local Publicly Owned Electric Utility or public entity will assume responsibility for the financial liabilities of the Joint Powers Agency associated with the assigned or aggregated portion of the Unsecured Credit Limit. Such documentation may include a guaranty or similar instrument acceptable to the CAISO.

Unsecured Credit Limits established pursuant to this Section 12.1.1.1 shall be subject to the CAISO's consideration of the same qualitative factors that apply to all Market Participants as set forth in Section 12.1.1.2 and, accordingly, the CAISO may adjust their Unsecured Credit Limits pursuant to Section 12.1.1. The \$250 million hard cap on Unsecured Credit Limits specified in Section 12.1.1 has been set

with respect to the length of the current CAISO Payments Calendar, i.e., a maximum of ninety-five (95) Trading Days of charges outstanding. Upon implementation of payment acceleration (scheduled for 2008), the CAISO expects to recommend a reduction in the \$250 million hard cap. Any changes to the \$250 million cap will require FERC approval of an amendment to the applicable provisions of the CAISO Tariff.

**12.1.1.1.1 Maximum Percentage of Tangible Net Worth and Net Assets.**

For Rated and Unrated Public/Private Corporations or Rated Governmental Entities, the maximum percentage of TNW or NA is 7.5 percent (7.5%) if the Market Participant's combined default probability (CDP) is less than or equal to 0.06 percent (0.06%).

The maximum allowable percentage of 7.5% is for the highest quality firms; that is, those Market Participants with a CDP of 0.06 percent or less. The Tangible Net Worth percentage (TNWP) or Net Assets percentage (NAP) that a Market Participant qualifies for will be reduced as its credit risk increases.

For Unrated Governmental Entities, the CAISO may provide an Unsecured Credit Limit of up to five percent (5%) of NA.

With respect to either of these potential maximum percentages, a lesser amount of unsecured credit may be granted if the CAISO becomes aware of information related to a Material Change in Financial Condition or other significant information that presents a significant risk to the creditworthiness of the entity.

**12.1.1.1.2 Unsecured Credit Limit Calculation Steps.**

An eight-step process is used to determine Unsecured Credit Limits for Market Participants that are Rated Public/Private Corporations, Unrated Public/Private Corporations, and Rated Governmental Entities.

- Step 1 – If the Market Participant has a credit rating(s) from one or more of the "Nationally Recognized Statistical Rating Organizations" (NRSRO), verify the rating(s) with the appropriate NRSRO.

Step 2 - Calculate the Market Participant's Average Rating Default Probability (ARDP).

- (a) ARDP is the sum of Credit Rating Default Probabilities divided by the total number of Credit Rating Default Probabilities used.
- (b) The median default probability calculated by Moody's KMV (i.e., MKMV) for Standard & Poor's and Moody's long-term credit rating classes is provided on the CAISO Website at <http://www.caiso.com/1bd8/1bd8b09916e50.html>. Default probabilities are available from each NRSRO.
- (c) Issuer ratings without the benefit of credit enhancement would be used in this assessment. Such ratings are also known as "counterparty" or "underlying" ratings.

Step 3 – Using Moody's KMV's CreditEdge or RiskCalc software, obtain the Market Participant's MKMV Default Probability (MKDP).

- (a) Since Moody's KMV calculates default probabilities directly, the MKMV Default Probability will be used without any mapping.

Step 4 – Calculate a combined default probability (CDP) based on one of the following methodologies:

- (a)  $CDP \text{ for Rated Public/Private Corporations} = (ARDP * 50\%) + (MKDP * 50\%)$  or  $(ARDP * 100\%)$  if a MKDP is not reasonably applicable.
- (b)  $CDP \text{ for Unrated Public/Private Corporations} = MKDP * 100\%$
- (c)  $CDP \text{ for Rated Governmentally Owned Utilities} = ARDP * 100\%$

Step 5 – Calculate the Market Participant’s Tangible Net Worth percentage (TNWP) or Net Assets percentage (NAP).

- (a)  $TNWP = MAP * BDP / CDP$  for Rated/Unrated Public/Private Corporations
- (b)  $NAP = MAP * BDP / CDP$  for Rated Governmental Entities

Where:

MAP = maximum allowable percentage;

BDP = base default probability;

CDP = see Step 4 above; and

If the SC’s CDP > 0.5%, the TNWP or NAP equals 0%

Step 6 – Calculate the Market Participant’s Tangible Net Worth or Net Assets.

- (a)  $TNW$  for Rated/Unrated Public/Private Corporations = Assets minus Intangibles (e.g., Good Will) minus Liabilities
- (b)  $NA$  for Rated Governmental Entities = Total Assets minus Total Liabilities

Step 7 – Calculate the Market Participant’s Unsecured Credit Limit.

- (a)  $UCL = TNW * TNWP$  for Rated/Unrated Public/Private Corporations
- (b)  $UCL = NA * NAP$  for Rated Governmental Entities

Step 8 – Adjust Unsecured Credit Limit downward, if warranted based on the CAISO’s review of factors in Section 12.1.1.1.

- (a)  $Final\ UCL = UCL\ from\ Step\ 7 * (0 - 100\%)$



**12.1.1.2 Qualitative and Quantitative Credit Strength Indicators.**

In determining a Market Participant's Unsecured Credit Limit, the CAISO may rely on information gathered from financial reporting agencies, the general/financial/energy press, and provided by the Market Participant to assess its overall financial health and its ability to meet its financial obligations.

Information considered by the CAISO in this process may include the following qualitative factors:

- (a) Applicant's history;
- (b) Nature of organization and operating environment;
- (c) Management;
- (d) Contractual obligations;
- (e) Governance policies;
- (f) Financial and accounting policies;
- (g) Risk management and credit policies;
- (h) Market risk including price exposures, credit exposures and operational exposures;
- (i) Event risk;
- (j) The state or local regulatory environment; and
- (k) Affiliate disclosure information provided pursuant to Section 39.9.

Material negative information in these areas may result in a reduction of up to **one hundred percent** (100%) in the Unsecured Credit Limit that would otherwise be granted based on the eight-step process described in Section 12.1.1.1. A Market Participant, upon request, will be provided a written analysis as to how the provisions in Section 12.1.1.1 and this section were applied in setting its Unsecured Credit Limit.

**12.1.1.3 Financial Statements.**

Market Participants requesting unsecured credit are required to provide financial statements so that a credit review can be completed. Based on availability, the Market Participant must submit a financial statement for the most recent financial quarter, as well as audited financial statements for the most recent three fiscal years, or the period of existence of the Market Participant, if shorter, to the CAISO or the CAISO's designee. If audited financial statements are not available, financial statements, as described below, should be submitted, signed and attested to by an officer of the Market Participant as a fair representation of the financial condition of the Market Participant in accordance with generally accepted accounting principles. The information should include, but is not limited to, the following:

- (a) If publicly traded:
  - (i) Annual and quarterly reports on Form 10-K and Form 10-Q, respectively
  - (ii) Form 8-K reports, if any
- (b) If privately held or governmentally owned:
  - (i) Management's discussion & analysis (if available)
  - (ii) Report of independent accountants (if available)
  - (iii) Financial statements, including:
    - Balance sheet
    - Income statement
    - Statement of cash flows
    - Statement of stockholder's equity
  - (iv) Notes to financial statements

If the above information is available electronically on the internet, the Market Participant may indicate in written or electronic communication where such statements are located for retrieval by the CAISO or the CAISO's designee.

**12.1.1.4 Determination of Unsecured Credit Limits for Affiliates.**

If any Market Participant requesting or maintaining an Unsecured Credit Limit is affiliated with one or more other entities subject to the credit requirements of this Section 12, the CAISO may consider the overall creditworthiness and financial condition of such Affiliates when determining the applicable Unsecured Credit Limit. The CAISO may determine that the maximum Unsecured Credit Limit specified in Section 12.1.1 applies to the combined activity of such Affiliates. In the event the CAISO determines that the maximum Unsecured Credit Limit applies to the combined activity of the Affiliates and the Market Participant, the CAISO shall inform the Market Participant in writing.

**12.1.1.5 Notification of Material Change in Financial Condition.**

Each Market Participant shall notify the CAISO in writing of a Material Change in Financial Condition, within five (5) Business Days of when the Material Change in Financial Condition is known or reasonably should be known by the Market Participant. The provision to the CAISO of a copy of a Form 10-K, Form 10-Q, or Form 8-K filed with the U.S. Securities and Exchange Commission shall satisfy the requirement of notifying the CAISO of such Material Change in Financial Condition. Alternatively, the Market Participant may direct the CAISO to the location of the information on their company website or the website of the U.S. Securities & Exchange Commission.

**12.1.2 Financial Security and Financial Security Amount.**

A Market Participant that does not have an Unsecured Credit Limit, or that has an Unsecured Credit Limit that is less than its Estimated Aggregate Liability, shall post Financial Security that is acceptable to the CAISO and that is sufficient to ensure that its Aggregate Credit Limit (i.e., the sum of its Unsecured Credit Limit and Financial Security Amount) is equal to or greater than its Estimated Aggregate Liability. The Financial Security posted by a Market Participant may be any combination of the following types of Financial Security provided in favor of the CAISO and notified to the CAISO under Section 12.3:

- (a) an irrevocable and unconditional letter of credit issued by a bank or financial institution that is reasonably acceptable to the CAISO;
- (b) an irrevocable and unconditional surety bond issued by an insurance company that is reasonably acceptable to the CAISO;
- (c) an unconditional and irrevocable guaranty issued by a company that is reasonably acceptable to the CAISO;
- (d) a cash deposit standing to the credit of the CAISO in an interest-bearing escrow account maintained at a bank or financial institution that is reasonably acceptable to the CAISO;
- (e) a certificate of deposit in the name of the CAISO issued by a bank or financial institution that is reasonably acceptable to the CAISO;
- (f) a payment bond certificate in the name of the CAISO issued by a bank or financial institution that is reasonably acceptable to the CAISO; or
- (g) a prepayment to the CAISO.

Financial Security instruments as listed above shall be in such form as the CAISO may reasonably require from time to time by notice to Market Participants , or in such other form as has been evaluated and approved as reasonably acceptable by the CAISO. The CAISO shall publish and maintain standardized forms related to the types of Financial Security listed above on the CAISO Website. The CAISO shall require the use of standardized forms of Financial Security to the greatest extent possible.

**12.1.2.1 Additional Procedures Regarding Certain Types of Financial Security.**

- (a) Unconditional and irrevocable guaranties: In those cases where a Market Participant is a subsidiary or Affiliate of another entity and would like to utilize the consolidated financial statements and other relevant information of that entity for obtaining credit, a signed corporate guaranty is required. A guarantor would be considered reasonably acceptable and a corresponding Financial Security Amount would be set based on the guarantor's credit evaluation according to the same procedures that apply to the credit evaluation of a Market Participant.
- (b) Cash deposits standing to the credit of the CAISO in interest-bearing escrow accounts: Interest on a cash deposit standing to the credit of the CAISO in an interest-bearing escrow account will accrue to the Market Participant's benefit and will be added to the Market Participant's prepayment account on a monthly basis. Should a Market Participant become delinquent in payments, the Market Participant's outstanding account balance will be satisfied using deposited funds. The Market Participant must take care to replenish used funds to ensure that its Aggregate Credit Limit continues to exceed its Estimated Aggregate Liability.

- (c) Prepayments to the CAISO: Prepayments to the CAISO will be held in an interest-bearing account or another investment acceptable to the Market Participant and the CAISO, and interest on the investment will accrue at the rate as provided for in the investment. Interest will accrue to the Market Participant's benefit and will be added to the Market Participant's prepayment account on a monthly basis. Due to the additional administrative effort involved in tracking and posting interest on such prepayments, the use of this option is not encouraged.

**12.1.2.2 Process for Evaluating Requests to Use Non-Standardized Forms of Financial Security.**

A Market Participant that seeks permission to use a form for Financial Security other than one or more of the standardized forms posted on the CAISO Home Page shall seek such permission in a written request to the CAISO that explains the basis for the use of such non-standardized form. The CAISO shall have ten (10) Business Days from receipt of such request to evaluate it and determine whether it will be approved as reasonably acceptable. If the CAISO does not respond to such request within the ten (10) Business Day period, the request shall be deemed to have been denied. Until and unless the CAISO approves the use of a non-standardized form for Financial Security, the Market Participant that submitted such request shall be required to use one of the standardized forms for Financial Security described in this Section 12.1.2.

**12.1.2.3 Expiration of Financial Security.**

Each Market Participant shall ensure that the financial instruments it uses for the purpose of providing Financial Security will not expire and thereby cause the Market Participant's Aggregate Credit Limit to fall below the Market Participant's Estimated Aggregate Liability. The CAISO will treat a financial instrument that does not have an automatic renewal provision and that is not renewed or replaced within seven (7)

days of its date of expiration as being out of compliance with the standards for Financial Security contained in this Section 12 and will deem the value of such financial instrument to be zero, and will draw upon such Financial Security prior to its stated expiration if deemed necessary by the CAISO.

**12.1.2.4 Risk of Loss of Financial Security Amounts Held and Invested by the CAISO.**

In accordance with the CAISO's investment policy, the CAISO will invest each Financial Security Amount of a Market Participant only in bank accounts, high-quality money market accounts, and/or U.S. Treasury/Agency securities unless a specific written request is received from the Market Participant for a different type of investment and the CAISO provides its written consent to such alternative investment. A Market Participant that provides a Financial Security Amount that is held and invested by the CAISO on behalf of the Market Participant will bear all risks that such Financial Security Amount will incur a loss of principal and/or interest as a result of the CAISO's investment of such Financial Security Amount.

**12.1.3 Estimated Aggregate Liability.**

The CAISO will periodically calculate the Estimated Aggregate Liability of each Market Participant, based on all charges and settlement amounts for which such Market Participant is liable or reasonably anticipated by the CAISO to be liable for pursuant to the CAISO Tariff. The Estimated Aggregate Liability for each Market Participant shall be determined and applied by the CAISO consistent with the procedures set forth in the applicable Business Practice Manual. The CAISO shall upon request provide each Market Participant with information concerning the basis for the CAISO's determination of its Estimated Aggregate Liability, and the CAISO's determination may be disputed in accordance with the procedures set forth in the applicable Business Practice Manual. The CAISO shall compare each Market Participant's Estimated Aggregate Liability against its Aggregate Credit Limit on a periodic basis.

**12.1.3.1 Calculation of Estimated Aggregate Liability.**

**12.1.3.1.1 Calculation of the Estimated *Aggregate Liability Amount*.**

Except as described in Section 12.1.3.1.2, the CAISO shall use the method described in this Section 12.1.3.1.1 to calculate each Market Participant's Estimated Aggregate Liability. The Estimated Aggregate Liability represents the amount owed to the CAISO for all unpaid obligations, specifically, the obligations for the number of Trading Days outstanding at a given time based on the CAISO's Payments Calendar plus seven (7) Trading Days based on the allowable period for Market Participants to respond to CAISO requests for additional collateral (five (5) Business Days), and other liabilities including the value of a Market Participant's CRR portfolio, if negative. The charges the CAISO shall use to calculate Estimated Aggregate Liability shall be charges described or referenced in the CAISO Tariff. The CAISO shall calculate the Estimated Aggregate Liability for each Market Participant by aggregating the following obligations:

- Invoiced amounts, i.e., any published but unpaid amounts on Invoices;
- published amounts, i.e., amounts for Trading Days for which Settlement Statements have been issued;
- estimated amounts, i.e., amounts based on estimated Settlement amounts calculated by the Settlement system using estimated meter data, and other available operational data;
- extrapolated amounts, i.e., amounts calculated for Trading Days for which neither actual nor estimated Settlement Statements have been issued;
- CRR portfolio value, i.e., the prospective value of the CRR portfolio, if negative, as described in Section 12.6.3;
- CRR Auction limit, i.e., the maximum credit limit for participation in a CRR Auction;



- CRR Auction awards (prior to invoicing), i.e., amounts to cover winning offers at the completion of the CRR Auction but prior to invoicing;
- past-due amounts, i.e., any unpaid or past due amounts on Invoices;
- Annual FERC Fees, i.e., FERC fees for a Market Participant that has elected to pay such amounts on an annual basis that are owed and outstanding and not already captured in any other component of Estimated Aggregate Liability;
- WAC Charges, i.e., WAC amounts for the current year or future years as specified in Section 36.9.2;
- Estimated Aggregate Liability adjustments, i.e., adjustments that may be necessary as a result of analysis performed as a result of Section 12.4.2; and
- extraordinary adjustments, i.e., adjustments to Settlement amounts related to FERC proceedings, if known and estimated by the CAISO, as described in Section 12.1.3.1.3.

For a Market Participant that maintains multiple BAID numbers, the Estimated Aggregate Liability of the Market Participant as a legal entity shall be calculated by summing the Estimated Aggregate Liabilities for all such BAID numbers and comparing the sum of the Estimated Aggregate Liabilities to the Aggregate Credit Limit of the Market Participant. Market Participants may recommend changes to the liability estimates produced by the CAISO's Estimated Aggregate Liability calculation through the dispute procedures described in Section 12.4.2.

**12.1.3.1.2 Calculation Methodology Applicable to New Market Participants.**

Each new Market Participant (and each Market Participant that has previously been inactive) is required to have an initial Aggregate Credit Limit that is sufficient to cover a minimum of forty-five (45) Trading Days of estimated obligations. This initial credit requirement is based on anticipated transactions in the CAISO Markets, and shall be considered to be equal to the Market Participant's Estimated Aggregate Liability *until the CAISO obtains sufficient data from its automated calculation of Estimated Aggregate Liability as described in Section 12.1.3.1.1 to begin relying on that calculation.*

**12.1.3.1.3 Special Circumstances**

**12.1.3.1.3.1 Daily Adjustments and Disputes.**

Charges associated with daily adjustments and disputes that are regularly calculated by the CAISO Settlement system will be included in the CAISO's determinations of Estimated Aggregate Liability as the charges are calculated.

**12.1.3.1.3.2 FERC Refund Orders.**

The CAISO will assess its ability to reasonably calculate the charges associated with a refund before the CAISO's Settlement system is re-run. If the CAISO can reasonably apportion the refund charges to specific Market Participants, it will include the amounts in its calculation of Estimated Aggregate Liability for those Market Participants and will request Financial Security from them accordingly. If the CAISO determines that complexities of a FERC refund order preclude the CAISO from reasonably being able to include refunds in its calculation of Estimated Aggregate Liability, the CAISO will not request Financial Security associated with the required refunds until the refunds are processed through the CAISO Settlement system. However, if feasible, the CAISO will make available to Market Participants, for informational purposes only, an aggregate forecast of the effect that providing the refunds will have on the CAISO's calculation of Estimated Aggregate Liability.

**12.1.3.1.3.3 CAISO ADR Procedures.**

The CAISO will handle transactions associated with the CAISO ADR Procedures in the same manner as transactions associated with refunds provided pursuant to Section 12.1.3.1.3.2.

**12.2 Review of Creditworthiness.**

The CAISO may review the creditworthiness of any Market Participant that delays or defaults in making payments due under the CAISO Tariff and, as a consequence of that review, may require such Market Participant, whether or not it has an Unsecured Credit Limit, to provide credit support in the form of any of the following types of Financial Security:

- (a) an irrevocable and unconditional letter of credit by a bank or financial institution reasonably acceptable to the CAISO;
- (b) a cash deposit standing to the credit of an interest-bearing escrow account maintained at a bank or financial institution *reasonably acceptable to* the CAISO;
- (c) an irrevocable and unconditional surety bond posted by an insurance company reasonably acceptable to the CAISO;
- (d) a payment bond certificate in the name of the CAISO from a financial institution *reasonably acceptable to* the CAISO; or
- (e) a prepayment to the CAISO.

The CAISO may require the Market Participant to maintain such Financial Security for at least one (1) year from the date of such delay or default.

### **12.3 Posting and Releases of Financial Security.**

Each Market Participant required to provide a Financial Security Amount under Section 12.1.2 shall notify the CAISO of the initial Financial Security Amount that it wishes to provide at least fifteen (15) days in advance and shall ensure that the CAISO has received such Financial Security Amount prior to the date the Market Participant commences activity through the CAISO, or the date the CRR Holder or Candidate CRR Holder participates in the applicable auction of CRRs. A Market Participant may at any time increase its Financial Security Amount by providing additional Financial Security in accordance with Section 12.1.2. A Market Participant may request that its Financial Security Amount be reduced or released by making its request not fewer than fifteen (15) days prior to the date on which the reduction or release is requested to occur. The CAISO shall evaluate the request and inform the Market Participant within ten (10) Business Days either that a reduction or release of the Financial Security Amount is permissible, that a reduction or release of the Financial Security Amount is impermissible, or that the CAISO requires more information from the Market Participant in order to make its determination. The CAISO may decline to reduce or release a Financial Security Amount or may release a lesser amount for any of the following reasons:

- (a) The Estimated Aggregate Liability for the Market Participant cannot be accurately determined due to a lack of supporting Settlement charge information.
- (b) The most recent liabilities of the Market Participant are volatile to a significant degree and a reduction or release of the Financial Security Amount would present a high likelihood that, after the Financial Security Amount was reduced or released, the Estimated Aggregate Liability for the Market Participant, as calculated by the CAISO, would exceed its Aggregate Credit Limit.

- (c) The Market Participant has provided notice or otherwise demonstrated that it is terminating or significantly reducing its participation in the CAISO Markets. The CAISO may retain a portion of the Financial Security Amount to ensure that the Market Participant is adequately secured with respect to pending liabilities that relate to Settlement re-runs or other liabilities for which the Market Participant may be responsible under this CAISO Tariff.

#### **12.3.1 Self-Supply of UDC Demand.**

Notwithstanding anything to the contrary in the CAISO Tariff, a Scheduling Coordinator or UDC that is an Original Participating Transmission Owner or is a Scheduling Coordinator for an Original Participating Transmission Owner shall not be precluded by Section 12.3 from scheduling transactions that serve a UDC's Demand from

- (1) a resource that the UDC owns; and
- (2) a resource that the UDC has under contract to serve its Demand.

#### **12.4 Calculation of Ongoing Financial Security Requirements.**

Following the date on which a Market Participant commences trading, if the Market Participant's Estimated Aggregate Liability, as calculated by the CAISO, at any time exceeds its Aggregate Credit Limit, the CAISO shall direct the Market Participant to post an additional Financial Security Amount within five (5) Business Days that is sufficient to ensure that the Market Participant's Aggregate Credit Limit is at least equal to its Estimated Aggregate Liability. The CAISO shall also notify a Market Participant if at any time its Estimated Aggregate Liability exceeds ninety percent (90%) of its Aggregate Credit Limit. For the purposes of calculating the Market Participant's Estimated Aggregate Liability, the CAISO shall include (1) outstanding charges for Trading Days for which Settlement data is available, and (2) an estimate of charges for Trading Days for which Settlement data is not yet available. To estimate charges

for Trading Days for which Settlement data is not yet available, the CAISO will consider available historical Settlement data, and other available operational and market data as described in the applicable Business Practice Manual.

**12.4.1 Resolution of a CAISO Request for an Additional Financial Security Amount.**

A Market Participant has five (5) Business Days to resolve a CAISO request for additional Financial Security. Within the five (5) Business Days, the Market Participant must either demonstrate to the CAISO's satisfaction that the CAISO's Financial Security request is entirely or partially unnecessary, or post the required Financial Security Amount calculated by the CAISO. If the CAISO and the Market Participant are unable to agree on the appropriate level of Financial Security during the five (5) Business Day review period, the Market Participant must post the additional Financial Security and may continue with the dispute process described in Section 12.4.2. Any excess Financial Security Amounts will be returned to the Market Participant if the dispute process finds in favor of the Market Participant.

**12.4.2 Dispute Process Regarding a CAISO Request for an Additional Security Amount.**

Market Participants may dispute the Estimated Aggregate Liability calculated by the CAISO and, as a result, the CAISO may reduce or cancel a requested Financial Security adjustment. The following steps are required for a Market Participant to dispute a Financial Security request resulting from the CAISO's calculation of Estimated Aggregate Liability:

- (1) Request by the Market Participant to review the CAISO calculation.
- (2) A reasonable and compelling situation presented, as determined by the Market Participant's CAISO client representative.
- (3) Documentation of facts and circumstances that evidence that the CAISO's calculation of Estimated Aggregate Liability results in an excessive and unwarranted Financial Security posting requirement.
- (4) Approval by the CAISO Manager and/or Director of Customer Services and Industry Affairs and approval by the CAISO Treasurer.

- (5) The CAISO may decline to adjust the initial Estimated Aggregate Liability, as calculated by the CAISO, if the Market Participant has had Financial Security shortfalls in the past twelve (12) months (i.e., it has been shown that the Market Participant's Aggregate Credit Limit at times during the preceding twelve (12) months has been insufficient to cover the Market Participant's Estimated Aggregate Liability).

In no such case shall a CAISO request for increased Financial Security remain outstanding for more than five (5) Business Days. Either the above process is to be completed within five (5) Business Days from the date of the CAISO request for additional Financial Security, or the Market Participant is to post additional Financial Security within the five (5) Business Days and continue this process, which may result in a return of posted Financial Security back to the Market Participant if the results of the dispute process are found to favor the Market Participant.

Factors for consideration in the event this dispute process is utilized include: weighing the risk of using the lower figure to the potential detriment of market creditors if the Market Participant is under-secured and defaults, against the desire not to impose additional potentially unwarranted costs on a Market Participant; equity and consistency of treatment of Market Participants in the dispute process; and the evidentiary value of the information provided by the Market Participant in the dispute process.

#### **12.5 CAISO Enforcement Actions Regarding Under-Secured Market Participants.**

If a Market Participant's Estimated Aggregate Liability, as calculated by the CAISO, at any time exceeds its Aggregate Credit Limit, the CAISO may take any or all of the following actions:

- (a) The CAISO may withhold a pending payment distribution.

- (b) The CAISO may limit trading, which may include rejection of Bids, including Self-Schedules, and/or limiting other CAISO Market activity, including limiting eligibility to participate in a CRR Allocation or CRR Auction. In such case, the CAISO shall notify the Market Participant of its action and the Market Participant shall not be entitled to participate in the CAISO Markets or CRR Auctions or submit further Bids, including Self-Schedules, or otherwise participate in the CAISO Markets until the Market Participant posts an additional Financial Security Amount that is sufficient to ensure that the Market Participant's Aggregate Credit Limit is at least equal to its Estimated Aggregate Liability.
- (c) The CAISO may require the Market Participant to post an additional Financial Security Amount in lieu of an Unsecured Credit Limit for a period of time.
- (d) The CAISO may restrict, suspend, or terminate the Market Participant's CRR Entity Agreement or any other service agreement.
- (e) The CAISO may resell the CRR Holder's CRRs in whole or in part, including any Long Term CRRs, in a subsequent CRR Auction or bilateral transaction, as appropriate.
- (f) The CAISO will not implement the transfer of a CRR if the transferee or transferor has an Estimated Aggregate Liability in excess of its Aggregate Credit Limit.

In addition, the CAISO may restrict or suspend a Market Participant's right to submit further Bids, including Self-Schedules, or require the Market Participant to increase its Financial Security Amount if at any time such Market Participant's potential additional liability for Imbalance Energy and other CAISO charges is determined by the CAISO to be excessive by comparison with the likely cost of the amount of Energy reflected in Bids or Self-Schedules submitted by the Market Participant.



## **12.6 Credit Obligations Applicable to CRRs.**

### **12.6.1 Credit Requirements for CRR Allocations.**

Subject to applicable requirements of Section 36.9.2 concerning the prepayment of Wheeling Access Charges, Load Serving Entities eligible to participate in any CRR Allocation are not required to provide additional Financial Security in advance of a CRR Allocation.

### **12.6.2 Credit Requirements for CRR Auctions.**

To establish available credit for participating in any CRR Auction, each CRR Holder or Candidate CRR Holder must have an Unsecured Credit Limit or have provided Financial Security in a form consistent with Section 12.1.2. Each CRR Holder or Candidate CRR Holder may choose to designate a portion of its Unsecured Credit Limit and/or posted Financial Security specifically for the CRR Auction by notifying the CAISO of the CRR Holder's or Candidate CRR Holder's intent. Alternatively, the CRR Holder or Candidate CRR Holder may choose to post additional Financial Security to cover its participation in the CRR Auction, and shall by notify the CAISO of the portion of its total Financial Security to be assigned as its CRR Auction bidding limit. Each CRR Holder or Candidate CRR Holder that participates in a CRR Auction shall ensure that its Aggregate Credit Limit in excess of its Estimated Aggregate Liability is the greater of \$500,000 or the sum equal to the sum of the absolute values of all of its bids for CRRs submitted in the relevant CRR Auction plus the sum of the Credit Margins for all of the CRRs for which the Candidate CRR Holder submits bids in the relevant CRR Auction. A CRR Holder or Candidate CRR Holder that fails to satisfy this requirement shall not be permitted to participate in the relevant CRR Auction, or shall have bids exceeding its Available Credit Limit for participation in the CRR Auction, in accordance with the above formula, rejected by the CAISO on a last-in, first-out basis.

### **12.6.3 Credit Requirements for the Holding of CRRs.**

**12.6.3.1 Credit Requirements Generally.**

- (a) Each CRR Holder, whether it obtains CRRs through a CRR Allocation or a CRR Auction, must maintain an Aggregate Credit Limit in excess of its Estimated Aggregate Liability including the credit requirement of the CRR portfolio determined as described in this Section 12.6.3. CRR Holders obtaining CRRs in the initial CRR Allocation will be required to comply with the credit requirements associated with such CRRs as determined by the CAISO after completion of the initial CRR Auction. The CAISO shall issue a Market Notice after completion of the initial CRR Auction to announce that CRR Holders obtaining CRRs in the initial CRR Allocation must comply with such credit requirements.
- (b) Each CRR Holder shall be required to ensure that its Aggregate Credit Limit is sufficient to satisfy the credit requirements described in this Section 12.6.3. Except as provided in this paragraph, CRRs are evaluated on a portfolio basis as follows. If a CRR Holder owns more than one CRR, such CRR Holder shall be subject to an overall credit requirement that is equal to the sum of the individual credit requirements applicable to each of the CRRs held by such CRR Holder , which is calculated after the MW associated with any Offsetting CRRs are netted out. If this sum is positive, the amount will be added to the CRR Holder's Estimated Aggregate Liability. However, if the sum is negative, the CRR Holder's Estimated Aggregate Liability shall not be reduced. If a CRR Holder holds one or more CRRs obtained through a CRR Allocation and also holds one or more CRRs obtained through a CRR Auction, the individual credit requirements applicable to any of the CRRs obtained through a CRR Allocation may not be netted against the individual credit requirements applicable to any of the CRRs obtained through a CRR Auction in determining such CRR Holder's Estimated Aggregate Liability.

- (c) The CAISO shall reevaluate the credit requirements for holding CRRs, and shall adjust the credit requirements accordingly, not less than monthly. The CAISO may adjust the credit requirements for holding CRRs with terms of one year or less at the CAISO's discretion to account for changes in the monthly auction prices for CRRs and changes in the Historical Expected Values for CRRs, or more frequently than monthly if necessary if the CAISO finds that actual or anticipated market conditions indicate that CRR credit requirements may be inadequate to cover the financial risk of the CRRs. The CAISO may also adjust the credit requirements for holding Long Term CRRs annually to reflect the changes in auction prices of one-year CRRs in annual auctions, and to reflect updates to Credit Margins based on actual Locational Marginal Price data derived from market operations.
- (d) In cases where the ownership of a CRR is to be transferred through either the Secondary Registration System or through Load Migration, the CAISO shall evaluate and adjust the credit requirements for both the current owner of the CRR and the prospective owner of the CRR as appropriate prior to the transfer. If additional Financial Security is required from either the current or prospective owner, the transfer will not be completed until such Financial Security has been provided to and accepted by the CAISO. CRRs transferred through the Secondary Registration System will be treated like auctioned CRRs for the purpose of calculating the credit requirements for holding the CRRs, regardless of whether the CRRs were originally allocated or purchased at auction or acquired through the Secondary Registration System. CRRs assigned to Load-gaining or Load-losing Load Serving Entities as a result of Load Migration will be treated like allocated CRRs for the purpose of calculating the credit requirements for holding the CRRs.

**12.6.3.2 Calculation of the Credit Amount Required to Hold a CRR With a Term of One Year or Less.**

Each CRR Holder that holds a CRR with a term of one year or less shall be subject to a credit requirement (\$/MW) equal to the negative of the most recent CRR Auction Price of such CRR or the Historical Expected Value of such CRR, whichever is lower, plus the Credit Margin for such CRR. The CRR Auction Price will be used until twelve (12) months of historical market operations data are available.

**12.6.3.3 Calculation of the Credit Amount Required to Hold a Long Term CRR.**

Each CRR Holder that holds a Long Term CRR shall be subject to a credit requirement (\$/MW) equal to (i) the negative of the most recent CRR Auction Price of a CRR with the same CRR Source and CRR Sink as the Long Term CRR but with only a one-year term, plus (ii) the Credit Margin calculated for the one-year CRR. If there is less than one year remaining in the term of a Long Term CRR, the credit requirement shall be determined pursuant to Section 12.6.3.2.

**12.6.3.4 Calculation of Credit Margin.**

The Credit Margin (\$/MW) for a CRR is equal to (i) the Expected Congestion Revenue minus (ii) the Fifth Percentile Congestion Revenue of such CRR. Both values will be based on the probability distribution of Congestion revenue of such CRR calculated using historical Locational Marginal Price data, when available, and proxy values, including data taken from Locational Marginal Price studies conducted by the CAISO, until such time as historical Locational Marginal Price data is available, with the details of such calculation published in a Business Practice Manual. The CAISO may reassess its determinations regarding the Credit Margin determination at any time and shall require additional Financial Security if the reassessment results in an increase in a CRR Holder's Estimated Aggregate Liability that is not covered by a CRR Holder's Aggregate Credit Limit (consisting of the CRR Holder's Unsecured Credit Limit and/or Financial Security).

**12.6.4 Credit Requirements for Sales of Allocated CRRs.**

Each Load Serving Entity that sells a CRR obtained through a CRR Allocation shall, as a prerequisite to the sale of any such CRR, have an Aggregate Credit Limit with a sufficient margin to cover the credit requirement for holding the Offsetting CRR that the Load Serving Entity would be responsible for assuming in the event of Load Migration from the Load Serving Entity to another Load Serving Entity pursuant to Section 36.8.5.3. The credit requirement for holding the Offsetting CRR will be included in the Estimated Aggregate Liability of the Load Serving Entity upon the transfer of the allocated CRR.

**12.7 Credit Obligation for New Responsible Utilities for RMR Costs.**

If a Responsible Utility first executed the TCA after 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 & Poor's ("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,

the New Responsible Utility shall issue and confirm to the CAISO an irrevocable and unconditional letter of credit in an amount equal to three times the highest monthly payment invoiced by the CAISO to the New Responsible Utility (or the prior Responsible Utility) in connection with services under Reliability Must-Run Contracts in 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 be in such form as the CAISO may reasonably require from time to time by notice to the New Responsible Utility and shall authorize the CAISO or the RMR 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 Invoice. The security provided by the New Responsible Utility pursuant to this Section is intended to cover the New Responsible Utility's outstanding liability for payments it is liable to make to the CAISO under this Section, including monthly payments, any reimbursement for capital improvement, termination fees and any other payments to which the CAISO is liable under Reliability Must-Run Contracts.

**13 DISPUTE RESOLUTION.**

**13.1 Applicability.**

**13.1.1 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 FPA), the CAISO ADR Procedures shall apply to all disputes between parties which arise under the CAISO Documents except where the decision of the CAISO is stated in the provisions of this CAISO Tariff to be final. The CAISO ADR Procedures shall not apply to:

- (1) Disputes arising under contracts which pre-date the CAISO Operations Date, except as the disputing parties may otherwise agree;
- (2) Disputes as to whether rates and charges set forth in this CAISO Tariff are just and reasonable under the FPA.

**13.1.2 Disputes Involving Government Agencies.**

If a party to a dispute is a government agency the procedures herein that 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.

**13.1.3 Injunctive and Declaratory Relief.**

Where the court having jurisdiction so determines, use of the CAISO 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.



**13.2 Negotiation and Mediation.**

**13.2.1 Negotiation.**

The CAISO and Market Participants (party or parties) shall make good-faith efforts to negotiate and resolve any dispute between them arising under CAISO Documents prior to invoking the CAISO ADR Procedures outlined herein. Each party shall designate an individual with authority to negotiate the matter in dispute to participate in such negotiations.

**13.2.2 Statement of Claim.**

In the event a dispute is not resolved through such good-faith negotiations, any one of the parties may submit a statement of claim, in writing, to each other disputing party, the CAISO ADR Committee, and the CAISO Governing Board, which submission shall commence the CAISO 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 fourteen (14) days of the date of the initial statement of claim or such longer period as the chair of the CAISO ADR Committee 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. A summary of the statements of claim shall be published by the CAISO on the CAISO's secure communication system, and any other method adopted by the CAISO ADR Committee. No Market Participant shall be considered as having received notice of a claim decided or relief granted by a decision made under these procedures unless the summary of the statements of claim published by the CAISO includes such claim or relief.

**13.2.3 Selection of Mediator.**

After submission of the statements of claim, the parties may request mediation, if at least **seventy-five percent (75%)** of the disputing parties so agree, except that where a dispute involves three parties, at least two of the parties must agree to mediation. If the parties agree to mediate, the chair of the CAISO ADR Committee 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 CAISO ADR Committee chair'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 13.3.2.

**13.2.4 Mediation.**

The mediator and representatives of the disputing parties, with authority to settle the dispute, shall within fourteen (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 WECC technical advisory panel) for resolution or an advisory opinion, or referring the dispute directly to FERC. The CAISO shall publish notice of the referral of the dispute on the CAISO's secure communication system, and any other method adopted by the CAISO ADR Committee.

**13.2.5 Demand for Arbitration.**

If the disputing parties have not succeeded in negotiating a resolution of the dispute within thirty (30) days of the initial statement of claim or, if within that period the parties agreed to mediate, within thirty (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, the CAISO ADR Committee and the CAISO Governing Board, which shall publish notice of such demand in the CAISO newsletter or electronic bulletin board, and any other method adopted by the CAISO ADR Committee.

**13.3 Arbitration.**

**13.3.1 Selection of Arbitrator.**

**13.3.1.1 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 ten (10) qualified individuals supplied by the CAISO ADR Committee, or if the CAISO is a party to the dispute, the names of at least ten (10) qualified individuals supplied by the American Arbitration Association within fourteen (14) days following submission of the demand for arbitration. If the parties cannot agree upon an arbitrator within fourteen (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.

**13.3.1.2 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 (10) qualified individuals provided by the CAISO ADR Committee, or if the CAISO is a party to the dispute, the names of at least ten (10) qualified individuals supplied by the American Arbitration Association within fourteen (14) days following submission of the demand for arbitration. If the 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 CAISO ADR Committee list of arbitrators no later than the tenth (10th) day thereafter. The two arbitrators so chosen shall then choose a third arbitrator.

**13.3.2 Disclosures Required of Arbitrators.**

The designated arbitrator(s) shall be required to disclose to the parties any circumstances which might preclude him or her from rendering an objective and impartial determination. Each designated arbitrator shall disclose:

- (a) Any direct financial or personal interest in the outcome of the arbitration;
- (b) Any information required to be disclosed by California Code of Civil Procedure Section 1281.9.; and
- (c) 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 he or she has been told will be a witness. Designated arbitrators 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. 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 (10) 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 13.3.1. If within ten (10) days of a party's objection notice the parties have not agreed how to proceed the matter shall be referred to the CAISO ADR Committee for resolution.

**13.3.3 Arbitration Procedures.**

The CAISO ADR Committee shall compile and make available to the arbitrator and the parties standard procedures for the arbitration of disputes, which procedures (i) shall include provision, upon good cause shown, for intervention or other participation in the proceeding by any party whose interests may be affected by its outcome, (ii) shall conform to the requirements specified herein, and (iii) may be modified or adopted for use in a particular proceeding as the arbitrator deems appropriate, in accordance with Section 13.3.4. The procedures adopted by the CAISO ADR Committee 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 Section 13. Except as provided herein, all parties shall be bound by such procedures.

**13.3.4 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.

**13.3.5 Remedies.**

**13.3.5.1 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 other court of competent jurisdiction. Where any CAISO Document 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 CAISO ADR Procedures, 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 of the CAISO Document concerned and the arbitrator's opinion as to what is fair and reasonable in all the circumstances.

**13.3.5.2 "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 (7) days in advance of the date fixed for the hearing, or such other 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.

**13.3.6 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 13.4.

**13.3.7 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 13.3.4.

**13.3.8 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 13.3.4. 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 which shall be available to the parties on its completion upon request.

**13.3.9 Confidentiality.**

Subject to the other provisions of this CAISO Tariff, 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. 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.

**13.3.10 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 (6)** months (or such 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.



**13.3.11 Decision.**

**13.3.11.1** 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 the relevant CAISO Documents, (iii) applicable United States federal law, including the FPA 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. A summary of the disputed matter and the arbitrator's decision shall be published in a CAISO newsletter or electronic bulletin board and any other method adopted by the CAISO ADR Committee, and maintained by the CAISO ADR Committee.

**13.3.11.2** 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 the relevant CAISO Documents, (iii) applicable United States federal law, including the FPA 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. A summary of the disputed matter and the arbitrator's decision shall be published in a CAISO newsletter or electronic bulletin board, and any other method adopted by the CAISO ADR Committee. An award shall not be deemed to be precedential.

**13.3.11.3** Where a panel of arbitrators is appointed pursuant to Section 13.3.1.2, a majority of the arbitrators must agree on the decision.

**13.3.12 Compliance.**

Unless the arbitrator's decision is appealed under Section 13.4, 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 the FERC or any court of competent jurisdiction.

**13.3.13 Enforcement.**

Following the expiration of the time for appeal of an award pursuant to Section 13.4.3, any party may apply to FERC or any court of competent jurisdiction for entry and enforcement of judgment based on the award.

**13.3.14 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. Notwithstanding the above, at the discretion of the arbitrator, the winning party in any dispute which has resulted in the enforcement of an important right affecting the public interest shall not be required to pay any of the costs of the arbitrator and may recover such of its own reasonable attorney fees, expert witness fees and other reasonable costs from the losing party to the dispute if (a) a significant benefit, whether pecuniary or non-pecuniary, has been conferred on the general public, (b) the necessity and financial burden of private enforcement are such as to make the award appropriate, and (c) such fees should not, in the interest of justice, be paid out of the recovery.

**13.4 Appeal of Award.**

**13.4.1 Basis for Appeal.**

A party may apply to the FERC or any court of competent jurisdiction to hear an appeal of an arbitration award only upon the grounds that the award is contrary to or beyond the scope of the relevant CAISO Documents, United States federal law, including, without limitation, the FPA, and any 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 13.4.

**13.4.2 Appellate Record.**

The parties intend that FERC or the court of competent jurisdiction should afford substantial deference to the factual findings of the arbitrator. No party shall seek to expand the record before the FERC or 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.

**13.4.3 Procedures for Appeals.**

**13.4.3.1** If a party to an arbitration desires to appeal an award, it shall provide a notice of appeal to the CAISO Governing Board, all parties and the arbitrator within ~~fourteen~~ (14) days following the date of the award. The appealing party must likewise provide notice to the CAISO ADR Committee, which shall publish notice of the appeal on the CAISO's secure communication system, and any other method adopted by the CAISO ADR Committee.

Within ten (10) days of the filing of the notice of appeal, the appealing party must file an appropriate application, petition or motion with the FERC to trigger review under the FPA or with a court of competent jurisdiction. Such filing shall state that the subject matter has been the subject of an arbitration pursuant to the relevant CAISO Document.

**13.4.3.2** Within ~~thirty~~ (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 award with FERC or with the court of competent jurisdiction. The appellant shall serve copies of a description of all materials included in the submitted evidentiary record.

**13.4.4 Award Implementation.**

Implementation of the award shall be deemed stayed pending an appeal unless and until, at the request of a party, the FERC or the court of competent jurisdiction to which an appeal has been filed, issues an order dissolving, shortening, or extending such stay. However, a summary of each appeal shall be published in a CAISO newsletter or electronic bulletin board, and any other method adopted by the CAISO ADR Committee.

**13.4.5 Judicial Review of FERC Orders.**

FERC orders resulting from appeals shall be subject to judicial review pursuant to the FPA.

**13.5 Allocation of Awards Payable by or to the CAISO.**

**13.5.1 Allocation of an Award.**

If the CAISO must pay an award to a party pursuant to good faith negotiations or the CAISO ADR Procedures, the CAISO will recover the amount of the award from Market Participants and Scheduling Coordinators. If the CAISO receives an award from a party pursuant to good faith negotiations or the CAISO ADR Procedures, the CAISO will flow back the amount of the award to Market Participants and Scheduling Coordinators.

**13.5.2 Timing of Adjustments.**

Upon determination that an award is payable by or to the CAISO pursuant to good faith negotiations or the CAISO ADR Procedures, the CAISO shall calculate the amounts payable to and receivable from the party, Market Participants, and Scheduling Coordinators, as soon as reasonably practical, and shall show any required adjustments as a debit or a credit in a subsequent **Initial** Settlement Statement **T+38BD** or, in the case of an amount payable by the CAISO to a party, as soon as the CAISO and that party may agree.

**13.5.3 Method of Allocation.**

**13.5.3.1 Allocation to Market Participants.**

The CAISO will use best efforts to determine which Market Participant(s) is or are responsible for and/or benefit from payment of an award by or to the CAISO and to allocate receipt of or payment for the award equitably to such Market Participant(s). In undertaking the allocation, the CAISO shall consider the extent of a Market Participant's participation in affected markets and the CAISO Tariff in effect on the applicable Trading Day(s), and may consider any other relevant factor, including but not limited to, applicable contracts.

**13.5.3.2 Residual Amounts.**

Any awards for which the CAISO is unable to identify Market Participants in accordance with 13.5.3.1 and any award amounts that the CAISO is unable to collect that are not covered by Section 11.29.17.1 will be allocated to all Scheduling Coordinators through neutrality adjustments.

**14 FORCE MAJEURE INDEMNIFICATION AND LIMITATIONS ON LIABILITY.**

**14.1 Uncontrollable Forces.**

Neither the CAISO nor a Market Participant will be considered in default of any obligation under this CAISO Tariff if prevented from fulfilling that obligation due to the occurrence of an Uncontrollable Force.

**14.2 Responsibilities of Affected Entity.**

In the event of the occurrence of an Uncontrollable Force, which prevents the CAISO or a Market Participant from performing any of its obligations under this CAISO Tariff, the affected entity shall (i) if it is the CAISO, immediately notify the Market Participants in writing of the occurrence of such Uncontrollable Force and, if it is a Market Participant, immediately notify the CAISO in writing of the occurrence of such Uncontrollable Force, (ii) not be entitled to suspend performance of its obligations under this CAISO Tariff in any greater scope or for any longer duration than is required by the Uncontrollable Force, (iii) use its best efforts to mitigate the effects of such Uncontrollable Force, remedy its inability to perform and resume full performance of its obligations hereunder, (iv) in the case of the CAISO, keep the Market Participants apprised of such efforts, and in the case of the Market Participants, keep the CAISO apprised of such efforts, in each case on a continual basis and (v) provide written notice of the resumption of its performance of its obligations hereunder.

**14.3 Strikes, Lockouts or Labor Disputes.**

Notwithstanding any of the foregoing, the settlement of any strike, lockout or labor dispute constituting an Uncontrollable Force shall be within the sole discretion of the entity involved in such strike, lockout or labor dispute and the requirement that an entity must use its best efforts to mitigate the effects of the Uncontrollable Force and/or remedy its inability to perform and resume full performance of its obligations hereunder shall not apply to strikes, lockouts, or labor disputes.

**14.4 Market Participant's Indemnity.**

Each Market Participant, to the extent permitted by law, shall indemnify the CAISO and hold it harmless against all losses, damages, claims, liabilities, costs or expenses (including legal expenses) arising from any act or omission of the Market Participant except to the extent that they result from the CAISO's default under this CAISO Tariff or gross negligence or intentional wrongdoing on the part of the CAISO or of its officers, directors or employees.

**14.5 Limitation on Liability.**

**14.5.1 Liability for Damages.**

Except as provided for in Section 13.3.14, the CAISO shall not be liable in damages to any Market Participant for any losses, damages, claims, liability, costs or expenses (including legal expenses) arising from the performance or non-performance of its obligations under this CAISO Tariff, including but not limited to any adjustments made by the CAISO in Inter-SC Trades, except to the extent that they result from gross negligence or intentional wrongdoing on the part of the CAISO.

**14.5.2 Exclusion of Certain Types of Loss.**

The CAISO shall not be liable to any Market Participant under any circumstances for any consequential or indirect financial loss including but not limited to loss of profit, loss of earnings or revenue, loss of use, loss of contract or loss of goodwill except to the extent that it results from except to the gross negligence or intentional wrongdoing on the part of the CAISO.

**14.6 Potomac Economics, Ltd. Limitation Of Liability.**

Potomac Economics, Ltd. shall not be liable in damages to any Market Participant for any losses, damages, claims, liability, costs or expenses (including legal expenses) arising from its calculation of reference levels under its Consultant Agreement with the CAISO dated as of September 3, 2002, except to the extent that they result from gross negligence or intentional wrongdoing of Potomac Economics, Ltd.

**15 REGULATORY FILINGS.**

Any amendment or other modification of any provision of this CAISO Tariff must be in writing and approved by the CAISO Governing Board in accordance with the bylaws of the CAISO. Any such amendment or modification shall be effective upon the date it is permitted to become effective by FERC. Nothing contained herein shall be construed as affecting, in any way, the right of the CAISO to furnish its services in accordance with this CAISO Tariff, or any tariff, rate schedule or Scheduling Coordinator Agreement which results from or incorporates this CAISO Tariff, or unilaterally to make an application to FERC for a change in rates, terms, conditions, charges, classifications of service, Scheduling Coordinator Agreement, rule or regulation under FPA Section 205 and pursuant to the FERC's rules and regulations promulgated thereunder. Nothing contained in this CAISO Tariff or any Scheduling Coordinator Agreement shall be construed as affecting the ability of any Market Participant receiving service under this CAISO Tariff to exercise its rights under Section 206 of the FPA and FERC's rules and regulations thereunder.