April 24, 2000

The Honorable David P. Boergers
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

**Re: California Independent System Operator Corporation,
Docket No. ER00-____-000**

Reliability Must-Run Settlement Agreement Among the California ISO, Northern California Power Agency, and Pacific Gas and Electric Company, and Related Agreements

Dear Secretary Boergers:

Pursuant to Section 205 of the Federal Power Act (AFPA@), 16 U.S.C. ' 824d, and Section 35 of the Commission's regulations, 18 C.F.R. ' 35 (1999), the California Independent System Operator Corporation (AISO@)[1] respectfully submits for filing and approval an original and six copies of an agreement entitled "Reliability Must-Run Settlement Agreement Among California ISO, Northern California Power Agency and Pacific Gas And Electric Company" ("Settlement Agreement"). The ISO also submits the

[1] Capitalized terms not otherwise defined herein are defined in the Master Definitions Supplement, ISO Tariff Appendix A, as filed August 15, 1997, and subsequently revised.

following additional agreements which are appended to, and expressly incorporated in and made a part of the Settlement:

- three Reliability Must-Run Contracts (hereafter “Must-Run Service Agreements” or “MRSAs”)[2] between the ISO and the Northern California Power Agency ("NCPA") which provide for service from June 1, 1999, through December 31, 1999 from the following Generating Units owned and operated by NCPA: (i) Collierville 1 and 2; (ii) Lodi STIG; and (iii) Alameda CT 1 and 2, Lodi CT, and Roseville CT 1 and 2 (collectively, the “1999 MRSAs”);

- two MRSAs between the ISO and NCPA, which provide for service from January 1, 2000 through December 31, 2000 from the following Generating Units owned and operated by NCPA, and which are subject to extension from year-to-year thereafter at the discretion of the ISO: (i) NCPA Geothermal Plant Number 2, units 3 and 4; and (ii) Alameda CT 1 and 2 and Lodi CT (collectively, the “2000 MRSAs”);

- a Participating Generator Agreement (“PGA”) between the ISO and NCPA; and

- a Meter Service Agreement for ISO Metered Entities (“MSA”) between the ISO and NCPA.

As explained in greater detail below, the enclosed Settlement Agreement and related agreements are the result of extensive negotiations among the ISO, NCPA, and Pacific Gas and Electric Company ("PG&E") concerning the rates, terms and conditions of Must-Run Service Agreements for the Generating Units at NCPA-owned facilities designated as Reliability Must-Run ("RMR") Units through the ISO's RMR selection process for 1999 and 2000, as well as the payment for service provided by those units. NCPA bid these units in the ISO's Local Area Reliability Service ("LARS") processes for 1999 and 2000, through which Generating Units were selected by the ISO to be

[2] The term "Must-Run Service Agreement" or "MRSA" is synonymous with the term "Reliability Must-Run Contract" as defined in the ISO Tariff.

designated as RMR Units. Pursuant to Paragraph 2(b) of the Settlement Agreement, the ISO requests that the Commission approve the Settlement Agreement, accept the PGA and MSA for filing, and authorize the rates and charges set forth in the 1999 and 2000 MRSAs with NCPA, under the terms and conditions of those contracts, to be charged to and paid by PG&E as costs incurred by the ISO under those contracts. In accordance with the terms of Paragraph 2(b) of the Settlement Agreement, the ISO is authorized to represent that both PG&E and NCPA support the ISO's request for approval of the Settlement Agreement and the ISO's request for action on the related agreements in their entirety, including the rates to be charged to PG&E by the ISO, without reservation or exception.

The ISO is requesting waiver of the 60-day notice requirement such that the Commission accept the Settlement Agreement to become effective as of March 15, 2000, the 1999 MRSAs to become effective as of June 1, 1999, the 2000 MRSAs to become effective as of January 1, 2000, the PGA to become effective as of January 1, 2000, and the MSA to become effective as of January 1, 2000. Such waiver is necessary for these agreements to go into effect consistent with the terms of the Settlement Agreement.

I. BACKGROUND

As part of the restructuring of the California electricity markets, the ISO assumed operational control of a grid comprising the transmission systems of PG&E, San Diego Gas & Electric Company, and Southern California Edison Company. The ISO is a non-profit public benefit corporation, organized under the laws of the State of California, that is responsible for, among other things, the reliable operation of the ISO Controlled Grid.

Various provisions governing the ISO are set forth in its FERC Electric Tariff, on file with the Commission ("ISO Tariff").

PG&E is a California corporation that has placed its transmission facilities under the operational control of the ISO in accordance with the Transmission Control Agreement ("TCA"). PG&E is therefore a Participating Transmission Owner or "Participating TO" as defined in the ISO Tariff. As a utility which is party to the TCA, PG&E is also a "Responsible Utility" which is responsible for the costs incurred by the ISO under certain RMR Contracts, in accordance with Section 5.2.8 of the ISO Tariff.

NCPA is a joint powers agency organized under California law. NCPA is a "municipality" pursuant to Section 3(7) of the FPA. As a municipality, NCPA is not a "public utility" under the FPA. NCPA is also a "Local Publicly Owned Electric Utility" as that term is defined in the ISO Tariff. NCPA owns and operates certain Generating Units that are suitable to provide Energy and Ancillary Services that the ISO can utilize to ensure the reliability of the ISO Controlled Grid.

During the restructuring of the California electricity markets, it became apparent that, at times, certain Generating Units would need to run for reliability purposes, including location-specific reliability needs. Prior to restructuring, this need was met by the regulated electric utility for a given region in California, such as PG&E, which could recover the costs of such needed generation as an element of its overall rates. In the restructured, market-based environment, however, alternative mechanisms were necessary to ensure that needed generation would be available to support the reliability of California’s electric grid.

Under one such reliability mechanism developed through the California restructuring process, and approved by FERC, the ISO is authorized to designate certain Generating Units as "Reliability Must-Run Units." The owner of a unit that is so designated ultimately becomes party to a Must-Run Service Agreement, a contract under which the ISO can call on the RMR Unit to generate Energy or provide Ancillary Services to the market as and when required to ensure the reliability of the ISO Controlled Grid in return for certain payments to the owner of the RMR Unit. This agreement is used to assure that the price of such Energy and Ancillary Services does not reflect the exercise of locational market power, since an RMR Unit may have such market power at times when the ISO must call on it. Under the ISO Tariff, Participating TOs, or "Responsible Utilities" as they are designated in this context, are responsible for costs incurred by the ISO and, based on payment by the Responsible Utility, the ISO, in turn, pays RMR Owners under Must-Run Service Agreements.

There is currently a *pro forma* Must-Run Service Agreement in place. This agreement was submitted to the Commission as part of an offer of settlement in Docket Nos. ER98-441 *et al.* filed on April 2, 1999 which resolved numerous (but not all) disputed issues related to various Must-Run Service Agreements and the ISO's relationship with both RMR Owners and Responsible Utilities.[3] The Commission issued a letter order approving the April 2, 1999 offer of settlement, including the *pro forma* Must-Run Service Agreement, on May 28, 1999. *California Independent System Operator Corp.*, 87 FERC ¶ 61,250. The April 2, 1999 offer of settlement did not resolve certain issues relating to

[3] The Stipulation and Agreement submitted as part of that offer of settlement includes an extensive discussion of the procedural history of the Reliability Must-Run cases. The ISO and PG&E are both parties to

the *pro forma* Must-Run Service Agreement. Most of these issues will be resolved in an additional settlement offer to be filed with the Commission shortly. The ISO also currently is involved in litigation with certain RMR Owners concerning a few remaining issues related to *pro forma* Must-Run Service Agreement.

The ISO annually establishes a process to determine the units that are effective to mitigate reliability concerns on the ISO Controlled Grid. This process, once approved by the ISO Governing Board, results in the establishment of an eligibility list. This list is the foundation for the LARS solicitation and award process, which determines the RMR Units and alternatives to RMR to be designated or authorized for that year.

Designation of RMR Units for 1999 and 2000 was determined through two separate annual LARS processes. Prior to the 1999 LARS process, NCPA Generating Units were not considered candidates for RMR selection. This was due to the ISO's understanding that NCPA units would be on-line and could be called by the ISO to provide needed services pursuant to an Existing Contract with PG&E. However, the ISO was notified by PG&E and NCPA that this premise was incorrect. As a result, NCPA's units were placed on the eligibility list starting in 1999. Through the LARS process for 1999, the ISO determined that certain Generating Units at NCPA-owned facilities could provide reliability requirements for the ISO Control Area, and specifically for PG&E's Service Area, and

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the April 2, 1999 settlement.

satisfied the 1999 LARS criteria for designation as RMR Units.[4] The ISO selected these units to provide RMR services under RMR Contracts for 1999. The ISO, NCPA, and PG&E (the "Parties") have been engaged in negotiations concerning the Must-Run Agreements for those NCPA Generating Units since April 1999. These negotiations addressed a number of issues, including whether and how the RMR Contracts for the NCPA units should reflect NCPA's status as a municipality that is not subject to FERC jurisdiction as a public utility and the fact that NCPA has outstanding tax-exempt bonds with respect to the units that result in certain statutory and regulatory limits on use by the ISO. Since NCPA is not a public utility, there was also an outstanding issue as to whether RMR Contracts between NCPA and the ISO should be filed for Commission approval.[5] For these and other reasons, agreement on contract rates, terms and conditions has been delayed.

These negotiations had not been completed by the start of the 1999 summer peak demand season, at which time NCPA unilaterally adopted a rate schedule for reliability service from its designated units. NCPA operated its units when it was requested to do so by the ISO in order to help ensure the reliability of portions of the ISO Controlled Grid located within PG&E's Service Area. NCPA has billed the ISO for the RMR generation under NCPA's unilaterally adopted rate schedules, but the extent of the applicability of

[4] The description of the 1999 and 2000 LARS processes by which the ISO selected certain NCPA units to be designated as RMR Units is intended to be consistent with the statements and characterizations set forth in introductory Paragraphs A through D of the attached Settlement Agreement. In accordance with Paragraph 12 of the Settlement Agreement, the ISO's filing of this Background section shall not be deemed in any respect to constitute an admission by any party that those statements or characterizations are true or valid.

[5] The Commission has since provided guidance on this issue. *See California Independent System Operator Corp.*, 90 FERC ¶ 61,315 (March 29, 2000).

such rate schedules and any obligation for payment under them has been and is presently disputed by the ISO and by PG&E.

In the summer of 1999, the ISO conducted a LARS process to determine the RMR Units to be designated for the year 2000. In August 1999, the ISO selected certain other NCPA units to provide services upon the negotiation of RMR Contracts for 2000. After the ISO discovered an error in this LARS process due to insufficient information provided to Market Participants, the ISO conducted a supplemental LARS 2000 solicitation for the San Francisco North Bay local reliability area. The result of the supplemental solicitation, among other things, was a decrease in the number of NCPA Generating Units for which the ISO would negotiate RMR Contracts in order to help ensure the reliability of the ISO Controlled Grid during the year 2000. NCPA has disputed the supplemental LARS 2000 process and its results in a proceeding currently pending before the Superior Court of Sacramento in the State of California, *NCPA v. CAISO*, case number 99CS02017 (Cal. Super. Ct., Sacramento County, filed September 28, 1999) ("Superior Court case"). A hearing in the Superior Court case was scheduled for May 2000. As discussed below, pursuant to Paragraph 10 of the Settlement Agreement, NCPA and the ISO have requested suspension of the proceedings in the Superior Court case; upon final FERC action on the Settlement Agreement, NCPA will move to dismiss the Superior Court case.[6]

Starting in September 1999, the Parties began discussing the issues relating to the LARS 2000 process as well as the contract rates, terms and conditions for NCPA units to provide RMR services for 2000, as part of the ongoing negotiations concerning the 1999 Must-Run Service Agreements for NCPA Generating Units which had not yet been

resolved. Extensive negotiations through face-to-face meetings, conference calls, e-mails and other means continued throughout the remainder of 1999 and the early part of 2000. In March 2000, the Parties completed their negotiations to resolve these issues, including the rates, terms and conditions of the RMR Contracts and service for both 1999 and 2000. The Settlement Agreement and related agreements submitted in the instant filing represent and embody the results of those negotiations.

II. DESCRIPTION OF THE AGREEMENTS

As provided in Paragraph 14 of the Settlement Agreement, the attached Settlement Agreement as well as the related agreements expressly incorporated in and made a part of the Settlement Agreement (referred to in the Settlement Agreement as the "New Agreements"), constitute the full and complete agreement of the Parties with respect to the subject matter set forth therein and supersede all prior offers, discussions, and agreements, whether written or oral, with respect to such subject matter. The following descriptions of the major provisions of the Settlement Agreement and the New Agreements are provided as an explanatory statement and are not intended to amend, modify, or limit any of the provisions of the Settlement Agreement. These descriptions should not be used as an interpretive tool. In the event of a conflict between these descriptions and the Settlement Agreement or New Agreements, the Settlement Agreement or New Agreements will prevail.

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[6] As discussed below, "Final FERC Action" is defined in Paragraph 3(a) of the Settlement Agreement.

A. The Settlement Agreement

Incorporation of New Agreements

As described above, the 1999 and 2000 MRSAs, the PGA, and the MSA executed between the ISO and NCPA (*i.e.,* the New Agreements) are appended to and expressly incorporated in and made a part of the Settlement Agreement. In the event of a conflict between the terms and conditions of the Settlement Agreement and any terms and conditions of any of these New Agreements, the terms and conditions of the Settlement Agreement will prevail. The New Agreements themselves and provisions of the Settlement Agreement relating to those agreements are described below.

Justness and Reasonableness of the Rates, Terms and Conditions of the Settlement Agreement and New Agreements

Paragraph 2(a) of the Settlement Agreement establishes that the Parties believe the rates, terms and conditions of the Settlement Agreement and the New Agreements to be just and reasonable, including the rates and charges under the 1999 and 2000 MRSAs and PG&E's resulting payment obligations under the ISO Tariff. The Parties further agree that the rates and charges under the Settlement and the MRSAs are cost-based. This provision reflects the review of the cost basis for the MRSAs undertaken by the Parties in the context of the settlement negotiations.

Invoicing and Payment Obligations Under the Settlement Agreement, the 1999 and 2000 MRSAs, and the ISO Tariff

The Settlement Agreement provides that both the 1999 MRSAs and the 2000 MRSAs will be binding upon the ISO and NCPA upon execution, and will continue to be binding thereafter, subject to their terms and the terms of the Settlement Agreement. In

addition, the Parties agree that, upon execution of the Settlement Agreement, the ISO and NCPA will be deemed to have complied fully with all obligations arising under the 1999 MRSAs other than payment obligations prior to the execution thereof. Upon execution of the Settlement Agreement, the invoicing and payment obligations under the 1999 MRSAs are suspended and will be discharged upon the Parties' compliance with Paragraph 6 of the Settlement Agreement. If the Settlement is terminated pursuant to Paragraph 3 of the Settlement Agreement, however, the 1999 MRSAs will be void *ab initio* (and the 2000 MRSAs will be terminated as of the date of such termination). In the event of such termination, the invoicing and payment obligations, if any, that otherwise exist with respect to reliability service from NCPA units during 1999 will be reinstated as of the date of such termination.

Paragraph 4 of the Settlement Agreement provides that, in accordance with Article 9 of the MRSAs and Section 5.2.7 of the ISO Tariff, the ISO only will be obligated to pay NCPA for service under the MRSAs if and to the extent that payment for such service has been received by the ISO from PG&E, and that PG&E will pay the ISO all amounts duly invoiced by the ISO under the MRSAs, whether or not such amounts are disputed by PG&E, *provided* that, in the event that payment of an amount invoiced by the ISO would be inconsistent with a FERC order relating to the MRSAs or the order of a court reviewing such a FERC order, PG&E will pay so much of such invoice as would not be inconsistent with such an order, and the disposition of the remainder will be resolved by good faith negotiations between NCPA and PG&E.

Paragraph 4 also provides that, if a decision of FERC, or that of a court reviewing a FERC order, concerning rates or charges or changes to rates or charges under the MRSAs or their pass-through under the ISO Tariff, results in a requirement that the ISO refund to PG&E amounts already paid to NCPA under the MRSAs, NCPA and PG&E will take certain enumerated steps to ensure that the net amount collected by the ISO from PG&E with respect to the MRSAs is equal to the amount that the ISO pays to NCPA with respect to the MRSAs and that, upon completion of these steps, the ISO will have satisfied fully its obligations to both PG&E and NCPA.

Paragraph 4 further provides that, unless the provisions of Paragraph 3 of the Settlement Agreement apply, if FERC or a court reviewing a FERC order issues an order concerning rates and charges under any of the MRSAs that results in a requirement that PG&E pay less to the ISO than is required under such MRSAs, any Party may give written notice to the other Parties within fifteen (15) days of such order. Following receipt of such notice, the Parties will negotiate in good faith for at least sixty (60) days in an attempt to determine whether the benefits of the MRSAs can be restored in a manner acceptable to the Parties. If such negotiations are unsuccessful, any Party may terminate such MRSAs upon written notice to the other Parties.

Paragraph 4 is to terminate at the end of December 31, 2000, but will continue to apply to rates and charges under the 1999 MRSAs and 2000 MRSAs incurred through December 31, 2000, and the pass-through of such rates and charges under the ISO Tariff, for as long as necessary.

Paragraph 6 of the Settlement Agreement sets forth the procedures by which NCPA will invoice the ISO, and effectively the ISO invoice PG&E, for all services provided under the 1999 MRSAs as well as the procedures by which PG&E, in accordance with Section 5.2.8 of the ISO Tariff, will provide payment for such services to the ISO and by which the ISO will forward such payment to NCPA. Such invoicing and payment is to occur after issuance of a final FERC order on the Settlement Agreement that is no longer subject to review and that is without modification which is unacceptable to any Party ("Final FERC Action" as defined in the Settlement Agreement). Once the provisions of Paragraph 6 have been satisfied, there will be no other invoicing or payment obligations with respect to reliability service from NCPA units during 1999, and any outstanding invoices will be deemed withdrawn.

Invoicing for service under the 2000 MRSAs will be as set forth in those agreements. NCPA will provide the ISO with an invoice for the period beginning on January 1, 2000 in the first invoice cycle under the 2000 MRSAs .

Miscellaneous Provisions of the Settlement Agreement Concerning the 1999 and 2000 MRSAs

Notwithstanding the provisions of Section 2.2(d) of the MRSAs, the Settlement Agreement provides that, if the ISO terminates one of the 2000 MRSAs or does not extend the term of an MRSA for any NCPA Generating Unit for 2001, the ISO may redesignate the same Generating Unit or designate another unit at the same facility as an RMR Unit at any time during 2001, provided that the MRSA applicable to such a unit will have a term of not less than twelve calendar months following commencement (or renewal) of service under such MRSA.

NCPA agrees that it will not seek to increase the level of the Monthly Availability Payment under any MRSA that is part of this Settlement Agreement, under Section 14.3 of such MRSA or by any other means, based on the ISO's proposal to modify the ISO Tariff to provide for dispatch of Energy under an MRSA at any time prior to the ISO's establishment of Final Schedules for the Day-Ahead Market operated by the California Power Exchange Corporation. The Settlement Agreement expressly recognizes that such proposed modification of the ISO Tariff is an exception to the precedence of the 2000 MRSAs over the ISO Tariff.[7]

NCPA agrees that, during the term of the MRSA applicable to the Lodi CT, the costs associated with the operation of the Lodi CT to relieve overloads or other operational constraints at the PG&E Lockeford Substation will be compensated fully from the revenues associated with such MRSA for the Lodi CT. PG&E and NCPA agree that, as part of PG&E providing transmission transfer capability for the year 2000 to the City of Lodi, which relates to service under PG&E's Interconnection Agreement with NCPA, PG&E will re-rate the Lockeford-Lodi No. 3, 60 kV transmission line, and will utilize existing PG&E operating procedures for the Lockeford area, which include operation of the Lodi CT pursuant to the MRSA applicable to the Lodi CT.

Specific provisions of the 1999 and 2000 MRSAs, including provisions that differ from the *pro forma* Must-Run Service Agreement approved in Docket Nos. ER98-441 *et al.*, are described below.

Rejection or Modification of the Settlement Agreement and Termination of the Settlement

[7] The Commission has recently approved, with certain modifications, the ISO's proposal to implement this reform. *California Independent System Operator Corp.*, 90 FERC ¶ 61,345 (March 29, 2000)

Paragraph 3 of the Settlement Agreement applies in the event that FERC or a court reviewing a FERC order rejects the terms of the Settlement Agreement or modifies such terms in any way, including by imposing any limitation on the ISO's ability to recover the rates and charges specified in the MRSAs from PG&E under the ISO Tariff. In such an event, any Party materially adversely affected may give written notice to the other Parties within fifteen (15) days of such order. Failure to give such notice to the other Parties will be deemed continued acceptance of the Settlement Agreement regardless of the rejection or modification.

Following receipt of any such notice, the Parties will negotiate in good faith for at least sixty (60) days in an attempt to determine whether the benefits of the Settlement Agreement adversely affected by FERC's or a reviewing court's rejection or modification can be restored in a manner acceptable to the Parties, through modification of the Settlement Agreement or otherwise. If the Parties are able to agree on a modified Settlement, then the modified Settlement will entirely supersede the Settlement Agreement, and the ISO will, if needed to implement the modified Settlement, promptly seek FERC approval of such modified Settlement with the active support (through filings at FERC) of NCPA and PG&E, which will be without reservation or exception.

If negotiations are unsuccessful, any Party may give the other Parties written notice of termination of the Settlement Agreement. In the event of such termination, the Parties will be restored to their rights, obligations and positions prior to entering into the Settlement Agreement to the extent consistent with law and the terms of the Settlement Agreement.

Tolling of Time Defenses

The Settlement Agreement provides for tolling of all applicable statutes of limitation, contractual time defenses, the equitable defense of laches and any other time-related bar or defense (collectively the "Time Defenses"), from the effective date of the Settlement Agreement to forty-five (45) days after the date of a termination of the Settlement under Paragraph 3 of the Settlement Agreement, with respect to certain defined claims NCPA may bring against the ISO or PG&E or certain defined claims or counterclaims that may be filed by the ISO or PG&E.

Effect of FERC Order on Settlement Agreement if Settlement is Terminated

The Parties agree that any order, decision, finding of fact or conclusion of law of the FERC with respect to any of the claims defined in the Settlement Agreement will not, if the Settlement is terminated, be recognized or enforced in any court as a final or binding resolution of any issue of fact or law, be offered or be admissible in evidence, or be offered, argued or taken as any guidance on any point of fact or law and that any such finding or conclusion of the FERC will be given no effect by any court so as to affect in any way a claim or defense of any Party; *provided* that the ISO or PG&E, after reasonable advance notice to and an opportunity for discussion (and potentially Alternative Dispute Resolution ("ADR")) with the other Parties, may make a court aware, without characterization, of a specific requirement in any FERC order that the ISO or PG&E, respectively, take, or refrain from taking, action in respect of this Settlement if necessary in such Party's judgment to ensure that such Party is not subject to mutually exclusive obligations with respect to the taking, or refraining from taking, action imposed or

potentially to be imposed by the FERC and by such court and provided that the ISO or PG&E may make a court aware, without characterization, of the amount authorized by FERC for pass-through to PG&E under the MRSA and of the potential financial consequences for the ISO and PG&E. Any dispute arising under this provision will be resolved in accordance with the ADR provisions of the Settlement Agreement. The Parties agree to cooperate and use reasonable efforts, including jointly requesting extensions to procedural deadlines, to permit conclusion of such ADR proceedings prior to the ISO or PG&E exercising their rights, under this provision of the Settlement Agreement, to make a court aware of such information, so long as in the ISO's or PG&E's judgment such proceedings can be completed without unreasonably jeopardizing their ability so to inform the court.

PG&E's Status as a Scheduling Coordinator

The Parties agree for purposes of the Settlement Agreement that PG&E's status as Scheduling Coordinator (as that term is defined in the ISO Tariff) for NCPA, including its RMR Units, and the execution by NCPA and the ISO of a PGA effective January 1, 2000, do not affect service from NCPA under the 1999 MRSAs, which service was provided as if NCPA had executed a PGA effective June 1, 1999. The Parties further agree that nothing in this Settlement: (a) limits PG&E's ability to seek retroactive recovery of Scheduling Coordinator costs incurred on NCPA's behalf during 1999, or (b) constitutes PG&E's agreement that service under an MRSA can be provided by an NCPA resource also subject to the PG&E-NCPA Interconnection Agreement except for purposes of the 1999 MRSAs.

Superior Court Case

The Settlement Agreement provides that NCPA will either dismiss without prejudice or move to suspend indefinitely all proceedings in the Superior Court case.[8] Immediately upon entering into the Settlement Agreement, all parties to that case also agree to suspend all pre-trial activities immediately, including discovery. All such pre-trial activities are to remain suspended until the Superior Court case has been dismissed with prejudice or until the Settlement Agreement is terminated in accordance with Paragraph 3 of the Settlement Agreement. Within thirty (30) days after Final FERC Action, or as may be otherwise agreed in writing by the Parties, NCPA will move to dismiss the Superior Court case with prejudice and will request an expedited ruling on such request.

Mutual Release

As of the date of Final FERC Action on the Settlement Agreement, a mutual release will be effective whereby the ISO, NCPA and PG&E each will waive and release any and all claims to be resolved through the Settlement Agreement as specified in Paragraph 11 of the Settlement Agreement. This mutual release will not apply to any claim or cause of action: (a) to enforce the Settlement Agreement, including the mutual release provisions, or any of the New Agreements; (b) brought by NCPA or any of its members or affiliates, solely in the capacity of a user or beneficiary of the ISO Controlled Grid and not as a potential or actual provider of reliability service, concerning the effect of the ISO's RMR designations on the reliability of the ISO Controlled Grid or adjacent control areas (except to the extent that NCPA should have, under normal principles of the compulsory joinder

[8] As noted above, both NCPA and the ISO have requested that the Superior Court case be taken "off-calendar" pending Final FERC Action on the Settlement Agreement. The ISO has been informed by the clerk

of claims or causes of action, brought or asserted such claims or causes of action in the Superior Court case as of the date the Superior Court case commenced); or (c) brought by NCPA or any of its members or affiliates arising out of an NCPA claim that PG&E failed to provide Scheduling Coordinator services to NCPA or otherwise precluded NCPA from providing Ancillary Services under Section 2.5 of the ISO Tariff, but not under any MRSA.

Reservations

Agreement to or acquiescence in the Settlement Agreement will not be deemed in any respect to constitute an admission by any Party that any allegation or contention made by any other Party in any proceeding or dispute addressed in this Settlement is true or valid, or that any specific statement or characterization in the introductory paragraphs of the Settlement Agreement itself is true or valid. The Settlement Agreement prohibits any Party from seeking to introduce as true or valid based on the Settlement Agreement any such allegation, contention or specific statement or characterization against any other Party in any proceeding whatsoever. These provisions of the Settlement Agreement will survive termination of other provisions of the Settlement Agreement for as long as necessary. Except as specifically provided in Paragraph 2(a) of the Settlement Agreement, no Party has or will be deemed to have approved, accepted, agreed to, or consented to any fact, concept, theory, rate methodology, principle or method relating to jurisdiction, prudence, reasonable cost of service, cost classification, cost allocation, rate design, tariff provisions, or other matters underlying or purported to underlie the Settlement Agreement. FERC's approval of the Settlement Agreement will not constitute approval of,

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of the Superior Court that this request has been granted.

or precedent regarding, any principle or issue among the Parties related to the subject matter of the Settlement Agreement.

Interpretation of the Settlement Agreement

The Settlement Agreement is to be interpreted and construed under California law, without regard to principles of conflicts of laws. Since each Party participated in the drafting of the Settlement Agreement and the New Agreements with the aid of counsel, no ambiguity will be interpreted for or against any Party.

Alternative Dispute Resolution

Any dispute regarding the interpretation or enforcement of the Settlement Agreement will be resolved, to the extent permitted by law, under the ADR provisions of the 1999 and 2000 MRSAs. The Settlement Agreement further provides that PG&E will have the same rights and obligations under such ADR provisions as the ISO and NCPA, that any discovery must be completed within 15 days after the selection of the arbitrator(s), and that in any arbitration conducted pursuant to such provisions, the arbitrator(s) will issue an award or decision within 45 days of appointment.

Successors and Assigns

The rights conferred and obligations imposed on any Party by the Settlement Agreement will inure to the benefit of and be binding on that Party's successors in interest or assignees as if such successor or assignee was itself a party to the Settlement Agreement.

B. The 1999 and 2000 Must-Run Service Agreements with NCPA

The 1999 and 2000 MRSAs filed herewith are "New Agreements" which are

explicitly incorporated into the Settlement Agreement. These MRSAs vary in a number of respects from the *pro forma* Reliability Must-Run Contract filed with the Commission as part of the RMR settlement on April 2, 1999. It is important to note that Article I.C.5 of the Stipulation and Agreement filed on April 2, 1999 provides that a Local Publicly Owned Electric Utility, such as NCPA, is not precluded from entering into an RMR Contract that conforms to the *pro forma* RMR Contract "but which has been revised to the extent necessary to conform to: (i) the requirements of governing statute, municipal charter, applicable regulations or other obligations imposed by a local regulatory authority, or (ii) applicable regulations of the Internal Revenue Service."[9]

Among the differences from the *pro forma* RMR Contract found in the MRSAs are changes designed specifically to address NCPA concerns relating to the potential impact of the MRSAs on its tax-exempt financing in light of the "Private Use Restrictions" placed on the ISO's ability to dispatch these RMR Units, changes related to the effective period and termination of the MRSAs to make those agreements consistent with the Settlement Agreement, and provisions calling for various matters to be resolved through ADR rather than Section 205 or Section 206 filings with the Commission due to the fact that NCPA is

[9] In accordance with Article I.C.5(e) of that Stipulation and Agreement, the ISO is serving the 1999 and 2000 MRSAs between the ISO and NCPA on each RMR Owner and Responsible Utility.

not a public utility subject to the jurisdiction of the Commission. As discussed below, the question of the jurisdictional status of RMR Contracts between the ISO and non-jurisdictional utilities had not been addressed by the Commission at the time the attached agreements were negotiated. The last set of changes to the MRSAs were agreed to by the ISO to address NCPA's concerns that the form of the MRSAs would pre-determine those issues. As also discussed below, the ISO believes that these changes are consistent with the Commission's direction that RMR Contracts with non-jurisdictional utilities need not be filed with the Commission under Section 205 of the FPA.

The 1999 and 2000 MRSAs include a revised Section 14.4 which states that the MRSAs are subject to the terms and provisions of the Settlement Agreement and which incorporates the Settlement Agreement by reference. Any conflict between the MRSAs and the Settlement Agreement is to be resolved in favor of the latter. Section 14.4 also has been revised to state that nothing in the 1999 or 2000 MRSAs shall be construed as requiring NCPA, as the RMR Owner under those agreements, to make Section 205 filings; and has been revised to eliminate a reference to the right of the ISO to make Section 206 filings.

Modified provisions relating to NCPA's tax status include the Recitals section of both the 1999 and 2000 MRSAs, in which Part E has been added, which reads as follows:

> Owner is a Local Publicly Owned Electric Utility, has outstanding tax-exempt bonds with respect to the Units and is required, as of the Effective Date, to comply with various provisions of the Internal Revenue Code and the regulations promulgated thereunder ("Private Use Restrictions") in order to maintain the tax-exempt status of its bonds.

A new Section 14.14, relating to Private Use Restrictions, not found in the *pro forma* RMR Contract, also has been added to both the 1999 and 2000 MRSAs. Section 14.14 of the 1999 MRSAs provides that, in light of the term of those agreements, the service provided thereunder, and the Settlement Agreement, no additional provisions related to Private Use Restrictions are necessary. Section 14.14 of the 2000 MRSAs, however, sets forth significant detail on the procedures by which the ISO and NCPA will seek to ensure that Private Use Restrictions are not exceeded. Section 14.14(c) of the 2000 MRSA for the Alameda and Lodi combustion turbine units ("CTs") also includes a specific provision that reflects Energy generated from those units in response to ISO Dispatch notices between June 1, 1999 and December 31, 1999.

Section 12.3(b) of both the 1999 and 2000 MRSAs, concerning RMR Owner representations and warranties, reflects the fact that NCPA is a “joint exercise of powers agency."

By agreement of the Parties, the 1999 MRSAs are to be effective from June 1, 1999 until December 31, 1999 and will not be extended. Section 2.1 of the 1999 MRSAs reflects this effective period. Various provisions of the *pro forma* RMR Contract, including Sections 2.1(b), 2.2(d), 2.3, 4.11, 7.5(k)(ii), 14.3(b), and portions of 2.5(a) have been eliminated from the 1999 MRSAs because those provisions are not applicable to contracts that are effective only for a limited, specified term.

Section 2.1 of the 2000 MRSAs has been modified to establish that the 2000 MRSAs constitute a binding contract between NCPA and the ISO as of their effective date, January 1, 2000.

In addition, a new Section 2.2(b)(vi) has been added to both the 1999 and 2000 MRSAs to reflect the fact that these MRSAs may be terminated pursuant to the terms of the Settlement Agreement, as described above.

Section 2.3 of the 2000 MRSAs, "Effective Date of Expiration or Termination", has been changed to remove the necessity of FERC approval of the termination.

The termination fee set forth in the *pro forma* RMR Contract, which was based in part on the annual discount rate under the *pro forma* contract, has been changed in the 1999 and 2000 MRSAs to a fee derived from the yield of the Local Agency Investment Fund established under California state law because this better reflects, for this purpose, NCPA's cost of funds as a California public agency.

As noted above, because NCPA is a non-jurisdictional entity, references to Section 205 and 206 filings in general have been removed from the MRSAs. Provisions for amending the 1999 and 2000 MRSAs have been modified to remove references to Section 205 and 206 filings, and to FERC jurisdiction. Section 4.9(d), dealing with the heat input test, has been altered to enable NCPA to modify the heat inputs used in various payments without a Section 205 filing. The section now calls for resolution of any dispute regarding the revisions to heat inputs through ADR. Section 4.11 of the 2000 MRSAs has been modified to allow NCPA to change the contract service limits of the prior contract year, again without making a Section 205 filing.[10] As with the heat input provision, ADR is available in case the ISO or the relevant Responsible Utility (*i.e.*, PG&E) disputes the proposed contract service limits for the ensuing year.

[10] Such contract service limits can be found in Schedule A to the MRSA.

Other instances in which FERC filing requirements set forth in the *pro forma* RMR Contract have been modified in the 1999 and 2000 MRSAs include: Section 7.4(f), relating to ISO rejection of a planned capital item, in which the requirement that an Owner's decision to terminate the Agreement with respect to an RMR Unit be subject to authorization by FERC has been removed[11]; Section 7.5(g), in which references to obtaining FERC authorization for repair costs have been removed; and Section 7.5(k), in which references to "filed rates" have been replaced with "rates in effect." In addition, Section 7.7(b) has been revised to eliminate the requirement found in the *pro forma* RMR Contract that an RMR Owner seek authorization from FERC to recover the ISO's share of repair costs. Section 7.8 similarly has been revised. Finally, Section 13.1 has been revised to remove a reference to FERC approval of any assignment under Article 13 of the MRSAs.

Portions of Section 14.3 ("Amendments") of the 1999 and 2000 MRSAs have been revised from the *pro forma* RMR Contract to eliminate the need for FERC approval of amendments to the MRSAs. Consistent with the changed sections noted above, Section 14.3(a) has also been revised to provide a limited exception to the requirement that any amendments to the MRSAs be in writing and be duly executed by both parties. Section 14.3(b) of the 2000 MRSAs has been revised to establish that the provisions of Sections 14.4 (which makes the MRSAs subject to the Settlement Agreement) and 14.14 (concerning Private Use Restrictions) are not subject to the review and revision procedures

[11] Parallel revisions from the *pro forma* RMR Contract can be found in Section 7.5(i), relating to repair costs, and Section 7.6(h), relating to unplanned capital items.

of that provision. In addition, Section 14.3(b) of the 2000 MRSAs is revised such that Notice of Review procedures must be consistent with the formulas for rate changes under Schedule F. Lastly, language has been added to Section 14.3(b)(v) of the 2000 MRSAs to establish that an arbitrator in an ADR proceeding dealing with the Notice of Review procedures is not bound by a decision or finding made by FERC or another agency concerning the terms of the 2000 MRSAs that are unique to NCPA as an RMR Owner. As noted above, Section 14.3(b) has been removed from the 1999 MRSAs.

A new Section 14.3(c) has been added to the 2000 MRSAs, describing how changes to the *pro forma* RMR Contract approved by FERC will be incorporated into the 2000 MRSAs. Included in this section is a delineation of provisions in the 2000 MRSAs related to NCPA's public agency status that cannot be altered through changes to the *pro forma* RMR Contract. This provision is not included in the 1999 MRSAs.

The Schedules to both the 1999 and 2000 MRSAs have been modified from the Schedules in the *pro forma* RMR Contract in a number of respects, primarily to eliminate references to the RMR Owner (*i.e.*, NCPA) making filings with FERC on various matters. These modifications are as follows:

- A reference to the RMR Owner making a Section 205 filing concerning the Annual Fixed Revenue Requirement has been eliminated from Paragraph 7 of Schedule B.
- Paragraph 8 of Schedule B has been modified to provide that, in the event a 2000 MRSA contract term is extended, the RMR Owner (NCPA) will provide the ISO and the Responsible Utility (PG&E) with notice of any changes in the values in Tables B-1

through B-6 for the ensuing year, and to provide that disputes of such changes will be resolved through ADR procedures.

- Schedule C has been modified to provide that, in order to receive payment for a 2nd Tier Imbalance, the RMR Owner (NCPA) must submit a notice to the ISO (instead of making an informational filing to FERC), and that disputes related to such notices will be resolved through ADR.
- The definition of "Other Sales" in the formula for Pre-Empted Energy Market Transactions in Schedule E has been revised to eliminate a reference to FERC annual charges for short term sales, as this charge is not applicable to NCPA.
- A requirement that a unilateral FERC filing be made in order to remove Black Start service from the Must-Run Service Agreement has been deleted from the portion of Schedule E addressing Black Start Services.
- Because NCPA is not an entity required to make a Form No. 1 filing with FERC, Schedule F has been revised to permit equivalent data in the Information Package to be provided to the ISO pursuant to that Schedule, to eliminate numerous specific references in Schedule F to the Commission's System of Accounts and regulations relating to the Form No. 1 filing requirement, and to remove requirements and procedures relating to the filing of the Information Package with FERC.
- Article II, Part B, Section 5 of Schedule F has been revised to establish that the Allowable Pre-Tax Rate of Return shall be the "Contract Year's weighted-average cost of long-term debt for the Subject Resource, less interest income on funds held in

reserve." The percentage applicable to the units at each facility is shown in this schedule.

- The provisions of Article II, Part C, Section 1(B) of Schedule F concerning "Determination of Depreciation Expenses" in the *pro forma* RMR Contract have been eliminated in the 1999 and 2000 MRSAs, as has Exhibit B to Schedule F, "Depreciation Rate and Mortality Characteristics." The elimination of these provisions is necessary because they are not applicable to the public financing of the NCPA-owned and operated RMR Units.
- References to Section 206 proceedings in Article II, Part C, Section 1(H) of Schedule F, concerning "Imprudently Incurred Costs" have been replaced with references to ADR.
- Exhibit A to Schedule F, concerning "Initial Variable O&M Rates" is not included in the 1999 and 2000 MRSAs.
- Exhibit C to Schedule F, concerning "1998 Cost Information" is also not included in the 1999 and 2000 MRSAs because it concerns RMR Contracts that were in effect in 1998 and therefore does not apply to the 1999 and 2000 MRSAs.
- Schedule K, concerning Dispute Resolution under the MRSAs, has been revised by the deletion of Sections 1.1.2 and 1.6.5 from the *pro forma* RMR Contract and by eliminating references to FERC proceedings found in Sections 1.4.4, 1.5.5.1, 1.5.12, 1.5.13, 1.6.1, 1.6.2, 1.6.3, and 1.6.4 of Schedule K in the *pro forma* RMR Contract.

Other modifications of provisions of the *pro forma* RMR Contract in the 1999 and 2000 MRSAs include the addition of the phrase "including as a result of an audit by FERC

of the ISO" to Section 12.2(a), a provision which specifies circumstances in which an RMR Owner must make its books and records available for audit by the ISO; and the addition of clarifying language in Section 12.7(a), a provision which specifies the conditions under which RMR Owners will be considered to have maintained an investment grade rating.

The ISO seeks waiver of the 60-day prior notice requirement in this filing so that the agreed-upon effective date of the MRSAs can be implemented.

C. The Participating Generator Agreement with NCPA

A further element of the Settlement Agreement is the Participating Generator Agreement between the ISO and NCPA. A Participating Generator Agreement is required with respect to all Generating Units from which RMR services are to be provided. The Participating Generator Agreement is a *pro forma* agreement, accepted by the Commission as part of a settlement agreement and developed by the ISO, which is applicable to all Generating Units that participate in the California market by scheduling Energy or by submitting bids through a Scheduling Coordinator into the ISO Controlled Grid.

Generally, the Participating Generator Agreement covers matters such as certification requirements and data requirements relating to major incidents including emergencies that affect the reliability of the ISO Controlled Grid, for which the ISO has responsibility under California law. The Participating Generator Agreement includes an acknowledgment that the reliability of the ISO Controlled Grid depends on the Participating Generator's compliance with the ISO Tariff. Specifically, the Participating Generator Agreement sets out the procedures that the parties agree will govern the manner in which the Participating Generator's facilities will interface with the ISO Controlled Grid. Included

as a schedule to the Participating Generator Agreement is a specific list of such facilities and their technical characteristics.

The PGA with NCPA is based on the *pro forma* Participating Generator Agreement submitted as part of the offer of settlement filed in Docket Nos. ER98-992 *et al.* on December 29, 1998, as amended on December 23, 1999. The Commission accepted that offer of settlement by letter order issued on February 24, 2000. 90 FERC ¶ 61,176. The PGA with NCPA differs from the *pro forma* Participating Generator Agreement in the following respects:

- The recitals of the PGA explicitly recognizes that the Participating Generator (NCPA) "is a Local Publicly Owned Electric Utility, has outstanding tax-exempt bonds with respect to the Generating Units, and is required, as of the effective date of this Agreement, to comply with various provisions of the Internal Revenue Code and the regulations promulgated thereunder ("Private Use Restrictions") in order to maintain the tax-exempt status of its bonds."
- Consistent with this recognition, Section 4.2 of the PGA, which provides that the PGA is subject to the ISO Tariff, includes the following express exception to that requirement:

> Notwithstanding the foregoing, any other provision of this Agreement, or the ISO Tariff, the Parties [to the PGA] expressly acknowledge and agree that, as long as the Participating Generator remains subject to the Private Use Restrictions, Section 5.2.3 of the ISO Tariff shall only apply to the Participating Generator if, and to the extent that, the ISO and the Participating Generator have mutually agreed upon a mechanism designed to eliminate the risk that application of that section of the ISO Tariff to the Participating Generator could cause the Participating Generator to violate the Private Use Restrictions and such mechanism is in full force and effect. The foregoing requirement of a risk-elimination mechanism also shall apply,

> in addition to Section 5.2.3 of the ISO Tariff, to any other provision of the ISO Tariff, or any order of the ISO that would expose the Participating Generator to a risk that the Participating Generator might violate the Private Use Restrictions (as determined by the Participating Generator in accordance with the written advice of its nationally recognized bond counsel). Participating Generator shall provide notice to the ISO as soon as it is aware that a risk of violation of the Private Use Restrictions exists and will provide a written explanation to the ISO of the source of such risk as soon as practical.

- This express exception is also reflected in Section 1.2(a) of the PGA.
- Similarly, Section 3.2.2 of the PGA has been modified by the addition of the following clause to the start of the first sentence of the section: "Notwithstanding anything to the contrary in the ISO Tariff, ..."
- The last sentence of Section 3.2.2 of the *pro forma* Participating Generator Agreement, "This Agreement shall terminate upon acceptance by FERC of such notice of termination", has also been eliminated in the PGA with NCPA.
- Lastly, Section 3.1 of the PGA has been modified so that the agreement will become effective on January 1, 2000, as agreed by the Parties to the Settlement Agreement. The ISO seeks waiver of the 60-day prior notice requirement in this filing so that the agreed-upon effective date of the PGA can be implemented.

As noted above, Paragraph 8 of the Settlement Agreement provides that the execution of the attached PGA by NCPA and the ISO does not affect service provided by NCPA under the 1999 Must-Run Service Agreements, which service was provided as if NCPA had executed a PGA effective June 1, 1999.

D. The Meter Service Agreement for ISO Metered Entities with NCPA

The last element of the Settlement Agreement is the Meter Service Agreement for ISO Metered Entities between the ISO and NCPA. A Meter Service Agreement is necessary with respect to all units from which RMR services are to be provided. The Meter Service Agreement for ISO Metered Entities is a *pro forma* agreement, accepted by the Commission as part of a settlement agreement, and developed by the ISO to establish the terms and conditions upon which the ISO shall certify the revenue quality meters of ISO Metered Entities and the terms on which those ISO Metered Entities will make metered data directly available to the ISO revenue meter data acquisition and processing system. The ISO may, under the Meter Service Agreement, consider requests for exemptions from certain provisions of the ISO Tariff and shall have the authority to grant such exemptions.

The MSA with NCPA submitted with this filing is based on the *pro forma* Meter Service Agreement for ISO Metered Entities submitted as part of the offer of settlement filed in Docket Nos. ER98-1499 *et al.* on September 10, 1999, as amended on September 13, 1999. The Commission accepted that offer of settlement by letter order issued on February 24, 2000. 90 FERC ¶ 61,186. The MSA with NCPA differs from the *pro forma* Meter Service Agreement for ISO Metered Entities in the following respects:

- The recitals of the MSA explicitly recognizes that the ISO Metered Entity (NCPA) "is a Local Publicly Owned Electric Utility, has outstanding tax-exempt bonds with respect to the Generating Units, and is required, as of the effective date of this Agreement, to comply with various provisions of the Internal Revenue Code and the regulations

promulgated thereunder ("Private Use Restrictions") in order to maintain the tax-exempt status of its bonds."

- Consistent with this recognition, Section 3.1 of the MSA, which provides that the MSA is subject to the ISO Tariff and ISO Metering Protocol, includes the following express exception to that requirement:

> Notwithstanding the foregoing, any other provision of this Agreement, or the ISO Tariff, the Parties [to the MSA] expressly acknowledge and agree that, as long as the ISO Metered Entity remains subject to the Private Use Restrictions, Section 5.2.3 of the ISO Tariff shall only apply to the ISO Metered Entity if, and to the extent that, the ISO and the ISO Metered Entity have mutually agreed upon a mechanism designed to eliminate the risk that application of that section of the ISO Tariff to the ISO Metered Entity could cause the ISO Metered Entity to violate the Private Use Restrictions and such mechanism is in full force and effect. The foregoing requirement of a risk-elimination mechanism also shall apply, in addition to Section 5.2.3 of the ISO Tariff, to any other provision of the ISO Tariff, or any order of the ISO that would expose the ISO Metered Entity to a risk that the ISO Metered Entity might violate the Private Use Restrictions (as determined by the ISO Metered Entity in accordance with the written advice of its nationally recognized bond counsel). ISO Metered Entity shall provide notice to the ISO as soon as it is aware that a risk of violation of the Private Use Restrictions exists and will provide a written explanation to the ISO of the source of such risk as soon as practical.

- This express exception is also reflected in Section 1.3(a) of the MSA.
- Similarly, Section 2.2.2 of the MSA has been modified by the addition of the following clause to the start of the first sentence of the section: "Notwithstanding anything to the contrary in the ISO Tariff, ..."
- The last sentence of Section 2.2.2 of the *pro forma* Meter Service Agreement for ISO Metered Entities, "This Agreement shall terminate upon acceptance by FERC of such notice of termination," has also been eliminated in the MSA with NCPA.

- Lastly, Section 2.1 of the MSA has been modified so that the agreement will become effective on January 1, 2000, as agreed by the Parties to the Settlement Agreement.

In addition, submitted as Schedule 2 to the MSA is a letter dated March 27, 2000 from the ISO's Manager, Metering and MDAS Operations, stating that, in accordance with Section 10.5.2 of the ISO Tariff, the ISO has granted NCPA a temporary exemption of ISO Metering standards for Alameda CT Units 1 and 2.

The ISO seeks waiver of the 60-day prior notice requirement in this filing so that the agreed-upon effective date of the MSA can be implemented.

III. REQUEST FOR COMMISSION ACTION ON THIS FILING

A. The Commission Should Find That the Modifications To the Termination Provisions of the MSA and PGA Are Acceptable As Part of the Overall Settlement.

As discussed above, the PGA and MSA submitted with this filing have been modified from the *pro forma* versions of those agreements accepted by the Commission in Docket Nos. ER98-992 *et al.* and Docket Nos. ER98-1499 *et al.* respectively. Both the ISO and NCPA were parties to both those proceedings.[12] The ISO requests that the Commission accept the attached PGA and MSA, with the modifications from the *pro forma* agreements described above, as the result of extensive negotiations among the ISO, NCPA, and PG&E to resolve numerous outstanding issues, some of which were the subject of a state court proceeding. These modifications should therefore be considered

[12] NCPA was an intervenor in Docket Nos. ER98-992 *et al.* and Docket Nos. ER98-1499 *et al.* NCPA also has executed a Meter Service Agreement for Scheduling Coordinators filed in Docket No. ER98-1849, which was accepted by the Commission subject to the outcome of Docket No. ER98-1499 *et al. California Independent System Operator Corp.*, 82 FERC ¶ 61,325 at 62,275 (1998).

only in the context of the overall Settlement, and do not establish any precedent for similar modifications of future Participating Generator Agreements or Meter Service Agreements.[13]

The ISO also requests that the Commission specifically find that one modification to the termination provisions of the PGA and MSA is acceptable insofar (and only insofar) as it is a part of the overall Settlement that is the subject of this filing. As described above, Section 3.2.2 of the *pro forma* Participating Generator Agreement, concerning the termination of the agreement by the Participating Generator, provides that the agreement will terminate "upon acceptance by FERC" of a notice of termination to be filed by the ISO. Similarly, Section 2.2.2 of the *pro forma* Meter Service Agreement for ISO Metered Entities, concerning termination of the agreement by the ISO Metered Entity, provides that the agreement will terminate "upon acceptance by FERC" of a notice of termination to be filed by the ISO. This language has been removed from the PGA and MSA submitted as part of this Settlement in order to address NCPA's concerns that it should not be subject to such a requirement because it is not a FERC-jurisdictional public utility.

The ISO has agreed to the modifications to the termination provisions in the attached PGA and MSA as an element of the negotiated resolution with NCPA and PG&E of the numerous issues described above. The ISO requests that the Commission confirm that the ISO and NCPA may agree to this modification in the context of the overall Settlement that is the subject of this filing without violating the offers of settlement accepted by the Commission in Docket Nos. ER98-992 *et al.* and Docket Nos. ER98-1499 *et al.*

[13] As described above, the MRSAs also include a number of modifications from the *pro forma* RMR Contract accepted in Docket Nos. ER98-441 *et al.* Pursuant to Paragraph 12 of the Settlement Agreement,

B. The ISO Requests That the Commission Authorize the Rates and Charges in the MRSAs, Under the Terms and Conditions of Those Contracts, To Be Charged To and Paid By PG&E As Costs Incurred By the ISO Under Those Contracts.

Pursuant to Paragraph 2(b) of the Settlement Agreement, the ISO requests that the Commission approve the Settlement Agreement, accept the PGA and MSA for filing, and authorize the rates and charges set forth in the 1999 and 2000 MRSAs with NCPA, under the terms and conditions of those contracts, to be charged to and paid by PG&E as costs incurred by the ISO under those contracts. The ISO acknowledges that, in a recent order, the Commission has held that RMR Contracts or MRSAs with entities such as NCPA need not be presented to the Commission. Authorization of the rates and charges set forth in the 1999 and 2000 MRSAs, however, would assist in the resolution of many outstanding issues negotiated by the ISO, PG&E, and NCPA over a period of nearly a year. Since Commission approval of the Settlement Agreement, including authorization of the MRSA rates and charges to be collected by the ISO from PG&E, is an event contemplated by the Parties, the Parties' fulfillment of their obligations under the Settlement will be aided by Commission authorization.

The Commission has held that Must-Run Service Agreements, *i.e.*, RMR Contracts or MRSAs, are to be filed by the entities that own or control the RMR Units, as those entities will be the sellers under those agreements. *See, e.g., Pacific Gas and Electric Co., et al.*, 81 FERC ¶ 61,322 at 62,487 n.6 (1998). The obligation of such public utilities to file RMR Contracts with FERC under Section 205 of the FPA has been without dispute. As a municipality, NCPA is not a "public utility" under the FPA. The question of whether RMR

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these modifications do not establish any precedent for similar modifications of future RMR Contracts.

Contracts between the ISO and non-jurisdictional utilities such as NCPA and/or the pass-through of costs incurred by the ISO under such contracts to Responsible Utilities pursuant to Section 5.2.8 of the ISO Tariff require Commission approval had not been resolved at the time the Parties finalized the attached Settlement Agreement and the New Agreements. In an order issued on March 29, 2000, however, the Commission did address this question. *California Independent System Operator Corp.*, 90 FERC ¶ 61,315 ("March 29 Order"). In that order, the Commission explained that the recovery of RMR costs from Responsible Utilities under the ISO Tariff is through a formula rate that constitutes a filed rate. Accordingly, the Commission stated that "we see no purpose to also requiring the filing under FPA section 205 of each contract the ISO enters into with a non-jurisdictional entity." *Id.*, slip op. at 5.[14]

Even in light of this ruling, however, in the instant case, the ISO requests that the Commission authorize the rates and charges in the 1999 and 2000 MRSAs, under the terms and conditions of those contracts, to be charged to and paid by PG&E as costs incurred by the ISO under those contracts. Such authorization is appropriate in the instant case because the RMR Contracts between the ISO and a non-jurisdictional entity, NCPA, are explicitly incorporated into the Settlement Agreement that is the subject of this filing, an agreement entered into before the Commission issued the March 29 Order. Two of the Parties to the Settlement Agreement, the ISO and PG&E, are public utilities subject to the jurisdiction of the Commission.

[14] The ISO notes that this finding is consistent with the various modifications to the 1999 and 2000 MRSAs eliminating references to Section 205 filings with respect to various terms and conditions of those agreements. If an underlying RMR Contract with a non-jurisdictional utility need not be filed with the Commission under Section 205 of the FPA, there is no reason to require Section 205 filings for modifications to that RMR Contract.

In addition, the Settlement Agreement expressly provides that all Parties believe the rates, terms and conditions of the Settlement Agreement and the New Agreements, including the rates and charges under the 1999 and 2000 MRSAs and PG&E's resulting payment obligations under the ISO Tariff, are just and reasonable. Consistent with the carefully woven resolution of many outstanding issues negotiated by the ISO, PG&E, and NCPA over a period of nearly a year, the ISO therefore requests that the Commission, in addition to approving the Settlement Agreement and accepting the attached PGA and MSA for filing, authorize the rates and charges in the 1999 and 2000 MRSAs, under the terms and conditions of those contracts, to be charged to and paid by PG&E as costs incurred by the ISO under those contracts.

IV. EFFECTIVE DATES

Pursuant to Section 35.11 of the Commission's regulations, 18 C.F.R. § 35.11, the ISO respectfully requests a waiver of the 60-day prior notice requirement if it is deemed applicable to this filing, so that the Settlement Agreement may become effective as of March 15, 2000, the 1999 MRSAs may become effective for the period from of June 1, 1999 to December 31, 1999, and the 2000 MRSAs, the PGA, and the MSA may become effective as of January 1, 2000.

As discussed above, the requested effective dates are necessary to implement the resolutions of numerous outstanding issues relating to these agreements, including those which are the subject of the Superior Court case, negotiated among the ISO, NCPA and PG&E. Due to the many novel issues involved in negotiating an RMR Contract with a municipal utility and the resulting extensive nature of the negotiations, it was impossible

for the ISO to file these agreements in advance of the requested effective dates. The ISO notes that all of the entities that directly will be financially affected by these agreements are Parties to the Settlement Agreement and have agreed to the requested effective dates. In addition, granting the requested waiver will facilitate the provision of needed Reliability Must-Run Services from NCPA Generating Units as soon as possible, which will enhance the reliability of the ISO Controlled Grid. Granting the requested waiver, therefore, is appropriate.

V. EXPENSES

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

VI. NOTICE AND SERVICE OF DOCUMENTS

Copies of this filing have been served on PG&E, NCPA, the California Public Utilities Commission, and the California Electricity Oversight Board. A copy of this filing is available for public inspection at the ISO's principal office located at 151 Blue Ravine Road, Folsom, CA. A copy of this filing will also be posted on the ISO Home Page.

Communications regarding this filing should be addressed to the following individuals, whose names should be placed on the official service list established by the Secretary with respect to this submittal:

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* Individuals designated for service pursuant to Rule 203(b)(3), 18 C.F.R. § 385.203(b)(3).

VII. SUPPORTING DOCUMENTS

The following documents, in addition to this transmittal letter, support this filing:

Attachment A — Reliability Must-Run Settlement Agreement Among California ISO, Northern California Power Agency and Pacific Gas And Electric Company;

Attachment B — Must-Run Service Agreement between the ISO and NCPA for NCPA units Collierville 1 and 2 from June 1, 1999, through December 31, 1999;

Attachment C — Must-Run Service Agreement between the ISO and NCPA for NCPA unit Lodi STIG from June 1, 1999, through December 31, 1999;

Attachment D — Must-Run Service Agreement between the ISO and NCPA for NCPA units Alameda CT 1 and 2, Lodi CT, and Roseville CT 1 and 2 from June 1, 1999, through December 31, 1999;

Attachment E — Must-Run Service Agreement between the ISO and NCPA for NCPA Geothermal Plant Number 2, units 3 and 4 from January 1, 2000, through December 31, 2000;

Attachment F — Must-Run Service Agreement between the ISO and NCPA for NCPA units Alameda CT 1 and 2 and Lodi CT from January 1, 2000, through December 31, 2000;

Attachment G Participating Generator Agreement between the ISO and NCPA;

Attachment H Meter Service Agreement for ISO Metered Entities between the ISO and NCPA; and

Attachment I Notice of this filing, suitable for publication in the Federal Register (also provided in electronic format).

Two additional copies of this filing are enclosed to be date-stamped and returned to our messenger. If there are any questions concerning this filing, please contact the undersigned.

Respectfully submitted,

_____

Roger E. Smith,
Senior Regulatory Counsel
The California Independent
System Operator Corporation

J. Phillip Jordan
Sean A. Atkins
Swidler Berlin Shereff Friedman, LLP

Counsel for
The California Independent System Operator
Corporation

CERTIFICATE OF SERVICE

I hereby certify I have this day served this document upon Pacific Gas and Electric Company, the Northern California Power Agency and the California Public Utilities Commission in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated at Washington, D.C. on this 24th day of April, 2000.

_____

Sean A. Atkins