

Reliability Coordinator Services

Rate Design, Terms and Conditions Straw Proposal

COMMENTS TEMPLATE

Company	Contact Person	Date Submitted
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Please use this template to provide your written comments on the stakeholder initiative
“**Reliability Coordinator Services Rate Design, Terms and Conditions**”

Submit comments to initiativecomments@caiso.com

Comments are due May 4, 2018 by end of day

Western Area Power Administration (WAPA), an agency of the U.S. Department of Energy, provides the following comments on the California Independent System Operator Corporation’s (CAISO) Reliability Coordinator Rate Design, Terms, and Conditions Straw Proposal dated April 5, 2018 (Straw Proposal).

WAPA appreciates the time and effort the CAISO has undertaken to develop its Straw Proposal and the opportunity CAISO has provided to interested stakeholders to participate in the process.

Federal agency

WAPA is a federal agency and is bound by federal laws. All federal contracts are subject to existing federal laws including appropriations by Congress, Anti-Assignment Act, Anti-Deficiency Act, Prohibition on Advance Payment, etc. WAPA has reviewed the Straw Proposal and identified certain provisions that may create conflicts for federal agencies.

First, federal agencies cannot pay monetary fines for violations of reliability standards issued under Section 215 of the Federal Power Act. *Southwestern Power Administration v. Federal Energy Regulatory Commission*, No. 13-1033, (D.C. Cir. 2014). This prohibition applies to fines levied directly by FERC or passed through by third parties, such as CAISO. Given the limitations of executive branch agencies to use appropriated dollars to pay monetary penalties for reliability standards, CAISO should ensure the RC Services Agreement and CAISO Tariff provisions for RC Services recognize that executive branch agencies are excluded from the imposition or allocation of monetary fines. CAISO currently proposes to pay for fines out of its reserves. See *Straw Proposal* at 12. Such an approach is acceptable since it does not directly allocate the cost of fines or monetary penalties on the federal government. This is similar to what Peak Reliability does under its Funding Agreement. However, the CAISO proposes that entities outside of the CAISO Balancing Authority that take RC services from the CAISO “will be among the entities that can potentially be allocated costs associated with penalties related to the CAISO’s performance of RC functions.” *Id.* As noted above, CAISO cannot directly allocate or assign costs for monetary fines on executive branch agencies. As a result, CAISO should ensure its Tariff and RC Services Agreement for federal agencies are consistent with this limitation.

Next, federal agencies, generally, may not enter into contracts which require payment in advance. See 31 U.S.C. § 3324. Peak Reliability addressed this concern for federal agencies in Attachment C of the Peak Reliability Funding Agreement. In the Straw Proposal, it appears CAISO plans on billing after services are provided, so it does not appear there will be a conflict with this law. In its presentation, CAISO discussed changing this provision to require advance funding. If the CAISO requires advance funding, WAPA would request CAISO bill federal agencies after the services have been provided. Peak Reliability accommodates BPA’s and WAPA’s requirements regarding this matter.

In addition to the direct allocation of monetary fines, federal agencies are bound by the Anti-deficiency Act and may not enter into contracts exceeding the amount available in an appropriation. See 31 U.S.C. § 1341. WAPA may enter into contracts for construction, operations and maintenance provided such contracts are contingent upon appropriations made by Congress. See 43 U.S.C. § 388.

In addition to the above, there are certain affirmative actions upon which federal contracting parties must agree. In developing Peak Reliability’s Universal Funding Agreement, Peak Reliability took into consideration not only the limitations imposed by federal law but the affirmative duties required by all federal contractors. Peak Reliability incorporated into

Attachment C of its Reliability Coordinate Funding Agreement provisions necessary for all federal contracts. Peak Reliability's Funding Agreement provides:

Contingent upon Appropriations and Authorization: Where activities provided for in this Agreement extend beyond the current fiscal year, continued expenditures by Western are contingent upon Congress making the necessary appropriations required for the continued performance of Western's obligations under the Agreement. In case such appropriation is not made, (i) Western shall promptly give each of the other Parties written notice of such failure. (ii) Western shall from and after the occurrence of any such failure no longer be a party to this Agreement, and (iii) the Parties hereby release Western from its contractual obligations and from all liability due to the failure of Congress to make such appropriation.

Covenant Against Contingent Fees: Each of the Parties warrants to each of the other Parties that no person or selling agency has been employed or retained by it to solicit or secure the Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by any Party for the purpose of securing business. For breach or violation of this warranty by any Party other than Western or Bonneville, Western and Bonneville shall have the right to annul the contract with respect to Western and Bonneville without liability or in its discretion to deduct from the contract price or consideration the full amount of such commission, percentage, brokerage, or contingent fee.

Contract Work Hours and Safety Standards: The Agreement, to the extent that it is of a character specified in Section 103 of the Contract Work Hours and Safety Standards Act (Act), 40 U.S.C. § 3701, as amended or supplemented, is subject to the provisions of the Act, 40 U.S.C. §§ 3701-3708, as amended or supplemented, and to regulations promulgated by the Secretary of Labor pursuant to the Act. 5. Equal Opportunity Employment Practices Section 202 of Executive Order No. 11246, 30 Fed. Reg. 12319 (1965), as amended by Executive Order No. 12086, 43 Fed. Reg. 46501 (1978), as amended or supplemented, which provides, among other things, that the Parties will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin, is incorporated herein by reference the same as if the specific language had been written into the contract.

Use of Convict Labor: The Parties agree not to employ any person undergoing sentence of imprisonment in performing the Agreement except as provided by 18 U.S.C. §

3622(c), as amended or supplemented, and Executive Order No. 11755, 39 Fed. Reg. 779 (1973), as amended or supplemented.

WAPA would seek these provisions in any agreement it executes with CAISO for RC services.

Governance

The CAISO provides a general outline of the proposed RC governance. *See Straw Proposal* at 6. WAPA recognizes the CAISO RC will be part of the CAISO; however, WAPA strongly advocates for independence of the RC from the California Governor-appointed CAISO Board. CAISO proposes to establish an interim RC Project Steering Committee (RCPSC). The RCPSC will include representatives from BAs and TOPs. The RCPSC will establish working groups and will develop, review and comment on procedures and practices related to implementation and certification of RC. The Straw Proposal states RCPSC is advisory in nature; however, CAISO intends to follow the direction of the RCPSC unless it would constitute an unacceptable risk to reliability or would be inconsistent with reliability standards. While this is a good start, WAPA believes CAISO should commit to follow the RCPSC – rather than just “intend” to follow it. Also the RCPSC should continue to exist after the implementation and certification of the RC. It should continue to provide direction even after RC certification. It is important to WAPA as well to other stakeholders that we continue to have a voice in the decisions of the RC.

Payment Defaults

WAPA has significant concerns about the payment default provisions contained in the Straw Proposal. Under the proposal, after 10 days a customer is charged a \$1,000 late payment fee and after 20 days the CAISO may suspend service. *See Straw Proposal* at 16. While WAPA recognizes it is important for CAISO to be able to enforce payment, RC services are required by mandatory reliability standards. If the CAISO suspends RC services after 20 days, the TOP or BA will violate those reliability standards. Violations of reliability standards can carry significant consequences. In addition, suspending one entity may have impacts on other entities. These impacts may affect reliability. A 20 day period, given the consequences, does not seem sufficient to suspend service. CAISO should have some process in place before it suspends RC services. There are many variables that can impact timely payment of an invoice, e.g., software or hardware malfunctions. Rather than a suspension after 20 days, WAPA recommends that CAISO, along with the stakeholders, develop a multi-stage process under which the CAISO could

suspend service. Such a process would need to ensure safeguards are in place to protect reliability.

In addition to having concerns about the suspension provisions as currently proposed, WAPA believes that the \$1,000 late payment fee may be excessive for some entities. If an entity pays the minimum charge (\$416 per month) and is assessed a \$1,000 late payment fee, the late payment fee will be more than twice its monthly bill. WAPA recommends a more proportional late payment fee.

Exiting

CAISO 's Straw Proposal provides that RC Customers may terminate the agreement without penalty by giving 6 months' notice (after the initial 18 month commitment period). *See Straw Proposal* at 8. The CAISO proposes to have two withdrawal periods each year. Rather than 6 months' notice, WAPA would recommend 12 months' notice at any time. Twelve months' notice provides more certainty for other funding parties.

Hosted Advanced Applications

CAISO states it will facilitate the continuation of the Western Interconnection tools such as Western Interchange Tool and Enhanced Curtailment Calculator. *See Straw Proposal* at 6. WAPA expects that CAISO will provide and maintain platforms and tools similar to the existing Peak Reliability Hosted Advanced Applications (HAA). This includes but is not limited to the Areva (was Alstom, now GE) wide area Supervisory Control and Data Acquisition (SCADA) data and visualization tools; state estimator functionality; power flow and contingency analysis; displays; model build; and enhancements. The technology platform provided by HAA plays an important role in assisting BAs and TOPs to maintain situational awareness and to perform operational planning and real time assessments. Furthermore, CAISO should host user groups similar to the current HAA forum of users to discuss best practices, bug fixes and requested tool updates/modifications.