

5.2.7 Reliability Must-Run Charge. The ISO shall ~~recover the costs it incurs through~~ ~~payments~~prepare and send to each Responsible Utility in accordance with Annex 1 to the ISO's ~~Settlement and Billing Protocol~~ a Responsible Utility invoice in respect to those costs incurred under each Reliability Must-Run Contract ~~from the utility that is a party to the TGA in whose~~ ~~Service Area the Reliability Must-Run Generating Unit is located after deducting the amounts~~ received by the Reliability Must-Run Owner ~~from that are payable to the ISO by such Responsible~~ ~~Utility pursuant to Section 5.2.8.~~ The Responsible Utility invoices shall reflect all reductions or credits required or allowed under or arising from the Reliability Must-Run Contract or under this Section 5.2.7. The Responsible Utility invoice shall separately show the amounts due for services from each RMR Owner. Each Responsible Utility shall pay the Scheduling Coordinators for Energy and Ancillary Services, as set forth in Appendix H of the Settlement and Billing Protocol. ~~The ISO shall prepare and send to each such utility in accordance with the relevant~~ ~~ISO Protocols an invoice in respect of all such costs incurred under all such contracts relating to~~ that utility's Service Area. Each such utility shall pay the ISO's invoices by the Payment Date,~~amount due under each~~ Responsible Utility invoice by the due date specified in the ~~Responsible Utility invoice,~~ in default of which interest shall become payable at the ~~ISO Default~~ Interest Rate. ~~interest rate provided in the Reliability Must-Run Contract from the due date until the date on~~ ~~which the amount is paid in full.~~ For each Reliability Must-Run Contract, the ISO shall establish two, segregated commercial bank accounts under the "Facility Trust Account" referred to in Annex 1 to the ISO's Settlement and Billing Protocol and Article 9 of the Reliability Must-Run Contract. One commercial bank account, the "RMR Owner Facility Trust Account," shall be held in trust by the ISO for the RMR Owner. The other commercial bank account, the "Responsible Utility Facility Trust Account," shall be held in trust by the ISO for the Responsible Utility. Payments received by the ISO from the Responsible Utility in connection with the Reliability Must-Run Contract, including payments following termination of the Reliability Must-Run Contract, will be deposited into the RMR Owner Facility Trust Account and payments from

the ISO to the RMR Owner will be withdrawn from such account, in accordance with Section 5.2.7, Article 9 of the Reliability Must-Run Contract and Annex 1 to the ISO's Settlement and Billing Protocol. Any payments received by the ISO from the RMR Owner in connection with the Reliability Must-Run Contract will be deposited into the Responsible Utility Facility Trust Account. Any payments due to the Responsible Utility of funds received from the RMR Owner in connection with the Reliability Must-Run Contract will be withdrawn from the Responsible Utility Facility Trust Account, in accordance with this Section 5.2.7, Annex 1 to the ISO's Settlement and Billing Protocol and Article 9 of the Reliability Must-Run Contract. Neither the RMR Owner Facility Trust Account nor the Responsible Utility Trust Account shall have other funds commingled in it at any time. The ISO shall not modify this Section 5.2.7 or Annex 1 to the ISO Settlement and Billing Protocol as it applies to procedures for the billing, invoicing and payment of charges under Reliability Must-Run Contracts without the Responsible Utility's consent, provided, however, that no such consent shall be required with respect to any change in the method by which costs incurred by the ISO under RMR Contracts are allocated to or among Responsible Utilities.

~~5.2.7.1 Each utility referred to in Section 5.2.7 shall provide in favor of the ISO one of the following forms of security for an amount to be determined by the ISO and notified to such utility under Section 5.2.7.2:~~

5.2.7.1 Except where the Responsible Utility is also the RMR Owner, the Responsible Utility's payment of the Responsible Utility invoice shall be made without offset, recoupment or deduction of any kind whatsoever. Notwithstanding the foregoing, if the ISO fails to deduct an amount required to be deducted under Section 5.2.7.1.1, the Responsible Utility may deduct such amount from payment otherwise due under such invoice.

5.2.7.1.1 If the Responsible Utility disputes a Responsible Utility invoice, final Estimated RMR Invoice, or final Adjusted RMR Invoice, it shall pay the Responsible Utility invoice but may pay under protest and reserve its right to seek a refund, with interest, from the ISO. If resolution of the dispute results in an amount paid by the Responsible Utility under protest being due from the

ISO to the Responsible Utility, then such amount, with interest at the interest rate specified in the applicable Reliability Must-Run Contract from the date of payment until the date on which the amount is repaid in full, shall be deducted by the ISO from the next succeeding amounts otherwise due from the Responsible Utility to the ISO with respect to the applicable Reliability Must-Run Contract or, if such Contract has terminated, such amount shall be refunded by the ISO to the Responsible Utility; provided, however, that if and to the extent that such resolution is based on an error or breach or default of the RMR Owner's obligations to the ISO under the Reliability Must-Run Contract, then such refund obligation shall extend only to amounts actually collected by the ISO from the RMR Owner as a result of such resolution.

5.2.7.1.2 If the Responsible Utility disputes a Responsible Utility invoice, a final Estimated Invoice or a final Adjusted RMR Invoice, or part thereof, based in whole or in part on an alleged error by the RMR Owner or breach or default of the RMR Owner's obligations to the ISO under the Reliability Must-Run Contract, the Responsible Utility shall notify the ISO of such dispute within 12 months of its receipt of the applicable final Adjusted RMR Invoice from the ISO, except that the Responsible Utility may also dispute a final Estimated RMR Invoice or final Adjusted RMR Invoice for the reasons set forth above in this Section 5.2.7.1.2, within 60 days from the issuance of a final report with respect to an audit of the RMR Owner's books and accounts allowed by a Reliability Must-Run Contract.

5.2.7.1.3 If the Responsible Utility disputes a final Estimated RMR Invoice or final Adjusted RMR Invoice based in whole or in part on an alleged error by the ISO or breach or default of the ISO's obligations to the Responsible Utility, the Responsible Utility shall notify the ISO of such dispute prior to the later to occur of (i) the date 12 months following the date on which the ISO submitted such invoice to the Responsible Utility for payment or (ii) the date 60 days following the date on which a final report is issued in connection with an operational audit, pursuant to Section 12.2.2, of the ISO's performance of its obligations to Responsible Utilities under this Section 5.2.7 conducted by an independent third party selected by the ISO Governing Board and covering the period to which such alleged dispute relates. The ISO or any Responsible Utility shall have the

right to request, but not to require, that the ISO Governing Board arrange for such an operational audit at any time.

5.2.7.1.4 Notwithstanding Article 13, any Responsible Utility dispute relating to a Responsible Utility Invoice, a final Estimated Invoice, a final Adjusted Invoice, or a RMR Charge, RMR Payment or RMR Refund as defined in Annex 1 to the Settlement and Billing Protocol, shall be resolved through the dispute resolution process specified in the relevant RMR Contract. If the Responsible Utility fails to notify the ISO of any dispute as provided above, it shall be deemed to have validated the invoice and waived its right to dispute such invoice.

5.2.7.2 The RMR Owner shall, to the extent set forth herein, be a third party beneficiary of, and have all rights that the ISO has under the ISO Tariff, at law, in equity or otherwise, to enforce the Responsible Utility's obligation to pay all sums invoiced to it in the Responsible Utility invoices but not paid by the Responsible Utility, to the extent that, as a result of the Responsible Utility's failure to pay, the ISO does not pay the RMR Owner on a timely basis amounts due under the Reliability Must-Run Contract. The RMR Owner's rights as a third party beneficiary shall be no greater than the ISO's rights and shall be subject to Section 13 of this ISO Tariff regarding dispute resolution. Either the ISO or the RMR Owner (but not both) will be entitled to enforce any claim arising from an unpaid Responsible Utility invoice, and only one party will be a "disputing party" under Section 13 of the ISO Tariff with respect to such claim so that the Responsible Utility will not be subject to duplicative claims or recoveries. The RMR Owner shall have the right to control the disposition of claims against the Responsible Utility for nonpayments that result in payment defaults by the ISO under a Reliability Must-Run Contract. To that end, in the event of nonpayment by the Responsible Utility of amounts due under the Responsible Utility invoice, the ISO will not take any action to enforce its rights against the Responsible Utility unless the ISO is requested to do so by the RMR Owner. The ISO shall cooperate with the RMR Owner in a timely manner as necessary or appropriate to most fully effectuate the RMR Owner's rights related to such enforcement, including using its best efforts to enforce the Responsible Utility's payment obligations if, as, to the extent, and within the time frame, requested by the RMR Owner. The

ISO shall intervene and participate where procedurally necessary to the assertion of a claim by the RMR Owner.

5.2.7.3 If a Responsible Utility first executed a 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.

~~(a) the New Responsible Utility shall issue and confirm to the ISO an irrevocable and unconditional letter of credit confirmed by a bank or financial institution reasonably acceptable to the ISO; or~~

~~(b) a cash deposit standing to the credit of an interest bearing escrow account maintained at a bank or financial institution designated by the ISO.~~

in an amount equal to three times the highest monthly payment invoiced by the ISO to the New Responsible Utility (or the prior Responsible Utility) in connection with services under Reliability Must-Run Contracts in the last 3 Letters of credit and escrow agreements 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 ISO may reasonably require from time to time by notice to the utilities referred to in Section 5.2.7.

New Responsible Utility and shall authorize the ISO or the 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 Responsible Utility invoice. The security provided pursuant to Section 5.2.7.1 by the utility that is a party to the TCA in whose Service Area the Reliability Must-Run Generating Unit is, by the New Responsible Utility pursuant to this Section located 5.2.7.3 is intended to cover that utility's the New Responsible Utility's outstanding

liability for all payments it is liable to make to the ISO under this Section 5.2.7, including monthly payments, any reimbursement for capital ~~improvements, exit~~improvement, ~~termination~~ fees and any other payments to which the ISO is liable under Reliability Must-Run Contracts.

5.2.8 Responsibility for Reliability Must-Run Charge. The costs incurred by the ISO under each Reliability Must-Run Contract shall be payable to the ISO by the Responsible Utility in whose Service Area the Reliability Must-Run Contracts. ~~The amount of such security in any month shall be equal to two times the highest monthly payment invoiced by the ISO in the previous quarter. In any month for which all relevant data is not yet available, the ISO will calculate the amount of security required on the basis of a reasonable estimate of its requirements for Reliability Must-Run Generation. Must-Run Generating Units covered by such Reliability Must-Run Contract are located.~~