

February 18, 2010

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

**RE: Docket Nos. ER09-1048-\_\_\_, ER06-615-\_\_\_, & ER06-615-\_\_\_**

**Amendments to the FERC Electric Tariff of the California  
Independent System Operator Corp. in Compliance with the  
Commission's November 19, 2009 *Order on Compliance***

Dear Secretary Bose:

The California Independent System Operator Corporation ( ISO) hereby submits for Commission approval amendments to the ISO's FERC Electric Tariff. On November 19, 2009, the Commission issued its *Order on Compliance Filing*<sup>1</sup> (*Compliance Order*) in response to the ISO's initial compliance report and associated tariff amendments called for under the Commission's Order No. 719.<sup>2</sup> The *Compliance Order* largely accepted the ISO's initial compliance filing but ordered the ISO to amend the Tariff to address the five following market monitoring issues:

- A. Clarify the ISO's market monitoring structure.
- B. Conform the ISO's definition of the term "Market Violation" to match the definition offered in the Commission's regulations.

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<sup>1</sup> *Cal. Indep. Sys. Operator Corp.*, 129 FERC ¶ 61,157 (2009).

<sup>2</sup> *Wholesale Competition in Regions with Organized Electric Markets*, 125 FERC ¶ 61,071 (2008).

- C. Review the ISO's Rules of Conduct to ensure that only objectively identifiable conduct is subject to sanction by the ISO under its internal penalty authority.
- D. Clarify the definitions of the terms "material affiliation" and "de minimis" in the ethics rules applicable to market monitoring personnel.
- E. Broaden the information sharing provisions in Section 8 of Appendix P to the utility commissions of all states, rather than limiting it to the California Public Utilities Commission (CPUC).

Through the attached tariff sheets and the instant transmittal letter, the ISO now addresses these five issues.

## **I. Tariff Amendments and Discussion of Compliance**

### **A. Clarifying the ISO's Market Monitoring Structure**

#### *1. Explanation of Compliance Obligation*

The ISO has long maintained what it has considered to be a hybrid market monitoring structure that involves an internal monitor, the Department of Market Monitoring (DMM), and an external monitor, the Market Surveillance Committee (the MSC). In the *Order on Compliance*, the Commission objected to the ISO's continued categorization of the MSC as a market monitor, finding that the MSC's role under the Tariff is consultative.<sup>3</sup> The Commission thus requires the ISO either to: (1) acknowledge that the MSC's role is to provide consulting services; or (2) amend the Tariff to clarify that the MSC has some responsibility to carry

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<sup>3</sup> *Compliance Order* at P 81. Although not stated explicitly, the ISO understands the rationale for this conclusion as being that the MSC is not obligated to carry out any of the core market monitoring functions. Instead, the Tariff specifies that the MSC may carry out these tasks on its own accord or where it is requested to do so by the ISO. *E.g.*, Tariff, Appendix O, Section 5.2 ("The MSC may, upon request of DMM, the CAISO management or the CAISO Governing Board, or on its own initiative, recommend such changes as it believes are appropriate to the CAISO Tariff"); Tariff, Appendix O, Section 5.5 ("The MSC may make such additional reports and recommendations as it sees fit relating to the monitoring program referred to in this CAISO Tariff.").

out at least part of one core market monitoring function.<sup>4</sup> Those core functions involve “identifying ineffective market rules, reviewing the performance of the markets, and making referrals to the Commission.”<sup>5</sup>

As described in the *Order on Compliance*, if the ISO elects the first choice, the only amendment to the Tariff involves modifying the title of Section 5 of Appendix O from “Duties of the Market Monitor” to “Duties of the Market Surveillance Committee.”<sup>6</sup> Alternatively, if the ISO elects the second choice, it must make revisions to both Appendix P and Appendix O to “(1) define clearly the relationship between the internal and external market monitors, [and] (2) delineate clearly the responsibilities of the external Market Monitoring Unit.”<sup>7</sup>

## 2. *Description of Division of Labor between DMM and the MSC*

Throughout the ISO’s history, DMM and the MSC have occupied distinct but complementary niches within the ISO’s market monitoring structure. DMM is comprised of full-time ISO staff whose educational training and professional expertise lie in economics and quantitative analysis. DMM’s primary role has been to provide day-to-day review of market design and market performance. Under the Tariff, DMM is required to develop, implement, and refine quantitative metrics for measuring market performance and detecting suspected exercises of market power and market manipulation. Based, in part, on the results of this ongoing analysis, DMM reviews trends in market performance and provides the ISO and the stakeholder community regular reports of its findings. DMM is also

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<sup>4</sup> *Id.* at P 82.

<sup>5</sup> *Id.* at P 81, n.63.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at P 121.

obligated to conduct ongoing review of market rules, including flaws in the market structure that lead to undue concentrations of market power. The market monitoring metrics, along with tips from market participants and other components of the ISO, provide DMM the basis for referring suspected market violations to the Commission. Before making such referrals, DMM first performs a preliminary investigation of the matter, which can include requesting data and documents from the market participants involved. In cases where a referral is made, DMM serves as the ISO's primary point of contact for the Commission's Office of Enforcement as it pursues its investigation of the referred conduct.

The MSC is a blue ribbon committee composed of at least three experts recognized for their experience in energy economics, power system engineering, and energy and other commodities trading. It is formally a subcommittee of the ISO Governing Board subject to the same open meeting requirements as the Board. Under the ISO's Open Meeting Policy, except under defined emergency circumstances, the ISO Governing Board and its subcommittees, including the MSC, may only take action in a publicly noticed meeting.<sup>8</sup> Members of the MSC are not employees of the ISO and traditionally have been full-time university professors. The MSC's main function has been to provide the ISO and the market with guidance and expert analysis on discrete topics related to the market's operations. Notably, the MSC is empowered to offer its unsolicited views to the ISO Governing Board, ISO management, and the Commission on a wide variety of topics, including: the need for amendments to the ISO's Tariff or

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<sup>8</sup> CALIF. INDEP. SYS. OPERATOR CORP., OPEN MEETING POLICY § 1.2, *available at* <http://www.caiso.com>.

any Business Practice Manual; the imposition of penalties and sanctions against market participants for violations of the Tariff; and the efficacy of the ISO's market monitoring efforts. The MSC additionally has provided peer review of DMM's efforts and a second opinion on all major topics DMM addresses. That peer review includes: evaluating the data and information DMM develops, including criteria that DMM uses to monitor market performance; providing pre-publication comments on the quarterly and annual market monitoring reports produced by DMM; and providing pre-submission comments on referrals DMM makes to FERC on suspected market violations and market design flaws.

The ISO believes that this division of labor between the MSC and DMM has effectively served the interests of its stakeholders, the integrity of the market, California's electricity consumers, and the ISO itself. It strikes an effective balance between the respective strengths and capacities of DMM and the MSC.

### *3. The ISO's Decision on Compliance*

The ISO believes that the current division of responsibilities between DMM and the MSC provides an effective market monitoring function and that revisions to that structure would be unwise. In meeting its obligations under the *Order on Compliance*, the ISO's primary interest is thus in altering as little as necessary to this structure.

Following the second choice provided in the *Order on Compliance* would require the ISO to take some of the recurring, ongoing oversight obligations performed by DMM and obligate the MSC either to duplicate those efforts or take them over exclusively. Either duplicating or bifurcating the obligation to carry out

what the Commission has now identified as the core market monitoring duties would not provide any value or benefit for the market or the ultimate consumers of electricity. It instead poses the danger of misaligning the MSC's strengths and responsibilities. The MSC's value lies in providing an outside perspective on the most challenging issues the ISO must confront.

On the other hand, following the first choice provided in the *Order on Compliance* would involve no changes to the MSC's Tariff-defined role. The MSC would continue to recommend Tariff amendments to the ISO Governing Board and ISO Management, provide pre-publication comments on the quarterly and annual market monitoring reports produced by DMM, and provide pre-submission comments on referrals DMM makes to FERC on suspected market violations and on market design flaws. In addition, the MSC would continue to hold an unfettered right to submit any of its reports directly to the Commission, subject only to restrictions on the dissemination of confidential and commercially sensitive information.

This preserves in its entirety the MSC's longstanding role, and is thus the ISO's preferred option. If it is the Commission's determination that an entity holding the MSC's duties and responsibilities no longer qualifies as a Market Monitoring Unit, as that term is defined in FERC regulations,<sup>9</sup> the ISO has no objection. What is important to the ISO is the substance of the MSC's role in the ISO's market monitoring apparatus, rather than what labels are used to describe

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<sup>9</sup> 18 CFR § 35.28(b)(7).

that role. The ISO accordingly elects to change the characterization of the MSC's role consistent with the Commission's suggestion.

**B. Correcting the ISO's Definition of the Term "Market Violation"**

The ISO's initial compliance filing offered the following definition of market violation: "A violation of a market behavior rule promulgated by the Commission or a violation of a provision of this Tariff other than those provisions that carry a sanction specifically enumerated under Section 37 of this Tariff." The *Compliance Order* mandates that the Tariff must reflect the definition of the term that is included in the Commission's regulations, which is "a tariff violation, violation of a Commission-approved order, rule or regulation, market manipulation, or inappropriate dispatch that creates substantial concerns regarding unnecessary market inefficiencies."<sup>10</sup>

In compliance with the Commission's directive, the ISO will amend its definition of the term "Market Violation" to conform with the definition provided in current FERC regulations. However, in order to make this amendment without triggering other problems, the ISO must make an additional amendment to the Tariff. Aside from tracking the definition of the term as provided in the Commission's market monitoring policy statement,<sup>11</sup> the ISO believed that the definition offered in the initial compliance filing was necessary to clarify that DMM did not have an obligation to refer matters to FERC that the ISO was already addressing through its internal penalty authority. Under the Commission's definition of the term, *any* violation of the Tariff, whether or not the violation

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<sup>10</sup> 18 C.F.R. § 35.28(b)(8).

<sup>11</sup> *Market Monitoring Units in Regional Transmission Organizations, Independent System Operators*, 111 FERC ¶ 61,267 (2005).

already had been the subject of sanctions from the ISO, would require DMM to make a formal referral to the Commission's Office of Enforcement under the protocols outlined in Section 11 of Appendix P.

In reviewing the Order No. 719 *Order on Compliance* issued to the New York Independent System Operator (NYISO),<sup>12</sup> the ISO understands that it is permissible for an ISO to tailor a MMU's market violation referral obligation to exclude those violations that carry a tariff-defined sanction for objectively identifiable conduct. Accordingly, the ISO has also amended Section 11.1.3 of Appendix P to specify which parts of Section 37 the violation of which will not compel DMM to make a referral to the Office of Enforcement.

### **C. Reviewing the ISO's Rules of Conduct**

Section 37 of the ISO's Tariff contains the ISO's "Rules of Conduct," which include the rules the ISO's market participants must follow and the sanctions that the ISO may impose for violations. In the *Compliance Order*, the Commission determined that Section 37.5.1 and Section 37.6.1.1 do not meet the Commission's requirement that independent system operators and regional transmission organizations may only impose sanctions against objectively identifiable behavior.<sup>13</sup> The Commission thus ordered the California ISO to amend these specific provisions and conduct a full review of Section 37 and amend it "to conform to the requirements for behavior subject to internal sanction."<sup>14</sup>

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<sup>12</sup> *N.Y. Indep. Sys. Operator, Inc.*, 129 FERC ¶ 61,164, at PP 98 & 99 (2009).

<sup>13</sup> *Compliance Order* at PP 99 & 100.

<sup>14</sup> *Id.* at P 100.

Although the ISO did not understand Order No. 719 to require ISOs and RTOs to review their rules subject to internal penalty authority and the ISO's initial compliance filing did not amend the substantive Rules of Conduct, the ISO nevertheless has conducted the required review and submits a revised Section 37. The ISO identified five rules carrying sanctions that could be viewed as involving behavior that is not objectively identifiable: 37.2.1, 37.2.3, 37.2.4, 37.5.1, and 37.6.1. In amending these rules, the ISO took two approaches. In the case of Section 37.2.1, Section 37.2.4, and Section 37.6.1, the ISO proposes to amend the substance of the rule so that it now only covers objectively identifiable behavior. For Section 37.2.3 and Section 37.5.1, the DMM will refer suspected violations to FERC for possible enforcement. Even with these amendments, the ISO acknowledges that there always may be exceptional cases in which the facts and circumstances preclude an objective determination as to whether or not a Rule of Conduct was violated. As before, Section 37.8.2 requires a FERC referral in such situations.

Section 37.2.1.1 currently requires Market Participants to comply with ISO operating orders, and defines compliance as requiring "a good faith effort to achieve full performance as soon as is reasonably practicable in accordance with Good Utility Practice." This definition of compliance calls for the ISO to apply subjective terms such as "reasonably practicable." For Section 37.2.1.1, going forward, the ISO will levy a Sanction under Section 37.2.1.2 for all instances in which a Market Participant does not comply with an operational order. Compliance will not be defined in terms of whether a good faith effort may have

been made to comply with an order. However, if a Market Participant fails to comply with an operational order but the ISO believes that the Market Participant made a good faith effort to comply or that compliance was otherwise infeasible, the ISO may recommend to FERC that the penalty be waived under Section 37.9.2.5. To assist the Commission in its review of any claimed infeasibility or limitation and to aid the ISO in grid operations, the Tariff will continue to require Market Participants to provide the ISO with prompt notification that compliance is infeasible as well as an explanation of why compliance is infeasible. For clarification, a Market Participant's prompt notification that compliance is infeasible does not excuse the failure to obey an operational order. Rather, the need to provide such notification is an additional requirement. As an additional note, the ISO reserves the right to rescind the operational order based on the explanation provided by the Market Participant.

Section 37.2.4.1 requires that a Resource Adequacy Generating Unit must be on-line and/or available "unless the CAISO releases the Generating Unit after the RUC process is completed, or a derate, Outage or other event outside the control of the Market Participant" prevents the Generating Unit from being available. The phrase "event outside the control of the Market Participant" involves a subjective determination. Accordingly, it will be removed from 37.2.4.1. However, if an uncontrollable event forces a Resource Adequacy Generating Unit to be unavailable, the relevant Scheduling Coordinator could still be excused under Section 37.9.2.1.

Under Section 37.6.1.1, all information required to be submitted by the Tariff, a Business Practice Manual (BPM), or a FERC-jurisdictional contract must be submitted in a “complete, accurate, and timely manner.” For Section 37.6.1.1, the ISO proposes to remove the word “accurate.” Under the proposed revision, required information now “must be submitted in a complete and timely manner . . . .” The Tariff, BPMs, and jurisdictional contracts invariably provide direction in terms of what information is required and what timeline governs its submission. For this reason, the ISO believes that Section 37.6.1.1, as amended, will involve solely objective determinations. While Section 37.6.1.1 would no longer impose an obligation to submit accurate information, Section 37.5.1, which includes an obligation to “provide accurate and factual information,” will remain in the Tariff. Thus, the removal of the word “accurate” in Section 37.6.1.1 should in no way be construed to indicate that the ISO’s Tariff would now permit the submission of inaccurate or false information.<sup>15</sup>

Going forward, suspected violations of Section 37.2.3 (obligation to conduct maintenance procedures necessary to avoid a major Outage) and Section 37.5.1 (general obligation to submit accurate information) will be referred to the Commission by DMM under the provisions of Section 11 of Appendix P governing DMM’s responsibility to refer suspected Market Violations to FERC for enforcement.<sup>16</sup> As before, Section 37.7 will be enforced by the Commission.

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<sup>15</sup> Additionally, as noted in the *Order on Compliance*, submission of false or misleading information to an ISO or RTO violates Commission regulations. *Compliance Order* at P 100.

<sup>16</sup> Such a referral would be in addition to any other appropriate referrals to government agencies or industry organizations, including potential referrals to the North American Electric Reliability Corp. or the Western Electricity Coordinating Council.

Section 37.2.3 intersects with California state law and warrants further discussion. Under Section 349 of the California Public Utility Code, the ISO must:

[P]erform a review following a major outage that affects at least 10 percent of the customers of the entity providing the local distribution service. The review shall address the cause of the major outage, the response time and effectiveness, and whether the transmission facility owner or operator's operation and maintenance practices enhanced or undermined the ability to restore service efficiently and in a timely manner. If the Independent System Operator finds that the operation and maintenance practices of the transmission facility owner or operator prolonged the response time or was responsible for the outage, the Independent System Operator may order appropriate sanctions, subject to the Federal Energy Regulatory Commission approving that authority.<sup>17</sup>

Irrespective of DMM's obligation to refer suspected violations of Section 37.2.3 to FERC, the ISO will continue to perform the review required under Section 349 of the Public Utility Code. In considering whether to make a confidential referral to FERC of a suspected violation of Section 37.2.3, DMM may consider the results of the ISO's review, confer with ISO staff, and consider any other material it believes is relevant. In all circumstances, however, per Section 11.1.1 of Appendix P, the final decision on whether to make a referral still "is committed to the sole discretion of DMM," and the results of the ISO's review shall not compel DMM's decision one way or the other.

The ISO notes that under Section 349, it may levy penalties where the "maintenance practices of the transmission facility owner or operator prolonged

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<sup>17</sup> CAL. PUB. UTIL. CODE § 349.

the response time or was responsible for the outage,” provided that FERC approves such penalty authority. As this determination involves inherently subjective matters and the ISO is precluded, per FERC regulations, from levying sanctions on matters involving subjective determinations, the ISO believes that FERC has implicitly denied the ISO authority to levy such penalties.

The ISO is also mindful of Section 11.1 of Appendix P, which requires DMM to “desist from independent action related to the alleged Market Violation” following a referral to the Commission.” In circumstances where DMM makes a referral to FERC for a suspected violation of Section 37.2.3 while the ISO’s Section 349 review is pending, the ISO will interpret Section 11.1 of Appendix P to apply solely to DMM such that it would not preclude the ISO from completing its mandated review. The ISO believes that such an interpretation would maintain comity between the Commission’s regulations and California’s statutes and would prevent Section 349 from being preempted.

The ISO acknowledges that two other rules in Section 37 – Section 37.3.1.1 and Section 37.5.2.1 – could be seen as levying sanctions for behavior that is not objectively identifiable. Section 37.3.1.1 requires that bids be submitted based on resources that are “reasonably expected” to be available. However, per Section 37.3.1.2, violation of this provision is enforced through a settlement rule that denies payment for services that are not delivered. Furthermore, Appendix A of the Tariff explicitly excludes such non-payment from the definition of “Sanction,” stating: “Neither referral to FERC nor rescission of payment for service not provided shall constitute a Sanction.” Section 37.5.2.1

requires Scheduling Coordinators to submit “Scheduling Coordinator Estimated Settlement Quality Meter Data that is complete and based on a good faith estimate that reasonably represents Demand and/or Generation quantities for each Settlement Period as required by Section 10.” While the reference to a “good faith estimate” seemingly may involve subjective considerations, Section 10.3.6.1 provides clarity as to what constitutes such a good faith estimate. This clarity reduces the level of subjectivity involved in administering Section 37.5.2.1. Furthermore, the sentence in question is a key element of the ISO’s payment acceleration efforts and was approved by the Commission in an order issued while the ISO’s initial compliance filing had been pending before the Commission for over four months.<sup>18</sup> The ISO thus believes that the Commission did not intend to include Section 37.5.2.1 among the provisions in Section 37 requiring amendment.

Aside from the substantive Rules of Conduct, the *Compliance Order* necessitates a few additional amendments. As required by the *Compliance Order*, Section 37.8.2 and Section 37.9.3.3 have been amended to ensure that DMM is not involved in enforcing the Rules of Conduct. Additionally, Section 37.9.2 has been amended so that it is up to FERC to determine whether any of the excuses delineated in that section will excuse a violation of a Rule of Conduct. This is necessary because determining whether or not one of the excuses applies involves a level of discretion and judgment that is not based exclusively on objective factors.

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<sup>18</sup> The sentence in question was approved by the Commission on September 17, 2009. *Cal. Indep. Sys. Operator Corp.*, 128 FERC ¶ 61,265 (2009). The initial compliance filing was made on April 28, 2009.

**D. Clarifying the Terms “Material Affiliation” and “De Minimis”**

Order No. 719 required ISOs and RTOs to amend their tariffs to include seven specific ethics rules applicable to market monitoring units and their personnel.<sup>19</sup> The ISO adopted those rules virtually verbatim in its initial compliance filing. The *Compliance Order* found that in adopting these rules, the ISO failed to provide clarification for two vague terms: (1) “material affiliation;” and (2) “de minimis.”

In response to the Commission’s directive, the ISO has amended Sections 9.1 and 9.6 of both Appendix O<sup>20</sup> and P to provide the necessary clarity. Instead of stating that MSC members and DMM employees “shall have no material affiliation with any market participant or affiliate,” Section 9.1 now states that such personnel “shall have no professional or commercial affiliation with a market participant where such affiliation would tend to affect, or give the appearance of affecting, their judgment in the performance of their duties.” Section 9.6 no longer uses the term “de minimis” and instead provides that MSC members and DMM employees “shall not accept from a market participant any item with a value in excess of \$25.”

**E. Broadening Information Sharing Provisions in Section 8, Appendix P**

Order No. 719 required ISOs and RTOs to amend their tariffs to require market monitors to consider tailored requests from state utility commissions for information or data on general market trends and the performance of the

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<sup>19</sup> Those rules are stated at 18 CFR § 35.28 (g)(3)(vi).

<sup>20</sup> Although the ISO has acknowledged that the MSC is no longer formally a market monitor, the ISO believes that due to its unique role in advising the ISO Governing Board and ISO CEO, it is appropriate that the Section 9 ethics obligations remain in place for the MSC.

wholesale markets.<sup>21</sup> In implementing this requirement, the ISO believed that, as a single-state ISO, its obligation was limited to considering requests from the CPUC. The *Order on Compliance*, however, has clarified that the ISO must consider such requests from the utility commissions of all states.<sup>22</sup>

In response to the *Order on Compliance*, the ISO has amended Section 8 of Appendix P to refer generally to a “State Commission” generally, rather than the CPUC specifically. The ISO additionally has added a definition of the term “State Commission” to Appendix A to clarify that the term shall mean: “The regulatory body of a State having jurisdiction to regulate rates and charges for the sale of electric energy to consumers within the State.” Due to this broader sharing of information, DMM may occasionally be in the position of simultaneously responding to requests from multiple State Commissions. In such circumstances, DMM reserves the right to exercise the discretion granted to it under Section 8 of Appendix P to prioritize requests from the CPUC ahead of requests from other State Commissions.

## **II. Effective Date**

The ISO requests that the amendments included in this filing be made effective on February 18, 2010.

## **III. Communications**

Communications regarding this filing should be addressed to the following individuals:

Daniel J. Shonkwiler

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<sup>21</sup> Order No. 719 at P 446.

<sup>22</sup> *Compliance Order* at P 132.

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18 C.F.R. § 385.203(b)(3)

## **V. Service**

The ISO has served copies of this transmittal letter, and all attachments, on the parties included on the service lists for the relevant dockets. In addition, the ISO is posting this transmittal letter and all attachments on its website. If there are any questions concerning this filing, please contact the undersigned.

## **VI. Attachments**

The following attachments, in addition to this transmittal letter, support the instant filing:

Attachment A	Revised ISO tariff sheets that incorporate the proposed changes described above.
Attachment B	The proposed changes to the ISO tariff shown in black-line format.

## **VII. Conclusion**

The ISO respectfully submits that with the implementation of the accompanying tariff sheets it will have met its obligations under the *Compliance Order* and requests that the tariff sheets be made effective immediately. Please contact the undersigned if you have any questions regarding this matter.

Respectfully submitted,

A handwritten signature in black ink that reads "Daniel J. Shonkwiler" with a stylized flourish at the end.

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**Attachment A – Clean Sheets  
Order 719 Compliance Filing  
Fourth Replacement CAISO Tariff  
February 18, 2010**

**37.1.4 FERC Authority**

In addition to any authority afforded in this Section 37, FERC shall have the authority to assess the Sanctions, and otherwise to enforce the rules as set forth and described in this Section 37. FERC shall have authority to remedy a violation under this Section 37 from the date of the violation. Nothing in this Section 37 shall be deemed to be a limitation or condition on the authority of FERC or other entities under current law or regulation.

**37.1.5 Administration**

As provided in Section 37.8.2, the CAISO will administer the Rules of Conduct specified herein, except for Section 37.2.3, Section 37.5.1 and Section 37.7, which shall be administered by FERC, and except as provided in Section 37.2.5 and Section 37.4.4.

**37.2 Comply with Operating Orders.**

**37.2.1 Compliance with Orders Generally.**

**37.2.1.1 Expected Conduct**

Market Participants must comply with operating orders issued by the CAISO as authorized under the CAISO Tariff. For purposes of enforcement under this Section 37.2, an operating order shall be an order(s) from the CAISO directing a Market Participant to undertake, a single, clearly specified action (e.g., the operation of a specific device, or change in status of a particular Generating Unit) that is feasible and intended to resolve a specific operating condition. A Market Participant's failure to obey an operating order containing multiple instructions to address a specific operating condition will result in a single violation of Section 37.2. If some limitation prevents the Market Participant from fulfilling the action requested by the CAISO or the action is otherwise infeasible, then the Market Participant must promptly and directly communicate the nature of any such limitation or infeasibility to the CAISO.

**37.2.1.2 Sanctions**

The Sanction for a violation of this Section shall be the greater of the quantity of Energy non-performance multiplied by the applicable Dispatch Interval Locational Marginal Price or the following: for the first violation in a rolling twelve (12) month period, \$5,000; for the second and subsequent violations in a rolling twelve (12) month period, \$ 10,000. Sanctions under Section 37.2.1 will not be greater than \$10,000 per violation and will be subject to the limitation stated in Section 37.2.6. If a quantity of Energy cannot be objectively determined, then the financial Sanctions specified above will apply. A Market Participant may incur Sanctions for more than one violation per day.

**37.2.2 Failure to Curtail Load.**

**37.2.2.1 Expected Conduct.**

A UDC or MSS Operator shall promptly comply with any CAISO operating order to curtail interruptible or firm Load issued pursuant to the CAISO's authority under Section 7.7.11.3.

**37.2.2.2 Sanctions.**

The Sanction for non-compliance with an operating order to curtail Load will be \$10,000 for each violation.

**37.2.3 Operations & Maintenance Practices.**

**37.2.3.1 Expected Conduct.**

Market Participants shall undertake such operating and maintenance practices as necessary to avoid contributing to a major Outage or prolonging response time as indicated by Section 7.7.13.3.

**37.2.3.2 Sanctions.**

The Sanction for a violation of Section 37.2.3 will be \$10,000 for each violation.

**37.2.4 Resource Adequacy Availability.**

**37.2.4.1 Expected Conduct**

A Market Participant shall operate a Generating Unit listed as a Resource Adequacy Resource on-line and/or available consistent with a DAM or RUC commitment or Real-Time Dispatch Instructions, subject to Section 40, unless the CAISO releases the Generating Unit after the RUC process is completed, or a derate or Outage prevents the Generating Unit from being on-line and available. A Market Participant that fails to perform in accordance with the expected conduct described in this Section 37.2.4.1 shall be subject to Sanction.

**37.2.4.2 Sanctions.**

The Sanctions for a violation of Section 37.2.4 shall be as follows: for the first violation in a rolling twelve (12) month period, \$5,000; for the second and all subsequent violations in a rolling twelve (12) month period, \$10,000. A Market Participant is limited to one Sanction per Generating Unit per calendar day.

**37.2.5 Enhancements and Exceptions**

Except as otherwise specifically provided, penalty amounts shall be tripled for any violation of Section 37.2.1, Section 37.2.2 or Section 37.2.4 if a CAISO System Emergency exists at the time an operating order becomes effective or at any time during the Market Participant's non-performance. Notwithstanding the foregoing, violations of Section 37.2.1, Section 37.2.2 and Section 37.2.4 are subject to penalty under this rule only to the extent that the CAISO has issued a separate and distinct non-automated Dispatch Instruction to the Market Participant. Any penalty amount that is tripled under this provision and that would exceed the \$10,000 per day penalty limit shall not be levied against a Market Participant until the CAISO proposes and the Commission approves such an enhancement. A Market Participant that is subject to an enhanced penalty amount under this Section 37.2.5 may appeal that penalty amount to FERC if the Market Participant believes a mitigating circumstance not covered in Section 37.9.2 exists. The duty of the Market Participant to pay the enhanced penalty amount will be tolled until FERC renders its decision on the appeal.

**37.2.6 Per Day Limitation on Amount of Sanctions**

The amount of Sanctions that any Market Participant will incur for committing two or more violations of Section 37.2.1, Section 37.2.2 or Section 37.2.4 on the same day will be no greater than \$10,000 per day.

**37.3 Submit Feasible Energy Bids, RUC Capacity Bids, Ancillary Service Bids, and Submissions to Self-Provide an Ancillary Service.**

**37.3.1 Bidding Generally.**

**37.3.1.1 Expected Conduct.**

Market Participants must submit Bids for Energy, RUC Capacity and Ancillary Services and Submissions to Self-Provide an Ancillary Service from resources that are reasonably expected to be available and capable of performing at the levels specified in the Bid, and to remain available and capable of so performing based on all information that is known to the Market Participant or should have been known to the Market Participant at the time of submission. HASP Intertie Schedules for import or export Energy are not subject to the foregoing requirement, but failure to deliver on such HASP Intertie Schedules can violate the anti-manipulation provisions in Section 37.7 and in any regulations issued by FERC.

**37.3.1.2 Consequence for Non-Performance**

A Market Participant that fails to perform in accordance with the expected conduct described in Section 37.3.1.1 above shall be subject to having the payment rescinded for any portion of an Ancillary Service or RUC Capacity that is unavailable. If a Market Participant fails to deliver on a HASP Intertie Schedule for import or export Energy, it shall be subject to any charge that may apply in Section 11.31 and to any penalty or sanction FERC may impose for violation of Section 37.7, but shall not be considered to have violated any other provision of Section 37, including this Section 37.3.

**37.3.2 Exceptions**

The submission of a Bid or of a Submission to Self-Provide Ancillary Services that causes, or that the CAISO expects to cause Congestion shall not, by itself, constitute a violation of Section 37.3.1 unless the Market Participant fails to comply with an obligation under the CAISO Tariff to modify Bids as determined by the CAISO to mitigate such Congestion or such Bids violate another element of this rule.

**37.4 Comply with Availability Reporting Requirements.**

**37.5.2.3 Disposition of Sanction Proceeds.**

For purposes of redistributing collected market adjustments, any amounts collected under this provision shall be applied first to those parties affected by the conduct. Any excess amounts shall be disposed of as set forth in Section 37.9.4.

**37.6 Provide Information Required by CAISO Tariff.**

**37.6.1 Required Information Generally.**

**37.6.1.1 Expected Conduct**

Except as provided below in Section 37.6.4 (Review by FERC), all information that is required to be submitted to the CAISO under the CAISO Tariff, CAISO Business Practice Manuals, or jurisdictional contracts must be submitted in a complete and timely manner. Market Participants must comply with requests for information or data by the CAISO authorized under the CAISO Tariff, including timelines specified for submitting Bids and other information.

**37.6.1.2 Sanctions.**

Except as otherwise provided below, in Section 37.6.2 and Section 37.6.3, a violation of this rule is subject to a penalty of \$500 for each day that the required information is late.

**37.6.2 Investigation Information.**

**37.6.2.1 Expected Conduct.**

Except as provided below in Section 37.6.4 (Review by FERC), Market Participants must submit timely information in response to a written request by the CAISO for information reasonably necessary to conduct an investigation authorized by the CAISO Tariff.

**37.6.2.2 Sanctions.**

The Sanction for a violation of Section 37.6.2 shall be as follows: for the first violation in a rolling twelve (12) month period, \$1000/day; for the second violation in a rolling twelve (12) month period, \$2000/day; for the third and subsequent violations in a rolling twelve (12) month period, \$5000/day. For purposes of

**37.7 Prohibition of Electric Energy Market Manipulation.**

It shall be a violation of this CAISO Tariff for an entity, directly or indirectly, in connection with the purchase or sale of electric energy or the purchase or sale of transmission services subject to the jurisdiction of the FERC, (i) to use or employ any device, scheme, or artifice to defraud, (ii) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, or (iii) to engage in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any entity. Violations or potential violations of this rule shall be referred to FERC for appropriate sanction.

Actions or transactions by a Market Participant that are explicitly contemplated in the CAISO Tariff or are undertaken at the direction of the CAISO are not in violation of this Rule of Conduct.

**37.8 Process for Investigation and Enforcement.**

**37.8.1 Purpose; Scope.**

The provisions of this Section 37.8 set forth the procedures by which the CAISO will independently investigate potential violations of the Rules of Conduct and administer enforcement activities. Except as hereinafter provided, and except as provided in Section 37.2.5 and Section 37.4.4, the provisions of this section apply to the Rules of Conduct set forth in Sections 37.2 through 37.7.

**37.8.2 Referrals to FERC**

Section 37.2.3, Section 37.5.1, and Section 37.7 shall be enforced by FERC, in accordance with FERC's rules and procedures. Pursuant to Section 11 of Appendix P, DMM shall refer suspected violations of Section 37.2.3, Section 37.5.1, and Section 37.7 to FERC. Although Sections 37.2 through 37.6, with the exceptions of Section 37.2.3, Section 37.2.4, and Section 37.5.1, will generally be enforced by the CAISO, the CAISO shall refer to FERC any Sanction that it believes would be modified in accordance with Sections 37.2.5, 37.4.4, or 37.9.1 or excused pursuant to Section 37.9.2. The CAISO shall refer to FERC any matter for which the particular circumstances preclude the objective determination that a Rules of Conduct violation

did or did not occur. The time limitation contained in Section 37.10.1 to assess a Sanction under this Section 37 shall be determined as of the date that a Sanction is initially assessed by the CAISO, excluding the time required for FERC to investigate a potential Rules of Conduct violation and/or determine a Sanction in accordance with this section, Sections 37.2.5, 37.4.4, 37.9.1, or 37.9.2.

**37.8.3 Investigation.**

The CAISO shall conduct a reasonable investigation seeking available facts, data, and other information relevant to the potential Rules of Conduct violation.

**37.8.4 Notice.**

The CAISO shall provide notice of the investigation in sufficient detail to allow for a meaningful response to the Scheduling Coordinator and, as limited below, to all Market Participants the Scheduling Coordinator represents that are the subject(s) of the investigation. The CAISO shall contact the Market Participant(s) that may be involved, so long as the CAISO has sufficient objective information to identify and verify the role of the Market Participant(s) in the potential Rules of Conduct violation. Such Market Participant(s) will likely have an existing contractual relationship with the CAISO (e.g., UDC, MSS, CAISO Metered Entity, Participating Transmission Owner, Participating Generator, or Participating Load).

**37.8.5 Opportunity to Present Evidence.**

The CAISO shall provide an opportunity to the Market Participant(s) that are the subject(s) of the investigation to present any issues of fact or other information relevant to the potential Rules of Conduct violation being investigated. The CAISO shall consider all such information or data presented.

**37.8.6 Results of Investigation.**

The CAISO shall notify the Market Participant(s) that are the subject(s) of the investigation of the results of the investigation. The Market Participant(s) shall have thirty (30) days to respond to the findings of the CAISO before the CAISO makes a determination of whether a Sanction is required by this CAISO Tariff.

**37.8.7 Statement of Findings and Conclusions**

Where the investigation results in a Sanction, the CAISO shall state its findings and conclusions in writing, and will make such writing available to the Scheduling Coordinator and, as provided in Section 37.8.4, to the Market Participant(s) that are the subject(s) of the investigation. The CAISO also shall specify whether it has recommended or intends to recommend to FERC that a Sanction for violation of this Section 37 be modified pursuant to Section 37.9.1 or excused pursuant to Section 37.9.2.

**37.8.8 Officer Representative.**

Where an investigation results in a Sanction by the CAISO, the CAISO shall direct its notice of such result to a responsible representative of the Scheduling Coordinator and, as provided in Section 37.8.4, to the Market Participant(s) that are the subject(s) of the investigation at the officer level.

**37.8.9 Record of Investigation.**

Where an investigation results in a Sanction, the CAISO will maintain a record of the investigation until its decision has been finally reviewed, if review is sought, or until the period for seeking review has expired.

**37.8.10 Review of Determination.**

A Market Participant that receives a Sanction may obtain immediate review of the CAISO's determination by directly appealing to FERC, in accordance with FERC's rules and procedures. In such case, the applicable Scheduling Coordinator shall also dispute the Initial Settlement Statement T + 38 BD containing the financial penalty, in accordance with Section 11. The Initial Settlement Statement

T + 38 BD dispute and appeal to FERC must be made in accordance with the timeline for raising disputes specified in Section 11.29.8.2. The penalty will be tolled until FERC renders its decision on the appeal. The disposition by FERC of such appeal shall be final, and no separate dispute of such Sanction may be initiated under Section 13, except as provided in Section 37.9.3.4. For the purpose of applying the time limitations set forth in Section 37.10.1, a sanction will be considered assessed when it is included on an Initial Settlement Statement T + 38 BD, whether or not the CAISO accepts a Scheduling Coordinator's dispute of such Initial Settlement Statement T + 38 BD pending resolution of an appeal to FERC in accordance with this section or Section 37.9.3.3.

### **37.9 Administration of Sanctions.**

#### **37.9.1 Assessment; Waivers and Adjustments**

Penalty amounts for violation of these Rules of Conduct shall be calculated as specified in Section 37.2 through Section 37.7. A Sanction specified in this Section 37 may be modified by FERC when it determines that such adjustment is just and reasonable. The CAISO may make a recommendation to FERC to modify a Sanction. An adjustment generally shall be deemed appropriate if the prescribed Sanction appears to be insufficient to deter the prohibited behavior, or if the circumstances suggest that the violation was inadvertent, unintentional, or some other mitigating circumstances exist.

#### **37.9.2 Excuse**

A violation of a Rule of Conduct under the terms of this CAISO Tariff shall be excused if FERC determines that any of the circumstances described in Sections 37.9.2.1, 37.9.2.2, 37.9.2.3, 37.9.2.4, or 37.9.2.5 apply.

##### **37.9.2.1 Uncontrollable Force.**

No failure by a Market Participant to satisfy the Rules of Conduct shall be subject to penalty to the extent and for the period that the Market Participant's inability to satisfy the Rules of Conduct is caused by an event or condition of Uncontrollable Force affecting the Market Participant; provided that the Market Participant gives notice to the CAISO of the event or condition of Uncontrollable Force as promptly as possible after it knows of the event or condition and makes all reasonable efforts to cure, mitigate, or remedy the effects of the event or condition.

**37.9.2.2 Safety, Licensing, or Other Requirements.**

Failure by a Market Participant to perform its obligations shall not be subject to penalty if the Market Participant is able to demonstrate that it was acting in accordance with Section 4.2.1.

**37.9.2.3 Emergencies.**

Failure by a Market Participant to perform its obligations may not be subject to penalty if the Market Participant is able to demonstrate that it was acting in good faith and consistent with Good Utility Practice to preserve System Reliability in a System Emergency, unless contrary to a CAISO operating order.

**37.9.2.4 Conflicting Directives.**

To the extent that any action or omission by a Market Participant is specifically required by a FERC order or CAISO operating order, the Market Participant may not be subject to penalty for that act or omission.

**37.9.2.5 Good Faith Effort to Comply with Operating Orders**

For violations of Section 37.2.1.1 of this CAISO Tariff, a Market Participant's good faith effort to achieve full performance of an operating order as soon as is reasonably practicable in accordance with Good Utility Practice shall excuse a violation.

**37.9.2.6 Procedures for Application**

Where the CAISO believes that an excuse existed under this Section 37.9.2, it may recommend to FERC that a violation be excused. Unless otherwise specified in this Section 37, if a Market Participant believes that an excuse existed under this Section 37.9.2, it may petition FERC for review pursuant to Section 37.8.10.

**37.9.3 Settlement.**

**37.9.3.1 Settlement Statements**

The CAISO will administer any penalties issued under this Section 37 through Initial Settlement Statements T + 38 BD, and Initial Settlement Statement Reissues or Recalculation Settlement Statements, as relevant, issued to the responsible Scheduling Coordinator by the CAISO. Before invoicing a financial penalty through the Settlement process, the CAISO will provide a description of the penalty to the responsible Scheduling Coordinator and all Market Participants the Scheduling Coordinator represents that are liable for the penalty, when the CAISO has sufficient objective information to identify and verify responsibility of such Market Participants. The CAISO shall specify whether such penalty is modified pursuant to Section 37.2.5 or Section 37.4.4. The description shall include the identity of the Market Participant that committed the violation and the amount of the penalty. Where FERC has determined the Sanction, the CAISO will provide such of the above information as is provided to it by FERC. The CAISO also may publish this information under the CAISO Website after Initial Settlement Statement Reissues or Recalculation Settlement Statements, as relevant, are issued.

**37.9.3.2 Payment.**

Except as provided in Section 37.2.5, Section 37.4.4, Section 37.8.10 or Section 37.9.3.3 below, the Scheduling Coordinator shall be obligated to pay all penalty amounts reflected on Settlement Statements to the CAISO pursuant to the CAISO's Settlement process, as set forth in Section 11.

**37.9.3.3 Other Responsible Party**

Where a party or parties other than the Scheduling Coordinator is responsible for the conduct giving rise to a penalty reflected on a Settlement Statement, and where the Scheduling Coordinator bears no responsibility for the conduct, such other party or parties ultimately shall be liable for the penalty. Under such circumstances, the Scheduling Coordinator shall use reasonable efforts to obtain payment of the penalty from the responsible party(ies) and to remit such payment to the CAISO in the ordinary course of the Settlement process. In the event that the responsible party(ies) wish to dispute the penalty, or the Scheduling Coordinator otherwise is unable to obtain payment from the responsible parties, the Scheduling Coordinator shall notify the CAISO and dispute the Settlement Statement. The CAISO promptly shall notify FERC. If the CAISO finds that a Market Participant separate from the Scheduling Coordinator that is unable to obtain payment from the responsible party(ies) is solely responsible for a violation, the Scheduling Coordinator that is unable to obtain payment may net its payment of its Invoice amount by the amount of the penalty in question. The CAISO may refuse to offer further service to any responsible party that fails to pay a penalty, unless excused under the terms of the CAISO Tariff, by providing notice of such refusal to the Scheduling Coordinator. Following such notice, the Scheduling Coordinator shall be liable for any subsequent penalties assessed on account of such responsible party.

**37.9.3.4 Dispute of FERC Sanctions.**

The right that a Market Participant may otherwise have under the CAISO Tariff to dispute a penalty that has been determined by FERC shall be limited to a claim that the CAISO failed properly to implement the penalty or other Sanction ordered by FERC, except as provided by Section 37.2.5 and Section 37.4.4.

<b>Market Interruption</b>	Actions taken by the CAISO outside of the normal market operation of any of the CAISO Markets in the event of a Market Disruption, to prevent a Market Disruption, or minimize the extent of a Market Disruption as provided in Sections 7.7.15 and 34.9.
<b>Market Manipulation</b>	Has the meaning set forth in Section 37.7.
<b>Market Monitoring Unit</b>	The component of the CAISO organization (currently the “Department of Market Monitoring”) that is assigned responsibility in the first instance for the functions of a Market Monitoring Unit, as that term is defined in 18 CFR § 35.28(b)(7).

<b>Market Notice</b>	An electronic notice issued by the CAISO that the CAISO posts on the CAISO Website and provides by e-mail to those registered with the CAISO to receive CAISO e-mail notices.
<b>Market Participant</b>	An entity, including a Scheduling Coordinator, who either: (1) participates in the CAISO Markets through the buying, selling, transmission, or distribution of Energy, Capacity, or Ancillary Services into, out of, or through the CAISO Controlled Grid; or (2) is a CRR Holder or Candidate CRR Holder.
<b>Market Power Mitigation-Reliability Requirement Determination (MPM-RRD)</b>	The two-optimization run process conducted in both the Day-Ahead Market and the HASP that determines the need for the CAISO to employ market power mitigation measures or Dispatch RMR Units.
<b>Market Surveillance Committee (MSC)</b>	The committee established under Appendix O.
<b>Market Usage Charge</b>	The component of the Grid Management Charge that provides for the recovery of the CAISO's costs, including, but not limited to the costs for processing Day-Ahead, Hour-Ahead Scheduling Process and Real-Time Bids, maintaining the Open Access Same-Time Information System, monitoring market performance, ensuring generator compliance with market rules as defined in the CAISO Tariff and the Business Practice Manuals, and determining LMPs. The formula for determining the Market Usage Charge is set forth in Appendix F, Schedule 1, Part A.
<b>Market Violation</b>	A CAISO Tariff violation, violation of a Commission-approved order, rule or regulation, market manipulation, or inappropriate dispatch that creates substantial concerns regarding unnecessary market inefficiencies.
<b>Master File</b>	A file containing information regarding Generating Units, Loads and other resources, or its successor.

<b>Start-Up Time</b>	The time period required for a resource to go from Off to its Minimum Load.
<b>State Commission</b>	The regulatory body of a State having jurisdiction to regulate rates and charges for the sale of electric energy to consumers within the State.
<b>State Estimator</b>	A computer software program that provides the CAISO with a near Real-Time assessment of system conditions within the CAISO Balancing Authority Area, including portions of the CAISO Balancing Authority Area where Real-Time information is unavailable.
<b>Station Power</b>	Energy for operating electric equipment, or portions thereof, located on the Generating Unit site owned by the same entity that owns the Generating Unit, which electrical equipment is used exclusively for the production of Energy and any useful thermal energy associated with the production of Energy by the Generating Unit; and for the incidental heating, lighting, air conditioning and office equipment needs of buildings, or portions thereof, that are owned by the same entity that owns the Generating Unit; located on the Generating Unit site; and used exclusively in connection with the production of Energy and any useful thermal energy associated with the production of Energy by the Generating Unit. Station Power includes the Energy associated with motoring a hydroelectric Generating Unit to keep the unit synchronized at zero real power output to provide Regulation or Spinning Reserve. Station Power does not include any Energy used to power synchronous condensers; used for pumping at a pumped storage facility; or provided during a Black Start procedure. Station Power does not include Energy to serve loads outside the CAISO Balancing Authority Area.
<b>Station Power Portfolio</b>	One or more generating resources eligible to self-supply Station Power, including Generating Units in the CAISO Balancing Authority Area, and generating facilities outside the CAISO Balancing Authority Area, all of which are owned by the same entity.

**CAISO TARIFF APPENDIX O**  
**CAISO Market Surveillance Committee**

**1. Introduction and Purpose**

**1.1** There shall be established a Market Surveillance Committee (MSC), whose role it shall be to serve as an external market advisor to the CAISO CEO and CAISO Governing Board. The MSC shall provide independent external expertise on the CAISO market monitoring process and, in particular, provide independent expert advice and recommendations to the CAISO CEO and Governing Board.

**2. Definitions**

**2.1** This section intentionally left blank.

**3. Independence and Oversight**

**3.1** This section intentionally left blank.

**4. Structure**

**4.1** The MSC shall comprise a body of three or more independent and recognized experts whose combined professional expertise and experience shall encompass the following: (a) economics, with emphasis on antitrust, competition, and market power issues in the electricity industry; (b) experience in operational aspects of Generation and transmission in electricity markets; (c) experience in antitrust or competition law in regulated industries; and (d) financial expertise relevant to energy or other commodity trading.

**4.2** Members of the MSC shall be compensated on such basis as the CAISO Governing Board shall from time to time determine. Members of the MSC shall receive prompt reimbursement for all expenses reasonably incurred in the execution of their responsibilities under this Appendix O.

**4.3** Members of the MSC shall not be, and shall not be understood to be, employees or agents of the CAISO.

**4.4** For each position on the MSC, the CAISO CEO shall conduct a thorough search and requisite due diligence to develop a nomination to the CAISO Governing Board, which nomination shall be consistent with meeting the combined professional expertise and experience of the MSC set forth in Section 4.1 of this Appendix O and with the criteria for independence set forth in Section 9 of this Appendix O. The CAISO Governing Board shall expeditiously consider such nominations. If the nomination is approved, the CAISO CEO shall appoint the candidate so nominated to the MSC. If the nomination is rejected, the CAISO CEO shall expeditiously proceed to develop another nomination.

**4.5** No member of the MSC shall be liable to any Market Participant under any circumstances whatsoever for any matter, including but not limited to any financial loss or loss of economic advantage resulting from the performance or non-performance by the MSC of its functions under this CAISO Tariff.

**5. Duties of the Market Surveillance Committee**

**5.1** The MSC may, upon request of DMM, the CAISO management or the CAISO Governing Board, or on its own initiative, evaluate information and data described in Section 7.1 of this Appendix O, including as may be collected by DMM on the basis of the evaluation criteria developed by DMM or on such further articulated evaluation criteria developed by the MSC.

**5.2** The MSC may, upon request of DMM, the CAISO management or the CAISO Governing Board, or on its own initiative, recommend such changes as it believes are appropriate to the CAISO Tariff, any CAISO Business Practice Manual, any CAISO agreement or any Rules of Conduct applicable in accordance with Section 22.11 of this CAISO Tariff. The CAISO Governing Board shall consider and may adopt proposed CAISO Tariff changes in accordance with Section 22.11 of this CAISO Tariff.

**5.3** Upon request of the MSC, the CAISO shall publish reports and recommendations of the MSC or incorporate them, if consistent, into the CAISO's own reports or recommendations.

**5.4** The MSC may on its own initiative recommend that the CAISO impose Sanctions and penalties for violations of the CAISO Tariff and related protocols. Upon recommendation of the MSC, the CAISO may impose such Sanctions or penalties as it believes necessary and as are permitted under the CAISO Tariff and related protocols approved by FERC.

**5.5** The MSC may make such additional reports and recommendations as it sees fit relating to the monitoring program referred to in this CAISO Tariff, the analysis of information, the evaluation criteria or any corrective or enforcement actions proposed by DMM or proposed on its own initiative.

**5.6** The MSC may review in draft form, and provide pre-publication comment on, all quarterly and annual reports DMM produces pursuant to Section 5.2 of Appendix P.

**5.7** The MSC may review in draft form, and provide pre-submission comment on, all referrals to FERC pursuant to Sections 11 and 12 of Appendix P.

**5.8** The MSC may not participate in the administration of CAISO's tariff or conduct prospective market mitigation.

**6. Duties of the CAISO.**

**6.1** CAISO responsibilities not expressly assigned to the MSC, DMM, or any specific individual or entity in this Appendix O remain with the CAISO.

**7. Data Access, Collection, and Retention**

**7.1** The MSC shall review the initial catalogs of information and data and of evaluation criteria developed by DMM pursuant to Sections 7.4 and 7.5 of Appendix P and shall propose such changes, additions or deletions to such catalogs or items therein as it sees fit. In so doing, the MSC shall have full discretion to specify database items or evaluation criteria for inclusion in the pertinent catalog.

**8 Information Sharing**

**8.1** All evaluations carried out by the MSC pursuant to Section 5.1 of this Appendix O, and any recommendations emanating from such evaluations, shall be embodied by the MSC in written reports to the CAISO CEO and CAISO Governing Board, and DMM, and shall be made publicly available subject to due restrictions on dissemination of confidential or commercially sensitive information. The MSC may submit any MSC report to FERC, subject to due restrictions on dissemination of confidential or commercially sensitive information.

**9. Ethics**

**9.1** Members of the MSC shall have no professional or commercial affiliation with a Market Participant where such affiliation would tend to affect, or give the appearance of affecting, their judgment in the performance of their duties.

**9.2** Members of the MSC shall not serve as officers, employees, or partners of a Market Participant.

**9.3** Members of the MSC shall have no material financial interest in any Market Participant or affiliate, with the exception of mutual funds and non-directed investments.

**9.4** Members of the MSC shall not engage in any market transactions other than in the performance of their duties under the CAISO tariff.

**9.5** Members of the MSC shall not be compensated, other than by CAISO, for any expert witness testimony or other commercial services in connection with any legal or regulatory proceeding or commercial transaction relating to the CAISO.

**9.6** Members of the MSC shall not accept anything from a Market Participant any item with a value in excess of \$25.

**9.7** Members of the MSC shall advise the CAISO Governing Board in the event they seek employment with a Market Participant, and must disqualify themselves from participating in any matter that would have an effect on the financial interest of the Market Participant.

## **CAISO TARIFF APPENDIX P**

### **CAISO Department of Market Monitoring**

#### **1 Introduction and Purpose**

##### **1.1 Establishment**

There shall be established within the CAISO a Department of Market Monitoring (DMM).

##### **1.2 Mission Statement**

To provide independent oversight and analysis of the CAISO Markets for the protection of consumers and Market Participants by the identification and reporting of market design flaws, potential market rule violations, and market power abuses.

#### **2 Definitions**

**2.1** This section intentionally left blank.

#### **3 Independence and Oversight**

##### **3.1 Department of Market Monitoring**

DMM shall report to the CAISO Governing Board on all matters pertaining to the core monitoring duties specified under Section 5 of this Appendix P, and shall have direct access to the individual CAISO Governing Board members at any time. DMM shall report to the CAISO CEO or his or her designee for administrative purposes, including matters relating to the internal administration of DMM. DMM shall advise the CAISO Governing Board about DMM's independent analysis of the CAISO's markets and its independent identification of market design flaws and market power abuses, and DMM also shall inform CAISO management about such matters.

**3.2** The CAISO may not alter any reports generated by DMM or dictate the conclusions reached by DMM. The CAISO may, however, comment upon drafts of DMM reports where such right is otherwise conferred by this CAISO Tariff.

**3.3** The employment of the Director of DMM shall not be terminated without the approval of the CAISO Governing Board.

#### **4 Structure**

**4.1** DMM shall be adequately staffed by the CAISO with full-time CAISO staff with the experience and qualifications necessary to fulfill the functions referred to in this CAISO Tariff. Such qualifications may include professional training pertinent to and experience in the operation of markets analogous to CAISO Markets, in the electric power industry, and in the field of competition and antitrust law, economics and policy. Subject to the respective oversight responsibilities as defined in this CAISO Tariff of the CAISO Governing Board and the CAISO CEO, responsibility for overseeing the conduct and operations of DMM shall be conferred upon the Director of DMM.

**4.2** Neither DMM nor any DMM employee shall be liable to any Market Participant under any circumstances whatsoever for any matter, including but not limited to any financial loss or loss of economic advantage resulting from the performance or non-performance by DMM of its functions under this CAISO Tariff.

**4.3** CAISO shall provide DMM access to the resources, personnel, and consulting assistance (internal and external) sufficient to enable DMM to carry out its duties independently as defined under this Appendix P. The CAISO shall ensure DMM personnel meet the general employment requirements applicable to CAISO employees.

## **5 Duties of Market Monitor**

### **5.1 Review of Market Rules**

DMM shall review existing and proposed market rules, tariff provisions, and market design elements and recommend proposed rule and tariff changes to the CAISO, the CAISO Governing Board, FERC staff, the California Public Utilities Commission, Market Participants, and other interested entities.

**5.1.1** DMM's review shall include, but is not limited to, identification of flaws in the overall structure of the CAISO Markets that may reveal undue concentrations of market power or other structural flaws.

**5.1.2** DMM's responsibility to propose market design changes shall not extend to effectuating its proposed market design itself.

**5.1.3** DMM must limit distribution of its identifications and recommendations to CAISO, the CAISO Governing Board, and FERC staff in the event that DMM believes broader dissemination of its identifications and recommendations could lead to exploitation of the identified market rule or design flaw. Where DMM so limits the distribution, it shall explain to FERC staff why further dissemination should be avoided.

**5.1.4** Section 5.1 of this Appendix P shall not be understood to impose upon DMM the obligation to conduct an independent evaluation of every existing market rule, tariff provision, and market design element. DMM need only report on market rule, tariff, or market design elements it otherwise believes merit evaluation and scrutiny.

**5.1.5** Per a request from the CAISO, or on its own initiative, DMM may provide a draft version of any report DMM prepares under Section 5.1 of this Appendix P to the CAISO for comment. DMM may, but shall not be required to, amend its report in light of such comment.

**5.1.6** Any report DMM makes under Section 5.1 of this Appendix P is advisory in nature and does not obligate the CAISO to effectuate the recommended market rule, tariff, or market design change.

**5.1.7** Where the CAISO disagrees with DMM's recommendation pursuant to Section 5.1 of this Appendix P or DMM disagrees with a proposed market rule, tariff, or market design change, CAISO shall notify the FERC of such disagreement. Such notification shall be made in writing to the FERC Director of the Office of Energy Market Regulation as part of a referral under Section 12 of this Appendix P.

### **5.2 Review of Market Trends and Performance**

DMM shall review and report on market trends and the performance of the wholesale markets to the CAISO, the CAISO Governing Board, FERC staff, the California Public Utilities Commission, Market Participants, and other interested entities, on at least a quarterly basis and submit a more comprehensive annual state of the market report. Unless urgency requires otherwise, all annual and quarterly reports shall first be submitted to the MSC for review.

**5.2.1** In conjunction with the annual and quarterly reports issued under Section 5.2 of this Appendix P, DMM shall hold conference calls with FERC staff, staff of the California Public Utilities Commission, Market Participants, and other interested entities to discuss market trends and the performance of the wholesale markets.

**5.3** With the exception of those CAISO Tariff provisions enumerated in Section 11.1.3 of this Appendix P, DMM shall identify and notify the FERC's Office of Enforcement staff of instances in which a Market Participant's behavior or the behavior of the CAISO itself is suspected to constitute a Market Violation.

**5.4** DMM shall consider any information or complaint a Market Participant may make concerning any matter that it believes may be relevant to DMM's monitoring responsibilities. Such submissions or complaints may be made on a confidential basis in which case DMM shall preserve the confidentiality thereof. DMM, at its discretion, may request further information from such entity and carry out any investigation that it considers appropriate as to the concern raised. DMM shall periodically make reports to the CAISO CEO and CAISO Governing Board on complaints received.

**5.5** Prohibition on Tariff Administration and Market Mitigation – DMM shall not participate in the administration of CAISO's Tariff or conduct prospective market mitigation.

**5.5.1** For the purposes of Section 5.5 of this Appendix P, the term "prospective market mitigation" shall have the same meaning as provided in Commission Order No. 719, P 375.

**5.5.2** DMM may conduct retrospective mitigation to the extent it is otherwise permitted to do so under this CAISO Tariff.

**5.5.3** DMM may provide the inputs required for CAISO to conduct any prospective mitigation that is otherwise permitted under this CAISO Tariff. Such inputs may include, but are not limited to, Default Energy Bids, identification of competitive transmission Constraints, and cost calculations.

## **6 Duties of the CAISO**

**6.1** CAISO responsibilities not expressly assigned to the MSC, DMM, or any specific individual or entity in this Appendix P remain with the CAISO.

## **7. Data Access, Collection, and Retention**

**7.1** The CAISO shall provide DMM access to the CAISO's databases of market information and any other market data necessary to enable DMM to carry out its duties as defined under this Appendix P.

**7.2** Any data created by DMM, including, but not limited to, reconfiguring of the CAISO's data, will be kept within the exclusive control of DMM. This requires that the CAISO must ensure that DMM has control over which parties have access to the data, as well as control over the format and configuration of such data.

**7.3** DMM shall be responsible for developing an information system and criteria for evaluation that will permit it to effectively monitor the CAISO Markets to identify and investigate abuses of that market, whether caused by exercises of market power or by other actions or inactions.

**7.4** To develop the information system set forth in Section 7.3 of this Appendix P, DMM shall initially develop, and shall refine on the basis of experience, a detailed catalog of all the categories of data it will have the means of acquiring, and the procedures it will use (including procedures for protecting confidential data) to handle such data.

**7.5** DMM shall initially develop, and shall refine on the basis of experience, a catalog of the CAISO Market monitoring indices that it will use to evaluate the data so collected.

**7.6** DMM shall evaluate and reevaluate on an ongoing basis the data categories and market monitoring indices that it has developed under Sections 7.4 and 7.5 of this Appendix P, and the information it collects and receives from various other sources, including and in particular the CAISO's operation of the CAISO Markets. Such ongoing evaluations shall provide the basis for its reporting and publication responsibilities as set forth in this CAISO Tariff, for recommendations on proposed changes to this CAISO Tariff and CAISO Business Practice Manuals and other potential rules affecting the CAISO Markets, and for the development of criteria or standards for the initiation of proposed corrective or enforcement actions. In evaluating such information, the DMM may consult the MSC or such external bodies as may be appropriate.

## **8. Information Sharing**

**8.1** Tailored Requests for Information from a State Commission to DMM – DMM shall consider requests from a State Commission for specifically identified information or data concerning general market trends and the performance of the wholesale markets. DMM may deny a request when it determines, in its sole discretion, that complying with a request would be unreasonably burdensome or if it would interfere with the core market monitoring functions of DMM as defined in Section 5 of this Appendix P. For the avoidance of doubt, this Section 8.1 of Appendix P shall not apply to otherwise enforceable subpoenas, court orders, or any other form of compulsory process issued by, or on behalf of, a State Commission.

**8.1.1** DMM may agree to provide information about general market trends or performance. If DMM determines, in its sole discretion, that this information either is market sensitive or identifies an individual Market Participant, then the information may be shared only if the State Commission with which the information will be shared agrees in writing with the CAISO that the information will not be disclosed unless the State Commission has been directed to do so by a court of competent jurisdiction. The written agreement also must specify that if a State Commission is so directed to disclose such information, the State Commission will notify the CAISO before such information is disclosed. Once the CAISO receives such notification, the CAISO must notify the affected Market Participant promptly.

**8.1.2** DMM may agree to release to a State Commission raw CAISO data, but only after the information is redacted to satisfy any concerns that DMM may have about the need to maintain confidentiality.

**8.1.2.1** If DMM agrees to provide a State Commission with raw data that pertains to a specific Market Participant, DMM shall notify the affected Market Participant and give it the opportunity to contest the accuracy of the data. The affected Market Participant may provide to DMM a written statement providing context to the data. So long as the process of providing such a written statement does not unduly delay release of the data to the State Commission, DMM shall provide an unedited copy of such written statement to the State Commission concurrently with DMM's submission of the data to the State Commission.

**8.1.2.2.** If the affected Market Participant asserts that the data to be provided is commercially sensitive, DMM shall share such sensitive information or data only if the State Commission with which the information will be shared agrees in writing with the CAISO that the information shared will not be disclosed unless the State Commission has been directed to do so by a court of competent jurisdiction. The written agreement also must specify that if a State Commission is so directed to disclose such information, the State Commission will notify the CAISO before such information is disclosed. Once the CAISO receives such notification, the CAISO must notify the affected Market Participant promptly.

**8.1.3** DMM shall not provide any requested information or data that is designed to aid an enforcement action by an instrumentality or political subdivision of any state of the United States of America.

**8.1.4** DMM shall not provide any requested information or data that would impinge on the Commission's confidentiality rules regarding referrals to the Commission pursuant to Sections 11 or 12 of this Appendix P.

**8.2** When publicly available reports are made to one regulatory agency with competent jurisdiction, such as the FERC, DMM may simultaneously make such reports available to other regulatory agencies with legitimate interests in their contents, such as the California Public Utilities Commission, the California Energy Commission and/or the California Attorney General.

**8.3** The final results of DMM's ongoing evaluations under Section 7.6 of this Appendix P shall routinely and promptly be submitted to the MSC for comment.

**8.4** The catalogs of data and indices developed pursuant to Sections 7.4 and 7.5 of this Appendix P shall be duly published on the CAISO Website and disseminated to all Market Participants.

### **8.5 Collection and Dissemination of Information Specific to a Market Participant**

**8.5.1** DMM may request that Market Participants or other entities whose activities may affect the operation of the CAISO Markets submit any information or data determined by DMM to be potentially relevant. This data will be subject to due safeguards to protect confidential and commercially sensitive data. Failures by Market Participants to provide such data shall be treated under Section 37. In the event of failures by other entities to provide such data, the CAISO may take whatever action is available to it and appropriate for it to take, including reporting the failure to the pertinent regulatory agency, after providing such entity the opportunity to respond in writing as to the reason for the alleged failure and may include possible exclusion from the CAISO Markets or termination of any relevant CAISO agreements or certifications. Before any such action is taken, the CAISO Market Participant shall be provided the opportunity to respond in writing as to the reason for the alleged failure.

**8.5.2** Any Market Participant may request that the CAISO provide data, including data that DMM has collected under Section 8.5.1 of this Appendix P, that the CAISO has collected concerning that Market Participant. Subject to constraints on the CAISO's resources, subject to Section 7.2 of this Appendix P, and at the CAISO's sole discretion, such data may be provided by the CAISO subject to due safeguards to protect confidential and commercially sensitive data. Where such activity imposes a significant burden or expense on the CAISO, the data may be provided on the condition that a reasonable contribution to the cost incurred by the CAISO is made to the CAISO by the requesting party.

**8.6** Information related to the Transmission Planning Process in accordance with Section 24 the release of which DMM determines may harm competitive markets shall be deemed confidential.

## **9. Ethics.**

**9.1** DMM employees shall have no professional or commercial affiliation with a Market Participant where such affiliation would tend to affect, or give the appearance of affecting, their judgment in the performance of their duties.

**9.2** DMM employees shall not serve as officers, employees, or partners of a Market Participant.

**9.3** DMM employees shall have no material financial interest in any Market Participant or affiliate, with the exception of mutual funds and non-directed investments.

**9.4** DMM employees shall not engage in any market transactions other than in the performance of their duties under the CAISO Tariff.

**9.5** DMM employees shall not be compensated, other than by CAISO, for any expert witness testimony or other commercial services in connection with any legal or regulatory proceeding or commercial transaction relating to the CAISO.

**9.6** DMM employees shall not accept from a Market Participant any item with a value in excess of \$25.

**9.7** DMM employees shall advise a supervisor (or in the case of the Director of DMM, the CAISO CEO) in the event they seek employment with a Market Participant, and must disqualify themselves from participating in any matter that would have an effect on the financial interest of the Market Participant.

**9.7.1** For the purposes of this provision, the term "seeking employment" shall have the same meaning it does in 5 CFR § 2635.603, or its successor provision.

**9.8** DMM employees shall comply with the CAISO Employee Code of Conduct, as amended from time to time.

**10. CAISO-Specific Provisions.**

**10.1** This section intentionally left blank.

**11. Protocol on Referrals of Investigations to the Office of Enforcement.**

**11.1** DMM shall make a non-public referral to the Commission in all instances where DMM has reason to believe that a Market Violation has occurred. DMM's non-public referral shall provide sufficient credible information to warrant further investigation by the Commission. Once DMM has obtained sufficient credible information to warrant referral to the Commission, DMM shall immediately refer the matter to the Commission and desist from independent action related to the alleged Market Violation. DMM may, however, continue to monitor for any repeated instances of the activity by the same or other entities, which would constitute new Market Violations. DMM shall respond to requests from the Commission for any additional information in connection with the alleged Market Violation it has referred.

**11.1.1** The decision to make such a referral is committed to the sole discretion of DMM. In all such cases of direct referral, DMM shall promptly inform the CAISO Governing Board, the MSC and the CAISO CEO of the fact of and the content of the referral.

**11.1.2** For the avoidance of doubt, the CAISO itself is subject to referral by DMM.

**11.1.3** Section 11.1 of this Appendix P notwithstanding, DMM may, but need not, refer to the Commission a suspected violation of the following provisions of Section 37 of this CAISO Tariff: [37.2.1; 37.2.2; 37.2.4; 37.3.1; 37.4.1, 37.4.2; 37.4.3; 37.5.2; 37.6.1; 37.6.2; and 37.6.3].

**11.2** All referrals to the Commission of alleged Market Violations are to be in writing, whether transmitted electronically, by fax, mail, or courier. DMM may alert the Commission orally in advance of the written referral.

**11.3** The referral is to be addressed to the Commission's Director of the Office of Enforcement, with a copy also directed to both the Director of the Office of Energy Market Regulation and the General Counsel.

**11.4** The referral is to include, but need not be limited to, the following information.

**11.4.1** The name[s] of and, if possible, the contact information for, the entity[ies] that allegedly took the action[s] that constituted the alleged Market Violation[s];

**12 Protocol on Referrals of Perceived Market Design Flaws and Recommended Tariff Changes to the Office of Energy Market Regulation.**

**12.1** DMM is to make a referral to the Commission in all instances where it has reason to believe market design flaws exist that it believes could effectively be remedied by rule or tariff changes. DMM must limit distribution of its identifications and recommendations to CAISO, the CAISO Governing Board, and to the Commission in the event it believes broader dissemination could lead to exploitation of the market design flaw, with an explanation of why further dissemination should be avoided at that time.

**12.2** All referrals to the Commission relating to perceived market design flaws and recommended tariff changes are to be in writing, whether transmitted electronically, by fax, mail, or courier. DMM may alert the Commission orally in advance of the written referral.

**12.3** The referral should be addressed to the Commission's Director of the Office of Energy Market Regulation, with copies directed to both the Director of the Office of Enforcement and the General Counsel.

**12.4** The referral is to include, but need not be limited to, the following information.

**12.4.1** A detailed narrative describing the perceived market design flaw[s];

**12.4.2** The consequences of the perceived market design flaw[s], including, if known, an estimate of economic impact on the market;

**12.4.3** The rule or tariff change(s) that DMM believes could remedy the perceived market design flaw;

**12.4.4** Any other information DMM believes is relevant and may be helpful to the Commission.

**12.5** Following a referral to the Commission, DMM is to continue to notify and inform the Commission of any additional information regarding the perceived market design flaw, its effects on the market, any additional or modified observations concerning the rule or tariff changes that could remedy the perceived design flaw, any recommendations made by DMM to CAISO, stakeholders, Market Participants or state commissions regarding the perceived design flaw, and any actions taken by CAISO regarding the perceived design flaw.

**Attachment B - Blacklines**  
**Order 719 Compliance Filing**  
**Fourth Replacement CAISO Tariff**  
**February 18, 2010**

\* \* \*

#### **37.1.4 FERC Authority-**

In addition to any authority afforded in this Section 37, FERC shall have the authority to assess the ~~s~~Sanctions, and otherwise to enforce the rules as set forth and described in this Section 37. FERC shall have authority to remedy a violation under this Section 37 from the date of the violation. Nothing in this Section 37 shall be deemed to be a limitation or condition on the authority of FERC or other entities under current law or regulation.

#### **37.1.5 Administration-**

As provided in Section 37.8.2, ~~T~~the CAISO will administer the Rules of Conduct specified herein, except for Section 37.~~7~~2.3, Section 37.5.1 and Section 37.7, which shall be administered by FERC, and except as provided in Section 37.2.5 and Section 37.4.4.

\* \* \*

#### **37.2.1.1 Expected Conduct-**

Market Participants must comply with operating orders issued by the CAISO as authorized under the CAISO Tariff. For purposes of enforcement under this Section 37.2, an operating order shall be an order(s) from the CAISO directing a Market Participant to undertake, a single, clearly specified action (e.g., the operation of a specific device, or change in status of a particular Generating Unit) that is feasible and intended to resolve a specific operating condition. A Market Participant's failure to obey an operating order containing multiple instructions to address a specific operating condition will result in a single violation of Section 37.2. If some limitation prevents the Market Participant from fulfilling the action requested by the CAISO or the action is otherwise infeasible, then the Market Participant must promptly and directly communicate the nature of any such limitation or infeasibility to the CAISO. ~~Compliance with CAISO operating orders requires a good faith effort to achieve full performance as soon as is reasonably practicable in accordance with Good Utility Practice.~~

#### **37.2.1.2 Sanctions-**

The Sanction for a violation of this Section shall be the greater of the quantity of Energy non-performance multiplied by the applicable Dispatch Interval Locational Marginal Price or the following: for the first

violation in a rolling twelve (12) month period, \$5,000; for the second and subsequent violations in a rolling twelve (12) month period, \$ 10,000. Sanctions under Section 37.2.1 will not be greater than \$10,000 per violation and will be subject to the limitation stated in Section 37.2.6. If a quantity of Energy cannot be objectively determined, then the financial ~~s~~Sanctions specified above will apply. A Market Participant may incur Sanctions for more than one violation per day.

\* \* \*

#### **37.2.4.1 Expected Conduct.**

A Market Participant shall operate a Generating Unit listed as a Resource Adequacy Resource on-line and/or available consistent with a DAM or RUC commitment or Real-Time Dispatch Instructions, subject to Section 40, unless the CAISO releases the Generating Unit after the RUC process is completed, or a ~~derate or~~ Outage or other event outside the control of the Market Participant prevents the Generating Unit from being on-line and available. A Market Participant that fails to perform in accordance with the expected conduct described in this Section 37.2.4.1 shall be subject to Sanction.

\* \* \*

#### **37.2.5 Enhancements and Exceptions.**

Except as otherwise specifically provided, penalty amounts shall be tripled for any violation of Section 37.2.1, Section 37.2.2 or ~~through~~ Section 37.2.4 if a CAISO System Emergency exists at the time an operating order becomes effective or at any time during the Market Participant's non-performance.

Notwithstanding the foregoing, violations of Section 37.2.1, Section 37.2.2, and ~~through~~ Section 37.2.4 are subject to penalty under this rule only to the extent that the CAISO has issued a separate and distinct non-automated Dispatch Instruction to the Market Participant. Any penalty amount that is tripled under this provision and that would exceed the \$10,000 per day penalty limit shall not be levied against a Market Participant until the CAISO proposes and the Commission approves such an enhancement. A Market Participant that is subject to an enhanced penalty amount under this Section 37.2.5 may appeal that penalty amount to FERC if the Market Participant believes a mitigating circumstance not covered in Section 37.9.2 exists. The duty of the Market Participant to pay the enhanced penalty amount will be tolled until FERC renders its decision on the appeal.

**37.2.6 Per Day Limitation on Amount of Sanctions-**

The amount of Sanctions that any Market Participant will incur for committing two or more violations of Section 37.2.1, ~~Section 37.2.2 or through~~ Section 37.2.4 on the same day will be no greater than \$10,000 per day.

\* \* \*

**37.3.1.2 Consequence for Non-Performance-**

A Market Participant that fails to perform in accordance with the expected conduct described in Section 37.3.1.1 above shall be subject to having the payment rescinded for any portion of an Ancillary Service or RUC Capacity that is unavailable. If a Market Participant fails to deliver on a HASP Intertie Schedule for import or export Energy, it shall be subject to any charge that may apply in Section 11.31 and to any penalty or sanction FERC may impose for violation of Section 37.7, but shall not be ~~subject to Sanctions pursuant to~~ considered to have violated any other provision of Section 37, including this Section 37.3.

**37.3.2 Exceptions-**

~~Violations of Section 37.3.1 that result in circumstances in which an Uninstructed Deviation Penalty under Section 11.23 may be assessed or for which payments have been eliminated under Section 8.10.8 are not subject to Sanction under this section.~~—The submission of a Bid or of a Submission to Self-Provide Ancillary Services that causes, or that the CAISO expects to cause Congestion shall not, by itself, constitute a violation of Section 37.3.1 unless the Market Participant fails to comply with an obligation under the CAISO Tariff to modify Bids as determined by the CAISO to mitigate such Congestion or such Bids violate another element of this rule.

\* \* \*

**37.6.1.1 Expected Conduct-**

Except as provided below in Section 37.6.4 (Review by FERC), all information that is required to be submitted to the CAISO under the CAISO Tariff, CAISO Business Practice Manuals, or jurisdictional contracts must be submitted in a complete, ~~accurate~~, and timely manner. Market Participants must comply with requests for information or data by the CAISO authorized under the CAISO Tariff, including timelines specified for submitting Bids and other information.

\* \* \*

### **37.8.2 Referrals to FERC.**

Section 37.2.3, Section 37.5.1, and Section 37.7 shall be enforced by FERC, in accordance with FERC's rules and procedures. Pursuant to Section 11 of Appendix P, DMM shall refer suspected violations of Section 37.2.3, Section 37.5.1, and Section 37.7 to FERC. Although Sections 37.2 through 37.6, with the exceptions of Section 37.2.3, Section 37.2.4, and Section 37.5.1, will generally be enforced by the CAISO, the CAISO shall refer to FERC any Sanction that it believes would be modified in accordance with Sections 37.2.5, 37.4.4, or 37.9.1 or excused pursuant to Section 37.9.2. ~~Pursuant to Section 11.1.3 of Appendix P, the CAISO shall refer to DMM-FERC any matter for which the particular circumstances preclude the objective determination that a Rules of Conduct violation did or did not occur, and if DMM concurs with the CAISO's conclusion that the circumstances preclude such an objective determination, then DMM shall refer the matter to FERC under the protocol on referrals outlined in Section 11 of Appendix P.~~ The time limitation contained in Section 37.10.1 to assess a Sanction under this Section 37 shall be determined as of the date that a Sanction is initially assessed by the CAISO, excluding the time required for FERC to investigate a potential Rules of Conduct violation and/or determine a Sanction in accordance with this section, Sections 37.2.5, 37.4.4, ~~or 37.9.1,~~ or 37.9.2.

\* \* \*

### **37.8.7 Statement of Findings and Conclusions.**

Where the investigation results in a Sanction, the CAISO shall state its findings and conclusions in writing, and will make such writing available to the Scheduling Coordinator and, as provided in Section 37.8.4, to the Market Participant(s) that are the subject(s) of the investigation. The CAISO also shall specify whether it has recommended or intends to recommend to FERC that a Sanction for violation of this Section 37 be modified pursuant to Section 37.9.1 or excused pursuant to Section 37.9.2.

\* \* \*

### **37.9.1 Assessment; Waivers and Adjustments.**

Penalty amounts for violation of these Rules of Conduct shall be calculated as specified in Section 37.2 through Section 37.7. A Sanction specified in this Section 37 may be modified by FERC when it

determines that such adjustment is just and reasonable. ~~With the concurrence of DMM,~~ The CAISO may make a recommendation to FERC to modify a Sanction. An adjustment generally shall be deemed appropriate if the prescribed Sanction appears to be insufficient to deter the prohibited behavior, or if the circumstances suggest that the violation was inadvertent, unintentional, or some other mitigating circumstances exist.

### **37.9.2 Excuse-**

~~The following circumstances shall excuse a~~ violation of a Rule of Conduct under the terms of this CAISO Tariff shall be excused if FERC determines that any of the circumstances described in Sections 37.9.2.1, 37.9.2.2, 37.9.2.3, 37.9.2.4, or 37.9.2.5 apply.

\* \* \*

### **37.9.2.5 Good Faith Effort to Comply with Operating Orders**

For violations of Section 37.2.1.1 of this CAISO Tariff, a Market Participant's good faith effort to achieve full performance of an operating order as soon as is reasonably practicable in accordance with Good Utility Practice shall excuse a violation.

### **37.9.2.6 Procedures for Application**

Where the CAISO believes that an excuse existed under this Section 37.9.2, it may recommend to FERC that a violation be excused. Unless otherwise specified in this Section 37, if a Market Participant believes that an excuse existed under this Section 37.9.2, it may petition FERC for review pursuant to Section 37.8.10.

\* \* \*

### **37.9.3.1 Settlement Statements.**

The CAISO will administer any penalties issued under this Section 37 through Initial Settlement Statements T + 38 BD, and Initial Settlement Statement Reissues or Recalculation Settlement Statements, as relevant, issued to the responsible Scheduling Coordinator by the CAISO. Before invoicing a financial penalty through the Settlement process, the CAISO will provide a description of the penalty to the responsible Scheduling Coordinator and all Market Participants the Scheduling Coordinator represents that are liable for the penalty, when the CAISO has sufficient objective information to identify

and verify responsibility of such Market Participants. The CAISO shall specify whether such penalty is modified pursuant to Section 37.2.5, or Section 37.4.4 ~~or Section 37.9.4~~. The description shall include the identity of the Market Participant that committed the violation and the amount of the penalty. Where FERC has determined the Sanction, the CAISO will provide such of the above information as is provided to it by FERC. The CAISO also may publish this information under the CAISO Website after Initial Settlement Statement Reissues or Recalculation Settlement Statements, as relevant, are issued.

\* \* \*

### **37.9.3.3 Other Responsible Party-**

Where a party or parties other than the Scheduling Coordinator is responsible for the conduct giving rise to a penalty reflected on a Settlement Statement, and where the Scheduling Coordinator bears no responsibility for the conduct, such other party or parties ultimately shall be liable for the penalty. Under such circumstances, the Scheduling Coordinator shall use reasonable efforts to obtain payment of the penalty from the responsible party(ies) and to remit such payment to the CAISO in the ordinary course of the Settlement process. In the event that the responsible party(ies) wish to dispute the penalty, or the Scheduling Coordinator otherwise is unable to obtain payment from the responsible parties, the Scheduling Coordinator shall notify the CAISO and dispute the Settlement Statement. The CAISO promptly shall notify FERC. If the CAISO finds, ~~and DMM concurs,~~ that a Market Participant separate from the Scheduling Coordinator that is unable to obtain payment from the responsible party(ies) is solely responsible for a violation, the Scheduling Coordinator that is unable to obtain payment may net its payment of its Invoice amount by the amount of the penalty in question. The CAISO may refuse to offer further service to any responsible party that fails to pay a penalty, unless excused under the terms of the CAISO Tariff, by providing notice of such refusal to the Scheduling Coordinator. Following such notice, the Scheduling Coordinator shall be liable for any subsequent penalties assessed on account of such responsible party.

\* \* \*

\* \* \*

**Market Monitoring Unit**

The component of the CAISO organization (currently the “Department of Market Monitoring”) that is assigned responsibility in the first instance for the functions of a Market Monitoring Unit, as that term is ~~used in Docket No. EL01-118~~ defined in 18 CFR § 35.28(b)(7).

\* \* \*

**Market Surveillance Committee (MSC)**

The committee established under Appendix ~~P.20~~.

\* \* \*

**Market Violation**

~~A violation of a market behavior rule promulgated by the Commission or a violation of a provision of this Tariff other than those provisions that carry a sanction specifically enumerated under Section 37 of this Tariff.~~  
A CAISO Tariff violation, violation of a Commission-approved order, rule or regulation, market manipulation, or inappropriate dispatch that creates substantial concerns regarding unnecessary market inefficiencies.

\* \* \*

**State Commission**

The regulatory body of a State having jurisdiction to regulate rates and charges for the sale of electric energy to consumers within the State.

\* \* \*

**CAISO TARIFF APPENDIX O**  
**CAISO Market Surveillance Committee**

**1. Introduction and Purpose**

**1.1** There shall be established a Market Surveillance Committee (MSC), whose role it shall be to serve as an external market advisor to the CAISO CEO and CAISO Governing Board. The MSC shall provide independent external expertise on the CAISO market monitoring process and, in particular, ~~to~~ provide independent expert advice and recommendations to the CAISO CEO and Governing Board.

\* \* \*

## 5. Duties of the Market Surveillance Committee~~Market Monitor~~

5.1 The MSC may, upon request of DMM, the CAISO management or the CAISO Governing Board, or on its own initiative, evaluate ~~such information or data~~ information and data described in Section 7.1 of this Appendix O, including as may be collected by DMM on the basis of the evaluation criteria developed by DMM or on such further articulated evaluation criteria developed by the MSC.

\* \* \*

5.4 The MSC may on its own initiative recommend that the CAISO impose ~~s~~Sanctions and penalties for violations of the CAISO Tariff and related protocols. Upon recommendation of the MSC, the CAISO may impose such ~~s~~Sanctions or penalties as it believes necessary and as are permitted under the CAISO Tariff and related protocols approved by FERC.

\* \* \*

5.7 The MSC may review in draft form, and provide pre-submission comment on, all referrals to FERC pursuant to ~~section~~ Sections 11 and 12 of Appendix P.

\* \* \*

## 9. Ethics

9.1 Members of the MSC shall have no professional or commercial affiliation with a Market Participant where such affiliation would tend to affect, or give the appearance of affecting, their judgment in the performance of their duties ~~material affiliation with any market participant or affiliate.~~

9.2 Members of the MSC shall not serve as officers, employees, or partners of a ~~m~~Market ~~p~~Participant.

9.3 Members of the MSC shall have no material financial interest in any ~~m~~Market ~~p~~Participant or affiliate, with the exception of mutual funds and non-directed investments.

9.4 Members of the MSC shall not engage in any market transactions other than in the performance of their duties under the CAISO tariff.

\* \* \*

9.6 Members of the MSC shall not accept anything ~~of value~~ from a ~~m~~Market ~~p~~Participant any item with a value in excess of \$25~~in excess of a de minimis amount.~~

9.7 Members of the MSC shall advise the CAISO Governing Board in the event they seek employment with a ~~m~~Market ~~p~~Participant, and must disqualify themselves from participating in any matter that would have an effect on the financial interest of the ~~m~~Market ~~p~~Participant.

\* \* \*

## CAISO TARIFF APPENDIX P

### CAISO Department of Market Monitoring

\* \* \*

## 1.2 Mission Statement

To provide independent oversight and analysis of the CAISO ~~m~~Markets for the protection of consumers and ~~m~~Market ~~p~~Participants by the identification and reporting of market design flaws, potential market rule violations, and market power abuses.

\* \* \*

### **3.1 Department of Market Monitoring**

DMM shall report to the CAISO Governing Board on all matters pertaining to the core monitoring duties specified under Section 5 of this Appendix P, and shall have direct access to the individual CAISO Governing Board ~~M~~members at any time. DMM shall report to the CAISO CEO or his or her designee for administrative purposes, including matters relating to the internal administration of DMM. DMM shall advise the CAISO Governing Board about DMM's independent analysis of the CAISO's markets and its independent identification of market design flaws and market power abuses, and DMM also shall inform CAISO management about such matters.

**3.2** The CAISO may not alter any reports generated by DMM or dictate the conclusions reached by DMM. The CAISO may, however, comment upon drafts of DMM reports where such right is otherwise conferred by this CAISO Tariff.

\* \* \*

**4.1** DMM shall be adequately staffed by the CAISO with full-time CAISO staff with the experience and qualifications necessary to fulfill the functions referred to in this CAISO Tariff. Such qualifications may include professional training pertinent to and experience in the operation of markets analogous to CAISO Markets, in the electric power industry, and in the field of competition and antitrust law, economics and policy. Subject to the respective oversight responsibilities as defined in this CAISO Tariff of the CAISO Governing Board and the CAISO CEO, responsibility for overseeing the conduct and operations of DMM shall be conferred upon the Director of DMM.

\* \* \*

### **5.1 Review of Market Rules**

DMM shall review existing and proposed market rules, tariff provisions, and market design elements and recommend proposed rule and tariff changes to the CAISO, the CAISO Governing Board, ~~Commission~~ FERC staff, the California Public Utilities Commission, ~~m~~Market ~~p~~Participants, and other interested entities.

**5.1.1** DMM's review shall include, but is not limited to, identification of flaws in the overall structure of the CAISO ~~m~~Markets that may reveal undue concentrations of market power or other structural flaws.

\* \* \*

**5.1.3** DMM must limit distribution of its identifications and recommendations to CAISO, the CAISO Governing Board, and ~~Commission~~ FERC staff in the event that DMM believes broader dissemination of its identifications and recommendations could lead to exploitation of the identified market rule or design flaw. Where DMM so limits the distribution, it shall explain to ~~Commission~~ FERC staff why further dissemination should be avoided.

\* \* \*

**5.1.5** Per a request from the CAISO, or on its own initiative, DMM may provide a draft version of any report DMM prepares under Section 5.1 of this Appendix P to the CAISO for comment. DMM may, but shall not be required to, amend its report in light of such comment.

\* \* \*

**5.1.7** Where the CAISO disagrees with DMM's recommendation pursuant to Section 5.1 of this Appendix P or DMM disagrees with a proposed market rule, tariff, or market design change, CAISO shall notify the ~~Commission-FERC~~ of such disagreement. Such notification shall be made in writing to the ~~Commission's-FERC's~~ Director of the Office of Energy Market Regulation as part of a referral under Section 12 of this Appendix P.

## **5.2 Review of Market Trends and Performance**

DMM shall review and report on market trends and the performance of the wholesale markets to the CAISO, the CAISO Governing Board, ~~Commission-FERC~~ staff, the California Public Utilities Commission, ~~mMarket pParticipants~~, and other interested entities, on at least a quarterly basis and submit a more comprehensive annual state of the market report. Unless urgency requires otherwise, all annual and quarterly reports shall first be submitted to the MSC for review.

**5.2.1** In conjunction with the annual and quarterly reports issued under Section 5.2 of this Appendix P, DMM shall hold conference calls with ~~Commission-FERC~~ staff, staff of the California Public Utilities Commission, ~~mMarket pParticipants~~, and other interested entities to discuss market trends and the performance of the wholesale markets.

**5.3** With the exception of those CAISO Tariff provisions enumerated in Section 11.1.3 of this Appendix P, DMM shall identify and notify the ~~Commission-FERC's~~ Office of Enforcement staff of instances in which a ~~mMarket pParticipant's~~ behavior or the behavior of the CAISO itself is suspected to constitute a Market Violation.

\* \* \*

**5.5** Prohibition on Tariff Administration and Market Mitigation – DMM shall not participate in the administration of CAISO's ~~tTariff~~ or conduct prospective market mitigation.

\* \* \*

**5.5.2** DMM may conduct retrospective mitigation to the extent it is otherwise permitted to do so under this CAISO Tariff.

**5.5.3** DMM may provide the inputs required for CAISO to conduct any prospective mitigation that is otherwise permitted under this CAISO Tariff. Such inputs may include, but are not limited to, Default Energy Bids, identification of competitive transmission ~~eConstraints~~, and cost calculations.

\* \* \*

**7.6** DMM shall evaluate and reevaluate on an ongoing basis the data categories and market monitoring indices that it has developed under Sections 7.4 and 7.5 of this Appendix P, and the information it collects and receives from various other sources, including and in particular the CAISO's operation of the CAISO Markets. Such ongoing evaluations shall provide the basis for its reporting and publication responsibilities as set forth in this CAISO Tariff, for recommendations on proposed changes to this CAISO Tariff and CAISO Business Practice Manuals and other potential rules affecting the CAISO Markets, and for the development of criteria or standards for the initiation of proposed corrective or enforcement actions. In evaluating such information, the DMM may consult the MSC or such external bodies as may be appropriate.

## **8. Information Sharing**

**8.1** Tailored Requests for Information from a State Commission ~~the CPUC~~ to DMM – DMM shall consider requests from a State Commission ~~the CPUC~~ for specifically identified information or data concerning general market trends and the performance of the wholesale markets. DMM may deny a request when it determines, in its sole discretion, that complying with a request would be unreasonably burdensome or if it would interfere with the core market monitoring functions of DMM as defined in

Section 5 of this Appendix P. For the avoidance of doubt, this Section 8.1 of Appendix P shall not apply to otherwise enforceable subpoenas, court orders, or any other form of compulsory process issued by, or on behalf of, a State Commission~~the CPUC~~.

**8.1.1** DMM may agree to provide information about general market trends or performance. If DMM determines, in its sole discretion, that this information either is market sensitive or identifies an individual ~~Market Participant~~, then the information may be shared only if the ~~CPUC State Commission with which the information will be shared~~ agrees in writing with the CAISO that the information ~~shared will be covered under the terms of the agreement included as Attachment A to this Appendix P or a successor agreement that is as similarly protective as the current agreement~~ will not be disclosed unless the State Commission has been directed to do so by a court of competent jurisdiction. The written agreement also must specify that if a State Commission is so directed to disclose such information, the State Commission will notify the CAISO before such information is disclosed. Once the CAISO receives such notification, the CAISO must notify the affected Market Participant promptly.

**8.1.2** DMM may agree to release to ~~the CPUC~~ a State Commission raw CAISO data, but only after the information is redacted to satisfy any concerns that DMM may have about the need to maintain confidentiality.

**8.1.2.1** If DMM agrees to provide a State Commission~~the CPUC~~ with raw data that pertains to a specific ~~Market Participant~~, DMM shall notify the affected ~~Market Participant~~ and give it the opportunity to contest the accuracy of the data. The affected ~~Market Participant~~ may provide to DMM a written statement providing context to the data. So long as the process of providing such a written statement does not unduly delay release of the data to the ~~CPUC State Commission~~, DMM shall provide an unedited copy of such written statement to the ~~CPUC State Commission~~ concurrently with DMM's submission of the data to the ~~CPUC State Commission~~.

**8.1.2.2.** If the affected ~~Market Participant~~ asserts that the data to be provided is commercially sensitive, DMM shall share such sensitive information or data only if the ~~CPUC~~ agrees in writing that the information shared will be covered under the terms of the agreement included as Attachment A to this Appendix P or a successor agreement that is as similarly protective as the current agreement. ~~State Commission with which the information will be shared~~ agrees in writing with the CAISO that the information shared will not be disclosed unless the State Commission has been directed to do so by a court of competent jurisdiction. The written agreement also must specify that if a State Commission is so directed to disclose such information, the State Commission will notify the CAISO before such information is disclosed. Once the CAISO receives such notification, the CAISO must notify the affected Market Participant promptly.

**8.1.3** DMM shall not provide any requested information or data that is designed to aid an enforcement action by an instrumentality or political subdivision of ~~any state of the United States of America~~ the State of California against a specific party.

\* \* \*

## 9. Ethics.

**9.1** ~~DMM employees shall have no material affiliation with any market participant or affiliate~~ DMM employees shall have no professional or commercial affiliation with a Market Participant where such affiliation would tend to affect, or give the appearance of affecting, their judgment in the performance of their duties.

**9.2** DMM employees shall not serve as officers, employees, or partners of a ~~Market Participant~~.

**9.3** DMM employees shall have no material financial interest in any ~~m~~Market ~~p~~Participant or affiliate, with the exception of mutual funds and non-directed investments.

**9.4** DMM employees shall not engage in any market transactions other than in the performance of their duties under the CAISO Tariff.

\* \* \*

**9.6** DMM employees shall not accept ~~anything of value from a~~ ~~m~~Market ~~p~~Participant any item with a value in excess of \$25~~in excess of a de minimis amount.~~

**9.7** DMM employees shall advise a supervisor (or in the case of the Director of DMM, the CAISO CEO) in the event they seek employment with a ~~m~~Market ~~p~~Participant, and must disqualify themselves from participating in any matter that would have an effect on the financial interest of the ~~m~~Market ~~p~~Participant.

\* \* \*

**11.1.3** ~~The CAISO shall refer to DMM any matter for which the particular circumstances preclude the objective determination that a Rules of Conduct violation did or did not occur. If DMM concurs with the CAISO that the particular circumstances preclude the objective determination that a Rules of Conduct violation did or did not occur, DMM shall refer the matter to FERC according to the procedures of Section 11 of this Appendix P. Section 11.1 of this Appendix P notwithstanding, DMM may, but need not, refer to the Commission a suspected violation of the following provisions of Section 37 of this CAISO Tariff: [37.2.1; 37.2.2; 37.2.4; 37.3.1; 37.4.1, 37.4.2; 37.4.3; 37.5.2; 37.6.1; 37.6.2; and 37.6.3].~~

\* \* \*

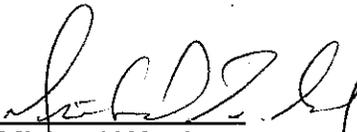
**12.5** Following a referral to the Commission, DMM is to continue to notify and inform the Commission of any additional information regarding the perceived market design flaw, its effects on the market, any additional or modified observations concerning the rule or tariff changes that could remedy the perceived design flaw, any recommendations made by DMM to CAISO, stakeholders, ~~m~~Market ~~p~~Participants or state commissions regarding the perceived design flaw, and any actions taken by CAISO regarding the perceived design flaw.

\* \* \*

## CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon all of the parties listed on the official service lists for the above-referenced proceedings, 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. this 18<sup>th</sup> day of February, 2010.



Michael Ward