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October 1, 2010

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

**Re: Calpine Corporation, et al. v. California Independent System  
Operator Corporation, Docket No. EL09-62-000  
Settlement Agreement**

Dear Secretary Bose:

Pursuant to Rule 602(b) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.602 (2010), the California Independent System Operator Corporation, on behalf of itself and the other Settling Parties in the above-referenced proceeding, submits a Settlement Agreement in the proceeding.

The background and terms of the Settlement Agreement are set forth in the attachments to this filing. Consistent with the Commission's regulations, the following documents are attached:

Attachment A	Settlement Agreement
Attachment B	Explanatory Statement

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Two extra copies of this filing are also enclosed. Please stamp these copies with the date and time filed and return them to the messenger.

Respectfully submitted,

/s/ Sean A. Atkins

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**ATTACHMENT A –  
SETTLEMENT AGREEMENT**

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

Calpine Corporation, Citigroup Energy Inc., Dynegy Power Marketing Inc., J.P. Morgan Ventures Energy Corporation, BE CA, LLC, Mirant Energy Trading, LLC, NRG Energy, Inc., Powerex Corporation, and RRI Energy, Inc.

v.

California Independent System Operator Corporation

Docket No. EL09-62-000

**SETTLEMENT AGREEMENT**

This settlement agreement (“Settlement Agreement”) is entered into by and among all of the parties in the above-captioned proceeding that are listed in footnote 1 hereto (collectively, “Settling Parties”), in order to resolve all issues in the above-captioned proceeding.<sup>1</sup> In addition, each party listed in footnote 2 hereto (collectively, “Settlement Discussion Participants”), each of which is a party in this proceeding as of October 1, 2010, has authorized the ISO to state that each such Settlement Discussion Participant either supports or does not oppose the Settlement Agreement.<sup>2</sup>

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<sup>1</sup> The Settling Parties are the California Independent System Operator Corporation (“ISO” or “CAISO”); Calpine Corporation; Citigroup Energy Inc.; Dynegy Power Marketing Inc.; J.P. Morgan Ventures Energy Corporation; BE CA, LLC; NRG Energy, Inc.; Powerex Corporation; RRI Energy, Inc.; Pacific Gas and Electric Company; San Diego Gas & Electric Company; Southern California Edison Company; and Morgan Stanley Capital Group Inc.

<sup>2</sup> The Settlement Discussion Participants are the Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California; the City of Santa Clara, doing business as Silicon Valley Power; the M-S-R Public Power Agency; The Metropolitan Water District of Southern California; the Modesto Irrigation District; Mirant Energy Trading, LLC; the Northern California Power Agency; the Transmission Agency of Northern California; the California Department of Water Resources State Water Project; Golden State Water Company; and Commission Trial Staff.

## **TERMS**

The terms of the Settlement Agreement are as follows:

### **ARTICLE 1**

#### **DEFINITIONS**

1.1 All defined terms in this Settlement Agreement will have the meanings set forth in the ISO's open access transmission tariff ("ISO Tariff") as amended or supplemented from time to time, provided that such amendments or supplements shall not alter any rights or obligations set forth in the Settlement Agreement.

### **ARTICLE 2**

#### **AGREEMENT OF THE SETTLING PARTIES AS TO ISSUES RAISED IN THIS PROCEEDING**

2.1 All issues in this proceeding will be fully resolved by acceptance by the Federal Energy Regulatory Commission ("Commission") of the proposed ISO Tariff provisions that are included in Attachment 1 to this Settlement Agreement ("Revised Default Allocation Tariff Provisions"). The Settling Parties request that the Commission issue an order in this proceeding accepting the Settlement Agreement without modification or condition and accepting the ISO's commitment under the terms and conditions of this Settlement Agreement to submit a compliance filing that contains the Revised Default Allocation Tariff Provisions. The ISO will submit a compliance filing to revise the ISO Tariff to incorporate the Revised Default Allocation Tariff Provisions within fifteen (15) calendar days after the Commission issues an order accepting the Settlement Agreement.

2.2 The Revised Default Allocation Tariff Provisions will go into effect as of the

April 1, 2009 Trading Day (including Day-Ahead transactions on March 31, 2009), and will expire as of the fifth anniversary of the date the Commission issues an order accepting this Settlement Agreement, unless the effectiveness of the Revised Default Allocation Tariff Provisions is continued as described in Section 2.3 of this Settlement Agreement.

2.3 No later than six (6) months prior to the fifth anniversary of the date the Commission issues an order accepting this Settlement Agreement, the ISO will begin a stakeholder process to examine whether there is a need to modify or replace the Revised Default Allocation Tariff Provisions. Upon conclusion of the stakeholder process, and at least three (3) months prior to the fifth anniversary of the date the Commission issues an order accepting this Settlement Agreement, the ISO will make a filing with the Commission pursuant to Section 205 of the Federal Power Act (“FPA”) either to request that the effectiveness of the Revised Default Allocation Tariff Provisions be continued or to file amendments to modify or replace them. Nothing in this Settlement Agreement is intended to prejudge the ISO’s FPA Section 205 filing required by this Section 2.3 or prejudice any party’s rights regarding such filing.

2.4 No party in Docket No. EL09-62 as of October 1, 2010 may exercise any otherwise available rights under Section 206 of the FPA as to the Revised Default Allocation Tariff Provisions for a period of three (3) years from the date that the Commission issues an order accepting the Settlement Agreement, unless, market-wide, payment default amounts that cumulatively exceed thirty-five million dollars (\$35,000,000) are allocated pursuant to the Revised Default Allocation Tariff Provisions, in which event all rights of the above-referenced parties under Section 206 of the FPA

will be fully restored prospectively as of the day after the thirty-five million dollar threshold is exceeded.

2.5 The Settling Parties request that, as part of an order in this proceeding accepting the Settlement Agreement, the Commission accept the Non-Disclosure Certificate contained in Attachment 2 hereto (“NDC”).

2.5.1 Each party in Docket No. EL09-62 as of October 1, 2010 that has executed the NDC accepted by the Commission will be entitled to receive aggregate quarterly default loss allocation percentages by groupings determined by the ISO (“Aggregate Information”), for purposes of monitoring the settlement embodied in this Settlement Agreement.

2.5.1.1 The ISO will provide the Aggregate Information using groupings of market participants to be determined by the ISO with at least three members, such groupings at a minimum to include the following categories: investor-owned utilities, municipalities, suppliers, and marketers/importers. The ISO will provide to the parties in Docket No. EL09-62 as of October 1, 2010 that have executed the NDC accepted by the Commission its determination of which market participants are in each grouping.

2.5.1.2 On or about the first Business Day of the second quarter of 2011, the ISO will provide the Aggregate Information based on application of the allocation methodology set forth in Section 11.29.17.2 of the Revised Default Allocation Tariff Provisions to participation in the CAISO Markets for the most recent two (2) full calendar quarters preceding the first Business Day of that quarter for which T+38B data are available (*i.e.*, the third and fourth quarters of 2010).

2.5.1.3 On or about the first Business Day of the third quarter of 2011, the ISO will provide the Aggregate Information based on application of the allocation methodology set forth in Section 11.29.17.2 of the Revised Default Allocation Tariff Provisions to participation in the CAISO Markets for the most recent three (3) full calendar quarters preceding the first Business Day of that quarter for which T+38B data are available (*i.e.*, the third and fourth quarters of 2010 and the first quarter of 2011).

2.5.1.4 On or about the first Business Day of the fourth quarter of 2011, and on or about the first Business Day of every subsequent quarter that this Settlement Agreement is in effect, the ISO will provide the Aggregate Information based on application of the allocation methodology set forth in Section 11.29.17.2 of the Revised Default Allocation Tariff Provisions to participation in the CAISO Markets for the most recent four (4) full calendar quarters preceding the first Business Day of that quarter for which T+38B data are available.

2.5.2 Nothing in this Section 2.5 is intended to preclude any party from obtaining this information in future proceedings through the discovery process. Should the stakeholder Credit Working Group formed in accordance with Section 2.6 of this Settlement Agreement recommend, after stakeholder input, that Aggregate Information subject to the NDC should be released by the ISO in any form in any public forum, the ISO must first obtain approval of the CAISO Governing Board for such disclosure. Once the CAISO Governing Board has approved such disclosure, the ISO will be authorized to release Aggregate Information subject to the NDC in a public forum without modification to the NDC or the Settlement Agreement.



2.6 The ISO will organize a stakeholder working group within ninety (90) days of a Commission order approving the Settlement Agreement that will meet at least quarterly to consider enhancements to the ISO's credit practices ("Credit Working Group"), including additional credit risk data to be included in the periodic public reports on credit issues to the CAISO Governing Board.

2.7 Following issuance by the Commission of an order approving this Settlement Agreement, the Settling Parties will take all actions reasonably necessary to effectuate the Settlement Agreement.

### ARTICLE 3

#### **EFFECTIVE DATE**

3.1 This Settlement Agreement will become effective upon issuance by the Commission of an order approving this Settlement Agreement without modification or condition, or, if modified or conditioned, upon its acceptance as so modified by the Settling Parties and the Settlement Discussion Participants as provided in Section 4.1 below.

### ARTICLE 4

#### **MISCELLANEOUS**

4.1 *Termination of Settlement Agreement.* If the Commission, in approving this Settlement Agreement or by taking any other regulatory action, modifies the Settlement Agreement in a manner that materially changes the benefits and burdens negotiated herein, the Settling Parties and the Settlement Discussion Participants will meet and confer within thirty (30) days as to whether all Settling Parties and Settlement

Discussion Participants can support or not oppose a modified Settlement Agreement. If all of the Settling Parties and Settlement Discussion Participants do not agree to support or not oppose a modified Settlement Agreement within sixty (60) days of a Commission order materially changing the Settlement Agreement, then the Settlement Agreement will terminate.

4.2 *Precedential Value.* Except as explicitly set forth herein, no one will be deemed to have approved, accepted, agreed to, or consented to any principle or position in this proceeding, or to have prejudiced positions taken or that may be taken in this or any other proceedings. This Settlement Agreement will have no precedential value, will not be cited as precedent, and will not be deemed to bind any entity (except as otherwise expressly provided for herein) in any proceeding, including any Commission proceeding, except in any proceeding to enforce this Settlement Agreement. This Settlement Agreement will not be deemed to be a “settled practice” as that term was interpreted and applied in *Public Service Commission of the State of New York v. FERC*, 642 F.2d 1335 (D.C. Cir. 1980).

4.3 *Negotiated Settlement Agreement.* This Settlement Agreement is made upon the express understanding that it constitutes a negotiated settlement agreement and, except as otherwise expressly provided for herein, no one will be deemed to have approved, accepted, agreed to, or consented to any principle or policy relating to the rates, charges, classifications, terms, conditions, principles, issues, or tariff sheets associated with this Settlement Agreement.

4.4 *Integration.* The Attachments to this Settlement Agreement are hereby

integrated into, and will constitute part of, this Settlement Agreement.

4.5 *Entire Agreement.* This Settlement Agreement, including the Attachments hereto, constitutes the full and complete agreement of the Settling Parties with respect to the subject matter addressed herein and supersedes all prior negotiations, understandings, and agreements, whether written or oral, between the Settling Parties with respect to the subject matter addressed herein.

4.6 *Standard of Review.* This Settlement Agreement will be subject to the just and reasonable standard of review.

4.7 *Settlement Privilege.* All discussions among the parties relating to this Settlement Agreement have been conducted on the explicit understanding that they were undertaken subject to Rule 602(e) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.602(e). All offers of settlement, and any comments on such offers, and any discussions among the parties in Docket No. EL09-62 with respect to this Settlement Agreement are privileged, are not admissible as evidence against any party who objects to their admission, and are not subject to discovery.

4.8 *Support for Settlement Agreement/No Waiver of Rights.* The Settling Parties will support this Settlement Agreement and will cooperate in securing Commission acceptance and implementation of this Settlement Agreement and the ISO compliance filing to be submitted pursuant to Section 2.1 of this Settlement Agreement. The Settling Parties hereby waive any and all rights to seek rehearing or judicial review of any Commission order(s) approving the Settlement Agreement or the compliance filing without modification or condition; provided, however, that if the Commission

approves the Settlement Agreement or the compliance filing with modifications or conditions, any party in Docket No. EL09-62 as of October 1, 2010 may seek rehearing or judicial review of the Commission order(s) approving the Settlement Agreement or the compliance filing solely to challenge the Commission's imposition of such modifications or conditions in order to preserve the terms and conditions of the Settlement Agreement or the compliance filing as filed. Except as set forth in Section 2.4 of this Settlement Agreement, no party waives its rights under Section 205 or 206 of the FPA with respect to any provision of the ISO Tariff.

4.9 *Headings.* Headings in this Settlement Agreement are included for convenience only and are not intended to have any significance in interpretation of this Settlement Agreement.

4.10 *Dispute Resolution.* Dispute resolution will be in accordance with the ISO Tariff.

**Attachment 1 to  
Settlement Agreement**

## 11.29 Billing and Payment Process.

\* \* \*

### 11.29.9.6.2.1 Replenishing the CAISO Reserve Account Following Payment Default.

If the CAISO has debited the CAISO Reserve Account then:

- (a) If, after the CAISO has debited the CAISO Reserve Account on a Payment Date, the CAISO Bank receives a remittance from a CAISO Debtor which has not been (but should have been, if it had been received on a timely basis) credited to the CAISO Clearing Account by 10:00 am on the Payment Date and which required the debiting of the CAISO Reserve Account, such remittance shall be credited to the CAISO Reserve Account.
- (b) The proceeds of any enforcement of Financial Security and/or amounts recovered under proceedings shall be credited to the CAISO Reserve Account.
- (c) If, after taking reasonable action, the CAISO determines that the default amount (or any part) and/or Interest cannot be recovered on the next practicable Invoices, such amounts shall be allocated in accordance with Section 11.29.17 of the CAISO Tariff. ~~deemed to be owing by those Market Participants who were CAISO Creditors on the relevant Payment Date pro rata to the net payments they received on that Payment Date and shall be accounted for by way of a charge in the next Settlement Statements of those CAISO Creditors. Such charge shall be credited to the CAISO Reserve Account.~~

\* \* \*

### 11.29.10.3 Other Invoicing Provisions.

The Invoices or Payment Advices will also include the total charges for each component of the Grid Management Charge, the total charges associated with any Interest for each relevant Trading Month, the FERC Annual Charges due monthly, as well as any disbursements associated with a shortfall receipt distribution.

A separate Invoice for the FERC Annual Charges due annually will be issued by the CAISO to the Scheduling Coordinator in accordance with Section 11.19.1.2. The CAISO will issue separate Invoices for NERC/WECC Charges as described in Section 11.20.

A separate Invoice for a shortfall allocation will be issued by the CAISO to Scheduling Coordinators in the event of a payment default in accordance with Section 11.29.17.1.

In the event of an allocation of a payment default in accordance with Section 11.29.17.2, the CAISO may either issue separate Invoices to Default-Invoiced SCIDs pursuant to Section 11.29.17.2.1 or to SCIDs pursuant to Section 11.29.17.2.2, as applicable, or may issue Invoices through its standard invoicing process that include the allocation of the payment default.

Recalculation Settlement Statements, post closing adjustments and the financial outcomes of CAISO ADR Procedures and any other dispute resolution may be invoiced separately from monthly market activities. The CAISO shall provide a Market Notice at least five (5) Business Days prior to such invoicing identifying the components of such Invoice or Payment Advice.

\* \* \*

**11.29.13 Non-payment by a Scheduling Coordinator or CRR Holder.**

**11.29.13.1 Notification and Interest.**

If a Scheduling Coordinator or CRR Holder becomes aware that a payment for which it is responsible will not be remitted to the CAISO Clearing Account on time, it shall immediately notify the CAISO of the fact and the reason for the non-payment. If the Scheduling Coordinator or CRR Holder fails to pay any sum to the CAISO when due and after and the CAISO draws upon any and all available Financial Security provided by the defaulting Scheduling Coordinator or CRR Holder, the Scheduling Coordinator or CRR Holder shall pay Interest on the overdue amount for the period from the Payment Date to the date on which the payment is remitted to the CAISO Clearing Account, together with any related transaction costs incurred by the CAISO. The CAISO shall apply all such Interest payments on the default amount either on a pro rata basis to CAISO Creditors in relation to amounts past due in the order of the creation of such debts, or, if the default amount was allocated pursuant to Section 11.29.17.2, to Default-Invoiced SCIDs in proportion to their allocated shares of the default amount as calculated pursuant to Section

11.29.17.2.1 or to SCIDs in proportion to their allocated shares of the default amount as calculated pursuant to Section 11.29.17.2.2, as applicable, in relation to amounts past due in the order of the creation of such debts.

\* \* \*

#### **11.29.13.10 Application of Funds Received**

Amounts credited to the CAISO Clearing Account in payment of a default amount (as set out in Section 11.29.9.6.2.1 and 11.29.9.6.4.1) or as a result of enforcing the defaulting CAISO Debtor's Financial Security shall be applied to the CAISO Reserve Account pursuant to Section 11.29.9.6.2.1 or to the CAISO Penalty Reserve Account pursuant to Section 11.29.9.6.4.1 to reduce amounts outstanding under any CAISO banking facilities used to fund the CAISO Reserve Account or the CAISO Penalty Reserve Account on the relevant Payment Date less any amounts that first ~~and the balance (if any)~~ shall be applied either to reimburse pro rata any CAISO Creditors whose payments were reduced pursuant to Section 11.29.17.1, or, if the default amount was allocated pursuant to Section 11.29.17.2, to reimburse Default-Invoiced SCIDs in proportion to their allocated shares of the default amount as calculated pursuant to Section 11.29.17.2.1 or to reimburse SCIDs in proportion to their allocated shares of the default amount as calculated pursuant to Section 11.29.17.2.2, as applicable.

\* \* \*

#### **11.29.17 Alternative Payment Procedures.**

##### **11.29.17.1 Pro Rata Reduction to Payments.**

If it is not possible to clear the CAISO Clearing Account on a Payment Date because of an insufficiency of funds available in the CAISO Reserve Account or by enforcing any Financial Security provided by a defaulting Scheduling Coordinator or CRR Holder, the CAISO shall (1) first pay in full every CAISO Creditor whose net amounts receivable on the relevant Payment Date is less than \$5,000; and (2) second, reduce payments to all remaining CAISO Creditors proportionately to the net amounts payable to them on the relevant Payment Date to the extent necessary to clear the CAISO Clearing Account through a shortfall allocation. The CAISO shall account for such reduction in the CAISO ledger accounts as amounts due and owing by the non-



paying CAISO Debtor to each CAISO Creditor whose payment was so reduced. Each payment default amount allocated to CAISO Creditors through a shortfall allocation under this Section 11.29.17.1 that remains unpaid by the defaulting Scheduling Coordinator or CRR Holder will be allocated as set forth in Section 11.29.17.2. The provisions of this Section 11.29.17.1 shall not apply to non-payment of any penalty amount that a Scheduling Coordinator or CRR Holder has disputed and FERC has specifically authorized the Scheduling Coordinator or CRR Holder to net its payment to the CAISO by the amount of the penalty in question in accordance with Section 37.9.3, in which case the non-payment amount will be allocated exclusively to the CAISO penalty trust account and not allocated to CAISO Creditors.

#### **11.29.17.2 Payment Default Allocation**

##### **11.29.17.2.1 Methodology for Allocating Payment Default Amounts**

Except as set forth in Section 11.29.17.2.2, each payment default amount allocated to CAISO Creditors through a shortfall allocation pursuant to Section 11.29.17.1 and that remains unpaid by the defaulting Scheduling Coordinator or CRR Holder will be allocated on the next practicable Invoices to the Default-Invoiced SCIDs to which the percentage shares calculated pursuant to Section 11.29.17.2.7 for the current calendar quarter apply, excluding the CAISO Debtor that has not paid the payment default amount, pursuant to the following methodology:

- (a) Twenty (20) percent of the payment default amount will be allocated to the Default-Invoiced SCIDs in proportion to the net amounts that were payable in each applicable calendar quarter (and averaged within such calendar quarter) to the Default-Invoiced SCIDs over the applicable Default Look-Back Periods. For Market Participants subject to Default Election option 1, these net amounts will be calculated on an SCID-by-SCID basis. For Market Participants that are eligible for and have chosen Default Election option 2, these net amounts will be calculated by consolidating all of the data for the applicable SCIDs, recognizing any offsetting effect of an individual SCID's positive or negative dollar amount in the consolidated total.

(b) Thirty (30) percent of the payment default amount will be allocated to the Default-Invoiced SCIDs in proportion to the sum of the absolute values of the dollar amounts shown on their Invoices payable or receivable in each applicable calendar quarter (and averaged within such calendar quarter) over the applicable Default Look-Back Periods, after excluding dollar amounts shown on the Invoices for payments and charges for GMC, RMR, and Wheeling Access Charge costs, and after excluding the billing of Access Charges and the payment of Transmission Revenue Requirements to Participating Transmission Owners. For Market Participants subject to Default Election option 1, the sum of the absolute values of the dollar amounts shown on their Invoices payable or receivable in each applicable calendar quarter will be calculated on an SCID-by-SCID basis. For Market Participants that are eligible for and have chosen Default Election option 2, the absolute values of the net sum of the dollar amounts shown on their Invoices payable or receivable in each applicable calendar quarter will be calculated by consolidating all of the data for the applicable SCIDs, recognizing any offsetting effect of an individual SCID's positive or negative dollar amount in the consolidated total.

(c) Fifty (50) percent of the payment default amount will be allocated to the Default-Invoiced SCIDs in proportion to the largest of the following five (5) amounts calculated in MWh for every month in each applicable calendar quarter (and averaged within such calendar quarter) for each Default-Invoiced SCID over the applicable Default Look-Back Periods:

- (1) Cleared Day-Ahead Schedules to supply Energy, plus Day-Ahead Ancillary Services Awards and qualified Self-Provided Ancillary Services, plus scheduled supply obligation for Ancillary Services (including imports but excluding RUC Schedules), plus Virtual Supply Awards;
- (2) Metered Generation, plus Real-Time Interchange Import Schedules, plus Real-Time Ancillary Services Awards and qualified Self-Provided

Ancillary Services, plus HASP Ancillary Services Awards and qualified Self-Provided Ancillary Services, plus Real-Time supply obligation for Ancillary Services;

- (3) Cleared Day-Ahead Schedules for Demand (including Demand served by Pumped-Storage Hydro Units and exports) multiplied by one-hundred three (103) percent to reflect Transmission Losses, plus scheduled demand obligation for Ancillary Services, plus Virtual Demand Awards;
- (4) Metered Load multiplied by one-hundred three (103) percent to reflect Transmission Losses, plus Real-Time Interchange Export Schedules, plus Real-Time demand obligation for Ancillary Services; or
- (5) The greater of (A) the quantity of CRRs acquired in CRR Auctions or transferred through the Secondary Registration System (excluding CRRs acquired in CRR Allocations) or (B) Inter-SC Trades of Energy.

For Market Participants subject to Default Election option 1, each of the five (5) amounts calculated in MWh for every month in each applicable calendar quarter (and averaged within such calendar quarter) will be calculated on an SCID-by-SCID basis. For Market Participants that are eligible for and have chosen Default Election option 2, each of the five (5) amounts calculated in MWh for every month in each applicable calendar quarter (and averaged within such calendar quarter) will be calculated by consolidating all of the data for the applicable SCIDs.

#### **11.29.17.2.2 Interim De Minimis Allocation**

During the time period from the effective date of this Section 11.29.17.2.2 until April 1, 2011, each payment default amount allocated to CAISO Creditors through a shortfall allocation pursuant to Section 11.29.17.1 that is equal to or less than \$1,000 multiplied by the total number of SCIDs that have recorded market activity in the most recent Trading Month will be allocated on the next practicable Invoices among all such SCIDs so that an equal share of the payment default amount is allocated to each applicable SCID excluding the CAISO Debtor that has not paid the payment

default amount. Notwithstanding the foregoing, if allocation of a payment default amount to any SCID under this Section 11.29.17.2.2 would result in any entity: (i) being allocated more than a \$1,000 share of a payment default amount per applicable SCID or (ii) being allocated cumulative shares of payment default amounts that equal more than \$1,000 per applicable SCID, the CAISO will instead allocate the payment default amount pursuant to Section 11.29.17.2.1.

### **11.29.17.2.3 Interest on Allocated Payment Default Amounts**

In accordance with Section 11.29.10.2, Interest will be charged to Default-Invoiced SCIDs pursuant to Section 11.29.17.2.1 or to SCIDs pursuant to Section 11.29.17.2.2 to the extent the payment default amounts allocated to those Default-Invoiced SCIDs or SCIDs exceed the payment default amounts allocated to them through a shortfall allocation pursuant to Section 11.29.17.1, and Interest will be paid to Default-Invoiced SCIDs pursuant to Section 11.29.17.2.1 or to SCIDs pursuant to Section 11.29.17.2.2 to the extent the payment default amounts allocated to those Default-Invoiced SCIDs or SCIDs are exceeded by the payment default amounts allocated to them through a shortfall allocation pursuant to Section 11.29.17.1, for the period between the date of the shortfall allocation and the date payments are due for the Invoices on which the allocation of the payment default amounts appear. The Interest payable pursuant to this Section 11.29.17.2.3 will be included on the Invoices on which the allocation of the payment default amounts appear.

### **11.29.17.2.4 Default Election**

- (a) Each Market Participant that is a Scheduling Coordinator, a CRR Holder, a Candidate CRR Holder, or a PTO will make an election of either option 1 or option 2 under this Section 11.29.17.2.4, which will be the Market Participant's Default Election until such time as a subsequent change by the Market Participant of its Default Election from option 1 to option 2 (or vice versa) goes into effect. Each Market Participant that is a Scheduling Coordinator, a CRR Holder, a Candidate CRR Holder, or a PTO shall make only a single Default Election regardless of whether that Market Participant has multiple effective contracts with the CAISO that cause the entity to be a Market Participant. For

example, an entity that has signed a Scheduling Coordinator Agreement and a CRR Entity Agreement shall only make a single Default Election.

- (i) Option 1: For such Market Participants that choose Default Election option 1, the methodology for allocating payment default amounts set forth in Section 11.29.17.2.1 will apply to each SCID of such Market Participant on an SCID-by-SCID basis, and each SCID of such Market Participant will be a Default-Invoiced SCID.
- (ii) Option 2: In order to qualify for Default Election option 2, all of the SCIDs of a Market Participant with one or more effective contracts with the CAISO must certify that they meet one of the following criteria, and the entity must agree that the methodology for allocating payment default amounts set forth in Section 11.29.17.2.1 will apply to all SCIDs created for use under all of the effective contracts with the CAISO based on a consolidation of data for all such SCIDs:
  - (1) All of the SCIDs are associated with Affiliates or business units under common control where one or more of the Affiliates or business units or a related business entity has more than fifty (50) percent control of the Affiliates or business units, either directly or through one or more intermediaries;
  - (2) All of the SCIDs are associated with a Joint Powers Authority; or
  - (3) All of the SCIDs are associated with a municipal utility or state or federal agency.

Each Market Participant that chooses Default Election option 2 will at the same time select a single SCID to be the sole Default-Invoiced SCID under option 2. This Default-Invoiced SCID will receive Invoices containing payment default amounts allocated on behalf of all of the SCIDs under all contracts between the entity and the CAISO. Allocation of payment default amounts for entities choosing Default Election option

2 will be based on consolidated data from all of the entity's SCIDs. The selection of a single SCID as the sole Default-Invoiced SCID will not in any way relieve any Market Participant subject to Default Election option 2 of any obligation to pay Invoices, including in the event of a default by the Default-Invoiced SCID on a default payment obligation, in which case the CAISO will be entitled to utilize all available Financial Security provided by any defaulting Market Participant subject to Default Election option 2.

- (b) By October 15, 2010, Market Participants will inform the CAISO in writing of their initial Default Elections for the period from March 31, 2009 through December 31, 2011. Within five (5) Business Days after FERC issues an order accepting the settlement agreement filed in FERC Docket No. EL09-62, Market Participants will inform the CAISO in writing of any changes to their initial Default Elections for the period from March 31, 2009 through December 31, 2011. If Market Participants that have made initial Default Elections fail to timely inform the CAISO in writing of changes to their initial Default Elections, the Market Participants will be deemed to have chosen their initial Default Elections as their Default Elections for the period from March 31, 2009 through December 31, 2011.
- (c) Starting on October 1, 2011, Market Participants may subsequently change their Default Elections by October 1 of each calendar year by notifying the CAISO, to become effective on January 1 of the next calendar year. Market Participants that do not change their Default Elections by that date will be deemed to have chosen to continue their current Default Elections.
- (d) Each entity that becomes a Scheduling Coordinator, a CRR Holder, a Candidate CRR Holder, or a PTO after one of the dates set forth in Section 11.29.17.2.4(a), - (b), or - (c) will make its Default Election prior to engaging in any transactions in the CAISO Markets. The Default Election of each such entity will remain in effect until the entity makes another Default Election pursuant to this Section

11.29.17.2.4. However, any Market Participant that has already made a Default Election will not be eligible to change its Default Election as a result of its subsequently also becoming a Scheduling Coordinator, a CRR Holder, a Candidate CRR Holder, or a PTO.

- (e) Market Participants that do not timely inform the CAISO of their initial Default Elections will be deemed to have chosen Default Election option 1.

**11.29.17.2.5 Effect of Change in Default Election**

Starting with the Default Elections due by October 1, 2011, each time that a Market Participant changes its Default Election pursuant to Section 11.29.17.2.4 from option 1 to option 2 (or vice versa), the following provisions will apply:

- (a) For the first quarter of the calendar year after the change in Default Election goes into effect, the Default-Invoiced SCID(s) will be allocated shares of payment default amounts calculated pursuant to Section 11.29.17.2.1 based on application of the prior election to the first three (3) full calendar quarters of data within the Default Look-Back Period and application of the new election to the most recent full calendar quarter of data within the Default Look-Back Period.
- (b) For the second quarter of the calendar year after the change in Default Election goes into effect, the Default-Invoiced SCID(s) will be allocated shares of payment default amounts calculated pursuant to Section 11.29.17.2.1 based on application of the prior election to the first two (2) full calendar quarters of data within the Default Look-Back Period and application of the new election to the most recent two (2) full calendar quarters of data within the Default Look-Back Period.
- (c) For the third quarter of the calendar year after the change in Default Election goes into effect, the new Default-Invoiced SCID(s) will be allocated shares of payment default amounts calculated pursuant to Section 11.29.17.2.1 based on application of the prior election to the first full calendar quarter of data within the

Default Look-Back Period and application of the new election to the most recent three (3) full calendar quarters of data within the Default Look-Back Period.

- (d) For the fourth quarter of the calendar year after the change in Default Election goes into effect, the Default-Invoiced SCID(s) will be allocated shares of payment default amounts calculated pursuant to Section 11.29.17.2.1 based on application of the new election to the entire Default Look-Back Period.

**11.29.17.2.6 Default Look-Back Period**

- (a) For each payment default that occurs anytime prior to March 31, 2011, the Default Look-Back Period will be the most recent two (2) full calendar quarters for which T+38B data are available. In no event will the CAISO consider settlement data for transactions occurring prior to March 31, 2009.
- (b) For each payment default that occurs in the second calendar quarter of 2011, the Default Look-Back Period will be the most recent two (2) full calendar quarters for which T+38B data are available (i.e., the third and fourth calendar quarters of 2010).
- (c) For each payment default that occurs in the third calendar quarter of 2011, the Default Look-Back Period will be the most recent three (3) full calendar quarters for which T+38B data are available (i.e., the third and fourth calendar quarters of 2010 and the first calendar quarter of 2011).
- (d) For each payment default that occurs in the fourth calendar quarter of 2011 or in any subsequent calendar quarter in which Section 11.29.17.2.1 is in effect, the Default Look-Back Period will be the most recent four (4) full calendar quarters for which T+38B data are available.
- (e) Notwithstanding any other provision in this Section 11.29.17.2.6, the following provisions will apply to each Default-Invoiced SCID for an entity that is a new Market Participant that begins to participate in the CAISO Markets following the effective date of this Section 11.29.17.2.6:



- (i) The Default-Invoiced SCID for that Market Participant will first be subject to allocation of payment default amounts under Section 11.29.17.2.1 in the second calendar quarter following the calendar quarter in which the Market Participant begins to participate in the CAISO Markets and the applicable Default Look-Back Period will be the calendar quarter in which the Market Participant began to participate in the CAISO Markets.
- (ii) For each payment default that occurs in the third calendar quarter following the calendar quarter in which the Market Participant begins to participate in the CAISO Markets, the applicable Default Look-Back Period will be the Market Participant's first two (2) calendar quarters of participation in the CAISO Markets.
- (iii) For each payment default that occurs in the fourth calendar quarter following the calendar quarter in which the Market Participant begins to participate in the CAISO Markets, the applicable Default Look-Back Period will be the Market Participant's first three (3) calendar quarters of participation in the CAISO Markets.
- (iv) For each payment default that occurs in any subsequent calendar quarter in which Section 11.29.17.2.1 is in effect, the applicable Default Look-Back Period will be determined as set forth in Section 11.29.17.2.6(d).

**11.29.17.2.7 Provision of Information on Percentage Shares**

Beginning with the second calendar quarter of 2011, the CAISO will provide to each Default-Invoiced SCID on or about the first Business Day of the applicable calendar quarter its own percentage share of any payment default amount that may be allocated in the calendar quarter to which the percentage share applies, subject to adjustment to account for any non-paying CAISO Debtor, based on application of the methodology for allocating payment default amounts set forth in Section 11.29.17.2.1 to the applicable Default Look-Back Period. In calculating the percentage share for each Default-Invoiced SCID pursuant to this Section 11.29.17.2.7, the CAISO will

determine the percentage share for each full calendar quarter and will average those quarterly percentage shares.

**11.29.17.2.8 Scope of Payment Default Allocation Provisions**

The provisions of Section 11.29.17.2 will not apply to the allocation of payment default amounts and interest accrued thereon that are associated with Trading Days that occurred prior to April 1, 2009.

**11.29.17.32 Payment of Defaulted Receivables.**

Collections of defaulted receivables (other than Interest) will either be distributed pro rata to CAISO Creditors for the month of default or, if the defaulted receivables are allocated pursuant to Section 11.29.17.2, collections of the defaulted receivables will be distributed to Default-Invoiced SCIDs in proportion to their allocated shares of the defaulted receivables as calculated pursuant to Section 11.29.17.2.1 or to SCIDs in proportion to their allocated shares of the defaulted receivables as calculated pursuant to Section 11.29.17.2.2, as applicable, for the month in which the payment default occurred.

- (1) If the total collected in that closing related to the past due Trading Month is less than \$5,000, then the funds shall accumulate in an interest-bearing account until either: (a) the account exceeds \$5,000, (b) there have been no distributions from the account for six months, or (c) all defaults for that month have been collected exclusive of any bankruptcy defaults.
- (2) If all CAISO Creditors for that Trading Month have been paid, then the proceeds will either be paid pro rata to the CAISO Creditors in the oldest unpaid Trading Month, or, if the defaulted receivables are allocated pursuant to Section 11.29.17.2, the proceeds will be paid to the Default-Invoiced SCIDs in proportion to their allocated shares of the default amount, as calculated pursuant to Section 11.29.17.2.1 or will be paid to the SCIDs in proportion to their allocated shares of the default amount as calculated pursuant to Section 11.29.17.2.2, as applicable, in the oldest unpaid Trading Month.

- (3) This provision is also applicable to the amounts netted against CAISO Creditor balances related to prior defaulted receivables.
- (4) All defaulted receivables disbursed under this Section shall be disbursed in accordance with the timeframes set forth in Section 11.29.9.6.1.

\* \* \*

**13.5.3.2 Residual Amounts.**

Any awards for which the CAISO is unable to identify Market Participants in accordance with 13.5.3.1 and any award amounts that the CAISO is unable to collect that are not covered by Section 11.29.17.1 or Section 11.29.17.2 will be allocated to all Scheduling Coordinators through neutrality adjustments.

\* \* \*

**CAISO Tariff Appendix A**

**Master Definitions Supplement**

\* \* \*

<b><u>Default Election</u></b>	<u>An election made pursuant to Section 11.29.17.2.4.</u>
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\* \* \*

<b><u>Default-Invoiced SCID(s)</u></b>	<u>The SCID(s) selected by an entity pursuant to the Default Election procedures set forth in Section 11.29.17.2.4 that are to be allocated a portion of any payment default amount pursuant to Section 11.29.17.2.1.</u>
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\* \* \*

<b><u>Default Look-Back Period</u></b>	<u>The retrospective time period determined pursuant to Section 11.29.17.2.6 for the purpose of allocating payment default amounts.</u>
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\* \* \*

<b><u>Real-Time Interchange Import Schedule</u></b>	<u>A final agreed-upon schedule of Energy to be transferred to the CAISO Balancing Authority Area from another Balancing Authority Area based on agreed-upon size (megawatts), start and end time, beginning and ending</u>
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ramp times and rate, and type required for delivery and receipt of power and Energy between the source and sink Balancing Authority Areas involved in the transaction.

**Attachment 2 to  
Settlement Agreement**

**UNITED STATES OF AMERICA**  
**FEDERAL ENERGY REGULATORY COMMISSION**

Calpine Corporation, Citigroup Energy Inc., Dynegy Power Marketing Inc., J.P. Morgan Ventures Energy Corporation, BE CA, LLC, Mirant Energy Trading, LLC, NRG Energy, Inc., Powerex Corporation, and RRI Energy, Inc.

v.

California Independent System Operator Corporation

Docket No. EL09-62-000

**PROTECTIVE ORDER**

**(Issued )**

1. This Protective Order shall govern the use of all Protected Materials provided by the California Independent System Operator Corporation ("ISO") to any Participant in accordance with Section 2.5 of the Settlement Agreement filed in the above-referenced docket on October 1, 2010. This Protective Order shall be in effect from the effective date of the Settlement Agreement and shall remain in effect unless the Settlement Agreement terminates or until specifically modified or terminated by the Chief Administrative Law Judge or the Federal Energy Regulatory Commission (Commission).

2. This Protective Order applies to Protected Materials provided to any Participant in accordance with terms of Section 2.5 of the Settlement Agreement, which are provided for purposes of monitoring the settlement embodied in the Settlement Agreement.

3. Definitions -- For purposes of this Order:

(a) The term "Participant" shall mean a Participant as defined in 18 CFR § 385.102(b) with the additional limitation, consistent with the Settlement Agreement, that Participants who are parties shall be limited to those who are parties as of October 1, 2010.

(b) (1) The term "Protected Materials" means the (i) aggregate quarterly default loss allocation percentages by groupings to be provided by the ISO to Participants on or about the first Business Day of each calendar quarter beginning with the second quarter of 2011, as described in Section 2.5.1 of the Settlement Agreement, and (ii) the ISO's

determination of which market participants are in each grouping, as described in Section 2.5.1.1 of the Settlement Agreement.

(2) The term "Notes of Protected Materials" means memoranda, handwritten notes, or any other form of information (including electronic form) which copies or discloses materials described in Paragraph 3(b)(1). Notes of Protected Materials are subject to the same restrictions provided in this order for Protected Materials except as specifically provided in this order.

(3) Protected Materials shall not include (A) any information or document that has been filed with and accepted into the public files of the Commission, or contained in the public files of any other federal or state agency, or any federal or state court, unless the information or document has been determined to be protected by such agency or court, or (B) information that is public knowledge, or which becomes public knowledge, other than through disclosure in violation of this Protective Order, or (C) any information or document labeled as "Non-Internet Public" by a Participant, in accordance with Paragraph 30 of FERC Order No. 630, FERC Stats. & Regs. ¶ 31,140. Protected Materials do include any information or document contained in the files of the Commission that has been designated as Critical Energy Infrastructure Information.

(c) The term "Non-Disclosure Certificate" shall mean the certificate annexed hereto by which Participants who have been granted access to Protected Materials shall certify their understanding that such access to Protected Materials is provided pursuant to the terms and restrictions of this Protective Order, and that such Participants have read the Protective Order and agree to be bound by it. All Non-Disclosure Certificates shall be served on all parties on the official service list maintained by the Secretary in this proceeding.

(d) The term "Reviewing Representative" shall mean a person who has signed a Non-Disclosure Certificate and who is:

- (1) Commission Trial Staff designated as such in this proceeding;
- (2) an attorney who has made an appearance in this proceeding for a Participant;
- (3) attorneys, paralegals, and other employees associated for purposes of this case with an attorney described in Subparagraph (2);
- (4) a person designated as a Reviewing Representative by order of the Chief Administrative Law Judge or the Commission; or

(5) employees or other representatives of Participants with significant responsibility for monitoring the settlement embodied in the Settlement Agreement.

4. Protected Materials shall be made available under the terms of this Protective Order only to Participants and only through their Reviewing Representatives as provided in Paragraphs 7-9.
5. Protected Materials shall remain available to Participants pursuant to the terms of the Settlement Agreement. To the extent Protected Materials are not returned or destroyed, they shall remain subject to the Protective Order.
6. All Protected Materials shall be maintained by the Participant in a secure place. Access to those materials shall be limited to those Reviewing Representatives specifically authorized pursuant to Paragraphs 8-9. The Secretary shall place any Protected Materials filed with the Commission in a non-public file. By placing such documents in a non-public file, the Commission is not making a determination of any claim of privilege. The Commission retains the right to make determinations regarding any claim of privilege and the discretion to release information necessary to carry out its jurisdictional responsibilities. For documents submitted to Commission Trial Staff ("Staff"), Staff shall follow the notification procedures of 18 CFR § 388.112 before making public any Protected Materials.
7. Protected Materials shall be treated as confidential by each Participant and by the Reviewing Representative in accordance with the certificate executed pursuant to Paragraph 9. Protected Materials shall not be used except as necessary for monitoring the settlement embodied in the Settlement Agreement, nor shall they be disclosed in any manner to any person except a Reviewing Representative who is engaged in the conduct of this proceeding and who needs to know the information in order to carry out that person's responsibilities in this proceeding. Reviewing Representatives may make copies of Protected Materials, but such copies become Protected Materials. Reviewing Representatives may make notes of Protected Materials, which shall be treated as Notes of Protected Materials if they disclose the contents of Protected Materials.
8. (a) If a Reviewing Representative's scope of employment includes the marketing of energy, the direct supervision of any employee or employees whose duties include the marketing of energy, the provision of consulting services to any person whose duties include the marketing of energy, or the direct supervision of any employee or employees whose duties include the marketing of energy, such



Reviewing Representative may not use information contained in any Protected Materials obtained through this proceeding to give any Participant or any competitor of any Participant a commercial advantage.

(b) In the event that a Participant wishes to designate as a Reviewing Representative a person not described in Paragraph 3(d) above, the Participant shall submit the disputed designation to the Chief Administrative Law Judge for resolution.

9. (a) A Reviewing Representative shall not be permitted to inspect, participate in discussions regarding, or otherwise be permitted access to Protected Materials pursuant to this Protective Order unless that Reviewing Representative has first executed a Non-Disclosure Certificate; provided, that if an attorney qualified as a Reviewing Representative has executed such a certificate, the paralegals, secretarial and clerical personnel under the attorney's instruction, supervision, or control need not do so. A copy of each Non-Disclosure Certificate shall be provided to counsel for the ISO prior to disclosure of any Protected Material to that Reviewing Representative.

(b) Attorneys qualified as Reviewing Representatives are responsible for ensuring that persons under their supervision or control comply with this order.

10. Any Reviewing Representative may disclose Protected Materials to any other Reviewing Representative as long as the disclosing Reviewing Representative and the receiving Reviewing Representative both have executed a Non-Disclosure Certificate. In the event that any Reviewing Representative to whom the Protected Materials are disclosed ceases to be engaged in these proceedings, or is employed or retained for a position whose occupant is not qualified to be a Reviewing Representative under Paragraph 3(d), access to Protected Materials by that person shall be terminated. Even if no longer engaged in monitoring the settlement embodied in the Settlement Agreement, every person who has executed a Non-Disclosure Certificate shall continue to be bound by the provisions of this Protective Order and the certification.

11. The Chief Administrative Law Judge shall resolve any disputes arising under this Protective Order. Prior to presenting any dispute under this Protective Order to the Chief Administrative Law Judge, the parties to the dispute shall use their best efforts to resolve it. Any participant that contests the designation of materials as protected shall notify the party that provided the protected materials by specifying in writing the materials the designation of which is contested. This Protective Order shall automatically cease to apply to such materials five (5) business days after the notification is made unless the designator, within said 5-day period, files a motion with the Chief Administrative Law Judge, with

supporting affidavits, demonstrating that the materials should continue to be protected. In any challenge to the designation of materials as protected, the burden of proof shall be on the participant seeking protection. The procedures described above shall not apply to protected materials designated by a Participant as Critical Energy Infrastructure Information. Materials so designated shall remain protected and subject to the provisions of this Protective Order, unless a Participant requests and obtains a determination from the Commission's Critical Energy Infrastructure Information Coordinator that such materials need not remain protected.

12. Nothing in this Protective Order shall be construed as precluding any Participant from objecting to the use of Protected Materials on any legal grounds.

13. Nothing in this Protective Order shall preclude any Participant from requesting the Chief Administrative Law Judge, the Commission, or any other body having appropriate authority, to find that this Protective Order should not apply to all or any materials previously designated as Protected Materials pursuant to this Protective Order. The Chief Administrative Law Judge may alter or amend this Protective Order as circumstances warrant at any time during the period that the Settlement Agreement is in effect.

14. Each party governed by this Protective Order has the right to seek changes in it as appropriate from the Chief Administrative Law Judge or the Commission.

15. Nothing in this Protective Order shall be deemed to preclude any Participant from independently seeking through discovery in any administrative or judicial proceeding information or materials produced in this proceeding under this Protective Order.

16. None of the Participants waives the right to pursue any other legal or equitable remedies that may be available in the event of actual or anticipated disclosure of Protected Materials.

17. The contents of Protected Materials or any other form of information that copies or discloses Protected Materials shall not be disclosed to anyone other than in accordance with this Protective Order and shall be used only in connection with this proceeding. Any violation of this Protective Order and of any Non-Disclosure Certificate executed hereunder shall constitute a violation of an order of the Commission.

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**Chief Administrative Law Judge**

**UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION**

Calpine Corporation, Citigroup Energy Inc., Dynegy Power Marketing Inc., J.P. Morgan Ventures Energy Corporation, BECA, LLC, Mirant Energy Trading, LLC, NRG Energy, Inc., Powerex Corporation, and RRI Energy, Inc.

v.

California Independent System Operator Corporation

Docket No. EL09-62-000

**NON-DISCLOSURE CERTIFICATE**

I hereby certify my understanding that access to Protected Materials is provided to me pursuant to the terms and restrictions of the Protective Order in this proceeding, that I have been given a copy of and have read the Protective Order, and that I agree to be bound by it. I understand that the contents of the Protected Materials, any notes or other memoranda, or any other form of information that copies or discloses Protected Materials shall not be disclosed to anyone other than in accordance with that Protective Order. I acknowledge that a violation of this certificate constitutes a violation of an order of the Federal Energy Regulatory Commission.

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Representing: \_\_\_\_\_  
Date: \_\_\_\_\_

**ATTACHMENT B –  
EXPLANATORY STATEMENT**

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

Calpine Corporation, Citigroup Energy Inc., Dynegy Power Marketing Inc., J.P. Morgan Ventures Energy Corporation, BECA, LLC, Mirant Energy Trading, LLC, NRG Energy, Inc., Powerex Corporation, and RRI Energy, Inc.

v.

California Independent System Operator Corporation

Docket No. EL09-62-000

**EXPLANATORY STATEMENT IN SUPPORT OF  
SETTLEMENT AGREEMENT**

Pursuant to 18 C.F.R. § 385.602(c)(1)(ii), the California Independent System Operator Corporation (“ISO” or “CAISO”), on behalf of itself and the other Settling Parties listed in the Settlement Agreement (“Settlement Agreement”) submitted herewith, submits this Explanatory Statement in support of the Settlement Agreement.<sup>1</sup>

**I. BACKGROUND**

From the start of ISO operations in 1998, the ISO tariff included provisions stating that the ISO will allocate financial losses associated with defaults in its markets (“default losses”) to net CAISO Creditors only. On June 30, 2009, a subset of what are now the Settling Parties (“Complainants”) filed a complaint to replace those ISO tariff

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<sup>1</sup> This Explanatory Statement is not intended to alter any of the terms of the Settlement Agreement. In the event of any conflict between this Explanatory Statement and the terms of the Settlement Agreement, the Settlement Agreement will govern. Unless otherwise stated, capitalized terms will have the meanings provided, or incorporated by reference, in the Settlement Agreement.

provisions with a proposed alternative default loss rule. On September 23, 2009, the Federal Energy Regulatory Commission (“Commission”) issued an order finding that the ISO’s existing default loss rule is unjust and unreasonable and that the Complainants had not satisfied their burden to demonstrate that their proposed alternative is just and reasonable. Accordingly, the Commission established hearing and settlement judge procedures in this proceeding.<sup>2</sup>

Pursuant to the Commission’s order, Judge Judith A. Dowd was named settlement judge in the proceeding. In-person or telephonic settlement conferences were held on October 14 and December 7, 2009, and on February 22, March 1, March 16, April 7, May 4, May 5, June 9, June 30, July 27, August 9, August 27, and September 7, 2010. These settlement conferences and related discussions among the active participants in this proceeding resulted in the Settlement Agreement submitted herewith.

## **II. OVERVIEW OF SETTLEMENT AGREEMENT TERMS**

Pursuant to Section 2.1 of the Settlement Agreement, all issues in this proceeding will be fully resolved by acceptance by the Commission of the Revised Default Allocation Tariff Provisions that are included in Attachment 1 to the Settlement Agreement. The Revised Default Allocation Tariff Provisions are described below.

As set forth in existing provisions of Section 11.29.17.1 of the ISO tariff, if it is not possible to clear the CAISO Clearing Account on a Payment Date because of an insufficiency of funds available in the CAISO Reserve Account or by enforcing any

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<sup>2</sup> *California Independent System Operator Corp.*, 128 FERC ¶ 61,271 (2009).

Financial Security provided by a defaulting CAISO Debtor, the CAISO shall (1) first pay in full every CAISO Creditor whose net amounts receivable on the relevant Payment Date is less than \$5,000; and (2) second, reduce payments to all remaining CAISO Creditors proportionately to the net amounts payable to them on the relevant Payment Date to the extent necessary to clear the CAISO Clearing Account through a shortfall allocation. Under the Revised Default Allocation Tariff Provisions, this is only the first step in addressing payment defaults. Each payment default amount allocated to CAISO Creditors through the shortfall allocation provisions of Section 11.29.17.1 that remains unpaid will be allocated as set forth in new Section 11.29.17.2 of the ISO tariff.

New Section 11.29.17.2.1 of the ISO tariff provides that each payment default amount that remains unpaid by the defaulting CAISO Debtor will be allocated on the next practicable Invoices to Default-Invoiced SCIDs<sup>3</sup> as determined pursuant to new Section 11.29.17.2.7 of the ISO tariff, excluding the CAISO Debtor that has not paid the payment default amount, using the following methodology:

- Twenty (20) percent of the payment default amount will be allocated to the Default-Invoiced SCIDs in proportion to the net amounts that were payable in each applicable calendar quarter (and averaged within such calendar quarter) to the Default-Invoiced SCIDs over the applicable Default Look-Back Periods.<sup>4</sup>
- Thirty (30) percent of the payment default amount will be allocated to the Default-Invoiced SCIDs in proportion to the sum of absolute values of the dollar amounts

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<sup>3</sup> “Default-Invoiced SCID” is a new term introduced in the Revised Default Allocation Tariff Provisions and discussed later in this Explanatory Statement. “SCID” is short for “Scheduling Coordinator ID Code.”

<sup>4</sup> “Default Look-Back Period” is a new term introduced in the Revised Default Allocation Tariff Provisions and discussed later in this Explanatory Statement.



shown on their Invoices payable or receivable in each applicable calendar quarter (and averaged within such calendar quarter) over the applicable Default Look-Back Periods, after excluding dollar amounts shown on the Invoices for Grid Management Charges, Reliability Must-Run services, and Wheeling Access Charges, and after excluding the billing of Access Charges and the payment of Transmission Revenue Requirements to Participating Transmission Owners.

- Fifty (50) percent of the payment default amount will be allocated to the Default-Invoiced SCIDs in proportion to the largest of the following five (5) amounts calculated in MWh for every month and averaged within each applicable calendar quarter for each Default-Invoiced SCID over the applicable Default Look-Back Periods:

- (1) Cleared Day-Ahead Schedules to supply Energy, plus Day-Ahead Ancillary Services Awards and qualified Self-Provided Ancillary Services, plus scheduled supply obligation for Ancillary Services (including imports but excluding RUC Schedules), plus Virtual Supply Awards;
- (2) Metered Generation, plus Real-Time Interchange Import Schedules, plus Real-Time Ancillary Services Awards and qualified Self-Provided Ancillary Services, plus HASP Ancillary Services Awards and qualified Self-Provided Ancillary Services, plus Real-Time supply obligation for Ancillary Services;
- (3) Cleared Day-Ahead Schedules for Demand (including Demand served by Pumped-Storage Hydro Units and exports) multiplied by

one-hundred three (103) percent to reflect Transmission Losses, plus scheduled demand obligation for Ancillary Services, plus Virtual Demand Awards;

(4) Metered Load multiplied by one-hundred three (103) percent to reflect Transmission Losses, plus Real-Time Interchange Export Schedules, plus Real-Time demand obligation for Ancillary Services; or

(5) The greater of (A) the quantity of CRRs acquired in CRR Auctions or transferred through the Secondary Registration System (excluding CRRs acquired in CRR Allocations) or (B) Inter-SC Trades of Energy.

The ISO will require some time to compile the data and perform the calculations necessary to implement the new default allocation methodology. In recognition of this fact, the Settlement Agreement provides for an Interim De Minimis Allocation methodology. New Section 11.29.17.2.2 of the ISO tariff states that, during the time period from the effective date of Section 11.29.17.2.2 (which is Trading Date April 1, 2009 pursuant to the Settlement Agreement) until April 1, 2011, cumulative payment default amounts that are equal to or less than \$1,000 multiplied by the total number of SCIDs that have recorded market activity in the most recent Trading Month will be allocated equally among all such SCIDs. As used in this provision, recorded market activity in the most recent Trading Month is intended to be consistent with the level of activity that would trigger a monthly SCID Grid Management Charge.

New Section 11.29.17.2.3 of the ISO tariff provides for the payment of Interest on

each allocated payment default amount by the Default-Invoiced SCIDs or SCIDs that did not share in the shortfall allocation to CAISO Creditors pursuant to Section 11.27.17.1 to the Default-Invoiced SCIDs or SCIDs that did share in such a shortfall allocation, for the period between the date of the shortfall allocation and the date payments are due for the Invoices on which the allocation of the payment default amount appears.

In some circumstances, the Revised Default Allocation Tariff Provisions allow market participants that are Scheduling Coordinators, CRR Holders, Candidate CRR Holders, or Participating Transmission Owners to elect to consolidate data among multiple related SCIDs. New Section 11.29.17.2.4 of the ISO tariff sets forth the process and timing for such market participants to choose either Default Election option 1 or option 2. For such market participants that choose Default Election option 1, the methodology for allocating payment default amounts set forth in Section 11.29.17.2.1 will apply to each SCID on an SCID-by-SCID basis, and each SCID will be a Default-Invoiced SCID. In order to qualify to choose Default Election option 2, all of the SCIDs of an entity with one or more effective contracts with the CAISO must meet criteria for one of three categories of SCIDs specified in Section 11.29.17.2.4. If Default Election option 2 is selected, default amounts set forth in Section 11.29.17.2.1 will apply to all SCIDs created for use under all of the effective contracts with the ISO based on a consolidation of data for all such SCIDs. The Interim De Minimis Allocation methodology, however, will only apply on an SCID-by-SCID basis even for market participants electing Default Election option 2.

New Section 11.29.17.2.5 of the ISO tariff provides that, each time that a market

participant changes its Default Election, the calculation of allocated shares of payment default amounts pursuant to the market participant's prior Default Election will be phased out over the four calendar quarters after the change in Default Election goes into effect, and the calculation of allocated shares of payment default amounts pursuant to the market participant's new Default Election will be phased in over those four calendar quarters.

New Section 11.29.17.2.6 of the ISO tariff defines the Default Look-Back Period, which is used to allocate payment default amounts pursuant to Section 11.29.17.2.1. This provision allows for a ramping up of the calendar quarters to be used in applying the new default allocation methodology to give the ISO time to compile the data and perform the calculations necessary to implement the new methodology.

New Section 11.29.17.2.7 of the ISO tariff requires the ISO, beginning with the second calendar quarter of 2011, to provide each Default-Invoiced SCID with its own percentage share of any payment default amount that may be allocated in the calendar quarter to which the percentage share applies. This provision will provide Market Participants with information they can use to assess their risk of default exposure in the ISO's markets.

New Section 11.29.17.2.8 of the ISO tariff states that the provisions of Section 11.29.17.2 will not apply to the allocation of payment default amounts and interest accrued thereon that are associated with Trading Days that occurred prior to April 1, 2009. Under this provision, the Revised Default Allocation Tariff Provisions will only apply to transactions under the ISO's new market design, implemented on a day-ahead basis on March 31, 2009 for Trading Day April 1, 2009. To the extent resettlements are

needed for Trading Days under the ISO's old market design, such resettlements will be reflected on separate invoices which will not be governed by the Revised Default Allocation Tariff Provisions.

The Settlement Agreement adds the new defined terms Default Look-Back Period, Default-Invoiced SCID, Real-Time Interchange Import Schedule, and Default Election to Appendix A to the ISO tariff. The Settlement Agreement also contains changes to various provisions in Sections 11 and 13 to make those provisions consistent with the new ISO tariff language described above.

Upon implementation of the Revised Default Allocation Tariff Provisions, Market Participants that subsequently exit the ISO markets will continue to be responsible for allocated shares of payment default amounts to the extent required by the ISO tariff as modified by the Revised Default Allocation Tariff Provisions. Because the relevant Default Look-Back Period will continue to include calendar quarters with data for an exiting Market Participant after the Market Participant stops participating in the ISO's market, that Market Participant will remain responsible for defaults after the Market Participant exits the market.

Pursuant to Section 2.1 of the Settlement Agreement, the Settling Parties request that the Commission issue an order in this proceeding accepting the Settlement Agreement without modification or condition and accepting the ISO's commitment under the terms and conditions of the Settlement Agreement to submit a compliance filing that contains the Revised Default Allocation Tariff Provisions. The ISO will submit a compliance filing to revise the ISO tariff to incorporate the Revised Default Allocation Tariff Provisions within fifteen (15) calendar days after the Commission issues an order

accepting the Settlement Agreement.

Section 2.2 of the Settlement Agreement states that the Revised Default Allocation Tariff Provisions will go into effect as of the April 1, 2009 Trading Day (including Day-Ahead transactions on March 31, 2009), and will expire as of the fifth anniversary of the date the Commission issues an order accepting the Settlement Agreement, unless the effectiveness of the Revised Default Allocation Tariff Provisions is continued as described in Section 2.3 of the Settlement Agreement.

Section 2.3 of the Settlement Agreement states that, no later than six (6) months prior to the fifth anniversary of the date the Commission issues an order accepting the Settlement Agreement, the ISO will begin a stakeholder process to examine whether there is a need to modify or replace the Revised Default Allocation Tariff Provisions. Upon conclusion of the stakeholder process, and at least three (3) months prior to the fifth anniversary of the date the Commission issues an order accepting the Settlement Agreement, the ISO will make a filing with the Commission pursuant to Section 205 of the Federal Power Act ("FPA") either to request that the effectiveness of the Revised Default Allocation Tariff Provisions be continued or to file amendments to the ISO tariff to modify or replace them. Nothing in the Settlement Agreement is intended to prejudice the ISO's FPA Section 205 filing required by Section 2.3 of the Settlement Agreement or prejudice any party's rights regarding such filing.

Pursuant to Section 2.4 of the Settlement Agreement, no party in Docket No. EL09-62 as of October 1, 2010 (*i.e.*, the day the Settlement Agreement was filed) may exercise any otherwise available rights under Section 206 of the FPA as to the Revised Default Allocation Tariff Provisions for a period of three (3) years from the date that the

Commission issues an order accepting the Settlement Agreement, unless market-wide, payment default amounts that cumulatively exceed thirty-five million dollars (\$35,000,000) are allocated pursuant to the Revised Default Allocation Tariff Provisions, in which event all rights of the above-referenced parties under Section 206 of the FPA will be fully restored prospectively as of the day after the thirty-five million dollar threshold is exceeded.

Pursuant to Section 2.5 of the Settlement Agreement, the Settling Parties request that, as part of an order in this proceeding accepting the Settlement Agreement, the Commission accept the Non-Disclosure Certificate contained in Attachment 2 to the Settlement Agreement (“NDC”).

Section 2.5.1 of the Settlement Agreement states that each party in Docket No. EL09-62 as of October 1, 2010 that has executed the NDC accepted by the Commission will be entitled to receive aggregate quarterly default loss allocation percentages by groupings determined by the ISO (“Aggregate Information”), for purposes of monitoring the settlement embodied in the Settlement Agreement.

Pursuant to Section 2.5.1.1 of the Settlement Agreement, the ISO will provide the Aggregate Information using groupings of Market Participants to be determined by the ISO with at least three members, such groupings at a minimum to include the following categories: investor-owned utilities, municipalities, suppliers, and marketers/importers. The ISO will provide to the parties in Docket No. EL09-62 as of October 1, 2010 that have executed the NDC its determination of which Market Participants are in each grouping.

Sections 2.5.1.2, 2.5.1.3, and 2.5.1.4 of the Settlement Agreement provide the schedule by which the ISO will provide this Aggregate Information.

Section 2.5.2 of the Settlement Agreement states that nothing in Section 2.5 of the Settlement Agreement is intended to preclude any party from obtaining this information in future proceedings through the discovery process. Should the stakeholder Credit Working Group formed in accordance with Section 2.6 of the Settlement Agreement recommend, after stakeholder input, that Aggregate Information subject to the NDC should be released by the ISO in any form in any public forum, the ISO must first obtain approval of the CAISO Governing Board for such disclosure. Once the CAISO Governing Board has approved such disclosure, the ISO will be authorized to release Aggregate Information subject to the NDC in a public forum without modification to the NDC or the Settlement Agreement.

Pursuant to Section 2.6 of the Settlement Agreement, the ISO will organize a stakeholder working group within ninety (90) days of a Commission order approving the Settlement Agreement that will meet at least quarterly to consider enhancements to the ISO's credit practices ("Credit Working Group"), including additional credit risk data to be included in the periodic public reports on credit issues to the CAISO Governing Board.

Section 2.7 of the Settlement Agreement states that, following issuance by the Commission of an order approving the Settlement Agreement, the Settling Parties will take all actions reasonably necessary to effectuate the Settlement Agreement.



### **III. ADDITIONAL INFORMATION**

#### **A. What are the issues underlying the settlement and what are the major implications?**

The factual and procedural background of this proceeding, the issues underlying this proceeding, and the major implications of this proceeding have been summarized in Sections I and II above. The Settlement Agreement expressly states that it is a negotiated settlement, that its terms have no precedential value, set no precedent regarding future rates, and that the parties retain or relinquish their rights under Sections 205 and 206 of the FPA as set forth in the Settlement Agreement. The Settlement Agreement resolves all issues in Docket No. EL09-62-000.

#### **B. Do any of the issues raise policy implications?**

The Settlement Agreement furthers the broad public interest favoring settlements.<sup>5</sup> Beyond that, the Settlement Agreement does not raise policy implications.

#### **C. Will other pending cases be affected?**

The Settling Parties do not believe that the Settlement Agreement affects any other pending cases.

#### **D. Does the settlement involve issues of first impression, or are there any previous reversals on the issues involved?**

The Settlement Agreement involves no issues of first impression, and there are no previous reversals on the issues involved in this proceeding.

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<sup>5</sup> See *Southern Union Gas Co. v. FERC*, 840 F.2d 964, 971 (D.C. Cir. 1988).

**E. Is the proceeding subject to the just and reasonable standard or is there *Mobile-Sierra* language making it the standard, i.e., what are the applicable standards of review?**

The Settlement Agreement provides that the just and reasonable standard of review will apply to modifications to the Settlement Agreement.

**IV. DUE DATES FOR COMMENTS**

In accordance with Rule 602, initial comments on the Settlement Agreement are due October 21, 2010, and reply comments are due November 1, 2010.

**V. CONCLUSION**

The Settlement Agreement would fully resolve all of the issues raised in Docket No. EL09-62. Commission approval of the Settlement Agreement will save the Settling Parties and the Commission the expense and risks associated with continued litigation.

For these reasons, the Settling Parties therefore respectfully request that the Commission approve the Settlement Agreement without modification.

Respectfully submitted,

/s/ Sidney M. Davies

Sidney M. Davies

Assistant General Counsel for the  
California Independent System  
Operator Corporation, on behalf of the  
Settling Parties

Dated: October 1, 2010

## CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing documents upon all of the parties listed on the official service list for the above-referenced proceeding, and upon all entities with effective Scheduling Coordinator Service Agreements under the California Independent System Operator Corporation tariff, 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 Folsom, California this 1<sup>st</sup> day of October, 2010.

/s/ Jane Ostapovich  
Jane Ostapovich