

# WESTERN ENERGY MARKETS WORKING GROUP FORM OF MRTU SETTLEMENT AMENDMENT

Version 1.0: October 23, 2008

A drafting committee of individuals working for companies actively trading energy in the Western U.S. energy markets has prepared this Amendment for market participants to use with their physical energy trading agreements to address changes in California Independent System Operator (“CAISO”) settlement procedures that Market Redesign and Technology Upgrade program (“MRTU”) will bring about. MRTU is currently to go into effect on or after February 1, 2009.<sup>1</sup> Parties may sign this Amendment<sup>2</sup> prior to MRTU implementation, and its terms provide that it will become effective once MRTU is implemented.

Under MRTU, when Parties settle a transaction through CAISO (in MRTU terms, when bilateral trades have been economically bid or self-scheduled in CAISO by different Scheduling Coordinators (“SCs”)), the Parties are not just “settling” with CAISO, they are in fact “contracting” with CAISO. This is why CAISO will issue a payment to the seller of the energy, and will issue an invoice to the buyer of the energy. Because the Parties’ contracts with each other require them to pay or bill each other, the addition of this MRTU CAISO settlement system means that a seller could be paid twice: once by CAISO and once by the buyer, and that a buyer could be billed twice, once by CAISO and once by the seller.

Some market participants were concerned that after MRTU implementation, offsetting this double payment/double billing would require them to enter into separate financial swaps

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<sup>1</sup> MRTU References: Bidding and Settlement of Bilateral Energy Transactions In the MRTU Integrated Forward Market: <http://www.caiso.com/18c3/18c3ddc68d10.pdf>  
Bilateral Energy Transaction 101 Training Course: <http://www.caiso.com/1824/18249c7b59690.html>  
Bidding and Settlement of Bilateral Energy Transactions: <http://www.caiso.com/18c3/18c3ddc68d10.pdf>  
MRTU and Contracts: <http://www.caiso.com/1fd4/1fd47c5b5a920.pdf>  
Inter-SC Trades Under MRTU Tutorial and Rule Set v.1.3: <http://www.caiso.com/1788/1788ed5721f70.pdf>  
Inter-SC Trade Comparison (Current vs. MRTU): <http://www.caiso.com/1b71/1b717c1d34460.pdf>  
Introduction to Inter-SC Trades: <http://www.caiso.com/1b6f/1b6f6a541bfc0.pdf>  
MRTU Training: [http://www.caiso.com/mrtu300/300\\_InterScTrades.html](http://www.caiso.com/mrtu300/300_InterScTrades.html)  
MRTU Implementation workshop: <http://www.caiso.com/1f94/1f94b89e145d0.pdf>  
Settlement Statement Types: <http://www.caiso.com/1fab/1fab8145743f0.pdf>  
Payment Acceleration Project: <http://www.caiso.com/docs/2004/10/25/200410251705294309.pdf>  
MRTU Homestretch Newsletter: <http://www.caiso.com/1c7b/1c7bae328da0.html>  
Settlements & Market Clearing User Group: <http://www.caiso.com/docs/2004/05/11/2004051110959025865.html>  
MRTU Fast Facts: <http://www.caiso.com/docs/2005/02/22/2005022208374426276.html>  
MRTU Recent Documents: <http://www.caiso.com/mrtu/recentdocs.html>

<sup>2</sup> The working group considered the concept of a WSPP-type adoption, with an Amendment effective between entities that have “signed on” to it without having to enter into individual amendments for each contract and each counterparty, as well as the concept of a published “Protocol” that would be incorporated by reference as the same might be changed from time to time, as the marketplace adjusted to MRTU and SIBR’s actual functioning post-MRTU implementation, but opted for the annotated form of amendment provided here.

(sometimes called “contracts for differences”<sup>3</sup>) with their counterparties. Though parties can use financial swaps, there is no requirement to do so.<sup>4</sup>

Instead, market participants can use this Amendment with existing power purchase or master trading agreements to provide that they will bilaterally offset the double payment by paying as normal under their physical trading agreement and using the CAISO Inter-Scheduling Coordinator Trade (“IST”) as a separate settlement, or, if the IST is not used, for whatever reason, by other provisions of this Amendment. Parties may tailor this amendment for their individual needs and use it, for example, with transaction confirmations, the EEI Agreement, the WSPP Agreement (under its §32.10), and long-term, resource-specific power purchase or tolling agreements. The Working Group may update this form of Amendment from time to time as market participants develop experience with MRTU.

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<sup>3</sup> Use of the term “financial swap” should be preferred to the term “contract for differences,” since a “contract for differences” is a description of criminal conduct in anti-bucketshop legislation in California and many other jurisdictions. *See, e.g.*, California Corporations Code §29008(c). Although such laws have been federally preempted in many circumstances by the Commodity Futures Modernization Act of 2000, best usage is to describe lawful conduct in lawful terms, e.g., a fire department’s “controlled burn” is not “arson.”

<sup>4</sup> The confusion arose from the wording of certain CAISO training charts comparing pre-MRTU to MRTU settlements; for example, one chart labeled *Inter-SC Trades of Energy Charge Types 6301 & 6351, MRTU Training*, Version 1.1e, page 7, states that Inter SC trades are “strictly financial transactions and are used solely for settlement purposes.” However, see §3.5 of the BPM, which more clearly states, “CAISO facilitates Inter-SC Trades (ISTs) of Energy, Ancillary Services, and IFM Load Uplift Obligation through the settlement process. ISTs do not have any impact on the scheduling or dispatch of resources. They affect only the financial settlement process. Only trades that SCs want to sell through CAISO are submitted in the IST process. All other trades are settled bilaterally between individual SCs.”

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Attachment: The MRTU Amendment

## MRTU AMENDMENT

### 1. Effect.

1.1 Adoption by Parties. This MRTU Amendment (“Amendment”) is entered into this \_\_\_ day of \_\_\_\_\_, 2008 by and between the entities named on the signature page (each a “Party” and collectively the “Parties”) and amends the following agreements (herein called the “Agreement”): [*modify, as applicable:*]

[the EEI Agreement between the Parties dated \_\_\_\_\_, and any Transaction for IST-enabled Product thereunder;]

[any Transaction for IST-enabled Product between the Parties transacted under the WSPP Agreement,<sup>5</sup> and]

[that certain [*insert name of agreement*] dated \_\_\_\_\_ between the Parties].

1.2 Effectiveness. This Amendment shall be effective between the Parties immediately upon CAISO’s implementation of MRTU with SIBR operational (“MRTU Implementation”).

1.3 Application. This Amendment applies only to SC-to-SC Transactions in IST-enabled Products within CAISO. This Amendment does not apply to a Transaction in which Buyer is its own SC and acts as SC for the Seller under the same SC identification number.<sup>6</sup> A Transaction with a Delivery Point at an Intertie as defined in the Tariff<sup>7</sup> intended by the Parties to be imported into CAISO shall be either (a)<sup>8</sup> delivered to a point outside CASIO with Buyer as an importing SC, in the case of an IST-enabled Product being imported into California, without use of Section 3 of this Amendment, or (b) at the option of the Parties upon mutual agreement, (i) cleared in the appropriate CAISO market the EZ Gen Hub or LAP mutually agreed upon by the Parties, and Buyer and Seller will perform pursuant to this Amendment or (ii) financially settled between the Parties outside CAISO.<sup>9</sup>

2. Definitions. Initially capitalized terms used and not otherwise defined herein are defined in the Tariff, or, if not defined in the Tariff, the BPM. In this Amendment, in addition to

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<sup>5</sup> This is written as an amendment to WSPP Transactions, as opposed to the WSPP Agreement, since the WSPP Agreement is not a bilateral agreement subject to agreement between two of its members, but a specific transaction under the WSPP Agreement is bilateral. Sometimes WSPP members enter into master confirmation agreements between each other amending the WSPP as it is in effect between them; parties may tailor this Amendment to use with such a master confirmation agreement.

<sup>6</sup> Since Buyer will be paid by the CAISO for the injection, “double payment” is already going to Buyer.

<sup>7</sup> CAISO Pnode mapping document (Based on Full Network Model Release DB23) published for the market simulation process, with Pnode data for generators, loads, and aggregation points such as Trading Hubs and LAPs, is available at <http://www.caiso.com/1ff6/1ff69abe2c5a0.xls>.

<sup>8</sup> One can’t use IST at an import point Pnode (often called a scheduling point). Only if one is completely out of the CAISO may one do (a). Buyer's schedule from an intertie to load would be a separate transaction. Note that this puts all CAISO risk on Buyer.

<sup>9</sup> This is intended to provide alternatives for existing Transactions. If Parties enter into a Transaction after the effective date of this Amendment between them they should expressly state, either in their Transaction or in this Amendment, which of the alternatives they wish to use.

the definitions in Section 1.1:

“Amendment” means this MRTU Amendment.

“BPM” means CAISO MRTU Business Practice Manuals.<sup>10</sup>

“Buyer” means the buying SC in a Transaction.<sup>11</sup>

“Contract Price” is defined in the Agreement.<sup>12</sup>

“Contract Quantity” in the case of the WSPP Agreement is defined in the Agreement, and in the case of the EEI Agreement, means “Quantity” as that term is defined in the EEI Agreement.<sup>13</sup>

“CPT” and “Converted Physical Trade” are defined in the Tariff.<sup>14</sup>

“Converted Quantity” is defined in the Tariff.

“DA-LMP” means Day Ahead LMP.

“Delivery Point” is defined in the Agreement.<sup>15</sup>

“EEI Agreement” means the Edison Electric Institute Master Power Purchase & Sale

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<sup>10</sup> Available at <http://www.caiso.com/17ba/17baa8bc1ce20.html>.

<sup>11</sup> In the case of a long-term PPA, the parties can replace this, and the definition of Seller, with the applicable party that has this role under their contract.

<sup>12</sup> If this Amendment is to a WSPP Transaction or EEI Agreement, this definition is accurate, and may be omitted altogether. However, it is included here to alert parties to power purchase agreements that may use a different defined term that they should replace “defined in the Agreement” with “means xxxx in the Agreement”, with xxxx being the Agreement’s defined term equivalent for Contract Price. The Contract Price is the price at which the Parties have agreed in a Transaction to purchase and sell Energy Product in any particularly scheduled delivery and can be a fixed, floating or index-based price, or another price as agreed by the Parties in a Transaction. A floating or index-based price could be the price that CAISO publishes for a particular Energy Product as an EZ Gen Hub Price, at a Pnode or at a LAP.

<sup>13</sup> See preceding footnote.

<sup>14</sup> For example, in an IST executed at a generator Pnode with the generator acting as Seller, if a Seller pursuant to a 50MW IST accepted by CAISO only received an award for 45MW by CAISO, the uncovered 5MW portion of the IST will be “converted” by CAISO to be settled at the EZ Gen Hub LMP to which the generator is mapped. This is known as a CPT. There are two key points: (1) A “schedule” is the physical transaction with the CAISO – this cannot be converted. Only an IST can be converted. (2) It is not the delivery of energy that is relevant for CPTs, it is the award in the relevant market. If the example provided occurred in the IFM with the generator receiving a 45MW award the CPT would occur. If the generator subsequently received a RT award for an additional 25MW, then the energy “delivered” would be 70MW. However, this does not cure the CPT.

<sup>15</sup> Note that there may be a functional change of Delivery Points with the implementation of MRTU, which is not addressed by this Amendment. See, for example, the Edison Electric Institute optional SP15/NP15 Delivery Point Definition language available at: [http://www.eei.org/industry\\_issues/legal\\_and\\_business\\_practices/master\\_contract/product.htm](http://www.eei.org/industry_issues/legal_and_business_practices/master_contract/product.htm).

Agreement as in effect between the Parties, if any.

“EZ Gen Hub Price” is the LMP at the EZ Gen Hub.

“IFM” means “Integrated Forward Market” as defined in the Tariff.<sup>16</sup>

“IST” means “Inter-Scheduling Coordinator Trade” as defined in the Tariff.

“IST-enabled Product” means any SC-to-SC traded product for which an IST can be submitted and for which CAISO will make a payment or issue an invoice,<sup>17</sup> including Energy, Tier I IFM Bid Cost Recovery Obligations<sup>18</sup> and Ancillary Service Obligation<sup>19</sup> trades, as each are defined in the Tariff.

“IST Delivery Point” means the Delivery Point if such Delivery Point is a Pnode, a LAP, an EZ Gen Hub, or another point recognized by CAISO to be a valid trading point for ISTs; otherwise the IST Delivery Point shall be a point recognized by CAISO to be a valid trading point for ISTs as mutually agreed upon by the Parties.<sup>20</sup>

“IST Delivery Point Price” means the LMP at the IST Delivery Point.

“LAP” and “Load Aggregation Point” are defined in the Tariff.

“LAP Price” means the LMP at the LAP.

“LMP” and “Locational Marginal Pricing” are defined in the Tariff,<sup>21</sup> the “DA-LMP”

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<sup>16</sup> This is the CAISO mechanism for committing generation and determining generation, load and inertia awards and LMPs in the Day-Ahead timeframe.

<sup>17</sup> Negative pricing would produce an invoice. If a negative Pnode Price occurs, a generator can still generate, accept a negative price, and transfer that negative price to Buyer through an IST. The drafting committee decided against attempting to provide rules respecting when Sellers should simply not generate rather than generate and submit an IST for a negative amount, leaving it to the parties in any particular transaction to decide how to implement based upon their particular circumstances.

<sup>18</sup> Entities with contracts for physical energy delivery in the CAISO may need to resolve whether the commodity traded between them is both the energy and the Load Uplift Obligation; i.e., not addressed here is whether, for example, WSPP Schedule B or Schedule C transactions include the Load Uplift Obligation with the energy at the particular Delivery Point.

<sup>19</sup> A firm import can incur a “negative Ancillary Service Obligation” (i.e., a credit) for operating reserves; e.g. 2.5% spin at spin user rate and 3.5% non-spin at non-spin user rate. This treatment may be changed in connection with implementation of the Western Electricity Coordinating Council Bal-002 Contingency Reserve Standard. A natural position is not necessary to execute these trades – one does not need a “negative obligation” to execute this. One can simply speculate on the price and sell a “credit” that one doesn’t have. This is also not MRTU specific, but exists in the current CAISO market.

<sup>20</sup> The Parties should expressly specify in the Transaction or in this Amendment an IST Delivery Point that is recognized by the CAISO as a valid trading point for ISTs.

<sup>21</sup> The Tariff definition is: “The marginal Cost of serving the next increment of Demand at that Pnode consistent with existing transmission facility constraints and the performance characteristics of resources.” The

Price” is the Day Ahead Price and “RT-LMP Price” is the Real-Time Price.<sup>22</sup>

“MRTU” means CAISO’s Market Redesign and Technology Upgrade program.

“MRTU Implementation” is defined in Section 1.2.

“Pnode” is defined in the Tariff.

“Pnode Price” means the LMP at the Pnode.

“SC” means “Scheduling Coordinator” as defined in the Tariff.

“Seller” means the selling SC in a Transaction.

“SIBR” means the CAISO Scheduling Infrastructure and Business Rules system.

“Tariff” means the CAISO MRTU Tariff.

“Transaction” means an agreement between the Parties under the Agreement to purchase and sell an IST-enabled Product.

“WSPP Agreement” means the WSPP Agreement published by WSPP, Inc., formerly known as the Western Systems Power Pool.

### 3. IST Settlements and Submissions.

3.1 Purpose.<sup>23</sup> The Parties adopt this Amendment to address what would otherwise be a double payment to the Seller and a double charge to Buyer through CAISO settlement of

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elements of LMP are System Marginal Cost of Energy (which is the same system-wide), the Marginal Cost of Congestion, and the Marginal Cost of Losses.

<sup>22</sup> CAISO training on Day Ahead v. Real Time: <http://www.caiso.com/1fef/1fef9a555a7d0.pdf>.

<sup>23</sup> This Amendment sets forth how the Parties will settle amounts owed between them after MRTU Implementation. Before MRTU Implementation, the Parties directly bill and pay each other for physical IST-enabled Product deliveries. After MRTU Implementation, Parties will continue to do so, but CAISO will in addition, as provided in the Tariff, directly pay Sellers and bill Buyers. This CAISO settlement process results in a double payment or a double charge. For example, under MRTU, if Seller delivers physical IST-enabled Product to a Pnode at which an IST may be transacted through CAISO, CAISO will pay Seller the Pnode Price, and if Buyer is taking delivery of physical IST-enabled Product at the LAP, CAISO will charge Buyer the LAP Price. Pursuant to a Transaction, a Seller may agree with a Buyer to buy and sell this same IST-enabled Product for the Contract Price at the Delivery Point (in this example, the Pnode). In this instance, Seller will receive payment from Buyer pursuant to a Transaction, and payment from the CAISO at the Pnode under MRTU. Buyer will pay Seller pursuant to a Transaction, and will be charged by CAISO at the LAP under MRTU. The resulting double payment received by Seller may be reversed through the use of the CAISO IST settlement process. Through the combination of its Agreement with Seller and the IST process, Buyer will pay the Contract Price to Seller and the LAP Price to CAISO, and CAISO will pay Buyer (instead of Seller) the Pnode Price. The CAISO will also charge Seller the LMP at the Pnode. The net effect is Buyer will pay the Contract Price to Seller, and Buyer is also out the difference between the Pnode Price that it has received through the IST process and the LAP Price that it has paid the CAISO. The costs of transmission losses and congestion are reflected in that difference. Note that is through the fact of an IST, not by or

Transactions in IST-enabled Products, and to ensure that the amounts each have agreed to pay or receive for IST-enabled Product remain the Contract Price, and that the payments each makes to the other under the Agreement shall be properly adjusted for payments made to or received by CAISO.

3.2 ISTs. Each Party will settle Transactions by making the payments to each other required in the Agreement.<sup>24</sup> Each Party also will submit, before the applicable IST deadline, ISTs to SIBR that match the terms of the Transactions to produce a final economic result between them that is fully consistent with the Agreement and the Contract Price by causing CAISO to pay<sup>25</sup> the IST Delivery Point Price to Buyer, unless the Parties have otherwise agreed in writing not to use ISTs for any particular Transaction. Each Party further agrees that it will not abuse SIBR or ISTs in order to double bill or double collect for the same IST-enabled Product, but will rather seek to use SIBR and ISTs in order to accomplish the essential intent and purpose of this Amendment as set forth in Section 3.1. To the extent any elections may be made as part of an IST submission, each Party covenants to make those elections that would best fulfill the purpose of this Amendment. Each Party will submit ISTs to CAISO to provide that the IST Delivery Point is the delivery point under the IST.

3.3 Payment Validation. Each Party shall within one business day following Transaction flow date verify that both Parties have submitted ISTs on SIBR and that such IST has been validated by SIBR.<sup>26</sup> If SIBR does not validate or accept an IST, the Parties shall within three business days of Transaction flow date meet in person or telephonically and in good faith to determine why. If CAISO does not accept an IST in a circumstance where it should according to the Tariff, both Parties will either settle the Transaction pursuant to Section 3.4 or as is otherwise appropriate to accomplish the purposes of this Amendment or jointly bring the matter to the attention of CAISO to be rectified pursuant to appropriate proceedings. If the Parties are unable to cause CAISO to rectify the matter before payment for the Transaction is due under the Agreement, they will settle the Transaction pursuant to Section 3.4 or as is otherwise appropriate to accomplish the purposes of this Amendment.

3.4 Settlements if IST Is Not Used or Available. If the Parties do not use the IST for a Transaction in an IST-enabled Product, whether through their own action or inaction or the unavailability of the IST process due to a force majeure event, change to or suspension of the

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with information on an IST, that parties allocate responsibility for congestion costs and transmission losses.

<sup>24</sup> Conceptualize two settlements- first is the Agreement settlement process- a current settlement within the terms of the applicable Agreement. Second, at a different time, as provided by the CAISO settlement calendar would be the separate settlement through the CAISO IST process. These terms set forth how to net out that second CAISO payment stream.

<sup>25</sup> It is not just a “reversal” of the CAISO payment. Buyer cannot receive energy at the Delivery Point but instead receives the value of energy through the CAISO payment of the applicable LMP. Seller can receive a payment only at the Nnode/Scheduling Point, whereas the contractual Delivery Point might transfer the value of energy to Buyer at another point, e.g. the EZ Gen Hub.

<sup>26</sup> The Parties interface with CAISO’s SIBR system, on which each can see if both Parties have submitted ISTs on SIBR and if those ISTs have been validated. SIBR is supposed to indicate unmatched ISTs in time for counterparties to make corrections. A second phase of validation will occur after the awards have been determined by CAISO.



Tariff or other event, or the CAISO IST process otherwise does not function correctly, this Amendment nevertheless applies, and subject to Sections 3.5 and 3.6, Seller will pay Buyer on the due date in the Agreement for payment for the Transaction the Contract Quantity times the IST Delivery Point Price.<sup>27</sup> If the IST Delivery Point Price is negative, Buyer shall pay Seller the Contract Quantity times the absolute value of the IST Delivery Point Price. If after payment is made as provided in this Section 3.4 the Transaction does become subject to the IST process, the payments made pursuant to this Section shall be refunded as appropriate to accomplish the purposes of this Amendment.

3.5 Conversion to EZ Gen Hub. If a Transaction has been converted by CAISO in whole or in part from one that did not settle at an EZ Gen Hub to one that does, then to the extent of such conversion, (a) if the Pnode Price is greater than the EZ Gen Hub Price, Seller shall pay Buyer (x) the Converted Quantity times (y) (i) Pnode Price minus (ii) EZ Gen Hub Price and (b) if the EZ Gen Hub Price is greater than the LMP Price, Buyer shall pay Seller (x) the Converted Quantity times (y) (i) EZ Gen Hub Price minus (ii) Pnode Price.

3.6 Failures to Perform. The provisions of this Amendment apply notwithstanding any provision in the Agreement that provides a remedy or specifies that damages are an “exclusive remedy” for an unexcused failure of a Party to schedule, purchase, sell, deliver or receive all or part of an IST-enabled Product pursuant to a Transaction.<sup>28</sup> A Party’s unexcused failure to perform that results in there being no IST,<sup>29</sup> shall constitute a failure to deliver or receive, as applicable, and shall be addressed pursuant to the Agreement.<sup>30</sup>

### 3.7 Payment Adjustments.

#### 3.7.1 CAISO Subsequent Adjustments. If the prices used to calculate the

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<sup>27</sup> This is to reverse the effect of the CAISO double payment as if the IST process had been used. Seller bears CAISO payment risk. When ISTs are submitted properly Buyer exchanges counterparty credit and performance risk for CAISO risk. The Seller’s risk of CAISO performance is transferred to Buyer by the IST. If a Seller consistently fails to submit an IST, requiring recourse to this provision, the Seller is in fact keeping a CAISO risk that it could have otherwise transferred to Buyer by performing. Parties should evaluate for themselves if their Agreement provides a right for adequate assurances if a Buyer consistently fails to submit an IST, taking for itself the shorter term, but probably greater, Seller credit risk over the longer-to-pay, but probably lesser, CAISO risk.

<sup>28</sup> Such as Article Four of the EEI Agreement and Section 21.3 of the WSPP Agreement. This Amendment overrides the underlying Agreement when it comes to paying the amounts due under this Amendment, even if there are liquidated damages specified as the “exclusive” remedy; additionally, amounts are owed for non-performance even if that non-performance is not a failure to “schedule” or “deliver” as that term is used in the Agreement.

<sup>29</sup> And so the IST-enabled Product does not flow or is not delivered. Failure to submit a “schedule” backing a physical IST might result in a CPT, but that is addressed in Section 3.5. Once submitted by both Parties and accepted by the CAISO, the IST will be paid, whether or not the Seller generates. Seller will be assessed Uninstructed Deviation Penalties, which are not deducted from IST payment, so need not be addressed in this Amendment. These are not set off against the IST- the IST will pay. Settlements/Billing for Uninstructed Deviation Penalties: <http://www.caiso.com/1b6a/1b6aa6ae147b0.doc>.

<sup>30</sup> Generally, the Agreement will provide for cover damages or liquidated damages and a party would be expected to undertake commercially reasonable efforts to mitigate damages. So, typically, if the day-ahead schedule fails and the performing party must transact in real-time, the difference between the real-time and the contract prices at the delivery point would constitute cover damages owed by the non-performing party.

amount paid by Seller pursuant to Section 3.4, or any other amount paid or payable by CAISO pursuant to an IST is subsequently changed by CAISO, the Parties shall within five days of notice thereof reconcile the payments made by each Party to the other hereunder to account for such adjustment.

3.7.2 Sales Tax. If CAISO collects sales or use tax on amounts exchanged through ISTs, such tax will be allocated between the Parties as provided in the Agreement as if a sales or use tax had been levied at the Delivery Point.

3.8 Exculpation. Neither Party shall be liable to the other for any delay caused by such other Party's failure to provide correct bank or funds transfer information to CAISO.

4. Potential Amendment to Governing Law. If the Agreement provides (a) that it is governed by the laws of a jurisdiction other than California,<sup>31</sup> and (b) that the internal laws of states other than the governing law state, or the principles of conflicts of laws, may not be used or referred to,<sup>32</sup> then such clause is amended to provide that to the extent necessary to implement this Amendment, the internal laws of the state of California will apply to any actions or inactions of CAISO, and to any actions or inactions of any Party to, with or against CAISO.<sup>33</sup>

5. No Other Amendment. Except as specifically set forth herein, nothing herein amends or cancels the Agreement. This Amendment is not a "conversion" product and is in no way intended to change the allocation of the economic benefits and burdens of the Parties; rather, the Parties enter into this Amendment in order to preserve them. Nothing in the Amendment changes Delivery Points or Contract Prices. Nothing in this Amendment changes the IST-enabled Product traded between the Parties. Headings, introductory commentary, usage notes and footnotes, if any, are included for convenience only and are not to be considered in interpretation. Each term hereof is to be construed simply according to its fair meaning and not strictly for or against either Party. No term hereof is to be construed against a Party on the

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<sup>31</sup> For example, the WSPF Agreement is governed by Utah law (although California municipalities and agencies sometimes enter into master confirmation agreements changing the governing law to California), and the EEI Agreement is governed by New York law.

<sup>32</sup> This is provided by both the EEI Agreement (§10.6) and the WSPF Agreement (§24), so without this Section, the contract would require the odd result of applying New York or Utah law to questions of performance of entities acting in California on a California computer system.

<sup>33</sup> Users should be aware that electricity is a "good" under California, but not under the law of certain other states, most notably New York. A "good" brings Article Two of the Uniform Commercial Code (UCC) to fill in any "gaps" that the parties may have left in their contract for its purchase and sale. Parties cannot "opt out" of the UCC if they are transacting in goods- the subject of the transaction is either a UCC "good" or it isn't; since electricity has been found to be a good in current California decisions (see *In re Pacific Gas and Electric Co.*, 2004 U.S. Dist. LEXIS 22023 (N.D. Cal., Sept. 30, 2004) (UCC § 2-609 implied into QF PPA because electricity is a good); *In re Pacific Gas and Electric Co.*, 271 B.R. 626, 638-640, 47 U.C.C. Rep. Serv. 2d 598 (N.D. Cal. 2002); see also *Searles Valley Mineral Ops. v. State Bd. Of Equalization*, 160 Cal. App. 4th 514 (2008)), all of UCC Article Two is implied, except to the extent contract terms are different from what is in the UCC; note this is not opting out, but filling in gaps so the UCC doesn't have to. Parties may not necessarily be able to avoid the effect of this by agreeing that the law of a state where electricity is not a good will apply without reference to principles of conflicts of laws, since courts may (a) imply UCC principles into contract interpretation anyway, e.g., *Norcon Power Partners, L.P. v. Niagara Mohawk Power Corp.*, 92 N.Y.2d 458, (1998) or (b) apply other state's laws on the subject anyway, e.g. *Enron Power Marketing, Inc. v. Nevada Power Co.*, 55 U.C.C. Rep. Serv. 2d 31 (S.D.N.Y. 2004).

ground that the Party is the author of that provision.

IN WITNESS WHEREOF, the Parties have executed this Amendment by their duly authorized officers or agents as of the date first above written.

\_\_\_\_\_  
[Party 1]

\_\_\_\_\_  
[Party 2]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_