

October 3, 2008

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

**Re: California Independent System Operator Corporation
Filing to Comply with Order No. 890-B,
Docket Nos. OA08-12-____ and OA08-113-____**

Dear Secretary Bose:

The California Independent System Operator Corporation (“CAISO”) ¹ hereby submits this filing to comply with Order No. 890-B.² The instant filing explains how the directives in Order No. 890-B are inapplicable to the CAISO’s Tariff implementing the CAISO’s Market Redesign and Technology Upgrade and explains why the services provided by the CAISO are consistent with or superior to the *pro forma* Open Access Transmission Tariff (“OATT”), as revised by Order No. 890-B.

I. BACKGROUND AND OVERVIEW

In Order No. 890, the Commission issued directives and revisions to the *pro forma* OATT with the stated goal of preventing undue discrimination and preference in the provision of transmission services. On October 11, 2007, the CAISO submitted a filing in Docket No. OA08-12-000 to comply with the non-transmission planning requirements of Order No. 890 (“October 11 Filing”). On December 21, 2007, the CAISO submitted a filing in Docket No. OA08-62-000 to

¹ Capitalized terms not otherwise defined herein have the same meanings as set forth in the CAISO’s Market Redesign and Technology Upgrade (“MRTU”) Tariff on file with the Commission or the existing CAISO Tariff, as applicable.

² *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 Fed. Reg. 12,266 (March 15, 2007), FERC Stats. & Regs. ¶ 31, 241 (2007) (“Order No. 890”), *order on reh’g*, Order No. 890-A, 73 Fed. Reg. 2984 (Jan. 16, 2008), FERC Stats. & Regs. ¶ 31,261 (2008) (“Order No. 890-A”), *order on reh’g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008) (“Order No. 890-B”), *reh’g pending*.

comply with the transmission planning requirements of Order No. 890 (“December 21 Filing”).

On December 28, 2007, the Commission issued Order No. 890-A, in which it affirmed its basic determinations in Order No. 890 and granted rehearing and clarification regarding certain revisions to its regulations and the *pro forma* OATT to ensure that transmission services are provided on a basis that is just, reasonable, and not unduly discriminatory. On April 15, 2008, the CAISO made its filing to comply with the directives of Order No. 890-A (“April 15 Filing”). The CAISO refers the Commission to the discussion in the CAISO’s October 11, December 21, and April 15 Filings with regard to all issues related to Order Nos. 890 and 890-A other than those addressed in the instant filing to comply with the requirements of Order No. 890-B.

On May 16, 2008, the Commission issued an order accepting the CAISO’s October 11 Filing, subject to modification (“May 16 Order”).³ Of particular relevance to the instant filing, the Commission accepted the CAISO’s demonstration in the October 11 Filing that the changes to the non-rate terms and conditions of the *pro forma* OATT adopted in Order No. 890 were not applicable to the CAISO’s transmission service model, and that the CAISO’s transmission service model was consistent with or superior to the *pro forma* OATT as revised in Order No. 890.⁴ Accordingly, the Commission did not require the CAISO to make any changes to its tariff in this regard. The Commission also found that the CAISO’s market mechanism for handling imbalances under MRTU was consistent with or superior to the tiered approach for imbalances adopted in Order No. 890.⁵ As such, the Commission did not require the CAISO to incorporate into its Tariff the Generator and Energy Imbalance provisions adopted in Order No. 890. The CAISO submitted a filing to comply with the May 16 Order on June 16, 2008.

³ *California Independent System Operator Corp.*, 123 FERC ¶ 61,180 (2008).

⁴ See *id.* at PP 7-9, 18. The May 16 Order recognized that the CAISO’s compliance demonstration in the October 11 Filing (for all compliance elements except definitions and matters related to available transmission capacity (“ATC”)) was based on the service model and tariff provisions that will be in place on the effective date of MRTU implementation, and the Commission “accept[ed] the CAISO’s compliance filing as it relates to the MRTU tariff, as modified, to become effective as of the date of MRTU implementation.” *Id.* at P 18. MRTU implementation is targeted for February 1, 2009. Consistent with the CAISO’s October 11 Filing and the May 16 Order, the CAISO’s compliance demonstration herein is based on the service model and tariff provisions that will be in place under MRTU. The CAISO requests that the Commission grant leave and any necessary waivers to permit the CAISO to demonstrate compliance with Order No. 890-B based on the terms of its MRTU Tariff.

⁵ *Id.* at P 25.

On June 19, 2008, the Commission issued an order on the CAISO's filing to comply with the transmission planning elements of Order No. 890.⁶ The Commission accepted the CAISO's December 21 Filing subject to a further compliance filing. By notice issued September 3, 2008, the Commission granted an extension of time to allow the CAISO to submit a filing to comply with the June 19 Order by October 31, 2008.

On June 23, 2008, the Commission issued Order No. 890-B, in which it largely affirmed its basic determinations in Order Nos. 890 and 890-A and granted limited rehearing and clarification to address certain specific matters raised on rehearing. The Commission made a few revisions to the *pro forma* OATT in order to implement these determinations, but none of the revisions "disturb[ed] the fundamental nature of the reforms adopted in Order No. 890."⁷ The Commission directed Regional Transmission Organization ("RTO") and Independent System Operator ("ISO") transmission service providers to submit filings pursuant to Section 206 of the Federal Power Act that contain the revised non-rate terms and conditions of the *pro forma* OATT as set forth in Appendix B of Order No. 890-B, within 90 days of publication of the order in the *Federal Register*.

As the CAISO stated in the October 11 Filing, December 21 Filing, and April 15 Filing, it supports the Commission's goal of preventing undue discrimination and preference with regard to the provision of transmission services. The CAISO continues to support that goal with regard to Order No. 890-B. However, as the CAISO explained in those previous filings, most of the requirements of Order Nos. 890 and 890-A are not applicable to the CAISO's service model under the MRTU Tariff (or under the existing CAISO Tariff). Likewise, as explained below, the handful of revisions that the Commission adopted in Order No. 890-B are not applicable to the MRTU Tariff (or to the existing CAISO Tariff). With respect to these Order No. 890-B compliance obligations, the CAISO submits that the terms of the Commission-approved MRTU Tariff are consistent with or superior to the *pro forma* OATT, as revised by Order No. 890-B.⁸

The specific reforms adopted in Order Nos. 890, 890-A, and 890-B simply are not applicable to, or are incompatible with, the CAISO's service model, which differs significantly from the *pro forma* OATT service model. As explained in

⁶ *California Independent System Operator Corp.*, 123 FERC ¶ 61,283 (2008).

⁷ Order No. 890-B at P 6.

⁸ As indicated *supra*, consistent with the October 11 Filing and the May 16 Order, the CAISO's compliance demonstration is based on the service model and tariff provisions under MRTU.

Section II below, which demonstrates the CAISO's compliance with the directives in Order No. 890-B, the CAISO does not offer traditional Order No. 888 network and point-to-point transmission services; the CAISO offers only a single "daily" transmission service that is available to all eligible customers. There are no firm, long-term transmission reservations of capacity under the CAISO's service model and, as such, no rollover rights. Likewise, there is no formal application process for transmission service. Instead, Scheduling Coordinators are able to schedule service on a daily basis. Further, in contrast to traditional transmission services provided under the *pro forma* OATT, customers that schedule transmission service under the MRTU Tariff need not formally designate network resources.

Likewise, the specific provisions promulgated in Order No. 890, *et seq.* regarding energy and generator imbalances are not compatible with the CAISO's energy markets based on Locational Marginal Prices ("LMPs") because energy and generator imbalances are resolved through market mechanisms. Because the modifications to the *pro forma* OATT transmission services that the Commission adopted in Order No. 890-B do not apply to the CAISO's service model, the Commission should not require the CAISO to adopt them. Accordingly, for the reasons set forth herein, the CAISO does not believe that any changes to the MRTU Tariff are necessary or appropriate in order to comply with Order No. 890-B.

II. COMPLIANCE DEMONSTRATION

A. Rollover Rights

In Order No. 890-A, the Commission amended Section 2.2 of the *pro forma* OATT to require customers rolling over service to match the longest competing request. On rehearing, one petitioner noted that the Commission's reference to the longest-term competing request could require a rollover customer taking long-term service to match the length of any competing long-term request. In Order No. 890-B, the Commission noted that under its existing precedent, there would only be one potential competitor for rollover customers seeking long-term service, *i.e.*, the first customer in the queue requesting competing service. The Commission stated that it did not intend to modify this policy and, therefore, revised the language of Section 2.2 to require customers rolling over their service to accept a contract term at least equal to a competing request.⁹

The revision promulgated in Order No. 890-B does not apply under the CAISO's service model and, as such, the CAISO should not be required to

⁹ Order No. 890-B at P 152.

incorporate such a revision into its MRTU Tariff. As the CAISO explained in its October 11 Filing (at pages 30-31) and its April 15 Filing (at pages 15-16), neither the existing CAISO Tariff nor the MRTU Tariff contain a right-of-first-refusal (“ROFR”) or rollover provision, and a ROFR provision is incompatible with the CAISO’s transmission service model both today and under MRTU. Transmission service on the CAISO grid is scheduled on a daily and hourly basis; there are no long-term reservations of capacity. Thus, the concept of contract rollover is inapplicable under the CAISO service model. The Commission has previously found that the concept of a ROFR is not compatible with the CAISO’s service model, and the Commission’s findings have been upheld by the D.C. Circuit Court of Appeals.¹⁰ Accordingly, the CAISO did not submit any tariff language to comply with the revised rollover provisions in its October 11 Filing.

In its May 16 Order, the Commission accepted the CAISO’s compliance demonstration as it pertained to rollover rights and did not require the CAISO to make any tariff revisions to implement the Order No. 890 modifications regarding rollover rights. Order No. 890-B merely revises the Section 2.2 language contained in Order No. 890-A and does not call into question the previous decisions, or the premises for such decisions, regarding the non-applicability of the rollover rights provisions to the CAISO’s service model. Because the rollover rights provisions do not apply to and are incompatible with the CAISO’s transmission service model, the CAISO, in its April 15 Filing to comply with Order No. 890-A, did not make the tariff change that the Commission has now revised in Order No. 890-B. Under these circumstances, it is both unnecessary and inappropriate for the CAISO to make the tariff change promulgated in Order No. 890-B.

B. Designation of Network Resources

In Order No. 890-B, the Commission granted rehearing and concluded that the requirement to provide an attestation supporting the designation of network resources pursuant to Sections 29.2(viii) and 30.2 of the *pro forma* OATT can be submitted at the time a resource designation is confirmed, rather than requested.¹¹ The Commission also amended Sections 1.26 and 30.4 of the *pro forma* OATT to eliminate the requirement that a reserve sharing program be approved by the Commission in order for a network customer or the transmission provider’s merchant function to use a designated network resource to meet its

¹⁰ See *Sacramento Municipal Utility District v. Pacific Gas and Electric Co., et al.*, 105 FERC ¶ 61,358 (2003), *order on reh’g*, 107 FERC ¶ 61,237 (2004), *aff’d sub nom. Sacramento Municipal Utility District v. FERC*, 428 F.3d 294 (D.C. Cir. 2005); see also *Sacramento Municipal Utility District v. FERC*, 474 F.3d 797 (D.C. Cir. 2007).

¹¹ Order No. 890-B at P 182.

reserve sharing obligations.¹² The Commission also revised Sections 29.2(viii) and 30.2 of the *pro forma* OATT to include references to the use of network resources to meet reserve sharing obligations.

The CAISO should not be required to make tariff revisions to comply with these directives. As explained in the October 11 Filing (at pages 25-27 and 33) and the April 15 Filing (at page 18), the new requirements for network service that the Commission promulgated in Order No. 890 are not applicable to the CAISO's transmission service model, and neither the existing CAISO Tariff nor the MRTU Tariff contains any of the network service provisions that the Commission has modified in Order No. 890-B. In its October 11 Filing and its April 15 Filing, the CAISO did not propose any changes to its Tariff to implement the revisions pertaining to network service that were promulgated in Order Nos. 890 and 890-A. As indicated in those filings, the CAISO does not offer a separate network service as contemplated in the *pro forma* OATT, and there is no such thing as "Network Resources" in the CAISO. Rather, each day Scheduling Coordinators schedule the supply resources necessary to serve their scheduled load and exports or to offer into the Energy market for the day. There is no need for a requirement or process to formally designate or un-designate network resources under these circumstances. In its May 16 Order, the Commission accepted the CAISO's compliance demonstration in the October 11 Filing as it pertained to the treatment of network resources and did not require the CAISO to make any tariff modifications to implement the Order No. 890 modifications regarding network service. Order No. 890-B merely revises a few network service tariff provisions to eliminate the requirement that a reserve sharing program be approved by the Commission in order for a network customer or the transmission provider's merchant function to use a designated network resource to meet its reserve sharing obligations. These minor revisions do not call into question the Commission's previous determinations that the CAISO's transmission service model – which does not include network service – is consistent with or superior to the *pro forma* OATT, and that the CAISO is not required to implement the network service tariff provisions of the *pro forma* OATT.¹³

C. Energy and Generation Imbalances

The Commission, in its discussion of Energy and Generator Imbalances in Order No. 890-B, granted rehearing of the definition of "incremental cost" as described in Schedules 4 and 9 of the *pro forma* OATT. Those schedules define

¹² *Id.* at P 215.

¹³ The Commission has previously found that the "daily" transmission service provided by the CAISO is consistent with the broad non-discrimination goals of Order No. 888 and that all customers have access to the CAISO Controlled Grid on a non-discriminatory basis. *Pacific Gas & Electric Co., et al.*, 81 FERC ¶ 61,122, at 61,435, 61,455-56 (1997).

incremental cost as “the Transmission Provider’s actual average hourly cost of the last 10 MW dispatched for any purpose.” The Commission agreed with petitioners that use of the term “e.g.” instead of “i.e.” when referring to the types of energy to be included in the incremental cost calculation better reflects the Commission’s intent to include within that calculation the last 10 MW dispatched for any purpose. The Commission revised the *pro forma* OATT accordingly.¹⁴

In its October 11 Filing (at pages 17-22) and April 15 Filing (at pages 8-11), the CAISO explained that the specific provisions of Order No. 890 and 890-A regarding charges for energy and generator imbalances are not compatible with ISO and RTO markets in general, and the CAISO’s market in particular, where energy and generator imbalances are resolved through market mechanisms. The CAISO noted that, over the past two years, the Commission has issued a series of orders conditionally accepting the provisions of the MRTU Tariff which will implement an energy market and congestion management paradigm based on LMPs.¹⁵ In its October 11 and April 15 Filings, the CAISO demonstrated that the LMP-based, two-settlement energy imbalance market and pricing structure satisfies the three generation and energy imbalance charge principles adopted in Order No. 890: (1) the charges must be based on incremental cost or some multiple thereof; (2) the charges must provide an incentive for accurate scheduling; and (3) the provisions must account for the special circumstances presented by intermittent generators and their limited ability to precisely forecast or control generation levels. In these compliance filings, the CAISO demonstrated that the CAISO’s LMP-based market and pricing structure is consistent with or superior to the specific energy and generator imbalance penalty structure adopted in Order Nos. 890 and 890-A. Under MRTU, imbalances are resolved through the optimized Real-Time Market and settled financially based on LMPs derived through that optimization. Accordingly, in its October 11 Filing and April 15 Filing, the CAISO did not submit any tariff language to comply with the directives in Order Nos. 890 and 890-A pertaining to Energy and Generator Imbalances.

In its May 16 Order, the Commission agreed with the CAISO and found as follows:

The CAISO sufficiently describes the market mechanism for imbalance energy settlement under MRTU which obviates the need

¹⁴ Order No. 890-B at P 45.

¹⁵ See *California Independent System Operator Corp.*, 116 FERC ¶ 61,274 (2006); *California Independent System Operator Corp.*, 119 FERC ¶ 61,076 (2006); *California Independent System Operator Corp.*, 119 FERC ¶ 61,313 (2007); *California Independent System Operator Corp.*, 120 FERC ¶ 61,271 (2008); *California Independent System Operator Corp.*, 122 FERC ¶ 61,271 (2008).

to develop separate imbalance energy charges based on incremental and decremental costs. We find the market mechanism is consistent with or superior to the tiered approach for imbalances adopted in the *pro forma* OATT.¹⁶

In Order No. 890-B, the Commission has merely changed an “*i.e.*” to an “*e.g.*” in Schedules 4 and 9 of the *pro forma* OATT. This extremely minor change does not undo the previous determination that the CAISO’s MRTU market mechanism for handling imbalances is consistent with or superior to the approach for imbalances adopted in the *pro forma* OATT, as modified by Order No. 890. Notably, the CAISO does not have a Schedule 4 or a Schedule 9 – or any comparable provision – in its MRTU Tariff (or in the existing CAISO Tariff). For this reason, and because such revision does not apply under the CAISO’s service model, the CAISO should not be required to incorporate such change into its MRTU Tariff.

III. COMMUNICATIONS

Communications regarding this filing should be addressed to the following individuals, whose names should be placed on the official service list established by the Secretary with respect to this submittal:

Anthony J. Ivancovich
Assistant General Counsel,
Regulatory
Beth Ann Burns,
Senior Counsel
California Independent System
Operator Corporation
151 Blue Ravine Road
Folsom, CA 95630
Tel: (916) 608-7135
Fax: (916) 608-7296
E-mail: aivancovich@caiso.com

IV. SERVICE

The CAISO has served copies of this transmittal letter, and all attachments, on all Scheduling Coordinators, the California Public Utilities Commission, the California Energy Commission, and all parties in the above-referenced dockets. In addition, the CAISO is posting this transmittal letter and all attachments on the CAISO website.

¹⁶ May 16 Order at P 25.

V. CONCLUSION

For the foregoing reasons, the Commission should accept the instant filing as satisfying the CAISO compliance obligations with respect to the directives of Order No. 890-B. To the extent any waivers are required to find that the CAISO complies with the requirements of Order No. 890-B, the CAISO requests that the Commission grant such waivers.

Respectfully submitted,

Sean A. Atkins
Bradley R. Miliauskas
Alston & Bird LLP
The Atlantic Building
950 F Street, NW
Washington, DC 20004
Tel: (202) 756-3300
Fax: (202) 654-4875

//s// Anthony J. Ivancovich
Nancy Saracino
General Counsel, Corporate Secretary
and Vice-President
Anthony J. Ivancovich
Assistant General Counsel – Regulatory
Beth Ann Burns, Senior Counsel
Anna McKenna, Counsel
California Independent System
Operator Corporation
151 Blue Ravine Road Folsom, CA
95630
Tel: (916) 351-4400
Fax: (916) 608-7296

Counsel for the
California Independent System
Operator Corporation

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon the California Public Utilities Commission, California Energy Commission, all Scheduling Coordinators, all of the parties listed on the official service list for the captioned proceedings, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure.

(18 C.F.R. § 385.2010).

Dated at Folsom, this 3rd day of October, 2008.

/s/ Anna Pascuzzo
Anna Pascuzzo