

# SWIDLER BERLIN<sup>LLP</sup>

Julia Moore  
Phone 202.295.8357  
Fax 202.424.7643  
juliamoore@swidlaw.com

The Washington Harbour  
3000 K Street, N.W., Suite 300  
Washington, D.C. 20007-5116  
Phone 202.424.7500  
Fax 202.424.7647  
www.swidlaw.com

June 6, 2005

The Honorable Magalie Roman Salas  
Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, D.C. 20426

**Re: *California Independent System Operator Corporation***  
**Docket No. ER05-\_\_\_\_-000**  
**Amendment No. 71**

Dear Secretary Salas:

Pursuant to Section 205 of the Federal Power Act, 16 U.S.C. § 824d, and Sections 35.11 and 35.13 of the regulations of the Federal Energy Regulatory Commission ("Commission"), 18 C.F.R. §§ 35.11, 35.13, the California Independent System Operator Corporation ("ISO") respectfully submits for filing an original and six copies of an amendment to the ISO Tariff ("Amendment 71").<sup>1</sup> Amendment No. 71 would modify the Tariff in the following respects:

- The addition of a provision to allow the ISO to disclose to the Commission confidential or commercially sensitive information, when requested by the Commission during the course of an investigation or otherwise, without providing notice of the request to affected Market Participants in advance of the disclosure; and
- The addition of a provision to allow the ISO to share critical operating information, system models, and planning data with other Western Electricity Coordinating Council ("WECC") Reliability Coordinators, subject to appropriate confidentiality and use restrictions.

---

<sup>1</sup> Capitalized terms not otherwise defined herein are defined in the Master Definitions Supplement, ISO Tariff Appendix A, as filed August 15, 1997, and subsequently revised.

The ISO requests that these tariff revisions be made effective immediately, as of June 7, 2005, to facilitate the rapid provision of critical information to the Commission and the WECC Reliability Coordinators during the peak season.

Revised Tariff sheets reflecting the changes proposed herein are contained in Attachment A.

## **I. THE PROPOSED AMENDMENTS**

The proposed modifications to the ISO Tariff have been approved by the ISO Board of Governors.<sup>2</sup> They are designed to facilitate market monitoring and Commission investigations, promote the reliable operation of the transmission grid, and strengthen coordination of California's electric transmission system operations with the remainder of the West.

### **A. Disclosure of Confidential or Commercially Sensitive Information to the Commission**

#### **1. Background**

Section 20.3.4 of the ISO Tariff currently provides that the ISO may disclose information that is confidential or commercially sensitive, when required by applicable laws or regulations, or in the course of administrative or judicial proceedings when required to do so. As a result, the ISO Tariff does not allow the ISO to respond to requests for confidential or commercially sensitive information by the Commission in the course of an investigation, or otherwise, without first providing notice to affected Market Participants, and subjecting the Commission's request to a possible court, or other appropriate order, enjoining disclosure.

Section 20.3.4 unnecessarily restricts the ISO's ability to provide without delay confidential or commercially sensitive information to the Commission. Because the ISO cannot respond immediately to requests for information, the usefulness and relevance of the information ultimately provided by the ISO is potentially limited. Section 20.3.4 also places unnecessary limitations on the Commission's ability to investigate -- and immediately remedy if necessary -- instances of possible gaming or market manipulation, or other violations of the Commission's Market Behavior Rules.

---

<sup>2</sup> The memo submitted to the ISO Board of Governors, dated June 1, 2005, requesting the Board's approval of the proposed amendment is contained in Attachment C.

## 2. Proposed Modification

To remedy the aforementioned concerns, the ISO proposes to add a new paragraph (c) (i) to Section 20.3.4 of the ISO Tariff to allow it to respond to the Commission's requests for confidential or commercially sensitive information, without having to notify affected market participants, provided the ISO and market participants have the opportunity to respond to requests by third parties subsequently requesting disclosure from the Commission.

To support the Commission's investigation and market monitoring functions effectively, the ISO must have the ability to disclose confidential or commercially sensitive information to the Commission, without first having to notify affected market participants. The proposed amendment will allow the ISO to respond more quickly to information requests by the Commission that require the production of confidential or commercially sensitive information and will facilitate the Commission's market monitoring efforts. As a result of the amendment, the Commission will be able to act more promptly to (1) review system events and market activities, (2) investigate potential instances of gaming violations of the Market Behavior Rules, and (3) remedy any gaming or market manipulation activity. The ISO submits that there is no legitimate basis to foreclose the ISO from disclosing confidential or commercially sensitive information to the Commission, as long as the ISO and affected market participants are given the opportunity to respond when a request has been received by the Commission to release the information to a third party.

Finally, the ISO notes that proposed Section 20.3.4 (c)(i) is consistent with tariff provisions that the Commission has approved for other independent system operators. In that regard, the other independent system operators' tariffs include a mechanism that allows them to respond to the Commission's requests for disclosure of confidential or commercially sensitive information, without first having to provide notice of the request to affected market participants. See NYISO FERC Electric Tariff, Original Volume No. 1, Original Sheet No. 373A; ISO New England, FERC Electric Tariff No. 3, Attachment D, Original Sheet No. 9417; PJM Interconnection, LLC, Third Revised Rate Schedule FERC No. 24, Substitute First Revised Sheet No. 61.

### **B. Sharing Critical Operating Information, System Models, and Planning Data with WECC Reliability Coordinators**

#### 1. Background

In the western interconnection, the ISO is one of three Reliability Coordinators. Coordination and communication with these Reliability Coordinators is fundamental to maintaining California's and the western

interconnection's reliable operation of the electric transmission system. However, the ISO's coordination and communication with other Reliability Coordinators is severely limited by the current ISO Tariff. In that regard, the ISO is presently unable to share important reliability information that is otherwise confidential or commercially sensitive (e.g., individual unit operating performance and facility outage information) with other WECC Reliability Coordinators, unless there is a legal obligation to do so. As a result, California and the entire western interconnection do not have a complete profile of regional operations and are thereby disadvantaged from a reliability standpoint.

The other two regional coordinators in the western interconnection routinely exchange information. However, the existing tariff limitation in Section 20.3.4 limits the ISO's ability to participate and reciprocate in the sharing of information. This in turn can hinder reliability efforts, such as the creation of a west-wide model, which would provide a real-time state of the grid analysis of the entire western interconnection. Better coordination, as well as timely and beneficial communication, will result if the ISO is permitted to join other WECC Reliability Coordinators in sharing critical operating information, system models, and planning data.

## 2. Proposed Modification

The ISO believes that, in order to promote reliable grid operations for both California and the Western Interconnection in Summer 2005 and beyond, the ISO must be able to share critical operating information, system models, and planning data with other WECC Reliability Coordinators. Accordingly, the ISO proposes to add a new paragraph (c) (ii) to Section 20.3.4 of the ISO Tariff to allow it to share critical operating information, system models, and planning data with other WECC Reliability Coordinators, subject to appropriate confidentiality and use restrictions.

Management of emergency operations, security analysis and planning of next day operations, and coordination of transmission loading relief procedures will likely improve as a result of the proposed amendment. The amendment will ensure that the three Reliability Coordinators in the western interconnection are "looking at everything" that could impact the transmission system in California and the West. Moreover, the proposed amendment will allow the ISO to contribute to the development of a west-wide model, which will benefit California and the entire western interconnection.

There is no reasonable basis to prevent the ISO from sharing information with WECC Reliability Coordinators, so long as the information is exchanged subject to the appropriate confidentiality and use restrictions. The ISO proposes that each recipient execute the Western Electricity Coordinating Council Confidentiality Agreement for Electric System Data, or are subject to similar

confidentiality requirements. In no circumstance will the information be submitted by the ISO absent proper confidentiality protections.

## **II. EFFECTIVE DATE**

The ISO respectfully requests that the Commission approve the proposed Tariff revisions effective June 7, 2005. It is important that the new tariff provisions be in place this summer to promote market monitoring, reliability efforts, and western grid coordination during the peak season.

## **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:

Charles F. Robinson  
Anthony J. Ivancovich  
Beth Ann Burns  
Stacie L. Ford  
The California Independent System  
Operator Corporation  
151 Blue Ravine Road  
Folsom, CA 95630  
Tel: (916) 351-4400  
Fax: (916) 608-7296

J. Phillip Jordan  
Julia Moore  
Swidler Berlin LLP  
3000 K Street, N.W., Suite 300  
Washington, D.C. 20007  
Tel: (202) 424-7500  
Fax: (202) 424-7643

## **IV. SERVICE**

The ISO has served copies of this transmittal letter, and all attachments, on the California Public Utilities Commission, the California Energy Commission, the California Electricity Oversight Board, and all parties with effective Scheduling Coordinator Service Agreements under the ISO Tariff. In addition, the ISO is posting this transmittal letter and all attachments on the ISO Home Page.

**V. ATTACHMENTS**

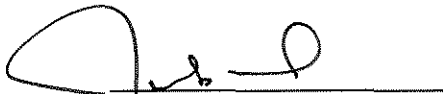
The following documents, in addition to this letter, support this filing:

- |              |   |
|--------------|---|
| Attachment A | Revised Tariff sheets for disclosing confidential information to the Commission and sharing information with WECC Reliability Coordinators  |
| Attachment B | Black-lined Tariff provisions showing the additional proposed provisions for disclosing confidential information to the Commission and sharing information with WECC Reliability Coordinators |
| Attachment C | June 1, 2005 memo to ISO Board of Governors   |
| Attachment D | Proposed Notice of Filing of Amendment 71 to the ISO Tariff   |

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.

Please feel free to contact the undersigned if you have any questions concerning this matter.

Respectfully submitted,



Charles F. Robinson  
Anthony J. Ivancovich  
Beth Ann Burns  
Stacie L. Ford  
The California Independent System  
Operator Corporation  
151 Blue Ravine Road  
Folsom, CA 95630  
Tel: (916) 351-4400  
Fax: (916) 608-7296

JJ Phillip Jordan  
Julia Moore  
Swidler Berlin LLP  
3000 K Street, N.W., Suite 300  
Washington, D.C. 20007  
Tel: (202) 424-7500  
Fax: (202) 424-7643

Enclosures

## ATTACHMENT A

law. The ISO shall cooperate with the affected Market Participant to obtain proprietary or confidential treatment of confidential information by the person to whom such information is disclosed prior to any such disclosure.

- (c) The ISO may disclose confidential or commercially sensitive information, without notice to an affected Market Participant, in the following circumstances:
- (i) If the FERC, or its staff, during the course of an investigation or otherwise, requests information that is confidential or commercially sensitive. In providing the information to FERC or its staff, the ISO shall take action consistent with 18 C.F.R. §§ 1b.20 and 388.112, and request that the information be treated as confidential and non-public by the FERC and its staff and that the information be withheld from public disclosure. The ISO shall notify an affected Market Participant within a reasonable time after the ISO is notified by FERC or its staff that a request for disclosure of, or decision to disclose, the confidential or commercially sensitive information has been received, at which time the ISO and the affected Market Participant may respond before such information would be made public; or
  - (ii) In order to maintain reliable operation of the ISO Control Area, the ISO may share critical operating information, system models, and planning data with other WECC Reliability Coordinators, who have executed the Western Electricity Coordinating Council Confidentiality Agreement for Electric System Data, or are subject to similar confidentiality requirements; or
  - (iii) In order to maintain reliable operation of the ISO Control Area, the ISO may share individual Generating Unit Outage information with the operations engineering and/or the outage coordination division(s) of other Control Area



operators, Participating TOs, MSS Operators and other transmission system operators engaged in the operation and maintenance of the electric supply system whose system is significantly affected by the Generating Unit and who have executed the Western Electricity Coordinating Council Confidentiality Agreement for Electric System Data.

**20.4 Staffing and Training To Meet Obligations.**

The ISO shall engage sufficient staff to perform its obligations under this ISO Tariff in a satisfactory manner consistent with Good Utility Practice. The ISO shall make its own arrangements for the engagement of all staff and labor necessary to perform its obligations hereunder and for their payment. The ISO shall employ (or cause to be employed) only persons who are appropriately qualified, skilled and experienced in their respective trades or occupations. ISO employees and contractors shall abide by the ISO Code of Conduct for employees contained in the ISO bylaws and approved by FERC.

**20.5 Accounts and Reports.**

The ISO shall notify Market Participants of any significant change in the accounting treatment or methodology of any costs or any change in the accounting procedures, which is expected to result in a significant cost increase to any Market Participant. Such notice shall be given at the earliest possible time, but no later than, sixty (60) days before implementation of such change.

## ATTACHMENT B

#### 20.3.4 Disclosure

Notwithstanding anything in this Section 20.3 to the contrary,

- (a) The ISO: (i) shall publish individual bids for Supplemental Energy, individual bids for Ancillary Services, and individual Adjustment Bids, provided that such data are published no sooner than six (6) months after the Trading Day with respect to which the bid or Adjustment Bid was submitted and in a manner that does not reveal the specific resource or the name of the Scheduling Coordinator submitting the bid or Adjustment Bid, but that allows the bidding behavior of individual, unidentified resources and Scheduling Coordinators to be tracked over time; and (ii) may publish data sets analyzed in any public report issued by the ISO or by the Market Surveillance Committee, provided that such data sets shall be published no sooner than six (6) months after the latest Trading Day to which data in the data set apply, and in a manner that does not reveal any specific resource or the name of any Scheduling Coordinator submitting bids or Adjustment Bids included in such data sets.
- (b) If the ISO is required by applicable laws or regulations, or in the course of administrative or judicial proceedings, to disclose information that is otherwise required to be maintained in confidence pursuant to this Section 20.3, the ISO may disclose such information; provided, however, that as soon as the ISO learns of the disclosure requirement and prior to making such disclosure, the ISO shall notify any affected Market Participant of the requirement and the terms thereof. The Market Participant may, at its sole discretion and own cost, direct any challenge to or defense against the disclosure requirement and the ISO shall cooperate with such affected Market Participant to the maximum extent practicable to minimize the disclosure of the information consistent with applicable law. The ISO shall cooperate with the affected Market Participant to obtain proprietary or confidential treatment of

confidential information by the person to whom such information is disclosed prior to any such disclosure.

- (c) The ISO may disclose confidential or commercially sensitive information, without notice to an affected Market Participant, in the following circumstances:
- (i) If the FERC, or its staff, during the course of an investigation or otherwise, requests information that is confidential or commercially sensitive. In providing the information to FERC or its staff, the ISO shall take action consistent with 18 C.F.R. §§ 1b.20 and 388.112, and request that the information be treated as confidential and non-public by the FERC and its staff and that the information be withheld from public disclosure. The ISO shall notify an affected Market Participant within a reasonable time after the ISO is notified by FERC or its staff that a request for disclosure of, or decision to disclose, the confidential or commercially sensitive information has been received, at which time the ISO and the affected Market Participant may respond before such information would be made public; or
  - (ii) In order to maintain reliable operation of the ISO Control Area, the ISO may share critical operating information, system models, and planning data with other WECC Reliability Coordinators, who have executed the Western Electricity Coordinating Council Confidentiality Agreement for Electric System Data, or are subject to similar confidentiality requirements; or
  - (iii) In order to maintain reliable operation of the ISO Control Area, the ISO may share individual Generating Unit Outage information with the operations engineering and/or the outage coordination division(s) of other Control Area operators, Participating TOs, MSS Operators and other transmission system operators engaged in the operation and maintenance of the electric supply system whose system is significantly affected by the Generating Unit and who have executed the Western Electricity Coordinating Council Confidentiality Agreement for Electric System Data.

## ATTACHMENT C



## Memorandum

**To:** ISO Board of Governors  
**cc:** ISO Officers  
**From:** Stacie Ford, ISO Counsel  
**Date:** June 1, 2005  
**Re:** *Amendment to CAISO Tariff Section 20.3.4, Disclosure of Confidential Information*

---

***This memorandum requires Board action.***

In an effort to facilitate market monitoring, promote the reliable delivery of electricity, and strengthen coordination of California's electric transmission system operations, Management proposes to amend Section 20.3.4 of the ISO Tariff, *Disclosure of Confidential Information*. Specifically, Section 20.3.4 would be amended to allow the ISO to disclose to the Federal Energy Regulatory Commission ("FERC") confidential or commercially sensitive information requested by FERC or its staff, during the course of an investigation or otherwise, without providing notice of the request to affected market participants in advance of the disclosure. Section 20.3.4 would further be amended to permit the ISO to share critical operating information, system models, and planning data with other Western Electricity Coordinating Council ("WECC") Reliability Coordinators, subject to appropriate confidentiality and use restrictions.

The proposed amendment to ISO Tariff Section 20.3.4 will allow the ISO to respond more quickly to information requests by FERC or its staff, that require the production of confidential or commercially sensitive information. The timely availability and disclosure of confidential and commercially sensitive information will enhance the usefulness of the data provided to FERC and will facilitate FERC's market monitoring efforts. FERC will be able to act more promptly to review system events or supply issues, to investigate potential instances of gaming and/or violations of the Market Behavior Rules, and to remedy any gaming or market manipulation activity. Moreover, the proposed tariff amendment is consistent with tariff provisions that FERC has approved for other independent system operators.

The proposed amendment to Section 20.3.4 will also allow the ISO to join other WECC Reliability Coordinators who routinely share *critical operating information, system models, and planning data, subject to appropriate confidentiality protection*. This disclosure of information will increase the operational reliability of the California transmission grid and the western interconnection. In that regard, the amendment will result in better coordination and timely communication with WECC Reliability Coordinators, which in turn will promote reliable grid operations in Summer 2005 and beyond. In particular, management of emergency operations, security analysis and planning of next day operations, and coordination of transmission loading relief procedures will likely improve as a result of the proposed amendment.

## MANAGEMENT RECOMMENDATION

For the reasons described above, Management recommends that the Board approve Management's recommendation to amend ISO Tariff Section 20.3.4, as proposed in Amendment A.

**MOVED,**

***That the ISO Board of Governors approves Management's recommendation to amend CAISO Tariff Section 20.3.4, as presented in Attachment A, to allow the disclosure of confidential and commercially sensitive information to FERC for investigative purposes and to WECC Reliability Coordinators for reliability purposes.***

## ATTACHMENT D





Comment Date: \_\_\_\_\_

3075902v1