

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

**Preventing Undue Discrimination and Preference In Transmission Services ) Docket No. RM05-25-000  
)**

**COMMENTS OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR  
CORPORATION ON NOTICE OF PROPOSED RULEMAKING**

The California Independent System Operator Corporation (“CAISO”) hereby submits its Comments<sup>1</sup> in response to the Notice of Proposed Rulemaking (“NOPR”) issued by the Federal Energy Regulatory Commission (“Commission”) in this proceeding on May 19, 2006.

In support hereof, the CAISO respectfully states as follows:

**I. BACKGROUND**

In the NOPR, the Commission proposes amendments to its regulations and to the *pro forma* open access tariff (“OATT”) to ensure that transmission services are provided on a basis that is just, reasonable and not unduly discriminatory or preferential. The Commission states that the reforms it proposes are intended to address the deficiencies in the *pro forma* OATT that have become apparent since Order No. 888 was issued in 1996<sup>2</sup> and to facilitate

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<sup>1</sup> In addition to these individual Comments, the CAISO is a signatory party to the comments being filed today by the ISO/RTO Council. The CAISO supports the positions taken in the ISO/RTO Council comments. The instant Comments focus on specific issues of particular importance to the CAISO and highlight the distinct aspects of the open access transmission service provided by the CAISO.

<sup>2</sup> *Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, 61 FR 21540 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, 62 FR 12274 (Mar. 14, 1997), FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on*

planning and operation of transmission facilities. In particular, the primary purpose of the rulemaking is to strengthen the *pro forma* OATT to ensure that it achieves its original purpose -- remedying undue discrimination.

The Commission proposes to achieve this goal by increasing the clarity and transparency of the rules applicable to the planning and use of the transmission system and by addressing ambiguities and the lack of sufficient detail in several areas of the OATT. First, the Commission proposes to improve transparency and consistency in the determination of available transfer capacity (“ATC”) calculations. Second, the Commission proposes to amend the *pro forma* OATT to require coordinated and transparent transmission planning on a regional and sub-regional basis. To implement this remedy, the Commission proposes eight planning principles that a public utility would be required to follow. Third, the Commission proposes a variety of modifications to point-to-point service. Fourth, the Commission proposes to revise the rollover rights provision of the OATT to apply to contracts that have a minimum term of five years rather than the current minimum of one year. Fifth, the Commission proposes a few pricing reforms related to OATT transmission service. Sixth, the Commission proposes to require transmission providers to post on OASIS all their business rules, practices and standards that relate to transmission services provided under the *pro forma* OATT. Finally, the Commission proposes a number of miscellaneous improvements to the OATT.

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*reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000) (TAPS v. FERC), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

The Commission proposes to apply the Final Rule in this proceeding to all public utilities, including Independent System Operators (“ISOs”) and Regional Transmission Organizations (“RTOs”); although, the Commission recognizes that ISOs and RTOs may already have tariff terms and conditions that are superior to the *pro forma* OATT. The Commission further states that the purpose of the NOPR is not to redesign approved ISO and RTO markets and that it does not expect that substantial changes to those markets will be required as a result of the NOPR.

## **II. EXECUTIVE SUMMARY**

The CAISO welcomes the opportunity to submit comments regarding the Commission’s proposed amendments to its regulations and to the *pro forma* OATT. The CAISO supports the Commission’s general goals of preventing undue discrimination and preference in the provision of transmission services and implementing transmission planning policies that promote the construction of adequate transmission facilities and guard against undue discrimination in the transmission planning process. The CAISO submits that many of the concerns and abuses identified in the NOPR already have successfully been addressed by the operation of ISOs and RTOs which are structurally independent from market participants. Each of the Commission-approved ISOs and RTOs are non-profit entities and do not have affiliates who take transmission service or provide generation services. The transparency of ISO and RTO operations, procedures, and congestion management mechanisms further addresses any concerns about undue discrimination or preference. Because ISOs and RTOs have already

addressed many of the concerns raised in the NOPR and because the approved tariffs of these ISOs and RTOs have moved far beyond the *pro forma* OATT -- thereby rendering many of the changes in the NOPR inapplicable to ISOs and RTOs -- the Commission should consider a more tailored application of the compliance filing requirement proposed in the NOPR to ISOs and RTOs.

In particular, many of the specific reforms proposed in the NOPR simply are not applicable to, or are incompatible with, the CAISO's service model. In that regard, the CAISO's OATT differs significantly from the *pro forma* OATT. Although the NOPR proposes a number of modifications to the traditional network and point-to-point transmission services established by Order No. 888, the NOPR does not propose to alter the fundamental nature of these services. As discussed in greater detail *infra*, the CAISO does not offer traditional Order No. 888 network and point-to-point transmission services; the CAISO offers only a single "daily" transmission reservation service that is available to all eligible customers. There are no firm, long-term transmission reservations under the CAISO's service model. Thus, the Commission's numerous changes to Order No. 888 point-to-point transmission service, as well as certain proposed transmission pricing changes (*e.g.*, capacity reassignment changes) and "miscellaneous OATT improvements" (see NOPR at P 58) simply do not apply to the CAISO or are otherwise not compatible with the CAISO's "daily" transmission service.<sup>3</sup>

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<sup>3</sup> The daily open access transmission service that the CAISO provides under its OATT is consistent with the objectives enunciated in the NOPR and adequately addresses the concerns identified by the Commission as the basis for modifying the requirements for the traditional Order No. 888 transmission services. In particular, the transmission service offered by the CAISO is

Given that the Commission is not intending in the NOPR “to redesign approved, fully functional RTO and ISO markets” (NOPR at P 101), the Commission should clarify: (1) that the NOPR does not propose to modify established Commission findings that the CAISO and other ISOs and RTOs can offer other forms of transmission service that differ from traditional Order No. 888 network and point-to-point transmission services, and (2) in their compliance filings, the CAISO and other ISOs and RTOs will not be required to address NOPR-proposed changes to the requirements for transmission services that the CAISO and other ISO’s/RTOs do not provide or to address other NOPR-proposed changes which are clearly incompatible with the CAISO’s long-standing, Commission-approved transmission service model. Such clarification would be based on the Commission’s previous findings that the CAISO OATT and similar ISO and RTO OATTs are consistent with or superior to the *pro forma* OATT. To the extent the CAISO, in its compliance filing, is required to address NOPR modifications to services the CAISO does not provide or requirements proposed in the NOPR which are otherwise incompatible with the CAISO’s service model, the Commission should clarify that the compliance filing requirement applies only to the new tariff provisions promulgated by the Final Rule and does not require the CAISO to re-justify differences between the CAISO’s existing tariff provisions and services and the *pro forma* OATT provisions that are not changed by the NOPR.

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fully transparent, maximizes customer flexibility, promotes efficient use of the transmission system and addresses the Commission’s concerns regarding undue discrimination or preference.

The CAISO requests that the Commission reaffirm that the revised right-of-first-refusal (“ROFR”) provision does not apply to the CAISO. The CAISO Tariff does not contain a ROFR provision, and the Commission has previously found that the nature of the CAISO’s transmission service is not compatible with a ROFR. The D.C. Circuit has upheld the Commission’s findings in this regard. The NOPR merely modifies the Commission’s rules governing the *pro forma* OATT to require that contracts have a minimum five-year term in order to be eligible for a ROFR (rather than the current minimum term of one year) and does not alter the premise underlying the Commission’s prior decisions that the ROFR does not apply under the CAISO service model, and the CAISO is not required to include a ROFR provision in its tariff. Accordingly, the Commission should confirm that the revised ROFR requirements proposed in the NOPR are not applicable to the CAISO.

The CAISO also requests that the Commission clarify that the regulatory changes proposed in the NOPR will not alter the Commission’s prior decisions that transmission facilities are not eligible for a network credit under the CAISO Tariff unless the customer becomes a Participating Transmission Owner and places the facilities under the CAISO’s operational control. In that regard, the Commission has found that facilities could be integrated with the CAISO system - - and therefore eligible for a credit -- only if such facilities are placed under the CAISO’s operational control. In the NOPR, the Commission proposes to retain the integration requirement for credits, and the limited changes to the customer crediting provision proposed in the NOPR do not in any way undermine -- or

even pertain to -- the basis for the Commission's prior determination on this issue. In any event, it is inappropriate to require the CAISO to offer credits for facilities over which it does not have operational control. To the extent a credit should be granted to a party who has turned over its facility to the CAISO's operational control, there already is a Commission-approved "crediting" mechanism in place, and the Commission should not undo that mechanism.

Although the CAISO urges the Commission to recognize the need to grant ISOs and RTOs flexibility in complying with the modified requirements proposed in the NOPR, the CAISO also acknowledges the benefits of promoting greater transparency in the industry and, in particular, greater uniformity among utilities that have not transferred operational control of their facilities to an independent entity like an ISO or RTO. As such, the CAISO strongly supports the Commission's proposal to establish standards for ATC calculations to ensure a more transparent consistent ATC methodology across the industry. The CAISO agrees with the Commission's goal to ensure the consistent exchange of data regarding ATC among transmission providers. The CAISO also supports the Commission's proposal to ensure adequate transparency in the calculation of ATC by requiring transmission providers to provide more detail regarding their ATC calculations. However, the CAISO recommends that the Commission strengthen the requirements regarding how often ATC calculations should be updated. The CAISO believes that ATC calculations should be updated daily and that transmission providers should be required to either conform to this daily

update standard or to submit a compliance plan indicating when they will be able to comply with such a requirement.

The CAISO agrees that the Commission should continue to apply the “rule of reason” to determine which rules, standards and practices must be filed in a transmission provider’s tariff and that the Commission should continue to allow other business rules, practices and standards that relate to transmission services provided under an OATT to be posted on OASIS. Transmission providers in general -- and ISOs and RTOs in particular -- have many business rules, standards and practices that do not significantly affect rates and terms of service but that must, out of necessity, be revised and updated to address operational developments, changes in market conditions, or other factors. It is neither practical nor necessary (especially for purposes of transparency) to require transmission providers to make Section 205 filings regarding every detail (or change thereto) of the services they provide.

Further, there is no valid reason why the “rule of reason” should be applied in a different manner to creditworthiness and security practices than it is applied for other business rules, standards and practices. In particular, the CAISO does not believe that inclusion of all of the details of creditworthiness requirements in the OATT is appropriate under the “rule of reason.” Such a requirement would impose an undue burden on transmission providers and unnecessarily limit the flexibility of transmission providers to change business practices relating to credit requirements to address rapidly changing market conditions and customer needs.



The CAISO generally supports the eight transmission planning guidelines proposed in the NOPR. The CAISO's transmission planning process satisfies these general guidelines, and the CAISO believes the guidelines are reasonable. The CAISO urges the Commission to require that **all** transmission providers -- including municipal utilities and federal power authorities -- share their transmission planning information with **all** interconnected transmission providers. The reciprocal sharing of information is essential to effective coordination and the pursuit of cost effective expansions that are necessary to maintain reliable grid operations. Information sharing cannot be a one-way street if coordination is to be effective. With respect to other specific aspects of transmission planning, the Final Rule should, subject to the guidelines discussed herein, provide sufficient flexibility to allow each region and sub-region to develop a transmission planning process that best fits the region's/sub-region's needs.

Finally, the CAISO recommends that, in the Final Rule, the Commission adopt a policy supporting transmission infrastructure development policies and/or innovative rate treatments that will encourage the construction of transmission lines necessary to attach renewable resources. The circumstances associated with the construction and financing of transmission lines to connect renewable resources to the transmission grid are significantly different from the circumstances associated with traditional gen-tie facilities, and the Commission's existing gen-tie rate policies simply are not workable for purposes of encouraging the connection of renewable resources to the grid. The promotion of renewable resources is not only an important policy objective of state regulators, but it also

is an important objective of the federal government, as confirmed by Title II of the Energy Policy Act of 2005. Accordingly, the Commission needs to adopt innovative transmission policies that recognize the unique circumstances facing renewable transmission development and which will promote the development of the transmission infrastructure that is necessary to support the development of renewable energy and the delivery of such energy to customers in highly populated regions.

### **III. SPECIFIC COMMENTS**

#### **A. Applicability of the Proposed Changes to the Order No. 888 OATT Transmission Pricing and Services to ISOs and RTOs That Do Not Provide Traditional Order No. 888 Transmission Services**

Section V of the NOPR proposes a number of modifications to point-to-point and network transmission services under the *pro forma* OATT (as well as certain changes regarding the pricing of such services). For the most part, these modifications do not apply to the CAISO because the CAISO does not offer traditional Order No. 888 open access point-to-point and network transmission services. Nor does the CAISO's open access transmission service model provide for long-term firm reservations of capacity. Accordingly, the CAISO will not comment on the substance of those proposed reforms. However, the CAISO seeks clarification regarding the scope of the compliance filing the CAISO must make in response to the Final Rule in this proceeding given that the CAISO does not even provide the transmission service products that the Commission is proposing to modify in the NOPR.

The CAISO operates under a transmission service model that is significantly different from that envisioned in Order No. 888. Rather than offering the two traditional transmission services contemplated in Order No. 888 (*i.e.*, point-to-point and network transmission services), the CAISO offers a single “daily” transmission reservation service that is available to all eligible customers. The open access transmission service provided by the CAISO is essentially a network-type service but with more flexibility than traditional network service. With the exception of certain transactions scheduled pursuant to contracts that preceded the existence of the CAISO, all energy transmitted under the CAISO Tariff is treated as “new firm use” on a day-to-day basis. All users of the CAISO Controlled Grid must schedule their use each day and cannot reserve available transmission capacity beyond the Day-Ahead timeframe. In contrast, the *pro forma* OATT permits users, on a first-come first-served basis, to make long-term reservations of available transmission capacity.

Under the CAISO’s transmission service model, Scheduling Coordinators (“SCs”) submit Day-Ahead and Hour-Ahead transmission schedules to the CAISO. SCs have equal access to all available capacity every day and can make schedule changes, including receipt and delivery changes, on an hourly basis. In contrast to traditional transmission services provided under the *pro forma* OATT, customers that take transmission service under the CAISO Tariff need not formally designate network resources.

The Commission has previously found that the “daily” transmission reservation service provided by the CAISO is consistent with the broad non-

discrimination goals of Order No. 888 and that all customers have access to transmission service on the CAISO Controlled Grid on a non-discriminatory basis.<sup>4</sup> The CAISO's "daily" transmission service does not give rise to the concerns identified in the NOPR regarding queuing, hoarding of capacity, and the various issues related to processing transmission service requests, reservation priorities, or receipt and delivery point flexibility. Because the CAISO's transmission service is a daily service, there is no need for any capacity reassignment mechanism. Moreover, because the CAISO offers only one type of transmission service, the discrimination concerns that arise from the provision of two different types of transmission services do not apply to the CAISO.

The NOPR directs ISOs and RTOs to either adopt the Final Rule's non-rate terms and conditions, or "demonstrate that their existing tariff provisions are consistent with or superior to the revised provisions to the *pro forma* OATT."<sup>5</sup> The Commission should clarify in the Final Rule how, in its compliance filings, the CAISO should handle NOPR-proposed changes to transmission services that the CAISO does not provide<sup>6</sup> or which are clearly incompatible with the transmission service model employed by the CAISO.<sup>7</sup> Given that the Commission has already

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<sup>4</sup> *Pacific Gas & Electric Company, et al.*, 81 FERC ¶ 61,122 at 61,435, 61, 455-56 (1997) (hereinafter "PG&E").

<sup>5</sup> NOPR at P 100.

<sup>6</sup> For example, because the CAISO does not provide point-to-point transmission services, the Commission's proposed changes to point-to-point service do not apply to the CAISO.

<sup>7</sup> For example, capacity reassignment and reservation priorities are unnecessary in connection with a "daily" transmission service model where there are no long-term firm reservations of capacity. Similarly, the NOPR-proposed changes regarding charges for energy and generator imbalances are not compatible with ISO/RTO markets where imbalances are resolved through market mechanisms.

found the CAISO's unique transmission service model to be consistent with the principles enunciated in Order No. 888, the fact that the NOPR merely seeks to "tweak" the traditional Order No. 888 transmission services rather than completely overhaul them, and the Commission's statements that it does not intend to overhaul existing ISO/RTO markets, it does not seem necessary for the CAISO to address in its compliance filing NOPR-proposed changes to the requirements for transmission services that the CAISO does not provide and other NOPR-proposed changes that are clearly incompatible with the CAISO's Commission-approved transmission service model.<sup>8</sup> In the Final Rule, the Commission should find that such matters do not need to be addressed in the CAISO's compliance filing.

To the extent the Commission issues a Final Rule that requires ISOs and RTOs to submit compliance filings that address NOPR modifications to services they do not provide or which are otherwise incompatible with their transmission service models, the Commission should clarify that the compliance filing requirement applies only to the new tariff provisions promulgated by the Final Rule and does not require that ISOs and RTOs submit compliance filings re-justifying each and every existing tariff provision that differs from provisions of the *pro forma* OATT that are not changed by the NOPR. Such a clarification appears to comport with the Commission's intention and statements in Paragraphs 100-101 of the NOPR. In particular, such an interpretation is consistent with the Commission's statements that the NOPR is not intended "to redesign approved,

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<sup>8</sup> Indeed, such a requirement would merely impose unnecessary administrative costs on both the CAISO and the Commission.

fully functional RTO and ISO markets” and that the Commission “does not expect that substantial changes to those markets will be required as a result of this NOPR.”<sup>9</sup> Accordingly, the CAISO requests that the Commission resolve any ambiguity and confirm that the scope of the compliance filing requirement is limited to the new tariff provisions.

**B. Right of First Refusal**

Section 2.2 of the *pro forma* OATT provides that existing firm service customers have the right to continue to take transmission service from the public utility transmission provider when the contract expires, rolls-over, or is renewed. The NOPR proposes to retain this ROFR provision, with certain revisions designed to encourage long-term use of the grid. Specifically, the Commission proposes to revise the ROFR provision to limit the availability of the right of first refusal to wholesale requirements and transmission-only contracts with a minimum term of five years, rather than the current minimum term of one year.<sup>10</sup> Further, the Commission would require transmission customers under a rollover agreement to provide advance notice of at least one year as to whether they will exercise the right at the expiration of the transmission service agreement.<sup>11</sup>

The Commission should confirm that the revised ROFR requirements do not alter the Commission’s previous determinations that the *pro forma* OATT ROFR provisions do not apply to the CAISO. The CAISO’s current tariff does not

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<sup>9</sup> In this context, the Commission recognized that some ISOs and RTOs have eliminated point-to-point service. NOPR at P 101.

<sup>10</sup> NOPR at P 249.

<sup>11</sup> *Id.*

contain a ROFR provision, and a ROFR provision is incompatible with the CAISO's transmission service model. Indeed, the Commission has found on two prior occasions -- and has had its findings upheld by the D.C. Circuit -- that the CAISO operates under a service model that is quite different from that envisioned in Order No. 888, and the concept of a ROFR is not compatible with the CAISO's service model. Because the NOPR merely increases the minimum term of contracts to which the ROFR would apply and does not undermine the premise for the Commission's and the D.C. Circuit's decisions regarding the non-applicability of the ROFR to the CAISO, the Commission should confirm that the revised ROFR requirements are not applicable to the CAISO.

At the formation of the CAISO, the Commission explicitly approved the absence of a ROFR provision in the CAISO Tariff, noting that "[t]he ISO's proposal to schedule transmission in a day-ahead and hour-ahead basis is not compatible with the long-term reservation of discrete physical transmission rights." *PG&E* at 61,472. The Commission ordered customers to take service under the CAISO Tariff upon contract expiration.<sup>12</sup>

The Commission re-affirmed this policy in denying a complaint filed by the Sacramento Municipal Utility District ("SMUD") in which SMUD sought to invoke the Order No. 888 right of first refusal to extend the term of service under a pre-Order No. 888 contract with the California Utilities. *Sacramento Municipal Utility*

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<sup>12</sup> *Id.* at 61,463-65. n. 196. To achieve consistency with the Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company (collectively "California Utilities") Order No. 888 tariffs, which governed service until the CAISO commenced operations, the Commission struck the Section 2.2 right of first refusal provision from the California Utilities' tariffs, replacing it with a clause honoring existing contracts only for the term of the contract. *PG&E* at 61,472.

*District v. Pacific Gas & Electric Company, 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). The Commission stated that the right of first refusal provision in Order No. 888 is not applicable to any customer in the CAISO service territory because the service model under the Order No. 888 *pro forma* OATT does not apply and has no meaning under the California Utilities' transmission systems which have been turned over to CAISO control. 105 FERC ¶ 61,358 at 62,615. Further, the CAISO Tariff supersedes the Order No. 888 *pro forma* OATT. See 107 FERC ¶ 61,237 at 62,010. Accordingly, the Commission concluded that upon the expiration of its contract, SMUD would have to take service under the rates, terms and conditions of the CAISO Tariff. 105 FERC ¶ 61,358 at 62,615. On November 1, 2005, the D.C. Circuit denied SMUD's petition for review in part and dismissed it to the extent that it collaterally attacked the Commission's prior orders in *PG&E*.

Because the NOPR does not alter the basis upon which these prior decisions were made, the Commission should confirm that the revised ROFR provision does not apply to the CAISO and is not compatible with the CAISO's service structure. Pre-Order No. 888 contracts do not fit the CAISO service model, and the Commission has recognized on numerous occasions that such contracts are problematic and result in clear market inefficiencies.<sup>13</sup> Thus, as the Commission has consistently found, pre-existing, non-open access contracts

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<sup>13</sup> See, e.g., *California Independent System Operator Corporation*, 109 FERC ¶ 61,301 at PP 17-20 (2004), *order on reh'g*, 111 FERC ¶ 61,337 (2005); *California Independent System Operator Corporation*, 91 FERC ¶ 61,205 at 61,727(2000).



expire, customers should continue to be required to take transmission service under the CAISO Tariff.

### **C. Credits for New Transmission Facilities**

In the NOPR, the Commission explains that, under current Section 30.9 of the *pro forma* OATT, network customers may receive credit for existing transmission facilities if they are “integrated into the plans or operations of the Transmission Provider to serve its power and transmission customers.”<sup>14</sup> Credit is available for new transmission facilities if they are “are jointly planned and installed in coordination with the Transmission Provider.”<sup>15</sup> The NOPR rejects suggestions that the credits be expressly available to point-to-point customers.<sup>16</sup> However, in the NOPR, the Commission proposes to “de-link” credits for new facilities from the joint planning requirements. Under the Commission’s proposal, network customers would receive credit for new facilities they build if: “(1) such facilities are integrated into the operations of the transmission provider’s facilities and, (2) if the transmission facilities were owned by the transmission provider, would be eligible for inclusion in the transmission provider’s annual transmission revenue requirement.”<sup>17</sup>

The CAISO does not oppose the Commission’s proposal, provided that the Commission confirms that facilities cannot be integrated into the CAISO’s

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<sup>14</sup> NOPR at P 248.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at P 259.

<sup>17</sup> *Id.* at P 256.

operations unless they are under the CAISO's operational control. Such a finding is consistent with the Commission's prior rulings on this subject.

In Opinion No. 445,<sup>18</sup> the Commission addressed arguments that non-Participating Transmission Owners should receive network customer credits against their Access Charges for their transmission facilities that are "integrated" with a Participating Transmission Owner's transmission system. The Initial Decision in that proceeding had concluded that credits were required because the facilities provided substantial support to the CAISO Controlled Grid and that the non-Participating Transmission Owners were functionally network customers.<sup>19</sup>

The Commission reversed the Administrative Law Judge. Citing *Florida Municipal Power Agency v. Florida Power & Light Co.*,<sup>20</sup> the Commission explained that facilities could not be integrated with a transmission provider's system unless the transmission provider could provide service to itself or customers on the facilities. Because the CAISO could only provide service on those facilities under its operational control, that meant that facilities could be integrated with the CAISO system -- and the customer could receive a credit -- *only* if the customer placed the facilities under the CAISO's operational control, *i.e.*, became a Participating Transmission Owner. The Commission affirmed that

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<sup>18</sup> *Southern California Edison Co.*, 92 FERC ¶ 61,070 (2000).

<sup>19</sup> *Southern California Edison Co.*, 86 FERC ¶ 63,014 at 65,168-74 (1999).

<sup>20</sup> 67 FERC ¶ 61,167 (1994), *reh'g denied*, 74 FERC ¶ 61,006 (1996).

conclusion on rehearing.<sup>21</sup> On a number of occasions, the Commission has expanded upon the criteria for integration and eligibility for customer credits.<sup>22</sup> On none of those occasions has the Commission relaxed the principle that the ability of a transmission provider to provide service on transmission facilities is a fundamental criterion for integration with the transmission provider's system. There are no legitimate reasons to abandon that sound principle now.

Once facilities are placed under the CAISO's operational control, the transmission owner essentially becomes part of the transmission provider, and the issue of credits is moot. As the Commission has recognized, to the extent that Participating Transmission Owners are viewed as a continuing customer, they "essentially receive credits."<sup>23</sup> Those credits come in the nature of a share of the revenues from the transmission Access Charge.

Consistent with these principles, the Commission's proposed modifications to Section 30.9 of the *pro forma* OATT should not affect the conclusion that, under Commission's policy, non-Participating Transmission Owners with transmission facilities interconnected with the CAISO Grid are not eligible for credits against the CAISO Access Charge. The CAISO asks the Commission to reaffirm this conclusion.

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<sup>21</sup> *Southern California Edison Co.*, 108 FERC ¶ 61,085 at PP 8-10 (2004).

<sup>22</sup> See, e.g., *City of Vernon*, Opinion No. 479, 111 FERC 61,092. *reh'g denied*, 112 FERC ¶ 61,207 (2005), *reh'g denied* Opinion 479-B, 115 FERC ¶ 61,297 (2006); *Pacific Gas & Elec. Co.*, Opinion No. 466-A, 106 FERC ¶ 61,144; *reh'g denied*, Opinion No. 466-B, 108 FERC ¶ 61,297 (2004); *Northeast Texas Electric Cooperative, Inc.*, Opinion No. 474, 108 FERC ¶ 61,084 (2004); *Consumers Energy Company*, 98 FERC ¶ 61,333 (2002); *Mansfield Elec. Dep't v. New England Power Co.*, 94 FERC ¶ 63,023, *aff'd*, 97 FERC ¶ 61,134 at 61,613-14 (2001), *reh'g denied*, 98 FERC ¶ 61,115 (2002).

<sup>23</sup> 108 FERC ¶ 61,085 at P 8.

#### **D. Consistency and Transparency of ATC Calculations**

In the NOPR, the Commission proposes to modify the *pro forma* OATT and establish requirements to ensure greater consistency and transparency in the calculation of Available Transfer Capability.<sup>24</sup> The CAISO strongly supports the Commission's proposed modifications to the ATC provisions of the OATT. The CAISO believes that consumers and market participants will benefit from the Commission's proposal to establish standards for the methodology used to calculate ATC and to promote a more consistent and transparent ATC methodology across the industry.

In the NOPR, the Commission recognizes that there have been historical differences between the industry approaches used to calculate ATC in the Eastern Interconnection and the industry approaches used in the Western Interconnection.<sup>25</sup> The CAISO supports the Commission's objective of establishing standards for ATC calculations, but stresses that any approved standard methodology must allow for functional differences resulting from, Commission-approved market operations and should not be incompatible with such market operations.

The Commission proposes regulations that will provide general guidance regarding the calculation of ATC and further proposes to direct public utilities,

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<sup>24</sup> In the NOPR, the Commission proposes to revise the *pro forma* OATT to use the generally-accepted industry term "Available Transfer Capability" rather than the term "Available Transmission Capability" used in Order No. 888. NOPR at P. 3, n.7. The CAISO uses the generally-accepted industry term "Available Transfer Capability" in the CAISO Tariff and supports this change.

<sup>25</sup> NOPR at P 115.

working through the North American Electric Reliability Council (“NERC”) and the North American Energy Standards Board (“NAESB”), to use this guidance to revise relevant standards and business practices.<sup>26</sup> The CAISO supports the Commission’s proposal to direct public utilities, working through NERC and NAESB, to develop standards for the methodology used to calculate ATC. The CAISO strongly supports the establishment of strong national reliability standards now that the Commission has certified NERC as the national Electric Reliability Organization (“ERO”).<sup>27</sup> The CAISO believes the establishment of appropriate national standards regarding the determination of ATC will complement such national reliability standards. These standards should permit sufficient flexibility for independent entities like ISOs and RTOs to retain an ATC calculation methodology that is consistent with their Commission-approved market design, but that still satisfy the reliability and transparency criteria developed by the ERO. For example, these standards should permit ISOs and RTOs that administer markets based on locational marginal pricing (“LMP”) to retain an ATC determination methodology that is consistent with such LMP-based markets.

In the NOPR, the Commission also proposes to: (1) require increased detail in the *pro forma* OATT regarding the method of calculating ATC<sup>28</sup> and (2) amend the Commission’s OASIS regulations to require increased transparency

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<sup>26</sup> NOPR at PP 148, 155-170.

<sup>27</sup> *North American Electric Reliability Council*, 116 FERC ¶ 61,062 (2006).

<sup>28</sup> NOPR at PP 148, 171-179.

regarding ATC calculation.<sup>29</sup> The CAISO submits that the Commission's objective of ensuring the consistent exchange of data regarding ATC among transmission providers will benefit both customers and system operators. The CAISO supports the proposed regulations that would require transmission providers to publish more detail regarding their ATC calculations. The CAISO recommends that the Final Rule in this proceeding establish specific requirements for ATC calculation data that must be published by each transmission provider, including the specific mathematical algorithm used to calculate ATC for both the scheduling horizon and planning horizon of each transmission provider. The CAISO also recommends that each transmission provider be required to publish a process flow diagram that illustrates the various steps through which that transmission provider calculates ATC.

In the NOPR, the Commission notes that its existing regulations require ATC on constrained paths to be updated when: (1) transactions are reserved, (2) service ends, or (3) whenever the TTC estimate for the path changes by more than 10 percent.<sup>30</sup> The Commission seeks comment on whether these requirements, as supplemented by the requirement to post narrative explanations of ATC changes, are sufficient to provide adequate transparency to customers without imposing an undue burden on transmission providers.<sup>31</sup> The CAISO recommends that the Commission strengthen the requirements regarding how

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<sup>29</sup> *Id.* at PP 148, 180-190.

<sup>30</sup> NOPR at P 186.

<sup>31</sup> *Id.*

often ATC calculations need to be updated. Specifically, the CAISO believes that ATC should be updated at least on a daily basis. Such a requirement would recognize the dynamic nature of transmission systems and be more in alignment with scheduling practices. The CAISO believes that market participants looking to enter into short-term transactions involving the systems of multiple transmission providers must have information on ATC that is no more than 24 hours old. Stale ATC information can impede such multi-system transactions. The CAISO recommends that transmission providers unable to comply with such a daily update requirement as of the effective date of the new ATC regulations should be required to take steps to conform to the new standards and to submit a compliance plan indicating when they will be able to comply with these standards.

#### **E. Standardization of Rules and Practices**

Under the Commission's existing OATT regulations, the Commission has recognized that "certain rules, standards and practices governing the provision of transmission service (*e.g.*, public utility business practices)" need not be filed as part of a transmission provider's OATT.<sup>32</sup> The Commission only requires filings under Section 205 of the Federal Power Act ("FPA") to amend a transmission provider's OATT when a transmission provider adopts or modifies a rule, standard or practice that "significantly affects its rates and services."<sup>33</sup> The Commission applies a "rule of reason" to determine whether rules, standards and

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<sup>32</sup> NOPR at P 444.

<sup>33</sup> *Id.*, citing *Cleveland v. FERC*, 773 F.2d 1368, 1376 (D.C. Cir. 1985).

practices need to be filed as part for Commission approval under Section 205 of the FPA.

The Commission solicited comment on the application of its rule of reason in its Notice of Inquiry (“NOI”) in this proceeding. Based on these comments, the Commission proposes to retain its existing policies concerning the level of detail that should be included in a transmission provider’s OATT. Specifically, the Commission concluded that requiring transmission providers to include excessive detail in their tariffs could inappropriately limit the flexibility of a transmission provider to address customer concerns and would be unduly burdensome:

We agree . . . that requiring transmission providers to include all of their rules, standards and practices in their OATTs could decrease a transmission provider’s flexibility to change businesses practices and respond to the requests of customers. Additionally, we believe that requiring transmission providers to file all of their rules, standards and practices in their OATTs would be impractical and potentially administratively burdensome.

NOPR at P 452. The proposed regulations would require that those rules, standards and practices that are not required to be included in a filed OATT instead be posted on a transmission provider’s OASIS.<sup>34</sup>

The CAISO agrees that the Commission should continue to apply its rule of reason to determine which rules, standards, and practices of a transmission provider must be filed with the Commission pursuant to Section 205 of the FPA, and further agrees that those rules, standards, and practices that are not required to be filed as part of an OATT should be posted on the transmission provider’s OASIS. The CAISO strongly believes that the Final Rule in this

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<sup>34</sup> NOPR at P 451.



proceeding should recognize that transmission providers -- and particularly ISOs and RTOs -- have many rules, standards and practices that do not significantly affect the rates and terms of service but that must, out of necessity, be revised and updated to address operational developments, changes in market conditions, or other factors.

The Commission's proposal recognizes that it is not practical to require utilities to submit Section 205 filings regarding every detail of the services they provide. Nor is it necessary for the Commission to review and adjudicate every change or update to a transmission provider's business practices. The Commission has already developed a workable rule for determining which rules, standards and practices should be filed. As described in *Town of Easton v. Delmarva Power and Light Company*,<sup>35</sup> the Commission's rule of reason "balance[s] [its] desire not to deprive utilities or groups of utilities of the flexibility they need to manage their own affairs by introducing substantial delay and layered decision-making into their operations . . . with the need for the full disclosure that furthers the purpose of having filing and posting requirements which provide real benefits to existing and potential customers or users of the services in question." Significantly, the U.S. Court of Appeals for the District of Columbia Circuit has endorsed this rule of reason and described the rationale for this approach in *City of Cleveland v. FERC*:

[T]here is an infinitude of practices affecting rates and service. The statutory directive must reasonably be read to require the recitation of only those practices that affect rates and service *significantly*, that are realistically susceptible of specification, and that are not so

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<sup>35</sup> 24 FERC ¶ 61,251 at 61,531 (1983).

generally understood in any contractual arrangement as to make recitation superfluous. It is obviously left to the Commission, within broad bounds of discretion, to give concrete application to this amorphous directive.<sup>36</sup>

Although, as described below, the CAISO disagrees with at least one instance where the Commission has applied this rule of reason to require the filing of more details on creditworthiness requirements than have previously been required, the Commission has generally applied the rule of reason effectively to balance the objective of providing transparency to customers with the need for the flexibility required for efficient management of the transmission system. For example, under the rule of reason, the Commission has determined that the following rules, standards and practices need not be filed with the Commission under Section 205 of the FPA:

- Procedures from a business practice manual for requests for information and challenges to confidentiality designations;<sup>37</sup>
- Details regarding marginal loss calculations;<sup>38</sup>
- Procedures to ensure that pass-through charges are not assessed to load that does not use the transmission grid;<sup>39</sup>
- Criteria according to which the utility determined the availability of economy energy, the arrangement of sales of that energy, and the termination of such sales;<sup>40</sup>

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<sup>36</sup> 773 F.2d 1368, 1376 (D.C. Cir. 1985) (emphasis added).

<sup>37</sup> *Midwest Independent Transmission System Operator*, 113 FERC ¶ 61,081 at P 118 (2005).

<sup>38</sup> *Northeast Util. Serv. Co. v. ISO New England*, 105 FERC ¶ 61,122 at P 21 (2003).

<sup>39</sup> *California Independent System Operator*, 95 FERC ¶ 61,195 (2001).

<sup>40</sup> *Commonwealth Edison Company*, 21 FERC ¶ 61,096 (1982).

- Standard terms and conditions and form contracts when the documents included prices and obligations to complete sales that were also included in the filed rates, as well as provisions that qualified customers for participation and typical contractual provisions;<sup>41</sup> and
- A framework for WSCC [now Western Electricity Coordinating Council] and its operating procedures relating to system security and general system reliability.<sup>42</sup>

The Commission should reject any arguments that the Commission should abandon its rule of reason and require virtually every rule, practice and standard of a transmission provider be filed as part of its OATT. There is no justification for such a drastic and unnecessary change. The Commission’s proposal to retain its existing policy will continue to promote the appropriate balance between flexibility and transparency especially if, as the Commission also proposes, those rules, standards, and practices for transmission service that are not filed must be posted on a transmission provider’s OASIS or website. As the Commission notes in the NOPR, this transparency will protect against unjust or discriminatory practices because those rules, standards, and practices that are not filed with the Commission will not be entitled to a “just and reasonable” presumption, and any customer will have the right to challenge such practices under Section 206 of the FPA.<sup>43</sup>

The continued application of the Commission’s rule of reason is of particular concern to the CAISO. As part of the CAISO’s Market Redesign and

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<sup>41</sup> *Automated Power Exchange*, 85 FERC ¶ 61,232 (1998).

<sup>42</sup> *PacifiCorp*, 70 FERC ¶ 61,322 (1995).

<sup>43</sup> NOPR at P 451 n.401.

Technology Upgrade (“MRTU”) initiative, the CAISO is developing Business Practice Manuals (“BPMs”) which will provide market participants with additional details regarding the new market design. Consistent with Commission precedent applicable to other ISOs and RTOs, the CAISO has endeavored to ensure that all details that significantly affect rates, terms and conditions of service are included in the CAISO’s proposed tariff to implement MRTU. The CAISO has initiated a stakeholder process to obtain input on the development of BPMs, including input as to whether stakeholders believe that any details developed for inclusion in the BPMs should be included in the MRTU tariff. In its May 16, 2006, reply comments in Docket No. ER06-615, the CAISO has also proposed a technical conference to be scheduled later in 2006 to discuss any details in the BPMs that stakeholders believe should be included in the CAISO’s MRTU tariff. This process would be significantly and unnecessarily complicated, however, if the Commission were to depart from its long-standing, Court-approved rule of reason and create uncertainty as to which rules, standards, and practices must be included in a transmission provider’s filed OATT.

Moreover, the CAISO is concerned that certain statements in the NOPR, when considered in light of a recent Commission order, suggest that the Commission may apply its rule of reason in a different manner with respect to creditworthiness and security procedures than it does for other rules, standards, and practices. In that regard, in the NOPR, the Commission proposes to amend the *pro forma* OATT to require each transmission provider to include the

“quantitative and qualitative criteria” used to determine the level of secured and unsecured credit and to include in the OATT the following elements:

(1) a summary of the procedure for determining the level of secured and unsecured credit; (2) a list of the acceptable types of collateral/security; (3) a procedure for providing customers with reasonable notice of changes in credit levels and collateral requirements; (4) a procedure for providing customers, upon request, a written explanation for any change in credit levels or collateral requirements; (5) a reasonable opportunity to contest determinations of credit levels or collateral requirements; and (6) a reasonable opportunity to post additional collateral, including curing any non-creditworthy determination.

NOPR at p 455. The Commission also proposes “to allow these basic elements to be supplemented with a credit guide or manual to be posted on OASIS.”<sup>44</sup>

The Commission acknowledges that “there is a balance . . . between the burden on the transmission provider of adding these methodologies to the OATT and the need for Commission review and approval” and requests comment on whether the NOPR’s proposal for filing of credit and security requirements is unduly burdensome.<sup>45</sup>

On their face, the NOPR requirements concerning credit and security requirements do not appear unduly burdensome, and none of the listed requirements appears to require excessive implementing detail. However, the CAISO’s recent experience suggests that the Commission may apply these requirements in a manner that will, in fact, impose an undue burden on transmission providers and effectively eliminate the ability of transmission providers to supplement basic elements with a credit guide or manual.

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<sup>44</sup> *Id.*

<sup>45</sup> *Id.* at P 456.

Specifically, the Commission's May 12, 2006, order in Docket No. ER06-700 on the CAISO's amendments to modify the credit requirements in the CAISO Tariff suggests that the Commission expects that far more detail on credit requirements be included in a filed tariff than is appropriate or necessary.<sup>46</sup> In that order, the Commission required the CAISO to file as an attachment to its tariff the CAISO's Credit Policy & Procedures Guide, which contains far more detail than the six "basic elements" laid out in the NOPR.

As the CAISO explained in its June 12, 2006, request for rehearing of the Commission's May 12, 2006 order in Docket No. ER06-700, the requirement to file details such as those included in the CAISO Credit Policy & Procedures Guide would impose significant burdens on the CAISO and other transmission providers. It would also limit the flexibility of transmission providers to change businesses practices to address changing market conditions and customer needs. In other words, this particular application of the rule of reason is contrary to the Commission's principles as reaffirmed in Paragraph 452 of the NOPR.

A review of the Credit Policy & Procedures Guide reveals why the requirement to include this Guide in the CAISO's tariff is contrary to these principles. For example, the Guide includes a detailed description of how the CAISO will apply its eight-step process for determining the unsecured credit limits of market participants. As described in the CAISO's request for rehearing in Docket No. ER06-700, these details include a table of Agency Rating Default Probabilities, percentages that establish restrictions on those credit limits, and a

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<sup>46</sup> 115 FERC ¶ 61,170 (2006).

description of certain software tools employed by the CAISO. Each of these details was intended to be updated on an ongoing basis, in some cases as frequently as once a month. Requiring the CAISO to file these details as part of its tariff is therefore highly impractical and will create a significant and undue administrative burden. In particular, such a requirement would stifle the ability of the CAISO to improve the application of its Commission-approved credit requirements as needed and to make timely adaptations to the application of its credit requirements.

The CAISO emphasizes that the question of whether certain details concerning credit and security requirements can be included in a guide that is not filed under Section 205 is not an issue of transparency. The CAISO recognizes that the Commission has a legitimate interest in ensuring that credit requirements are applied in an open and transparent manner. However, the provisions of the Credit Policy & Procedures Guide are already completely transparent to all parties because they are posted on the CAISO's website. Filing these provisions as part of the CAISO Tariff will delay updates to the Credit Policy & Procedures Guide without improving the transparency of the provisions of the Guide. Moreover, as the NOPR itself acknowledges, any market participant that has concerns about rules, standards, and practices such as those included in the CAISO's Credit Policy & Procedures Guide can contact the Commission's enforcement hotline or seek review of the CAISO's practices through a Section 206 complaint.<sup>47</sup> There is no legitimate reason to treat credit policies and

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<sup>47</sup> NOPR at P 452 n.401.

procedures any differently than other the other rules, practices and standards that the Commission permits to be included on OASIS and does not require to be filed as part of the tariff.

In *City of Cleveland*, the District of Columbia Circuit found that "[t]he statutory directive [of section 205(c)] must reasonably be read to require the recitation of only those practices that affect rates and service *significantly*, that are realistically susceptible of specification, and that are not so generally understood in any contractual arrangement as to render recitation superfluous."<sup>48</sup> Requiring a level of detail such as that included in the CAISO Credit Policy & Procedures Guide goes well beyond that standard.

Accordingly, the Commission's Final Rule in this proceeding should clarify that the proposal in the NOPR to require the inclusion of creditworthiness and security requirements in a transmission provider's OATT does not require inclusion in tariffs of the type of detail that would limit a transmission provider's flexibility to change businesses practices to address changing market conditions or customer needs or that would impose impractical and administratively burdensome requirements on transmission providers to file detailed credit procedures that are designed to be updated frequently.

**F. Transmission Planning – Coordinated, Open and Transparent Planning**

**1. The Proposed Transmission Planning Principles**

The CAISO supports the Commission's proposed requirement that transmission providers adopt the eight transmission planning guidelines specified

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<sup>48</sup> 773 F.2d at 1376.



in the NOPR.<sup>49</sup> The CAISO's transmission planning process reflects these eight general principles, and the CAISO believes that it is appropriate for all transmission providers to adopt such principles. The Final Rule should provide for sufficient flexibility for each region and sub-region to develop and adopt a transmission planning coordination process that best fits the region's or sub-region's needs. However, it is essential that the Commission require all transmission providers -- including municipal utilities and federal power authorities -- to share their transmission planning information with all interconnected transmission providers. Below, the CAISO provides its specific comments on the transmission planning principles enunciated by the Commission.

The CAISO stresses that regional participation and information exchange among interconnected transmission providers are two essential components of effective and efficient transmission planning. Indeed, the CAISO believes that the keys to success of sub-regional transmission planning coordination are the substantive exchange of information between the participants and a recognition of cross-interchange concerns in the transmission provider transmission plans. To achieve these important goals, the Commission should require that all transmission providers -- including municipal utilities and federal power agencies -- share their system transmission plans and relevant planning information with all interconnected transmission providers. The reciprocal exchange of transmission planning information is necessary to ensure the development of

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<sup>49</sup> See NOPR at PP 52, 214.

cost effective expansions that are designed to maintain reliable grid operations.<sup>50</sup> The reciprocal exchange of information will also ensure that transmission plans are simultaneously feasible, eliminate unnecessary redundancies and promote efficiencies between projects. This sharing of information will also allow transmission providers to identify system enhancements that could relieve significant and recurring transmission congestion. In sum, coordinated information sharing among transmission providers allows transmission planners to design their systems more efficiently and cost effectively taking into account, and taking advantage of, efficiencies that can be gained as a result of neighboring projects.

Although the Commission should mandate the sharing of transmission planning information among **all** interconnected transmission providers, the Commission should leave it to transmission providers to determine the appropriate boundaries for regional and sub-regional coordination and the entities/organizations that should facilitate such coordination. While the concept of creating a regional planning entity that is empowered to order the expansion of the regional transmission system might have some appeal, such an entity has not existed in the Western Interconnection, and there would be many hurdles to establishing such an entity. The formation of such an empowered regional entity probably would require a multi-state compact or some other regional

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<sup>50</sup> Any sub-regional coordination process which would require a particular transmission provider to share its system plans with its interconnected neighbors, but would not require a reciprocal sharing of information by all interconnected neighbors would hamper the ability to coordinate effectively, fail to fully achieve the goals enunciated in the NOPR, and otherwise would not provide significant improvement to existing regional transmission planning processes.

agreement. In light of the multiple and competing interests of the states and sub-regions with respect to siting, funding, cost-allocation and other issues, the adoption of such an agreement is unlikely. Therefore, at present, the Commission should take no action that would undermine the legitimate and established authority of transmission providers like the CAISO and other entities that are currently empowered to expand the transmission system. Also, the Commission also should not derail regional efforts that are already underway which are seeking to achieve the same goals enunciated by the Commission in the NOPR.

The NOPR does not appear to address the type of authority that would be bestowed upon any entity involved in regional and sub-regional coordination. The CAISO submits that any such entity should not have “veto” power over the transmission plans of its constituents. Specifically, the regional or sub-regional planning group should not have the authority to dictate what projects should be constructed or not constructed by a particular transmission provider. Such authority is not necessary to achieve the necessary coordination. Rather, transmission planners, such as ISOs and RTOs, should retain ultimate control of the plans adopted for the service territories they oversee. Coordination and collaboration can be achieved effectively through a requirement that the members of a planning group share transmission planning information with each other so they can provide input on each other’s plans and identify any interdependencies of the constituent plans. As indicated above, the most important aspect of regional and sub-regional planning is the sharing of

information because such information sharing will promote more cost effective and efficient transmission planning and coordination. Thus, a regional or sub-regional committee would essentially serve as advisory body whose intended purpose would be to facilitate transmission planning coordination among neighboring control areas and to identify any issues redundancies or opportunities for efficiencies.

The CAISO supports the Commission's proposal that transmission providers be required to meet with their transmission customers and interconnected neighbors, as well as relevant state agencies, to consult and coordinate with such entities, but requests that the Final Rule not be overly prescriptive by requiring a specified number of meetings, narrowly defining the scope of the meetings, or establishing specific notice requirements and/or meeting formats. Further, the Final Rule should provide sufficient flexibility to allow RTOs and ISOs to continue to coordinate transmission planning efforts within their footprint under the framework already developed and implemented by each RTO and ISO.<sup>51</sup>

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<sup>51</sup> In late 2005, the CAISO initiated an effort to revamp its existing transmission planning process to facilitate greater transmission coordination between the CAISO, PTOs, The California Public Utilities Commission ("CPUC"), The California Energy Commission ("CEC"), and stakeholders. The CAISO submits that its revamped transmission planning process exemplifies a transmission planning process that satisfies the openness and coordination requirements proposed by the Commission. Where the CAISO's previous transmission planning process allowed the PTOs to submit their individual transmission plans to the CAISO, beginning in 2006, the CAISO will prepare a single transmission plan for the CAISO Controlled Grid. This revamped process provides a centralized planning process for coordinating the transmission plans of the PTOs and facilitates the design of proposed solutions that maximize benefits for all CAISO market participants. The CAISO transmission plan is developed on an annual cycle, spans a minimum ten-year horizon, and is based on input and studies performed by the CAISO, PTOs, and the CEC. During the annual planning cycle, several public meetings are held to collect and coordinate study assumptions and stakeholder comments on the plans and results. Market participants, as well as neighboring control areas, are able to participate, and do in fact

In recognition of the importance of coordinating with its interconnected transmission providers, the CAISO's transmission planning meetings are open to all persons and entities that choose to participate. In many instances the CAISO actively invites the participation of interconnected transmission providers where it is necessary for the effective evaluation of the transmission plan. State-level participation in the transmission planning process is also an important element of any sub-regional coordination efforts, and any Commission-approved transmission planning process should accommodate the participation of state commissions and agencies. Both the California Public Utilities Commission ("CPUC") and the California Energy Commission ("CEC") participate in the CAISO transmission planning process, and they provide State policy input, as well as load and resource forecasts and other information for consideration in the CAISO's process.

Although the CAISO is a firm believer in a transmission planning process that is collaborative and open to all stakeholders, it is not evident that a specific number of meetings, or a single meeting format, is necessary to achieve the Commission's stated goal of making the transmission planning process more coordinated, open, and transparent. What is more important is that the transmission planner provide sufficient information to stakeholders and neighboring transmission providers in a timely manner so that they will have an

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participate, in the CAISO transmission planning meetings where comments on the proposed transmission plan for facilities in the CAISO Controlled Grid are provided and addressed by the CAISO and PTOs before the CAISO transmission plan is finalized.

adequate opportunity to fully understand and evaluate the plans and be able to provide useful input into, and to influence the outcome of, the planning process.

While there is no magic number of meetings that should be held, the CAISO believes that, at a minimum, there should be a sufficient number of meetings to address the following: (1) the baseline of the transmission plan; (2) the assumptions underlying the plan; (3) specific projects that are to be considered in the plan; and (4) an opportunity to discuss the plan prior to its finalization. Further, the meeting format should ensure open discussion of the issues raised by the transmission plans, and participants should have an opportunity to fully evaluate the plans and have consideration given to their comments in the final draft. Moreover, the timing of meetings should be left at the transmission planner's discretion to determine when sufficient information is available for fruitful discussion.

The CAISO agrees with the Commission that the transmission planning process should be open to all transmission customers and other affected parties and believes that the CAISO's existing process, as described above, provides for such participation. However, the CAISO urges the Commission not to adopt too prescriptive a requirement as to what "transmission planning meetings" must be open. For example, impromptu or short-notice meetings between the CAISO and Participating Transmission Owners ("PTOs") that involve the exchange of detailed information needed to perform technical studies need not be public because the end result and underlying assumptions ultimately will be made

public.<sup>52</sup> Similarly, meetings between the CAISO and its PTOs that are necessary to address confidential matters such as project cost estimates which may influence future contractor bidding on projects and operating procedures which detail how the transmission system is operated should not be public. Further, meetings where the CAISO needs to discuss confidential market/bid information of individual market participants as it pertains to the CAISO's evaluation of the impact of a proposed project on congestion -- which is a component of the CAISO's overall economic assessment of a project -- should not be open to the public. A requirement that meetings where market sensitive information is being discussed be public would obviously stifle the CAISO's ability to fully evaluate and discuss such confidential information, which in turn could hamper the CAISO's efforts in assessing the economic benefits of a project.

The CAISO agrees with the Commission that transmission providers should be required to disclose to all customers and other stakeholders the basic criteria used in their evaluations, the assumptions and the data that underlies the transmission plan.<sup>53</sup> Transparency is vital in ensuring effective coordination with and involvement of stakeholders in the planning process. While the CAISO

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<sup>52</sup> The CAISO may meet with its PTOs to discuss certain details (*e.g.*, detailed operational issues, power system modeling data issues, etc.) that aid the CAISO in formulating the plans and resolving specific issues. Ultimately, the outcome of such discussions is shared with stakeholders during stakeholder meetings and in technical reports, so parties will ultimately be able to comment on the substance of such meetings. There is no need to make all such meetings public, provided that any developments arising from such meetings are presented for stakeholder consideration through the open meeting process discussed above.

<sup>53</sup> The CAISO posts transmission planning-related information including the assumptions, practices and models and data used in the transmission planning process -- all subject to Critical Energy Infrastructure Information protections and confidentiality requirements. This approach promotes transparency in the process.

believes that this goal can be achieved by requiring transmission providers to comply with a general transparency requirement, the CAISO cautions against the adoption of standardized forms for the collection of necessary information.

For example, standardized forms such as FERC Form No. 715 do not necessarily elicit the information needed by market participants to determine the adequacy of particular plans. In that regard, the CAISO has found that additional data is needed to conduct actual stability, short circuit, and other transmission-related studies, as well as economic evaluation analyses. The CAISO does not believe that the Commission's efforts should be focused on devising a one-size-fits all approach to information gathering. While forms such as Form No. 715 may be adequate to provide a high level description of the information considered in the transmission planning process, market participants may need more specific transmission system information in order to effectively evaluate transmission plans.

Finally, the CAISO agrees with the Commission that the transmission provider should have a dispute resolution process applicable to its transmission planning process. However, the Commission should not mandate a specific dispute resolution processes. Transmission provider tariffs, including the CAISO's Tariff, already contain a variety of effective and time tested Alternative Dispute Resolution ("ADR") mechanisms that apply to, or can be applied to, disputes that arise during the transmission planning process.



## **2. Level Of Detail on the Transmission Planning Process That Should Be In The Tariff**

The Commission seeks comment on the level of detail on transmission planning that should be required in transmission providers' OATTs.<sup>54</sup> As discussed above, the Commission should apply the traditional "rule of reason" to determine the detail that should be in the tariff. The Commission can look to previously approved ISO and RTO tariffs as guidance as to the amount of detail that should be in a tariff with respect to transmission planning. The CAISO believes that the level of detail reflected in its tariff is sufficient for it to conduct its business as the transmission planner for the PTOs who have transferred operational control of their facilities to the CAISO. In particular, the general principles and requirements that serve as the foundation of the transmission planning processes should be in a transmission provider's tariff. However, more granular details such as the number and timing of meetings should not be in the tariff because such a requirement might unduly constrain participants and limit any flexibility.

## **3. Grid Enhancements Consideration Beyond Reliability**

The Commission inquires whether there should be a specific study process to identify opportunities to enhance the grid for purposes beyond reliability or reducing congestion.<sup>55</sup> The CAISO believes that the Commission should adopt a policy supporting transmission infrastructure development policies and/or innovative rate treatments that will encourage the construction of

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<sup>54</sup> NOPR at P 219.

<sup>55</sup> NOPR at P 218.

transmission lines necessary to attach renewable resources. The challenges associated with constructing transmission lines that will attach renewable resources are significantly different than the circumstances associated with traditional gen-tie facilities. A traditional gen-tie typically involves a single resource coming on line at a single point in time. The line will be for the sole use of that generator and the line will be sized accordingly. The Commission's policy has been to require the generator to pay for such line up front.

Significant impediments to the development of renewable transmission lines currently exist, and the Commission's existing policy regarding the rate treatment for gen-ties simply is not workable for purposes of encouraging the connection of renewable resources to the grid. Renewable resources are typically located in areas remote from the grid, and renewables developers have no choice but to locate their projects in such locations because the "fuel source" is not transportable. Renewables development typically involves a number of projects (often small projects) -- as opposed to a single project -- that come on line over a period of years (as opposed to coming on line at a single point in time). Further, development in a renewables area can involve multiple project developers as opposed to a single developer.

The Commission's existing gen-tie financing policy does not work in this context. Accordingly, the Commission needs to adopt innovative transmission policies that recognize the unique circumstances facing renewables transmission development and which will promote the development of the transmission infrastructure that is necessary to support the development of renewable energy

resources and the delivery of such energy to customers in highly populated regions. The promotion of renewable resources is not only an important policy objective of state regulators but also an important objective of the federal government, as confirmed by Title II of the Energy Policy Act of 2005.

The CAISO notes that it expects to make a filing with the Commission in the near future seeking policy guidance regarding the creation of a new, distinct category of transmission facility intended to accommodate renewable energy projects. Facilities that qualify under this proposed “third” transmission category would be eligible for alternative rate treatment that would facilitate the development of renewables transmission which would otherwise be extremely difficult to pursue under the Commission’s existing policies. The CAISO believes that such a proposal is appropriate and necessary because the facilities in question would be distinct from both from the traditional generation interconnections that are financed up front entirely by the interconnecting resources, and from pure network facilities. The CAISO urges the Commission to be open to proposals such as the one the CAISO expects to file which are necessary to facilitate the development of renewables generation and renewables transmission.

#### **IV. CONCLUSION**

For the foregoing reasons, the Commission should issue a Final Rule in this proceeding consistent with the discussion herein.

Respectfully submitted,

**/s/ Anthony J. Ivancovich**

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Date: August 7, 2006



August 7, 2006

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

**Re: Preventing Undue Discrimination and  
Preference In Transmission Services  
Docket No. RM05-25-000**

Dear Secretary Salas:

Enclosed please find an electronic filing of the Comments of the California Independent System Operator Corporation on Notice of Proposed Rulemaking.

Thank you for your attention to this filing.

Respectfully submitted,

**/s/ Anthony J. Ivancovich**  
Anthony J. Ivancovich

Counsel for the California Independent  
System Operator Corporation

## **CERTIFICATE OF SERVICE**

I hereby certify that I have, this 7<sup>th</sup> day of August 2006, caused to be served a copy of the foregoing document upon all the parties listed on the official service list compiled by the Secretary of the Federal Energy Regulatory Commission in this proceeding.

**/s/ Anthony J. Ivancovich**  
Anthony J Ivancovich