

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

Electronic Tariff Filings

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Docket No. RM01-5-000

**COMMENTS OF THE CALIFORNIA INDEPENDENT
SYSTEM OPERATOR CORPORATION**

Pursuant to the Commission's April 29, 2005 "Notice of Technical Conference, Comment Deadline and Electronic Format Manual" ("April 29 Notice"), issued in the captioned docket, the California Independent System Operator Corporation ("CAISO")¹ hereby submits its comments. The April 29 Notice requests comments on the regulatory text changes proposed in the Commission's Notice of Proposed Rulemaking regarding electronic tariff filings, Commission Statutes and Regulations, 69 Fed. Reg. 43,929 (July 23, 2004), Proposed Regulations ¶ 32,575 (July 8, 2004) ("July 8, 2004 NOPR"). The CAISO also submits its comments in response to the July 6, 2005 "Notice of Additional Proposals and Procedures" (112 FERC ¶ 61,043) ("July 6, 2005 Notice"), also issued in the captioned docket. The CAISO's comments include several requests for clarification of the Commission's proposals.

¹ Capitalized terms not otherwise defined herein have the meanings set forth in the Master Definitions Supplement, Appendix A to the CAISO Tariff.

I. Correspondence

The CAISO requests that all correspondence, pleadings and other communications concerning this filing be served upon the following:

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II. Comments on the July 8, 2004 NOPR

A. The Comment Process in this Proceeding

As an initial matter, the CAISO notes that the Commission has requested comments on proposed changes to the Code of Federal Regulations (C.F.R.) concerning the implementation of electronic tariffs or “eTariffs” by August 1, 2005. Presumably the Commission will subsequently request comments on the Commission’s proposed non-C.F.R. mechanics of implementing eTariffs. The CAISO believes that the Commission should provide an additional comment period on the proposed changes to the C.F.R. subsequent to the comment period on the proposed non-C.F.R. mechanics, so that entities have an opportunity to address any changes to the C.F.R. provisions that may be needed in light of the non-C.F.R. mechanics.

B. Unilateral Tariffs and Rate Schedules

The CAISO seeks clarification regarding whether there will be any difference between unilateral tariffs and contracts designated by the Commission as rate schedules for purposes of the July 8, 2004 NOPR (particularly regarding the form of electronic submittal of amendments to contracts, including signature pages). See July 8, 2004 NOPR at ¶¶ 4-5, 12, 14, 41. For example, the CAISO cannot tell whether it will have to submit a scanned signature page (and whether the Commission's software will accept such a scanned page) for a contract that is otherwise submitted in a word-searchable format. See *id.* at ¶¶ 34-37.

C. Electric Quarterly Report Requirements

The CAISO requests clarification on several issues concerning the relationship of the proposed eTariff filing requirements to the Electric Quarterly Report ("EQR") requirements of Order No. 2001. See July 8, 2004 NOPR at ¶ 8. First, if *pro forma* contracts designated as rate schedules by the Commission are currently being treated as subject to the EQR requirements of Order No. 2001, do such *pro forma* contracts need to be deleted from the EQR listings and refiled as eTariffs or parts of eTariffs? Second, do individual executed "conforming" Large Generator Interconnection Agreements ("LGIAs") have to be filed as eTariffs or part of eTariffs, or can they simply be reported in the EQR?

D. Rate Schedules and Service Agreements

The CAISO requests clarification as to whether the Commission proposes implementing similar treatment for those contracts designated as rate schedules and those that are service agreements. See July 8, 2004 NOPR at ¶ 8. The

NOPR suggests that contracts designated as rate schedules will be subject to the new electronic tariff filing requirements, while service agreements (1) will not be filed electronically but will instead continue to be summarized in the EQR and (2) will continue to be required to be filed in hard copy in the event of any variance from *pro forma* service agreement terms. On the other hand, statements made by the Commission staff at the technical conference held on June 1, 2005 suggest that the Commission envisions similar treatment for contracts designated as rate schedules and those that are service agreements., The CAISO believes that the Commission should clarify that the filing requirements for variations from *pro forma* service agreements will be the same as for rate schedules and will be subject to the electronic tariff filing requirement.

E. Tariff Provision Numbering Issues

The CAISO agrees with the Commission's proposal that tariff sheets be replaced with tariff sections for purposes of filing revisions. See July 8, 2004 NOPR at ¶ 16. The CAISO believes that the system of using tariff sheets and sheet numbers should be done away with entirely.

The Commission also requests comment "on whether to adopt a standardized numbering or outlining scheme for tariff filings across industries, to adopt a standardized scheme within each industry, or to permit each filer to choose its own numbering scheme." July 8, 2004 NOPR at ¶ 28. The CAISO believes that each filer should be able to utilize its own numbering or outlining scheme. A standardized scheme appears to be impractical, because different

tariff provisions or organization of tariff provisions may be required for different utilities and industries.

The Commission requests comments on whether “utilities should not (except in extreme cases) change the initial numbering of tariff provisions.” July 8, 2004 NOPR at ¶ 29. The CAISO believes that utilities should be permitted to change the initial numbering of tariff provisions where a tariff is being completely re-written. In such a case, the utility should perhaps include in its tariff a table of cross-references from the old section numbers to the new sections (if any) covering the same subject matter.

The Commission asked commenters to address whether utilities, in making their initial filings, should be required to break their tariffs into the same sections they currently use, or should be able to file larger or smaller sections. July 8, 2004 NOPR at ¶ 30. The CAISO believes that utilities should not be required to break their tariffs into the sections they currently use, because a re-written tariff may require a different organization of sections than the organization in the tariff it replaces. Moreover, the sizes of tariff sections will vary according to their content, and therefore utilities should be able to file larger or smaller sections.

The Commission requested comments on whether using date stamps is sufficient to identify historic tariff provisions or whether the current practice of numbering revisions would provide for more accurate tracking and citation. July 8, 2004 NOPR at ¶¶ 20, 31. The CAISO believes that using date stamps sufficiently identifies historic tariff revisions, and that date stamps are more

efficient and user friendly than the current practice. For example, the current practice may lead to situations in which several different versions of a given section are pending at the same time and it is not known in advance in which order they will be approved. The date stamp method would accommodate such situations more easily.

F. Software and Database Issues

The July 8, 2004 NOPR states that “[a]lthough the tariff creation software the Commission provides will have the capability to generate marked versions of the tariff, the Commission believes that applicants should be responsible for identifying those changes for which they are requesting Commission action.” July 8, 2004 NOPR at ¶ 44. It is unclear to the CAISO why utilities should have to go to the extra step of filing a “black-line” if the Commission’s software has the capability to generate marked versions. Moreover, the CAISO notes that the User Guide provided by the Commission (at pp. 34-35) discusses the “compare” features of the Commission’s software. However, it is difficult to evaluate the adequacy of the software to substitute for a black-line without being able to test this feature, which requires a great deal of effort given the conditions of the current software testing system. The feature can only be used in connection with the software’s tariff revision functions, and the tariff revision functions cannot be used until there is an accepted baseline tariff available to be revised. While it is true that the option of creating and submitting a baseline tariff to the Commission to be approved for testing purposes is currently available, the effort required to generate and submit a baseline tariff makes this option a high threshold for those

parties who have not been involved in the formal testing program to meet in order simply to be able to test the “compare” feature and other relevant software features related to tariff revisions. The CAISO believes that the Commission should make available a dummy “approved baseline tariff” (or allow public utilities to create their own) so that commenters who have not found it practicable to submit a baseline tariff can experiment with the compare function and related software features and may submit supplemental comments informed by such a trial. (The CAISO does note that the Commission recently posted guidelines on how to create a “black-line strikeout macro.”) The CAISO believes it would be preferable if the Commission’s software were able to generate marked versions dynamically, *i.e.*, to allow comparison with any filed version of the eTariff. Such a feature could be very helpful for all parties that will be evaluating any proposed changes to the eTariff.

It is unclear to the CAISO whether the Commission’s database can be accessed through other programs, *e.g.*, the “Documentum” program. The CAISO seeks clarification from the Commission on this question. The CAISO would prefer that the database be accessible through other programs for greater efficiency. Use of web services, WebDAV, or other automated access methods could greatly enhance all parties’ ability to deal with tariffs.

The CAISO requests clarification on whether the Commission’s software will provide a means for distinguishing between a tariff section’s approval date, effective date, issued-on date, date made effective upon specific conditions, etc. as is required under Order No. 614. See July 8, 2004 NOPR at ¶¶ 40, 61-64.

The CAISO seeks clarification on several issues regarding the insertion of the effective date for a tariff section. First, it is unclear who provides the effective date for a tariff section – the Commission or the utility. Paragraph 40 of the July 8, 2004 NOPR “require[s] the company to populate other required fields, such as the proposed effective date.” However, page 22 of the Commission’s User Guide states that the “Effective Date” field in the “Tariff Section Window . . . reflects when the displayed section was Approved by an order from FERC. This field is designated as “read only” and populated when the Approved status for the filing is downloaded from the FERC Tariff Server.” (There appears to be no discussion of proposed effective dates anywhere in the User Guide.) The Commission does not appear to explain what happens in a situation where the Commission does not agree with a utility’s proposed effective date. The CAISO’s request for clarification concerns the initial effective dates of new proposed tariff provisions as well as the effective dates of amendments to tariff provisions.

G. Filing Requirements

The CAISO notes that the July 8, 2004 NOPR does not contain any procedures that will be required as to notices of filing and interventions (and other filings) concerning eTariff modifications.² The CAISO requests that the Commission explain any such procedures.

² The July 8, 2004 NOPR does state that “[t]he baseline tariff filings will be subject to notice and comment to permit customers to ensure that the proposed baseline tariff is an accurate duplication of the effective tariff,” and that “[p]rotests in the baseline tariff proceedings, therefore, will only be considered if they involve the issue of whether the baseline tariff reflects an accurate duplication of the existing effective tariff. July 8 NOPR at ¶ 53. However, the July 8, 2004 NOPR does not appear to address procedures applicable to modifications to eTariffs.

H. Confidential Information

The July 8, 2004 NOPR (at ¶ 47) provides some guidelines for the provision of confidential information. The CAISO seeks clarification on the process for ensuring that sensitive information remains confidential, as the CAISO has several *pro forma* contracts designated by the Commission as rate schedules that each include confidential information. For example, when sensitive information in tariff provisions needs to be redacted, particularly from a contract designated by the Commission as a rate schedule, how much of the tariff provisions should be filed as confidential and how much should be redacted from the non-confidential version of a particular section? Can the entire section be redacted? Also, will the Commission be specifying a standard form for the protective order that the filing utility must prepare to allow intervenors access to the confidential information?

I. “Baseline” Tariffs

The CAISO understands a “baseline” tariff to include both a utility’s Commission-approved unilateral tariff and all of the utility’s contracts designated by the Commission as rate schedules. See July 8, 2004 NOPR at ¶¶ 51-58; Commission’s User Guide at pp. 2-3; Introduction of “How to Prepare your Tariff for Input into the FERC eTariff Software.” However, the CAISO requests verification of that understanding.

Moreover, the Commission appears to treat the baseline tariff as being synonymous with the “effective” tariff. This equivalence of the baseline tariff with the effective tariff does not reflect the situation in which certain tariff provisions

are approved by the Commission but not yet made effective; in such a situation, the Commission-approved tariff is not the same as the effective tariff.³ The CAISO requests clarification on whether provisions that are approved but not yet effective are to be included in the baseline tariff. If they are not to be included in the baseline tariff, the CAISO requests clarification on what should be done with them until they become effective.

If, on the other hand, approved but not yet effective tariff provisions are to be included in the baseline tariff, the CAISO requests clarification on how the currently effective tariff provisions that precede them should be reflected in the baseline tariff. In that latter situation, the CAISO believes that the preferred solution may be a multi-layer approach pursuant to which the utility submits the current effective provisions for inclusion in the baseline tariff, and simultaneously submits the approved but not yet effective tariff provisions as a proposed revision; the utility could ask the Commission to accept the approved but not yet effective tariff provisions as a revision that is not yet part of the baseline tariff, but will become part of the baseline tariff upon the arrival of some specified date or occurrence of some specified event (*e.g.*, notice to market participants). If such a multi-layer approach were to be adopted, the Commission's software would have to be revised to allow the submission of proposed revisions at the same time that the initial baseline tariff is submitted. The current version of the

³ The CAISO Tariff includes provisions that are approved by the Commission but not yet made effective, such as certain provisions to implement the CAISO's Market Redesign & Technology Upgrade.

software does not permit the submission of revisions until the baseline tariff has been accepted by the Commission.

An alternative to the multi-layer approach described above would be to treat approved but not yet effective tariff provisions in the same way that pending or suspended tariff amendments would be treated according to paragraph 54 of the July 8, 2004 NOPR.⁴ However, this alternative approach appears to be less appealing than the multi-layer approach. For example, under the alternative approach, if a utility wanted to submit the approved but not yet effective tariff provisions after approval of the baseline tariff, and the utility was required to provide notice that those tariff provisions had gone into effect, the utility's notice would have to be acted on by the Commission so as to trigger the requirement to file the tariff provisions as a revision in the new electronic format. Thus, the alternative approach could impose another, later Commission approval requirement before the tariff provisions that were approved but not yet effective could be added to the effective tariff, thus causing a burdensome and potentially confusing delay for the utility and market participants with regard to updating the tariff. This additional round of Commission approval could also be a burdensome and duplicative additional administrative requirement for the Commission at a time when it is in the process of managing the transition from the old paper tariff system to the new eTariff system.

⁴ "If a regulated entity has a pending or suspended tariff change filing at the time of the filing of the baseline tariff, the regulated entity will not have to file these pending or suspended tariff sections as part of the baseline tariff filing. However, the regulated entity will be required to identify the proceedings where such tariff changes exist. As the Commission acts on pending or suspended tariff[] sections, the Commission will require the regulated entities to file the accepted tariffs in the new electronic format." July 8, 2004 NOPR at ¶ 54.

J. Timing of the Transition to eTariffs

The Commission proposed to require public utilities, including regional transmission organizations and independent system operators, to submit eTariffs in approximately the last half of a six-month period following the effective date for the Commission's proposed regulations. July 8, 2004 NOPR at ¶ 56.⁵ The CAISO believes that a six-month transition period is ambitious with regard to entities such as the CAISO that are in the process of re-writing their tariffs, if the proposed regulations become effective during the re-write. However, if the proposed regulations become effective after the CAISO's tariff re-write is completed, the CAISO believes that it would be able to submit its eTariff within the six-month period.

III. Comments on the July 6, 2005 Notice

The July 6 Notice stated:

As applied to filings by electric utilities, all generally applicable tariffs, which includes the open access transmission tariffs (OATTs), power sales tariffs, and market-based rate tariffs, as well as new agreements will still need to be filed utilizing the Commission's eTariff software, as the July 8 NOPR proposed. However, old or non-conforming rate schedules and agreements will not need to be converted unless they are revised. When such agreements and rate schedules are revised, electric public utilities must file the entire agreement utilizing the eTariff software and conform to the requirement in Order No. 614 that a utility filing a service agreement must file a complete agreement with appropriate designation.

⁵ Specifically, the Commission proposed to require natural gas pipelines to submit eTariffs in the first eight-week period following the effective date for the proposed regulations, followed by oil pipelines over the next eight-week period, and public utilities over the next 14-week period. July 8, 2004 NOPR at ¶ 56. The Commission originally was aiming for a March 1, 2005 effective date for the proposed regulations (*id.* at ¶ 51), but now the regulations will be made effective on some subsequent date.

July 6, 2005 Notice at ¶ 5. Under the provisions of Order No. 614, “conforming” service agreements do not need to be filed and instead are reported through the EQR process. The CAISO requests clarification that this will still be the case after the eTariff provisions are implemented.

IV. Conclusion

The CAISO requests that the Commission give consideration to the comments presented herein.

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