

**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 INQUIRY**

The California Independent System Operator Corporation (“CAISO”) hereby submits its Comments¹ in response to the Notice of Inquiry (“NOI”) issued by the Federal Energy Regulatory Commission (“Commission”) in this proceeding on September 16, 2005. In the NOI, the Commission invites comments on whether reforms are needed to the Order No, 888 pro forma open access transmission tariff (“OATT”) and the OATTs of public utilities to ensure that transmission services provided thereunder are just, reasonable and not unduly discriminatory or preferential. The Commission indicates that its goal is to prevent undue discrimination and preference in the provision of transmission service. The Commission seeks comments describing the specific enhancements that are needed to (1) remedy any unduly discriminatory or preferential application of the pro forma OATT, or (2) improve the clarity of the Order No.888 pro forma OATT and individual utility’s OATTs in order to more readily identify violations and facilitate compliance. In particular, the Commission invites commenters to share their overall thoughts on how the pro forma OATT

¹ 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.

has worked thus far, including which portions of the OATT have worked well, which portions could be improved and what are the best practices of individual transmission providers (and whether such practices should be made part of the pro forma OATT). The Commission also asks which of the matters discussed in the NOI, if any, do not need to be applied to ISO and RTO tariffs.

The CAISO welcomes the opportunity engage in the discussion of whether reforms are needed to the pro forma OATT and the OATTs of public utilities in order to prevent undue discrimination and preference. The CAISO agrees with the Commission that the prevention of undue discrimination and preference in the provision of transmission services is an important goal. The CAISO submits that many of the concerns raised by the Commission in the NOI already have successfully been addressed by the operation of ISOs and RTOs. Because ISOs and RTOs are independent (and many are non-profit entities) and do not have affiliates who take transmission service or provide generation services, they have no motive to discriminate. The transparency of ISO and RTO operations, procedures and congestion management further addresses any concerns about undue discrimination or preference. Because ISOs and RTOs have already addressed many of the issues raised in the NOI and their tariffs have moved far beyond the pro forma OATT, it would not be appropriate or productive for the Commission to use this proceeding to modify ISO/RTO transmission services or tariffs.

Many of the specific matters raised in the NOI do not apply to ISOs and RTOs in general and to the CAISO in particular. In that regard, the CAISO's

OATT differs significantly from the pro forma OATT. For example, 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. Thus, many of the questions the Commission poses in the NOI regarding the characteristics and pricing of Order No. 888 network and point-to-point transmission services simply do not apply to the CAISO. The daily open access transmission service that the CAISO provides under its OATT adequately addresses the concerns raised by the Commission in the NOI regarding the traditional Order No. 888 transmission services. Such transmission service is fully transparent, maximizes customer flexibility, promotes efficient use of the transmission system and addresses the Commission’s concerns regarding undue discrimination or preference. Given the distinct nature of the transmission service provided by the CAISO, it would not be productive for the Commission to explore modifications to such service in this proceeding.

With respect to other matters raised in the NOI, the CAISO urges the Commission to act in accordance with the following key principles: (1) uninstructed deviation penalties such as those that the Commission previously approved for the CAISO are appropriate for inclusion in a public utility’s OATT; (2) ISO’s/RTOs and their market participants should determine the appropriate Ancillary Services to be provided within the ISO/RTO footprint and the pricing of such services, and the Commission should not mandate market-based pricing for services such as Black Start and Reactive Power; (3) the Commission should

reaffirm its existing policy that the right of first refusal under Order No. 888 does not apply to ISOs and RTOs; (4) the Commission should not use this proceeding to order reforms to the CAISO's existing and proposed transmission planning process which involves joint transmission planning, includes an obligation to construct reliability upgrades, and accommodates joint ownership of transmission facilities; and (5) the Commission should consider adding a general requirement to the OATT obligating all public utilities to comply with certain market monitoring and reporting obligations and with all Commission-established market behavior and enforcement rules.

I. SPECIFIC COMMENTS

A. Because the CAISO Does Not Provide Traditional Order No. 888 Transmission Services (*i.e.*, Point-to-Point And Network Service), the Concerns Expressed by the Commission Do Not Apply to The CAISO (Sections A,C,D,F,G, N, P)

The NOI raises numerous questions regarding Order No. 888 point-to-point and network transmission services and potential changes to such services, including the appropriate type(s) of transmission service that should be provided, processing of transmission requests, the need for an hourly transmission service, capacity reassignment, changes in receipt/delivery points, the processing of transmission requests, hoarding of capacity and queuing.

The aforementioned issues raised by the Commission 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 or long-term transmission service. 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 only 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. 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 the reservation of available transmission capacity on a first-come first-served basis, on a long-term basis. Also, the CAISO functions in a paradigm in which the concept of native load, and the obligation to serve such load, does not exist.

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. *Pacific Gas & Electric Company, et al.*, 81 FERC ¶¶61,128 at 61.435, 61, 456-56 (1997). There is no basis for revisiting those findings. The CAISO's transmission service does not raise the concerns identified in the NOI regarding queuing, hoarding of capacity, the processing of 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 does not apply to the CAISO. Under these circumstances, the CAISO's daily reservation service should be left intact, and the Commission should not seek to modify such service in the course of this proceeding.

B. The CAISO's Transmission Pricing Methodology Promotes Efficient Use Of The Transmission System (Section B)

In the NOI, the Commission seeks comments on whether reforms to the Commission's transmission pricing policies should be considered as part of OATT reform. In particular, the Commission asks whether there are changes that could be made to its current pricing policies to increase the efficient use of the grid on systems that do not use locational marginal pricing ("LMP").

The CAISO allocates transmission capacity in Real-Time, based on Hour-Ahead and Day-Ahead Schedules.² Instead of providing long-term reservations of capacity at a set price, the CAISO prices transmission as follows: (1) the CAISO charges all metered Demand and exports a transmission Access Charge; and (2)

² Capitalized terms used herein are in accordance with Appendix A of the CAISO Tariff as amended from time to time.

the CAISO manages Congestion on a zonal basis and imposes a Usage Charge on all users of congested Inter-Zonal Interfaces as well as a Grid Operations Charge to relieve Congestion within a Zone in Real-Time. Essentially, any customer can receive service at any time if it is willing to pay the applicable Access and Congestion Charges.³ As part of its Market Redesign and Technology Upgrade program, the CAISO will be moving from a zonal congestion management model to a LMP congestion management model. Many of the pricing concerns raised by the Commission in the NOI are inapplicable in a LMP regime.

The embedded costs of the High Voltage Transmission Facilities (*i.e.*, 200 kV and above) that have been turned over to the CAISO's Operational Control are recovered via the CAISO's transmission Access Charge. The CAISO submits that its High Voltage Access Charge, as recently approved by the Commission,⁴ promotes efficient use of the transmission system and ensures that the embedded costs of the transmission grid will be recovered on a basis that is just and reasonable and not unduly discriminatory.

In Tariff Amendment Nos. 27, 34, 49, 57 and 63 to the CAISO Tariff, the CAISO proposed tariff provisions to develop a single CAISO Grid-Wide High Voltage Access Charge for recovery of each Participating TO's Commission-

³ The Commission has recognized that the congestion usage charge sends the proper price signals regarding the opportunity costs of using congested transmission paths and encourages the efficient use of the transmission system. *Pacific Gas & Electric Company, et al.*, 80 FERC ¶61,128 at 61,429 (1997).

⁴ *California Independent System Operator Corporation*, 109 FERC ¶61,301 (2004). ("Order No. 478"), *order on reh'g and clarification*, 111 FERC ¶ 61,337 (2005).

approved embedded high voltage transmission costs.⁵ Previously, the Access Charge consisted of three separate utility-specific rates based on the revenue requirements of the Participating TOs. Access Charges were paid based on where the metered Demand was served, or where the export left the CAISO Control Area.⁶ However, in Tariff Amendment No. 27, the CAISO proposed -- and the Commission recently approved -- a ten-year transition period during which the High Voltage Access Charge ("HVAC") for the TAC areas⁷ would gradually merge to form a single CAISO Grid-Wide Access Charge. This will be accomplished by blending a cumulative ten percent per year of the individual Participating TO's existing High Voltage Transmission Revenue Requirements ("HVTRRs") for each TAC Area with the sum of all Participating TOs' existing HVTRRs⁸. In addition, all New High Voltage Facilities, including capital additions to Existing High Voltage Facilities, are immediately included in the CAISO's Grid-Wide Access Charge. Thus, by 2011, users of the CAISO-Controlled Grid will pay a single charge for use of the high voltage system regardless of location of either metered Demand or export.

⁵ The CAISO currently has a total of 11 Participating TOs. The Cities of Vernon, Anaheim, Azusa, Banning, Riverside and Pasadena have joined the East Central TAC Area with Southern California Edison Company ("SCE"). Trans-Elect LLC and Western Area Power Administration have built a new upgrade to Path 15, and have joined Pacific Gas and Electric Company ("PG&E") in the Northern TAC Area. San Diego Gas & Electric Company ("SDG&E") is in the Southern TAC Area.

⁶ For example, Load in SDG&E's Service Area would pay SDG&E's utility-specific Access Charge; whereas, an export at the California-Oregon Intertie ("COI") would pay the weighted average utility-specific rate of the Participating TOs who have rights on COI.

⁷ The TAC areas correspond to the historical control areas of the original Participating TOs: PG&E, SCE, and SDG&E.

⁸ Existing High Voltage Facilities are defined as those transmission facilities at 200 kV or above that were placed in service on or before January 1, 2001 when the Transition Period commenced. This demarcation has facilitated transferring to a CAISO Grid-Wide rate more expeditiously.

The CAISO developed the Access Charge rate methodology proposed in Amendment No. 27 in order to advance six principal objectives: (1) the establishment of an Access Charge that creates an equitable balance of costs and benefits among the various affected classes of stakeholders; (2) the development of an Access Charge rate methodology that was acceptable to the largest possible majority of the members of the CAISO Governing Board; (3) the establishment ultimately of a single rate for access to the High Voltage Transmission Facilities forming the backbone of California's regional transmission grid; (4) the treatment of all Participating TOs on the same basis; (5) the creation of incentives for, and removal of barriers to, additional entities including their transmission facilities and contractual entitlements in the regional grid controlled by the CAISO; and (6) the strengthening of the CAISO's independence by increasing the extent to which the design of charges for transmission access is incorporated in the CAISO Tariff.

The Commission has expressly endorsed the "ISO's objectives of creating an equitable balance of benefits and burdens among the various affected classes of stakeholders[,] the treatment of all Participating TOs on the same basis, as well as the goal of a uniform grid wide high voltage rate, and incentives for new Participating TOs."⁹

In approving the Access Charge methodology, the Commission found that the Access Charge rate design "is just and reasonable, and not unduly discriminatory," and that TAC is not inconsistent with general principles of cost

⁹ *California Independent System Operator Corporation*, 91 FERC ¶ 61,205 at 61,722 (2000).

causation".¹⁰ The Access Charge methodology and the gradual move to a single CAISO Grid-Wide Access Charge promotes economically efficient transmission, accounts for and reflects the integrated nature of the CAISO-Controlled Grid, provides for an adequate transition period to address cost shifting concerns, reflects comparability, and treats everyone in a non-preferential manner. The CAISO's Access Charge methodology is halfway through its transition period, Existing High Voltage Facilities is already 50% TAC Area and 50% CAISO Grid-Wide, going to 40% TAC Area and 60% ISO Grid-Wide on January 1, 2006. For these reasons, and given that the Commission approved the TAC methodology less than a year ago, the Commission should not seek to revisit transmission pricing on the CAISO-Controlled Grid in this proceeding.

C. The CAISO's Current And Proposed Transmission Planning Processes Incorporates Joint Planning, Includes An Obligation To Expand, And Accommodates Joint Ownership (Sections J, K, L)

The NOI poses numerous questions regarding transmission planning. For example, the Commission seeks comments on whether public utilities' OATTs should be reformed to include mandatory joint planning requirements. The Commission also seeks comments regarding possible changes to its policy on the obligation to expand capacity. Finally, the Commission queries whether it should make changes to the OATT to promote joint ownership of transmission facilities and raises issues regarding joint ownership.

The CAISO's existing transmission planning process mandates joint planning for Participating TOs, includes an obligation to expand for projects that

¹⁰ *California Independent System Operator Corporation*, 109 FERC ¶ 61,301 (2004) (Opinion No. 478), order on reh'g and clarification, 111 FERC ¶ 61,337 at 62,501 (2005).

are needed for reliability, and accommodates joint ownership. The CAISO notes that it is in the process of developing a new transmission planning process that will achieve these same objectives and will promote the construction of new infrastructure that is needed for reliability and/or economic reasons. Set forth below is a brief description of the CAISO's existing and proposed transmission planning processes and how they promote the Commission's objectives.

Under the CAISO's existing coordinated transmission planning process, the CAISO coordinates with Participating TOs to identify any transmission additions or upgrades that are needed to ensure that the transmission system operates consistent with Applicable Reliability Criteria.¹¹ To meet this requirement, Participating TOs annually submit transmission assessment and expansion plans to the CAISO, which include a detailed, year-by-year analysis of projects needed to meet reliability criteria for the next five years, plus a 10-year case for loads that are geographically embedded within the Participating TO service territory and within the CAISO Control Area. Proposed transmission additions or upgrades must meet regional planning requirements.¹² The CAISO reviews expansion plans to determine if the proposed projects (1) solve an identified problem, (2) are the best alternative from a system point of view, (3) constitute the most economical alternative, and (4) meet applicable reliability criteria. For purposes of developing a CAISO Controlled Grid-wide integrated plan, the CAISO historically has initiated an open stakeholder process to ensure

¹¹ CAISO Tariff § 3.2.1.2

¹² CAISO Tariff § 3.2.2.1. Because Participating TOs' transmission plans are performed on an annual basis, the submitted expansion plans demonstrate a rolling ten-year planning horizon for their individual systems.

that stakeholders are provided an early opportunity to review and comment on the individual transmission expansion plans. Importantly, the product derived from stakeholder participation is the development of base cases and study plans, which incorporate the concerns identified by the stakeholders, and describe how such concerns will be addressed.

Once the CAISO approves a Participating TOs' transmission expansion plans, the recommended projects are incorporated into the CAISO's Controlled Grid Study to corroborate that all reliability requirements have been addressed and to assure that there are no "seams" issues among the Participating TOs' systems that were not identified in the individual TO plans. In other words, the CAISO must ensure that transmission expansions are properly integrated with the CAISO-Controlled Grid. The CAISO makes the determination that a transmission addition or upgrade is needed where it will promote economic efficiency or maintain system reliability. The Participating TOs are obligated to construct any transmission upgrades or additions that the CAISO determines are necessary to ensure system reliability consistent with applicable reliability criteria.¹³ Participating TOs are not obligated to construct economically driven upgrades or expansions.¹⁴ The CAISO Tariff specifies the criteria for the construction of economically driven upgrades and expansions.¹⁵ The CAISO's transmission planning process has successfully accommodated the joint-ownership. For example, the recent Path 15 capacity upgrade is co-owned by WAPA, TransElect and PG&E.

¹³ CAISO Tariff §§ 3.2 and 3.2.1.2.

¹⁴ CAISO Tariff § 3.2.1.1, *et seq.*

¹⁵ CAISO Tariff § 3.2.1.1, *et seq.*

The CAISO is in the process of developing a new transmission planning process that will enable the CAISO to evolve from the fairly reactionary role that it historically has played with respect to transmission planning to a more proactive role. For example, decisions to pay RMR costs or to build facilities to avoid RMR costs have essentially been the sole responsibility of the Participating TOs. In addition, transmission expansion projects intended to mitigate congestion costs within the CAISO Control Area have frequently been completed only after significant congestion costs had already accrued.

As such, the CAISO is working toward developing an annual transmission plan that will identify projects that will enhance grid operations and which CAISO studies indicate should be built for economic¹⁶ and/or reliability reasons. Under this process, once projects are identified, the CAISO will submit the plans to the Participating TOs for their evaluation. If a Participating TO determines that an alternative project(s) would be as equally beneficial as or superior to the project(s) recommended by the CAISO, such project(s) will be evaluated by the CAISO and incorporated into the CAISO transmission plan.

In the event the CAISO determines that a project should be constructed, and the affected Participating TO has not included such project in its annual plan, the Participating TO will be requested to construct the project on a right of first refusal basis. If the Participating TO declines to build the project, then the opportunity will be offered to third-party investors. The CAISO will develop a

¹⁶ The projects will be selected to minimize costs when it can be demonstrated that the project costs are lower than the congestion or RMR-type costs that are otherwise being incurred.

competitive process for awarding projects to third parties with regulatory oversight.

The CAISO believes that the new planning process will allow the CAISO proactively to eliminate congestion and RMR-type costs by expanding the transmission infrastructure where it makes economic sense to do so. This will result in a more robust transmission system that will benefit ratepayers and provide locational signals to generators to build resources in areas that would resolve transmission bottlenecks.

Thus, the CAISO's existing and proposed planning process promote a coordinated approach to addressing transmission infrastructure issues. Any Commission reforms in this area should build upon these processes.

D. Uninstructed Deviation Penalties Are Appropriate (Section S.ii.)

In Order No. 888, the Commission defined generator imbalances as the difference between the scheduled and actual delivery of energy from the generator. However, the Commission did not adopt a pro forma generator imbalance schedule. The Commission expressed concern that if a generator was allowed to deviate from its schedule by 1.5 percent without penalty (as permitted for energy imbalances), it would discourage good generator operating practices. The Commission concluded that generator imbalances should be specified in each generator's interconnection agreement. In the NOI, the Commission inquires whether (1) it should require a generator imbalance schedule in the pro forma OATT, (2) how generator imbalances should be priced,

and (3) whether there should be low or no penalty charges when reliability is not threatened and higher penalties when reliability is threatened.

The CAISO believes that uninstructed deviation penalties (“UDP”) designed based on the particular circumstances of an ISO or RTO -- such as those that the Commission previously approved for the CAISO¹⁷ -- are appropriate for inclusion in an ISO or RTO tariff. As proposed by the CAISO and approved by the Commission, uninstructed deviations occur when a Scheduling Coordinator (“SC”) produces/delivers more or less energy than directed based on specific CAISO dispatch instructions or the SC’s final Hour-Ahead schedule. Thus, uninstructed deviations are essentially the CAISO’s terminology for generator imbalances. As proposed by the CAISO and approved by the Commission, the CAISO would penalize SCs for uninstructed deviations beyond a tolerance band equal to the greater of 5 MW or three percent of the maximum operating limit of the resource. The Commission-approved penalty for positive uninstructed deviations was calculated as the quantity of energy in excess of the tolerance band multiplied by a price equal to 100 percent of the applicable market clearing price.¹⁸ The penalty for negative uninstructed deviations was calculated as the quantity of uninstructed imbalance energy below the tolerance

¹⁷ *California Independent System Operator Corporation*, 100 FERC ¶ 61,060 (2002) (approving penalties for uninstructed deviations); *California Independent System Operator Corporation*, 105 FERC ¶ 61,091 (2003) (approving modifications to the previously approved UDP tariff provisions). Following these orders, the CAISO encountered certain UDP implementation issues and filed Amendment No. 64 to its tariff to suspend financial settlement of UDP until approval of a subsequent Section 205 filing to re-institute UDP. The Commission approved Amendment No. 64 on January 28, 2005. *California Independent System Operator Corporation*, 110 FERC ¶ 61,082 (2005).

¹⁸ In effect, a supplier would not be paid for any overgeneration energy in excess of the tolerance band.

band multiplied by a price equal to 50 percent of the applicable market clearing price.¹⁹

As indicated above, the Commission found the tolerance band and penalty levels to be reasonable. A three percent tolerance band permits a reasonable amount of flexibility for generators without having significant adverse impacts; although, a narrower tolerance band and/or different penalty structure may be appropriate depending on the particular characteristics of the ISO or RTO. Excessive uninstructed deviations can (1) have a significant adverse impact on reliability and market costs, (2) make it difficult to manage congestion, and (3) result in an inefficient dispatch. Penalties provide incentives for generators to follow their schedules and CAISO dispatch instructions. The CAISO also submits that system conditions, market competitiveness and the level of spot market volumes can change rapidly and in ways that are difficult to predict. The decision to provide appropriate market rules and financial incentives for generators to reasonably follow dispatch instructions should not be based on the expected degree of these negative impacts. The impacts are always negative and the extent of such injuries cannot be predicted in advance. Therefore, uninstructed deviations should always be discouraged. To the extent uninstructed deviations jeopardize reliability, it may be appropriate to have higher penalties. For normal system conditions, the Commission should grant individual ISOs or RTOs the flexibility to determine whether penalties for excessive uninstructed deviations are appropriate.

¹⁹ The supplier would also be charged for any replacement energy purchased to make up for energy not delivered. Thus, the supplier would essentially be charged at 150 percent of the market clearing price for negative uninstructed deviations.

In summary, generator imbalance penalties comparable to the UDP provisions previously approved for the CAISO are reasonable and may be appropriate to ensure reliable and efficient operations and discourage withholding.

E. The Commission Should Not Mandate Additional Ancillary Services Or The Pricing Of Ancillary Services In This Proceeding (Section S)

The Commission notes that in the pro forma OATT it established six Ancillary Services to be offered by transmission providers: (1) Scheduling, System Control and Dispatching services; (2) Reactive Supply and Voltage Control; (3) Regulation and Frequency Response Service; (4) Energy Imbalance Service; (5) Operating Reserve -- Spinning Reserve Service; and (6) Operating Reserve -- Supplemental Reserve Service. In the NOI, the Commission asks whether it has identified the correct Ancillary Services that are needed to provide open access transmission service or whether there are additional Ancillary Services that should be included in the pro forma OATT. The Commission also asks whether it should address Ancillary Services pricing issues in this proceeding.

While the CAISO uses similar terminology to Order No. 888 and generally conforms with the Ancillary Services requirements of Order No. 888, the CAISO's Ancillary Services are not simple one-to-one matches with the Ancillary Services identified in Order No. 888. In that regard, the CAISO currently offers the following six Ancillary Services; Regulation; Spinning Reserve; Non-spinning Reserve; Replacement Reserve; Voltage Support; and Black Start capability.

Upon the formation of the CAISO, the Commission accepted these proposed Ancillary Services because “the actions required by the [CAISO] and the obligations under the tariff indicate that the [CAISO] will provide all necessary services.” *Pacific Gas & Electric Company, et al.*, 81 FERC ¶ 61,122 at 61,490 (1997) (“PG&E”).

The Commission should not mandate different Ancillary Services for the CAISO or address Ancillary Services pricing issues in this proceeding. ISOs and RTOs, and their respective market participants, should determine whether additional Ancillary Services are needed in their regions (or whether existing Ancillary Services need to be reformed) -- and what the appropriate pricing for such Ancillary Services should be -- based on the scope, structure and nature of their operations and the specific circumstances present in the region. A cookie-cutter approach to Ancillary Services and Ancillary Services pricing is not appropriate under these circumstances, except for the recognition that certain Ancillary Services are needed to provide basic transportation service for customers while maintaining reliability within and among control areas.

In Order No. 888, the Commission concluded that it would consider Ancillary Services rate proposals on a case-by-case basis. *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, FERC Stats. & Regs., ¶ 31,036 at 31,720 (1996). The Commission should do the same here. For example, market power issues in a region need to be assessed and effectively addressed before

determining the appropriateness of market-based rates for Ancillary Services (and the need for any price mitigation for such services). Also, local market power can be a concern for those Ancillary Services that might need to be procured on a locational basis, e.g., Voltage Control and Black Start. Because local market power concerns, the Commission must be cautious in ordering market-based approaches for the pricing of these services.

F. The Concept of Rollover Rights For Pre-Order No. 888 Contracts Should Not Apply To ISOs and RTOs (Section H)

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. In the NOI, the Commission raises numerous questions regarding the concept of rollover rights for pre-Order No. 888 contracts including, *inter alia*, whether reforms are needed to the terms and conditions of rollover rights and whether policy determinations made subsequent to Order No. 888 should be included in the pro forma OATT.

As discussed above, the CAISO operates under a service model that is quite different from that envisioned in Order No. 888. The CAISO tariff does not contain a right of first refusal provision. Upon the formation of the CAISO, the Commission explicitly approved the absence of such a provision, 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.²⁰ *Id* at 61,463-65. n. 196.

The Commission (as recently upheld by the D.C. Circuit) re-affirmed this policy in denying a complaint filed by 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 District v. Pacific Gas & Electric Company, et al.*, 100 FERC ¶ 61,358 (2003), *order on reh'g*, 107 FERC ¶ 61,237 (2004), *aff'd*, *Sacramento Municipal Utility District v. FERC*, D.C. Cir. Case No. 04-1171 (Nov. 1, 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 tariff does not apply and has no meaning under the California utilities transmission systems which have been turned over to CAISO control. 105 FERC at 62,615. Further, the CAISO tariff supercedes the Order No. 888 pro forma tariff. 107 FERC at 62,010. Accordingly, upon the expiration of its contract, SMUD would have to take service under the rates, terms and conditions of the CAISO tariff. 105 FERC at 62,615. On November 1, 2005, the D.C. Circuit affirmed the Commission's findings.

The CAISO submits that the Commission should not modify the aforementioned policy in this proceeding. Pre-order No. 888 contracts do not fit in an ISO/RTO paradigm. Indeed, as the CAISO has previously advised the

²⁰ To achieve consistency with the 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.

Commission, such contracts can be problematic and adversely impact ISO and RTO grid and market operations. *See Proposal For Honoring Existing Transmission Contracts Under The California Independent System Operator Corporation's Amended Comprehensive Market Design*, Docket No. ER02-1656, pp. 4-5, 17-21, 23-25. Thus, as pre-existing, non-open access contracts expire, customers should be required to take transmission service under the applicable ISO or RTO tariff.

G. The Commission Should Consider Establishing A General Requirement Under The OATT Regarding Market Monitoring And Enforcement

As the Commission is aware, effective market monitoring and enforcement are essential elements of well-functioning regulated markets. It is appropriate that all public utilities, regardless of whether they participate in RTO/ISO-facilitated centralized markets, support market monitoring efforts and comply with all Commission-established market behavior and enforcement protocols.

Accordingly, the Commission should consider adding a general requirement in the OATT, or elsewhere as appropriate, requiring all public utilities to provide timely and accurate information regarding their participation in market activity, be it in centrally-administered markets or in bilateral markets. While the CAISO understands that certain requirements already exist, such as compliance with the Commission's Electric Quarterly Reporting ("EQR") requirements, no general requirements are currently included in the Order 888 OATT.

Moreover, the Commission should consider establishing a general obligation to provide such market data to either an established, Commission-

authorized independent market monitor or to the Commission itself. The provision of such information -- including information regarding bilateral transactions -- is critical if the Commission is to ensure well-functioning *regional* electricity markets. This is a critical issue in both RTO/ISO markets as well as in regions without ISOs or RTOs. More importantly, it is a critical issue in broader regional markets that include both ISO/RTO and non-ISO/RTO areas. For example, while it is likely that the CAISO will remain, for the foreseeable future, as the only functioning ISO/RTO with centrally-administered markets in the Western Interconnection, it is indisputable that the Western Interconnection functions as one market. In that regard, public utilities throughout the West actively participate in the larger regional market, including selling into and purchasing from the CAISO's organized markets. While the CAISO can and does receive information from those entities that directly participate in its markets, the CAISO does not receive information regarding bilateral transactions in the larger regional market -- transactions that can greatly influence behavior and market outcomes in the CAISO's markets. Such opacity can lead to delayed identification of ongoing or looming market anomalies.

The CAISO understands the challenges and reluctance of market participants to provide detailed information on their market sales and purchases, especially bilateral market information. Nevertheless securing such information is critical to ensuring well-functioning and effectively monitored regional electricity markets, whether such markets are monitored by an independent market monitor

or the Commission itself. To that end, the CAISO continues to support the development of a strong West-wide market monitoring function.

Finally, the CAISO supports establishing a general obligation under the OATT for all public utilities comply with Commission-established market behavior and enforcement rules. While such requirements are a condition of market-based rate authority, it is nonetheless important for such requirements to be clearly stated under the OATT and to be explicitly linked to the provision of market information outlined and discussed above.

II. CONCLUSION

For the foregoing reasons, the Commission should take actions in this proceeding consistent with the discussion herein.

Respectfully submitted,

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Counsel for the California Independent
System Operator Corporation

Date: November 22, 2005



November 22, 2005

Via Electronic Filing

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

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

Dear Secretary Salas:

Transmitted herewith for electronic filing in the above-referenced proceeding are Comments of the California Independent System Operator Corporation on Notice of Inquiry.

Thank you for your attention to this matter.

Yours truly,

/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 day served a copy of this document upon all parties listed on the official service list compiled by the Secretary in the above-captioned proceedings, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated this 22nd day of November in the year 2005, at Folsom, in the State of California.

/s/ Anthony J. Ivancovich
Anthony J. Ivancovich