

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Implement
Senate Bill No. 1488 (2004 Cal. Stats., Ch. 690
(Sept. 22, 2004)) Relating to Confidentiality of
Information

Rulemaking 05-06-040
(Filed June 30, 2005)

**COMMENTS OF THE
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
ON THE COMMISSION'S PROPOSED DECISION DEFINING "MARKET
PARTICIPANT" AND "NON-MARKET PARTICIPANT" FOR THE PURPOSES
OF ACCESS TO CONFIDENTIAL DOCUMENTS**

Charles F. Robinson, General Counsel
Sidney M. Davies, Assistant General Counsel
Stacie L. Ford, Associate Counsel
California Independent System
Operator Corporation
151 Blue Ravine Road
Folsom, CA 95630
Telephone: 916-351-4400
Facsimile: 916-351-2350

Attorneys for the
**California Independent System
Operator Corporation**

Dated: November 7, 2006

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Implement
Senate Bill No. 1488 (2004 Cal. Stats., Ch. 690
(Sept. 22, 2004)) Relating to Confidentiality of
Information

Rulemaking 05-06-040
(Filed June 30, 2005)

**COMMENTS OF THE
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
ON THE COMMISSION'S PROPOSED DECISION DEFINING "MARKET
PARTICIPANT" AND "NON-MARKET PARTICIPANT" FOR THE PURPOSES
OF ACCESS TO CONFIDENTIAL DOCUMENTS**

Pursuant to the Proposed Decision issued by Administrative Law Judge ("ALJ") Sarah R. Thomas on September 21, 2006 ("Proposed Decision"), the California Independent System Operator Corporation ("CAISO") respectfully submits comments addressing the definitions of "market participant" and "non-market participant" for purposes of determining access to confidential electric procurement, resource adequacy and renewals portfolio standard (RPS) data under Public Utilities Code §454.5(g).¹

I. Introduction

On June 29, 2006, the Commission issued Decision (D.) 06-06-066, in which it left open for consideration which individuals and entities are "market participants" and which are "non-market participants" for purposes of receiving access to confidential electric procurement, resource adequacy and renewables portfolio standard (RPS) data under § 454(g).

On October 18, 2006, the ALJ issued a Proposed Decision addressing this issue and adopted the following definition of "market participant" and "non-market

¹ All section references are to the Public Utilities Code.

participant” for purposes of access to “market sensitive” procurement data covered by § 454.5(g) and/or D.06-06-066:

A “market participant” is

- 1) A person or entity, or an employee of an entity, that engages in the wholesale purchase, sale or marketing of energy or capacity, or the bidding on or purchasing of power plants, or bidding on utility procurement solicitations, or consulting on such matters, subject to the limitations in 3) below.
- 2) A trade association or similar organization, or an employee of such organization,
 - a) whose primary focus in proceedings at the Commission is to advocate for persons/entities that purchase, sell or market energy or capacity at wholesale; bid on, own, or purchase power plants; or bid on utility procurement solicitations, and/or
 - b) a majority of whose members purchase, sell or market energy or capacity at wholesale; bid on, own, or purchase power plants; or bid on utility procurement solicitations, and/or
 - c) formed for the purpose of obtaining market sensitive information; and/or
 - d) controlled or primarily funded by a person or entity whose primary purpose is to purchase, sell or market energy or capacity at wholesale; bid on, own, or purchase power plants; or bid on utility procurement solicitations.
- 3) A person or entity that meets the criteria of 1) above is nonetheless not a market participant for purpose of access to market sensitive data unless the person/entity seeking access to market sensitive information has the potential to materially affect the price paid or received for electricity if in possession of such information. An entity will be considered not to have such potential if:
 - a) the person or entity’s participation in the California electricity market is *de minimis* in nature. In the resource adequacy proceeding (R.05-12-013) it was determined in D.06-06-064 § 3.3.2 that the resource adequacy requirement should be rounded to the nearest megawatt (MW), and load serving entities (LSEs) with local resource adequacy requirements less than 1 MW are not required to make a showing. Therefore, a *de minimis* amount of

energy would be less than 1 MW of capacity per year, and/or an equivalent of energy, and/or

b) the person or entity has no ability to dictate the price of electricity it purchases or sells because such price is set by a process over which the person or entity has no control, and/or

c) person or entity is a cogenerator that consumes all the power it generates in its own industrial and commercial processes.

The Commission adopted the following definition of “non-market participant”:

Persons or entities that do not meet the definition of market participant are non-market participants, and may have access to market sensitive information. It is proper to require such non-market participants to sign a nondisclosure agreement or to be bound by a protective order prohibiting the disclosure of information to market participants.

II. The Proposed Decision Correctly Finds That The CAISO Is Not a Market Participant

The Proposed Decision has properly characterized CAISO, a not-for-profit public benefit corporation, as a neutral arbiter, and not as a market participant. The CAISO appreciates the recognition that the activities of the CAISO are a result of ensuring system reliability, and that CAISO does not have incentives to act for its own economic gain. The CAISO agrees with the Proposed Decision that its role in operating the CAISO Control Grid and associated Energy and Ancillary Services markets should not render the CAISO a Market Participant.

III. Requiring the CAISO to Sign Nondisclosure Agreements or Submit to Protective Orders is not Appropriate in all Circumstances

The Proposed Decision remarks that the CAISO did not weigh in on the appropriateness of having its staff sign nondisclosure agreements or submit to

protective orders. Moreover, the Proposed Decision correctly assumes that CAISO would agree not to disclose market sensitive information to market participants and states that the CAISO has had its staff sign nondisclosure agreements and/or submit to protective orders in the past.

The CAISO acknowledges that it has had its staff sign nondisclosure agreements and/or submit to protective orders in the past, and when appropriate, would require the same in future proceedings. The CAISO, however, does not believe that all matters in which it is involved with at the Commission warrant such measures. In fact, the CAISO believes that in certain circumstances it is not practical or necessary for its staff to sign nondisclosure agreements or submit to protective orders, such as matters or proceedings in which the CAISO and the Commission have an ongoing relationship. For example, matters related to Resource Adequacy should not impose a requirement on the CAISO to have its staff sign nondisclosure agreements. The CAISO intends to address this issue further as part of its comments on the proposed model protective order.²

Notwithstanding the CAISO's opposition to a blanket requirement that CAISO must have its staff sign nondisclosure agreements, the CAISO would not disclose confidential or market sensitive information to market participants, as doing so could be a violation of its Tariff.

///

///

² Alternatively, the CAISO may by motion under Rule 11.1 seek modification of the September 15, 2006 Administrative Law Judge's Ruling Regarding Interim Procedures for Claiming Confidential Treatment of Data Submitted by Load-Serving Entities with Resource Adequacy Compliance Filings, which continued, until superseded by the proposed model protective order, the effectiveness of Revised Protective Order adopted in R.05-12-013. The purpose of this motion would be to specifically address in the interim period the requirement that CAISO staff execute nondisclosure certificates as part of the CAISO's role in implementing the Commission's resource adequacy program.

IV. Conclusion

The CAISO agrees with the Commission that it is not a market participant for purposes of access to “market sensitive” procurement data covered by § 454.5(g) and/or D.06-06-066. Moreover, the CAISO does not believe having its staff sign nondisclosure agreements is appropriate in all circumstances.

November 7, 2006

Respectfully submitted,

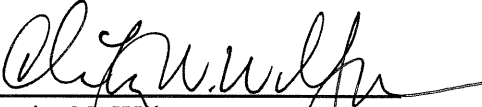
By: Stacie L. Ford
Stacie L. Ford

Attorney for the
California Independent System
Operator Corporation

CERTIFICATE OF SERVICE

I hereby certify that I have served, by electronic and United States mail, Comments of The California Independent System Operator Corporation on The Commission's Proposed Decision Defining "Market Participant" and "Non-Market Participant" for the Purposes of Access to Confidential Documents in Docket No. R.05-06-040.

Executed on November 7, 2006, at Folsom, California.


Charity N. Wilson
An Employee of the California
Independent System Operator

ANDREW B. BROWN
ELLISON, SCHNEIDER & HARRIS, LLP
abb@eslawfirm.com

AVIS CLARK
CALPINE CORPORATION
aclark@calpine.com

ADRIAN PYE
ENERGY AMERICA, LLC
adrian.pye@na.centrica.com

FRANK ANNUNZIATO
AMERICAN UTILITY NETWORK INC.
allwazeready@aol.com

ANDREA WELLER
STRATEGIC ENERGY, LLC.
aweller@sel.com

BETH ANN BURNS
CALIFORNIA ISO
bburns@caiso.com

BRIAN T. CRAGG
GOODIN MACBRIDE SOUERI RITCHIE & DAY LLP
bcragg@gmsr.com

BETH A. FOX
SOUTHERN CALIFORNIA EDISON COMPANY
beth.fox@sce.com

ROBERT FINKELSTEIN
THE UTILITY REFORM NETWORK
bfinkelstein@turn.org

WILLIAM H. CHEN
CONSTELLATION NEW ENERGY, INC.
bill.chen@constellation.com

BRUNO JEIDER
BURBANK WATER AND POWER
bjeider@ci.burbank.ca.us

BARRY F. MCCARTHY
MCCARTHY & BERLIN, LLP
bmcc@mcCarthyLaw.com

BARBARA R. BARKOVICH
BARKOVICH & YAP, INC.
brbarkovich@earthlink.net

BRIDGET A. JENSEN
SOUTHWEST GAS CORPORATION
bridget.branigan@swgas.com

CASE ADMINISTRATION
SOUTHERN CALIFORNIA EDISON COMPANY
case.admin@sce.com

CENTRAL FILES
SAN DIEGO GAS AND ELECTRIC COMPANY
CentralFiles@semprautilities.com

Charlyn A. Hook
CALIF PUBLIC UTILITIES COMMISSION
chh@cpuc.ca.gov

CARYN HOLMES
CALIFORNIA ENERGY COMMISSION
cholmes@energy.state.ca.us

CHRIS KING
CALIFORNIA CONSUMER EMPOWERMENT
chris@emeter.com

CHRISTOPHER J. MAYER
MODESTO IRRIGATION DISTRICT
chrism@mid.org

CONNIE LENI
CALIFORNIA ENERGY COMMISSION
cleni@energy.state.ca.us

CARL C. LOWER
clower@earthlink.net

CAROLYN KEHREIN
ENERGY MANAGEMENT SERVICES
cmkehrein@ems-ca.com

DEANA M. WHITE
SOUTHERN CALIFORNIA EDISON
deana.white@sce.com

DOUGLAS K. KERNER
ELLISON, SCHNEIDER & HARRIS, LLP
dkk@eslawfirm.com

DANIEL W. DOUGLASS
DOUGLASS & LIDDELL
douglass@energyattorney.com

DONALD SCHOENBECK
RCS, INC.
dws@r-c-s-inc.com

EDWARD B. GIESEKING
SOUTHWEST GAS CORPORATION
ed.gieseeking@swgas.com

J.A. SAVAGE
CALIFORNIA ENERGY CIRCUIT
editorial@californiaenergycircuit.net

EVELYN KAHL
ALCANTAR & KAHL, LLP
ek@a-klaw.com

ED LUCHA
PACIFIC GAS AND ELECTRIC COMPANY
el5@pge.com

ELENA MELLO
SIERRA PACIFIC POWER COMPANY
emello@sppc.com

CALIFORNIA ISO
e-recipient@caiso.com

EDWARD V. KURZ
PACIFIC GAS AND ELECTRIC COMPANY
evk1@pge.com

ED KURZ
PACIFIC GAS AND ELECTRIC COMPANY
evk1@pge.com

VICKI FERGUSON
BRAUN & BLAISING, PC
ferguson@braunlegal.com

KAREN TERRANOVA
ALCANTAR & KAHL, LLP
fillings@a-klaw.com

F. Jackson Stoddard
CALIF PUBLIC UTILITIES COMMISSION
fjs@cpuc.ca.gov

FRANK J. COOLEY
SOUTHERN CALIFORNIA EDISON COMPANY
frank.cooley@sce.com

JOHN C. GABRIELLI
GABRIELLI LAW OFFICE
gabrielilaw@sbcglobal.net

GARY HINNERS
RELIANT ENERGY, INC.
ghinners@reliant.com

GREGG MORRIS
GREEN POWER INSTITUTE
gmorris@emf.net

GRANT A. ROSENBLUM
CALIFORNIA INDEPENDENT SYSTEM OPERATOR
grosenblum@caiso.com

GLENN SEMOW
CALIFORNIA CABLE & TELECOMM. ASSOC.
grs@calcable.org

GRACE LINGSTON-NUNLEY
PACIFIC GAS & ELECTRIC COMPANY
gx12@pge.com

JOHN BOGY
PACIFIC GAS & ELECTRIC COMPANY
j05@pge.com

JACQUE LOPEZ
VERIZON CALIFORNIA INC.
jacque.lopez@verizon.com

JACQUELINE MINOR
OFFICE OF CITY ATTORNEY
Jacqueline.Minor@sfgov.org

JEFF WIRTZFELD
QWEST COMMUNICATION CORPORATION
jeff.wirtzfeld@qwest.com

JEFFREY P. GRAY
DAVIS WRIGHT TREMAINE, LLP
jeffgray@dlw.com

JESUS G. ROMAN
VERIZON CALIFORNIA, INC.
jesus.g.roman@verizon.com

JOHN W. LESLIE
LUCE, FORWARD, HAMILTON & SCRIPPS, LLP
jleslie@luce.com

JENNIFER K. POST
PACIFIC GAS AND ELECTRIC COMPANY
jtkm@pge.com

JOY A. WARREN
MODESTO IRRIGATION DISTRICT
joyw@mid.org

KAREN FORSGARD
PACIFIC GAS AND ELECTRIC COMPANY
kaf4@pge.com

KAREN LINDH
LINDH & ASSOCIATES
karen@klindh.com

KEVIN WOODRUFF
WOODRUFF EXPERT SERVICES, INC.
kdw@woodruff-expert-services.com

KEITH R. MCCREA
SUTHERLAND ASBILL & BRENNAN LLP
keith.mccrea@sablaw.com

GREGORY KLATT
DOUGLASS & LIDDELL
klatt@energyattorney.com

AVIS KOWALEWSKI
CALPINE CORPORATION
kowalewskia@calpine.com

Karen P. Paull
CALIF PUBLIC UTILITIES COMMISSION
kpp@cpuc.ca.gov

LYNNE BROWN
CALIFORNIANS FOR RENEWABLE ENERGY, INC.
l.brown246@hotmail.com

LESLIE DANIELSON
PACIFIC GAS AND ELECTRIC COMPANY
lad1@pge.com

LARRY BARRETT
BARRETT CONSULTING ASSOCIATES, INC.
lbarrett@adelphia.net

DONALD C. LIDDELL
DOUGLASS & LIDDELL
liddell@energyattorney.com

LISA WEINZIMER
PLATTS
lisa_weinzimer@platts.com

LESLEA LEHTONEN
CALIFORNIA CABLE & TELECOM ASSOCIATION
ll@calcable.org

Lisa-Marie Salvacion
CALIF PUBLIC UTILITIES COMMISSION
lms@cpuc.ca.gov

MARIA L. WOODBRIDGE
MCI, INC.
Maria.L.Woodbridge@mci.com

MARGIE HERLTH
QWEST COMMUNICATIONS CORPORATION
marjorie.herlth@qwest.com

BRUCE MCLAUGHLIN
BRAUN & BLAISING, P.C.
mclaughlin@braunlegal.com

MICHAEL B. DAY
GOODIN MACBRIDE SOUERI RITCHIE & DAY LLP
mday@gmsr.com

MICHEL PETER FLORIO
THE UTILITY REFORM NETWORK (TURN)
mflorio@turn.org

MICHAEL A. BACKSTROM
michael.backstrom@sce.com

MICHAEL E. BOYD
CALIFORNIANS FOR RENEWABLE ENERGY, INC.
michaelboyd@sbcglobal.net

MICHELLE K. CHOO
A T & T CALIFORNIA
michelle.choo@att.com

MIKE JASKE
CALIFORNIA ENERGY COMMISSION
mjaskes@energy.state.ca.us

MARTIN A. MATTES
NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP
mmattes@nossaman.com

MICHAEL MAZUR
3 PHASES ENERGY SERVICES
mmazur@3phases.com

MARCIE MILNER
CORAL POWER, L.L.C.
mmilner@coral-energy.com

MARGIE OXSEN
CALPINE CORPORATION-WESTERN REGION
moxsen@calpine.com

MARIA POLITZER
CALIFORNIA CABLE TELEVISION ASSOCIATION
mp@calcable.org

MICHAEL ALCANTAR
ALCANTAR & KAHL, LLP
mpa@a-klaw.com

MRW & ASSOCIATES, INC.
mrw@mrwassoc.com

MARK P. SCHREIBER
COOPER, WHITE & COOPER, LLP
mschreiber@cwclaw.com

Merideth Sterkel
CALIF PUBLIC UTILITIES COMMISSION
mts@cpuc.ca.gov

Noel Obiora
CALIF PUBLIC UTILITIES COMMISSION
nao@cpuc.ca.gov

NINA BUBNOVA
PACIFIC GAS AND ELECTRIC COMPANY
nbb2@pge.com

NELSONYA CAUSBY
AT&T CALIFORNIA
nelsonya.causby@att.com

Nilgun Atamturk
CALIF PUBLIC UTILITIES COMMISSION
nil@cpuc.ca.gov

NORMAN A. PEDERSEN
HANNA AND MORTON LLP
npedersen@hanmor.com

ORLANDO B. FOOTE
HORTON, KNOX, CARTER & FOOTE
ofoote@hkcf-law.com

PATRICK M. ROSVALL
COOPER, WHITE & COOPER, LLP
prosvall@cwclaw.com

PAUL A. SZYMANSKI
SAN DIEGO GAS & ELECTRIC COMPANY
pszymanski@sempra.com

JOHN DUTCHER
MOUNTAIN UTILITIES
ralf1241a@cs.com

TREVOR DILLARD
SIERRA PACIFIC POWER COMPANY
regulatory@sierrapacific.com

RICK NOGER
PRAXAIR PLAINFIELD, INC.
rick_noger@praxair.com

RONALD MOORE
GOLDEN STATE WATER/BEAR VALLEY ELECTRIC
rkmoore@gswater.com

ROBERT B. KEELER
SOUTHERN CALIFORNIA EDISON COMPANY
Robert.Keeler@sce.com

ROBERT L. PETTINATO
LOS ANGELES DEPT. OF WATER & POWER
robert.pettinato@ladwp.com

ROGER PELOTE
THE WILLIAMS COMPANY, INC.
roger.pelote@williams.com

ROD AOKI
ALCANTAR & KAHL, LLP
rsa@a-klaw.com

REED V. SCHMIDT
BARTLE WELLS ASSOCIATES
rschmidt@bartlewells.com

STEPHANIE LA SHAWN
PACIFIC GAS AND ELECTRIC COMPANY
S1L7@pge.com

ROBERT SARVEY
CALIFORNIANS FOR RENEWABLE ENERGY, INC.
sarveybob@aol.com

SHIRLEY WOO
PACIFIC GAS AND ELECTRIC COMPANY
saw0@pge.com

C. SUSIE BERLIN
MC CARTHY & BERLIN, LLP
sberlin@mccarthylaw.com

SCOTT MOLLOY
BUILDING INDUSTRY ASSO. OF SAN DIEGO CNTY
scott@biasd.org

SCOTT J. ANDERS
UNIVERSITY OF SAN DIEGO SCHOOL OF LAW
scottanders@sandiego.edu

STEVE ENDO
PASADENA DEPARTMENT OF WATER & POWER
sendo@ci.pasadena.ca.us

STACIE L. FORD
CALIFORNIA ISO
sford@calso.com

CALIFORNIA ENERGY MARKETS
shaunao@newsdata.com

SHAY LABRAY
PACIFICORP
shayleah.labray@pacifcorp.com

LINDA Y. SHERIF
CALPINE CORPORATION
sheriff@calpine.com

SCOTT LOGAN
CALIFORNIA PUBLIC UTILITIES COMMISSION
sjl@cpuc.ca.gov

Scott Logan
CALIF PUBLIC UTILITIES COMMISSION
sjl@cpuc.ca.gov

STEVEN G. LINS
CITY OF GLENDALE
slins@ci.glendale.ca.us

Sarah R. Thomas
CALIF PUBLIC UTILITIES COMMISSION
srt@cpuc.ca.gov

SEBASTIEN CSAPO
PACIFIC GAS AND ELECTRIC COMPANY
sscb@pge.com

STEVEN S. SCHLEIMER
CALPINE CORPORATION
sschleimer@calpine.com

STACY AGUAYO
APS ENERGY SERVICES COMPANY, INC.
stacy.aguayo@apses.com

STEVE F. GREENWALD
DAVIS WRIGHT TREMAINE LLP
stevegreenwald@dwf.com

STEVEN KELLY
INDEPENDENT ENERGY PRODUCERS ASSN
steven@iepa.com

TOM SELHORST
AT&T CALIFORNIA
thomas.selhorst@att.com

TOM BEACH
CROSSBORDER ENERGY
tomb@crossborderenergy.com

THEODORE E. ROBERTS
SEMPRA ENERGY
troberts@sempra.com

VALERIE J. ONTIVEROZ
SOUTHWEST GAS CORPORATION
valerie.ontiveroz@swgas.com

VALERIE J. WINN
PACIFIC GAS AND ELECTRIC COMPANY
vju3@pge.com

VICKI L. THOMPSON
SEMPRA ENERGY
vthompson@sempra.com

WILLIAM H. BOOTH
LAW OFFICES OF WILLIAM H. BOOTH
wbooth@booth-law.com

WILLIAM V. WALSH
SOUTHERN CALIFORNIA EDISON
william.v.walsh@sce.com

WENDY KEILANI
SAN DIEGO GAS & ELECTRIC
wkeilani@semprautilities.com

WILLIAM W. WESTERFIELD III
ELLISON SCHNEIDER & HARRIS, LLP
www@elsawfirm.com

YAREK LEHR
CITY OF CORONA DEPARTMENT OF WATER
yarek.lehr@ci.corona.ca.us

YVONNE GROSS
SEMPRA ENERGY
ygross@sempraglobal.com

VIDHYA PRABHAKARAN
GOODIN, MACBRIDE, SOUERI, RITCHIE & DAY, LLP
yprabhakaran@gmsr.com

PILOT POWER GROUP
9320 CHESAPEAKE DRIVE, STE 112
SAN DIEGO, CA 92123

ELECTRIC AMERICA
600 ANTON BLVD., STE 2000
COSTA MESA, CA 92626

CALPINE POWERAMERICA-CA, LLC
3875 HOPYARD ROAD, SUITE 345
DUBLIN, CA 94568

MODESTO IRRIGATION DISTRICT
PO BOX 4060
MODESTO, CA 95352

BP ENERGY COMPANY
501 WESTLAKE PARK BLVD
HOUSTON, TX 77079

QUIET LLC/QUIET ENERGY
3311 VAN ALLEN PLACE
TOPANGA, CA 90290