

**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 PHASE TWO ISSUES**

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Dated: October 11, 2006

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Pursuant to the Scoping Memo and Ruling of Assigned Commissioner Dian M. Grueneich and Administrative Law Judge Sarah R. Thomas, issued September 21, 2006 (“Scoping Memo”), the California Independent System Operator Corporation (“CAISO”) respectfully submits comments in the above-referenced proceeding on Phase Two issues.

**I. Introduction**

On June 29, 2006, the Commission issued Decision (D.) 06-06-066, in which it adopted new rules governing the treatment of confidential data regarding electric procurement, resource adequacy, and renewable portfolio standard (“RPS”) implementation submitted to the Commission in formal proceedings and other non-proceeding contexts. Among other things, the Commission adopted a matrix setting forth the allowed confidential treatment of specific categories of data submitted by Investor Owned Utilities (“IOUs”), and a similar matrix setting forth the allowed confidential treatment of corresponding categories of data submitted by Energy Service Providers (“ESPs”). The Commission also adopted procedures for parties who seek to protect confidential information submitted to the Commission to file motions demonstrating that their information qualifies as confidential under the Commission’s decision.

The Scoping Memo invited all individuals and entities who submit information in formal Commission proceedings as evidence or through discovery, submit data to Commission staff or other parties outside Commission proceedings, and submit data as part of Advice Letters or compliance filings to participate in Phase Two of the above-referenced proceeding.

**II. The CAISO is Concerned that Compliance with D.06-06-066 may be in Contravention of the CAISO Tariff**

The CAISO is concerned that compliance with D.06-06-066 may place it in the untenable position of having to forego participating in Commission activities rather than violate its Tariff. The CAISO is in the unique position of being the custodian of other parties' data and information. Pursuant to its Tariff, approved by the Federal Energy Regulatory Commission ("FERC"), the CAISO must treat other parties' information as confidential and provide the appropriate protections for nondisclosure.<sup>1</sup> While the CAISO recognizes the need for the Commission to ensure meaningful public participation and open decision making, it does not want to find itself in a position where it is asked to produce information in a formal proceeding or other non-proceeding context, which it otherwise would not be allowed to produce under the CAISO Tariff.

In D.06-06-066, the Commission stated that Section 583 provides a process for handling information a party believes is confidential. Section 583 of the Public Utilities Code provides that:

No information furnished to the commission by a public utility, or any business which is a subsidiary or affiliate of a public utility, or a corporation which holds a controlling interest in a public utility, except those matters specifically required to be open to public inspection by this part, shall be open to public inspection or made public except on order of the commission, or by the commission or a commissioner in the course of

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<sup>1</sup> ISO Tariff Section 20.

a hearing or proceeding. Any present or former officer or employee of the commission who divulges any such information is guilty of a misdemeanor.

Because information produced by the CAISO is likely to be another party's proprietary data, the CAISO must allow affected parties an opportunity to protest any disclosure. Moreover, affected parties must be afforded the opportunity to prove confidential treatment should apply. The CAISO requests the Commission to be mindful of the CAISO's obligations under the CAISO Tariff and to adopt procedures that are not inconsistent with those obligations.

### **III. Conclusion**

The CAISO does not want to find itself in violation of its FERC-approved Tariff, and asks the Commission to be mindful of CAISO's concurrent interests.

Dated: October 11, 2006

Respectfully submitted,



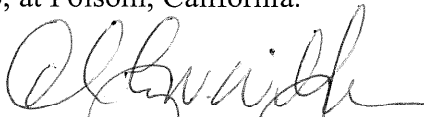
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**CERTIFICATE OF SERVICE**

I hereby certify that I have served, by electronic and United States mail,  
Comments of The California Independent System Operator Corporation on Phase 2  
Issues in Docket No. R.05-06-040.

Executed on October 11, 2006, at Folsom, California.



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