

Memorandum

To: ISO Board of Governors
From: Nancy Saracino, Vice President, General Counsel and Corporate Secretary
Date: October 20, 2008
Re: **Regulatory Update**

This memorandum does not require Board action.

Federal Energy Regulatory Commission (FERC) matters and related decisions of the Court of Appeal

Market redesign and technology upgrade (MRTU)

- **Integrated Balancing Authority Area tariff amendment proceeding (Docket No. ER08-113)**

On September 19, 2008, FERC issued its order conditionally accepting the ISO's proposed tariff revisions to establish an Integrated Balancing Authority Area (IBAA) for the Sacramento Municipal Utility District (SMUD) and Turlock Irrigation District (TID) external balancing authorities. The order approves the ISO's configuration of the IBAA as a single hub with default modeling and pricing points for all interchange transactions for the SMUD/TID IBAA as just and reasonable. The order also approves the ISO's proposal to allow holders of previously released Congestion Revenue Rights (CRRs), which were based on a multiple hub as opposed to a single hub approach for the SMUD/TID IBAA, to make a one-time election to modify the settlement of the CRR to be consistent with the revised market pricing points associated with the IBAA or to allow the holder of the CRR to retain the original source or sink specification of the CRR. The order requires tariff changes in a compliance filing to: 1) address potential over-collection for losses due to modeling of parallel flows; 2) clarify the requirement that the ISO file any changes to the IBAA with FERC; 3) add default pricing points; 4) remove the stakeholder process requirement for developing individual market efficiency enhancement agreements; and 5) specify the information it seeks in connection with a market efficiency enhancement agreement, which the ISO is to treat as confidential.

Responsible Attorney: Anna McKenna

- **Interim Capacity Procurement Mechanism (Docket No. ER08-556)**

On October 16, 2008, FERC issued an order accepting the ISO's proposed Interim Capacity Procurement Mechanism (ICPM) subject to minor modifications. FERC accepted the proposed \$41/kW-year ICPM capacity price and the ISO's proposal that suppliers who believe their going forward costs plus 10% exceed \$41/kW-year may file with FERC to justify a higher capacity payment. FERC also agreed with the ISO that participation in the ICPM should be voluntary. FERC approved the ISO's proposed sunset date of December 31, 2010 and rejected a request that the ISO be required to initiate a stakeholder process to replace the ICPM by December 1, 2009. Finally, FERC directed specific minor modifications to be made in a compliance filing within 30 days.

Responsible Attorney: Anthony Ivancovich

- **Market power mitigation measures for Exceptional Dispatches (Docket Nos. ER08-1178 and EL08-88)**

On October 16, 2008 FERC issued an order accepting the ISO's tariff amendment filing to mitigate bids of resources when using Exceptional Dispatch tariff authority to dispatch resources outside of the MRTU software subject to refund as of day one MRTU. In the same order, FERC initiated an investigation into the justness and reasonableness of all the Exceptional Dispatch tariff language in light of two concerns. First, the Commission is concerned that the premise of its prior just and reasonableness finding in September 2006 (that these would be rare and infrequent) is no longer the case. Second, the Commission is concerned that non resource adequacy resources may not be appropriately compensated under the ISO's proposal, though FERC recognizes that mitigation may be appropriate. In this regard, FERC cited its ICPM order and prior orders requiring that non resource adequacy resources be compensated when dispatched by the ISO out of market. FERC's order allows the ISO to move forward with MRTU. FERC will be scheduling a technical conference in the near future to examine the issues relating to the ISO's Exceptional Dispatch tariff authority and options for how non resource adequacy resources should be compensated.

Responsible attorney: Sidney Davies

- **Congestion Revenue Rights tariff amendment (Docket No. ER08-1508)**

On September 8, 2008, the ISO filed with the FERC for the approval of tariff language that involves three aspects of the allocation and auction of Congestion Revenue Rights (CRRs) for calendar year 2009 and is based on an MRTU start-up of February 1, 2009. The proposed tariff would enable the ISO to implement the revised 2009 CRR allocation and auction process prior to the start of MRTU. The filing proposed changes are necessary to: 1) confirm the treatment of CRRs that are allocated and auctioned in the first season of 2009 which is subject to CRR year one rules; 2) establish the sequence of the allocation tiers in the allocation of CRRs for 2009; and 3) modify the implementation of the transfer of CRRs due to load migration from one load serving entity to another to account for all load migration *after* the 2009 annual CRR Allocation process is completed. The ISO filed an answer to comments on October 16, 2008.

Responsible Attorney: Anna McKenna

- **Reliability Must-Run contract for MRTU (Docket No. ER06-615)**

By order dated October 1, 2008, FERC accepted the ISO's MRTU-adapted version of the Reliability Must-Run contract filed in compliance with FERC's September 21, 2006 MRTU order. FERC also accepted modifications to related tariff provisions. FERC's acceptance was conditioned on a single compliance requirement to conform a pre-existing contract definition to be consistent with the definition in the MRTU tariff.

Responsible Attorney: Sidney Davies

Petition for waiver of timing provisions of the Large Generator Interconnection Procedures (Docket No. ER08-960)

On September 26, FERC issued an order denying all requests for clarification or rehearing related to the ISO's requested waiver of provisions governing generator interconnection. In May, the ISO had requested temporary suspensions of interconnection study obligations and timelines with respect to specific pending and future interconnection requests to facilitate future implementation of the generator interconnection reform process (GIPR). In July, FERC issued an order granting the ISO's waiver request. Two entities filed requests for rehearing or clarification asking that the GIPR criteria be modified, and the September order denied these requests.

Responsible attorneys: Sidney Davies and Mike Dozier

Generator interconnection process reform (GIPR) filing (Docket No. ER08-1317)

On July 28, 2008, the ISO filed revisions to both the currently-effective ISO tariff and the MRTU tariff to implement its GIPR proposal, including revisions to the ISO's generator interconnection process, as embodied in its Large Generator Interconnection Procedures, Large Generator Interconnection Agreement, and related tariff provisions and *pro forma* agreements. On September 26, FERC issued an order accepting all of the primary elements of the GIPR filing, subject to some minor revisions to be made in a compliance filing within 60 days and the requirement that the ISO submit reports on its progress in implementing the GIPR.

Responsible Attorneys: Mike Dozier and Sidney Davies

Green Borders unexecuted Large Generator Interconnection Agreement (Docket No. ER07-1034)

On June 14, 2007, the ISO and Southern California Edison Company (SCE) filed an unexecuted Large Generator Interconnection Agreement with Green Borders Geothermal, LLC specifying the terms for the interconnection of Green Borders' proposed new 62 MW generating facility to the ISO controlled grid. On July 31, 2008, SCE filed an offer of partial settlement. One issue remains in dispute regarding the status of (and cost responsibility for) telecommunication facilities located on the Green Borders side of the interconnection that are deemed necessary to implement the special protection system and remedial actions schemes. Pursuant to the requests of the ISO and the other parties, rather than setting this issue for hearing, FERC has directed that the parties develop a stipulated set of facts and file briefs on this issue based on those facts.

Responsible attorney: Bill Di Capo

Geysers interconnection agreement dispute (Docket Nos. ER08-1193 and ER08-1289, 1290, 1291, 1292)

On June 30, 2008, Pacific Gas and Electric Company (PG&E) filed revisions to its pre-existing generator interconnection agreement with Calpine to add four Geysers qualifying facilities after expiration of their Public Utility Regulatory Policies Act power purchase agreements. On July 22, 2008, the ISO filed a protest, arguing that the Geysers units are required to comply with the ISO tariff requirement to enter into a large generator interconnection agreement (LGIA). At the same time, the ISO filed four unexecuted LGIAs. On August 28, 2008, FERC issued an order rejecting PG&E's filing and directing the parties to enter into settlement proceedings regarding the execution of the ISO-filed LGIAs. On October 7, 2008, the settlement judge issued a report indicating that PG&E, the ISO, and Geysers Power have reached an agreement in principle and that they are in the process of finalizing and executing the LGIAs. The report gives the parties until November 12, 2008 to request dismissal of this matter or provide a further progress report.

Responsible attorneys: Sidney Davies and Mike Dozier

Resource-specific system resource filing (Docket No. ER08-1364)

On August 6, 2008, the ISO filed revisions to the MRTU tariff to accommodate resource-specific system resources, including a new *pro forma* agreement to be executed by the owners of such resources. On September 29, 2008, FERC accepted the entire filing without revision, to be effective upon the implementation of the MRTU tariff.

Responsible attorney: Mike Dozier

Order No. 890 compliance filing -- non-transmission planning (Docket No. OA08-12)

On October 3, 2008, the ISO made a filing to comply with the requirements of FERC Order No. 890-B. In this order, FERC adopted changes to the *pro forma* Open Access Transmission Tariff (OATT) pertaining, *inter alia*, to rollover rights, designation and treatment of network resources, and energy and generation imbalances. In its compliance filing, the ISO explained that the directives in Order No. 890-A were inapplicable to the ISO's MRTU tariff and service model and that the ISO's services under MRTU are consistent with or superior to the *pro forma* OATT as revised by Order No. 890-B. Accordingly, the ISO argued that FERC should not require the ISO to implement any tariff changes to comply Order No. 890-B.

Responsible Attorney: Anthony Ivancovich

Order No. 676-C compliance filing (Docket No. ER08-1591)

On September 26, 2008, the ISO filed a petition for waiver of certain business practice standards adopted in FERC Order No. 676-C. In this order, FERC revised its regulations to incorporate by reference the latest version of the business practice standards adopted by the Wholesale Electric Quadrant of the North American Energy Standards Board. In its petition, the ISO requested a waiver of the OASIS (Open Access Same-Time Information System) related business practices standards adopted in Order No. 676-C, as well as the business practice standard pertaining to transmission loading relief. The ISO argued that these business practice standards do not apply to and are incompatible with the ISO's operations and transmission service model which differs substantially from the *pro forma* OATT service model.

Responsible Attorney Anthony Ivancovich

Audit of ISO Open Access Same-time Information System (Docket No. PA08-20-000)

In late August, the FERC Office of Enforcement issued a letter order finding the ISO to be in compliance with the Open Access Same-time Information System (OASIS) requirements of 18 C.F.R § 37.6 (2008). The Office of Enforcement conducted audits of independent system operators, regional transmission organizations, and other transmission providers to ensure compliance with all relevant OASIS requirements, including new functionality and posting requirements adopted in Order No. 890.

In auditing the ISO, the Office of Enforcement reviewed information posted on the ISO's OASIS during the period of the audit, March 17, 2008 through June 13, 2008, and requested additional information through conference calls and data requests. Based on this information, the audit found no deficiencies in the ISO's compliance with the OASIS requirements.

Responsible Attorney: Beth Ann Burns

Station Power netting (Docket No. ER05-849)

On October 17, 2008, FERC issued an order addressing all of the pending compliance filings and requests for clarification regarding station power load. This resolved a matter that had been pending for several years. Pursuant to a FERC order in response to a complaint filed in 2004, the ISO submitted a compliance filing in 2005 establishing provisions for netting over a monthly period of service by generators from their own generation to their station power load. FERC conditionally accepted the ISO's filing and ordered further compliance filing, but also stayed implementation of a portion of its order pending consideration of clarifications requested by the ISO and other parties. The October FERC order accepts (1) the ISO's proposed clarifications to preserve the historic ability of generators to net service to on-site station power load with generation produced from the associated generating unit, (2) the ISO's station power provisions, subject to additional clarifications proposed by the ISO in response to generator comments, and (3) the ISO's compliance filing of cost support for its station power charges. Additionally, in response to a dispute between generators on the one hand and utilities and the CPUC on the other hand, the FERC order precludes retail service providers from imposing retail and other load-based charges on merchant generators that self-supply their station power requirements over the monthly netting period under the ISO tariff.

Responsible attorneys: Mike Dozier and Sidney Davies

CPUC matters

CPUC-CEC Joint Greenhouse Gas Proceeding (R06-04-009)

On September 12, 2008, the CPUC and CEC released Commissioner Peevey's proposed decision. The proposed decision provides recommendations to the Air Resources Board for regulation of the electricity sector under AB 32. In addition, the proposed decision affirms that green house gas reduction goals should be met through energy efficiency and an enhanced renewables procurement requirement. The proposed decision also recommends that efficiency measures include both direct mandatory requirements and market-based strategies, such as cap and trade and that the renewables measure take the form of a 33% renewable portfolio standard mandate for all electricity retail providers (including publicly owned utilities) by 2020.

Responsible Attorney: Bill Di Capo

FILINGS THROUGH SEPTEMBER 2008



