

# Memorandum

**To:** ISO Board of Governors

**From:** Nancy Saracino, Vice President, General Counsel & Chief Administrative Officer

**Date:** May 11, 2011

**Re: Regulatory Update**

---

*This memorandum does not require Board action.*

## **Federal Energy Regulatory Commission and related Court of Appeals matters**

### **Tariff amendment filings and orders**

- **Tariff amendment to modify bid cost recovery rules (ER11-3149)**

On March 21, 2011, the ISO filed tariff amendments proposing to modify bid cost recovery rules to eliminate the incentive for parties to engage in a bidding practice that exploited bid cost recovery rules to generate increased payments. The ISO Board authorized the filing at its March 18 meeting. The ISO's bid cost recovery mechanism was created to ensure that where the ISO commits a resource, that resource will at least recover its bid costs, including start-up and minimum load costs. Where a resource's energy market revenues are insufficient to cover those costs, the bid cost recovery mechanism provides a resource with a make-whole payment. In March of 2011, the ISO observed a bidding practice that forced the ISO to schedule a resource in the day-ahead market at a high megawatt level but to dispatch the resource at a much lower level in the real-time market. This bidding practice resulted in significant overpayment of bid cost recovery of approximately \$57 million in total bid cost recovery payments from August 2010 through February 2011. The ISO proposed a tariff amendment to eliminate the opportunity for the bidding practice and requested expedited consideration of the proposed amendment. FERC issued an order on May 4, 2011 accepting the tariff amendment as just and reasonable with a March 26, 2011 effective date, as requested.

Responsible attorneys: Roger Collanton and Anna McKenna

- **Energy self-schedule requirement for self-provided regulation (ER11-3510)**

On May 3, 2011, the ISO filed a tariff amendment to clarify a requirement that an energy self-schedule must be submitted by scheduling coordinators self-providing regulation ancillary services. The ISO experienced market performance degradation in January and February and determined the root cause was the submission of an economic bid with a submission to self-provide regulation. An economic bid is a price responsive bid. A self-schedule has no offer price and is priced at the market. It is incompatible with the market software and ISO policy for an economic bid to be submitted in conjunction with a submission to self-provide regulation. The ISO requested waiver of the 60-day notice requirement and an effective date of May 24, 2011 so that the rule change could be made effective as soon as the software change can be implemented.

Responsible attorney: Sidney Davies

- **Start-up and minimum load costs tariff amendment (ER11-2760)**

FERC issued an order on March 31, 2011, accepting the ISO's January 26, 2011 tariff amendment to permit scheduling coordinators additional flexibility with respect compensation of resources' start-up and minimum load costs. Specifically, scheduling coordinators can now make independent elections for start-up and minimum load costs selecting either the cost-based proxy cost option or the registered cost option that allows scheduling coordinators to be compensated at up to 200% of calculated proxy costs for either or both start-up or minimum load costs. In addition, scheduling coordinators electing the proxy cost option for either start-up or minimum load costs can submit daily bids at amounts up to the calculated proxy costs. Scheduling coordinators continue to have the right to change their elections every 30 days.

Responsible attorney: Sidney Davies

- **Revised transmission planning process (ER10-1401; ER10-2191; EL10-7)**

In May 2010, following a ten-month stakeholder process, the Board approved the revised transmission planning process. The ISO filed the tariff amendment to implement the new process on June 4, 2010. On July 26, 2010, FERC suspended the effective date of the tariff revisions until January 3, 2011, or the date of an earlier decision, and held a technical conference on August 24, 2010. On December 16, 2010, FERC approved the ISO's revised transmission planning process proposal, requiring only minor changes on compliance to provide greater clarity on certain details in the tariff. The ISO submitted its filing on January 18, 2011. At the same time, the ISO filed a motion for clarification of the December order regarding a directive to submit additional tariff details concerning how to distinguish reliability projects that might also provide some economic or policy benefits and how to distinguish economic or policy elements that might also mitigate reliability concerns from reliability projects. The ISO submitted proposed tariff language addressing how such projects or elements could be distinguished and urged FERC to approve its proposed interpretation.

Responsible attorneys: Anthony Ivancovich and Judi Sanders

- **Generation interconnection process (ER11-1830)**

On March 28, 2011, FERC issued a letter order accepting the ISO's compliance filing on the generator interconnection procedures tariff amendment. This amendment combined the interconnection process for both small and large generators into a single tariff process and created three tracks for processing: 1) a cluster approach, which is the default and primary process track; 2) an independent study track for projects which are electrically independent of other interconnection requests and demonstrate a need for processing faster than the cluster approach; and 3) a fast track for projects up to 5 MW that can interconnect with few or no transmission upgrades. FERC had previously issued an order conditionally accepting the generator interconnection procedures amendment on December 16, 2010, and the ISO submitted its compliance filing on January 18, 2011.

Responsible attorney: Bill Di Capo

- **Miscellaneous tariff clarifications (ER11-2574)**

On February 28, 2011, FERC issued an order conditionally accepting the ISO's tariff amendment filed on December 30, 2010 to clarify the meaning of existing tariff provisions, ensure consistency throughout the tariff as well as between the tariff and applicable business practices, and correct typographical and other inadvertent errors. Prior to making its filing, the ISO conducted a stakeholder process and ultimately incorporated a number of stakeholder proposals into the filing. The ISO agreed to make additional clarifying changes to its tariff amendment in response to protests and comments. The ISO has submitted conforming changes to its tariff in compliance with FERC's order.

Responsible attorney: Andrew Ulmer

- **Capacity procurement mechanism (ER11-2256)**

On March 17, 2011, FERC issued an order that generally accepted the ISO's December 1, 2010 capacity procurement mechanism proposal. Under the order, the ISO's proposed capacity compensation based on going-forward costs and continuation of exceptional dispatch mitigation for non-competitive constraints and delta dispatch became effective April 1, 2011, subject to refund. In addition, FERC scheduled a technical conference that was held on April 28, 2011. The order accepted the remainder of the ISO's proposal, including the new criterion for designating resources at risk of retirement under the capacity payment mechanism, with limited modifications. The purpose of the technical conference was to consider the reasonableness of the ISO's proposed capacity payment proposal and continuation of exceptional dispatch mitigation over the long-term particularly in light of the California Public Utilities Commission's decision to retain the existing framework of the resource adequacy program and the ISO's proposal to change from an interim backstop mechanism to the more permanent capacity payment mechanism that has no sunset date in the tariff. At the technical conference ISO staff explained the rationale for the ISO's going-forward costs methodology and for continuing exceptional dispatch mitigation for non-competitive constraints and delta dispatch. Post-technical conference comments are due May 27 and reply comments are due June 15. Based on the

technical conference and the accompanying written comments, FERC will issue a final order addressing the capacity payment proposal and exceptional dispatch mitigation.

Responsible attorneys: Beth Ann Burns and David Zlotlow

- **Order 719 compliance filing (ER09-1048)**

On January 20, 2011, FERC issued another in a series of orders addressing the ISO's compliance with FERC Order No. 719. The January 20 order found that the ISO was generally compliant with Order 719, but directed the ISO to make additional modifications to Section 37 of the tariff, which sets forth the rules of conduct for market participants. FERC directed the ISO to ensure that the tariff only has penalty authority for purely objective violations; violations requiring subjective assessments are to be reserved for FERC consideration. Due to ambiguities in the January 20 order, on February 22, the ISO filed a motion for clarification and, in the alternative, rehearing. On March 24, 2011, FERC granted the ISO's clarification request. Consistent with these clarifications, the ISO made its compliance filing on April 20, 2011, which resulted in certain violations of the rules of conduct becoming enforceable by FERC through a referral from the ISO's Department of Market Monitoring, rather than subject to enforcement by the ISO.

Responsible attorney: David Zlotlow

- **Station power netting (ER05-849 and EL04-130)**

On February 28, 2011, FERC issued an order denying all requests for rehearing regarding its August 30, 2010 order on station power. In its prior order, FERC declared that treatment of station power for retail purposes can be different from treatment of station power for wholesale purposes and otherwise affirmed its prior orders regarding tariff provisions regarding station power. The requests for rehearing raised issues regarding the application of the monthly netting period for accounting for station power under the tariff and asserted that FERC has created the potential for double charging between the ISO and state retail rates. In response, FERC noted that no generator is required to self-supply under the terms of the tariff, and any generator that is currently registered for self-supply can deregister its portfolio. In addition, FERC found no need to reevaluate the justness and reasonableness of the tariff in this regard at this time. However, FERC encouraged interested parties to address these issues as necessary through the ISO's stakeholder process.

Responsible Attorney: Mike Dozier

- **Standard capacity product tariff amendments (ER10-1524 and ER 10-2781)**

On April 13, FERC issued a letter order that accepted the ISO's compliance filing in the proceeding that extended the standard capacity product to wind, solar, and qualifying facilities. The compliance filing effectuated the requirements in FERC's August 20 Order, which directed the ISO to modify the tariff language proposed in the ISO's initial filing as follows: 1) to include August 22, 2010 as the deadline date for supply contracts for the resource adequacy resources with historical qualifying capacity to be eligible for grandfathering and as the effective date for certain of the tariff provisions; 2)

to revise Section 40.9.6 or include a definition of the term “SCP” as used in that provision; and 3) accept clerical revisions to tariff section 40.9.4.2. Previously, on February 15, FERC denied the California Public Utilities Commission’s request for clarification or rehearing of the order approving the application of the ISO’s standard capacity product mechanism to previously-exempted resource adequacy resources, which include wind, solar, and qualifying facility resources. In denying the request, the Commission: 1) confirmed that it was appropriate for the ISO to allow the three-month advisory period to facilitate the transition of these resources to the mechanism before financial charges begin to apply; and 2) determined that imposing reporting requirements on the ISO about the advisory period was not necessary.

Responsible attorney: Beth Ann Burns

- **Convergence bidding tariff amendment (ER11-2128)**

The ISO submitted two filings on March 2, 2011 in compliance with FERC’s January 31, 2011 order generally accepting the ISO’s convergence bidding tariff amendment filed on June 25, 2010 as authorized by the Board at its February 2010 meeting: (1) tariff language in response to specific directives; and (2) additional evidence in support of the proposed virtual award charge through which the ISO proposes to collect a portion of its grid management charge. On April 13, 2011, FERC issued a letter order accepting the ISO’s compliance filing of tariff language. On April 18, 2011, the ISO filed an answer to the protest of certain financial market participants that challenged the ISO’s virtual award charge. This matter remains pending at FERC.

Responsible attorney: Sidney Davies

- **Default loss allocation (ER11-2973)**

On March 1, 2011, the ISO filed tariff language implementing the settlement agreement concerning how market losses should be allocated in the event of a payment default in response to the February 11, 2011 FERC order approving the settlement agreement. The settlement agreement results in tariff amendments that will allocate default losses to all market participants based on various metrics that measure participation in the ISO market. This matter initiated as a result of a complaint filed at FERC on June 30, 2009 by a coalition of energy sellers challenging the justness and reasonableness of the then effective default loss provisions of the tariff, which allocated losses to net creditors. FERC issued a letter order on April 28, 2011 accepting the filed tariff language.

Responsible attorney: Sidney Davies

## **Rulemakings and related proceedings**

- **Demand response compensation final rule (FERC Order 745)**

On March 15, 2011, FERC issued a final rule on demand response compensation that found payment by a regional transmission organization or independent system operator of compensation other than the full locational marginal price would be unjust and unreasonable under certain circumstances. The final rule also addressed how the costs associated with payment of the

locational marginal price for demand response should be allocated and rejected various other suggested methods of cost allocation. This aspect of the ruling calls into question the ISO's default load adjustment previously approved by FERC and implemented as part of the ISO's proxy demand resource program, which has been relied on by the California Public Utilities Commission in considering retail financial settlement issues. Accordingly, the ISO filed a request for clarification and, in the alternative, rehearing to preserve the default load adjustment mechanism. FERC also directed that each independent system operator and regional transmission organization develop a monthly price threshold using historical data to determine when "net benefits" would be realized by bids from demand response resources. This threshold would be used to create a minimum bid price from demand response providers. FERC also directed independent system operators and regional transmission organizations to undertake a study to assess whether a dynamic net benefits test could be implemented and to file the results of such studies by September 21, 2012. The ISO also sought rehearing of the requirement to implement the net benefits test in both the static and dynamic forms.

Responsible attorneys: Sidney Davies and John Anders

- **Regulation frequency compensation rulemaking (RM-11-7)**

At its February 2011 meeting, FERC adopted a notice of proposed rulemaking addressing frequency regulation compensation. FERC makes a preliminary finding that current frequency regulation compensation practices in organized electricity markets may result in rates that are unjust, unreasonable and unduly discriminatory. FERC is proposing to require a two-part compensation mechanism for frequency regulation: (1) a capacity payment that captures the marginal unit's marginal costs, including opportunity costs; and (2) a payment for performance that compensates resources for moving in both up and down directions and for the accuracy of the resource's response to an energy management system signal. The ISO submitted comments on May 2 challenging the notice of proposed rulemaking's determination that rates for regulation are unjust and unreasonable or unduly discriminatory and urging FERC not to prescribe a specific compensation method for regulation resources and instead allow independent system operators and regional transmission organizations to evaluate alternatives in their stakeholder processes that will most effectively achieve FERC's policy goals and the needs of each balancing area. The ISO also joined comments filed by the joint council of independent system operators and regional transmission organizations requesting that the final rule provide sufficient flexibility to enable ISOs and RTOs to develop cost-effective frequency response solutions that reflect their varying assets, market structures and balancing authority area size, as well as the evolving technologies and capabilities of regulation resources.

Responsible attorneys: Anthony Ivancovich, Anna McKenna and Grant Rosenblum

- **Variable energy resources rulemaking (RM11-10)**

On March 2, 2011, the ISO submitted comments in response to FERC's proposed reforms of the pro forma Open Access Transmission Tariff intended to remove barriers to the integration of variable energy resources and to do so in a manner that aids in the reliable operation of the interconnected grid while recognizing that the existence and penetration of such resources varies throughout the country. FERC's proposed reforms allow for intra-hour transmission, scheduling, power production forecasts, and recovery of charges for generator regulation service. The ISO submitted comments expressing its

general support while proposing slight modifications that would enable the ISO to continue to work with its stakeholders in making appropriate market rule changes to address the specific market and operational issues relating to the increasing presence of variable energy resources in the ISO balancing authority area.

- The ISO supports FERC's proposal to require greater intra-hour transmission scheduling flexibility. However, there are multiple ways in which the ISO's market based transmission service already provides intra-hour transmission service flexibility and the final rule should recognize such possible diversity. In this regard, the ISO asked FERC to recognize that in certain areas transitional measures such as the ISO's pilot program with Bonneville Power Administration to afford half-hour scheduling changes may be necessary to ensure the adoption of more flexible transmission reservation rules.
- The ISO also supports FERC's proposal to require that variable energy resources provide meteorological data. The Appendix Q of the tariff already requires that all eligible intermittent resources (wind and solar) provide the same meteorological data that FERC's is proposing to require through a generator interconnection agreement.
- The ISO expressed its recognition of the need to reevaluate cost allocation for regulation requirements, including the consideration of a volumetric rate, in the anticipation of an influx of additional variable energy resources.

The ISO also joined in the ISO/RTO council comments filed on the same day, cautioning that some of the Commission's proposals and proposed compliance deadlines are problematic and should be reconsidered. The ISO/RTO council requested that FERC allow transmission providers to develop just and reasonable mechanisms to integrate variable energy resources without negatively impacting the reliability of the integrated transmission system, and should afford transmission providers sufficient time to do so.

Responsible Attorneys: Anthony Ivancovich, Anna McKenna and Grant Rosenblum

- **Smart Grid- technical conference (RM11-2)**

On April 8, 2011, the ISO joined in comments with other independent system operators and regional transmission organizations on questions set forth by FERC staff on five areas of interoperability standards identified by the National Institute of Standards and Technology in October 2010 as ready for FERC consideration pursuant to Section 1305(d) of the Energy Independence and Security Act of 2007. The purpose of the January 31 technical conference was to explore whether there is "sufficient consensus," as that term is used in Section 1305(d), regarding the interoperability standards identified by institute to permit FERC to initiate a rulemaking proceeding to adopt those standards. The questions identified by FERC staff in the supplemental notice sought further detail on the core issues addressed at the technical conference: enforceability of the proposed standards, the meaning of "sufficient consensus," and the process that should be used in evaluating proposed standards. The joint parties noted that as was evident from the January 31 technical conference, sufficient consensus that the five areas of interoperability standards are ripe for FERC consideration in a rulemaking proceeding does not yet exist.

Responsible Attorneys: Anna McKenna and David Zlotlow

- **Emergency preparedness and operations reliability standard (RD11-40)**

On March 4, 2011, the ISO joined the ISO/RTO council in comments in support of the petition of the North American Electric Reliability Corporation for approval of one emergency preparedness and operations reliability standard (EOP-008-1) and the retirement of one existing reliability standard (EOP-008-0) filed on February 11, 2011. In the petition, the North American Electric Reliability Corporation sought FERC approval of revised reliability standard EOP-008-1 – Loss of Control Center Functionality and the retirement of existing reliability standard EOP-008-0 – Loss of Control Center Functionality. The new proposed standard is intended to ensure that a plan is in place for backup functionality and to ensure organizational readiness to implement that plan. The proposed standard applies to transmission operators, balancing authorities, and reliability coordinators and would be a significant improvement to the current standard and would also address specific FERC Order No. 693 directives.

Responsible Attorneys: Grant Rosenblum and Anthony Ivancovich

- **Protection system reliability standard rulemaking (RM10-5)**

On February 25, 2011, the ISO joined the ISO/RTO council filed in response to FERC's December 16, 2010 notice of proposed rulemaking regarding the North American Electric Reliability Corporation's interpretation of transmission and generation protection system maintenance and testing reliability standard, PRC-005-1.2. The comments recommended that FERC accept NERC's proposed interpretation of PRC-005-1 and reconsider its proposal to direct NERC to modify the reliability standard to include devices and equipment that are not required to maintain bulk electric system reliability. The council noted that the primary purpose of PRC-005-1 is to ensure adequate maintenance and testing of equipment necessary for the reliability of the bulk electric system, and PRC-005-1 as currently drafted achieves this objective. The council also noted that FERC's proposal to expand the standard to address devices that are designed to protect equipment rather than to ensure the reliability of the bulk electric system exceeds the purpose of the standard is unnecessary to fulfill NERC's obligation to maintain an adequate level of bulk electric system reliability.

Responsible Attorneys: Grant Rosenblum and Anthony Ivancovich

- **Reliability standards rulemaking ( RM10-8)**

On February 7, 2011, the ISO joined the ISO/RTO council in comments in response to FERC's notice of proposed rulemaking issued on December 16, 2010, proposing to approve the North American Electric Reliability Corporation's interpretation of certain requirements in the FERC-approved reliability standards, TOP-005-1 – Operational Reliability Information, and IRO-005-1, Reliability Coordination – Current-Day Operations. FERC also proposes to direct NERC to develop modifications to TOP-005-1 and IRO-005-1 through the reliability standards development process to add reporting obligations when the primary response in a redundant special protection system component is lost. The



council supports the approval of the interpretations, but does not believe the additional reporting obligations are necessary to support the reliability purposes of the relevant functional entities under the respective standards. Accordingly, the council requests that FERC reconsider its proposed directive regarding additional reporting requirements.

Responsible Attorneys: Grant Rosenblum and Anthony Ivancovich

### **Regulatory contracts filings and orders**

- **Transition of balancing authority responsibilities from SMUD to the Balancing Authority of Northern California (ER11-3387 and ER11-3388)**

On April 19, 2011 the ISO filed two new agreements necessary to transition balancing authority responsibilities from SMUD to the Balancing Authority of Northern California (BANC). BANC is a joint powers agency among the Modesto Irrigation District, City of Redding, City of Roseville, and SMUD, which operates as a separate public agency effective as of May 1, 2011. A primary purpose of BANC is to assume the NERC balancing authority registration from SMUD, thereby giving each of the BANC participants a stake in the administration of the balancing authority, including a percentage share of liability for BANC's compliance with the reliability standards applicable to its registration as a balancing authority. To facilitate this transition, the ISO filed with FERC to terminate its interconnected control area operating agreement with SMUD and make effective an adjacent balancing authority operating agreement with BANC. In addition, it was necessary to enter into a pilot pseudo-tie continuation agreement with BANC to carry forward a commitment between the ISO and SMUD previously documented in the interconnected control area operating agreement.

Responsible attorney: John Anders

- **Transmission Control Agreement (ER06-1360 and ER11-2295)**

On February 14, 2011, FERC issued a letter order accepting the ISO's filing of a revised version of the Transmission Control Agreement to reflect its acceptance of operational control of the Trans Bay Cable project as of November 23, 2010 and Trans Bay Cable's status as a new participating transmission owner as of that date. The ISO filed the revised version of the Transmission Control Agreement on December 3, 2010.

Responsible Attorneys: Mike Dozier and John Anders

- **Non-conforming Pro Forma Large Generation Interconnection Agreements**

Since the last regulatory report, FERC has issued orders conditionally accepting the remaining non-conforming pro forma large generation interconnection agreements that the ISO filed in December 2010 and January 2011 for projects seeking American Recovery and Reinvestment Act funding. These include the PaloVerde II/Blythe Solar Power Project (ER11-2318), approved February 4, 2011; the Palen Solar Power project (ER11-2451), order issued on February 17, 2011; Mojave Solar 1 (ER11-2368), order issued on January 28, 2011; AV Solar Ranch (ER11-2572), order issued on

February 17, 2011. FERC conditioned its orders on the outcome of a separate petition by Southern California Edison for abandoned plant approval and other incentives. FERC issued separator orders granting Edison's petition on March 11, 2011, discussed below, and thereby addressing the condition.

Responsible attorney: Bill Di Capo

- **Interconnection agreement amendments (ER11-2885 and 2899)**

On March 15, 2011, FERC issued a letter order accepting the ISO's amendments to the Solar Partners I, Solar Partners II, and Solar Partners VIII (subsidiaries of BrightSource) DPT 1, DPT 2, and Ivanpah 3 interconnection agreements. These amendments provide for the reallocation of capacity among the three generating facilities, with an overall reduction from 437 MW to 404 MW. The ISO determined that this reallocation did not constitute a material modification requiring re-study pursuant to new interconnection requests. The amendments to the Solar Partners II agreement also provide for the funding and construction of a temporary interconnection for the DPT 2 generating facility to permit it to deliver power to the grid in advance of the construction schedule otherwise provided in the agreement. The ISO filed these amendments on February 15 and 16, 2011.

Responsible Attorney: Mike Dozier

### **Report filings**

- **Regulation energy management from non-generation resources (ER10-1755; ER11-1875)**

In 2010, FERC conditionally accepted an ISO tariff amendment to facilitate the participation of non-generator resources in the ISO's ancillary services market. Among other things, the ISO proposed to modify the requirement that resources provide two hours of continuous energy to provide regulation, spinning reserve and non-spinning reserve. This change will increase the pool of resources that can provide these ancillary services. As part of its order approving the amendment, FERC directed the ISO to file a report to discuss design elements associated with regulation energy management to facilitate the provision of regulation by limited energy storage resources such as batteries and fly-wheels. Regulation energy management will allow limited energy storage resources to more effectively bid their capacity into the ISO's regulation markets consistent with the continuous energy requirements for regulation service set forth in the tariff. Under the proposal, the ISO will manage the resources' state of charge. The ISO will discharge the resource for regulation energy associated with regulation up and will charge the resource for regulation energy associated with regulation down. The ISO will use offsetting dispatches of energy from the real time energy market, if necessary, so that the resource can satisfy its regulation capacity award. On March 4, 2011, the ISO filed a report with FERC explaining that it had completed a stakeholder process to address the design of regulation energy management and obtained approval from the Board to amend the tariff to implement this market functionality. The ISO plans to discuss its proposed tariff changes to implement regulation energy management with stakeholders during the second quarter of 2011, and file a tariff amendment with FERC during the

third quarter of 2011. The ISO intends to implement regulation energy management by April 1, 2012.

Responsible attorneys: Andrew Ulmer, Anna McKenna

- **ISO combined fourth quarter 2010 interconnection queue quarterly progress report and status report following completion of transition cluster study phase (ER08-1317)**

On January 31, 2011, the ISO filed its combined Q4 2010 interconnection queue quarterly progress report and comprehensive status report following completion of the study phase for the transition cluster projects. The requirement to file a comprehensive status report was included in FERC's September 2008 order which approved the ISO's change in the large generation interconnection tariff from a serial (one at a time) study approach to a cluster study approach. The comprehensive status portion of the ISO's report outlined four primary issues that arose during processing of this first cluster to be studied under a cluster approach, including increased project modification requests, financial security posting issues, and acceleration and coordination efforts to help projects meet American Recovery and Reinvestment Act stimulus requirements.

Responsible attorney: Bill Di Capo

- **ISO first quarter 2011 interconnection queue quarterly progress report (ER08-1317; ER11-1830)**

The ISO submitted its Q1 2011 interconnection queue quarterly progress report on May 2, 2011. Among other points, the ISO reported that the fourth queue cluster window was open through the month of March (March 1-31). This queue cluster will be administered under the ISO's newly revised generator interconnection procedures. In the fourth queue cluster window, the ISO received 193 interconnection requests representing an additional 36,480 MW. The ISO is currently reviewing the interconnection requests for "validation" (completeness of the submitted material sufficient to move the request into the study process).

Responsible attorney: Bill Di Capo

- **Market disruption reports (ER06-615)**

A market disruption is an action or event that causes a failure of an ISO market, related to system operation issues or system emergencies. The ISO reports these market disruptions to FERC in connection with the implementation of its new market design. On February 15, 2010, March 15, 2011, and February 15, 2011 the ISO submitted its monthly market disruption reports that occurred from December 16, 2010 through March 15, 2011. Section 7.7.15 of the tariff authorizes the ISO to take one or more of a number of specified actions in the event of a market disruption, to prevent a market disruption, or to minimize the extent of a market disruption.

Responsible attorney: Anna McKenna

- **Exceptional dispatch reports (ER08-1178)**

The ISO submits two monthly exceptional dispatch reports to FERC in connection with exceptional dispatches under its new market design. On February 15, March 15 and April, 15, 2011, the ISO submitted transactional data including incremental and decremental MW volume, duration and location for exceptional dispatches occurring during the months of December 2010 and January and February, 2011, respectively. On February 28 and March 30, 2011, the ISO submitted MW hour data and cost data for exceptional dispatches occurring during the months of November and December, 2010, respectively.

Responsible attorney: Sidney Davies

- **Negotiated default energy bids informational filing (ER06-615)**

On March 7, 2011, the ISO filed an informational report with a confidential attachment providing information concerning nine new negotiated default energy bids that were implemented in February 2010. Default energy bids are used in the automated market power mitigation processes in the ISO market.

Responsible attorney: Sidney Davies

### **Other FERC matters**

- **Complaint regarding the second financial security posting (EL11-17)**

On January 27, 2011, TGP Development Company, LLC (“Terra-Gen”) filed a complaint and motion to stay seeking to postpone the February 8, 2011 due date for the second interconnection financial security postings for four projects in the ISO transition cluster and to insulate Terra-Gen from the tariff consequence that the projects are deemed withdrawn for failure to post. Terra-Gen argued that an earlier queued project under the serial interconnection process should have been studied such that the earlier queued project would be responsible for network upgrades ultimately assigned to Terra-Gen. In fact, the ISO is required under the interconnection tariff provisions to conduct the study in a manner that derives the maximum cost responsibility for network upgrades assigned to each interconnection request, which is exactly the result of the study assumption made by the ISO. Having not received any relief from FERC as of the date financial security was due, Terra-Gen notified the ISO of its desire to withdraw the interconnection requests for the four Terra-Gen projects associated with this proceeding. By order dated April 27, 2011, FERC dismissed Terra-Gen’s complaint and denied Terra-Gen’s motion for stay.

Responsible attorney: John Anders

- **ISO petition for limited waiver of tariff requirement regarding interconnection financial postings (ER11-2503)**

On April 22, 2011, FERC issued an order granting the ISO's petition for a limited waiver of the requirement that generator interconnection customers make their second posting of financial security 180 days after publication of the final Phase II interconnection study report. The purpose of the waiver filed on December 23, 2010 was to extend the timing of the posting requirement for seven transition cluster interconnection customers that relied on erroneous information provided by the ISO to the effect that the 180 day period would be calculated from the date of subsequent revisions to their final Phase II study reports. In granting the waiver FERC noted it was appropriate for several reasons. First, the seven affected interconnection customers may have to withdraw their interconnection request from the interconnection queue if they acted on the inaccurate information and are unable to timely post the second financial security installment. Second, the seven interconnection customers were mistakenly operating with erroneous information provided by ISO staff. Third, the limited amount of time extended to these interconnection customers through this waiver will be consistent with their original expectations. Finally, PG&E, the only transmission owner to which this second financial security installment is due, supported the waiver. In its April 22 order, FERC also denied the requests of other interconnection customers to be included in the scope of the ISO waiver.

Responsible attorney: John Anders

- **Interconnection customer petition for limited waiver of tariff requirement regarding interconnection financial postings (ER11-3140)**

On May 17, 2011, one of the interconnection customers included in the scope of the ISO waiver note above, Hydrogen Energy of California, requested additional time beyond the ISO's waiver request to seek investors for its project. Hydrogen Energy argued that it is a unique carbon sequestration demonstration project with express support by Department of Energy and the California Public Utilities Commission. The Department of Energy submitted a statement in support of request. The ISO did not oppose the waiver and left the decision to FERC as to whether Hydrogen Energy had made a sufficient public policy argument to support a waiver. The ISO did argue that the need for additional capital should, not by itself, provide a sufficient basis to support a grant of waiver. On April 22, 2011, FERC granted the request to delay the deadline to post its second installment of financial security by 48 days as requested. FERC limited the situation to its facts, noting that each request for waiver of tariff requirements is reviewed on its own merits and on a case-by-case basis, emphasizing its action was limited to the unique circumstances presented.

Responsible attorneys: Bill Di Capo and John Anders

- **Motion for extension of time to file compliance filing on more granular default load aggregation points (ER06-615)**

On February 16, 2011, the ISO submitted a motion for an extension of time to comply with FERC's directive in its order issued on September 21, 2006 to develop more granular default load aggregation points to be used for scheduling and settling demand in the ISO market. Based on its

preliminary analysis of locational pricing trends during the first 16 months of its new market design and in anticipation of significant market enhancements likely to further alter these trends, the ISO concluded that insufficient data exist to support more granular default load aggregation points at this time. The ISO's recent stakeholder process has revealed a near consensus opposing implementation of more granular default load aggregation points in 2012. Stakeholder consensus rests, in part, on the fact that the value of more granular default load aggregation points will depend on the future alignment between retail rate and wholesale market design. The ISO requested an extension of time to the last quarter of 2014 for the ISO to implement more granular default load aggregation points.

Responsible Attorneys: Anna McKenna and Grant Rosenblum

- **Waiver of penalties for submitting late meter data (ER11-2819)**

On February 1, 2011, the ISO petitioned FERC to excuse penalties that otherwise would be levied under the tariff against scheduling coordinators that amended their meter data submissions more than 43 days after the trading day for which the meter data pertains. The ISO explained to FERC that a waiver was justified due to confusion among scheduling coordinators regarding how the implementation of the payment acceleration tariff amendments affected meter data submission timelines. The ISO thus determined that the violations were largely, if not entirely, inadvertent. In prior similar circumstances, FERC granted the ISO a waiver of penalties it otherwise would be required to impose on scheduling coordinators.

Responsible attorney: David Zlotlow

- **Calpine Sutter tariff waiver filing (ER11-2085)**

On March 25, 2011, FERC issued an order granting Calpine's request for a waiver of provisions of the ISO tariff to permit two limited circumstances under which it can withdraw its interconnection request for its Sutter Energy Center project from the ISO's interconnection queue and receive full recovery of its initial posting of interconnection financial security. As a result, Calpine can withdraw and receive full recovery if either: (1) it has not received a final determination of its total affected system cost responsibility from all affected systems within one year of the date it posted its initial financial security or (2) the aggregate amount of upgrade costs for all affected systems and WECC path mitigation, combined, exceeds the cost estimate in the phase I interconnection study report by at least \$1 million. The ISO's position was set forth in its December 1, 2010 comments, in which, the ISO stated that while it does not believe that the interconnection financial security posting requirements in the tariff should be waived in all cases where affected system costs are not identified by the time of posting, the ISO does not object to Calpine's request based upon the facts and unique circumstances of this request, subject to the following clarification. The ISO requested that FERC make clear in any order granting Calpine's request for a limited waiver of the tariff that the waiver is only available if the aggregate amount of upgrade costs for all affected systems and WECC path mitigation, combined, exceeds the cost estimates set forth in the ISO's phase I interconnection study report by at least \$1 million.

The March 25 order expressly makes its grant of the waiver subject to this clarification. The order also denies a request by Western Area Power Administration, which the ISO opposed in an answer filed on December 16, 2010, that FERC open up a Federal Power Act section 206 investigation to determine whether the ISO's pilot pseudo tie program should be made long term and applied to Sutter. Calpine's interconnection request for Sutter presented a unique set of circumstances due to the following factors: (1) Sutter is already in commercial operation, (2) Sutter was at one time within the ISO balancing authority area, (3) the interconnection request seeks to reconnect Sutter within the ISO balancing authority area, (4) the results of the ISO's interconnection studies require further studies through the WECC path rating process, and (5) Calpine is exposed to significant cost uncertainty for potential network upgrades that may be required by affected systems as a result of the WECC path rating process, which the ISO's interconnection studies cannot quantify with a great deal of accuracy in advance of the determination of those costs by the affected systems.

Responsible Attorneys: Mike Dozier and Bill Di Capo

- **Southern California Edison incentive rate filing for four transmission projects (EL11-10)**

On March 11, 2011, FERC issued an order granting Southern California Edison's requests for recovery of any costs of abandoned plant and construction work in progress for the proposed (1) expansion of Colorado River substation, (2) expansion of Whirlwind substation, (3) south of Kramer transmission project, and (4) west of Devers transmission project. SCE filed its incentive rate request on December 9, 2010.

Responsible Attorney: Mike Dozier

- **Southern California Edison Eldorado-Ivanpah incentive rate filing (EL10-1)**

On March 17, 2011, FERC issued an order denying requests for clarification or rehearing of its October 29, 2010 order granting Southern California Edison's requests for recovery of any costs of abandoned plant and construction work in progress for the proposed Eldorado-Ivanpah transmission project (but not SCE's request for adders to its return on equity). SCE filed its incentive rate request on October 1, 2009.

Responsible Attorney: Mike Dozier

- **Investor-owned utilities' application to terminate their mandatory purchase obligation from qualifying facilities larger than 20 MW (QM11-2)**

On March 18, 2011, Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company filed an application to terminate their purchase obligation under the Public Utility Regulatory Policies Act of 1978 for qualifying facilities larger than 20 MW. The applicants requested that FERC approve termination of their obligation under PURPA to enter into new contracts or new obligations to purchase electric energy and capacity from qualifying facilities with net capacity in excess of 20 MW as part of the terms of the settlement agreement recently entered into among the applicants, cogeneration and combined heat and power qualifying facility representatives,

and statewide consumer and ratepayer groups. On April 15, 2011, the ISO filed comments supporting this application, consistent with the ISO's support of the underlying settlement agreement.

Responsible Attorneys: Mike Dozier and Sidney Davies

- **Critical Path, LLC and Clear Power, LLC complaint (EL11-11)**

On April 14, 2011 FERC issued an order denying the Critical Path and Clear Power complaint against the ISO regarding the ISO's decision to defer consideration of economic projects submitted into the 2008/2009 transmission planning request window until after the revised transmission planning process was implemented in the 2010/2011 planning cycle. In the order, FERC determined that under the previous tariff structure the ISO had the authority to consider economic projects over the course of multiple planning cycles. FERC noted that the ISO's evaluation of other categories of transmission during prior planning cycles-particularly reliability projects and generator interconnection procedure network upgrades- did not amount to undue discrimination because the ISO has specific and independent obligations to reliably operate the grid and to comply with generation interconnection requests under Order 2003. Thus, FERC found that the ISO's proposal to consider more than 30 economic projects submitted in the 2008/2009 request window under its revised comprehensive grid analysis, rather than under the prior tariff, to be reasonable, non-discriminatory and not in violation of the filed rate doctrine.

Responsible attorneys: Anthony Ivancovich and Judi Sanders

- **Transmission Technology Solutions/Western Grid Development complaint (No. EL11-8)**

On April 27, 2011, FERC issued an order denying a complaint filed by Transmission Technology Solutions LLC (TTS) and Western Grid Development LLC (WGD) alleging that the ISO's decisions and actions with respect to their proposed reliability projects submitted in the 2008 and 2009 request windows were unjust, unreasonable, and discriminatory. FERC found that in evaluating TTS' and WGD's projects, the ISO acted in a manner consistent with its tariff, the applicable business practice manual, the Transmission Control Agreement, and applicable reliability criteria. FERC reaffirmed that only participating transmission owners with a service territory are permitted to construct, finance and own reliability projects. FERC also found that the ISO properly adhered to the requirements of its tariff in rejecting TTS' application to become a participating transmission owner. Because TTS' facilities were not approved or pending consideration in the transmission planning process, TTS lacked the ability to transfer operational control of facilities over to the ISO, and therefore TTS did not meet the requirements to become a participating transmission owner under the tariff and Transmission Control Agreement. FERC found that the ISO appropriately followed its tariff and business practice manual to select the most cost-effective reliability solutions. FERC also found that the ISO's rejection of the proposed TTS and WGD projects was based on a proper assessment of each project and that there was no evidence that the ISO discriminated against the TTS and WGD projects.

Responsible attorney: Anthony Ivancovich



## **California Public Utilities Commission matters**

- **Rulemaking proceedings regarding qualifying facility policy (R.04-04-003, etc.)**

The CPUC issued Decision 11-03-051, dated March 24, 2011, on applications for rehearing of its December 16, 2010 decision (D.10-12-035) approving the global settlement regarding qualifying facility issues. D.11-03-051 makes minor clarifications to and otherwise denies all applications for rehearing of D.10-12-035, except that it grants a request by the California Municipal Utilities Association (CMUA) for abeyance of its rehearing application. On April 1, 2011, the parties to the global settlement filed a joint petition with CMUA for modification of D.10-12-035. The petition asks the CPUC to revise the decision to include statements that municipal utilities' issues regarding cost allocation to "municipal departing load" have been resolved – and to deny their application for rehearing of the decision. On April 18, 2011, representatives of community choice aggregators and direct access customers filed a response that does not object to the petition so long as no stranded costs are passed on to them and indicating that a similar "vintaged" cost allocation approach as agreed with municipal utilities might be acceptable to them. D.10-12-035 notes that the settlement will not be effective until FERC approves a waiver of the utilities' mandatory obligations to purchase power from qualifying facilities under the Public Utility Regulatory Policies Act of 1978 and requires the utilities to file a motion for closure of the proceedings on the settlement once the conditions of the effectiveness of the settlement have been met.

Responsible Attorneys: Mike Dozier and Sidney Davies

- **PG&E applications for approval of new qualifying facility power purchase agreements (A.10-10-004, A.10-10-005)**

On March 10, 2011, the California Public Utilities Commission adopted decisions approving two Pacific Gas & Electric applications for approval of a total of seven new power purchase agreements with qualifying facilities to replace existing grandfathered agreements. On February 28, 2011, the ISO filed comments supporting the proposed decisions issued on February 8, 2011 on the basis that they specified that the proposed power purchase agreements include provisions requiring the qualifying facilities to comply with the requirements of the tariff. This is consistent with the position advocated by the ISO in the proceedings that are subject to the proposed settlement described above (R.04-04-003, etc.). PG&E filed its application with the CPUC on October 8, 2010, simultaneous with the filing of the settlement described above regarding R.04-04-003, etc.

Responsible Attorneys: Mike Dozier and Sidney Davies

## **Other regulatory filings**

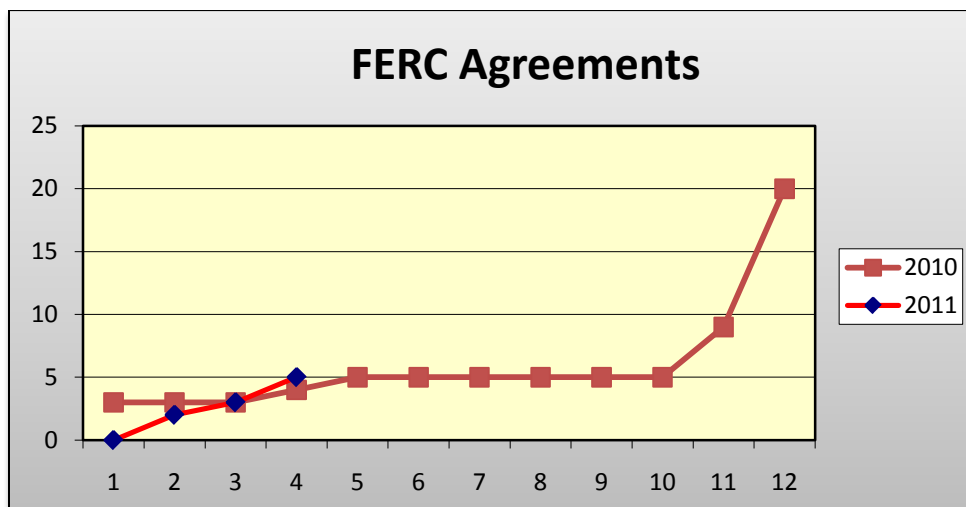
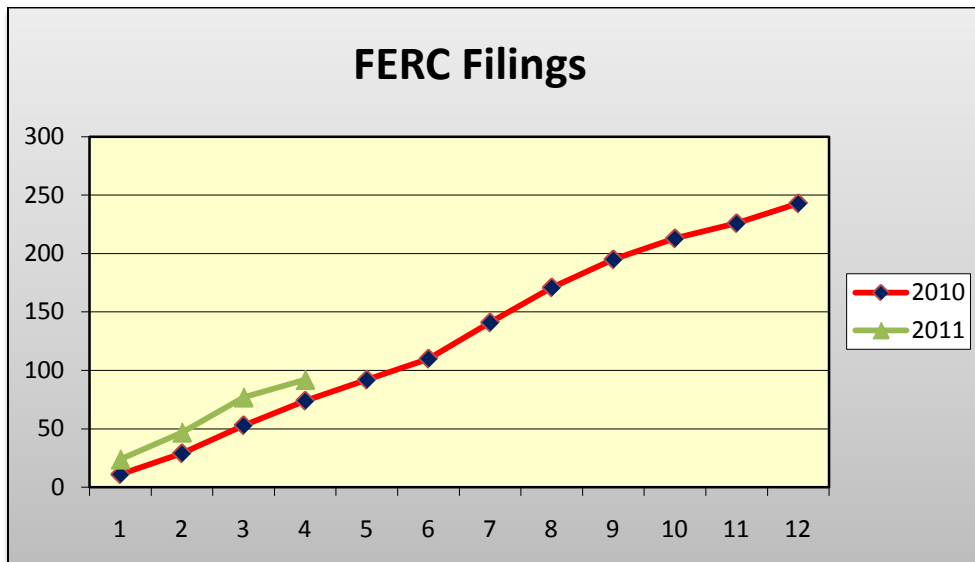
- **Statewide policy on the use of coastal and estuarine water for power plant cooling**

In May 2010, the State Water Resources Control Board adopted a policy on the use of coastal and estuarine water for power plant cooling (once-through cooling). As defined by the policy, the State Water Resources Control Board will require power plants to adopt the best technology available to cool

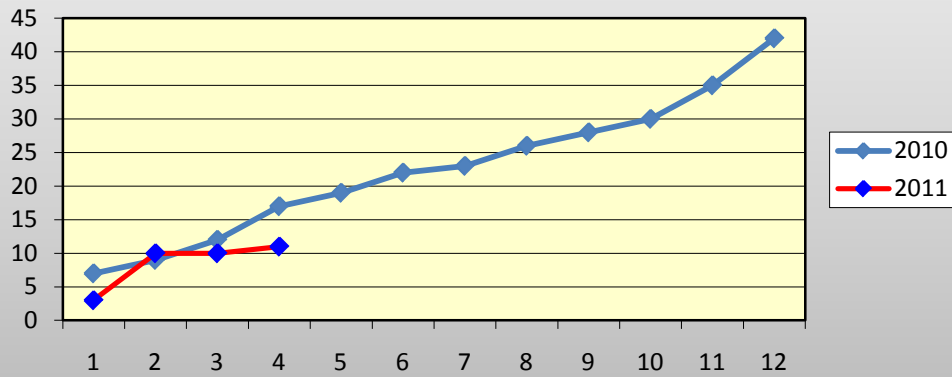
power plants with coastal or estuarine waters so as to reduce the level of impingement and entrainment of marine life in accordance with a specific schedule. Under the policy, affected generators submitted implementation plans on April 1, 2011. The ISO is working in collaboration with various state agencies as part of the statewide advisory committee on cooling water intake structures to review those implementation plans in order to advise the State Water Resources Control Board whether they are feasible from an electric reliability perspective.

Responsible Attorney: Andrew Ulmer

### Regulatory Filings 2011 Cumulative Charts through April



### CPUC/Other Commission Filings



### Court Filings

