



Memorandum

To: Audit Committee
From: N. Beth Emery, Vice President & General Counsel
Cc: ISO Board of Governors, ISO Officers
Date: June 17, 1999
Re: ***Proposed Policy on ISO Procedures Development Process***

This matter involves a proposed Board action. Last month, the Audit Committee considered, in the context of recommendations arising from the Operations Audit, the issue of what level of detail properly resides in the Tariff as contrasted with Procedures. Management proposed to prepare a draft Board policy dealing with the process to be followed by the ISO when adopting Procedures (including Operating Procedures, Planning Procedures, Maintenance Standards and Contingency Procedures). We have included the draft policy here as ***Attachment A***.

As discussed last month, FERC's "rule of reason" applies: tariffs need to be detailed enough to provide market participants an understanding of the rights and obligations granted or imposed, but not so detailed in matters of implementation as to deny operating flexibility as long as it is exercised consistent with the tariff. The rush to start-up resulted in our Tariff containing significantly more detail than we believe is required under the "rule of reason". FERC has asked the ISO to simplify the Tariff and to eliminate unnecessary detail. Our plan is to do so over time.

As a first step, Management believes that it is crucial to limit *new* Tariff language to that properly in a tariff, and to use Procedures for detail *not* normally filed in a tariff. Management still intends to ensure Market Participants' access to, and input on, the "details", by committing that the ISO will only adopt or change Procedures using a formal and open process. This new policy is a mere subset of the controls on procedures proposed in our action plan responding to the Operations Audit.

Attached for Board approval is a proposed policy for improving stakeholder input in the development of ISO procedures within a formalized process. Highlights of the policy are as follows:

- **Needs Identification** - The ISO will establish a page on its internet site to give Market Participants and other members of the public the opportunity to comment on the development of new, or changes to existing, Procedures.
- **Needs Evaluation** – The ISO will evaluate the need for developing or updating Procedures, including an analysis of whether the procedures need to be formalized in the Tariff.
- **Initial Drafting and Input from Content Experts** – The ISO will draft new or modified Procedures and, as part of the drafting, seek comments from stakeholders directly affected by the changes.

- **Processing Procedures for Comment or Immediate Posting** - Once reviewed by ISO Management, new or modified Procedures will be posted to the ISO web site for stakeholder review and comment. The only possible exception would be an emergency or time-critical situation which demands that the Procedure be made effective before passage of an appropriate comment period. In those cases, stakeholders may comment on the Procedure after its effective date; those comments will be cycled back into the "needs assessment" portion of the development process (possibly leading to modification of the Procedure if appropriate).
- **Processing Documents for Final Approval and Posting with Effective Date** - Once finalized, Procedures will be posted to both the ISO's internet site and intranet site, and will be linked to the ISO's "Internet University" (*i.e.*, a corporate distance learning center), making the *same* Procedure clearly available for internal, external and training purposes.

A visual diagram of the policy process is included as **Attachment B**. A copy of my original memorandum to the Committee is included for your reference as **Attachment C**.

Therefore, Management recommends the following motion:

MOVED, that the Committee recommend that the Board of Governors adopt the Board Policy on ISO Procedures Development Process as presented to the Board, to be effective immediately.

DRAFT

California ISO Board Policy -- ISO Procedures Development Process --

It is the policy of the ISO to distinguish between rules and policies appropriately contained in the ISO Tariff, and those Operating Procedures, Billing and Settlement Procedures, Planning Procedures, Maintenance Standards and Contingency Procedures ("Procedures") that merely implement the policies and authorities contained in the Tariff. Subjecting the adoption and amendment of Procedures to the Tariff amendment process is not required by law and creates a number of inefficiencies, including the significant time lags inherent in the Tariff amendment process, detracting from the necessary focus of Board members on policy matters, and burdening FERC with review of matters not required to be filed with FERC. On the other hand, consistent with the ISO's commitment to public access to information and stakeholder input into decisions affecting their interests, the Board finds it is essential that a formal mechanism be created for ensuring (1) stakeholder input into the adoption or modification of Procedures and (2) public access to Procedures, in compliance with the Board's Information Availability Policy. This Policy establishes the mechanisms and processes that will be followed by the ISO (in partnership with stakeholders, where appropriate) with regard to Procedure development, as summarized in the attached diagram.

Needs Identification

- The ISO shall maintain a page on its Internet web site, for access by market participants and the public, giving market participants the opportunity to comment on existing Procedures, make suggestions with respect to the need for new Procedures, or present concerns related to existing Procedures.

Needs Evaluation

- The applicable ISO Department will evaluate the need for development or updating of Procedures, including operational changes or changes to standards. The Legal Services Department will determine whether Tariff changes are required.
- In limited instances, involving emergencies or time-critical matters (see **Processing Procedures for Comment or Immediate Posting**), the ISO may implement a new Procedure, or update an existing one, without pre-effectiveness stakeholder review and comment.

Initial Drafting and Input from Content Experts

- Once the need for a new or modified Procedure has been evaluated, the ISO will prepare a draft.
- The ISO will identify those stakeholders for which the Procedure will apply or have some direct bearing and seek their comments.

Processing Procedures for Comment or Immediate Posting

- Once drafted, Procedures will be posted to the ISO's Internet web site, in accordance with the Board's Information Availability Policy.
- When released in draft form for comments, the ISO will issue a notice to draw the public's attention to the document's availability on the ISO's Internet web site, and specify the deadline for comments. The comment period

shall be reasonable in light of the scope of affected parties, the complexity of the changes, and the Board's policy to encourage stakeholder involvement.

- In the event that the ISO is required to develop or update a Procedure (1) in order to avert a System Emergency, avoid a threat to System Reliability or to maintain the reliability of Interconnections, (2) to correct an obvious error, (3) to make a non-substantive change, or (4) to revise a Procedure to avoid substantial economic costs being imposed on the market, the Procedure may be immediately implemented and posted. Stakeholders will be given an opportunity to comment on emergency procedures and those comments shall be considered by the ISO in determining whether to make further modifications under the regular time lines.

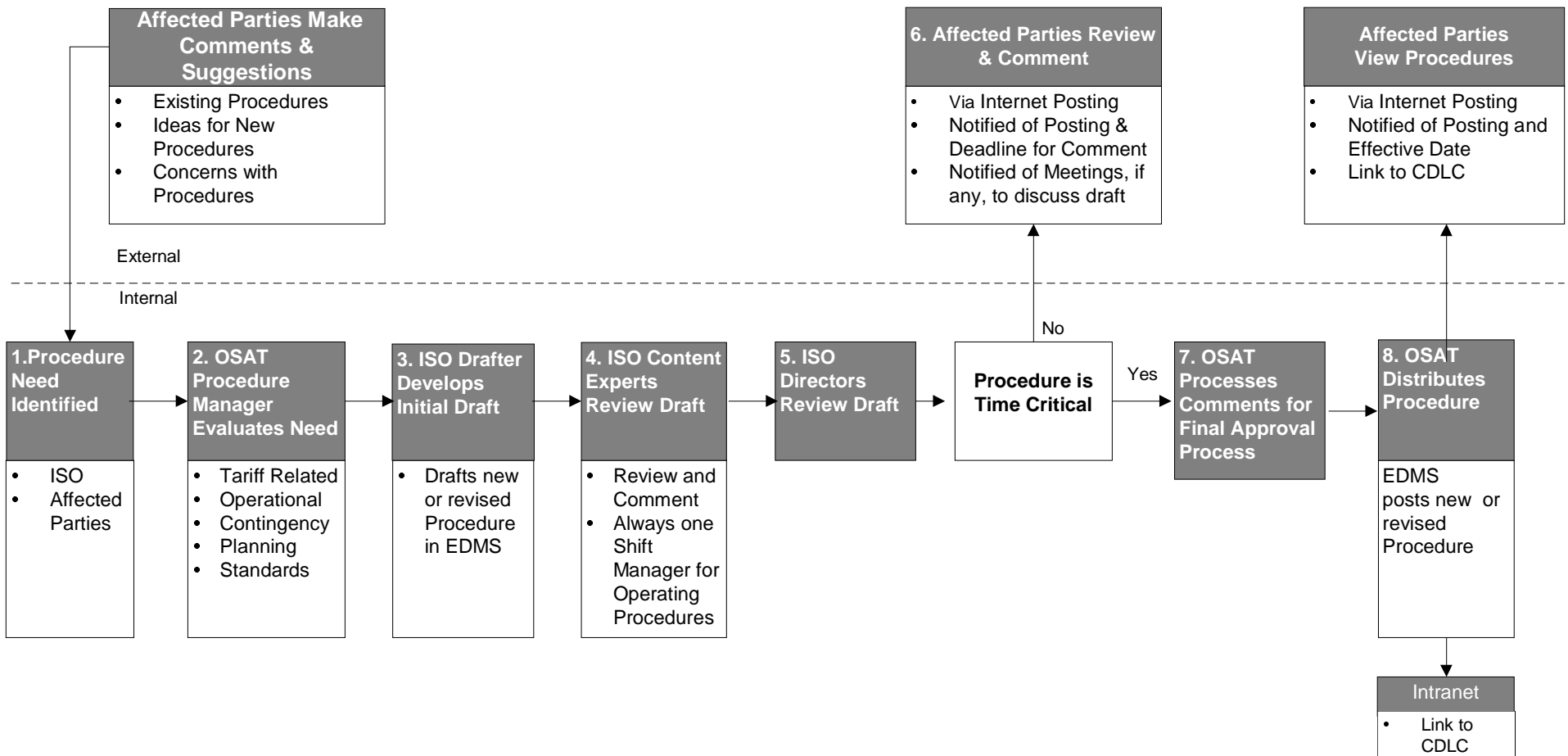
Processing Documents for Final Approval and Posting with Effective Date

- Following the ISO's posted deadline for comments on a draft Procedure or update, the ISO will incorporate comments received, as appropriate, and post the final procedure with the effective date.
- The ISO's document control mechanism will allow for the identical Procedure to be available on both the ISO's Intranet and Internet web sites. Both of these sites will have links to the ISO's Internet University (*i.e.*, a corporate distance learning center), thereby ensuring the same Procedure is available for training purposes and accessed by all ISO employees and others.

No Private Right of Action

Nothing set forth in this Policy shall establish a cause of action on the part of any person or entity for monetary damages, or to invalidate any action of the ISO, claimed as a result of a violation of this Policy.

Procedure Development Process (Overview)





Memorandum

To: Audit Committee
From: N. Beth Emery, Vice President & General Counsel
Cc: ISO Board of Governors, ISO Officers
Date: May 20, 1999
Re: *Process for Promulgation of Operating and Other Procedures*

This matter does not require a vote from the Board this month. We are seeking advice from the Committee this month, including whether this matter should be assigned to another Committee. A vote will be requested in June.

At the special meeting of the Audit Committee on April 14, we first raised the issue of what level of detail is properly in the Tariff as contrasted with operating procedures. At my request, Ed Berlin provided further legal analysis of our obligation to provide detail in the Tariff (see *Attachment*). In short, our obligation is subject to a "rule of reason."

OPERATING PROCEDURES VS. TARIFF

As noted in Swidler's opinion included as an appendix to the Operations Audit, the ISO Tariff (which includes our Protocols) is far more detailed than typical utility-filed (or ISO) tariffs. In fact, this was not the original plan. The ISO's detailed Protocols were intended to be the equivalent of operating procedures. Cameron McKenna filed them with FERC for information. As I understand it, however, because the Protocols were filed last they contained policies that had only been decided at the Protocol stage and that properly belonged in the Tariff. There was simply not time to produce necessary Tariff amendments.

Intervenors protested that certain Protocols included rules properly in the Tariff, FERC staff agreed, and rather than sorting through which ones did and did not, FERC accepted both the Tariff and Protocols as the "Tariff" and directed the ISO to file to remove those matters properly belonging in operating procedures. Since last year, we have had that process (referred to internally as "Tariff Simplification") assigned to a project team; however, it has taken a back seat to market redesign and quarterly filings. We believe it remains an important longer-term objective because both the ISO and market participants need to be able to react to changing conditions quickly and flexibly. Given the six or more months required to implement a Tariff change, it would seem to everyone's advantage that we not subject to FERC filing those matters FERC would not require to be filed.

That said, notwithstanding deferral of plans to convert detail already in the Tariff into procedures, we believe it is crucial to limit *new* Tariff language to that properly in a tariff and to use operating procedures for detail *not* normally filed in a utility tariff. In fact, we take a high-profile step in that direction this month with the proposed approach to the New Generator Interconnection Policy (see materials in Grid Ops section).

PROPOSED BOARD POLICY ON ADOPTION OF PROCEDURES

In June, we will be asking the Board to adopt a policy specifying the process by which operating (and other) procedures are promulgated, including how the public is notified; how parties may appeal Management's decisions to the Board and, ultimately, FERC; and where procedures will be posted. This policy is a subset of the controls on procedures proposed in our action plan responding to the Operations Audit.

We anticipate that the Policy will include details on how the following occur

Identification of Additions or Changes, and ISO Staff Analysis: The ISO would publish, by subject area, the group or individual at the ISO to whom proposed additions or changes to procedures are to be directed. The modifications could be suggested by any market participant or stakeholder group, or by ISO Management. There would be a requirement to respond to outside recommendations to advise of the conclusions reached.

Opportunity for Board Review: Management promulgates procedures because they are to be limited to details for implementing policy established in the Tariff. When a procedure is adopted or changed, it is supposed to be posted on the ISO Web site. We would formalize the timing and include a "notice" period, which would provide some period of public notice before a procedure could be implemented or changed. In fact, this has been occurring informally now, by circulation of procedures to Market Participants for comment. The Policy would institutionalize that process. The Policy would provide for Board review (through the relevant Committee) should a Market Participant feel the procedure included matters properly in the Tariff or in conflict with the Tariff. Of course, if a procedure is inconsistent with the Tariff or should be filed as a Tariff amendment under FERC's "rule of reason," a party always has the ability to file a complaint at FERC, an implicit appeal right of any Board decision. We would likewise recognize that implicit appeal right in the policy. We considered whether we should provide opportunities for Board review and approval of each procedure, but believe such a limitation would (1) be inconsistent with the need for flexibility and to be able to act with reasonable dispatch and (2) imply that procedures were establishing policy, when in fact they should be limited to details to implement policy contained in the Tariff.

Exception for Emergencies: Notwithstanding the above, there must be authority to modify procedures when necessary to avert a threatened emergency or the reliability of a portion of the ISO Controlled Grid or interconnected operations providing. The policy would specify those instances and make it clear that if the modification is to remain in place following the perceived emergency or threat to reliable operations, all of the above procedural protections would still be applicable.

[ATTACHMENT INTENTIONALLY OMITTED]

