

November 16, 2012

The Honorable Kimberly D. Bose  
Secretary  
Federal Energy Regulatory Commission  
888 First Street, NE  
Washington, DC 20426

**Re: California Independent System Operator Corporation  
Docket No. ER13-\_\_\_\_ - 000-  
Tariff Amendment Regarding CFTC Regulations**

Dear Secretary Bose:

The California Independent System Operator Corporation (“ISO”) hereby submits for filing the attached amendment to its Fifth Replacement FERC Electric Tariff.<sup>1</sup> The ISO has asked the Commodity Futures Trading Commission (“CFTC”) to exempt from regulation under the Commodity Exchange Act<sup>2</sup> certain transactions in the ISO’s market that might fall within the CFTC’s jurisdiction. The CFTC has issued a proposed order that would grant the exemption subject to certain conditions. This tariff amendment is necessary to fulfill one of those conditions. The ISO requests an effective date for the amendments proposed in this filing of January 30, 2013.

**I. BACKGROUND**

The Dodd-Frank Wall Street Reform and Consumer Protection Act<sup>3</sup> expanded the authority of the CFTC to include regulation of “swaps,” which have been defined broadly in a way that could be construed to cover certain transactions in the ISO market. In February 2012, a group of independent system operators and regional transmission organizations, including the ISO, jointly petitioned the CFTC to exempt transactions in their markets from the

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<sup>1</sup> The ISO makes this filing pursuant to section 205 of the Federal Power Act, 16 U.S.C. § 825d (2006) and 18 C.F.R. Part 35 (2012).

<sup>2</sup> 7 U.S.C. § 1 et seq. (2006), as amended through Pub. L. 111-203, 124 Stat. 1376 (2010).

<sup>3</sup> Pub. L. 111-203, 124 Stat. 1376 (2010).

CFTC's jurisdiction. In response, on August 28, 2012, the CFTC issued a proposed order that would grant the requested exemption on certain conditions.<sup>4</sup> One of the conditions is that ISO and RTO tariffs do not require the ISO to notify market participants when providing information to the CFTC in response to a subpoena or data request. Specifically, the CFTC stated:

4. Conditions. The exemption provided by this Order is expressly conditioned upon the following:

...

b. Notification of requests for information: With respect to each Requesting Party, neither the tariffs nor any other governing documents of the particular RTO or ISO pursuant to whose tariff the agreement, contract or transaction is to be offered or sold, shall include any requirement that the RTO or ISO notify its members prior to providing information to the Commission in response to a subpoena or other request for information or documentation.<sup>5</sup>

This tariff amendment is proposed to satisfy this condition.

## II. STAKEHOLDER PROCESS AND BOARD CONSIDERATION

The ISO posted a paper for stakeholder review on October 12, 2012, explaining the proposed amendment, including draft tariff language. The ISO received only one written comment on the proposal – from Southern California Edison – which asked for additional information about the proposed exemption from CFTC jurisdiction and the future role of the CFTC in the ISO market. The ISO held a stakeholder call to review the proposed tariff amendment. No stakeholder objected to the ISO's proposal.

The ISO submitted the proposed amendment to its Board of Governors for consideration at its November 1, 2012 meeting. The memorandum to the Board is included as Attachment C. The Board unanimously approved the amendment.

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<sup>4</sup> See Proposed Order and Request for Comment on a Petition From Certain Independent System Operators and Regional Transmission Organizations To Exempt Specified Transactions Authorized by a Tariff or Protocol Approved by the Federal Energy Commission or the Public Utility Commission of Texas From Certain Provisions of the Commodity Exchange Act, 77 Fed. Reg. 52137 (August 28, 2012).

<sup>5</sup> *Id.* at 52166.

### III. DESCRIPTION OF TARIFF AMENDMENTS

The ISO tariff generally requires that the ISO notify affected market participants if it receives a subpoena seeking confidential or commercially sensitive information. There is an exemption, however, for information requested by the Commission or its staff. See § 20.4(c)(i). When providing confidential or commercially sensitive information under this section, the ISO is required to take action consistent with Commission regulations to protect the information from disclosure under the Freedom of Information Act.

To satisfy the condition of the CFTC's proposed order described above, the ISO proposes to amend this section to provide the same treatment to information requests from the CFTC or its staff as is currently provided to requests from the Commission, as follows:

#### 20.4 Disclosure

Notwithstanding anything in this Section 20 to the contrary,

. . .

(c) The CAISO may disclose confidential or commercially sensitive information, without notice to an affected Market Participant, in the following circumstances:

(i) If the FERC, the Commodity Futures Trading Commission ("CFTC"), or their staff of one of those agencies, during the course of an investigation or otherwise, requests information that is confidential or commercially sensitive. In providing the information to FERC or its staff, the CAISO shall take action consistent with 18 C.F.R. §§ 1b.20 and 388.112, or to the CFTC or its staff, the CAISO shall take action consistent with 17 C.F.R. §§ 11.3 and 145.9, and request that the information be treated as confidential and non-public by the agencyFERG and its staff and that the information be withheld from public disclosure. The CAISO shall provide the requested information to the agencyFERG or its staff within the time provided for in the request for information. The CAISO shall notify an affected Market Participant within a reasonable time after the CAISO is notified by the agencyFERG or its staff that a request for disclosure of, or decision to disclose, the confidential or commercially sensitive information has been received, at which time the CAISO and the affected Market Participant may respond before such information would be made public;

#### **IV. EFFECTIVE DATE AND REQUEST FOR WAIVERS**

The ISO requests an effective date of January 30, 2013. The ISO believes that this filing complies with the requirements of 18 C.F.R. Part 35. To the extent that it does not, the ISO respectfully requests waiver as may be necessary in order for these tariff revisions to become effective.

#### **V. COMMUNICATIONS**

Communications regarding this filing should be addressed to the following individuals, whose names should be placed on the official service list established by the Secretary with respect to this submittal:

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#### **VI. SERVICE**

The ISO has served copies of this transmittal letter, and all attachments, on the California Public Utilities Commission, the California Energy Commission, and all parties with effective Scheduling Coordinator Service Agreements under the ISO tariff. In addition, the ISO is posting this transmittal letter and all attachments on the ISO website.

#### **VII. ATTACHMENTS**

The following documents, in addition to this transmittal letter, support the instant filing:

<b>Attachment A</b>	Revised ISO Tariff Sheets – Clean
<b>Attachment B</b>	Revised ISO Tariff Sheets – Marked
<b>Attachment C</b>	October 25, 2012 Board Memo

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## VIII. CONCLUSION

For the reasons set forth above, the ISO respectfully requests that the Commission approve the tariff modifications in Attachment A, effective January 30, 2013.

Respectfully submitted,

/s/ Daniel J. Shonkwiler  
Daniel J. Shonkwiler

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*Counsel for the  
California Independent System  
Operator Corporation*

Dated: November 16, 2012

**Attachment A – Clean Tariff**  
**Tariff Amendment Regarding CFTC Regulations**  
**California Independent System Operator**  
**Fifth Replacement FERC Electric Tariff**  
**November 16, 2012**

Notwithstanding anything in this Section 20 to the contrary,

- (a) The CAISO: (i) shall publish individual bids ninety (90) days after the Trading Day with respect to which the bid was submitted and in a manner that does not reveal the specific resource or the name of the Scheduling Coordinator submitting the bid, but that allows the bidding behavior of individual, unidentified resources and Scheduling Coordinators to be tracked over time; (ii) may publish data sets analyzed in any public report issued by the CAISO or by the MSC, provided that such data sets shall be published no sooner than six (6) months after the latest Trading Day to which data in the data set apply, and in a manner that does not reveal any specific resource or the name of any Scheduling Coordinator submitting bids included in such data sets; and (iii) shall, consistent with 18 CFR § 35.28 (g)(4), electronically deliver to FERC, on an ongoing basis and in a form and manner consistent with the CAISO's own collection of data and in a form and manner acceptable to FERC, data related to the CAISO Markets.
- (b) If the CAISO is required by applicable laws or regulations, or in the course of administrative or judicial proceedings, to disclose information that is otherwise required to be maintained in confidence pursuant to this Section 20, the CAISO may disclose such information; provided, however, that as soon as the CAISO learns of the disclosure requirement and prior to making such disclosure, the CAISO shall notify any affected Market Participant of the requirement and the terms thereof. The Market Participant may, at its sole discretion and own cost, direct any challenge to or defense against the disclosure requirement and the CAISO shall cooperate with such affected Market Participant to the maximum extent practicable to minimize the disclosure of the information consistent with applicable law. The CAISO shall cooperate with the affected Market Participant to obtain proprietary or confidential treatment of confidential information by the person to whom such information is disclosed prior to any such disclosure.

- (c) The CAISO may disclose confidential or commercially sensitive information, without notice to an affected Market Participant, in the following circumstances:
- (i) If the FERC, the Commodity Futures Trading Commission (“CFTC”), or the staff of one of those agencies, during the course of an investigation or otherwise, requests information that is confidential or commercially sensitive. In providing the information to FERC or its staff, the CAISO shall take action consistent with 18 C.F.R. §§ 1b.20 and 388.112, or to the CFTC or its staff, the CAISO shall take action consistent with 17 C.F.R. §§ 11.3 and 145.9, and request that the information be treated as confidential and non-public by the agency and its staff and that the information be withheld from public disclosure. The CAISO shall provide the requested information to the agency or its staff within the time provided for in the request for information. The CAISO shall notify an affected Market Participant within a reasonable time after the CAISO is notified by the agency or its staff that a request for disclosure of, or decision to disclose, the confidential or commercially sensitive information has been received, at which time the CAISO and the affected Market Participant may respond before such information would be made public; or

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**Attachment B – Marked Tariff**  
**Tariff Amendment Regarding CFTC Regulations**  
**California Independent System Operator**  
**Fifth Replacement FERC Electric Tariff**  
**November 16, 2012**

Notwithstanding anything in this Section 20 to the contrary,

- (a) The CAISO: (i) shall publish individual bids ninety (90) days after the Trading Day with respect to which the bid was submitted and in a manner that does not reveal the specific resource or the name of the Scheduling Coordinator submitting the bid, but that allows the bidding behavior of individual, unidentified resources and Scheduling Coordinators to be tracked over time; (ii) may publish data sets analyzed in any public report issued by the CAISO or by the MSC, provided that such data sets shall be published no sooner than six (6) months after the latest Trading Day to which data in the data set apply, and in a manner that does not reveal any specific resource or the name of any Scheduling Coordinator submitting bids included in such data sets; and (iii) shall, consistent with 18 CFR § 35.28 (g)(4), electronically deliver to FERC, on an ongoing basis and in a form and manner consistent with the CAISO's own collection of data and in a form and manner acceptable to FERC, data related to the CAISO Markets.
- (b) If the CAISO is required by applicable laws or regulations, or in the course of administrative or judicial proceedings, to disclose information that is otherwise required to be maintained in confidence pursuant to this Section 20, the CAISO may disclose such information; provided, however, that as soon as the CAISO learns of the disclosure requirement and prior to making such disclosure, the CAISO shall notify any affected Market Participant of the requirement and the terms thereof. The Market Participant may, at its sole discretion and own cost, direct any challenge to or defense against the disclosure requirement and the CAISO shall cooperate with such affected Market Participant to the maximum extent practicable to minimize the disclosure of the information consistent with applicable law. The CAISO shall cooperate with the affected Market Participant to obtain proprietary or confidential treatment of confidential information by the person to whom such information is disclosed prior to any such disclosure.

(c) The CAISO may disclose confidential or commercially sensitive information, without notice to an affected Market Participant, in the following circumstances:

- (i) If the FERC, the Commodity Futures Trading Commission ("CFTC"), or ~~the~~its staff of one of those agencies, during the course of an investigation or otherwise, requests information that is confidential or commercially sensitive. In providing the information to FERC or its staff, the CAISO shall take action consistent with 18 C.F.R. §§ 1b.20 and 388.112, or to the CFTC or its staff, the CAISO shall take action consistent with 17 C.F.R. §§ 11.3 and 145.9, and request that the information be treated as confidential and non-public by the ~~agency~~FERC and its staff and that the information be withheld from public disclosure. The CAISO shall provide the requested information to the ~~agency~~FERC or its staff within the time provided for in the request for information. The CAISO shall notify an affected Market Participant within a reasonable time after the CAISO is notified by the agency~~FERC~~ or its staff that a request for disclosure of, or decision to disclose, the confidential or commercially sensitive information has been received, at which time the CAISO and the affected Market Participant may respond before such information would be made public; or

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**Attachment C – Memorandum to ISO Board of Governors**

**Tariff Amendment Regarding CFTC Regulations**

**California Independent System Operator**

**Fifth Replacement FERC Electric Tariff**

**November 16, 2012**

# Memorandum

**To:** ISO Board of Governors

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

**Date:** October 25, 2012

**Re:** Decision on Information Requests from the CFTC

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***This memorandum requires Board action.***

## EXECUTIVE SUMMARY

The tariff generally requires the ISO to notify affected market participants before providing confidential or commercially sensitive information in response to a subpoena. There is an exception, however, when FERC requests information. The ISO may respond to FERC without notifying affected market participants. Management proposes to amend the tariff to expand this exception to include requests from the Commodity Futures Trading Commission (“CFTC”). This amendment is necessary before the CFTC will exclude the ISO market from its jurisdiction. Stakeholders do not oppose the amendment.

Management recommends the following motion:

***Moved, that the ISO Board of Governors approves the proposed tariff change to allow the ISO to respond to information requests from the Commodity Futures Trading Commission without notifying affected market participants, as described in the memorandum dated October 25, 2012; and***

***Moved, that the ISO Board of Governors authorizes Management to make all necessary and appropriate filings with the Federal Energy Regulatory Commission to implement the proposed tariff change.***

## DISCUSSION AND ANALYSIS

The Dodd-Frank Wall Street Reform Act expanded the authority of the CFTC in a way that could be construed to include certain types of transactions in the ISO market. In February 2012, a group of ISOs and RTOs, including the California ISO, jointly petitioned the CFTC to exempt transactions in their markets from the CFTC’s jurisdiction. On August 28, 2012, the CFTC issued a proposed order that would grant

the exemption on certain conditions, one of which is that the ISO tariffs must not require notice to market participants when the ISOs provide information to the CFTC in response to a subpoena or data request.

Management proposes to amend the tariff to fulfill the CFTC's condition. Under the amendment, the ISO may provide information to the CFTC on the same basis that it currently provides information to FERC – i.e., without notice to the affected market participant, but with a request that the agency treat the information as confidential for purposes of the Freedom of Information Act.

The ISO posted a paper for stakeholder review on October 12, 2012, that explained the proposed amendment and included draft tariff language. The ISO received only one written comment on the proposal -- from Southern California Edison – which asked for additional information about the proposed exemption from CFTC jurisdiction and the future role of the CFTC in the ISO market. The ISO held a stakeholder call to review the proposal and answer questions about the CFTC's proposed order. No stakeholder has objected to the proposal.

## **CONCLUSION**

Management requests that the Board approve the proposed tariff amendment to allow the ISO to respond to information requests from the Commodity Futures Trading Commission without notifying affected market participants as described above.