

Memorandum

To: ISO Board of Governors
From: Nancy Saracino, Vice President, General Counsel and Corporate Secretary
Date: September 2, 2009
Re: **Regulatory Update**

This memorandum does not require Board action.

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

Tariff amendment filings and orders

- **Standard capacity product and ancillary services must offer obligation (ER09-1064)**

On August 10, 2009, the ISO submitted a compliance filing in accordance with FERC's June 26, 2009 order that approved the ISO's resource adequacy standard capacity product and ancillary services must offer obligation proposals, subject to some modifications. The compliance filing included certain clarifying tariff language that the ISO had agreed to make, plus the following three modifications to the standard capacity product to comply with FERC's directives: (1) the cut-off date for grandfathering existing contracts changed from January 1, 2009 to June 28, 2009, *i.e.*, 60 days after the date on which the proposal was filed with FERC; (2) adopting a more graduated approach to non-availability charges, establishing incremental charges throughout the entire dispatchable range of resource adequacy capacity; and (3) extending the same monthly availability standard applied to the internal resource adequacy fleet to non-resource specific system resources (imports), on a temporary basis, until the ISO is able to compile and evaluate performance data to support a specific availability standard for these resources.

Responsible Attorneys: Anthony Ivancovich, Judi Sanders and Beth Ann Burns

- **Integrated Balancing Authority Area (IBAA) tariff amendment (ER08-113)**

On June 30, 2009, FERC issued an order denying various requests for rehearing and clarification of its September 2008 order that approved the IBAA structure. FERC's order upheld the IBAA structure as a single hub as well as the default pricing approved for imports and exports between the IBAA and the ISO. The order also affirms the opportunity for parties to obtain alternative pricing if they share data under a market efficiency enhancement agreement to demonstrate the operation and location of their external resources supporting interchange transactions. On

August 20, 2009, FERC held a technical conference to address the remaining compliance issues in this matter. The conference focused on the following issues: (1) the ISO's information requirements to model and calculate locational marginal prices under a market efficiency enhancement agreement; (2) the availability of that information; and (3) the ISO's procedures and information requirements to verify the location and operation of resources identified in a market efficiency enhancement agreement in order to determine applicable prices for interchange transactions subject to the agreement.

Responsible Attorneys: Anna McKenna, Andrew Ulmer

- **Grid Management Charge (ER08-585)**

On July 14, 2009, FERC accepted the ISO's March 31 tariff compliance filing that clarified an issue raised by the Northern California Power Association with respect to netting physical and financial inter-scheduling coordinator trades against energy in the day-ahead market. FERC found that the late-filed protests and motions to intervene filed by the Western Power Trading Forum, the Financial Institutions Energy Group and SMUD raised issues that were outside the scope of the compliance filing.

Responsible Attorney: Judi Sanders

- **New market issues tariff amendments (ER09-1529)**

In a tariff amendment filing submitted on July 31, 2009, the ISO proposes changes to address three areas of concern arising out of the new market design. First, the ISO proposes to allow scheduling coordinators to change their election as to how to recover start-up and minimum load costs from once every six months to once every thirty days. Second, the ISO proposes to simplify the credit statements reporting of credits and charges for congestion revenue rights to be consistent with how they will actually be reflected on invoices. Third, the ISO proposes a rule change for determining the locational marginal price for an electrically disconnected pricing node. The ISO requested waiver of the notice requirements under the Federal Power Act so that these tariff changes could become effective as of August 1, 2009.

Responsible Attorneys: Anna McKenna and Sidney Davies

- **Tariff clarifications regarding Regulatory Must-Take Generation and enforcement of transmission constraints (ER09-1542)**

On August 3, 2009, the ISO submitted a filing to amend the tariff to clarify that eligible generating units outside the ISO's balancing authority area can be treated as regulatory must-take generation under the tariff and to clarify the role of the full network model and the enforcement of transmission constraints in the ISO's new market design. The ISO had previously proposed to clarify these matters in another proceeding. FERC indicated in that proceeding that the clarifications should be submitted in a separate tariff amendment filing.

Responsible Attorneys: Anna McKenna and Sidney Davies

- **Price cap proceeding (ER09-241-002)**

On July 28, 2009, FERC issued a letter order accepting revisions made to the tariff in compliance with its May 21, 2009 order. The compliance filing modified the price cap tariff language to ensure that the price screen that delays posting of prices only applies to prices that exceed the upper and lower caps.

Responsible Attorney: Anna McKenna

- **Reference Bus Tariff Amendment (ER09-240)**

On August 4, 2009, FERC issued an order accepting tariff revisions, subject to modification, that specify that the ISO has the flexibility to use a distributed generation reference bus in calculating the marginal cost of energy in cases where the integrated forward market cannot clear using a distributed load reference bus. The order also requires the ISO to add specific language to its tariff that will require the ISO to notify market participants when a distributed reference bus is utilized. The order also requires the ISO to post on its website an informational report detailing the nodal pricing ramifications whenever a distributed generation reference bus is utilized.

Responsible Attorney: Anna McKenna

- **Access to ISO non-public Operating Procedures (ER06-615; ER08-367)**

On August 7, 2009, FERC issued an order on compliance conditionally accepting the ISO's proposed tariff language addressing access to ISO non-public operating procedures. The ISO had proposed to limit access to entities that are operationally affected by the ISO non-public operating procedure subject to agreed-upon controls. The order affirms that the ISO may restrict access to non-public operating procedures if the requesting entity is only economically or financially impacted by the procedure. The order accepts the ISO's proposed tariff subject to modifications that the ISO agreed to incorporate on further compliance.

Responsible Attorneys: Andrew Ulmer

- **Payment acceleration tariff amendment (ER09-1247)**

On July 10, 2009, the ISO filed an answer to motions to intervene and comments on our payment acceleration filing. The motions to intervene and comments expressed universal support for the design and adoption of payment acceleration. In its answer to comments, the ISO agreed to make requested clarifications to tariff language. The ISO also agreed to continue reviewing the possibilities of accommodating earlier submission of wheeling out and wheeling through data and moving to monthly invoicing following deployment of payment acceleration. The answer disagreed with suggested changes to the payment acceleration proposal related to: the time period for retaining revenue quality meter data and settlement quality meter data; the methodology for the ISO to estimate settlement quality meter data; and extending interest to all deviations throughout the settlement timeline.

Responsible Attorney: Beth Ann Burns

- **Merchant Congestion Revenue Rights (ER09-239)**

On July 21, 2009, FERC issued an order denying the Metropolitan Water District of Southern California's request for rehearing of its December 19, 2008 order. The December 19 order accepted the ISO's October 31, 2008, filing of revisions to its tariff to enable the ISO to allocate to FPL Energy, LLC merchant congestion revenue rights associated with FPL's contribution to the Path 59 transmission upgrade.

Responsible Attorney: Anna McKenna

- **Reliability capacity services tariff rate proceeding (EL05-146)**

On August 18, 2009, FERC issued an order on remand from the Court of Appeals for the District of Columbia Circuit decision in *City of Anaheim v. FERC*. The Court found that FERC did not have the authority to make the increased reliability capacity services rates effective retroactively back to June 1, 2006. The Court ruled that any rate increase following a complaint cannot be effective before the date of the FERC order fixing new rates to be observed thereafter. The Court remanded the case to FERC for further consideration on the issue of when the rates became legally fixed. In its order on remand, FERC found that the rates became fixed on February 13, 2007, the date on which FERC issued its order approving the specific rate formula and cost allocation methodologies. FERC directed the sellers of reliability capacity services to refund with interest any revenues collected for the period June 1, 2006 to February 13, 2007 within 30 days of the date of the order.

Responsible Attorney: Anthony Ivancovich

Regulatory contracts filings and orders

- **Bonneville Power Administration (BPA) Adjacent Balancing Authority Operating Agreement (ABAOA) and emergency assistance letter agreement (ER09-1630)**

On August 25, 2009, the ISO filed original and new versions of its ABAOA with BPA and its letter agreement for the commercial terms for emergency assistance with BPA Power Services. These agreements set forth terms for coordination of operations by the ISO and BPA as operators of adjacent balancing authority areas, including the terms under which each will provide emergency assistance to the other. The ABAOA particularly sets forth each party's responsibilities in the event of an emergency potentially affecting the reliable operation of each party's transmission facilities pursuant to the mandatory reliability standards of the North American Electric Reliability Corporation.

Responsible Attorney: Mike Dozier

- **Small Generator Interconnection Procedures (SGIP)/Small Generator Interconnection Agreement (SGIA) (ER06-629; ER06-630)**

On July 9, 2009, FERC issued an order accepting the ISO's March 20, 2009 compliance filings of revisions to the SGIP and SGIA retroactive to November 16, 2007. The compliance filings consisted of: (1) insertion of an express reference to the interconnection handbooks of the participating

transmission owners into the SGIP; (2) extension of the timeline for preparing an accounting for interconnection costs from three months to six months in the SGIA; and (3) insertion of provisions for allocation of filing rights between the ISO and the participating transmission owners into the SGIA.

Responsible attorney: Mike Dozier

- **IOU Demand Response Pilot Programs (ER09-1361; ER-09-1362 and ER09-1363)**

On August 25, 2009 FERC accepted the three demand response pilot program agreements between the ISO and investor owned utilities. The purpose of the pilots is to evaluate the feasibility of using demand response by certain utility retail customers in the ISO's ancillary services market for non-spinning reserve.

Responsible Attorney: Bill Di Capo

- **SMUD Interconnected Control Area Operating Agreement (ICAOA) amendment no. 5 and California-Oregon Intertie (COI) Control Area Operating Agreement amendment no. 1 (ER09-1577; ER09-1578)**

On August 12, 2009, the ISO filed amendment no. 5 to its ICAOA with SMUD and amendment no. 1 to its COI Control Area Operating Agreement with SMUD. The amendments to these agreements implement a modification to the percentage obligations of the ISO and SMUD for power flow reduction measures that may be required by the path operator for the COI and any sanctions that may be imposed on the path operator of the COI. The modified percentages reflect the transfer of a portion of the transmission rights in the California-Oregon Transmission Project, one of the lines of the three-line COI system, from the City of Vernon, an ISO participating transmission owner, to an entity that is not. The amendments to the ICAOA also include updates to the description of the Western Electricity Coordinating Council reliability coordinator, revisions to reflect termination of certain pre-existing contracts and other agreed upon modifications.

Responsible Attorney: Mike Dozier

Report filings

- **Market Disruption and Exceptional Dispatch reports (ER06-615; ER08-1178)**

On July 15 and August 17, 2009, the ISO submitted for informational purposes its market disruption and exceptional dispatch reports covering the May 16 through June 15 and June 16 through July 15 time-periods, respectively. A market disruption is an action or event that causes a failure of in the market, related to system operation issues or system emergencies. Under the tariff, the ISO can 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. An exceptional dispatch is a manual dispatch issued by the ISO. As required by the FERC, the tariff requires the ISO to submit regular informational market disruption and exceptional dispatch reports. The July market disruption report reported on a slight increase in the frequency of market disruptions for the May 16 to June 15 time period with an increase from 63 to 65 total reportable events, whereas the August market disruption

report reported a significant decrease in reportable events from 65 to 35. The August exceptional dispatch report shows a decline in the number of exceptional dispatches occurring as a result of market disruptions in the hour-ahead schedule processes as well as a substantial decline in the MWh quantity when compared to the July exceptional dispatch report.

Responsible Attorney: Anna McKenna and Sidney Davies

- **First quarterly report regarding status of new market(ER06-615)**

On July 30, 2009, the ISO filed the first quarterly report regarding the status of the ISO's new market design. The report addressed numerous criteria developed in consultation with market participants as well as specific directives required by FERC in its orders.

Responsible Attorneys: Anna McKenna and Sidney Davies

Complaint proceedings

- **Default Loss Rule Complaint (EL09-62)**

On June 30, 2009, certain sellers of electricity in the ISO markets filed a complaint requesting that FERC find that Section 11.29.17.1 of the ISO tariff -- the default loss rule -- is unjust and unreasonable. The default loss rule allocates losses from defaults on payments due the ISO to sellers. The complainants request that FERC adopt a rule which allocates the default risk among all market participants that benefit from the ISO's markets. On July 20, 2009, the ISO filed its answer defending the existing default allocation tariff provisions as just and reasonable and arguing that complainants had failed to meet their burden proof. The ISO also expressed willingness to explore alternative approaches in the context of FERC directed settlement proceedings.

Responsible Attorney: Sidney Davies

- **Californians for Renewable Energy (CARE) complaint proceeding (EL09-65)**

On July 22, 2009, CARE filed a complaint at FERC against the California Public Utilities Commission (CPUC), Southern California Edison (SCE) and the ISO, purportedly "regarding the SCE Application for a Certificate of Public Convenience and Necessity Concerning the Tehachapi Renewable Transmission Project (TRTP) and "SCE's Tehachapi amendment to its open access transmission tariff." With respect to the ISO, the complaint requested that FERC act on a wholly unrelated matter ordering the ISO to provide access to the market for 515 MW of distributed generation photo voltaic solar generation voluntarily participating in the CPUC's California Solar Initiative program. The ISO filed an answer on August 11, 2009, arguing that the complaint should be dismissed because it does not contain any facts showing that the ISO violated its tariff or any FERC rules, regulations or orders. The ISO noted that CARE appeared to be taking issue with the requirements of the California Solar Initiative program and the State's Renewable Portfolio Standards program, and that these are retail programs and state environmental initiatives that are unrelated to the ISO and beyond FERC's jurisdiction.

Responsible Attorney: Judi Sanders

Rulemakings and policy statements

- **Policy statement on Smart Grid (PL09-4)**

On July 16, 2009, FERC issued a final policy statement on smart grid policy. FERC had previously issued a proposed policy statement and action plan on March 19, 2009. The original proposed policy statement had two purposes. The first was to set out FERC's proposed approach in developing interoperability standards in six key smart grid areas. Under the Energy Independence and Security Act of 2007, FERC is required to approve standards developed in a standards-setting process coordinated by the National Institute of Standards and Technology. The final policy statement marks the completion of the first step in that process by promulgating the principles that must be met in the final standards. The second purpose of the proposed policy statement was to establish an interim rate policy to cover smart grid expenditures by FERC-jurisdictional entities. In both areas, the final policy statement largely adopts the positions taken in the proposed policy statement.

Responsible Attorney: David Zlotlow

- **Wholesale competition rulemaking, Order 719-A (RM07-19)**

On July 16, FERC issued Order 719-A, which is a response to requests for rehearing and clarification of Order 719. Order 719-A addresses six market monitoring issues from Order 719. In five of the six issues, FERC either affirmed its original Order 719 requirements or the modification does not affect the ISO or its market monitoring unit. Concerning the sixth issue, FERC clarified that the market monitoring unit's obligations regarding referral of market design flaws to FERC enforcement staff. In this regard, FERC clarified that the trigger for suspected misconduct or a possible design flaw is the same. In either case, the market monitor should make the referral in all instances where it has reason to believe that either a market violation has occurred or that a market design flaw exists that could be remedied effectively by a tariff change. Based on this standard, FERC states that market monitors must exercise judgment and discretion in determining what to refer to FERC staff. For example, if a market monitor is aware of a market design flaw that is already being remedied through a tariff amendment, a referral may not be warranted (although informal notification would still be expected). Similarly, minor market design flaws may not warrant a referral.

Responsible Attorney: David Zlotlow

Other proceedings

- **ISO bond offering (ES09-26)**

On April 10, 2009, the ISO filed an application under Section 204 of the Federal Power Act for a FERC order authorizing the ISO to issue bonds in an amount not to exceed \$225 million ("Application"). The Commission granted the application by a letter order issued on May 15, 2009, 127 FERC ¶62,136. The bond offering was completed on July 22, 2009 in the amount of approximately \$200 million. As required by the order and Sections 34.10 and 131.43 of the Commission's regulations, 18 CFR Sections 34.10, 131.43, the ISO submitted on August 18,

2009 a Report of Securities Issued, which details the number of units sold, the dollar value (\$201,998,064) and the average life of the various bonds.

Responsible Attorney: Grace Arupo

- **Startrans IO, L.L.C. transmission revenue requirement filing (ER08-413)**

On July 31, 2009, FERC issued an order approving an offer of settlement filed by Startrans regarding its transmission revenue requirement for its operation of assets purchased from the City of Vernon. The ISO's concerns regarding this proceeding were resolved previously.

Responsible Attorney: Mike Dozier

- **North Star Steel Co. v. FERC (Court of Appeals, Case No. 03-73550)**

On August 25, the Court of Appeals for the Ninth Circuit issued a brief memorandum order affirming a FERC order that dismissed a complaint against the ISO and several energy suppliers that sought to begin a new refund proceeding for certain electricity crisis-era transactions. The complaint had been brought by North Star Steel, which operated a mill in Arizona in 2000 and 2001. FERC dismissed North Star's complaint on the ground that it sought refunds for retail transactions, which are outside FERC's jurisdiction. The Ninth Circuit affirmed on the ground that North Star failed to adequately preserve the arguments raised on appeal.

Responsible Attorney: Dan Shonkwiler

California Public Utilities Commission (CPUC) matters

Resource Adequacy Phase 2 Proceeding (Rulemaking 08-01-025)

On August 6, 2009, the ISO filed a response to the Application for Rehearing of Decision 09-06-028. Among other things, the decision adopted the recommendation of the ISO, Southern California Edison Company and San Diego Gas & Electric Company that an "exceedance" methodology be used to calculate the qualifying capacity of intermittent resources for resource adequacy purposes. The applicants for rehearing argued that the CPUC should retain the existing counting methodology for intermittent resources which is based on their average production during specified peak hours. The ISO demonstrated that the applicants for rehearing offered no evidence to dispute the CPUC's key findings that the current methodology overstates the availability of intermittent resources during peak periods. On the other hand, the ISO showed how the exceedance approach is a clear improvement over the existing methodology and is consistent with both how the ISO operates the grid and the fundamental purpose of the resource adequacy program, *i.e.*, to ensure that there is sufficient capacity available to meet peak loads.

Responsible Attorneys: Anthony Ivancovich, Beth Ann Burns, Judi Sanders

Sunrise Powerlink Transmission Project (Docket No. A.06-08-010)

The CPUC denied rehearing applications filed by the Utility Consumers Action Network (UCAN) and the Center for Biological Diversity (CBD) and Sierra Club on July 13, 2009, finding that these parties had failed to establish good cause to justify rehearing of the decision to approve the construction of the Sunrise transmission project. Although the CPUC modified D.08-12-058 for the purposes of clarifying several findings, it did not change the conclusion that Sunrise is needed for reliability purposes as well as to facilitate the state's 33% renewable portfolio standards goal, and that the project should be constructed. The ISO submitted a response to several of the issues raised in the rehearing applications and in support of Decision 08-12-058. On August 12, 2009 UCAN and CBD jointly filed a petition for review of the CPUC Sunrise decision with the California Supreme Court, alleging that that CPUC violated the California Environmental Quality Act requirements by approving Sunrise. On the same day, UCAN also filed a petition for review of the decision with the California court of appeal challenging the CPUC's finding that the transmission project is needed.

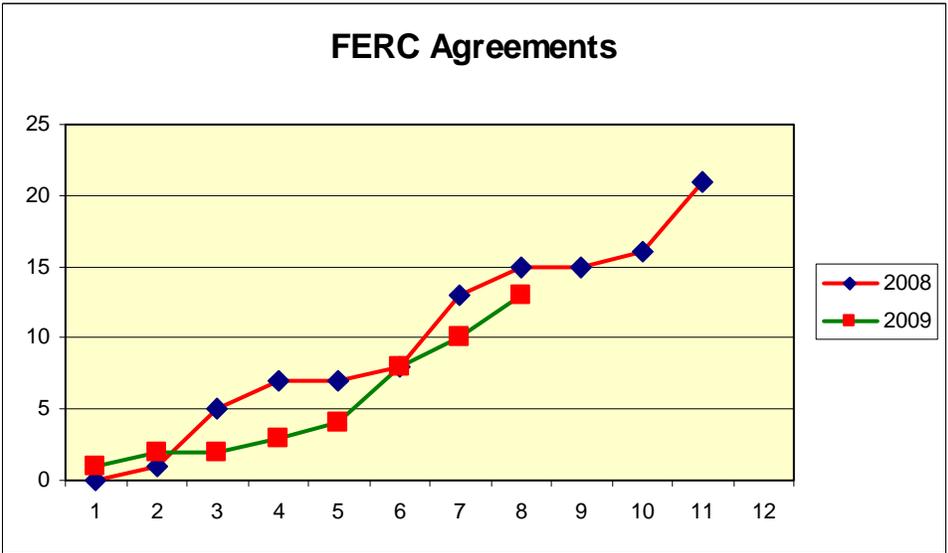
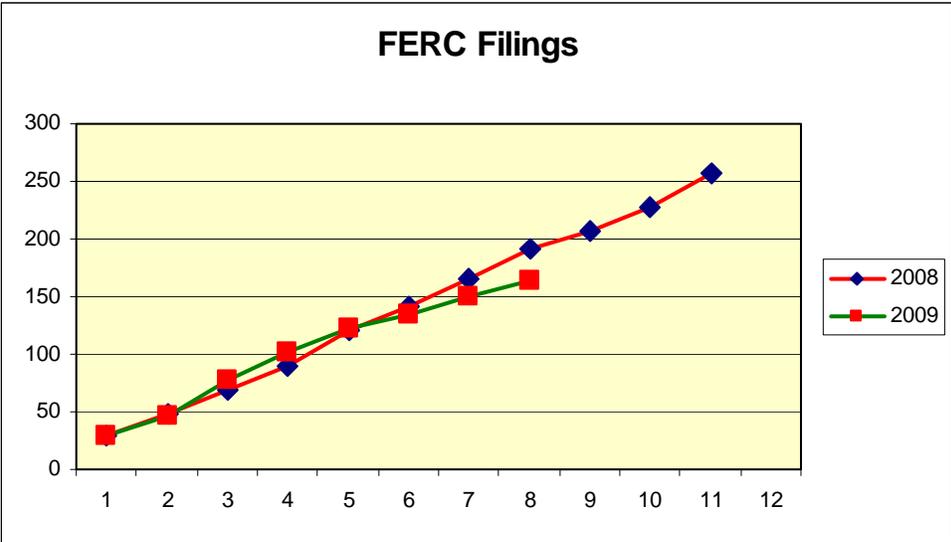
Responsible Attorney: Judi Sanders

PG&E, SCE and SDG&E Applications for Approval and Funding of Demand Response Programs for 2009-0211

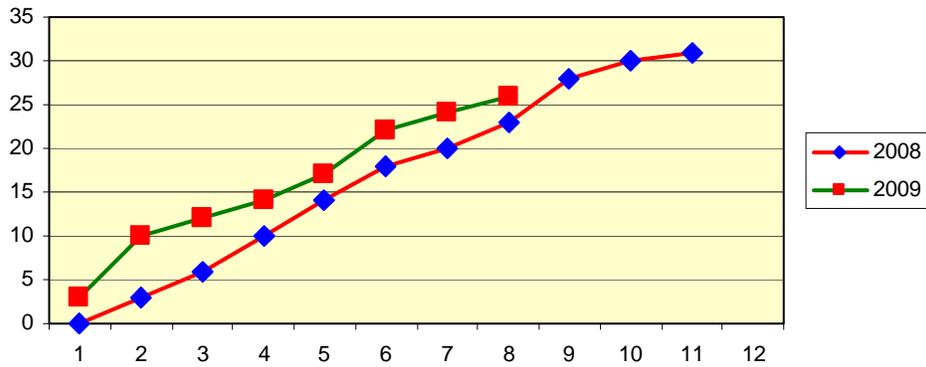
On August 24, 2009 the CPUC issued a final decision approving the majority of IOU demand response activity and budget applications for the current program cycle, 2009-2011. This decision approved the funding and authorization for IOU pilot programs intended to test the use of demand response to provide participating load to the ISO. Significantly, the decision capped the MW size of emergency triggered demand response programs pending a determination of appropriate statewide levels in another demand response proceeding (R.07-01-041), a position advocated by the ISO and the Division of Ratepayer Advocates in the proceeding.

Responsible Attorney: Bill Di Capo

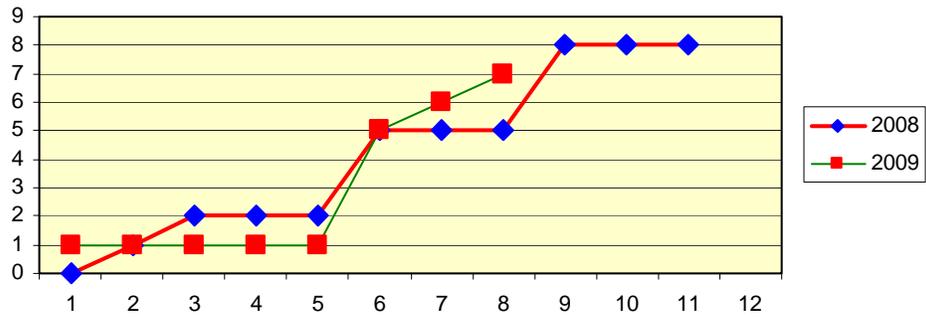
Regulatory Filings Through August 2009



CPUC/Other Commission Filings



Court Filings



Total Filings

