

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Promote Policy and Program Coordination and Integration in Electric Utility Resource Planning.

Rulemaking 04-04-003
(Filed April 1, 2004)

Order Instituting Rulemaking to Promote Consistency in Methodology and Input Assumptions in Commission Applications of Short-run and Long-run Avoided Costs, Including Pricing for Qualifying Facilities.

Rulemaking 04-04-025
(Filed April 22, 2004)

**COMMENTS OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATER
CORPORATION IN LIEU OF TESTIMONY**

In accordance with the Administrative Law Judge’s Ruling Modifying Schedule for Phase 2, issued on June 14, 2005, the California Independent System Operator Corporation (CAISO) respectfully submits these comments in lieu of testimony. Given the limited scope of the CAISO’s comments, the comments do not utilize the joint outline, but do pertain to Section II, PURPA and Other Legal Requirements.

I. INTRODUCTION

On November 11, 2004, the CAISO submitted comments (November 11 Comments) on the long-term policy for expiring Qualifying Facility (QF) Contracts in response to the September 30, 2004 order of Administrative Law Judge Wetzell on this subject. The purpose of these comments is to address how specific provisions of the Domenici-Barton Energy Policy Act of 2005 (Energy Policy Act of 2005) affect the status of QFs going forward and necessarily build on the CAISO’s November 11 Comments. Since the issues presented are substantially legal in nature, the CAISO has determined not to file testimony. These comments are intended to apprise the

Commission and the parties at an early stage of this proceeding of the evolution of the CAISO's position in light of the new federal legislation. As discussed below, the CAISO believes that the Energy Policy Act of 2005 will substantially achieve the results advocated by the CAISO in its November 11 Comments, namely that QF sales to public utilities not be classified as Regulatory Must Take under the CAISO's Tariff and that such sales would subject QFs to the CAISO Tariff.

II. SUMMARY OF NOVEMBER 11, 2004 COMMENTS

In its November 11 Comments, the CAISO requested the Commission clarify two areas involving the Public Utilities Regulatory Policy Act (PURPA) and the interrelationship between QFs and the CAISO:

First, the Commission should clearly state that, unlike QFs with [PURPA] contracts that predate the formation of the CAISO, QFs executing new [PURPA] contracts will not be exempted from CAISO Tariff requirements. Second, the Commission should specify that QFs seeking to interconnect or modify an existing interconnection at the transmission level should be required to comply with the CAISO's interconnection process. [November 11 Comments at 1.]

The CAISO urged the Commission to clarify that energy supplied under new PURPA contracts not be classified as "Regulatory Must-Take" and QFs entering into such contracts also be required to enter into a QF-Participating Generator Agreement (QF-PGA).¹

The CAISO also urged the Commission to require QFs proposed to interconnect with the CAISO Controlled Grid be subject to CAISO interconnection process. For the convenience of the Commission, a copy of the November 11 Comments is attached here to as Attachment A.

¹ Since the submission of the November 11 Comments, the Federal Energy Regulatory Commission has approved the QF-PGA

III. EFFECT OF ENERGY POLICY ACT OF 2005

Section 1253(a) of the Energy Policy Act of 2005, attached hereto as Attachment B, adds subsection “(m)(1)” to Section 210 of PURPA. Subsection “m” terminates the mandatory purchase and sale requirements of Section 210 of PURPA upon findings of the Federal Energy Regulatory Commission (FERC) that a QF has nondiscriminatory access to: (1) independently administered, auction based day-ahead and real time wholesale markets *and* wholesale markets for long-term sales of capacity and energy; *or* (2) transmission and interconnection services provided by a FERC-approved regional transmission entity administered through a tariff that ensures nondiscriminatory treatment *and* competitive wholesale markets for long-term, short-term and real-time sales; *or* (3) comparable competitive wholesale markets. Once FERC makes such findings, public utilities will not be obligated to enter into a new contract or otherwise be obligated to purchase energy from a QF.

Section 1243(a) of the Energy Policy Act of 2005 also adds subsection (m)(2) to Section 210 of PURPA, which terminates the mandatory purchase and sale requirements for any generating facility that is not an existing QF as of the date of enactment, unless the facility meets criteria for qualifying cogeneration facilities to be developed by FERC.

Section 210 of PURPA requires public utilities to purchase, and requires QFs to sell, the output of QFs and vests ratemaking authority with state ratemaking commissions notwithstanding the wholesale nature of the sale. (16 U.S.C. § 824a-3.) Section 5.1.5 of the CAISO’s Tariff requires the CAISO to honor the contractual rights and obligations of “Regulatory Must-Take” generators whose operation is not subject to competition, as

identified by the Commission.² In addition, “Regulatory Must-Take Generation” is defined under the CAISO Tariff as:

Those Generation resources identified by the CPUC, or a local Regulatory Authority, the operation of which is not subject to competition. These resources will be scheduled by the relevant Scheduling Coordinator directly with the ISO on a must-take basis.

Accordingly, sales of energy to public utilities from new QFs and existing QFs, once the mandatory purchase and sale requirements of Section 210 are terminated, would no longer be considered as “Regulatory Must-Take Generation” as the sale clearly *would* be subject to competition. Under these circumstances, the CAISO believes that it would be clear that QFs entering into any wholesale transaction would be required to enter into a QF PGA and otherwise be subject to the CAISO Tariff.

Similarly, the CAISO believes new QFs and existing QFs (once the mandatory purchase and sale requirements of Section 210 are terminated) seeking to be interconnected to the CAISO Controlled Grid, would be subject to the CAISO’s interconnection process.

IV. CONCLUSION

Although the CAISO believes that the Energy Policy Act of 2005 will, to a large measure, result in QFs being subject to the CAISO’s Tariff, the CAISO urges the California Commission to exercise its jurisdiction over QFs prior to the termination of the mandatory purchase and sale requirements and any residual jurisdiction it may have over QFs after termination of the mandatory purchase and sale requirements, to remove the

² Section 5.15 of the CAISO’s Tariff provides, “Notwithstanding any other provision of this ISO Tariff, the ISO shall discharge its responsibilities in a manner which honors any contractual rights and obligations of the parties to contracts, or final regulatory treatment, relating to Regulatory-Must-Take Generation of which protocols or other instructions are notified in writing to the ISO from time to time and on reasonable notice.”

Regulatory Must Take status of QF energy sales and to require QFs interconnecting to the CAISO Controlled Grid to comply with the CAISO's interconnection process.

August 17, 2005

Respectfully Submitted:

By: 
Grant A. Rosenblum
Attorney for
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ATTACHMENT A

**BEFORE THE
PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Promote)	
Policy and Program Coordination and)	R.04-04-003
Integration in Electric Utility Resource)	
Planning)	
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**COMMENTS OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR
CORPORATION ON THE DEVELOPMENT OF A LONG-TERM
POLICY FOR EXPIRING QUALIFYING FACILITIES (QF) CONTRACTS**

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Dated: November 10, 2004

**BEFORE THE
PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Promote)	
Policy and Program Coordination and)	R.04-04-003
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**COMMENTS OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR
CORPORATION ON THE DEVELOPMENT OF A LONG-TERM POLICY FOR
EXPIRING QUALIFYING FACILITIES (QF) CONTRACTS**

Pursuant to Rule 75 of the Commission’s Rules of Practice and Procedure and Administrative Law Judge Wetzell’s Ruling Requesting Proposals and Comments on the Development of a Long-Term Policy for Expiring Qualifying Facilities (QF) Contracts, issued September 30, 2004, the California Independent System Operator Corporation (CAISO) respectfully submits these comments. These comments relate to two areas of interest to the CAISO that it believes should be clarified by the California Public Utilities Commission (Commission) in developing a long-term policy for QFs. First, the Commission should clearly state that, unlike QFs with contracts that predate the formation of the CAISO, QFs executing new contracts will not be exempted from CAISO Tariff requirements. Second, the Commission should specify that QFs seeking to interconnect or modify an existing interconnection at the transmission level should be required to comply with the CAISO’s interconnection process.

I. QFs WITH NEW CONTRACTS SHOULD BE SUBJECT TO THE CAISO’S TARIFF

Section 2.2.1 of the CAISO’s *pro forma* Participating Generator Agreement (PGA) and the CAISO’s *pro forma* QF-PGA, currently pending approval in Federal Energy Regulatory

Commission (FERC) docket No. ER98-997 *et al.*, exempts certain Generators¹ with an existing power purchase contract with a utility from the requirement that they enter into a PGA or QF-PGA with the CAISO. The exemption extends to contracts entered into and effective as of December 20, 1995,² pursuant to which the QF sells all of its Energy (except for auxiliary load) and Ancillary Services to the utility or sells any Energy through “over the fence” arrangements authorized under California law.³ In addition, Section 5.1.5 of the CAISO’s Tariff requires the CAISO to honor the contractual rights and obligations of “Regulatory Must-Take” (RMT) generators whose operation is not subject to competition, as identified by the Commission.⁴ The QF exemption has been in effect since market start-up as part of the CAISO’s original *pro forma* PGA⁵ and is reflected elsewhere in the CAISO’s Tariff.⁶ The reason for exempting, or “grandfathering,” QFs with contracts that predate the creation and design of the CAISO markets was to protect the pre-existing contractual expectations of the parties. These pre-existing contracts include provisions regarding matters such as outage coordination, operations during system emergencies, and scheduling and settlement of power deliveries that are in some cases inconsistent with the provisions of the *pro forma* PGA and the CAISO’s Tariff with regard to the CAISO’s role as the new operator of the transmission system and the Control Area.

¹ Capitalized terms have the meaning set forth in Appendix A, Master Definitions Supplement to the CAISO Tariff.

² The relevant date is December 31, 1996, if the Generator employs landfill gas technology.

³ The exemption does not extend to Generators that participate in the CAISO’s markets. Even if a QF has an “over the fence” arrangement, the QF will be required to enter into a QF-PGA (or standard PGA) if it chooses to participate in the CAISO’s markets.

⁴ Section 5.15 of the CAISO’s Tariff provides, “Notwithstanding any other provision of this ISO Tariff, the ISO shall discharge its responsibilities in a manner which honors any contractual rights and obligations of the parties to contracts, or final regulatory treatment, relating to Regulatory-Must-Take Generation of which protocols or other instructions are notified in writing to the ISO from time to time and on reasonable notice.”

⁵ See the CAISO’s June 1, 1998 compliance filing in Commission Docket Nos. EC96-19-029 and ER96-1663-030.

⁶ See *e.g.* CAISO Metering Protocol MP § 13.5.2.vi exemption concerning QFs with contracts effective as of December 20, 1995, if PPA is inconsistent with the CAISO’s Metering Protocol; the CAISO’s Dispatch Protocol §

Accordingly, rather than attempt to require QFs with these pre-existing contracts to conform to the requirements applicable to all other Generators subject to the *pro forma* PGA and the CAISO's Tariff, the CAISO preserved the expectations and contractual rights and obligations of QFs with these pre-existing contracts. The CAISO has worked, and continues to work, with the utilities to ensure the reliability of CAISO Control Area operations, notwithstanding the inconsistency of the requirements applicable to pre-existing QF contracts. For similar reasons, the requirement for the CAISO to honor RMT contracts generally has also been in effect since market start-up as part of the CAISO's Tariff.

There is no justification for exempting or grandfathering QFs with new contracts or for the Commission's creation of any new RMT contracts. Given that the prospective parties to new contracts are fully aware of the CAISO's requirements, there is no reason for the new contracts to be inconsistent with the CAISO's requirements and the QFs should have the direct contractual relationship with the CAISO through the QF-PGA. The development of the *pro forma* QF-PGA has been the subject of extensive proceedings before FERC, in which FERC has in many cases directed the CAISO to adopt provisions advocated by representatives of the QF community. Having specifically tailored the QF-PGA to the needs of QFs, the CAISO feels strongly that it should serve as the standard vehicle for establishing the relationship between the CAISO and all QFs not grandfathered under a pre-existing contract. Accordingly, the CAISO requests that the Commission specify that new QF contracts, or any extension of an existing QF contract, be drafted in a manner consistent with the CAISO's Tariff and require the QF to enter a PGA or QF-PGA and comply with all applicable CAISO operating and scheduling protocols.

9.4.2 applies to QFs that have entered into a contract prior to March 31, 1997, and specifies that the outage coordination is subject to the existing contract.

The CAISO also requests that the Commission make clear that any new contracts established for QFs are not RMT contracts and are “subject to competition.” In doing so, the Commission would facilitate the CAISO’s efficient and reliable operation of the transmission grid. The CAISO must dispatch resources to accommodate RMT Energy, which may increase costs to consumers and, to the extent such resources are located in generation pockets, may effect system reliability.

II. QFs INTERCONNECTED WITH THE CAISO CONTROLLED GRID SHOULD BE SUBJECT TO THE CAISO’S INTERCONNECTION PROCESS

QFs that are interconnected to the CAISO Controlled Grid should be required to comply with the CAISO’s interconnection process in connection with any changes that may be necessary to accommodate new contracts. The CAISO believes that Rule 21 interconnections should continue to be limited to generation resources interconnected to the distribution system owned and controlled by one of the investor-owned utilities. The CAISO has a standard interconnection process that provides consistent, non-discriminatory access to the transmission system comprising the CAISO Controlled Grid applicable to all generators. Included in that interconnection process is a queuing process that ensures fair and timely treatment of all requests for new interconnections or modifications affecting an existing interconnection. It would be disruptive to this standardized, non-discriminatory transmission system interconnection process for the Commission to establish a different set of rules for the interconnection of QFs to the transmission system (or for modifications to existing QF projects that would have an effect on a QF’s interconnection to the transmission system).

Moreover, a basic feature of the CAISO interconnection process is the production of reliability studies to ensure that reliability upgrades required for a new interconnection to the transmission system are properly identified and associated with the project that has caused the

need for such upgrades. There have been, and will continue to be, instances where a single interconnection project may impact the reliability of more than one investor-owned utility's portion of the interconnected grid. The CAISO's interconnection process ensures that the overall impacts are assessed. As a result, the reliability studies conducted pursuant to the CAISO's interconnection process are necessary for all transmission level interconnection and it is simply not possible for an investor-owned utility to accommodate QF interconnections to the CAISO Controlled Grid without CAISO participation. Thus, the Commission should clarify that QFs seeking to interconnect to the transmission system to accommodate new or modified contracts should be required to comply with the CAISO's interconnection process.

Such Commission clarification in this regard is fully consistent with state law. AB 1890 transferred responsibility for ensuring grid reliability from the investor-owned utilities and the Commission to the CAISO. Public Utilities Code § 345 states that "[t]he Independent System Operator shall ensure efficient use and reliable operation of the transmission grid consistent with achievement of planning and operating reserve criteria no less stringent than those established by the Western Systems Coordinating Council and the North American Electric Reliability Council." Further, Public Utilities Code § 334 provides explicitly that "[t]he proposed restructuring of the electric industry would transfer responsibility for ensuring short- and long-term reliability away from electric utilities and regulatory bodies to the Independent System Operator" In contrast, the CAISO has no position regarding the Commission's rules for interconnections to a utility's distribution system, and the CAISO Tariff acknowledges that such interconnections are the province of the utilities and the Commission.

III. CONCLUSION

The CAISO respectfully requests that, in developing its long-term policies for QFs with expiring QF contracts, the Commission recognize that creating discrepancies in the treatment of Generators interconnected to the CAISO Controlled Grid undermines the ability of the CAISO to operate the transmission grid reliably and efficiently. Therefore, QFs interconnected with the CAISO Controlled Grid must be treated similarly to other Generators and, in particular, the Commission should specify that (1) QFs executing new contracts will not be exempted from CAISO Tariff requirements and (2) QFs seeking to interconnect or modify an existing interconnection at the transmission level in order to export energy should be required to comply with the CAISO's interconnection process.

November 10, 2004

Respectfully Submitted:

By: 

Sidney L. Mannheim
Attorney for
California Independent System Operator

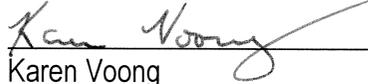
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CERTIFICATE OF SERVICE

I hereby certify that I have served, by electronic mail, a copy of the foregoing Comments of the California Independent System Operator Corporation on the Development of a Long-Term Policy for Expiring Qualifying Facilities (QF) Contracts to each party in Docket No. R.04-04-003.

Executed on November 10, 2004, at Folsom, California.

A handwritten signature in cursive script, appearing to read "Karen Voong", written over a horizontal line.

Karen Voong
An Employee of the California
Independent System Operator

ATTACHMENT B

SEC. 1253. COGENERATION AND SMALL POWER PRODUCTION PURCHASE AND SALE REQUIREMENTS.

(a) Termination of Mandatory Purchase and Sale Requirements. Section 210 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 824a-3) is amended by adding at the end the following:

"(m) Termination of Mandatory Purchase and Sale Requirements.

"(1) Obligation to purchase. After the date of enactment of this subsection, no electric utility shall be required to enter into a new contract or obligation to purchase electric energy from a qualifying cogeneration facility or a qualifying small power production facility under this section if the Commission finds that the qualifying cogeneration facility or qualifying small power production facility has nondiscriminatory access to--

"(A)(i) independently administered, auction-based day ahead and real time wholesale markets for the sale of electric energy; and

"(ii) wholesale markets for long-term sales of capacity and electric energy; or

"(B)(i) transmission and interconnection services that are provided by a Commission-approved regional transmission entity and administered pursuant to an open access transmission tariff that affords nondiscriminatory treatment to all customers; and

"(ii) competitive wholesale markets that provide a meaningful opportunity to sell capacity, including long-term and short-term sales, and electric energy, including long-term, short-term and real-time sales, to buyers other than the utility to which the qualifying facility is interconnected. In determining whether a meaningful opportunity to sell exists, the Commission shall consider, among other factors, evidence of transactions within the relevant market; or

"(C) wholesale markets for the sale of capacity and electric energy that are, at a minimum, of comparable competitive quality as markets described in subparagraphs (A) and (B).

"(2) Revised purchase and sale obligation for new facilities.

(A) After the date of enactment of this subsection, no electric utility shall be required pursuant to this section to enter into a new contract or obligation to purchase from or sell electric energy to a facility that is not an existing qualifying cogeneration facility unless the facility meets the criteria for qualifying cogeneration facilities established by the Commission pursuant to the rulemaking required by subsection (n).

"(B) For the purposes of this paragraph, the term 'existing qualifying cogeneration facility' means a facility that--

"(i) was a qualifying cogeneration facility on the date of enactment of

subsection (m); or

"(ii) had filed with the Commission a notice of self-certification, self recertification or an application for Commission certification under 18 C.F.R. 292.207 prior to the date on which the Commission issues the final rule required by subsection (n).

"(3) Commission review. Any electric utility may file an application with the Commission for relief from the mandatory purchase obligation pursuant to this subsection on a service territory-wide basis. Such application shall set forth the factual basis upon which relief is requested and describe why the conditions set forth in subparagraphs (A), (B) or (C) of paragraph (1) of this subsection have been met. After notice, including sufficient notice to potentially affected qualifying cogeneration facilities and qualifying small power production facilities, and an opportunity for comment, the Commission shall make a final determination within 90 days of such application regarding whether the conditions set forth in subparagraphs (A), (B) or (C) of paragraph (1) have been met.

"(4) Reinstatement of obligation to purchase. At any time after the Commission makes a finding under paragraph (3) relieving an electric utility of its obligation to purchase electric energy, a qualifying cogeneration facility, a qualifying small power production facility, a State agency, or any other affected person may apply to the Commission for an order reinstating the electric utility's obligation to purchase electric energy under this section. Such application shall set forth the factual basis upon which the application is based and describe why the conditions set forth in subparagraphs (A), (B) or (C) of paragraph (1) of this subsection are no longer met. After notice, including sufficient notice to potentially affected utilities, and opportunity for comment, the Commission shall issue an order within 90 days of such application reinstating the electric utility's obligation to purchase electric energy under this section if the Commission finds that the conditions set forth in subparagraphs (A), (B) or (C) of paragraph (1) which relieved the obligation to purchase, are no longer met.

"(5) Obligation to sell. After the date of enactment of this subsection, no electric utility shall be required to enter into a new contract or obligation to sell electric energy to a qualifying cogeneration facility or a qualifying small power production facility under this section if the Commission finds that--

"(A) competing retail electric suppliers are willing and able to sell and deliver electric energy to the qualifying cogeneration facility or qualifying small power production facility; and

"(B) the electric utility is not required by State law to sell electric energy in its service territory.

"(6) No effect on existing rights and remedies. Nothing in this subsection affects the rights or remedies of any party under any

contract or obligation, in effect or pending approval before the appropriate State regulatory authority or non-regulated electric utility on the date of enactment of this subsection, to purchase electric energy or capacity from or to sell electric energy or capacity to a qualifying cogeneration facility or qualifying small power production facility under this Act (including the right to recover costs of purchasing electric energy or capacity).

"(7) Recovery of costs. (A) The Commission shall issue and enforce such regulations as are necessary to ensure that an electric utility that purchases electric energy or capacity from a qualifying cogeneration facility or qualifying small power production facility in accordance with any legally enforceable obligation entered into or imposed under this section recovers all prudently incurred costs associated with the purchase.

"(B) A regulation under subparagraph (A) shall be enforceable in accordance with the provisions of law applicable to enforcement of regulations under the Federal Power Act (16 U.S.C. 791a et seq.).

"(n) Rulemaking for New Qualifying Facilities. (1)(A) Not later than 180 days after the date of enactment of this section, the Commission shall issue a rule revising the criteria in 18 C.F.R. 292.205 for new qualifying cogeneration facilities seeking to sell electric energy pursuant to section 210 of this Act to ensure--

"(i) that the thermal energy output of a new qualifying cogeneration facility is used in a productive and beneficial manner;

"(ii) the electrical, thermal, and chemical output of the cogeneration facility is used fundamentally for industrial, commercial, or institutional purposes and is not intended fundamentally for sale to an electric utility, taking into account technological, efficiency, economic, and variable thermal energy requirements, as well as State laws applicable to sales of electric energy from a qualifying facility to its host facility; and

"(iii) continuing progress in the development of efficient electric energy generating technology.

"(B) The rule issued pursuant to paragraph (1)(A) of this subsection shall be applicable only to facilities that seek to sell electric energy pursuant to section 210 of this Act. For all other purposes, except as specifically provided in subsection (m)(2)(A), qualifying facility status shall be determined in accordance with the rules and regulations of this Act.

"(2) Notwithstanding rule revisions under paragraph (1), the Commission's criteria for qualifying cogeneration facilities in effect prior to the date on which the Commission issues the final rule required by paragraph (1) shall continue to apply to any cogeneration facility that—

"(A) was a qualifying cogeneration facility on the date of enactment of subsection (m), or

"(B) had filed with the Commission a notice of self-certification, self-recertification or an application for Commission certification under 18 C.F.R. 292.207 prior to the date on which the Commission issues the final rule required by paragraph (1).".

(b) Elimination of Ownership Limitations.

(1) Qualifying small power production facility. Section 3(17)(C) of the Federal Power Act (16 U.S.C. 796(17)(C)) is amended to read as follows:

"(C) 'qualifying small power production facility' means a small power production facility that the Commission determines, by rule, meets such requirements (including requirements respecting fuel use, fuel efficiency, and reliability) as the Commission may, by rule, prescribe;".

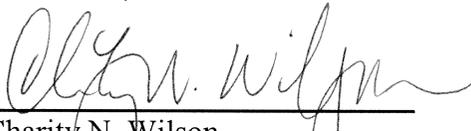
(2) Qualifying cogeneration facility. Section 3(18)(B) of the Federal Power Act (16 U.S.C. 796(18)(B)) is amended to read as follows:

"(B) 'qualifying cogeneration facility' means a cogeneration facility that the Commission determines, by rule, meets such requirements (including requirements respecting minimum size, fuel use, and fuel efficiency) as the Commission may, by rule, prescribe;".

CERTIFICATE OF SERVICE

I hereby certify that I have served, by electronic mail, a copy of the foregoing
Comments of the California Independent System Operator Corporation in Lieu of
Testimony on the parties of the service list for Docket No. R.04-04-003.

Executed on August 17, 2005, at Folsom, California.



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An Employee of the California
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