

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

**Preventing Undue Discrimination and Preference In Transmission Services ) Docket No. RM05-25-000  
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**REPLY COMMENTS OF THE  
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION ON  
NOTICE OF PROPOSED RULEMAKING**

The California Independent System Operator Corporation (“CAISO”) hereby submits its Reply Comments concerning the Notice of Proposed Rulemaking (“NOPR”) issued by the Federal Energy Regulatory Commission (“Commission”) in this proceeding on May 19, 2006.

On August 7, 2006, the CAISO submitted initial comments (“CAISO Initial Comments”) on the NOPR’s proposed amendments to the Commission’s regulations and *pro forma* open access transmission tariff (“OATT”) to ensure that transmission services are provided on a basis that is just, reasonable and not unduly discriminatory or preferential.<sup>1</sup> The CAISO now responds to certain initial comments of other parties addressing issues of particular importance to the CAISO, including comments addressing transmission planning in the Western Interconnection and comments related to the open access transmission service provided by the CAISO.

In support hereof, the CAISO respectfully states as follows:

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<sup>1</sup> In addition to the CAISO Initial Comments, the CAISO is a signatory of the August 7, 2006 Comments by the ISO/RTO Council (“ISO/RTO Council Initial Comments”) and the September 20, 2006 Reply Comments filed by the ISO/RTO Council. The CAISO supports the positions taken in the ISO/RTO Council Initial Comments and Reply Comments.

## I. EXECUTIVE SUMMARY

The CAISO strongly supports the Commission's policy objectives of preventing undue discrimination and preference in the provision of transmission services and promoting transmission planning policies that result in the construction of adequate transmission facilities and guard against undue discrimination in the transmission planning process. As explained in the CAISO's initial comments and the initial comments of the ISO/RTO Council, many of the concerns and abuses identified in the NOPR already have successfully been addressed by the operation of Independent System Operators ("ISOs") and Regional Transmission Organizations ("RTOs"). Each of the Commission-approved ISOs and RTOs are independent, non-profit entities that provide transmission services and that are not affiliated with market participants or transmission customers. These ISOs and RTOs have tariffs that differ in many respects from the *pro forma* OATT established by Order No. 888.<sup>2</sup> The Commission has recognized on numerous occasions that these ISO and RTO tariffs are consistent with the non-discrimination objectives of Order No. 888 or are superior to the terms of the *pro forma* OATT.

Because ISOs and RTOs have already addressed many of the concerns raised in the NOPR and because the approved tariffs of these ISOs and RTOs

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<sup>2</sup> *Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, 61 FR 21540 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, 62 FR 12274 (Mar. 14, 1997), FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

have moved far beyond the *pro forma* OATT, the CAISO urges the Commission to clarify that: (1) the Final Rule will not modify established Commission findings that the CAISO and other ISOs and RTOs can offer other forms of transmission service that differ from traditional Order No. 888 network and point-to-point transmission services, and (2) in their compliance filings, the CAISO and other ISOs and RTOs will not be required to address NOPR-proposed changes to the requirements for transmission services that such ISOs and RTOs do not provide or to address other NOPR-proposed changes which are clearly incompatible with the long-standing, Commission-approved transmission services offered by these ISOs and RTOs.

Several commenters suggest that the Commission should encourage or require the CAISO and other ISOs and RTOs to offer traditional Order No. 888 transmission services. These commenters provide no justification as to why the Commission should overturn long-standing precedent that these ISO and RTO tariffs are consistent with the objectives of Order No. 888 or superior to the *pro forma* OATT. For the reasons set forth in the CAISO's initial comments and further explained below, the Commission should not require the CAISO or other ISOs and RTOs to discard years of successful experience with their existing tariffs and adopt the traditional Order No. 888 transmission services. Nor should the Commission require the ISO and RTOs to re-justify the differences between their approved tariffs and the *pro forma* OATT when there is no evidence that these ISO and RTO tariffs have become unjust and unreasonable in the years since they were first approved by the Commission.

One commenter suggests that the Commission should establish a new requirement in this proceeding that the long-term transmission rights (“LTTRs”) required by Order No. 681<sup>3</sup> should be modified to include a “rollover” right or “right of first refusal” comparable to the right of certain transmission customers under the *pro forma* OATT to extend long-term transmission service under existing transmission contracts (“ETCs”). As explained below, this request to expand the requirements of Order No. 681 is inappropriate both because the Commission and courts have already recognized that rollover rights under the *pro forma* OATT do not apply to entities like the CAISO that do not offer traditional Order No. 888 network and point-to-point transmission services and because the Commission has already rejected such a requirement in Order No. 681 itself.

The CAISO generally supports the eight transmission planning guidelines proposed in the NOPR. As explained in its initial comments, the CAISO believes these guidelines are reasonable and further believes that the CAISO’s transmission planning process satisfies these general guidelines, particularly with the CAISO’s recent and ongoing enhancements to that planning process. The CAISO explained that the lack of reciprocal sharing of transmission planning information is the single greatest impediment to improved transmission planning. In particular, the CAISO urges the Commission to require that **all** transmission providers – including municipal utilities and federal power authorities – share their transmission planning information with **all** interconnected transmission

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<sup>3</sup> *Long-Term Firm Transmission Rights*, Order No. 681, 71 Fed. Reg. 43564 (Aug. 1, 2006), FERC Stats & Regs., Regs. Preambles ¶ 31,226 (2006) (“Order No. 681”).

providers. With respect to other specific aspects of transmission planning, the Final Rule should provide sufficient flexibility to allow each region and sub-region to develop a transmission planning process that best fits the needs of that region or sub-region.

Several commenters raise issues or questions about the CAISO's planning process. The CAISO does not believe that the Final Rule should address the planning process of any individual transmission provider. Nonetheless, the CAISO does respond to certain comments on the CAISO's planning process to highlight the efforts of the CAISO to revamp its historic planning process. Other transmission providers can be expected to pursue similar enhancements to their planning processes once the Commission adopts the eight transmission planning guidelines proposed in the NOPR.

The CAISO also notes that initial comments on the NOPR show that there is broad support for regional coordination of transmission planning efforts in the Western Interconnection. In particular, many commenters highlight the recent efforts of the Western Electricity Coordinating Council ("WECC") to improve communications among transmission providers, to conduct region-wide studies and to maintain central databases of planning data. The CAISO generally agrees with these comments and supports the recent planning coordination efforts of the WECC. The Commission should recognize, however, that these comments support voluntary coordination on a regional level, but do not propose a more active role for a regional entity in preparing individual transmission plans. Individual transmission providers and those entities authorized to prepare plans

for multiple utilities in a sub-region are best suited to assess the local reliability and economic needs which must be addressed by an individual transmission plan. The Final Rule should therefore promote voluntary regional coordination, supplemented by mandatory sharing of planning data among interconnected transmission providers, but should allow individual transmission providers and sub-regional planners to retain the authority to prepare transmission plans.

## **II. REPLY COMMENTS**

### **A. Applicability of the Proposed Changes to ISOs and RTOs That Do Not Provide Traditional Order No. 888 Transmission Services**

#### **1. Provision of Order No. 888 Network Service**

The San Francisco Bay Area Rapid Transit District (“BART”) contends that the CAISO should be encouraged to offer Order No. 888 network service under its existing tariff or under the pending tariff to implement the CAISO’s Market Redesign and Technology Upgrade (“MRTU”). BART Comments at 3.

BART implies that the transmission services offered under the CAISO’s current tariff somehow restrict the flexibility of BART and other transmission customers. This is not the case. In fact, the CAISO offers a form of “network service” that provides transmission customers with greater flexibility than the traditional Order No. 888 network service. Under the CAISO’s approved transmission service, Scheduling Coordinators representing transmission customers have equal access to all available transmission capacity every day. Under this service, Scheduling Coordinators can make schedule changes,

including receipt and delivery changes, on an hourly basis. In contrast to traditional network transmission services provided under the *pro forma* OATT, customers that take transmission service under the CAISO Tariff need not formally designate network resources.

The Commission has found that the CAISO's current transmission service is consistent with the broad non-discrimination goals of Order No. 888 and that all customers have access to transmission service on the CAISO Controlled Grid on a non-discriminatory basis.<sup>4</sup> BART does not provide any rationale for overturning this finding.

BART incorrectly claims that the CAISO is unique among independent system operators because it does not offer network transmission service. BART Comments at 3. As explained by the ISO/RTO Council, all ISOs and RTOS operate under tariffs that differ in some respects from the *pro forma* OATT but that have been found to be comparable to, or more advanced than, the terms and conditions of the *pro forma* OATT.<sup>5</sup> ISOs and RTOs also must meet stringent independence criteria that ensure that the discrimination concerns raised in the NOPR are not an issue. For this reason, the Commission has granted ISOs and RTOs greater deference in proposing variations from the *pro forma* tariff in complying with post-Order No. 888 tariff requirements. ISO/RTO Council Initial Comments at 10-14.

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<sup>4</sup> *Pacific Gas & Electric Company, et al.*, 81 FERC ¶ 61,122 at 61,435, 61,455-56 (1997).

<sup>5</sup> The transmission service provisions of the CAISO's MRTU tariff are closely modeled on accepted provisions in other ISO and RTO tariffs implementing locational marginal pricing. See the CAISO's February 9, 2006, filing of the MRTU tariff in Docket No. ER06-615.

This long-standing precedent is reflected in the NOPR itself, which recognizes that ISOs and RTOs already have tariff terms and conditions that are consistent with or superior to the *pro forma* OATT. NOPR at P 100. Absent a showing that these ISO and RTO tariffs have become unjust and unreasonable, there is no justification for suggesting that the CAISO or any other ISO or RTO should offer traditional Order No. 888 network transmission service.

## **2. Services Into, Out Of or Through ISOs and RTOs**

MidAmerican Energy Company and PacifiCorp agree that references in the NOPR to physical transmission service products and pricing reforms would generally not apply *within* an ISO/RTO that operates markets with financial transmission rights but suggest that the proposed physical transmission rights-related reforms still have relevance to service *into, out of or through* the ISO/RTO and that ISOs and RTOs therefore should be required to demonstrate that their services are consistent with or superior to the Commission's proposed reforms in this proceeding. MidAmerican/PacifiCorp Comments at 15.

These comments ignore the fact that the Commission has already concluded that the services offered by ISOs and RTOs – including service into, out of or through ISO and RTO service territories – satisfy the requirements of Order No. 888 because they are consistent with the non-discrimination objectives of Order No. 888 or have terms that are superior to the terms and conditions of the *pro forma* OATT. There is no proposal in the NOPR to fundamentally modify the nature of the transmission services in the *pro forma* OATT that would require the Commission to revisit its approval of the terms and conditions for service into, out of or through ISO and RTO service territories. Nor has



MidAmerican/PacifiCorp identified any specific issues with the service into, out of or through any ISO or RTO service territories that would require such reconsideration. Absent evidence that existing ISO and RTO tariffs have become unjust and unreasonable, there is no need for ISOs and RTOs to re-justify services that the Commission has already found to be consistent with the objectives of Order No. 888 or superior to the transmission services under the *pro forma* OATT.

**B. The Commission Should Not Modify the Requirements of Order No. 681 In This Proceeding**

The Sacramental Municipal Utility District (“SMUD”) argues that the Commission should “clarify” that Order No. 681 not only requires ISOs and RTOs to submit compliance proposals to offer LTTRs, but that the Commission create a further obligation that LTTRs offered by ISOs and RTOs must include a “rollover” right or “right of first refusal” comparable to the right under the *pro forma* OATT to extend long-term service under ETCs. SMUD Comments at 41-44.

As an initial matter, the CAISO notes that the Commission has already concluded that the Order No. 888 rollover right “is not applicable to SMUD (or any other customer in the CAISO service territory) because the service model of the Order No. 888 *pro forma* tariff does not apply to the California utilities' transmission systems.”<sup>6</sup> The D.C. Circuit has upheld the Commission’s finding that Order No. 888 rights of first refusal are not applicable to approved ISO tariffs that differ from the Order No. 888 service model.

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<sup>6</sup> *Sacramento Municipal Utility District v. Pacific Gas & Electric Company, et al.*, 105 FERC ¶ 61,358 at P 23 (2003), *order on reh'g*, 107 FERC ¶ 61,237 (2004), *aff'd sub nom. Sacramento Municipal Utility District v. FERC*, 428 F.3d 294 (D.C. Cir.2005).

Moreover, the Commission has already rejected SMUD’s suggestion that LTTRs must include Order No. 888-type rollover rights. In the LTTR rulemaking proceeding, SMUD proposed that, rather than the “renewal rights” proposed in the LTTR NOPR, the Commission should instead allow holders of long-term rights the ability “to apply the right of first refusal protections accorded OATT customers under Order No. 888.” Order No. 681 at P 250, *quoting* SMUD comments on the LTTR NOPR. The Commission chose not to adopt SMUD’s proposal, retaining in the LTTR final rule the “renewal rights” language from the LTTR NOPR. Order No. 681 at P 256.

It is an inappropriate collateral attack for SMUD to seek to modify the requirements of Order No. 681 in the instant proceeding. Instead, SMUD should have raised this issue in a request for rehearing of Order No. 681. The CAISO notes that there are good reasons why the proposed LTTR right of first refusal should not be adopted. For example, the type of rollover right contemplated by SMUD may not be consistent with long-term financial transmission rights permitted by Order No. 681.

**C. Transmission Planning – Coordinated, Open and Transparent Planning**

**1. The Final Rule Should Not Address Individual ISO Planning Processes**

As discussed in the CAISO’s initial comments, the CAISO supports the requirement that transmission providers develop planning processes consistent

with the eight transmission planning guidelines proposed in the NOPR.<sup>7</sup> The CAISO further recommends that the Commission should mandate the sharing of transmission planning information among **all** interconnected transmission providers, but that the Commission should leave it to transmission providers to determine the appropriate boundaries for regional and sub-regional coordination and the entities/organizations that should facilitate such coordination.

The Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California (“Six Cities”) and the Northern California Power Agency (“NCPA”) raise issues about the CAISO’s current and historic transmission planning process. The CAISO notes that a Final Rule in this proceeding need not and should not address concerns with the planning process of any individual transmission provider. Nonetheless, the CAISO believes that the Commission and other interested parties would benefit from a response to certain concerns raised by Six Cities and NCPA.

The CAISO agrees that its historic transmission planning process could be improved. For example, the CAISO agrees with Six Cities’ concern that the historic CAISO planning process was too reactionary in that it primarily responded to transmission plans prepared by Participating Transmission Owners (“PTOs”). Six Cities Comments at 4-5. Beginning in late 2005, the CAISO therefore initiated an effort to revamp its historic transmission planning process to, among other things, provide the CAISO with a more proactive role in planning for the CAISO Controlled Grid. This revamped process provides a centralized

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<sup>7</sup> See NOPR at PP 52, 214.

approach for coordinating the transmission plans of the PTOs and facilitates the design of proposed solutions that maximize benefits for all CAISO market participants. During the annual planning cycle, several public meetings are held to collect and coordinate study assumptions and to obtain stakeholder comments on the plans and results. Six Cities states that it believes this revamped process will be more consistent with the Commission's objectives in the NOPR. *Id.* at 5-6. The CAISO agrees that its ongoing efforts to enhance the CAISO planning process will allow the CAISO to better satisfy the Commission's objectives of promoting transmission planning policies that result in the construction of adequate transmission facilities and guard against undue discrimination in the transmission planning process. The CAISO is prepared to develop and finalize an updated process regarding the roles and responsibilities of the CAISO, the Participating Transmission Owners, and other parties regarding transmission planning and development in 2007.

NCPA raises concerns about the availability of "basic criteria, study methodology, assumptions and data" that underlie the CAISO's transmission planning decisions. NCPA Comments at 6-7. As the CAISO explained in its initial comments, the substantive exchange of information is key to a successful planning process. Consistent with this observation, the CAISO seeks to provide interested parties with ample information on its planning criteria, study methodology, assumptions and data. For example, the "basic criteria" that underlie the CAISO's planning decisions are criteria established by the WECC and the North American Electric Reliability Council. Base cases are available to

stakeholders that are WECC members. CAISO base case data is provided on the WECC website. Additional relevant information is included in the CAISO's study plans and final reports.

The release of CAISO planning information is subject, however, to appropriate restrictions on the release of confidential data consistent with the CAISO Tariff provisions governing the treatment of market data and bids<sup>8</sup> and with the Commission policies on Critical Energy Infrastructure Information. To the extent NCPA has questions about the availability of specific data, the CAISO encourages NCPA to present such questions directly to the CAISO.

## **2. The Final Rule Should Promote Voluntary Regional Coordination of Transmission Planning Efforts**

Initial comments on the NOPR show that there is broad support for voluntary regional coordination of transmission planning efforts in the Western Interconnection, building on the existing efforts of the WECC. Examples of comments supporting such an approach include the comments of the WECC itself and the following comments:

- Silicon Valley Power (“SVP”) believes that joint transmission planning should be voluntary and suggests that the WECC would be an appropriate institution to provide independent regional review and coordination of grid planning in the West. SVP Comments at 15-16.
- Salt River Project (“Salt River”) believes that mandatory participation in regional planning efforts is not necessary, especially in regions like the WECC where successful voluntary planning organizations exist. Salt River notes that the WECC is an appropriate organization for coordinating planning efforts and maintaining databases. Salt River Comments at 8-9.

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<sup>8</sup> See Section 20 of the CAISO Tariff.

- The Western Area Power Administration (“WAPA”) notes that, although regional coordination is useful with regard to certain broad functions, sub-regional coordination allows for “optimum stakeholder participation” and appropriate focus. WAPA Comments at 10.
- PacifiCorp contends that FERC should take advantage of the WECC’s planning efforts including its efforts to conduct region-wide congestion studies. MidAmerican/PacifiCorp at 12-13 PacifiCorp also notes that voluntary coordinated and regional planning efforts like those underway in the WECC are generally consistent with or superior to the requirements in the NOPR. MidAmerican/PacifiCorp Comments at 29-30.

The CAISO supports a Final Rule which encourages transmission providers to participate voluntarily in regional “umbrella” organizations like the WECC which will facilitate improved communication amongst individual transmission providers and other affected parties, conduct region-wide studies including congestion studies, and maintain a central database of planning information in a broad geographic region. Specifically, the CAISO supports the WECC’s current efforts to develop an economic transmission planning expansion database for the Western Interconnection and its progress in forming the Transmission Expansion Planning Policy Committee, which is focused on “providing impartial and reliable data, public process leadership, and analytical tools.” WECC Comments at 10-11.

The CAISO also supports WECC’s suggestion that region-wide congestion studies based on cost-production modeling be performed every two years. WECC Comments at 17; see also the comments of the California Public Utilities Commission (“CPUC”) at 15, 20; and the comments of the Imperial Irrigation District at 7-11. Such an approach is consistent with other planning timeframes in the West, such as the CPUC’s biennial review of forward

procurement plans and the California Energy Commission's Integrated Energy Policy Report.

The Commission should recognize, however, that as a "coordinating council," the WECC (or other comparable regional entities) should not be expected or required to assume a more active role in developing individual transmission plans. The responsibility for preparing such plans should be left to individual transmission providers and to sub-regional entities that have been granted responsibility to coordinate plans among multiple utilities.

Transmission providers and authorized sub-regional entities are the most appropriate entities to assess the local transmission capability concerns which must be addressed in individual transmission plans. Within a sub-regional boundary, an individual transmission provider or sub-regional entity will have the experience needed to perform the most effective studies of local reliability and economic needs.

Contrary to the implication of PacifiCorp's comments,<sup>9</sup> the Energy Policy Act of 2005 does not provide either the Electric Reliability Organization or regional entities with the responsibility or authority to establish interconnection-wide transmission expansion plans.<sup>10</sup> Moreover, as noted in the CAISO's initial comments, there would be many hurdles to establishing a regional entity empowered to plan for the entire region. The formation of such an empowered regional entity likely would require a multi-state compact or some other regional

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<sup>9</sup> MidAmerican/PacifiCorp Comments at 13.

<sup>10</sup> See Section 1211 of the Energy Policy Act of 2005.

agreement, which would be difficult to negotiate in light of siting, funding, and cost allocation issues. Lastly, there would be numerous pragmatic obstacles to assigning an active planning role for the entire Western Interconnection to a single entity.

The Final Rule in this proceeding therefore should not be overly prescriptive in discussing the role of regional planning organizations and should provide transmission providers with sufficient flexibility to determine the appropriate boundaries for regional and sub-regional coordination consistent with the Commission's general planning guidelines.



### III. CONCLUSION

For the foregoing reasons, the Commission should issue a Final Rule in this proceeding consistent with the discussion herein.

Respectfully submitted,

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