

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

Preventing Undue Discrimination and
Preference in Transmission Services

Docket Nos. RM05-25-000;
RM05-17-000

**REPLY COMMENTS OF
THE PUBLIC UTILITIES COMMISSION OF
THE STATE OF CALIFORNIA**

INTRODUCTION

The California Public Utilities Commission (“CPUC”) appreciates the opportunity to file these reply comments in response to the Notice of Proposed Rulemaking (“NOPR”) on *Preventing Undue Discrimination and Preference in Transmission Services*, 115 FERC ¶ 61,211 (2006), issued by the Federal Energy Regulatory Commission (“Commission” or “FERC”) in the above-captioned docket on May 19, 2006.

The CPUC’s initial comments addressed three issues, namely, (1) the transmission planning process addressed at ¶¶ 196-219 of the NOPR; (2) the redispatch and related issues discussed in connection with potential modifications to long-term firm point-to-point service at ¶¶ 288-332 of the NOPR; and (3) the Commission’s decision, discussed in ¶¶ 102-112, not to establish a rule pursuant to

EPAct section 1231 to require unregulated transmitting utilities to provide service under the *pro forma* OATT.

The CPUC notes that a number of other parties commenting on the NOPR, including but not limited to the National Association of Regulatory Utility Commissioners, the Western Electricity Coordinating Council and the California Independent System Operator Corporation (“CAISO”) made comments that were consistent with and/or complementary to the CPUC’s comments on transmission planning issues. The CPUC will not re-state its initial comments on transmission planning issues herein, but, rather, based on the initial comments submitted by the CPUC and others, would again urge FERC, as it proceeds to consider what kind of transmission planning process it should incorporate into the *pro forma* OATT: (1) to respect State commission participation in such planning processes; (2) to respect the fact that the system operators in California, and in the Western Interconnection more generally, have already made considerable progress toward the establishment of an open, regional transmission planning process that provides an opportunity for all interested stakeholders to participate; and (3) not to mandate the implementation of any particular procedures, steps or methodologies that would in any way interfere, or be at odds, with, the processes that the West has already established.

On the EPAct section 1231 issue, the CPUC would simply note the support voiced by the San Diego Gas & Electric Company in its initial comments for the position taken on this issue by the CPUC and would again urge FERC to reconsider its determination in the NOPR not to establish a rule pursuant to EPAct section

1231 to require unregulated transmitting utilities to provide service under the *pro forma* OATT.

The main substance of these reply comments will provide further thoughts on the redispatch issue.

COMMENTS

As indicated in the discussion on Redispatch at pages 23 - 28 of the CPUC's initial comments on the NOPR, the CPUC supports FERC's objective of enhancing the access for new customers to nondiscriminatory transmission service that is dependable enough to support financing for and other business decisions by such new customers, but that precedes or avoids the need for full transmission upgrades normally associated with conventional "full deliverability." Our initial comments also state that any new requirements such as for redispatch or conditional firm service should be sufficiently flexible and results-oriented so as not to hamper ongoing good-faith efforts to meet new customers' needs, particularly by independent grid operators. This is particularly important in RTOs and ISOs, such as the CAISO, where the specific nature of transmission service may differ from, but is at least as flexible, open and nondiscriminatory as, that service provided under FERC's *pro forma* OATT.¹

Consistent with this principle, the CAISO offers nondiscriminatory day-ahead transmission reservation service providing access to the entire network,

¹ In this regard, the CPUC notes with approval, and wishes to actively associate itself with, the discussion at pages 10-14 of the CAISO's comments on the NOPR.

supported by market (bid) based redispatch which, after the implementation of the CAISO's Market Redesign and Technology Update ("MRTU"), will incorporate locational marginal pricing ("LMP"). After the implementation of MRTU, such transmission service will also have to support important Resource Adequacy and renewable power initiatives which are of great and continuing concern to the CPUC.

The CAISO's transmission service already addresses the objectives of FERC's proposed "modifications to long-term firm point-to-point service." Thus, it would be counterproductive for FERC, in this NOPR, to simply superimpose on entities such as the CAISO new requirements that are intended to apply to *pro forma* transmission service, such as requirements that would prescribe redispatch or conditional firm service, except to the extent that such requirements are made meaningful and valuable in the context of the services already provided under the tariffs of such entities.

In fact, the sort of conditional firm service that FERC discusses in the NOPR is inapplicable to the CAISO's transmission service model, which makes no distinction between firm and non-firm service, and does not give certain customers a priority over others for commercial energy delivery. Under the CAISO's model, no new customer is "promised" physical access, conditional or otherwise, and the added administrative complexity of "conditional" versus "fully firm" service is unnecessary. Moreover, prospective new customers of the CAISO can obtain information on likely curtailments or congestion costs via interconnection studies

that include deliverability assessments. On that basis, such prospective new customers can weigh the costs and benefits of sponsoring network upgrades (with costs ultimately refunded) versus risking curtailment and/or congestion costs. In this dynamic, open, market-based system, the likelihood of curtailment for economic or reliability reasons can be objectively estimated, but not guaranteed. Indeed, in a system like the CAISO's, such guarantees would only shift or socialize the cost of congestion.

Moreover, once the CAISO's LMP-based MRTU is implemented, the CAISO model will incorporate an open and nondiscriminatory approach for accommodating new transmission customers via redispatch, which should meet all of the goals for a redispatch-type service that the Commission articulates in the NOPR. However, given that generation in the CAISO is controlled by many parties unaffiliated with the grid operator, the frequency and cost of redispatch can be objectively estimated but not guaranteed, especially over time horizons applicable to long-term transmission rights and generation investments. For this reason, guaranteeing or capping the frequency or cost of redispatch will have the undesirable effect of socializing and/or shifting congestion costs to others.

Instead, in the CAISO's open, market-based system, the appropriate method for generation investors and load serving entities to hedge future congestion costs is via financial transmission rights. This is being implemented by integrating congestion revenue rights into MRTU, an effort that would be compromised and complicated by superimposing mandatory guarantees regarding the frequency and

cost of redispatch.

A major limitation on efficient use of the existing grid to accommodate both new and existing transmission customers in the California electricity market comes from a lack of comparable transparency and nondiscriminatory access in neighboring control areas. It is difficult to efficiently and predictably plan transactions or employ redispatch when one end of a transaction occurs in a control area that lacks transparent and open access to dispatch and pricing.

FERC proposes to require greater transparency, openness and nondiscrimination in transmission access, particularly in control areas not having independent operators. This includes potentially requiring redispatch and/or conditional firm services as discussed in FERC's NOPR. In this regard, the CPUC would call attention to the fact that Federal Power Act ("FPA") § 211A(b) now provides that FERC may require unregulated transmitting utilities to provide transmission service on terms and conditions comparable to conditions under which those utilities provide transmission services to themselves and that are not unduly discriminatory or preferential.

It would accordingly be appropriate and helpful if redispatch or other requirements that FERC is considering to facilitate transmission access and efficient use of the grid are extended to unregulated transmission providers as described under FPA § 211A(b). Where such unregulated providers manage important parts of the overall interconnected network, as they do especially in the West, excluding them from requirements for open, nondiscriminatory access severely limits

improvements that can be achieved via redispatch or other elements of FERC's NOPR.

Redispatch is already required to be offered under the *pro forma* OATT. The problem is that in practice, non-independent transmission providers have been given considerable discretion in balancing reliability, economic and native load considerations in determining whether redispatch is available and how it will be priced. Short of requiring divestiture or unbundling of transmission assets, an essential part of the solution is greater transparency, disclosure and, where necessary, monitoring of dispatch and redispatch processes, as well as associated price information.

Arguments presented against a more resolute requirement of redispatch include: transmission providers do not have control of sufficient (typically affiliated) generation to implement redispatch; the inability to control or even access information regarding potentially redispatched generation in other control areas; discrimination against affiliated generation if it is preferentially subjected to redispatch; violation of FERC standards of conduct if the transmission provider exchanges information with affiliated generators to manage redispatch; loss of the "safety value" that redispatch provides for responding to contingencies; and reduced reliability of service to native load or other existing obligations.

However, none of these theoretical arguments diminishes the usefulness of greater transparency and disclosure regarding dispatch/redispatch processes and associated price information, which would actually ameliorate many of the cited

problems, and would not interfere with achieving an ultimate dispatch that is fully security constrained.

Ideally, the efficient provision of transmission services would be best accomplished by grid operators acting also as operators of open, transparent markets for redispatch. However, where such a proactive role is slow in coming, much can be achieved simply through greater transparency, not only to facilitate bilateral redispatch arrangements as proposed by some parties commenting on the NOPR, but also to better disclose how the process is working or not working, to inform market participants and to identify where specific remedies may be needed.

CONCLUSION

The CPUC respectfully requests the Commission to take the foregoing comments into consideration in this proceeding.

September 20, 2006

Respectfully submitted,

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September 20, 2006

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Washington, D.C. 20426

Re: *Preventing Undue Discrimination and Preference in Transmission Services*
Docket Nos. RM05-25-000; RM05-17-000

Dear Ms. Salas:

Enclosed for filing in the above-docketed case, please find an original electronic filing of the attached document entitled **“REPLY COMMENTS OF THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA.”**

Thank you for your cooperation in this matter.

Sincerely,

/s/ Laurence G. Chaset

Laurence G. Chaset
Staff Counsel

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