



**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

**COMMENTS OF  
THE PUBLIC UTILITIES COMMISSION OF  
THE STATE OF CALIFORNIA  
ON THE NOTICE OF PROPOSED RULEMAKING**

The Public Utilities Commission of the State of California (“CPUC”) hereby provides its comments pursuant to the Federal Energy Regulatory Commission’s (“Commission”) May 19, 2006 Notice of Proposed Rulemaking (“NOPR”) in the above-docketed proceeding.

The CPUC has previously filed its Notice of Intervention in this matter.

However, the CPUC would request that the following additional persons be added to the Service List in this Docket:

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## INTRODUCTION

On September 16, 2005, the Commission issued a Notice of Inquiry (“NOI”) inviting comments on whether reforms are needed to the Order No. 888 *pro forma* open access transmission tariff (“OATT”) and the OATTs of public utilities in order to ensure that services thereunder are just, reasonable and not unduly discriminatory or preferential. The NOI also invited comments on the implementation of Section 1231 of the Energy Policy Act of 2005 (“EPAAct”), which established Section 211A of the Federal Power Act (“FPA”) concerning the provision of open access transmission service by unregulated transmitting utilities. The Commission received numerous comments on its NOI, including comments from the CPUC focusing on the implementation of EPAAct Section 1231.

In its May 19, 2006 NOPR, the Commission is proposing to reform the Order No. 888 *pro forma* (“OATT”) in a number of significant respects in order to ensure that services thereunder are just, reasonable and not unduly discriminatory or preferential.

Because California’s transmission grid is, for the most part, operated by the California Independent System Operator Corporation (“CAISO”), many of the important OATT reforms proposed in the NOPR are not necessary, as the CAISO already provides nondiscriminatory access to the transmission system that it operates at just and reasonable rates pursuant to a Commission-approved tariff. The major transmission owners whom the CPUC directly regulates, namely, the Pacific Gas & Electric Company, the Southern California Edison Company and the San Diego Gas & Electric Company, participate in

the CAISO. By virtue of that participation, these companies have given up the ability to discriminate against non-utility users of those portions of the CAISO-controlled grid that they continue to own. For these reasons, although the CPUC does support the Commission's overall goal of assuring open, non-discriminatory access to the nation's transmission grid, there are many issues raised in the NOPR that are not of particular concern to the CPUC. However, there are three specific issues addressed in the NOPR on which the CPUC does have concerns. Our comments shall accordingly be limited to these three issues, namely, (1) the transmission planning process addressed at ¶¶ 196-219 of the NOPR; (2) the redispatch 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 EPCRA section 1231 to require unregulated transmitting utilities to provide service under the *pro forma* OATT.

## COMMENTS

### I. Transmission Planning Processes

The CPUC is generally supportive of the Commission's desire to have robust, transparent, coordinated, region-wide transmission planning. However, as the Commission is aware, broad-based transmission planning organizations already exist both in California and in the Western Interconnection. For this reason, the NOPR's concerns about a lack of coordination, openness and transparency in the current transmission planning process (e.g., at ¶ 210) are largely absent in California and the West. Indeed, at

¶ 211 of the NOPR, the Commission recognizes the “promising efforts” of the current planning efforts in California and the West, and acknowledges, at ¶ 212 of the NOPR, that in such regions, the proposal that the Commission will ultimately adopt should require “only modest changes.”

Accordingly, as it proceeds to consider what kind of transmission planning process it should incorporate into the *pro forma* OATT, the Commission should 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 should not 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. To the contrary, the Commission should look carefully at the processes already established in the West and use them as a template that could be followed in other parts of the country.

Toward this end, the first two parts of the following comments briefly summarize how the transmission planning processes in California and the West have been effective in encouraging the construction of new transmission facilities. In ¶ 217 of the NOPR, the Commission seeks examples of transmission planning processes that “comply with the proposed transmission planning reforms in principle.” These parts of the comments below are intended to provide summary examples of such existing processes that are

already in compliance with what the Commission is seeking to achieve in this portion of the NOPR.

The third part of these comments will address the eight principles set forth at ¶ 214 of the NOPR that, in the Commission's view, an open and transparent transmission planning process must satisfy. Finally, the fourth part of these comments will address some of the additional topics relating to transmission planning processes set forth in the NOPR on which the Commission seeks feedback.

A. The CAISO Process

Within California, the CAISO works closely with its Participating Transmission Owners ("PTOs"), the CPUC, the California Energy Commission and its other stakeholders to proactively identify needed, cost effective transmission solutions through an open, non-discriminatory planning process. Over the five year period between 2000 through 2004, the CAISO authorized 237 transmission project upgrades representing \$2.4 billion of infrastructure investment. \$1.8 billion of transmission projects were completed during that time period.

In general, the CAISO oversees the transmission expansion planning process within the CAISO control area in order to establish the reliability and economic need of proposed new projects. Transmission expansion plans are developed through a collaborative process that includes PTOs, the State, and other stakeholders. The PTOs perform the majority of the technical analyses for their respective systems and jointly participate in development of longer-term assessments. The CAISO reviews and

approves PTO plans and assessments based on applicable planning standards and criteria, and technical and economic feasibility. A new economic test, the Transmission Economic Assessment Methodology (“TEAM”) has been developed to provide a common methodology to evaluate the economic need of transmission upgrades based on local and regional benefits, market power, and uncertainty of a wide range of future system conditions, operational feasibility, and the comparison of valid alternatives.

The CAISO’s coordinated grid planning process involves review of proposed system upgrades and expansions to ensure efficient use of the system and enhance operating flexibility. Currently, the CAISO’s Comprehensive Grid Expansion Plan is developed from the following inputs:

- a. Proposed generation projects identified through interconnection requests;
- b. The CAISO Controlled Grid Plan that includes needs identified by PTO’s through the PTOs’ Annual Transmission Plans. (The PTOs’ Annual Transmission Plans describe proposed facility additions covering a 10-year planning horizon);
- c. Needs identified by the CAISO or Market Participants or through stakeholder or policy-driven processes, such as those associated with transmission upgrades necessary to accommodate new renewable energy resources; and

- d. The availability of Reliability Must Run Generation, Local Area Reliability Service, and Resource Adequacy resources.

The CAISO has the authority to mandate system upgrades required for reliability deficiencies. The CPUC also has the authority to require an upgrade or expansion of PTO facilities to meet regulatory obligations.

In addition, the CAISO has long participated in existing sub-regional groups, such as STEP, to discuss and assess new transmission projects. In furtherance of this sub-regional planning effort, California is currently working to develop state-wide transmission planning efforts that will include non-CAISO participants. Toward this end, the CAISO, the CPUC and other stakeholders in California have already begun the work of creating a California-wide sub-regional transmission planning group. We are optimistic that all key transmission systems in California, including those of the large, unregulated municipal utilities that do not participate in the CAISO, will soon be joining in a collaborative state-wide process, with the full support of the Western Electricity Coordinating Council (“WECC”), to identify transmission upgrades that will be needed state-wide in order to meet future needs.

Finally, the Commission should be aware of the key role that state regulatory agencies can play in promoting the development of needed new transmission. California’s legislatively mandated Renewable Portfolio Standard (“RPS”) explicitly recognizes the need for new transmission facilities to facilitate the achievement of RPS



goals.<sup>1</sup> Soon after the adoption of the RPS, the CPUC took the initiative to commence a planning process to identify the transmission needed to access up to 4,000 megawatts of wind energy in the Tehachapi Region of California by convening a Study Group incorporating all interested stakeholders. After an extensive, multi-year stakeholder process, the Tehachapi Study Group developed a set of proposals for transmission upgrades that would allow the full potential wind energy output of the Tehachapi Region to be fully deliverable to load within the state. The results of this effort were turned over to the CAISO for final analysis this past spring.<sup>2</sup>

At the same time that the Tehachapi study process was being conducted under the auspices of the CPUC, another study process intended to identify transmission needed to accommodate new renewable resources in the Imperial Valley area of Southeastern California was undertaken under the auspices of the California Energy Commission (“CEC”).<sup>3</sup> The results of the work of the Imperial Valley Study Group were also turned over to the CAISO for final approval. The Sunrise project proposed by the San Diego

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<sup>1</sup> California’s Renewable Portfolio Standard Program was enacted in 2002 and is set forth at California Public Utilities (“P.U.”) Code section 399.11, *et seq.* With respect to transmission issues associated with the development of renewable resources, see, in particular, P.U. Code section 399.25.

<sup>2</sup> The Final Report of the Tehachapi Study Group can be found at <http://www.cpuc.ca.gov/Published/Graphics/48819.PDF>.

<sup>3</sup> The CEC, rather than the CPUC, was ultimately responsible for preparing the report of Imperial Valley Study Group, because several of the key stakeholders in the development of the Imperial Valley’s renewable resources (*i.e.*, the Los Angeles Department of Water and Power and the Imperial Irrigation District) are unregulated municipal utilities that are outside the CPUC’s jurisdiction.

Gas & Electric Company, which is currently under permit review at the CPUC, is, in part, an outgrowth of this Imperial Valley study process.

In addition, there is another proposed transmission project in Southern California that has the potential to assist the state in meeting its RPS goals. This is the Lake Elsinore Advanced Pumped Storage (“LEAPS”) project, which is currently undergoing review at the Commission, although the LEAPS project will also require approval by the CAISO (and possibly other state agencies) in order to be built.

Given this set of major proposed transmission projects in Southern California, all geared, at least in part, to advance the state’s RPS, the CAISO has undertaken an integrated review of the proposed Sunrise, Tehachapi and LEAPS transmission projects in order to identify which of these projects will optimally advance the state’s RPS goals while also providing for grid reliability and good value for ratepayers. Work on this Southern California-wide transmission planning effort is currently on-going and is intended to result in the ultimate approval by the CAISO of a set of economically viable projects that will allow significant quantities of renewable resources to become fully deliverable to load. The CPUC is hopeful that the CAISO will complete its work on this Southern California plan before the end of this year.

The work of the CPUC, the CAISO and other stakeholders on the Tehachapi and Imperial Valley Study Groups, and now on the Southern California transmission plan, is an outstanding example of how state policy can appropriately, effectively and beneficially

impact the transmission planning process and of how state agencies can take a proactive role in this process.

B. The Planning Process in the Western Interconnection

Within the Western Interconnection more generally, WECC (and its predecessor, the Western States Coordinating Council) has maintained a formal coordinated planning process for over ten years. The Seams Steering Group – Western Interconnection (“SSG-WI”) was formed in the later 1990’s to address physical and market interface issues across the sub-regions and (actual and potential) RTOs in the West, including congestion and its costs under different load and resource scenarios, using a comprehensive database and production cost modeling. The functions of SSG-WI have recently been handed over to WECC, and the SSG-WI database is currently being maintained by WECC and is freely available to any transmission developer that seeks to build a project in the Western Interconnection.

In addition, in recent years, under the aegis of SSG-WI, sub-regional transmission planning organizations have formed and been active across the West. These include: the Northwest Transmission Assessment Committee (“NTAC”), the Southwest Area Transmission (“SWAT”) study, the Colorado Coordinated Planning Group (“CCPG”), the Southwest Transmission Expansion Plan (“STEP”), and the Rocky Mountain Area Transmission Study (“RMATS”).

Furthermore, WECC, via the ad hoc Western Congestion Assessment Task Force (“WCATF”), and with support from the CPUC staff, helped to prepare the Western

Interconnection portion of the congestion studies required by August 2006 under EPAct section 1221. In recent months, the WCATF has organized and packaged reports on a series of congestion studies for the Western Interconnection and has evaluated criteria for measuring historical congestion, as well as forward-looking congestion, under different generation scenarios out to 2008 and 2015. Using SSG-WI and Committee on Regional Electric Power Cooperation (“CREPC”) studies, WCATF will analyze the locations, prevalence and costs of congestion under additional scenarios out to 2015.

However, in order to allow for more coordinated planning to occur, this past April, the WECC Board formally approved a Transmission Expansion Planning Policy Committee (“TEPPC”).<sup>4</sup> TEPPC will oversee the interconnection-wide planning process on a collaborative basis that will allow for the consolidated needs of all of the system operators in the Western Interconnection to be considered in the transmission planning process. The work to be performed under TEPPC will consider long-term regional needs for new transmission beyond reliability and congestion relief. Through the TEPPC, WECC is expanding its scope to take over and extend SSG-WI’s role in “economic” transmission planning. Moreover, a key objective of the TEPPC will be to work toward the use of consistent and transparent input assumptions and robust methodologies that allow for the effective comparison of the results of the various transmission planning

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<sup>4</sup> TEPPC’s three main functions include: (1) overseeing database management, (2) providing policy and management of the planning process, and (3) guiding the analyses and modeling for Western Interconnection economic transmission expansion planning. These functions compliment but do not replace the responsibilities of WECC members and stakeholders to develop and implement specific expansion projects.

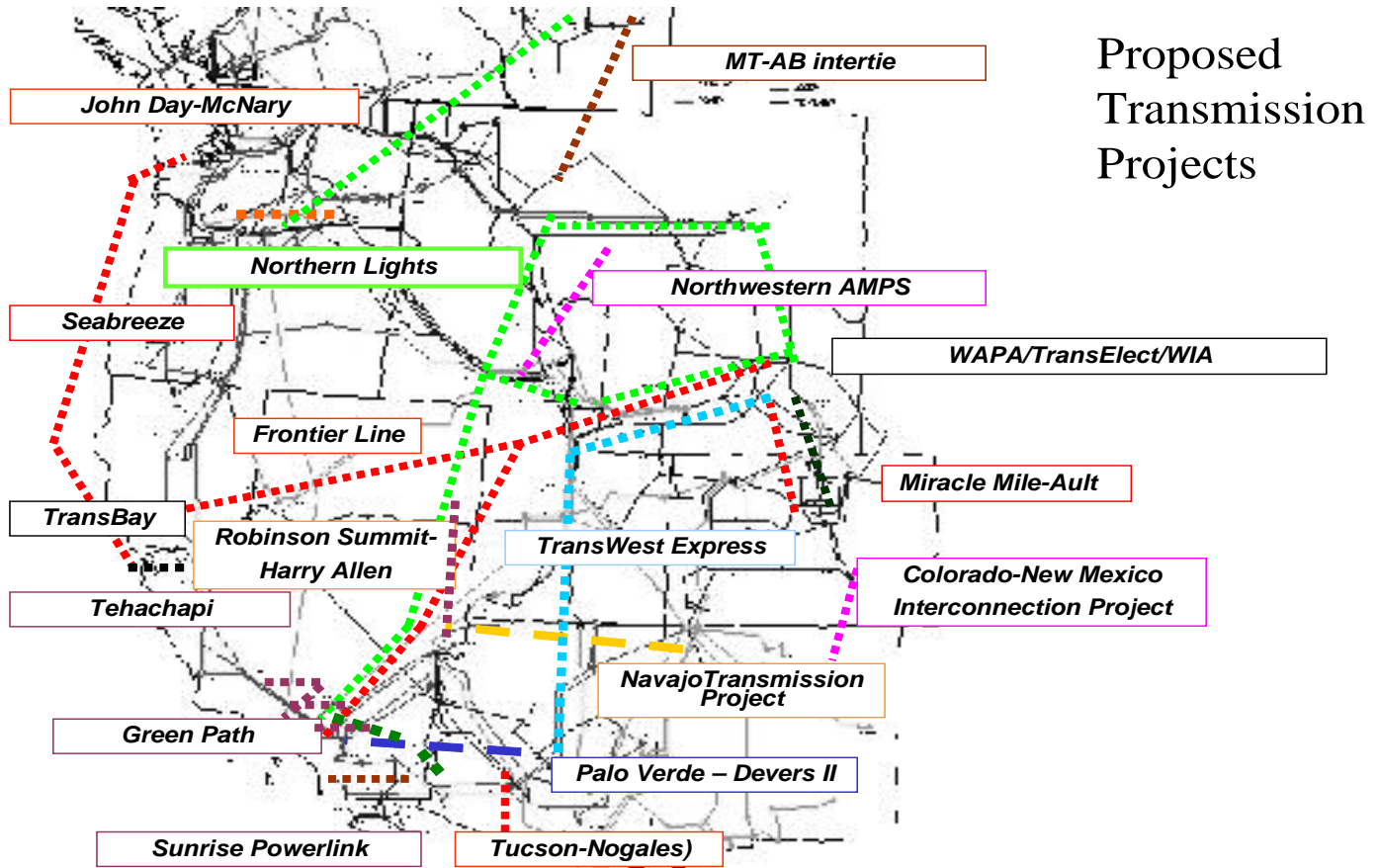
exercises that will be conducted throughout the Western Interconnection. This expanded role has the support of the industry, the states, and regional organizations such as the Western Governors' Association ("WGA"), the Western Interstate Energy Board ("WIEB") and CREPC.

While the TEPPC assumes its role in West-wide economic transmission planning, on-going transmission planning and evaluation activity in the West has already resulted in specific proposals for major new transmission projects that are currently under review at the state level. For example, the WCATF study identified congestion both east and west of the Colorado River. Two proposed transmission projects that would alleviate this congestion, Devers-Palo Verde 2 and the Sunrise Powerlink, are currently under active review by the CPUC, and have already been reviewed through the sub-regional STEP process. The CPUC is committed to reviewing these projects in an expeditious manner, consistent with its state statutory requirements for review of project alternatives and addressing project need in terms of ratepayer benefits. The CPUC's review of the Devers-Palo Verde project should be completed by the end of this year.

In addition to the California-specific projects noted just above, experience in the Western Interconnection shows that open transmission planning can lead to proposed projects and ultimately steel in the ground. For example, the sub-regional transmission planning processes have already resulted in the permitting and development of several projects in Arizona, as well as the identification of numerous other potential transmission

proposals in the Western Interconnection.

The map below shows many of these proposed projects.



California participates closely in WECC, in sub-regional planning groups, and in regional energy organizations such as WGA, WIEB and CREPC. Transmission planning in California reflects and balances diverse goals and reflects collaboration among various organizations and stakeholders, extending to relevant sub-regional organizations (*e.g.*, STEP for Southern California and desert Southwest transmission planning).

Thus, on-going transmission planning activities in California and across the

Western Interconnection have been developed through a careful, collaborative process, and are addressing a range of key, interdependent issues including reliability, congestion, competitiveness and diversity of supply, state policy objectives, resource adequacy, local area needs, stakeholder interests, balancing of wires and non-wires alternatives, and both permitting and funding challenges. Effective organizations and organizational relationships have been developed painstakingly over time, and we are making substantial progress. The evidence of this progress includes the activities of WECC, the sub-regional groups, west-wide organizations, and individual states, as well as the major transmission projects in various stages of planning and development.

In view of the abundance of effective, large-scale transmission planning and development that is already taking place in the Western Interconnection, nothing that the Commission seeks to implement with regard to transmission planning processes in connection with its proposed Order No. 888 *pro forma* OATT reforms should undermine or seek to trump these efforts. It is, first of all, up to the states and the regions to solve their transmission planning and siting problems. Federal agencies should not intervene on the state or regional level unless and until there is a demonstrated need for them to do so. Rather, we expect that the effort that the Commission will be undertaking in connection with the establishment of minimum requirements for transmission system planning will have much to learn from the West's current regional and sub-regional transmission planning efforts, objectives and concerns.

C. Comments on the Commission's Eight Principles

In ¶ 214 of the NOPR, the Commission indicates that the sort of coordinated, open and transparent planning process that it envisions mandating would satisfy eight principles. The CPUC offers the following thoughts on these eight principles. As an initial, more general point, however, the CPUC applauds, and wishes to state its strong support for, the Commission's statement, in the first paragraph of ¶ 214 of the NOPR, that it expects that municipal and other public power entities will participate in the regional planning processes that the Commission intends to mandate.

1) Coordination – The Commission should not be overly prescriptive in implementing this principle. As the effectiveness of the planning processes in the Western Interconnection has shown, each planning group needs to be able to determine the details of meetings, frequency, and format of its activities. Rather, the Commission should focus on mandating adequate notice and the posting and use of methods that allow for effective notice to, and that encourage active participation by, any interested stakeholder. The CPUC supports a biennial (not an annual) transmission planning reporting requirement, which includes: (a) a discussion of interconnection-wide planning results and projects, and (b) a discussion of sub-regional planning results and projects, including descriptions of the connections between sub-regional and interconnection-wide planning.

2) Openness – The CPUC concurs with the Commission that transmission planning meetings, conference calls and documents should be open to all affected parties



including, but not limited to transmission owners, transmission customers, generation developers, interest groups and states and provinces. However, to the extent that the planning processes in a given region utilize advisory subcommittees, the Commission should also mandate that the meetings of such advisory subcommittees also be open to all stakeholders.

3) Transparency – Load forecasts used in transmission planning need to be transparent and publicly available. Load forecast information available on Form 715, as well as the load forecast information presently used in regional transmission planning in the Western Interconnection is not sufficiently transparent, although the participants in the planning processes in the Western Interconnection are committed to having this data be as transparent as possible. Thus, the database used in the work of the WECC’s TEPPC will be open and publicly available. However, the Commission needs to recognize that maps and certain technical studies, such as those showing power flows, will have to be protected under the normal non-disclosure requirements.

4) Information Exchange – All actual and potential users of the system must be encouraged to participate in regional transmission planning. The plans of individual transmission owners currently using the system need to be shared to ensure they are simultaneously feasible and that they use consistent assumptions and data. Such sharing of plans is essential to identify system enhancements necessary to relieve existing congestion. Moreover, potential customers need to be encouraged to project their long term needs for service over the planning horizon and should be exhorted not to rely on the

use of *ad hoc* requests for transmission service as the basis for meeting their anticipated needs.

5) Comparability – The CPUC supports the proposal that transmission providers develop transmission system plans that will meet the specific service requests of its transmission customers and otherwise treat similarly situated customers comparably.

6) Dispute Resolution – The CPUC supports the notion that parties should be encouraged to resort to informal dispute resolution procedures to the extent possible.

7) Regional Participation – As noted in the comments above, we would point out that the WECC’s newly formed TEPPC and existing sub-regional planning groups already have processes in place for regional participation that meet this suggested requirement. However, this principle does raise a number of important sub-issues requiring comment.

a) With respect to the Commission’s comment in ¶ 215 of the NOPR, the CPUC does not believe that in the Western Interconnection, at least, there is a need to mandate the use of a third party to oversee the planning process, although we do recognize that a third party acting as a facilitator of stakeholder participation in the planning process can be effective and should be encouraged.

b) With respect to the Commission’s comment in ¶ 216 of the NOPR, the CPUC strongly supports the thought that the active participation of state regulatory commissions will be essential for regional transmission planning

to be effective. Such participation will ensure that critical issues, such as those associated with cost recovery and project siting are effectively addressed in the planning process.

- c) Moreover, we believe that regional transmission planning processes need to be closely linked with the resource planning processes of load-serving entities (“LSEs”). Transmission planning cannot be conducted in a vacuum, and a transmission planning process that ignores the broader resource adequacy planning taking place at the state and LSE-level could result in the development of unnecessary transmission facilities. For example, in California, over the past several years, the CPUC has implemented a comprehensive resource adequacy (“RA”) requirement for the LSEs under its jurisdiction.<sup>5</sup> California’s RA requirement includes a long-term resource procurement planning process.<sup>6</sup> In order to avoid the development of redundant or ultimately unnecessary facilities, the results of state and LSE-based RA processes will need to be carefully factored into the larger transmission planning processes that will be taking place on regional and

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<sup>5</sup> See, generally, CPUC Docket No. R.05-12-013. The most recent decisions in this proceeding, D.06-06-064 and D.06-07-031, were just issued, respectively, on June 29 and July 20, 2006. These decisions can be found at: [http://www.cpuc.ca.gov/PUBLISHED/FINAL\\_DECISION/58320.htm](http://www.cpuc.ca.gov/PUBLISHED/FINAL_DECISION/58320.htm) and [http://www.cpuc.ca.gov/PUBLISHED/FINAL\\_DECISION/57644.htm](http://www.cpuc.ca.gov/PUBLISHED/FINAL_DECISION/57644.htm)

<sup>6</sup> See, generally, CPUC Docket No. R.06-02-013. The most recent decision in this proceeding, D.06-07-029, was just issued on July 20, 2006. This decision can be found at: [http://www.cpuc.ca.gov/PUBLISHED/FINAL\\_DECISION/58268.htm](http://www.cpuc.ca.gov/PUBLISHED/FINAL_DECISION/58268.htm)

sub-regional levels in the Western Interconnection. This is especially true in the case of California's RA process, because California constitutes nearly 50% of the load in the United States portion of the Western Interconnection. It would simply not make sense for the transmission planning process in the West to overlook the realities of the resource plans of those LSEs that are subject to the CPUC's jurisdiction. By contrast, a regional transmission planning process that does take these resource plans into account has an excellent prospect for identifying the transmission system upgrades that will be necessary to meet load and load growth, to assure the reliability of the grid and to provide economic benefits to ratepayers.

- d) Similarly, regional transmission planning processes need to respect important state-level policies, such as California's aggressive renewable portfolio standard, that can have a significant impact on the identification and the location of needed transmission facility upgrades. Thus, if, for example, California's statutorily mandated policies call for the development of 4,000 new megawatts of capacity from renewable energy resources over the next 5 years, it makes more sense to assure that the regional transmission plan provides for the new facilities need to access those resources rather than for facilities that would access other, less preferable supply alternatives.
- e) Finally, in order to maximize the cost-effectiveness of the investments that

we will be making in new transmission facilities, regional transmission planning processes should be directed to evaluate the applicability of new transmission technologies and demand-side options to relieve congestion.

8) Congestion Study – In the West, we have spent significant time and energy learning how to do this right. The WCATF study that was submitted to U.S. Department of Energy (“DOE”) earlier this year was a trail blazing effort to identify “significant and recurring” congestion throughout the Western Interconnection. We expect that in the national congestion study that DOE will shortly be issuing pursuant to EPCRA section 1221, DOE’s analysis of congestion in the Western Interconnection will rely heavily on the work presented in the WCATF report. This being said, this principle also raises a number of important sub-issues requiring comment.

- a) The congestion study requirement should be biennial or even triennial. The effort required to complete the WCATF study was enormous, and it is simply not reasonable for the Commission to expect that a comparable effort can, will or should be completed for the entire Western Interconnection on an annual basis.
- b) The Commission needs to define what it means by “significant and recurrent” congestion, and it needs to specify the metrics to measure such congestion. Moreover, the Commission needs to recognize that because of the different configuration of the Western Interconnection, what is “significant and recurrent” in the West may be different from what it is in the East.

Accordingly, the Commission should allow for regional definitions of this term. Furthermore, the analysis of “significant and recurrent” congestion should include: (a) an assessment of historical flows on major transmission paths; (b) a comparison of available transfer capacity (“ATC”) and schedules with historical flows; and (c) an assessment of denied transmission service requests. To facilitate this analysis, the Commission should require the archiving of ATC and schedules in a form that allows for easy analysis across all transmission owners in an interconnection.

- c) The transmission planning process should not be limited to examining reliability and current congestion. Most regional transmission planning in the West has been more forward looking, and has focused on examining transmission needs 10 years or longer into the future and on alternative configurations that would support different mixes of future generating resources. As noted above under 7.c. and d., both the RA planning processes of states and LSEs, as well as state policies favoring particular types of resources, can have a significant impact on the transmission planning process. These considerations underscore the value of a more forward-looking transmission planning process that looks beyond short-term reliability and congestion concerns.

D. Comments on Other Topics

- 1) Financing of Participation in Regional Planning Efforts – The CPUC notes

that fiscal limitations have seriously constrained effective participation by state agencies in regional transmission planning efforts. Such participation is often not a central mandate of state law, and many states, especially those with smaller populations and limited staff, simply lack the resources to effectively participate in regional transmission planning efforts. Even the CPUC, with some 900 employees, has sometimes had trouble providing adequate staffing for the regional and sub-regional transmission planning processes taking place in the Western Interconnection. The Commission should accordingly consider adoption of a transmission tariff rider to fund participation by state regulatory agencies in regional transmission planning processes. Such a rider could also be used to fund the centralized costs of regional transmission planning efforts (*e.g.*, modeling cost, meeting costs, etc.) in order to assure equitable allocation of the costs of such planning to all users of the grid.

2) Open Season – An open season approach to enable any interested party to participate in a potential transmission project is not necessary in the Western Interconnection, because the objective behind this topic (namely, to allow all customers to participate in new projects on a non-discriminatory basis) is already being met through the typical project development process in the West.

3) Mandatory Participation – Mandatory participation in regional transmission planning processes should not be required in those regions, such as the Western Interconnection, which demonstrate that they have active and functioning regional planning processes. Rather, the Commission should use its bully pulpit to encourage and

support such participation. The Commission could even provide targeted incentives for participation in regional transmission planning processes. However, it should only impose a mandatory participation requirement, if any, after a reasonable period of time has elapsed, the other entities that are actively participating in a given regional planning process can demonstrate that the non-participation of a given party is undercutting their effort to conduct effective regional transmission planning.

## **II. Redispatch**

At ¶ 304 of the NOPR, FERC states its preliminary view that:

“...current practices do not adequately reflect the manner in which transmission service is planned for bundled retail native load and may no longer be just, reasonable and not unduly discriminatory. Transmission customers, especially those customers seeking service to or from new generation resources, must be given greater flexibility of service to meet their needs comparable with the flexibility provided on behalf of bundled native retail load.”

FERC also states at ¶ 303 of the NOPR that:

“without long-term firm service, it is difficult for alternative suppliers to procure the financing they need for project development.”

The NOPR presents “two basic options for addressing this problem:”(1) generation redispatch to accommodate long-term firm point-to-point service in lieu of costly transmission upgrades, or (2) provision of one or more kinds of less-than-fully firm (but better than non-firm) transmission service, particularly “conditional firm” service. The NOPR also describes various concerns and challenges for implementing such new, flexible forms of transmission service, including the need to preserve system reliability



and the rights of existing firm customers, as well as the added complexities in planning and system operations that will be associated with the implementation of these new, flexible forms of transmission service.

The CPUC generally agrees that there is need for additional means to accommodate requests for new transmission service, other than the building out the transmission system to fully accommodate the incremental needs of every party seeking new firm service. In this regard, the CPUC would also point out that such alternatives can be very useful as temporary measures while major transmission upgrades are being completed, and may especially be valuable for new generators lacking the financial resources to finance major transmission upgrades.

The CPUC also agrees with FERC that there are significant concerns relating to system reliability, the rights of existing customers and administrative complexity that must be addressed if such new, flexible forms of transmission service are to be implemented. We would also call attention to the fact that the structure and design of markets, transmission planning processes and grid operations (including congestion management protocols) differ substantially across and even within different regions. These regional differences can severely limit the effectiveness or feasibility of implementing the new kinds of transmission service being contemplated in certain regions of the country, especially if the requirements associated with these new kinds of service are overly narrow and prescriptive.

Thus, the CPUC generally supports what FERC is attempting to achieve in giving

new transmission customers more flexible alternatives for achieving predictable, if potentially less than fully firm transmission access. However, we believe that it is essential to avoid overly prescriptive requirements regarding the kinds of service must be offered. Prescriptive requirements would hinder and constrain efforts to balance new customers' needs for access guarantees at acceptable cost. At the same time, as it develops OATT provisions providing for such flexible, new alternatives, FERC needs to be careful to protect system reliability and existing customers' rights while at the same time keeping manageable the administrative burdens and complexities that these flexible, new alternatives will impose on grid operators.

As FERC is aware, the California Independent System Operator ("CAISO") provides a somewhat different system of transmission service than the system provided by the pro forma OATT or that is offered in the major organized markets in the East. Furthermore, the CAISO's approach differs from what is provided by non-independent transmission providers across the West, across whose systems substantial power exports to California often flow. A major rationale for the CAISO's approach to transmission service, based on day-ahead bid-based access to transmission, is to provide maximum, market-based scheduling flexibility.<sup>7</sup> Thus, the kinds of new, flexible transmission services discussed in the NOPR have significantly different implications for the CAISO-managed system than they will for non-independent transmission system owners

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<sup>7</sup> For example, there is no distinction of point-to-point versus network transmission service, such that transmission customers simply have transmission service, *i.e.*, access to the grid.

operating under the *pro forma* OATT or for the ISOs and RTOs operating in the Eastern Interconnection systems.

In this regard, FERC is well aware the CAISO has proposed major tariff revisions to implement a Market Redesign and Technology Update (“MRTU”).<sup>8</sup> Once implemented, MRTU will include a new system of transmission rights, which ultimately will also have to accommodate itself to FERC’s recent July 20 Order on long term firm transmission rights in Docket No. RM06-8-000. The MRTU process would be complicated, and potentially even hamstrung, if prematurely overlain with additional requirements for new forms of redispatch-based or less-than-firm transmission service that are overly narrow or prescriptive.

Furthermore, California stakeholders are currently exploring methods to provide “early” or “temporary” interconnection to the grid of planned wind power projects, which will be ready to operate well in advance of the planned transmission upgrades necessary to fully accommodate the energy these projects would deliver. Such flexible, faster interconnection alternatives would benefit not only California’s renewable power and energy diversity objectives, but will also contribute to the financial viability of these wind projects that are currently under development. However, these changes to transmission interconnection and access practices that the California stakeholders are currently exploring will have to be integrated into the CAISO’s overall planning and operating

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<sup>8</sup> See, FERC Docket No. ER06-615-000.

procedures in a reliable, efficient and nondiscriminatory manner. The important and carefully balanced efforts that are underway in this regard could be hindered by a FERC-imposed requirement to implement new kinds of redispatch-based or less-than-firm transmission services in a prescriptive or hasty manner.

The CPUC is not suggesting that FERC defer all action regarding the transmission access alternatives discussed in the NOPR, or that extensive further study is needed before any action can be taken. However, the CPUC is suggesting that any requirements for flexible transmission service alternatives that FERC establishes at the present time must be just that -- flexible. They should expedite rather than constrain efforts to address specific needs and circumstances in California and elsewhere. Besides being flexible, any such requirements should be enforced with the emphasis on results rather than mechanisms.

Because the California stakeholders are currently working actively on the issues raised in the NOPR regarding redispatch-based and less-than-firm transmission services, the CPUC will defer making any specific recommendations as to how FERC should implement the proposals discussed in the NOPR until the Reply Comments phase of this proceeding.<sup>9</sup> By that time, we hope to have developed some consensus with other key California stakeholders as to a specific approach to recommend to FERC that will best reflect the specific needs both of the CAISO-controlled system in California and the

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<sup>9</sup> By Notice dated June 19, 2006, FERC extended the deadline for submission of Reply Comments in this proceeding until September 20, 2006.

Western Interconnection more generally.

### III. Regulation of “Unregulated” Utilities

A considerable portion of the electric service provided in the Western States is provided by municipal and other governmental entities that are not subject to FERC jurisdiction, and that are consequently under no legal obligation to operate under an OATT.<sup>10</sup>

The CPUC is concerned that the NOPR, at ¶¶ 102 -111, declines to propose a generic rule to implement the new FPA section 211A concerning the provision of open access transmission service by unregulated transmitting utilities.<sup>11</sup> Rather, at ¶ 111 of the NOPR, the Commission states that it intends to apply the provisions of section 211A on a case-by-case basis, such as when a public utility seeks service from an unregulated transmitting utility that has not requested service under the public utility’s OATT and the reciprocity obligation therefore does not apply.

FPA section 211A(b) provides that FERC may require, by rule or order, that

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<sup>10</sup> For example, in the region’s largest state measured by population, California, approximately 20% of electric power is provided by governmental entities that do not participate in the system run by the CAISO. Such entities include one very large one, the Los Angeles Department of Water and Power (“LADWP”), and several other significantly large ones, the Sacramento Municipal Utility District (“SMUD”) and the Western Area Power Administration (“WAPA”) – that either do not participate in the CAISO at all (LADWP), or who once did belong to it but have subsequently withdrawn and chosen to form their own control area (SMUD and WAPA). There are similarly large percentages of a state’s electric power provided by unregulated entities in Arizona, Oregon and Washington.

<sup>11</sup> In its Notice of Inquiry that was filed on September 16, 2005, FERC expressly invited comments on the implementation of Section 1231 of the EPAct, which established Section 211A of the Federal Power Act.

unregulated transmitting utilities may be required to provide transmission service:

- (1) at rates that are comparable to those that the unregulated transmitting utility charges itself; and
- (2) on terms and conditions (not relating to rates) that are comparable to those under which the unregulated transmitting utility provides to transmission services to itself and that are not unduly discriminatory or preferential.

In addition, section 211A(f) provides that

"The rate changing procedures applicable to public utilities under subsections (c) and (d) of section 205 [of the FPA] are applicable to unregulated transmitting utilities for purposes of this section [211A]."

These requirements give the Commission the authority to require previously non-jurisdictional entities to file tariffs with the Commission that would be subject to the due process and the "just and reasonable" requirements of the FPA. In light of this language, the Commission should respect the intent of Congress by actively exploring a set of mandatory actions that it may impose on non-jurisdictional entities. If the Commission is reluctant to address the directives of section 211A in connection with the complex and multi-faceted rulemaking encompassed by the NOPR in this proceeding, the Commission should initiate a new rulemaking to consider adoption of a set of mandatory rules addressing the rates and terms and conditions of service under a pro forma OATT and under entity-specific OATTs that would be applicable to hitherto unregulated utilities.

There are a number of sound policy reasons for such an action that the Commission has overlooked in making the determination to address the mandate of section 211A "on a case-by-case basis."

First, in those parts of the country where there are already RTOs and ISOs, there are major problems resulting from the non-participation in such entities by non-jurisdictional utilities. Since the Commission's clearly enunciated policy is to encourage unified grid operations managed by RTOs and ISOs, the Commission should take advantage of the opportunity provided by the enactment of section 211A to prevent the balkanization of the grid that can result if non-jurisdictional transmission owners refuse to participate in independent regional entities whose service area surrounds, encompasses or overlaps that of an established RTO or ISO.

Second, section 211A has given the Commission explicit authority to require that previously non-jurisdictional transmission owners provide transmission service on a non-preferential and non-discriminatory basis. To the extent that such entities have not been providing non-preferential and non-discriminatory transmission service, this NOPR provides the Commission with a timely opportunity to remedy such problems in a comprehensive and decisive fashion, and, by so doing, to dramatically enhance the openness of the nation's transmission grid, especially in regions, such as the West, where there is a large number of non jurisdictional transmission owners.

Finally, the implementation of section 211A will provide the Commission with the opportunity to address more squarely than it has in the past the generic seams issues created by the existence of control areas operated by previously unregulated transmission owners and the ability of such entities to "free ride" on the systems and open access requirements of the jurisdictional entities. The imposition of OATT requirements on such

entities could prove to be a strong antidote to the elimination of current seams and the potential creation of new ones, and could ideally eliminate the “free rider” problem altogether.

For all the foregoing reasons, CPUC urges the Commission to reconsider its policy determination not to seek to implement FPA section 211A on a generic basis in connection with this NOPR.

### CONCLUSION

For the foregoing reasons, as it moves forward to reform the Order No. 888 *pro forma* OATT, the Commission should take into account the concerns of the CPUC, and, specifically, (1) should not adopt transmission planning principles that are at odds with the planning protocols already in effect in California and the West; (2) should not adopt any requirements for flexible transmission service alternatives that are not themselves flexible; and (3) should reconsider its policy determination not to seek to implement FPA section 211A on a generic basis.

August 3, 2006

Respectfully submitted,

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