

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

City of Vernon, California)
) Docket Nos. EL00-105-____
) ER00-2019-____
) (on Remand)
)

**MOTION OF
THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR
FOR ORDER ON REMAND AUTHORIZING
ADJUSTMENT OF RATES AND REFUNDS AND
CONFIRMING AUTHORITY TO RECOVER AMOUNTS REFUNDED**

Pursuant to Rule 212 of the Commission’s Rules of Practice and Procedure,
18 C.F.R § 385.212, the California Independent System Operator Corporation
 (“CAISO”) hereby moves the Commission to issue an Order on Remand that –

- (1) authorizes the CAISO to use a Transmission Revenue Requirement (“TRR”) of \$8,479,247 for the City of Vernon, California, (“Vernon”) in calculating the CAISO’s Access Charge, effective January 1, 2001;
- (2) confirms the CAISO’s obligation to make refunds of Access Charges that have been over-collected since January 1, 2001; and
- (3) confirms that the CAISO Tariff authorizes the CAISO to invoice Vernon for the amounts refunded.

I. SUMMARY

These dockets are before Commission on remand from the U.S. Court of Appeals for the D.C. Circuit. The CAISO is requesting that the Commission, on remand, confirm the CAISO’s authority and obligation to adjust its transmission

Access Charge to reflect the just and reasonable rate as determined by the Commission; to make necessary refunds; and to recover the amount of the refunds from Vernon.

In *Opinion No. 479*,¹ the Commission determined that Vernon's filed TRR was unjust and unreasonable, and therefore would render the CAISO's transmission Access Charge unjust and unreasonable. In *Opinion No. 479-A*,² the Commission directed Vernon to provide refunds of amounts collected in excess of the just and reasonable TRR. In *Transmission Agency of Northern California v. FERC*, 495 F.3d 663 (D.C. Cir. 2007) ("*TANC*"), the Court of Appeals affirmed the Commission's authority to review Vernon's TRR under the standards that the Commission had used in *Opinion No. 479*, but concluded that the Commission lacked the authority under the Federal Power Act ("FPA") to order Vernon to make refunds, as it had done in *Opinion No. 479-A*.

The Commission's Order in *Opinion No. 479*, which is unaffected by *TANC*, establishes that the CAISO's transmission Access Charge is unjust and unreasonable to the extent it includes Vernon's TRR in excess of the amount that the Commission decided was just and reasonable. The CAISO's Tariff requires that the CAISO thus adjust its transmission Revenue Requirement to reflect the TRR that the Commission approved for Vernon.

¹ *City of Vernon, Cal.*, 111 FERC ¶ 61,092 (2005).

² *City of Vernon, Cal.*, 112 FERC ¶ 61,207 (2005).

Opinion No. 479, however, did not specify a TRR for Vernon, but rather specified certain adjustments that needed to be made to Vernon's filed TRR. Vernon has not made a compliance filing including those adjustments or otherwise informed the CAISO of the impact of those adjustments on its TRR. Based on communications with Vernon's counsel, the CAISO believes that Vernon does not plan to do so. The CAISO, however, can itself calculate the adjustments using publicly available data. The CAISO has calculated Vernon's annual TRR, as determined by Commission, to be \$8,479,247. The CAISO requests that the Commission authorize use of this TRR to revise the transmission Access Charge and direct it to make refunds consistent with this revision.

In *Opinion No. 479-A*, the Commission authoritatively interpreted Section 16.2 of the Transmission Control Agreement as requiring Vernon to refund to the CAISO its over-collection of its TRR. *TANC* did not disturb this conclusion of the Commission in *Opinion No. 479-A*. The CAISO believes that the CAISO Tariff authorizes the CAISO to invoice Vernon for the refund required by Section 16.2. The CAISO requests that the Commission, on remand, confirm the CAISO's authority to do so. If Vernon thereafter failed to pay, the CAISO would offset Vernon's debt against amounts owed to Vernon pursuant to the CAISO's tariff authority. Although under *TANC* and other precedent, the CAISO or Market Participants could bring a legal action to recover the debt owed by Vernon under Section 16.2, the CAISO does not believe such action is advisable or that the Commission should confine Market Participants to that remedy. Legal action

would unnecessarily consume significant time and legal resources, and could pose additional obstacles to Market Participants' full recovery of amounts paid in excess of the just and reasonable rate set by the Commission.

II. BACKGROUND

A. Tariff and Contractual Revisions to Accommodate Vernon's Participating Transmission Owner Status.

In August 2000, Vernon applied to become a Participating Transmission Owner in the CAISO. The CAISO approved Vernon's application, and the CAISO, the Original Participating Transmission Owners ("TOs"), and Vernon negotiated amendments to the Transmission Control Agreement to reflect the addition of a Participating TO whose rates for transmission service were not subject to FERC jurisdiction under Section 205 of the Federal Power Act ("FPA").

The need for the amendments arose because each Participating TO's TRR (as a component of the Access Charge) governs *both* the amount that the CAISO can charge and the amount that the Participating TO can recover. For the former purpose, the CAISO uses the TRR authorized by the Commission in setting the level of the Access Charge. Tariff §§ 26.1, 26.2, and Appendix A, Definition of "TRR". For the latter purpose, the level of authorized TRRs establishes and limits the CAISO's obligation to pay a share of the revenues it receives from its Access Charges to the Participating TOs. Tariff App. F, Sch. 3, § 10. This limitation is inherent in the structure of the CAISO and the TAC because the CAISO, as a state-chartered non-profit corporation without investor assets, must

always be revenue-neutral. The ISO Clearing account must always clear.³ If the CAISO were required to pay out to a Participating TO revenues based on a TRR greater than the TRR it is authorized to collect with respect to that Participating TO's transmission facilities, there would not be sufficient funds in the ISO Clearing Account to pay all ISO Creditors. The difference would have to be recovered somewhere else in the CAISO's rates, or else the CAISO would have to reduce payments to Participating TOs such that they would receive less than their authorized TRRs. CAISO Tariff App. F, Sch. 3, 10.1(c).

The equivalence between the TRRs that the CAISO is authorized to collect and the TRRs upon which its payments to Participating TOs are based is ensured by Section 16.2 of the Transmission Control Agreement. This section, which was added when Vernon joined the CAISO to accommodate non-jurisdictional TOs, requires:

Each Participating TO, whether or not it is subject to the rate jurisdiction of the FERC under Section 205 and Section 206 of the Federal Power Act, shall make all refunds, adjustments to its Transmission Revenue Requirement, and adjustments to its TO Tariff and do all other things required of a Participating TO to implement any FERC order related to the CAISO Tariff, including any FERC order that requires the CAISO to make payment adjustments or pay refunds to, or receive prior period overpayments from, any Participating TO. All such refunds and adjustments shall be made, and all other actions taken, in

³ In the event that an ISO Debtor defaults, the CAISO must reduce all payments to all ISO Creditors proportionally and record the reductions as amount due from the defaulting ISO Debtor to each ISO Creditor. See CAISO Tariff 11.16.1.

accordance with the CAISO Tariff, unless the applicable FERC order requires otherwise.

Section 16.2 ensures that all Participating TOs conform their TRRs to the levels found proper by the Commission and make refunds of excess revenues, regardless of whether the Commission has jurisdiction over the Participating TOs. Vernon signed the amended Transmission Control Agreement and became a Participating TO effective January 1, 2001.

B. Initial Proceedings on Vernon's TRR.

Pursuant to the requirements of the CAISO Tariff, Vernon filed a TRR. The Commission reviewed and approved Vernon's first TRR with certain revisions and disallowances.⁴ Vernon made compliance filings in accordance with the Commission's directive, and the Commission ultimately accepted a revised TRR.⁵

Two Original Participating TOs sought rehearing of the order that approved Vernon's TRR. They argued that the Commission's review had been so cursory that it could not assure that the resulting jurisdictional CAISO rate, the transmission Access Charge, was lawful. The Commission denied all rehearing requests⁶ and the two Participating TOs then filed a petition for review in Court of Appeals for the D.C. Circuit.

⁴ *City of Vernon, Cal.*, 93 FERC ¶ 61,103 (2000).

⁵ *City of Vernon, Cal.*, 96 FERC ¶ 61,312 (2001).

⁶ *Cal. Indep. Sys. Operator Corp.*, 94 FERC ¶ 61,148 (2001).

In *Pacific Gas & Electric Co. v. FERC*, 306 F.3d 1112, 1117-19 (D.C. Cir. 2002), the court concluded that, because the Access Charge is derived from a pass-through formula rate, the Commission must ensure that Vernon's TRR does not render CAISO rates unjust or unreasonable when added to the Access Charge. The court concluded that the Commission had failed clearly to articulate and apply a standard that assures that the inclusion of Vernon's costs in the Access Charge is just and reasonable. *Id.* at 1117, 1119-20. It therefore remanded the matter. *Id.* at 1121.

C. Proceedings on First Remand.

Following remand, the Commission decided that on the existing record and following the guidance in *Pacific Gas & Electric Co.*, it could not find that Vernon's TRR would not render the CAISO rates unjust and unreasonable without a hearing.⁷ The Initial Decision after the hearing required Vernon to file a revised TRR conforming to certain modifications and disallowances, discussed below.⁸ In *Opinion No. 479*, the Commission affirmed the Initial Decision in relevant part.

Several parties sought rehearing of *Opinion 479*. In *Opinion No. 479-A*, the Commission affirmed the prior order and additionally held that, under Section 16.2 of the Agreement, Vernon had to refund the amounts of its TRR that it had received in excess of the lawful level. Vernon sought rehearing of *Opinion 479-A*,

⁷ See *City of Vernon, Cal.*, 101 FERC ¶ 61,353 (2002); *City of Azusa, Cal., et al.*, 106 FERC ¶ 61,143 (2004).

⁸ *City of Vernon, Cal.*, 109 FERC ¶ 63,057 at P 128 (2004).

claiming the Commission lacked jurisdiction to order Vernon to pay refunds. The Commission again denied rehearing⁹ and Vernon filed a petition for review.

In *TANC*, the U.S. Court of Appeals for the D.C. Circuit rejected arguments that Vernon's non-jurisdictional status was relevant to the standard of review, finding that the decision in *Pacific Gas & Electric Co.* had decided that issue. *TANC* at 671. It then concluded that the Commission's decision to review Vernon's TRR under the just and reasonable standard was a reasoned, fully supported decision. *Id.* at 672. It rejected arguments that *Pacific Gas & Electric Co.* required the Commission to review the CAISO's rate directly. *Id.* It also rejected arguments that the Commission had reversed its own precedent, affirming the Commission's conclusion that the reversal was justified by *Pacific Gas & Electric Co.* *Id.*

Nonetheless, the court ruled that the Commission lacked jurisdiction to order Vernon to pay refunds. The court found the exemption of municipalities in Section 201(f) of the Federal Power Act clear and unambiguous. *Id.* at 674. It rejected the Commission's argument that it was simply ensuring that the CAISO's rates were just and reasonable under Section 205 as not providing a basis for avoiding the clear language of Section 201(f). *Id.*

The Court stated that the Commission's reliance on the Transmission Control Agreement as providing the authority to direct refunds was misplaced. *Id.* at 675. It then went on to say:

⁹ *City of Vernon, Cal.*, 115 FERC ¶ 61,297 (2006) ("*Opinion 479-B*").

In Opinion No. 479-A, FERC reasonably read the Agreement as obligating Vernon to “make all refunds . . . required of a [PTO] to implement any FERC order related to the [CAISO] Tariff.” . . . FERC concluded that “[i]t is difficult to read [Section 16.2 of the Agreement] as anything but an explicit agreement by a non-jurisdictional [PTO] to make refunds arising from any [FERC] order to the [CAISO], from which they would otherwise be immune by statute.” But even if FERC’s interpretation of the Agreement were correct, FERC has cited no persuasive authority to support its claim that the Agreement therefore provides FERC with authority to order Vernon to issue refunds to CAISO where Congress has not granted such authority.

Id. (Citations omitted.) The Court discussed the Commission’s reliance on *Alliant Energy v. Nebraska Public Power District*, 347 F.3d 1046 (8th Cir. 2003), where the Eighth Circuit concluded that a nonjurisdictional entity was bound by a Commission-ordered modification of a jurisdictional contract. The court distinguished the case only because the contractual obligation was enforced by a court, not by the Commission; it did not call into question the obligation that had been imposed by the Commission’s order. *Id.* 675-76.

The court remanded the proceeding to FERC for further actions consistent with its decision. The mandate issued on September 17, 2007.

III. ARGUMENT

A. The Commission Should Authorize the CAISO to Revise Vernon’s TRR, Effective January 1, 2001, to Be \$8,479,247.

In *Opinion No. 479*, the Commission determined that the CAISO’s Tariff was unjust and unreasonable to the extent that it included Vernon’s filed TRR and

directed modifications to Vernon's TRR that were necessary in order to make the CAISO's Tariff just and reasonable. Specifically, the Commission rejected the inclusion in the TRR of AFUDC for the California-Oregon Transmission Project COTP and updated Vernon's return on equity to 10.72%.¹⁰ In addition, the parties stipulated to a revised depreciation rate of 2.857% through 12/31/2001 and 3.14% thereafter.¹¹

Vernon has not, however, made a compliance filing and the CAISO does not expect that it will do so. In addition, in light of the reasoning of *TANC*, there are questions whether the Commission could order Vernon to do so. There is no need to address these questions, however, because the problem can be resolved through means that are well within the Commission's authority. To this end, the CAISO requests the Commission authorize the CAISO to itself adjust the Vernon TRR included in its Access Charge in conformity with the rulings in *Opinion No. 479* and to make refunds consistent with that adjustment.

There should be no question the CAISO is authorized under the FPA and its Tariff to adjust Vernon's TRR. Indeed, the CAISO does not believe specific authorization from the Commission is necessary. The Tariff allows inclusion in the Access Charge only of *authorized* TRRs.¹² Accordingly, when the

¹⁰ See *Opinion No. 479* at PP 110-11, *Opinion No. 479-A* at P 59-60.

¹¹ *City of Vernon, Cal.*, 109 FERC ¶ 63,057 at P 90 (2004).

¹² CAISO Tariff § 26.1. "The Access Charge shall comprise two components The first component shall be the annual authorized revenue requirement associated with the transmission facilities and Entitlements turned over to the Operational Control of the [CAISO] by a participating TO approved by FERC."

Commission reviews the TRR of a non-jurisdictional Participating TO such as Vernon, it is not reviewing the Participating TO's "rate"; it is reviewing a cost that affects the level of the CAISO's Access Charge.¹³ When it finds that the TRR is unjust or unreasonable, it has concluded that the CAISO's Access Charge – not the formula, but one of the inputs into the formula – is unjust and unreasonable because one of the components is too high.¹⁴ The Commission, by finding Vernon's TRR unjust or unreasonable in *Opinion No. 479*, concluded that the CAISO's Access Charge – again, not the formula, but one of the inputs into the formula – is unjust and unreasonable because cost components are too high. Having so concluded, it may direct a new rate under Section 206 of the FPA, *see Public Serv. Comm'n of NY v. FERC*, 866 F.2d 487, 491 (D.C. Cir. 1989), and the CAISO must make refunds to the transmission customers who overpaid.

Despite the Commission's clear authority to adjust Vernon's TRR, the CAISO is requesting authorization because further calculations are required before the CAISO can make appropriate refunds. *Opinion No. 479* did not state a specific TRR for Vernon, but rather directed Vernon to make a compliance filing. Without a compliance filing by Vernon, the CAISO must calculate the TRR itself, and requires Commission confirmation that the calculated amount that the Commission is authorizing be included in the CAISO Tariff.

¹³ *Opinion No. 479* at P 13.

¹⁴ *Id.* at P 37.

As described in the attached Declaration of Sanda Ghiurau, the CAISO has calculated an annual TRR of \$8,479,247. The CAISO began with the workpapers accompanying Vernon's compliance filing of a \$10,216,178 annual TRR, which the Commission had accepted on March 28, 2001 (prior to *Pacific Gas & Electric Co.*) as consistent with the methodology previously approved by the Commission.¹⁵ *Opinion No. 479* revised that TRR by denying recovery of AFUDC¹⁶ and reducing Vernon's ROE (effective January 1, 2001) based on an update to underlying data that determined the ROE that Vernon filed in 2000.¹⁷ These changes result in a reduction to Gross Plant for the removal of AFUDC and a corresponding decrease in Accumulated Depreciation, plus a reduction in Return on Rate Base due to the decrease in ROE and application of the corresponding lower return to a lower rate base. The CAISO also reduced Vernon's Depreciation Expense to reflect a stipulation by the parties, accepted by the Commission, to a 2.857% depreciation rate through December 31, 2000, and a 3.14% depreciation rate beginning January 1, 2001,¹⁸ as opposed to a 3.2% depreciation rate used in Vernon's Compliance TRR. The adopted depreciation rate is applied to a lower rate base. In addition, the parties stipulated to a higher A&G Expense than was adopted in the Compliance TRR, which stipulation was approved by the

¹⁵ *City of Vernon, Cal.*, 94 FERC ¶ 61,344, *order on reh'g*, 95 FERC ¶ 61,274 (2001).

¹⁶ *Opinion No. 479* at P 12.

¹⁷ *Id.*, at P 110-111.

¹⁸ *City of Vernon, Cal.*, 109 FERC ¶ 63,057 at P 90.

Commission. Lastly, the CAISO corrected certain errors in Vernon's depreciation calculation.

These adjustments result in a Vernon TRR of \$8,479,247. The CAISO requests that the Commission authorize it to use that amount in the determination of the CAISO's Access Charge and in calculating refunds effective January 1, 2001.

B. The Commission Should Confirm that the CAISO's Tariff Requires It to Invoice Vernon for the Amounts Refunded.

Under the Commission's interpretation of Section 16.2 of the Transmission Control Agreement, Vernon has a legal obligation to refund the amounts it has been overpaid. That interpretation is within the Commission's authority. As a contract which governs the control of transmission facilities of public utilities, the Transmission Control Agreement is jurisdictional under the FPA. "Congress has explicitly delegated to FERC broad power over ratemaking, including the power to analyze relevant contracts." *S. Co. Servs., Inc. v. FERC*, 353 F.3d 29, 34 (D.C. Cir. 2003) (quoting *Baltimore Gas & Elec. Co. v. FERC*, 26 F.3d 1129, 1135 (D.C. Cir. 1994)) (additional citations omitted).¹⁹ The Commission's broad authority over contracts necessarily includes the determination of all parties' rights

¹⁹ That non-jurisdictional entities may be parties to the contract does not alter the Commission's authority over the contract. In *Transmission Agency of Northern California v. Sierra Pacific Power Co.*, 295 F.3d 918, 931-32 (9th Cir. 2002), the Ninth Circuit concluded the FPA pre-empted municipal entities' state law contract claims regarding transmission capacity allocation because the contracts were on file with FERC.

and obligations under those contracts.²⁰ The contract determinations are binding on all parties, who must comply with the Commission directives regardless of their jurisdictional status. In *Alliant*, the court was enforcing a Commission modification of the jurisdictional contract as binding on the nonjurisdictional party. In this case, the Commission has determined that under the jurisdictional Transmission Control Agreement, Vernon owes refunds for the difference between its filed and approved TRR. The Commission's jurisdiction to authoritatively interpret Vernon's obligations under the contract cannot be distinguished from the Commission's authority, at issue in *Alliant*, to authoritatively modify a contract to which a nonjurisdictional entity is a party.

In this instance, the CAISO Tariff provides a means for the CAISO to implement the Commission's determination of TRR and interpretation of Section 16.2. The CAISO can recover excess amounts paid to Vernon as follows.

Under the CAISO Tariff, as the result of the Commission's revision of a TRR, Vernon is obligated to pay additional amounts to the CAISO because of the manner in which the CAISO calculates disbursements to Participating TOs.

Disbursements are based on High Voltage Transmission Access charge receipts and the Participating TO's High Voltage TRR and usage.²¹ A Participating TO may owe or be owed amounts as a result of this calculation. The calculation of

²⁰ *E.g., Nat'l Fuel Gas Supply Corp. v. FERC*, 811 F.2d 1563, 1572-74 (D.C. Cir. 1987) (Commission denial of retroactive rate adjustment affirmed, because settlement agreement properly interpreted by FERC prohibited the adjustment).

²¹ *See* Appendix F, Schedule 3, §§ 1.2(b), 10.1.

disbursements changes if a TRR is revised because the Access Charge changes. Appendix F, Schedule 3, Section 8.1 of the CAISO Tariff provides in relevant part:

High Voltage Access Charges and High Voltage Wheeling Access Charges shall be adjusted . . . on the date [the Commission] makes effective a change to the High Voltage Transmission Revenue Requirements of any Participating TO. Using the High Voltage Transmission Revenue Requirement accepted or authorized by FERC . . . for each Participating TO, the [CAISO] will recalculate on a monthly basis the High Voltage Access Charge . . . during such period.

Thus, when the Commission adjusts a TRR retroactively, the CAISO recalculates the High Voltage Access charge for the retroactive period, which in turn will result on a recalculation of disbursement. The Participating TO may owe or be owed additional amounts. A Participating TO whose TRR the Commission has reduced, such as Vernon, will owe additional amounts.

Under Section 11.9 of the CAISO Tariff, the CAISO invoices Participating TOs for amounts to be paid by or to the Participating TO. The tariff directs that post-closing adjustments, such as when a TRR is retroactively modified, may be invoiced separately. Consistent with this section, it has been the practice of CAISO to invoice TOs who are ordered to pay refunds of their TRR. The CAISO thus believes that it is appropriate for the CAISO to invoice Vernon for the amounts the CAISO determines Vernon owes as a result of the Commission's modification of Vernon's TRR. The CAISO asks the Commission to confirm its authority to invoice Vernon for these amounts.

If Vernon refuses to pay the amounts due, under Section 11.12.4 of the CAISO Tariff, the CAISO will then set off any refund amounts that Vernon refuses to pay against amounts due Vernon for recovery of its TRR.²² Section 11.12.4 provides:

The [CAISO] is authorized to recoup, set off and apply any amount to which any defaulting [CAISO Debtor] is or will be entitled, in or towards the satisfaction of any of that [CAISO] Debtor's^[23] debts arising under the [CAISO] Settlement and billing process.

This process is self-implementing.²⁴

Vernon may argue that, because the Commission initially approved its TRR as modified and accepted its compliance filing, any retroactive adjustment of its TRR or the Access Charge constitutes retroactive rate making. Any such argument would ignore the Court's conclusion in *Pacific Gas & Electric Co.* that the Commission had not properly approved Vernon's TRR. The Commission can correct its errors without engaging in retroactive ratemaking. Specifically, the

²² The other Participating TOs also have the ability to pursue the enforcement of the Agreement through various means.

²³ A person who owes a payment to the CAISO, such as Vernon, is a "CAISO Debtor." CAISO Tariff, Appendix A.

²⁴ The CAISO Tariff also alternatively provides that the Commission can direct the manner in which the CAISO recovers the amounts due:

[A]ny refund associated with a Participating TO's Transmission Revenue Requirement that has been accepted by FERC, subject to refund, shall be provided as ordered by FERC.

Appendix F, Schedule 3, Section 8.2. Vernon, of course, may argue that this provision is inapplicable in light of *TANC*. Regardless of whether this is accurate, however, nothing in *TANC* affects the CAISO authority to collect amounts due pursuant to 11.12.4.

Commission may make the new rate effective as of the date of the overturned order by applying the “general principle of agency authority to implement judicial reversals.” *Natural Gas Clearinghouse v. FERC*, 965 F.2d 1066, 1073 (D.C. Cir. 1992) (*per curiam*); *see also United Gas Improvement Co. v. Callery Properties, Inc.*, 382 U.S. 223, 229 (1965) (an administrative agency may “undo what [was] wrongfully done by virtue of [a prior] order”).

Therefore, if the Commission authorizes the CAISO to use a TRR of \$8,479,247 for determining its Access Charge and calculating refunds, the CAISO intends to invoice Vernon for the amounts due and, if Vernon fails to pay, recover the amounts due from Vernon through set-offs of amounts due to Vernon. The CAISO requests that the Commission, in an Order on Remand, confirm its authority to do so.

IV. CONCLUSION

For the reasons stated above, the CAISO respectfully request that the Commission (1) authorize the CAISO to use a Transmission Revenue Requirement (“TRR”) of \$8,479,247 for the City of Vernon, California, (“Vernon”) in calculating the CAISO’s Access Charge, effective January 1, 2001; (2) confirm the CAISO’s obligation to make refunds of Access Charges over-collected since January 1, 2001; and (3) confirm the CAISO’s authority to invoice Vernon for the amounts refunded.

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November 13, 2007

1 Exhibit No. VER-8, the Initial Decision issued in this proceeding¹ and Opinion No.
2 479.²

3 3. Based on my examination of these documents, I calculated that the
4 City of Vernon has an annual TRR of \$8,479,247.

5 4. I began with the workpapers accompanying Vernon's Compliance
6 Filing which calculated an annual TRR of \$10,216,178. For clarity, I will address
7 each line of the chart set forth as Exhibit A to this declaration, comparing and
8 describing the changes that have occurred since Vernon's Compliance Filing.

9 5. Gross Plant: Vernon's Gross Plant Calculation in its Compliance
10 Filing was \$69,499,223. Opinion No. 479 revised the TRR calculation in
11 Vernon's Compliance Filing by denying Vernon recovery of costs for its
12 Allowance for Funds Used During Construction ("AFUDC").³ Therefore, I
13 removed AFUDC from the calculation of Gross Plant. This reduced the TRR by
14 \$12,618,072. The City of Vernon provided the details of its calculations of TRR
15 as Exhibit No. VER-8. Exhibit A at page 2 details the reconciliation of these
16 changes in Gross Plant.

17 Vernon made an error in its calculation of the California Oregon
18 Transmission Project ("COTP") for year 1999 Capital Additions. The COTP
19 entered into service in March 1993 with the fiscal year ending in June 1993.
20 However, Vernon did not depreciate those four months or the Addition.
21 Ultimately, this results in an increase to Gross Plant of \$11,789. Exhibit A at
22 page 3 provides a detailed explanation of this reconciliation.

¹ 109 FERC ¶ 63,057 (2004)("Initial Decision").

² Opinion No. 479, 111 FERC ¶ 61,092 (2005).

³ Opinion No. 479 at P 12.

1 6. Accumulated Depreciation: The calculation for Accumulated
2 Depreciation was reduced due to the reduction in Gross Plant. According to
3 Exhibit No. V-2 to Vernon's Petition for Declaratory Order, Vernon's annual
4 depreciation expense is \$2,223,975. The Initial Decision specifies that the
5 depreciation rate for Vernon's TRR is 2.857% through December 31, 2000.⁴
6 Therefore, the calculation for Accumulated Depreciation was reduced by
7 \$598,881. Exhibit A at 3 details the reconciliation of these changes in
8 Accumulated Depreciation.

9 7. Net Plant: Net Plant is equal to Gross Plant minus Accumulated
10 Depreciation. The Net Plant in Vernon's Compliance Filing was reduced in
11 correspondence with the reductions that occurred in Accumulated Depreciation
12 and Net Plant.

13 8. Cash Working Capital: The calculation for Cash Working Capital
14 remains unchanged from Vernon's Compliance Filing at \$116,727.

15 9. Total Rate Base: Due to the calculations above, the sum of the
16 Total Rate Base was reduced to \$48,520,489.

17 10. Rate of Return: The Commission adopted a return on common
18 equity of 10.72% for Vernon,⁵ a long-term debt rate of 7.43%, and a preferred
19 stock rate of 6.56%.⁶ The approved capital structure consists of 48.40% long-
20 term debt, 5.80% preferred stock and 45.80% common equity.⁷ Therefore,

⁴ Initial Decision at P 91.
⁵ Opinion No. 479 at P 110.
⁶ Initial Decision at P 119.
⁷ Initial Decision at P 113.

1 following these percentages Vernon's Rate of Return is 8.89%. Page 4 of Exhibit
2 A is a spreadsheet detailing these calculations.

3 11. Annual Depreciation Expense: Vernon's Annual Depreciation
4 Expense in its Compliance Filing was \$2,223,975. I decreased this amount to
5 reflect a stipulation by the parties, accepted by the Commission, to a 2.857%
6 depreciation rate through December 31, 2000 and a 3.14% depreciation rate
7 beginning January 1, 2001,⁸ as opposed to the 3.2% depreciation rate used in
8 Vernon's Compliance TRR. This depreciation rate is applied to a lower rate base
9 resulting in a reduction in Annual Depreciation Expense of \$598,881.

10 12. O&M Expense: The calculation for O&M Expense remains
11 unchanged from Vernon's compliance filing at \$445,821.

12 13. Transmission Service Expenses: The calculation for Transmission
13 Service Expenses remains unchanged from Vernon's compliance filing at
14 \$1,431,162.

15 14. A&G Expenses: Vernon filed for \$137,997 in A&G Expenses in its
16 Compliance Filing. However, I believe that Vernon unintentionally omitted a
17 portion of A&G Expense. Vernon's Workpaper AH specifies that the
18 Transmission Allocation of Other Cost in Fiscal Year 1999 was \$40,753.
19 Therefore, I included this amount in A&G Expenses, resulting in an increase of
20 \$40,753.

21 15. Property Tax: Property tax remains unchanged at 134,948.

⁸ Initial Decision at PP 90-91.

1 16. Regulatory Expenses: Regulatory Expenses remains unchanged
2 at 350,000.

3 17. Based on all of these calculations, the City of Vernon has an annual
4 TRR of \$8,479,247.

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6
7 I declare the foregoing to be true under penalty of perjury. Executed this
8 13 day of November, 2007.

9
10
11



Sanda Ghiurau

**Comparison of Currently Effective Vernon Compliance TRR to TRR Derived from
FERC Final Decision in Docket No. EL00-105**

	Vernon Compliance TRR	TRR Change	Final Decision TRR
Gross Plant	\$ 69,499,223	(\$12,618,072)	\$ 56,881,151
Accumulated Depreciation	(10,495,663)	2,018,274	(8,477,389)
Net Plant	59,003,560	(\$10,599,798)	48,403,762
Cash Working Capital	116,727	0	116,727
Total Rate Base	\$ 59,120,287	(\$10,599,798)	\$ 48,520,489
Rate of Return	9.29%		8.89%
Return on Rate Base	5,492,275	(1,178,803)	4,313,471
Annual Depreciation Expense	2,223,975	(598,881)	1,625,094
O&M Expense (owned projects)	445,821	0	445,821
Transmission Service Expenses	1,431,162	0	1,431,162
A&G Expenses	137,997	40,753	178,750
Property Tax	134,948	0	134,948
Regulatory Expenses	350,000	0	350,000
Total TRR	\$ 10,216,178	(\$1,736,931)	\$ 8,479,247

Reconciliation of Gross Plant Change

Description	Amount	Source
COTP Interest on Capital Expenditures	(\$4,819,306)	Vernon Workpaper A, Total Interest, Page 3
COTP Interest on Capital Expenditures	(\$1,519,549)	Vernon Workpaper B2, (36,991,427.01 - 35,471,878.25)
COTP Interest on Capitalized A&G	(\$178,260)	Vernon Workpaper AO1, Total Interest, Page 3
COTP Interest on Capitalized A&G	(\$78,185)	Vernon Workpaper AR, Total Interest, Page 1
MPP Interest on Capital Expenditures	(\$1,263,374)	Vernon Workpaper R, Total Interest, Page 2
MPP Interest on Capital Expenditures	(\$233,075)	Vernon Workpaper S (7,860,856.55 - 7,627,781.70)
MAP Interest on Capital Expenditures	(\$3,624,877)	Vernon Workpaper AC, Total Interest, Page 3
MAP Interest on Capital Expenditures	(\$537,114)	Vernon Workpaper AD (18,115,102.87 - 17,577,989.03)
MAP & MPP Interest on Capitalized A&G	(\$300,397)	Vernon Workpaper AO, Total Interest, Page 3
MAP & MPP Interest on Capitalized A&G	(\$75,724)	Vernon Workpaper AR, Total Interest, Page 3
Removal of AFUDC	(\$12,629,861)	
Add:		
Vernon Error in 1999 COTP Capital Additions	\$11,789	Vernon Workpaper I; 1999 Value of \$55,280 less August 2000 Exhibit V-2, Page 4 of 8, 1999 Value of \$45,491
Total Change	(\$12,618,072)	

Explanation of Vernon Error in 1999 COTP Capital Additions

COTP 1993 Beginning Gross Plant	\$30,652,572	WKPR-A, Total Cash Calls, Page 3
	\$660,528	WKPR-AO1, Total, Page 3
	(\$178,260)	WKPR-AO1, Interest, Page 3
	\$769,916	WKPR-AR, Total, Page 1
	(\$78,185)	WKPR-AR, Interest, Page 1
	\$31,826,571	
MPP 1996 Beginning Gross Plant	\$6,364,407	WKPR-R, Total Cash Calls, Page 2
	\$432,424	WKPR-AO, Total MPP, Page 3
	(\$150,199)	WKPR-AO, 50% of Interest, Page 3
	\$182,311	WKPR-AR, Total MPP, Page 3
	(\$37,862)	WKPR-AR, 50% of Interest, Page 3
	\$14,379,786	

Additions in Fiscal Year	1993	1994	1995	1996	1997	1998	1999
COTP	WKPR-B2	WKPR-D	WFPR-E	WKPR-F	WKPR-G	WKPR-H	WKPR-I
MPP				WKPR-T	WKPR-U	WKPR-V	WKPR-W
MAP					WKPR-AE		

NOTES:

*COTP entered service in March 1993. The fiscal year ended in June 1993 and Vernon did not depreciate those four months of COTP or the Addition.

*Vernon's Accumulated Depreciation was calculated using a depreciation rate of 3.2% and on Gross Plant that included AFUDC. See August 2000 Testimony of Albert Clark, Page 10, and Exhibit V-2, Page 1 of 8.

Reconciliation of Depreciation Expense Change

Revised Gross Plant	\$56,881,151
Adopted Depreciation Rate	2.857%
Annual Depreciation Expense	\$1,625,094
Less Vernon August 2000 Depreciation Expense	\$2,223,975
Depreciation Expense Change	(\$598,881)

Notes:

Adopted Depreciation Rate specified in Stipulation J-1 and Initial Decision at P 90

Vernon August 2000 Depreciation Expense specified in Vernon August 2000 Filing, Exhibit V-2, Page 1 of 8

Reconciliation of Rate of Return Change

		Rate	Capital Structure	Calculation	Rate of Return
				10.72% *	
Common Equity		10.72%	45.80%	45.80%	4.91%
Preferred Stock		6.56%	5.80%	6.56% * 5.80%	0.38%
Long Term Debt		7.43%	48.40%	7.43% * 48.40%	3.60%
Rate of Return			100.00%		8.89%

Notes:

Common Equity of 10.72% adopted in Opinion 479 at P 110

Preferred Stock of 6.56% and Long Term Debt of 7.43% adopted in Initial Decision at P 119

Capital Structure adopted in Initial Decision, P 113

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon all of the parties listed on the official service list for the captioned proceeding, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated at Folsom, California this 13th day of November, 2007.

/s/ Charity Wilson
Charity Wilson