

BACKGROUND INFORMATION FOR THE 2001-2003

GMC REFUND PROCESS

August 5, 2009

As identified in the August 5, 2009, Market Notice, one purpose of the August 12, 2009, Stakeholder conference call is to discuss the process for Grid Management Charge (GMC) refunds and reallocations stemming from the 2001-2003 time period. As the ISO will explain during the call, in order to calculate the refunds, the ISO will need additional information from Scheduling Coordinators. Because of the significant passage of time since the GMC charges for this period were first settled, the ISO believes it helpful to review the history of the litigation that resulted in these delays.

In 2000, the ISO filed a tariff amendment to unbundle the GMC into three “buckets”: the Inter-Zonal Scheduling charge, the Market Operations charge, and the Control Area Services charge. The ISO proposed to allocate the Control Area Services charge according to Control Area Gross Load and exports. The ISO defined Control Area Gross Load as “Control Area Gross Load is all Demand for Energy within the ISO Control Area.”

A number of parties protested the ISO’s proposal to allocate Control Area Services charge according to Control Area Gross Load. FERC set this issue, and others, for hearing on December 29, 2000. After protracted litigation, the Administrative Law Judge issued an Initial Decision on May 10, 2002.¹ The Initial Decision approved the allocation of the Control Area Service charge as proposed.

After briefs on exceptions, FERC approved the GMC in Opinion No. 463 on May 2, 2003.² FERC generally approved the allocation of the Control Area Services charge, but directed a limited exception:

Customers with behind-the-meter generation who primarily rely on that generation to meet their energy needs have made a convincing argument that use of gross load results in this customer class being allocated too great a share of [Control Area Services] costs. To take into account the more limited impact such customers have on the ISO's grid, the Commission finds that they should be allocated [Control Area Services] costs on the basis of their highest monthly demand placed on the ISO's grid, rather than on gross load. In this manner, their more limited dependence on the ISO grid will be reflected in their allocation of the

¹ *Cal. Indep. Sys. Operator Corp.*, 99 FERC ¶ 63,020 (2002).

² *Cal. Indep. Sys. Operator Corp.*, 103 FERC ¶ 61,114 (2003).

[Control Area Services] costs. Customers eligible for such treatment are those with generators with a 50 percent or greater capacity factor.³

Multiple parties filed rehearing requests. FERC granted rehearing in part on January 23, 2004, in Opinion No. 463-A.⁴ Responding to criticism of the exception it had fashioned, FERC concluded that the exception was not supported by the evidence. It nonetheless concluded that an exception remained necessary and proposed to provide an exception for generators that are not modeled by the ISO in its regular performance of transmission planning and operation. FERC ordered a hearing regarding its proposed exception.

Following another protracted hearing process, the Administrative Law Judge issued another Initial Decision on April 15, 2005.⁵ The Initial Decision endorsed FERC's proposed exception for generators that are not modeled by the ISO. As part of the hearing, the ISO had provided as an exhibit a list of generators that are modeled by the ISO. The initial decision concluded that the exhibit properly reflected the universe for allocating the Control Area Services charge.

In Opinion No. 463-B, FERC affirmed the Initial Decision regarding the exception but reversed the Initial Decision regarding the accuracy of the exhibit.⁶ FERC directed the ISO to file a revised list of modeled generators within 30 days, unless any party requested rehearing, in which case the ISO was to file the revised list 30 days after the decision on rehearing.

Several parties sought rehearing. The Commission denied rehearing on September 7, 2006, in Opinion No. 463-C.⁷ The ISO's compliance filing was delayed pending confirmation of certain data. The ISO made its compliance filing with a revised list of modeled generators on October 23, 2006.

Following Opinion No. 463-C, various parties sought review in the Court of Appeals. On May 2, 2008, the Court of Appeals for the D.C. Circuit affirmed FERC's decisions.⁸

FERC approved the ISO's list of modeled generators on October 8, 2008.⁹ Since that time, the ISO's processing of refunds has been delayed because of the exigencies of the implementation of MRTU. The ISO is now prepared to process the refunds according to its schedule for addressing legacy settlement issues. In order to calculate the refunds according to the process approved in Opinion No. 463-B, the ISO now needs data on the amount of load entitled to the

³ *Id.* at P 28.

⁴ *Cal. Indep. Sys. Operator Corp.*, 106 FERC ¶ 61,032 (2004).

⁵ *Cal. Indep. Sys. Operator Corp.*, 111 FERC ¶ 63,008 (2005).

⁶ *Cal. Indep. Sys. Operator Corp.*, 113 FERC ¶ 61,135 (2005).

⁷ *Cal. Indep. Sys. Operator Corp.*, 116 FERC ¶ 61,224 (2006)

⁸ *Western Area Power Admin. v. FERC*, 525 F.3d 40 (D.C. Cir. 2008)

⁹ *Cal. Indep. Sys. Operator Corp.*, 125 FERC ¶ 61,015 (2008).

exception, *i.e.*, that served by existing, but unmodeled, generators. The process for collecting that information is one of the subjects of the Stakeholder conference call.