

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Western Power Trading Forum)	
)	
Complainant,)	
)	
v.)	Docket No. EL00-58-000
)	
California Independent System Operator Corporation)	
)	
Respondent.)	
)	

**ANSWER OF
THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
TO THE COMPLAINT AND REQUEST FOR EXPEDITED RELIEF
FILED BY THE WESTERN POWER TRADING FORUM**

Pursuant to Rule 213 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.213 (2000), and the Notice of Filing issued on March 28, 2000, the California Independent System Operator Corporation (“ISO”)¹ submits this Answer in response to the “Complaint In Opposition to the ‘Informational Filing’” (“Complaint”) filed by the Western Power Trading Forum (“WPTF”) on March 24, 2000. The Complaint essentially duplicates relief that WPTF has already sought in other proceedings. The Commission’s decisions in those proceedings will either grant the relief sought by WPTF here or determine that no such relief is appropriate. Having afforded WPTF the protection it previously requested, the Commission should minimize the use of its valuable and scarce resources and should dismiss WPTF’s duplicative Complaint.

¹ Capitalized terms not otherwise defined herein are defined in the Master Definitions Supplement, ISO Tariff Appendix A, as filed August 15, 1997, and subsequently revised.

Permitting WPTF to pursue the Complaint would further waste scarce resources, forcing the parties and the Commission to adjudicate certain issues prematurely and then to pursue the same issues in a separate proceeding, once the ISO has filed an unbundling study. The Complaint accordingly should be dismissed, consistent with the Commission's three previous orders on the same subject.

COMMUNICATIONS

Communications regarding this matter on behalf of the ISO should be directed to the following individuals, whose names should be entered on the official service list maintained by the Secretary for this docket:

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BACKGROUND

WPTF's Complaint concerns the ISO's Grid Management Charge ("GMC"), which is the monthly charge assessed all Scheduling Coordinators in order to allow the ISO to recover its startup, development, and ongoing operation and maintenance costs. The GMC was originally established pursuant to a settlement filed on April 7, 1998 ("April 7, 1998 Settlement"), which was accepted by the Commission in a letter order.² That settlement instituted a single bundled rate for the GMC that was to be charged to all Scheduling Coordinators on the

² *California Independent System Operator Corp., et al.*, 83 FERC ¶ 61,247 (1998).

basis of the Loads they serve, except those holding “Existing Contracts,” which were assessed the GMC on 50 percent of the Loads served under those contracts.

GMC Settlement Extension

Under the April 7, 1998 Settlement, the ISO agreed to facilitate a study concerning the unbundling of the GMC, and to file to implement a new GMC to be effective on January 1, 1999.³ Because the working group reviewing the unbundling study believed the unbundling process required more time, rather than file for a new GMC, the ISO filed a request to allow the existing GMC formula to remain in effect until June 30, 1999.⁴ As part of that request, the ISO agreed to make a GMC rate filing to become effective July 1, 1999. Only one party, Enron Power Marketing, Inc. (“Enron”), which is one of the primary members of WPTF, opposed the ISO’s request. On December 23, 1998, the Commission accepted the ISO’s request.⁵

Responding to the arguments of Enron, the Commission, however, treated the ISO’s request as one under Section 205 of the Federal Power Act (“FPA”), 16 U.S.C. § 824d (1994). The Commission stated that its acceptance of the ISO’s request to extend the existing GMC was “subject to refund, and subject to the outcome of the proceeding in which the ISO submits a revised GMC to become effective on July 1, 1999.”⁶ Both Enron and the ISO filed requests for clarification or rehearing of the December 23, 1998 Order.

³ *California Independent System Operator Corp., et al.*, 85 FERC ¶ 61,433, 62,631 (1998) (“December 23, 1998 Order”).

⁴ *Id.*

⁵ *Id.* at 62,633.

⁶ *Id.*

Enron's request for clarification or rehearing of the December 23, 1998 Order sought an explicit determination of what it believed was implicit in the Commission's Order, namely that the Commission intended to use its authority pursuant to Section 206 of the FPA, 16 U.S.C. § 824e (1994), to establish an effective date of January 1, 1999 for refunds relating to the GMC charge.⁷ The ISO took the opposite view and sought rehearing to have the Commission eliminate the requirement that the extension be subject to refund or further order, and instead have the Commission approve it as a contested settlement. The ISO also requested in the alternative that the Commission specify that the ISO had authority to collect surcharges from customers to fund any refunds it was required to make.⁸

On April 2, 1999, the Commission granted in part and denied in part Enron's and the ISO's requests for clarification or rehearing of the December 23, 1998 Order.⁹ The Commission confirmed its earlier finding that the ISO's proposed extension of the GMC until June 30, 1999 should be treated as a Section 205 filing, and established, pursuant to Section 206 of the FPA, a refund effective date, which is June 7, 1999.¹⁰ The Commission established Docket No. EL99-47-000 to investigate the ISO's filing, but held that no purpose would

⁷ "Request of Enron Power Marketing, Inc. for Clarification, or in the Alternative, Rehearing," Docket Nos. ER99-473-001, ER99-418-001, filed January 22, 1999.

⁸ "California Independent System Operator Corporation's Request for Rehearing and/or Clarification," Docket No. ER99-473-001, filed January 22, 1999. The Transmission Agency of Northern California and the Metropolitan Water District of Southern California, filed answers; the M-S-R Public Power Agency and the Cities of Santa Clara and Redding, California, jointly filed an answer to the ISO's and Enron's requests for clarification, supporting the ISO's request, except to the extent it sought surcharge authority, and opposing Enron's request.

⁹ *California Independent System Operator Corp., et al.*, 87 FERC ¶ 61,023 (1999).

¹⁰ *Id.* at 61,095.

be served by commencing a hearing at that time. Instead, the Commission determined that the investigation and hearing, if required, would take place in connection with the ISO's filing to establish a GMC to be effective July 1, 1999. The Commission noted that the extension of the existing settlement GMC rate to June 30, 1999, would be subject to the outcome of the proceeding on the ISO's filing, and that if the ISO required a further extension of the April 7, 1998 Settlement, its order would provide an effective period for refunds of up to fifteen (15) months.¹¹ Finally, the Commission denied as premature the ISO's request for authorization to collect a surcharge in the event that the Commission orders refunds.¹²

WPTF's First Complaint

Following the Commission's December 23, 1998 Order and Enron's filing for rehearing, but prior to the Commission's order on April 2, 1999 in Docket No. ER99-473-000, WPTF filed a "Complaint and Request for Expedited Relief" ("April 2, 1999 Complaint") seeking a determination that the existing GMC is "discriminatory, anticompetitive, imposes excessive rates on Complainants and violates [the] . . . previously approved ISO settlement in Docket Nos. ER98-211-000, *et al.* . . ." WPTF also requested that the Commission, pursuant to Section 206 of the FPA, establish a refund effective date of January 1, 1999, or no later than 60 days after the filing of the complaint. Further, WPTF asked the Commission to set the matter for hearing (1) to determine and fix a just and reasonable rate for the GMC; and (2) to determine the appropriate amount of, and to order, refunds. The ISO filed an answer to WPTF's complaint, arguing that it duplicated the pending requests for relief made in Docket No.

¹¹ *Id.*

¹² *Id.*

ER99-473-000, that no purpose would be served by litigating a new GMC at that time, that granting the complaint would waste scarce resources, and that the complaint should be dismissed. Other intervenors also requested that the FERC dismiss the complaint. The Commission found WPTF's complaint moot in light of the pending proceeding that had been established to determine a GMC to be effective July 1, 1999, and dismissed the complaint.¹³ WPTF's current Complaint is substantially similar to the April 2, 1999 Complaint filed previously by WPTF and dismissed by the Commission.

Second GMC Settlement Extension

On April 30, 1999, the ISO filed Amendment No. 16 to the ISO Tariff, which established a rate for the GMC to be effective from July 1, 1999 to December 31, 2000. On June 17, 1999, the Commission issued an order that permitted the ISO to collect the proposed GMC charge, subject to refund and subject to the outcome of the proceeding in which the Commission will investigate the GMC to become effective January 1, 2001.¹⁴ Further, the Commission initiated proceedings under Section 206 of the FPA to establish refund effective dates.¹⁵ Requests for rehearing and clarification of that order were filed by WPTF, Enron, and Coral Power, L.L.C. ("Coral"). These parties sought to establish an immediate evidentiary hearing before an administrative law judge to determine a just and reasonable rate for the GMC to be effective July 1, 1999. They requested clarification that to the extent that volumes within the ISO Control Area but not flowing on the ISO Controlled Grid are exempt from assessment of the GMC, the same exemption should apply to distributed

¹³ *Western Power Trading Forum v. California Independent System Operator Corp.*, 87 FERC ¶ 61,016 (1999).

¹⁴ *California Independent System Operator Corp.*, 87 FERC ¶ 61,304 (1999).

¹⁵ See 85 FERC ¶ 61,433 and 87 FERC ¶ 61,304.

Generating Units located on a distribution system not controlled by the ISO. These parties also sought clarification that there would be no gap between the refund date established in this proceeding and the refund date established by the Commission in its December 23, 1998 Order approving the GMC to be effective from January 1, 1999 to June 30, 1999. The Commission has not yet acted on the requests for rehearing or clarification.

1999 GMC Informational Filing

On December 15, 1999, the ISO submitted in Docket No. ER00-800-000 its informational filing pursuant to the terms of the ISO Tariff to present information concerning its calculation of the GMC to be effective for calendar year 2000 ("Informational Filing"). The Informational Filing reflects a GMC increase from \$0.778/MWh to \$0.830/MWh, for the period from January 1, 2000 to December 31, 2000. WPTF filed a motion to intervene and protest and a request for clarification, hearing, and consolidation of this proceeding with the proceedings in Docket Nos. ER99-473-000, ER99-2730-000, EL99-47-000, and EL99-67-000, governing the GMC.¹⁶ In particular, WPTF requested that the Commission clarify that acceptance of the filing would be subject to the safeguards provided by Sections 205 and 206 of the FPA. WPTF also protested the Informational Filing for the same reasons it has protested the ISO's previous GMC filings. WPTF also requested that the Commission set all of the aforementioned dockets for hearing. In response to WPTF's filing,¹⁷ the ISO

¹⁶ Enron, one of WPTF's primary members, filed a motion to intervene and to protest, adopting WPTF's arguments as its own. For the purposes of this pleading any reference to WPTF will also refer to Enron.

¹⁷ "Answer of the California Independent System Operator Corporation to Comments, Protest, and Request for Clarification, Hearing and Consolidation," Docket No. ER00-800-000, filed January 24, 2000. In addition to WPTF's protest, in response to the Informational Filing, the Cities of Redding and Santa Clara, California, and the M-S-R Public Power Agency, questioned whether the ISO had forgotten to include an amount in the category "Reserve Transfer" under the GMC formula. In its answer, the

explained that WPTF had merely raised the same points it had argued in earlier proceedings relating to the GMC – points to which the ISO had previously responded. The ISO noted, in addition, that the issues raised by WPTF need not be addressed at this time, as the Commission has made clear that the collection of the GMC is currently subject to refund and to the outcome of the proceeding that will examine the GMC to be effective January 1, 2001.

On February 25, 2000, the Commission issued an order accepting the Informational Filing submitted by the ISO (“February 25, 2000 Order”). In response to WPTF’s protest, the Commission noted that Paragraph 16 of the April 7, 1998 Settlement requires parties objecting to the unit rate established in the ISO’s annual informational filing to file a complaint under Section 206 of the FPA. Although WPTF did not follow this procedure, the Commission responded to its requests, stating that “*all of the substantive arguments in [WPTF’s] . . . protest[] have been raised in other proceedings, and WPTF . . . will be able to pursue those concerns in connection with those proceedings and/or the proceeding in which the ISO submits a revised GMC to become effective on January 1, 2001.*”¹⁸ In denying WPTF’s request to establish hearing procedures at this time and to consolidate the Informational Filing with other proceedings regarding the GMC, the Commission explained that as it has stated in past decisions, it “*continue[s] to believe that it makes little sense to establish a hearing regarding the GMC until the ISO has produced an unbundling study*”¹⁹

ISO responded that the Operating Reserve Transfer amount is zero (0) for the Year 2000 calculation because the Operating Reserve Transfer account has not yet been fully funded; thus, the Informational Filing is correct.

¹⁸ *California Independent System Operator Corp., et al.*, 90 FERC ¶ 61,196, 61,636-37 (2000) (emphasis added).

¹⁹ *Id.* at 61,637 (emphasis added).

WPTF filed a request for rehearing and clarification of the Commission's February 25, 2000 Order.²⁰ WPTF argued that: (1) the Commission had misconstrued the April 7, 1998 Settlement when it held that WPTF must file a complaint in order to protest any aspect of the ISO's Informational Filing; (2) the Commission had abused its discretion and had failed to engage in reasoned decisionmaking by failing to set the ISO's proposal for immediate hearing; and (3) the Commission had erred when it accepted the Informational Filing and made it effective, without finding the proposed rate increase just and reasonable or making the collection of the rates effective subject to refund. WPTF also sought clarification that the refund protection provided in the GMC Refund Proceedings,²¹ Docket Nos. EL99-47-000 and EL99-67-000, include the rate the Commission accepted in the Informational Filing. The Commission has not yet acted on WPTF's requests.

WPTF's Second Complaint

In the instant Complaint, WPTF raises the same claims it presented in its April 2, 1999 Complaint. WPTF seeks a determination that the existing GMC, including the increased GMC charges effective January 1, 2000, as shown in the Informational Filing, is "unduly discriminatory, anticompetitive, imposes excessive rates on WPTF members and violates a previously approved ISO settlement in Docket Nos. ER98-211-000, *et al.* . . ."²² WPTF also requests that the

²⁰ "Request of Rehearing and Clarification of Western Power Trading Forum," Docket Nos. ER00-800-000, *et al.*, filed March 27, 2000. Again, Enron also files a request for rehearing, reiterating the same arguments set forth in WPTF's pleading in summary fashion. See "Request for Rehearing and Clarification of Enron Energy Services, Inc.," Docket Nos. ER00-800-000, *et al.*, filed March 27, 2000.

²¹ The "GMC Refund Proceedings" refers to Docket Nos. EL99-47-000 and EL99-67-000, which the Commission instituted in 87 FERC ¶ 61,023 and 87 FERC ¶ 61,304, respectively, to provide refund protection for the existing GMC subject to the proceeding to establish a GMC effective January 1, 2001.

²² Complaint at 1-2.

Commission, pursuant to Section 206 of the FPA, suspend the rates proposed under the Informational Filing and establish a refund effective date of January 1, 2000, or no later than 60 days after the filing of the Complaint.²³ Further, WPTF asks the Commission to set this matter for hearing (1) to determine and fix a just and reasonable rate for the GMC; and (2) to determine the appropriate amount of, and to order, refunds.²⁴

As explained below, the relief requested by the Complaint is the same relief that Enron has already requested from the Commission in its protest of the Informational Filing, and is the type of remedy that will be available in connection with the proceeding that will be established to review the forthcoming filing by the ISO to implement a GMC to be effective January 1, 2001, assuming, *arguendo*, that WPTF establishes a basis for relief in that proceeding. Accordingly, the Commission should treat the current Complaint the same way it treated WPTF's April 2, 1999 Complaint. It should dismiss the Complaint because a forum has already been established by the Commission for resolution of the issues that WPTF has raised. Moreover, there is no need to examine those issues here because the Commission has made clear that the collection of the GMC is currently subject to refund pursuant to the GMC Refund Proceedings, and to the outcome of the proceeding that will examine the GMC to be made effective January 1, 2001.²⁵ The Informational Filing only described the change in the level of the GMC in accordance with the formula rate; it did not alter the fact that the GMC is being collected subject to these conditions. WPTF thus will have the

²³ *Id.* at 2.

²⁴ *Id.*

²⁵ See 87 FERC ¶ 61,304; 90 FERC at 61,637.

opportunity to raise its concerns in connection with the GMC filing to take effect January 1, 2001. No further relief is required.

ARGUMENT

I. WPTF's Complaint Should Be Dismissed Because the GMC is Already Subject to Refund Pursuant to the GMC Refund Proceedings and Will Be Reviewed By the Commission in the Forthcoming Proceeding to Determine the GMC for January 1, 2001.

The Complaint filed by WPTF requests that the Commission initiate a proceeding under Section 206 of the FPA to determine the proper level for the GMC and the refunds that are due if the existing rate is found to be unjust and unreasonable. An examination of the issues under review in the GMC Refund Proceedings and the issues to be reviewed in the forthcoming proceeding to determine the GMC effective January 1, 2001, demonstrates that each of the issues raised by WPTF in the Complaint is subject to resolution through existing proceedings.

WPTF first requests that the Commission, pursuant to Section 206 of the FPA, provide refund protection for the existing GMC as of January 1, 2000.²⁶ The Commission, however, has already granted WPTF such protection through the GMC Refund Proceedings. First, in the proceeding in which the Commission extended the existing GMC through June 30, 1999, the Commission granted Enron's request to establish a Section 206 proceeding, instituting Docket No. EL99-47-000, with a refund effective date of June 7, 1999.²⁷ Second, in its order accepting the GMC to be effective from July 1, 1999 through December 31, 2000, the Commission established another Section 206 investigation, Docket No.

²⁶ Complaint at 11.

²⁷ 87 FERC ¶ 61,023.

EL99-67-000, with a refund effective date of August 23, 1999.²⁸ Accordingly, the relief that WPTF is seeking through its Complaint has already been made available to it through the GMC Refund Proceedings.

WPTF further requests that the Commission clarify that the refund protection established in the GMC Refund Proceedings applies to the entirety of the GMC, including the increased charges resulting from the Informational Filing on and after January 1, 2000.²⁹ Such clarification is unnecessary as the Commission accepted the Informational Filing with the understanding that all of WPTF's substantive arguments have been raised in other proceedings, and that WPTF "will be able to pursue those concerns in connection with those proceedings and/or the proceeding in which the ISO submits a revised GMC to become effective on January 1, 2001."³⁰ Moreover, the Commission explicitly notes that its "previous orders make the GMC . . . subject to the outcome of investigations in EL99-47-000 and EL99-67-000"³¹ Thus, the clarification that Enron requests is not necessary.

Second, the Complaint requests that the Commission establish a hearing to determine a just and reasonable level for the GMC.³² In the February 25, 2000 Order, as in previous orders, however, the Commission faced the identical issue and specifically rejected holding a hearing on the GMC at this time. In denying WPTF's request to establish hearing procedures, the Commission stated that it "continue[s] to believe that it makes little sense to establish a hearing regarding

²⁸ 87 FERC ¶ 61,304.

²⁹ Complaint at 11.

³⁰ 90 FERC at 61,636-37.

³¹ *Id.* at 61,637.

³² Complaint at 2.

the GMC until the ISO has produced an unbundling study³³ This echoes the Commission's earlier decision not to establish hearing procedures when it accepted the GMC to be effective from July 1, 1999 to December 31, 2000. In that matter, the Commission denied WPTF's request to establish hearing procedures "[i]n view of the fact that the ISO still has neither the computer capability nor the data to make its unbundling proposal"³⁴ WPTF's instant Complaint presents no basis for a different result here.

Instead of requiring the parties to litigate a new GMC at this time, the Commission has determined that it is sufficient and appropriate to allow the parties to litigate the appropriate level for the GMC when the ISO files to implement a charge to be effective January 1, 2001.³⁵ WPTF thus will be able to exercise its rights to have a hearing to determine the just and reasonable level for the GMC at the time the ISO makes that new filing. Again, the Commission's February 25, 2000 Order already made available to WPTF the same relief it seeks in the Complaint.

Finally, WPTF argues that the existing GMC is not just and reasonable.³⁶ As explained above, the Commission already has decided that these arguments should not be heard now, but instead the appropriateness of the existing charge should be determined by subjecting it to refund and the outcome of the proceeding that will be established to review the GMC to be effective January 1, 2001.

³³ 90 FERC at 61,637.

³⁴ 87 FERC at 62,230.

³⁵ 90 FERC at 61,636-37.

³⁶ Complaint at 3.

WPTF states that it filed its Complaint because the Commission found that WPTF must do so in order to challenge the ISO's Informational Filing.³⁷ However, even though WPTF had not then filed a Section 206 complaint, the Commission proceeded to act on WPTF's requests and arguments in its February 25, 2000 Order. The Commission noted that each of the substantive arguments in WPTF's protest to the Informational Filing had been raised in other proceedings, and that WPTF will be able to pursue its concerns in connection with those proceedings (the GMC Refund Proceedings) and in the proceeding to establish a GMC effective January 1, 2001. The Commission did *not* state that WPTF must file a complaint to protect the rights of its members. To the contrary, the Commission made clear that those rights were already fully protected. The Commission clearly indicated that WPTF's concerns would be resolved in forthcoming proceedings.

The Commission accordingly should dismiss WPTF's Complaint. Otherwise, Commission resources would be wasted through adjudication of the same issues twice: first in this proceeding, and then in the proceeding to be established to determine the GMC effective January 1, 2001.³⁸ If, for some reason, dismissal is not found appropriate, the Complaint should *not* be set for hearing separately. Instead, it should be consolidated with the proceeding that will be established to review the GMC filing the ISO will make for a charge to be effective January 1, 2001, because the proceedings involve identical issues.

³⁷ *Id.* at 10.

³⁸ The Commission does not permit "two bites at the apple," whether through simultaneous litigation of the same issues, or relitigation of an issue previously decided. *See, e.g., Exxon Co., USA v. Amerada Hess Pipeline Corp., et al.*, 83 FERC ¶ 63,011, 65,095-96 (1998) (citations omitted); *Gaviota Terminal Co.*, 75 FERC ¶ 63,008, 65,027-28 (1996); *Lake Murray Docks, Inc. v. South Carolina Electric & Gas Co.*, 57 FERC ¶ 61,320, 62,035, 62,037-38 (1991); *Alamito Co.*, 43 FERC ¶ 61,274, 61,753 (1988).

Where there is a similarity of issues – and here, they are identical – administrative efficiency requires consolidation.³⁹

II. Assuming *Arguendo* that the Commission Does Not Dismiss the Complaint as Being Duplicative, the Complaint Raises Disputed Material Issues of Fact that May Require a Hearing To Resolve.

In its Complaint, WPTF alleges that the existing GMC is unduly discriminatory, anticompetitive, unjust, unreasonable, or excessive. As explained below, the ISO disputes those allegations, and disagrees with the factual claims made by WPTF.⁴⁰ The Complaint thus raises disputed material issues of fact. (As stated above, any hearing held on such issues should be consolidated with the proceeding that will be established to evaluate the GMC to be effective January 1, 2001.)

In support of its allegations that the existing GMC is unduly discriminatory and anticompetitive, WPTF points to the different rates assessed customers with Existing Contracts and those assessed other Market Participants.⁴¹ Mere

³⁹ See, e.g., *Sadlerochit Pipeline Co.*, 76 FERC ¶ 61,125, 61,682-83 (1996).

⁴⁰ Exhibit 1 to this Answer contains the ISO's specific admission or denial of each allegation in the Complaint.

⁴¹ Complaint at 11-12. In support of its contention that the GMC is excessive, WPTF cites an internal, confidential ISO memorandum. *Id.* at 12-13. WPTF first used this memorandum in connection with its request for rehearing of the Commission's June 17, 1999 order regarding the GMC, appending it as Attachment A to its request. The ISO reiterates the concern it expressed in its answer to WPTF's request for rehearing in that matter. That memorandum was prepared in connection with an analysis in a separate matter and cannot simply be applied to the GMC analysis as WPTF attempts to do in its earlier request and in the Complaint. As the ISO has previously indicated to the Commission, what is especially troubling about WPTF's use of the memorandum is how WPTF obtained it. WPTF obtained the memo as a result of an inadvertent electronic release by the ISO, which the ISO requested all parties to return or destroy almost immediately after its release. WPTF ignored that request, a response that the ISO believes is inappropriate. As the ISO has previously noted, such practices do nothing to further and enhance the open stakeholder process that California and the Commission rely upon so heavily, but instead may lead parties to restrict the information they freely exchange today in California.

differences in rates, however, are not unduly discriminatory or anticompetitive if there is a justification for those differences.⁴² In this case, the Commission has clearly sanctioned a difference in treatment for holders of Existing Contracts.⁴³ The only question, then, is whether the existing GMC appropriately reflects that difference during a transition period. Every party to the proceeding establishing a GMC effective from July 1, 1999 through December 31, 2000, except WPTF, Enron, and Coral, concluded that it did, and either supported or did not oppose the request the ISO made to extend the GMC until a reliable unbundling study became available.⁴⁴ This conclusion is appropriate given the transitional evolution of the GMC and the fact that the study of unbundling is still under review.⁴⁵ Moreover, the mere fact that WPTF does not approve of the proposed rates does not mean that the rates are unjust and unreasonable. Such an argument assumes that there is but one just and reasonable rate, an assertion that the Commission has repeatedly rejected.⁴⁶

⁴² See, e.g., *St. Michaels Utilities Comm. v. FPC*, 377 F.2d 912, 915 (4th Cir. 1967); *Northwest Pipeline Corp.*, 76 FERC ¶ 61,068, 61,429 (1996).

⁴³ See *Pacific Gas and Electric Co., et al.*, 81 FERC ¶ 61,122, 61,470-71 (1997); see also *Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, 61 Fed. Reg. 21,540 (1996), FERC Stats. & Regs. ¶ 31,036, 31,663 (1996), *order on reh'g*, Order No. 888-A, 62 Fed. Reg. 12,274 (1997), FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998).

⁴⁴ 87 FERC at 62,229; Complaint at 16.

⁴⁵ The ISO has conducted numerous meetings concerning the unbundling of the GMC. These meetings were open to all stakeholders. The ISO notes that Enron has not attended any meetings concerning unbundling since last summer: Enron did not attend the meetings conducted on August 19, October 12, or November 30, 1999. Thus, Enron can have no reasonable basis for complaining that it has had no opportunity to participate in stakeholder meetings concerning the unbundling of the GMC.

⁴⁶ See *Mobil Oil Corp. v. FPC*, 417 U.S. 283, 316-17 (1974) (quoting *Permian Basin Area Rate Cases*, 390 U.S. 747, 796-98 (1968)); see also *Columbia Gas Transmission Corp., et al.*, 66 FERC ¶ 61,214, 61,492 (1994) ("It is well known that there is not one

WPTF further challenges the existing GMC on the basis that the ISO has not provided justification for the 50 percent exclusion for Existing Contracts.⁴⁷ WPTF's challenge, however, is premature in the absence of a reliable unbundling study. Consistent with the Commission's conclusion that it makes little sense to establish a hearing until a reliable unbundling study is available,⁴⁸ it makes little sense to attempt to justify the 50 percent exclusion for Existing Contracts when a reliable unbundling study remains forthcoming.

WPTF cites a report prepared on behalf of the ISO, which compares the California ISO's GMC with the administrative costs of four other ISOs, as support for its contention that the GMC charge is unjust or unreasonable because it may be excessive.⁴⁹ WPTF has previously recognized that differences in the functions of the California ISO and other ISOs may account for these disparities in costs.⁵⁰ In light of this admission, WPTF's contention that the California ISO admitted in another proceeding before the Commission that the California ISO "provides market administration and Control Area services similar to the New York ISO under its single tariff . . ." is meaningless.⁵¹ The fact that different ISOs provide similar services proves nothing, because there are significant differences among the ISOs regarding the timing of the implementation of their services and

just and reasonable rate, but that various rates can be within a zone of reasonableness."); *PacifiCorp Electric Operations*, 60 FERC ¶ 61,292, 62,038 (1992).

⁴⁷ Complaint at 16.

⁴⁸ 90 FERC at 61,637.

⁴⁹ Complaint at 16.

⁵⁰ April 2, 1999 Complaint at 9 n.7 (the relevant page is attached in Exhibit 2).

⁵¹ See "Initial Brief of the California Independent System Operator Corporation," Docket Nos. ER98-3760-000, *et al.*, filed February 14, 2000, at 14.

the level of responsibility each has assumed.⁵² The California ISO, unlike other ISOs, endeavored to establish significant infrastructure within a short period of time, accounting for the difference in costs cited by WPTF. Accordingly, WPTF has no basis on which to support its allegation that the GMC is excessive.

WPTF also cites the increase in the GMC described by the ISO's Informational Filing as demonstrating the excessive nature of the GMC.⁵³ WPTF, however, cites no support for its assertion other than the mere increase in cost. Such concerns, if they have any basis, will be resolved in the proceeding to determine the GMC effective January 1, 2001.

Finally, WPTF cites the cost levels underlying the GMC as a basis for its excessiveness.⁵⁴ The April 7, 1998 Settlement, however, precludes WPTF from challenging the levels of these costs. Paragraph 8 of that settlement prevents parties from challenging the start-up and infrastructure costs that were incurred by the ISO in 1998 (and earlier) and capitalized for recovery over an extended period of time.⁵⁵ WPTF further contends that the ISO waived that provision because the ISO did not file a revised GMC rate to be effective January 1, 1999.⁵⁶ WPTF claims that this deprives the parties of their *quid pro quo* for that settlement. Only one stakeholder, however, opposed the extension of the GMC until June 30, 1999 – Enron – and, in fact, many parties intervened in support of

⁵² In fact, the report itself notes its limitations, principally based on differences in the timelines governing the implementation of the operations of the ISOs. See Pages 3-4 of the Report, appended in Attachment C to the Complaint.

⁵³ Complaint at 17.

⁵⁴ *Id.*

⁵⁵ April 7, 1998 Settlement, ¶ 8.

⁵⁶ Complaint at 17.

the proposal.⁵⁷ Moreover, as noted earlier, all but three parties supported extension of the proposal through December 31, 2000, until a reliable unbundling study could be filed by the ISO.⁵⁸ Most parties thus did not see the extension of the existing GMC as depriving them of their *quid pro quo* for the April 7, 1998 Settlement. Nor has WPTF been injured by the continuation of the current GMC formula, because if the Commission determines that a different allocation is appropriate and refunds are appropriate, WPTF is protected. WPTF's claim that it has lost a benefit of this settlement is groundless. Accordingly, WPTF's claim is without merit.

⁵⁷ 85 FERC at 62,632.

⁵⁸ 87 FERC at 62,228-29.

CONCLUSION

Based on the foregoing, the ISO respectfully requests that the Commission issue an order: (1) dismissing WPTF's Complaint; or (2) in the alternative, consolidating this proceeding for hearing with the ISO's forthcoming filing to implement a GMC to be effective January 1, 2001.

Respectfully submitted,

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Dated: April 13, 2000

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the service list compiled by the Secretary in this proceeding.

Dated at Washington, DC, this 13th day of April, 2000.

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