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December 8, 2003

Honorable Magalie Roman Salas
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

VIA ELECTRONIC TRANSMISSION

RE: *California Independent System Operator Corp.*
Docket No. ER04-115-000

Dear Secretary Salas:

Enclosed with this cover letter, please find the California Independent System Operator Corporation's Motion for Leave to File Answer and Answer to Motions to Intervene, Motion to Reject, Motion for Partial Summary Disposition, Comments, Requests for Hearing, Requests for Suspension and Protests for filing in the above-captioned docket.

Thank you for your assistance with this matter.

Respectfully submitted,

_/s/*Theodore J. Paradise*
Theodore J. Paradise

Counsel for the California Independent
System Operator Corporation

cc: Service List

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

California Independent System Operator Corporation	)	Docket No. ER04-115-000

MOTION FOR LEAVE TO FILE ANSWER AND ANSWER OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION TO MOTIONS TO INTERVENE, MOTION TO REJECT, MOTION FOR PARTIAL SUMMARY DISPOSITION, COMMENTS, REQUESTS FOR HEARING, REQUESTS FOR SUSPENSION, AND PROTESTS

I. INTRODUCTION AND SUMMARY

On October 31, 2003, the California Independent System Operator Corporation ("ISO")[1] filed revisions to its Grid Management Charge ("GMC") with the Federal Energy Regulatory Commission ("FERC" or the "Commission").[2] The GMC is the rate through which the ISO recovers its administrative and operating costs, including the costs incurred in establishing the ISO prior to the commencement of operations. The proposed revisions to the GMC would further unbundle the GMC into seven separate charges to improve the linkage between the responsibility of Scheduling Coordinators ("SCs") for the ISO's administrative and operating costs and the extent to which they cause the ISO to incur those costs or benefit from the ISO's services.

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[1] Capitalized terms not otherwise defined herein shall have the meaning set forth in the Master Definitions Supplement, Appendix A to the ISO Tariff.

[2] The ISO's October 31, 2003 GMC rate filing is hereinafter referred to as the "Revised GMC Rate."

In accordance with Rules 212 and 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §§ 385.212, 385.213 the ISO submits this Answer in response to the Motion to Reject, Motion for Summary Disposition, requests for hearing or other affirmative relief. The ISO also submits its Motion for Leave to Answer Protests as described in Section III, *infra*, and its answer to protests.

A number of entities have submitted motions to intervene in the captioned proceedings, several entities have submitted substantive comments, and several entities have submitted protests of the filing.[3] The ISO does not oppose the interventions of entities that have sought leave to intervene in the proceeding, neither does the ISO oppose requests to suspend the proposed revisions to the GMC to allow for negotiations under the supervision of a settlement judge appointed by the Commission, while the current GMC remains in effect, as discussed in Section IV(D), below. The ISO does, however, oppose the Protests, Requests for Hearing, and Request to Reject, and the Motion for Partial Summary Disposition as discussed below in Section IV.

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[3] Motions to Intervene were filed by Arizona Public Service Commission; the Bonneville Power Administration ("BPA"); the California Department of Water Resources – State Water Project ("SWP"); the California Electricity Oversight Board; the California Municipal Utilities Association ("CMUA"); the Cities of Redding and Santa Clara, California, and the M-S-R Public Power Agency; the City and County of San Francisco; the Cogeneration Association of California; the Metropolitan Water District of Southern California ("MWD"); Mirant Americas Energy Marketing, LP, Mirant California, LLC, Mirant Delta, LLC, and Mirant Potrero, LLC ("Mirant"); Modesto Irrigation District ("MID"); Northern California Power Agency ("NCPA"); Pacific Gas and Electric Company ("PG&E"); Powerex Corporation ("Powerex"); the Public Utilities Commission of the State of California ("CPUC"); Sacramento Municipal Utility District; San Francisco Bay Area Rapid Transit District; San Diego Gas & Electric Company ("SDG&E"), Southern California Edison Company ("SCE"); and the Transmission Agency of Northern California ("TANC"). A Notice of Intervention was filed by the California Public Utilities Commission.

II. BACKGROUND

A. Current and Prior GMC Charges

The ISO originally filed its Grid Management Charge as a bundled rate on October 17, 1997 in Docket No. ER98-211-000. That original rate filing led to negotiations that resulted in an April 1998 settlement and gave rise to a stakeholder process directed toward the unbundling of the GMC rate to better reflect cost causation. The first proposal to unbundle the ISO GMC was adopted by the ISO Board of Governors and filed with the Commission on November 1, 2000 in Dockets No. ER01-313-000, *et al*. ("2001 GMC"). That original unbundling divided the GMC into three service categories: Control Area Services, Inter-Zonal Scheduling, and Market Operations. The 2001 GMC did not specify in the ISO Tariff how costs were to be allocated among the charges for these three categories and therefore could not operate as a formula rate.

The 2001 GMC resulted in a lengthy hearing before a Commission administrative law judge ("ALJ") in November and December of 2001. Just prior to the commencement of that hearing, on November 21, 2001, the ISO filed its further revised GMC rates, to take effect on January 1, 2002 in Dockets ER02-250-000, *et al*. (the "2002 GMC"). That filing contained relatively minor changes to the 2001 rate design, leaving the major elements of the 2001 rate design intact, and applying the revised rate design to the ISO's budgeted costs for 2002. Stakeholders and the ISO were able to work through differences over a four-and-a-half month period and successfully concluded a negotiated settlement agreement, which was filed with the Commission on October 17, 2002 ("2002 GMC Settlement"). Among other things, the 2002 GMC Settlement allowed for the ISO

to avoid making a new rate filing under Section 205 if its rates for 2003 were kept under certain set ceilings for each of the three service categories. The ISO filed its 2003 GMC as an informational filing with the Commission on November 8, 2002.

The 2001 GMC proceeding resulted in an Initial Decision issued on May 10, 2002.[4] In that Initial Decision, the Presiding ALJ adopted the suggestion of the ISO and some intervenors that the GMC's structure be reevaluated with the aid of a comprehensive stakeholder process. The Initial Decision was affirmed, except with regard to certain issues, by the Commission Opinion No. 463, issued on May 2, 2003.[5]

B. Stakeholder Process

The ISO engaged with stakeholders in a year-long process to consider concepts for a redesigned GMC that would constitute a set of just and reasonable charges, better track cost-causation, and be responsive to concerns expressed regarding the past GMC design; balancing these goals with an eye towards being able to administer the new rate logistically and efficiently.

The ISO's GMC rate re-redesign was informed by both the comments received by the ISO during the 2001 and 2002 GMC proceedings and the comments and alternative proposals offered by stakeholders over the past year. The ISO's re-evaluation of the GMC rate was guided by the directions given in the Initial Decision, guidelines set out as part of the ISO's 2002 GMC Settlement, pre-process meetings with stakeholders, and finally by the charter for the project that set out the goals to be achieved.

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4 *California Independent System Operator Corp., et al.,* 99 FERC ¶ 63,020 (2002) ("Initial Decision").

5 *California Independent System Operator Corp., et al.*, 103 FERC ¶ 61,114 (2003) ("Opinion No. 463").

The 2002-2003 stakeholder process consisted of 11 meetings and 20 telephone conferences. The ISO hosted several special topic calls in response to particular requests, in which all stakeholders were invited to participate.

While the ISO encouraged stakeholders to identify and express their concerns and proposed solutions regarding the design of the GMC, it also encouraged those stakeholders interested in developing separate proposals for presentation to the ISO Finance Committee and Board of Governors to do so, and made staff and data available to those requesting such resources. Ultimately, from this stakeholder process three separate proposals were developed and submitted to the ISO Finance Committee for review. In addition, stakeholders submitted possible modifications to the proposal developed by ISO staff for consideration by the ISO Board.

The ISO endeavored to meet the guidelines set out in the Initial Decision in the 2001 proceeding, Appendix B to the 2002 GMC Settlement, and as expressed by participants and agreed to in the project charter. The proposal developed by ISO staff incorporated suggestions from stakeholders and input from professional rate consultants. This process resulted in a new GMC rate design based on seven charges and implemented through a formula mechanism.

The ISO staff proposal, along with the other proposals and suggested modifications, were submitted to the Finance Committee of the ISO Board on July 17, 2003. The Finance Committee heard comments on all of the proposals and suggestions, reviewed presentations on each separate proposal, and suggested modifications to the ISO staff proposal. After requesting additional data on the various proposals and modifications and undertaking further consideration of all the options, the Finance

Committee recommended the ISO staff proposal to the Board of Governors with a direction to pursue additional study of certain alternative elements. After additional meetings were held, data collected, and a report to the Board prepared, the ISO GMC proposal was approved by the full ISO Board September 25, 2003.

C. October 31, 2003 GMC Proposal

On October 31, 2003 the ISO filed its Revised GMC Rate, which was assigned to Docket No. ER04-115-000 by the Commission, and noticed on November 7, 2003. The ISO's filing comprised an extraordinary amount of detailed exhibits, supporting the rate design and revenue requirement, and detailing the development of each. Compared to the current GMC, which comprises distinct charges for three services (the Control Area Services Charge, the Congestion Management Charge, and the Ancillary Services and Real Time Energy Operations Charge), the Revised GMC Rate comprises seven charges. The charges are: The Core Reliability Services Charge ("CRS"), the Energy Transmission Services Net Energy Charge ("ETS-NE"), the Energy and Transmission Services Uninstructed Deviations Charge ("ETS-UE"), the Forward Scheduling Charge, the Congestion Management Charge, the Market Usage Charge, and the Settlements, Metering and Client Relations Charge ("SMCR").

The Revised GMC Rate is a formula rate with all critical terms, including factors for the allocation of the ISO's costs among the seven constituent charges of the GMC, set in the ISO Tariff and unalterable by the ISO absent a Section 205 filing. The rates proposed in the Revised GMC Rate were determined by calculating the revenue requirement according to the formula contained in Part C of Appendix F, Schedule 1 of the ISO Tariff and then applying the ISO's budgeted revenue requirement for 2004 to the

proposed allocation percentages that have been inserted into the Tariff as proposed Part E of Appendix F, Schedule 1. Utilizing estimated billing determinant data, the billing determinants for each charge are then applied to the costs attributed to each of the seven charges under Part A of Appendix F, Schedule 1 in order to calculate the final rate for each charge.

The rates for 2004 reflect a net revenue requirement (the revenue needed after the effect of any surplus from the prior year's Operating and Capital Reserves Account) of approximately $218 million, a decrease from $237.6 million in 2003. The ISO costs decreased on a gross basis as well, falling from $246 million in 2003 to a projected $236 million for 2004. The $218 million revenue requirement being recovered in 2004 is also significantly below the $223.2 million approved as just and reasonable by the Commission in 2001. The ISO's costs for 2004 are detailed in the testimony of Philip R. Leiber, Exh. No. ISO-24.

III. MOTION FOR LEAVE TO ANSWER PROTESTS

Pursuant to Rules 212 and 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §§ 385.212, 385.213, the ISO hereby requests leave to file an answer, and files this answer, to the protests submitted in this proceeding. The ISO notes that no leave is required for it to respond to the comments, the Motion to Reject, Motion for Partial Summary Disposition, requests for hearing or other affirmative relief that were included with some of the interventions. To the extent any part of this answer is deemed also to constitute an answer to protests, the ISO requests waiver of Rule 213 (18 C.F.R § 385.213) to permit it to make this answer. Good cause for this waiver exists here because the answer will aid the Commission in understanding the issues in the proceeding,

provide additional information to assist the Commission in the decision-making process, and help to ensure a complete and accurate record in this case. *See, e.g., Entergy Services, Inc.,* 101 FERC ¶ 61,289, at P 6 (2002); *Duke Energy Corp.*, 100 FERC ¶ 61,251 at P 10 (2002); and *Delmarva Power & Light Co.*, 93 FERC ¶ 61,098 at 61,259 (2000).

IV. ANSWER

A. THE ISO'S PROPOSED REVISIONS TO THE GMC CHARGES AND RATE DESIGN ARE JUST AND REASONABLE

1. The Just and Reasonable Standard Applies to the ISO's Proposed Revisions to the GMC.

The ISO has submitted its Revised GMC Rate to the Commission pursuant to Section 205 of the Federal Power Act ("FPA"). 16 U.S.C. § 824d (2003). The ISO's proposed revisions to the GMC are therefore to be judged under the "just and reasonable standard."[6] The Court of Appeals for the District of Columbia Circuit has explained the just and reasonable standard in the following terms:

> [U]nder Section 205(a) of the Federal Power Act, a utility may charge only rates that are "just and reasonable." Interpreting that mandate, we have explained that such rates "should be based on the costs of providing service to the utility's customers, plus a just and fair return on equity." We have consistently upheld rates based on such a cost-causation principle.

Sithe / Independence Power Partners, LP v. FERC, 285 F.3d 1, 5 (D.C.Cir. 2002) (citations omitted). The ISO's GMC rate recovers its costs and is limited to its costs only as it has no rate base on which to earn a rate of return. As detailed in the ISO's filing,

[6] TANC argues in its protest that the ISO's filing should be reviewed under the just and reasonable standard. TANC at 13. The ISO does not disagree and has not stated otherwise.

see, e.g., Exh. Nos. ISO-1 – 50, 328 – 336, 341 – 342, 344, 358, 360, 368 – 371, and as explained at greater length below, the level of the revenue requirement recovered in the proposed GMC charges, as well as the collection of that revenue requirement through a fully reconciling formula rate mechanism, is just and reasonable.

The just and reasonable standard also applies to the ISO's proposed revisions to the GMC rate design. To satisfy this standard, the ISO need not show that its proposed rate design is the only conceivable just and reasonable rate design or that its proposal is "more" just and reasonable than alternatives. *See New England Power Co.*, 52 FERC ¶ 61,090 at 61,336 n.35 (1990), *reh'g denied*, 54 FERC ¶ 61,055, *aff'd Town of Norwood v. FERC*, 962 F.2d 20 (D.C. Cir. 1992); *citing City of Bethany v. FERC*, 727 F.2d 1131, 1136 (D.C. Cir.), *cert. denied*, 469 U.S. 917 (1984) (utility need establish that its proposed rate design is reasonable, not that it is superior to alternatives); *OXY USA, Inc. v. FERC*, 64 F.3d 679, 692 (D.C. Cir. 1995) ("[T]he Commission may approve the methodology, proposed in the settlement agreement if it is 'just and reasonable'; it need not be the only reasonable methodology or even the most accurate.") The ISO's proposed Revised GMC Rate design is therefore to be judged against the just and reasonable standard on its own merits, not by way of comparison to alternative rate designs that individual Scheduling Coordinators might prefer. As is detailed in the ISO's Revised GMC Rate filing, *see, e.g.*, Exh. Nos. ISO-1 – 22, 51 – 336, 341 – 342, 344, 358, 360, 368 – 371, and further discussed below, the ISO's Revised GMC Rate design, including the further unbundling of GMC charges, satisfies this standard; it *is* just and reasonable.

MID devotes much of its protest to touting the merits of its own alternative rate design, MID at 5-8, 11-19, inviting the Commission to evaluate the justness and reasonableness of its proposal, MID at 14, and requests that the Commission reject the ISO's proposal and replace it with MID's. *See, e.g.*, MID at 39. MID, however, is not the jurisdictional entity whose costs are recovered under the GMC (indeed, it is not a jurisdictional entity at all). It has no right to submit a GMC rate design proposal under Section 205 or to insist that its proposal be treated as an alternative to the ISO's GMC rate design proposal.

This is not to say that the ISO has ignored MID's alternative GMC rate design proposal. To the contrary, as MID candidly acknowledges, MID at 7, the ISO worked closely with MID during the stakeholder process to help MID develop its proposal. The ISO's stakeholder process also gave MID a more than fair opportunity to have its alternative proposal considered by other stakeholders and by the ISO Board of Governors. MID at 7, *see also, e.g.*, Exh. No. ISO-382. As described in the testimony of Mr. Ben T. Arikawa, the ISO Finance Committee heard presentations from MID and the ISO, as well as parties submitting modifications to the ISO's initial design. Exh. Nos. ISO-327 through ISO-349, ISO-354 through 360. However, the ISO identified significant drawbacks in MID's proposed design with respect to cost causation and the volatility of its billing determinants. Exh. No. ISO-358. The ISO's Finance Committee and the full Board of Governors determined that the GMC rate design proposal presented by the ISO Staff, incorporating some of the modifications proposed by stakeholders, best suited the needs of the ISO and would be presented to the Commission under Section 205. *Id.; see also,* Exh. Nos. ISO-377 and ISO-379. MID's proposal received full

consideration in this process, and MID has no right to usurp the role of the ISO Board of Governors to approve the ISO's rate applications or to to supplant the ISO as the only entity qualified to submit a GMC rate design proposal under Section 205.[7]

2. The GMC Rate Design Is Fully Explained And Documented In The ISO's Filing

The ISO has submitted a fully supported application to modify the GMC rates and rate design, consisting of over 4,200 pages of supporting documents explaining the proposed rates and their development. The ISO has provided all of the documents required by 18 C.F.R. Part 35, including Period I and Period II data and cost statements, even though many cost statements do not necessarily have an effect on the ISO's rate proposal.[8] Indeed, ISO in its GMC Rate filing has provided an exceptional amount of detail. In addition to the transmittal letter summarizing the filing, the GMC Rate filing contains: (a) the testimony of two expert rate witnesses discussing the reasoning behind, the structure of, and the functioning of the GMC Rate, and supporting documents; (b) the testimony of the ISO's treasurer and director of financial planning describing the ISO's budget process, and supporting documents; and (c) the testimony of the ISO's Senior Financial Analyst, who was closely involved with the stakeholder process, describing the

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[7] MID can present its alternative rate design proposal through a complaint under Section 206 of the FPA, 16 U.S.C. § 824e, once the rates go into effect, though it may not combine an application under Section 206 with its protest of the ISO's proposal. *See, e.g.*, *Yankee Atomic Electric Co.*, 60 FERC ¶ 61,316 at 62,096 (1992); *Entergy Services, Inc.*, 104 FERC ¶ 61,084 at P 13 (2003); and *Southern California Edison Co.*, 105 FERC ¶ 61,080 at P 23 and n. 16 (2003). If it chooses to submit its proposal under Section 206, MID would have the burden of showing both that the GMC rate design that it would supplant is not just and reasonable and that its proposed alternative is just and reasonable. *Occidental Chemical Corp. v. PJM Interconnection, LLC,*102 FERC 61,275 at P 18 (2003) ("[I]n a complaint proceeding filed pursuant to Section 206 of the FPA, Occidental has the burden of proof to demonstrate that the terms and conditions it seeks to revise are unjust and unreasonable and, conversely, that the revisions it proposes are just and reasonable.")

[8] Where particular cost statements are inapplicable to the ISO as a not-for-profit independent system operator, the ISO explained why there were omitted.

conduct of the stakeholder process in detail – including concerns raised and how the ISO adapted its proposal to respond to those concerns, and supporting documents. This last set of supporting documents provide detailed background on the structure and rationale of the ISO's proposal, the changes the ISO rate proposal went through over the past year, the documents that informed the process, such as presentations of ratemaking principles and comparisons of other ISO rates, as well as a record of concerns raised and how those concerns were addressed by the ISO. *See generally*, Exh. Nos. ISO-51 – ISO-383.

Despite the extraordinary amount of support for the GMC Rate and its development provided by the ISO, TANC contends that it has not submitted all of the materials required under 18 C.F.R. Part 35. TANC at 14. The only specific deficiency TANC cites is its claim that the ISO should have provided a study to support changes in depreciation in Statement AJ. *Id.* The ISO, however, *did* include statement AJ in the filing, despite the fact that the depreciation information in Statement AJ does not affect the proposed GMC rates and the ISO's request for a waiver for statements that did not affect the ISO's GMC rates.

TANC also attempts to argue that the ISO's filing is generically "incomplete" because it does not include as an exhibit every document referenced in every piece of testimony. TANC specifically points only to the omission of a single document: the ISO Operational Audit. TANC at 14. This argument is groundless. There is no requirement that a rate change application include every document to which a witness refers; the only requirements are that certain rate increase filings include the public utility's proposed case-in-chief in support of its proposal, and workpapers supporting Period II estimates. 18 C.F.R. § 35.13(d)(5) and (e)(2). The ISO's filing more than satisfies these

requirements. The omission of the ISO Operational Audit does not detract from the ISO's compliance with the applicable requirements or hinder the Commission's evaluation of the filing, especially since that document is publicly available on the ISO's internet web site, and has been since February 14, 2003.[9]

3. Objections to the Proposed Rate Design are Self-Interested Attempts To Shift Costs To Others

Some intervenors express support for the process and elements of its results. For example, SCE supports the proposed further unbundling of GMC charges, and the seven service categories proposed by the ISO, SCE at 2, and MWD states its view that the Revised GMC Rate furthers the goal of cost causation and that most of the cost categories and billing determinants follow cost causation principles. MWD at 6. Other intervenors raise specific arguments in opposition to elements of the proposed GMC rate design. In virtually every instance, however, it is clear that the intervenor's complaint or proposed modification to the ISO's proposal is designed to secure more favorable treatment for itself under the GMC (*i.e*., reduced responsibility for GMC charges), at the expense of other Market Participants. This self-interested focus is hardly surprising. During the extensive stakeholder process that it undertook, participants raised many (though, as explained below, not all) of the same concerns. The ISO took those concerns into account in developing a GMC rate design proposal that balances the interests of different classes of Market Participants, represents a just and reasonable next step in the

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[9] The Operational Audit is a public document available on the ISO's web site at the following URL: http://www.ISO.com/docs/09003a6080/1e/e2/09003a60801ee2ad.pdf. Dr. Barkovich's testimony, discussing the steps taken in preparing a first draft cost assignment, for which the audit was used, puts the audit in context. Exh. No. ISO-1 at 22. As she notes in her testimony, the audit was utilized along with other material to create a first draft cost assignment. This first draft was then sent to Grid Operations staff for comment. Additional steps followed, including modifications from Grid Operations Managers and Directors, and a process of back-and-forth iterations with those Managers and Directors regarding the assignments, "challenging them to make the distinctions carefully." *Id*. at 23.

unbundling process, and comports to the greatest practical extent with cost causation while avoiding undue changes in cost burdens.

a. Overall Rate Design Issues

(i) General

TANC argues that the ISO's treatment of general intangible, common plant, and administrative and general costs does not follow Commission precedent holding that these costs should be allocated in accordance with labor devoted to each function. TANC at 11. TANC is mistaken in its conclusion that the ISO fails to allocate these costs on the basis of labor expenses. In fact, the ISO has used a labor ratio or overhead allocator on many of its administrative and general costs. In other instances, administrative and general costs are allocated on the basis of labor expended, using a full time employee ("FTE") or headcount allocator. Exh. No. ISO-10 at 392-394. The type of labor-based allocator used depends on the function of the specific cost center under analysis. The labor ratio or overhead allocator is used for cost centers that are primarily labor related, such as the CEO (cost center 1111) and the Project Office (cost center 1851).[10]

On the other hand, Facilities (cost center 1351) and Human Resources (cost center 1841) are allocated using the FTE allocator. The ISO believes this labor-based allocator is better suited to these activities than the labor cost ratio approach that TANC evidently would prefer. For items such as computers, furniture, buildings, and related resources like security, and human resources, the number of people in each function is a better indicator of usage than the number of people weighted by salaries, which essentially is

[10] In Exh. No. ISO-10, cost centers allocated using labor ratios are identified with the designation "OH," while those using the FTE allocator are identified with the designation "FTE."

what the labor ratios are.[11] TANC's preference for a *different* approach to the allocation of these costs in accordance with the ISO's labor force does not, in any event, render the ISO's approach inconsistent with the just and reasonable standard. Moreover, the difference between the labor ratio and FTE allocators is very small, yielding virtually identical results for the CRS, ETS, Forward Scheduling Charge, and Market Usage categories and slight differences for the Congestion Management Charge and SMCR. Exh. No. ISO-10 at 376.

CMUA states that the ISO should explain why the cost shifts in this year's design are justified. CMUA at 13. As a threshold matter, the ISO has described in considerable detail in its testimony how each cost category has been developed, including the basis for changes between the previous GMC and the current proposal. *See, e.g.*, Exh.. No. ISO-1 and Exh. No. ISO-3. Moreover, the Revised GMC Rate proposal reflects the ISO's efforts to achieve a greater level of cost causation in the GMC. In the process of re-evaluating its rate design for the Revised GMC Rate, it became apparent to the ISO that certain classes of customers would be differently impacted by the change in rate structure. In many of these instances, the entities that would see a greater impact from the GMC in the new design were those that the ISO's analysis showed to have been carrying too light a load under the current design. Therefore, modifying the rate design to shift more costs onto these customers is completely appropriate.

[11] Employees with higher salaries do not necessarily utilize proportionately more resources (that is, someone with twice the salary does not necessarily receive twice the square footage, two computers, twice as much security or human resources support, etc.).

(ii) Basis for Unbundling

MID argues that the ISO's rate design relies on unbundled charges for "fictitious services" that do not properly reflect services used by customers, MID at 9, 12 (quoted language) and 19, provides "poor incentives for cost control," *id.* at 27, and that because, in its view, CRS, SMCR, and Forward Scheduling charges are poorly related to cost causation, these charges lead to "inequitable cost recovery." *Id* at 28. MID also discusses what it describes as the weak incentives for individual Scheduling Coordinators to 1) reduce the costs of managing the grid; and 2) behave in ways that improve system reliability. *Id.*

These complaints are baseless. MID's claim that the GMC redesign is premised on "fictitious" services proceeds from its refusal to recognize that the ISO has incurred and continues to incur substantial costs to maintain a reliable platform for the supply of electric service, including, but not limited to, supply through competitive market transactions. It is this claim, however, that is fictitious. As MID is well aware, the ISO underwent an extensive stakeholder process to design the Revised GMC Rate. Part of this process was the development and categorization of classes of services and activities. *See* Exh. Nos. ISO-1 and ISO-3. ISO personnel were asked to provide extensive information about the activities in which they engaged in operating the grid**,** *see, e.g.,* Exh. No. ISO-1 at 22:10 – 23:17.[12] Then, ISO personnel, together with consultants with many years of rate design experience, worked with stakeholders to craft an appropriate GMC. That MID does not approve of the outcome of the rate design process is clear;

[12] The requests and responses regarding activities performed in the winter of 2002 and spring of 2003 were not part of the extensive documentation submitted by the ISO on October 31, 2003. Follow-up requests used to determine the final allocations that are used in the filed rate are included in the documentation. *See, e.g.,* Exh. Nos. ISO-15 – 19.

nonetheless, to categorize the resulting rate categories as "fictitious" is more than merely incorrect – it constitutes a willful misunderstanding of the process and its results.

MID's specific criticisms of the incentive effects of the proposed GMC revisions are no better founded. The ISO discusses its efforts to control its costs in Section IV(A)(4), below. The success of those efforts is evident in the decline in the ISO's overall costs, as reflected in the lower revenue requirement that the Revised GMC Rate charges are designed to recover. The determination of the different components of the GMC through which the ISO's costs are recovered, however, does not and cannot affect the behavior of Market Participants in a manner that will have a significant effect on the overall level of the ISO costs. The appropriate basis for the selection of unbundled charges and the allocation of costs among them is the matching of cost responsibility with cost causation, to the extent feasible and consistent with avoiding undue bill impacts. As explained below and in the ISO's filing, the ISO's proposed revisions to the GMC fulfill this objective.

MID also contends that the ISO's filing "flaunts [*sic*] the Commission's instructions in Opinion No. 463." MID at 12. This contention, too, is unfounded. To the contrary, the proposed revisions to the GMC are entirely consistent with the letter and spirit of Opinion No. 463. In that opinion, the Commission largely affirmed the Initial Decision in the 2001 GMC proceeding.[13] The ISO took account in its rate filing of the Commission's rulings on the few issues with regard to which Opinion No. 463 modified the ISO's 2001 rate, *e.g.*, the introduction of a demand charge and the treatment of

[13] As paragraph 2 of the opinion explains, Opinion No. 463 upheld the Initial Decision on all but two issues: 1) the method of allocation of the Control Area Services ("CAS") charge to behind-the-meter load, directing a demand charge for certain loads, and 2) on one element of a utility's pass-through of a charge, which did not modify the ISO's rate design.

behind-the-meter load. Opinion No. 463 at PP 2, 28, and 34. MID's arguments in this area are groundless.

(iii) *SDG&E – SWPL Issues*

SDG&E seeks exemption from all GMC charges for the schedules it submits for Arizona Public Service Company ("APS") and Imperial Irrigation District ("IID") on the Southwest Power Link. The Southwest Power Link, or "SWPL," is a 500 kV transmission line partly owned by SDG&E that that is located entirely within the ISO Control Area. At one time SWPL was owned entirely by SDG&E, but in the early 1980s SDG&E transferred portions of SWPL to APS and IID. SDG&E submits Schedules to the ISO for the entire SWPL line pursuant to Existing Contracts between SDG&E and the two other owners. SDG&E claims that, because the two other owners of entitlements in the SWPL are not Participating Transmission Owners, no GMC charges should attach to energy flowing over their portions of the line. SDG&E also seeks partial summary disposition on this issue. SDG&E at 1; 13-14.

A party seeking summary disposition must show that it is entitled to a ruling in its favor as a matter of law and there are no genuine issues of material fact in dispute. SDG&E's motion fails this test at the threshold. SDG&E is not entitled to a ruling in its favor. To the contrary, the Commission considered the SWPL issue in Opinion No. 463 in affirming the Initial Decision and decided *against* SDG&E. SDG&E is barred as a matter of law and FERC policy from relitigating the issue.[14]

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[14] The doctrines of *res judicata* and *collateral estoppel* preclude the relitigation of issues that have been decided as to the parties in a prior judicial or administrative proceeding. *Kremer v. Chem. Constr. Corp.,* 456 U.S. 461, 466 n. 6 (1982). The Commission has a long-standing policy against relitigation of issues. The basis for this position is the fact that it is contrary to sound administrative practice and a waste of resources to relitigate issues in succeeding cases once those issues have been fully determined. *Alamito Co*., 43 FERC ¶ 61,274 at 61,753 (1988). *See also, Central Kansas Power Co*., 5 FERC ¶ 61,291 at 61,621

In the 2001 GMC proceeding, the Presiding Judge correctly found the application of the GMC to energy flowing on the non-SDG&E SWPL entitlements to be just and reasonable. *See* Initial Decision at 65,135. The Commission affirmed this conclusion in Opinion No. 463. Opinion No. 463 at P 7. SDG&E's request for rehearing of Opinion No. 463 on this issue is pending. SDG&E's attempt to raise the identical issue again, in the context of the Revised GMC Rate, constitutes an impermissible and duplicative collateral attack on Opinion No. 463.[15] SDG&E's motion for summary disposition should accordingly be denied. Instead, the application of the Revised GMC Rate to transactions on the SWPL should be governed by the Commission's disposition of the rehearing request in Docket No. ER01-313.

If the Commission nonetheless chooses to reach the SWPL issue in this case, it should deny SDG&E's motion on the merits, as SDG&E's arguments are unfounded. SDG&E first argues that the GMC would subject it to trapped costs, ostensibly in violation of the ISO Tariff, because SDG&E is unable to recover these costs through its Existing Contracts with APS and IID or under the ISO Tariff. SDG&E at 2-3. The ISO is not obliged, however, to design a rate that assesses only charges recoverable by each and every Scheduling Coordinator through each of its contracts. In Opinion Nos. 458 (*Pacific Gas and Electric Co., et al.*, 100 FERC ¶ 61,156 (2002)) and 458-A (*Pacific Gas*

(1978). The Commission applies this policy against "unnecessary, duplicative litigation." *Gaviota Terminal Co*., 75 FERC ¶ 63,008 at 65,027 (1996).

[15] In addition to the issue being raised in the 2001 GMC Docket, ER01-313-000. *et al.*, SDG&E also raises the issue in a pending complaint docket in which SDG&E seeks an exemption from certain GMC charges for 2001 through 2003, and refunds plus interest for amounts already paid. The ISO filed an Answer to this Complaint on June 16, 2003. A similar, though distinct, issue was also presented in the ISO's appeal of an Arbitration Award, filed Commission in Docket No. EL04-24 on November 14, 2003. That proceeding deals with the assessment of charges for Transmission Losses on SDG&E with regard to SWPL.

and Electric Co., et al., 101 FERC ¶ 61,151 (2002)), for example, the Commission acknowledged that costs may be trapped, but nonetheless specifically found that entities such as SDG&E should shoulder this burden. 100 FERC ¶ 61,156 at P 30.

SDG&E next claims that the ISO Tariff prohibits the application of the GMC to the non-SDG&E portions of SWPL because they are not part of the ISO Controlled Grid. SDG&E at 3. Both the premise and the conclusion of this argument are invalid. First, the GMC is *not* billed to Scheduling Coordinators solely for use of the ISO Controlled Grid. As stated in the ISO Tariff as proposed in the October 31 GMC filing, the GMC is: "The ISO monthly charge on all Scheduling Coordinators that provides for the recovery of the ISO's costs listed in Section 8.2… ." ISO Tariff Appendix A, Master Definitions Supplement. Section 8.2 of the ISO Tariff lists operating costs, financing costs, and operating and capital reserves costs as the costs recovered by the GMC. None of this can be characterized as "use of the ISO Controlled Grid." As the Commission recognized in Opinion No. 463, many of these costs are associated with the ISO's operation of its Control Area, not solely the use of transmission facilities. Indeed, the ISO has entirely separate charges (the Transmission Access Charge and the Wheeling Access Charge) related to transmission access. Further, the ISO disagrees that these elements of SWPL are not a part of the ISO Controlled Grid;[16] but even if they are not, as the Initial Decision (affirmed by Opinion No. 463) held, "[W]hether SWPL transmission facilities are, or are not, a part of the ISO Controlled Grid is not material to whether these facilities may be assessed the MO charge [component of the GMC]." Initial Decision at 65,136.

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[16] The ISO provided an extensive justification of this position in the evidence and pleadings in ER01-313, and the Record of the Arbitration currently before the Commission in EL04-24, and will not belabor them here.

SDG&E makes much of a recent arbitration award, finding that the ISO should not assess Transmission Losses for the APS and IID portions of SWPL, because they are not a part of the ISO Controlled Grid. *See, e.g.*, SDG&E at 8. While the ISO is appealing this award, the result of this appeal – like the award itself - has no bearing on the case at hand. As noted above, the Commission has determined that whether or not the non-SDG&E portions of the SWPL are part of the ISO Controlled Grid "*is not material*" to the assessment of the GMC. Initial Decision at 65,136 (emphasis added). Even if the Commission ultimately determines upon review of the arbitrator's decision that the APS and IID elements of SWPL are not a part of the ISO Controlled Grid and this is material to the assignment of Transmission Losses, SDG&E remains bound by the Commission's determination in Opinion No. 463, unless and until the Commission revises that determination on rehearing.

SDG&E also argues that APS and IID schedules do not contribute to the ISO's Load Responsibility or its Control Area responsibilities and do not constitute exports. SDG&E at 3, 9-11. Again, SDG&E's argument is not with the ISO's Revised GMC Rate filing, but with the Commission's conclusions in Opinion No. 463. *See* Initial Decision at 65,134-35.[17]

In sum, even if it were appropriate for the Commission to reconsider the SWPL issue in this proceeding – which it plainly is not – SDG&E has offered nothing that would lead to a different conclusion than the Commission reached in Opinion No. 463 on

[17] As part of its argument, SDG&E invents the term "Net Exports"; despite SDG&E's use of capitalization, this is not an ISO defined term and is not found in the ISO Tariff. Thus, the term has no meaning as a billing determinant for the GMC. It is possible that SDG&E intends to capture the "wheel through" concept using this neologism; if so, as noted above, its position has been rejected by the Commission.

precisely the same issue. SDG&E's motion for partial summary disposition in its favor on this previously litigated issue should accordingly be denied.

b. Core Reliability Services Charge

(i) General

Powerex argues that the demand-based billing determinant for the CRS does not follow cost causation. Powerex at 7. Powerex also complains that ISO witnesses did not examine whether the costs recovered in this charge were fixed or variable and asserts that the CRS charge should not be used to recover variable costs, since, in Powerex's view, these costs are not appropriate for recovery through a demand charge. Powerex at 8-9. Powerex's complaints are baseless. The distinction between fixed and variable costs simply is not relevant to the cost of service analysis that the ISO performed. The ISO's administrative costs recovered through the CRS and the other GMC charges are essentially all fixed costs, such as costs of equipment and personnel. Variable costs, which typically include items like losses, fuel costs, or shrinkage (*i.e.*, costs of delivering energy), are not included in the CRS or any other GMC charge.

MID argues that CRS is a "ratemaking fiction", because "'reliability' is a measure of the success with which a system operator performs fundamental services," MID at 20. MID further contends that costs should be recovered through the price of the ISO's "fundamental services." *Id.* As explained above, MID either fails to recognize, or willfully ignores the fact, that that providing reliability is one of the ISO's "fundamental services." This has been recognized by the Commission in Opinion No. 463. Paragraph 27 of that opinion, for example, discusses the importance of reliability and how it is

appropriately the focus of cost causation analysis. The Commission, in affirming the Initial Decision, stated:

> We affirm the factual findings of the Initial Decision that the [Control Area Services or "CAS"] in question are not and could not be self-provided. The record evidence on this point supports her finding. For example, while SMUD explained that it self-provides various services for its transmission facilities and loads, the ISO demonstrated that those services, provided only in SMUD's individual service area, were not the same services provided by the ISO on a Control Area-wide basis which can only be provided by the Control Area operator. The excepting parties' reliance on reliability standards suffers from the same flaw. The general prescription of the [Western System Coordinating Council's Minimum Operating Reliability Criteria] standards that all utilities bear some responsibility for reliability does not contradict the fact that certain significant tasks to ensure reliability are in the exclusive province of the control area operator. Finally, as the judge noted, all load is wholly dependent on the performance of CAS, without which no load serving entity could operate. These services cannot be self-provided, nor can these services be duplicated by SCs or other parties operating in a smaller service area within the ISO's footprint.

Opinion No. 463 at P 27 (footnote omitted).

MID also argues that CRS is "little more than a new name applied to the [CAS] category," MID at 21, and, while criticizing both as "catchall[s]," MID notes that CRS and CAS "differ only" in whether they use "an energy measure of gross load" or a "peak demand measure of gross load," and warns the Commission that two categories are "essentially the same." *Id*. at 22. MID uses this association of the CRS and CAS charges to claim that the CRS charge is inconsistent with Opinion No. 463. MID at 30 ("CRS is simply [a] new name for the CAS").

That MID finds similarities between the CRS charge and the former CAS charge is not surprising, as the CRS is primarily made up of costs related to grid operations, as was the case with CAS. CAS, however, also contains costs that were functionalized

differently, such as a portion of the Settlement system. Furthermore, in the current proposal, the grid operations costs have been broken up among three charges between CRS and ETS-UD and ETS-NE. It would appear that MID's real concern is the billing determinant for CRS, which MID erroneously characterizes as "gross load" – albeit gross load based on a demand instead of an energy charge. MID at 30. In fact, the CRS charge is billed based on metered non-coincident peak hourly demand during the month in MW. This represents a significant difference that is consistent with Opinion No. 463 and, as discussed below and in Exh. No. ISO-3 at 11-12, this billing determinant is eminently appropriate for the CRS charge.

MID further contends that the CRS charge is "inequitable," MID at 22, noting that ISO staff has stated that all customers do not use CRS to the same extent. The ISO finds this argument surprising, as MID's position on other issues appears to support the idea that customers pay for services to the extent they use them (as, indeed, is the case with regard to the CRS charge). In the CRS charge, all customers benefit from these services and pay the same rate , the overall sum of which depends upon the loads that they impose on the system during the month based on the ISO's (extensive) cost causation analysis. *See, e.g.*, Opinion No. 463 at P 26 ("the Initial Decision accurately characterized cost causation and received benefits as alternative means of expressing the same concept"); Exh. No. ISO-3 at 10:8 – 14:22.

MID argues that the CRS charge conflicts with Opinion No. 463. MID at 29-32, citing language from 463 directing CAS to be assessed on highest hourly demand. Once again MID misreads Opinion No. 463. In that decision, the Commission found that all loads in the control area created costs for the ISO. Opinion No. 463, however, found the

CAS charge too inexact – charging the same rate to those that relied on the ISO grid to a lesser degree. FERC therefore directed the ISO to utilize a demand-based charge for some loads, rather than a volumetric charge. The ISO's CRS responds to this direction; it represents a new rate design that has been developed to meet and exceeds the Commission's desire for greater granularity. Responding to FERC's additional guidance and requests from stakeholders such as the CPUC, the ISO has in essence divided what was the CAS charge into three categories: CRS, ETS-UD, and ETS-NE. Further, the CRS charge utilizes a demand charge for all SCs.[18]

MID makes reference to recent decisions regarding transmission Access Charges and a Participating Generator Agreement in an attempt to buttress its erroneous arguments regarding Opinion No. 463. MID at 30-31. Even beyond the obvious fact that transmission Access Charges, which recover the embedded costs of transmission facilities, and the terms of an agreement with qualifying facilities are not the same as the ISO's rate to recover its operating, administrative and capital costs, MID's reliance on these decisions is still misplaced. Regarding transmission Access Charges, the Commission found that certain behind-the-meter entities paid too much, and directed a charge assessed on a net basis for certain loads.[19] As noted above, the CRS charge *is* a demand charge for *all* loads – which means that those behind-the-meter loads are assessed the CRS on only their metered demand. Regarding the Participating Generator Agreement with qualifying facilities ("QFs"), the Commission found that QFs could not be directed to be charged for Ancillary Services for other than their metered use and that

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[18] The ETS-UD is assessed on net uninstructed deviations, and ETS-NE is assessed on Metered Control Area Load as defined in the October 31, 2003 GMC filing at Tab B and Exh. ISO-Nos. 20 and 21.

[19] *California Independent System Operator Corp.*, 104 FERC ¶ 61,062 (2003).

the QFs could not be directed to separately meter their on-site load and on-site generation.[20] Nothing in the ISO's GMC rate is in conflict with that finding – the GMC rate is not a rate for Ancillary Services of any type, nor is there any element of the ISO's GMC rate that directs any entity to meter. MID seems to be using the decision as support for the notion that behind-the-meter loads should be assessed the CRS on a demand basis. Again, under the Revised GMC Rate, QFs, and all loads, are assessed the CRS on their metered demand. Thus, even if MID's arguments regarding Commission decisions regarding cases that have nothing to do with the recovery of the ISO's costs could somehow be considered relevant to the GMC, the arguments would still fail.

MID also argues that the CRS charge discriminates between wholesale and retail behind-the-meter load, MID at 31, and argues that "metered non-coincident peak hourly demand" should be defined because it is not clear where the metering takes place. MID at 36. Similarly, SCE requests that a definition of "metered non-coincident peak hourly demand" be incorporated into the tariff, and has proposed a definition that would exclude retail behind-the-meter load served by behind-the-meter generators, thereby reducing the load subject to the GMC. SCE at 3-5.

The ISO is opposed to these requests, which amount to further attempts by MID and SCE to undermine the appropriate billing determinant for this charge in an effort to exclude significant portions of the loads on their systems and thereby avoid shouldering their fair shares of ISO's costs of providing core reliability services.[21] MID and SCE

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[20] *California Independent System Operator Corp*., 104 FERC ¶ 61,196 (2003).

[21] As the Commission recognized in Opinion No. 463, all loads in the ISO Control Area are "wholly dependent on the [ISO's] performance of CAS, without which no load serving entity could operate." Opinion No. 463 at P 27.

would have the ISO assess the CRS charges solely on the net meter readings of the transmission-level meters on the ISO Controlled Grid and ignore the metered demands of loads on their systems.[22] Under their preferred approach, CRS charges would be assessed only on the excess of the demand on a utility's system over the generation connected to the system. This approach, however, has no basis in cost causation. As the Commission recognized in Opinion No. 463, the ISO incurs the costs recovered through the CRS to maintain the reliability of its control area for the benefit of *all* loads in the control area. It does not incur fewer core reliability-related costs for the loads of utilities that have more generation on their systems than for the loads of utilities relying more heavily on remote generation. The net metering approach advocated by MID and SCE nevertheless would shift the costs of providing core reliability services from the former group (into which they presumably both fall) onto the latter. It would also inappropriately increase the absolute magnitude of the CRS charge, by reducing the total megawatts of demand to which it applies, even though *all* demands in the ISO Control Area benefit from the ISO's provision of core reliability services.

The net-metering approach advocated by MID and SCE also raises a number of other significant concerns. If adopted, it could create an incentive for the grid to become balkanized, with more generation constructed on lower voltage lines closer to Load. The higher per-MW CRS resulting from the net-metering approach would shift more of the ISO's core reliability costs to load that relies on more remote generation. In addition to violating principles of cost causation, this would discourage regional trading, and it might

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[22] A version of this type of metering was considered by the ISO and rejected. *See*, Exh. Nos. ISO-367 – 371.

lead to an ever-increasing incentive to re-classify lines to exclude them from the ISO's Operational Control.

Finally, TANC expresses confusion with regard to the ISO's use of 530,670 MW-months billing determinant. TANC at 10. Apparently TANC has failed to recognize that the proposed forecasted billing determinant includes 1 and 1/2 years', rather than 1 year's, worth of escalation relative to the base period. The 530,670 MW figure (for calendar year 2004) as well as the 526,563 MW figure (for the twelve months July 2003 through June 2004) is shown in the billing determinant spreadsheet. Exh. No. ISO-10 at 430.

(ii) Exports

BPA and Powerex argue that the CRS charge, as designed, would have a major negative effect on exporters. BPA at 2-5; Powerex at 4-8. They contend that the monthly costs would be prohibitive, deterring exporters from participating in the decremental energy market and thereby creating operating difficulties. They argue that the ISO should consider either reducing the costs recoverable through this charge, changing from a monthly to an hourly charge, or eliminating or mitigating the charge for exports and wheel-through transactions.

The issues concerning exports raised by BPA and Powerex have only lately come to the ISO's attention, as neither intervenor participated in the stakeholder process that led to the ISO's proposed Revised GMC Rate. As such, these concerns have not been fully discussed and evaluated by the ISO or by stakeholders. The ISO believes there may be some degree of legitimacy to these concerns, and feels there may be room for the parties to work together on resolving them by adjusting the manner in which the CRS is

applied to demands associated with wheel-through and export transactions. The ISO believes that this issue is particularly appropriate for consideration in the settlement judge process that it has recommended, to allow the affected parties in the first instance to address this and other possible unanticipated issues to be resolved by the parties.

SCE argues that energy exported over non-grid facilities should not be charged the GMC, and that, in SCE's view, if energy is transmitted over facilities that are not a part of the grid, such transmission does not constitute an export. SCE argues that the Mohave facilities for which it schedules are similar to the Southwest Powerlink ("SWPL") facilities for which SDG&E submits schedules, and notes that the SWPL facilities were found not to be part of the ISO Controlled Grid in a recent arbitration. SCE at 6-7.[23] SCE's attempt to link the Mohave facilities to the SWPL does not advance its claim. As described above, the Commission in Opinion No. 463 affirmed the Initial Decision's ruling that the GMC is appropriately assessed on deliveries over transmission facilities that do not form part of the ISO Controlled Grid (assuming, *arguendo,* that the Mohave facilities in fact are not a part of the ISO Controlled Grid). Initial Decision at 65,136. In fact, the Initial Decision (again affirmed by Opinion No. 463) specifically found that Mohave exports should be assessed the CAS charge element of the 2001 GMC, which covered many of the same costs as the CRS charge.[24]

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[23] SCE also states that a definition of "export" should be provided. SCE at 7. The ISO believes this is an attempt by SCE to ensure that a definition of export excludes the Mohave facilities, and that such a newly crafted definition then be used to allow SCE to avoid its share of the charge for these facilities. For this reason, the ISO objects to defining this commonly understood term.

[24] The Initial Decision explained:

> [Mohave Participant Energy or "MPE"] both contributes to CAS costs incurred by the ISO and receives benefits from the CAS performed by the ISO in the same manner as does any other export. For example, MPE benefits from, *inter alia*, outage coordination; scheduling; the performance of operational studies; and the monitoring of the entire grid--all activities required of

(iii) Non Coincident Peak

SWP argues that assessment of the CRS charge based on non-coincident peak ("NCP") demand is counter to cost causation, grid efficiency, and FERC precedent, and that a preferable approach to assigning a billing determinant for the CRS charge would be either to use coincident peak demand or to retain the volumetric charge. SWP at 5. SWP further argues that coincident peak assessment sends proper price signals, encouraging more efficient use of the grid. SWP at 8. Finally, SWP contends that the use of NCP demand discriminates against non-peak users such as SWP. SWP at 8.

These claims are unfounded. CRS services are required to be performed on a 24 hour a day, seven day a week schedule. There is no question of using this charge to send efficient price signals or to encourage more efficient use of the grid, because the costs of this charge are not based on peak grid usage but rather on baseline grid usage. In fact, the CRS charge specifically excludes the scalable, *i.e.*, usage sensitive, component of reliability services. *See, e.g.*, Exh. ISO-3 at 14:16 – 16:11. If this charge were to be assessed based on coincident peak demand, many customers that impose substantial requirements for reliability services would be able to pay little or nothing for them as long as their peak usage was outside of the coincident peak. SWP fits squarely into this category of customer, and it is evident why it seeks to cling to a rate design that has the potential to allow it a free ride. Such a rate design, however, would lead to entities with peak usage in the peak usage period shouldering an unfairly large proportion of the costs

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> the ISO. MPE is clearly an export within the definition of the ISO proposed billing determinant for CAS charges and nothing in the record persuades me that MPE should be exempted from paying its fair share of the CAS charge. In fact, to do so would result in inappropriate cost shifting to other market participants by increasing their share of CAS charges.

99 FERC at 65,133 (citations and footnote omitted).

of this service. Simply put, charging customers for their usage of a service, regardless of when it occurs, is not discrimination – it is rather an appropriate shift towards greater adherence to the principle of cost causation.

c. ETS – Net Energy Charge

SCE and MID repeat the arguments they raised with respect to the CRS in opposition to the inclusion of demand that is matched by local area generation in the billing determinant for the ETS-Net Energy Charge. SCE at 3-4; MID at 36. The ISO responded to these arguments in the context of the CRS in Section IV(A)(3)(b), above. They are no better founded in this instance. Here again, the exclusion of these demands has no basis in cost causation and would inappropriately shift costs among Scheduling Coordinators while driving up per-unit charges. For the reasons already discussed above, this attempt to limit the assessment of the GMC to only the high voltage transmission in the Control Area should be rejected.

d. ETS – Uninstructed Deviations Charge

MID argues that there is no clear definition for the billing determinant of ETS-UD. MID at 36. This billing determinant is provided in Appendix F, Schedule 1, Part A of the ISO Tariff language proposed in this filing. That provision states that this charge is determined based on the absolute value of total annual forecast net uninstructed deviations (netted within a settlement interval) in MWh. That definition is further clarified by Section 8.3.3 of the ISO Tariff. MID appears uncertain if the netting is by Scheduling Coordinator for that Scheduling Coordinator's portfolio. *Id.* at 36-37. The proposed charges are assessed to each Scheduling Coordinator, as explained in Section 8.3.3, based on the net uninstructed deviations in each settlement period, as explained in

Section 8.3.3 and Appendix F, Schedule 1, Part A. It is therefore clear that charges are by SC and do not create distinctions between different loads scheduled by a single Scheduling Coordinator. As with all GMC charges, each SC identification number ("SC ID") is treated as a separate Scheduling Coordinator, even if a single entity has acquired more than one SC ID for business purposes.

e. Forward Scheduling Charge

MID argues that the ISO's billing determinant for Forward Scheduling Charge is not based on customers' activities, but on the ISO's accounting practices, and that it is not clear that all submitted Schedules have the same costs. MID at 23. MID contends that it is unfair for a Generator that wanted to provide 90 MW of Energy and 10 MW of Regulation to pay two Forward Scheduling Charges in an hour, but a Generator only selling 100 MW of Energy to pay for only one charge. *Id.* In fact, the allocation of these costs by the number of Schedules submitted, rather than the number of MW scheduled, is fair and reasonable. The ISO incurs costs to process each Schedule. A Generator that wants to sell 90 MW of Energy and 10 MW of Regulation is in fact selling two different products into two different markets. It is appropriate that it should bear two separate costs, which, are, in any event, small relative to the overall amounts of money involved in the transactions.

MID further argues that costs of inter-Scheduling Coordinator ("inter-SC") trades are improperly allocated to the Forward Scheduling Charge because "inter-SC trades do not change physical schedules," and that costs should be allocated to settlement activity. MID at 24. MID is incorrect. In fact, inter-SC trades represent a large portion of the overall Schedules that have to be processed prior to the operating hour, and thus a large

portion of the work the ISO must perform for this function. The Forward Scheduling Services Charge is not a charge for monitoring physical Schedules, but a charge for processing Schedules. Among the tasks undertaken are verification that a Scheduling Coordinator's portfolio is balanced and that one Scheduling Coordinator's inter-SC trades are matched with the inter-SC trades of other Scheduling Coordinators.

Finally, MID contends that the ISO's Forward Scheduling Charge may run afoul of FERC's policy of not charging for changes to schedules. MID at 24. The ISO had FERC's policies very much in mind in crafting this charge, however, and is confident that it has been properly tailored to accommodate FERC's guidance. The ISO has made it clear in its testimony that Hour-Ahead Schedules can be altered an unlimited number of times prior to the close of the Hour-Ahead Market without additional charge. Exh. No. ISO-3 at 20:1-17.

f. SMCR Charge

Some intervenors argue that the ISO's determination to mitigate the bill impacts of the SMCR charge by assigning its costs above a fixed fee of $500 per month per Scheduling Coordinator to other service categories does not (or may not) comport with cost causation. TANC at 10; CMUA at 9; MID at 24; SWP at 10.[25]

These criticisms are unfounded. As described in the testimony of Dr. Barbara Barkovich, Exh. No. ISO-1 at 12, and Ms. Catherine Yap, Exh. No. ISO-3 at 39, the SMCR was mitigated to avoid unduly severe rate impacts, and this was done in a manner that complies fully with cost causation principles. Initially, the ISO's cost analysis would

[25] SWP mistakenly argues that the costs above the $500 monthly charge recovered through the other charges are not included in the rates provided by the ISO in the transmittal letter for the October 31 filing. SWP at 10. In fact, the allocation of this excess to the other charges is reflected fully in the rates provided.

have produced a monthly per-SC SMCR charge of $50,000 – a figure beyond the means of many SCs. Exh. No. ISO-3 at 39. To avoid establishing an inappropriate barrier to participation in the ISO's markets and to the receipt of transmission service on the ISO Controlled Grid, the ISO set the charge for SMCR at $500, with the shortfall spread to other service categories, in order to avoid excessive bill impacts. The re-allocation of costs was not done haphazardly, without regard to cost causation, as the intervenors imply. Rather, the ISO used an appropriate, quantified measure to associate the SMCR costs with the other subfunctions. The details of this process are described in the testimony of Ms. Catherine Yap, Exh. No. ISO-3 at 40-42. The ISO's treatment of SMCR costs thus appropriately took into account and balanced considerations of avoiding unduly large per-customer charges and cost causation principles. The costs of SMCR are clearly delineated in the Cost Statements provided in the filing, and those are associated with the provision of other services on the basis of a study of the ISO charge types.

MID notes that during the GMC Project stakeholders questioned why the "limited ranges of activities" involved in the SMCR resulted in such a large bill. MID at 25-26. MID, and perhaps the stakeholder to whom MID alludes, fail to consider that Settlements and metering include substantial capital investments in systems in addition to staffing requirements. *See, e.g.*, Exh. No. ISO-261 at 8. As a result, the systems supported by this charge are complex and costly. For example, the ISO's Settlements system issues far more than 94 bills per month, including, for each Scheduling Coordinator:

- Preliminary Market Invoice
- Final Market Invoice
- Preliminary GMC Invoice

- Final GMC Invoice
- Final FERC Fees Invoice
- Special Invoices (TAC, Re-runs)

MID also contends that if the ISO reached a reasonable result in finding $51.9 million in costs in the SMCR function, but does not collect all these costs through SMCR charges, then customers that do not cause costs will be subsidizing customers that do. MID at 25-26. This is not the case, however, because the costs involved are driven by customers' need for access to the ISO system. Although collecting the amount that has been committed to customer access is a difficulty, there is no question of subsidization.

MID contends that spreading the costs to other service categories "detracts from the transparency and clear price signals to Market Participants." MID at 26. The ISO has fully described how these costs are allocated to the other categories, however. As described by Ms. Yap, Exh. No. ISO-3 at 39-40, the SMCR costs not recovered through the $500 per SC monthly charge are reassigned according to the percentages set in the ISO Tariff for the other service categories, apart from the CRS and Forward Scheduling charges.[26]

g. Congestion Costs

MID argues that ISO's treatment of Congestion costs is "illogical," and that it doesn't make sense to collect Inter-Zonal Congestion costs in a separate category and to roll costs of Intra-Zonal Congestion into the CRS charge. MID at 26. This is incorrect; the ISO's charge for Congestion Management reflects the ISO's current Congestion Management system. Further, this category design was found to be just and reasonable in

[26] These service charges were not included in the reassignment due to concerns that such reassignment would result in unacceptable bill impacts for these categories, in which a fair amount of uncertainty already exists.

the 2001 proceeding. The current charge is merely a continuation of the prior just and reasonable design.

The ISO currently operates under a zonal Congestion Management system. Under this system, the costs of handling the flow of electricity across congested lines between defined Zones is handled through the ISO's Congestion Management system, including software designed expressly to manage Schedules involving Inter-Zonal Congestion, whereas Intra-Zonal Congestion is not. Under this system, Intra-Zonal Congestion is managed as part of the real-time operating process. For this reason, Intra-Zonal Congestion is handled as an issue of overall reliability, and Inter-Zonal Congestion is more appropriately separated out into its own cost category.

As described in the testimony of Ms. Catherine Yap, Exh. No. ISO-3 at 25, Schedules involving inter-zonal congestion must be processed separately from other schedules, making a natural division in cost causation. For this reason, it is appropriate to recover the costs of this activity in a separate category.

The ISO is working on a new approach to Congestion Management, as part of its overall market redesign effort. This new approach will eliminate the inter/intra distinction. When that approach is implemented, it will be appropriate to modify the allocation of costs to a Congestion charge. It would be premature to do so now; as the charge appropriately reflects the ISO's current operations.

4. Attacks on the ISO's Revenue Requirement are Unfounded

Certain intervenors contend that the ISO's revenue requirement is excessive. TANC at 3-4; CMUA at 2, 4. Such unsupported contentions are insufficient to warrant adjustments to the GMC rates or even to create issues requiring resolution through

evidentiary hearings. It is well settled that utility expenditures are generally presumed to be prudent and that the initial burden of proof is upon the entity challenging the prudence or recoverability of a utility's decision or expenditure. *Minnesota Power & Light Co.,* 11 FERC ¶ 61,312 at 61,645 *modified in part,* 12 FERC ¶ 61,264 (1980); *see also, West Ohio Gas Co. v. Public Utilities Commission of Ohio*, 294 U.S. 63, 72 (1935) (good faith of utility is presumed). In *Indiana and Michigan Municipal Dist. Ass'n. and City of Auburn, Indiana v. Indiana Michigan Power Co*. 62 FERC ¶ 61,189 (1993), the Commission (citing *Minnesota Power, supra*) elaborated upon the initial burden of proof borne by a challenging party:

> Thus, in the prudence review process, the initial burden of proof as to whether a utility's costs are excessive rests with the party making the allegation. Only when an opposing party raises "serious doubts" does the burden shift to the utility to dispel those doubts.

Id. at 62,239. In determining whether "serious doubt" has been raised, the Commission has held that a "[b]are allegation" is not enough to support a claim of imprudence. *Minnesota Power and Light,* 11 FERC at 61,645. Rather, "the party seeking to call the prudence of an expenditure into question must do so by adducing evidence or citing to material of which the Commission may take official notice," *Id.* at 61,645 n.45, and the evidence adduced must be substantial. *Wisconsin Electric Power Co.,* 73 FERC ¶ 63,019 at 65,225-26 (1995).

The intervenors protesting the ISO's revenue requirement as filed on October 31 have leveled no legitimate arguments against the ISO with regard to its costs – nor could they do so in the context of a hearing. The current GMC filing includes a revenue requirement that is substantially *lower* than that of recent years. While the ISO's revenue requirement has increased by about 50 percent from the 1998 level of approximately

$158 million, the level has been stable for the past three years, and is decreasing in 2004. Even apart from the level of the filed revenue requirement, the ISO has exercised cost control by keeping actual operating and maintenance costs $15 million below the budgeted level in 2001 and 2002. From 2003 to 2004, the revenue requirement has been reduced by $19.6 million. Exh. No. ISO-24 at 20. In spite of this, certain intervenors criticize the ISO's progress in this regard. The ISO recognizes that providing services at a reasonable cost is essential to its success and incorporates this imperative in its corporate mission statement, which lists high-level responsibilities of the ISO and notes that these are to be achieved "at a reasonable cost."

The ISO has in fact sought to control its costs through initiatives in three separate areas. First, where possible, the ISO has endeavored to stop providing services that are not needed or can be provided by other entities. As an example, in 2000 and 2001, the ISO sponsored demand response programs because there was a critical need for them that was not being met. The ISO has worked with others, including the CPUC, to taken on this role, and the ISO has not continued to pursue it. Second, the ISO has sought to pay less for the services it requires to meet its obligations. Most notably in this regard, the ISO has replaced a major communications contract with a new provider as soon as the contract term expired, at significant cost savings. Third, the ISO has worked to improve its efficiency by streamlining operations and reducing complexity. Its efforts in this regard are complicated by the desires of numerous Market Participants with varied interests. As an example, the ISO's efforts to reduce its costs of administering Existing Contracts have been complicated by opposition of parties to those agreements. Thus, the ISO has worked to lower its costs using each of these approaches, and will continue to

look for opportunities to do so. The ISO invites feedback from stakeholders as to how it may further pursue these means of cost reduction. Broad indictments that the ISO's costs are "too high," however, are not constructive.

Rather than acknowledging the ISO's real efforts – and successes – in lowering its costs, certain intervenors are dismissive of these achievements. For example, one issue of great contention during the 2001 GMC proceeding was the ISO contract with MCI, which represented a fairly large element of the ISO's revenue requirement. As noted above, upon the expiration of this contract, the ISO negotiated a much more reasonable telecommunications contract. Instead of welcoming these savings, and recognizing them for evidence of the ISO's real efforts to lower costs, certain intervenors denigrate the ISO's achievement of these savings. *See, e.g.*, TANC at 11-12; CMUA at 4. In fact, as explained above, the negotiation of new, more favorable contracts is a key cost control measure.

CMUA argues that savings the ISO has claimed for this year may not materialize, because they are based on median estimates of costs. CMUA at 4. This is nothing more than a generalized attack on the use of estimates in the budgeting process and in ratemaking. It is hardly surprising that the ISO would use median estimates of expected costs in preparing its budget and its rate filings – it must provide estimates of its costs prior to the year in which they will be incurred. As noted above, even after the ISO establishes its budget, management makes an effort to spend less than budgeted if possible. These savings are used to reduce the rates in subsequent years through the operating reserve mechanism. With increasing familiarity with the types of expenses that arise each year, the ISO continues to improve its ability to develop accurate forecasts of

expenses, and believes that actual spending in 2004 will closely match the 2004 budget. It is doubtful that CMUA would have preferred the alternative to the ISO's approach, which would have been for the ISO to budget high-end estimates of its costs, setting an unnecessarily high revenue requirement.

Some intervenors feel that the ISO lacks sufficient cost control mechanisms and procedures. Some go so far as to suggest that the Commission step in and impose cost control measures, in the form of "metrics" or actual cost caps. CMUA at 2, 7; NCPA at 4. TANC argues that it would require a Commission order to force the ISO to undertake real cost control. TANC at 3-4. In fact, as described in the testimony of Mr. Philip Leiber, Exh. No. ISO-24 at 12-20, the ISO undertakes a thorough budgeting process, including the evaluation of its programs and activities for cost-effectiveness. The process takes upwards of 4 months. As described by Mr. Leiber, the goal of this year's budgeting process was, from the very start, to reduce costs. Exh. No. ISO-24 at 15. Only the most essential new programs were accepted into the budget, and opportunities to reduce costs without jeopardizing the ISO's overall level of service were highlighted. *Id.*

Moreover, there are extensive opportunities for stakeholder participation in the budgeting process. Stakeholders are welcome to attend meetings of the ISO Board of Governors at which the budget is discussed (both in preliminary and final form), and to submit questions and suggestions to ISO staff responsible for the budget. The ISO also holds a budget workshop near the end of the process to allow stakeholders to examine and discuss the budget in detail with pertinent ISO personnel, including ISO officers and managers. All of these activities and opportunities are well documented in the ISO's filing. *See* Exh. No. ISO-24 at 13 and Exh. Nos. ISO-34 through 46.

MID argues that there are "weak incentives to cut costs" as a result of socializing costs rather than charging for services. MID at 27-28. The ISO's continuous unbundling efforts, however, have led to greater and greater granularity with regard to its services, dividing its costs into more specific categories over time. Since the ISO was formed, its costs have been recovered in a less and less "socialized" manner. The current GMC filing represents considerable progress in this regard. That some costs remain non-scalable, as described in the testimony of Ms. Catharine Yap, Exh. No. ISO-3 at 14:17 - 15:20, is merely an ineluctable feature of ratemaking. In spite of the arguments of MID to the contrary, MID at 28, technological advances cannot convert inherently non-scalable elements into scalable ones.

Notwithstanding the heated rhetoric employed by some intervenors in attacking the ISO's costs, only one specific cost projection was criticized, and by only one intervenor: TANC complains that the ISO's cost of incentives and bonuses has increased. TANC at 12. To single out one line item in an extensive budget as being higher than it was the previous year is not to demonstrate that this cost is inappropriate or has been imprudently incurred; much less is it to demonstrate that the revenue requirement as a whole (having decreased overall) is unjust or unreasonable. Moreover, with regard to this specific cost, the terms of the incentive compensation are unchanged from prior years. The change in this costs element relates to the slight increase in the number of employees, and an increase in base compensation costs from year to year.

Some intervenors criticize the ISO's costs in comparison to those of other ISOs. TANC at 3-4; CMUA at 5. While it is true that the California ISO's 2004 revenue requirement is higher than that of other ISOs, it is important to recognize that, unlike the

eastern ISOs, the ISO was created from whole cloth out of three separate control areas. It was put into operation in a very short period of time, and the mechanisms necessary for its efficient and reliable operation have required re-evaluation and improvement as experience was gained. The eastern ISOs, on the other hand, were developed from long-existing tight power pools in which the participants were accustomed to a more centralized control, and in which the mechanisms of operation had to undergo less in the way of dramatic change.[27] Additional reasons for the differences include:

- Funding capital expenditures directly from rates due to lack of access to credit markets;
- Debt service related to initial startup (the California ISO's startup costs were relatively high due to the need to build systems from ground up on an expedited basis, as opposed to having systems evolve as refinements to those in place for the existing power pool);
- Locational differences (higher costs in California);
- Different functionality and circumstances (market rules, regulatory issues, legal issues outstanding);
- Costs recorded at ISO versus elsewhere (California ISO pays costs of communication system that may be paid by participants elsewhere); and
- Extensive continued change to systems and response to crisis.

The ISO is not unaware of these differences, and is involved in continuing benchmarking efforts to understand and address them. Numerous benchmarking efforts have been referenced in the ISO's previous rate cases, and the ISO is currently working with New York ISO, ISO-New England, Ontario IMO, Alberta Electric System Operator, and Midwest ISO on a benchmarking study. The ISO's costs increased substantially from 1998 through 2001, were relatively constant from 2001 to 2003, and decline in

[27] Moreover, the eastern ISOs were begun voluntarily, allowing for special arrangements among the participating transmission owners and the ISOs. For example, PJM enjoys a special arrangement by which it pays only a nominal rent for certain of its facilities. *See* PJM Report for the Quarter Ended June 30, 2003 at 10. This Report is available on the PJM website at www.pjm.com/committees/finance/downloads/2003-2nd-quarter-report.pdf The California ISO, on the other hand, pays nearly $2.5 million in rent annually.

2004. Significantly, the ISO's costs are on a downward trend, while other ISOs are seeing substantial cost increases, meaning that costs are likely to come close to converging soon.

CMUA recommends that an independent audit of the ISO should be ordered. CMUA at 14. The ISO currently has regular operational audits, which are made available to the public and are used by ISO management and its board to improve operations and control costs. The ISO undergoes numerous independent audits on an annual basis (including a financial audit, an operational audit, SAS70 audit, and benefit plan audits) and had a FERC-ordered audit in 2001/2002. Moreover, FERC is commencing a new audit of the ISO this month.

MID argues that because ISO is revenue neutral with no shareholders to absorb imprudent costs, FERC must "assure that any ISO rate is designed to encourage and facilitate cost control." MID at 27. In fact, as MID is aware, both the Initial Decision in the 2001 GMC proceeding and the Commission decision that largely affirmed the Initial Decision found that the ISO's 2001 GMC costs of approximately $225 million were justified, with the exception of an error made in calculating the projected amount of incentive compensation, which reduced the revenue requirement by $1.8 million. Opinion No. 463 at P 9. As the ISO has demonstrated improved cost control in the present filing as compared with that of 2001, filing a revenue requirement of $218.2 million, it is reasonable to expect to meet with Commission approval in this regard once again.

In short, the ISO has presented a just and reasonable revenue requirement that meets the goal of cost control while at the same time providing adequate support for the ISO to carry out its responsibilities in operating the grid in a safe, reliable manner.

B. THE GMC FORMULA RATE IS APPROPRIATE AND SATISFIES FERC REQUIREMENTS

The ISO proposes to add additional specificity to the GMC provisions of the ISO Tariff to enable the GMC to function as a fully reconciling formula rate that will allow the ISO to eliminate the automatic requirement for an annual Section 205 filing. The ISO's authority to employ a formula rate mechanism that satisfies the Commission's requirements is clear: "It can hardly be doubted at this late date that the Commission 'need not confine rates to specific, absolute numbers but may approve a tariff containing a rate 'formula' or a rate 'rule,''" as "[t]he Commission has been accepting formula rates since the early 1970s." *Public Utilities Comm'n of California v. FERC*, 254 F.3d 250, 254 (D.C. Cir. 2001) (citations omitted). The Commission has long "recognized the advantages afforded by the use of automatically adjusting cost-of-service formula rates,"[28] and has approved their use in a wide variety of circumstances.[29] "The

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[28] *Louisiana Public Service Commission v. Arkansas Power & Light Co.*, 44 FERC ¶ 61,392, 62,270 (1988); *see also, e.g, Central Power & Light Co.*, 11 FERC ¶ 61,102 (1980); *Middle South Services, Inc.*, 16 FERC ¶ 61,101 at 61,219 (1981), *aff'd, Louisiana Public Service Commission v. FERC*, 688 F.2d 557 (1982), cert. denied, 460 U.S. 1082 (1983).

[29] *See., e.g.*, Midwest ISO, FERC Electric Tariff, Second Revised Volume No. 1, at Schedule 10 (approved formula rate used by RTO); PJM Interconnection, L.L.C., FERC Electric Tariff Sixth Revised Volume No. 1, at Schedule 9 (approved formula rate used by RTO); *Avista Corp., et al.*, 100 FERC ¶ 61,274, 62,071 (2002) (Commission approval of use of formula rate by RTO); New York Independent System Operator, Inc., FERC Electric Tariff, Original Volume No. 2, Rate Schedule 1 (approved formula rate used by ISO); *TRANSLink Development Co.*, 103 FERC ¶ 61,208 (2003) (Commission approval of use of formula rate by ITC); *San Diego Gas & Electric Co.*, 105 FERC ¶ 63,026 (2003) (Commission approval of use of formula rate by integrated utility).

Commission's acceptance of formula rates is premised on the rate design's 'fixed, predictable nature,' which both allows a utility to recover costs that may fluctuate over time and prevents a utility from utilizing excessive discretion in determining the ultimate amounts charged to customers." *Public Utilities Comm'n of California v. FERC*, 254 F.3d 250, 254 (D.C. Cir. 2001) (citations omitted). The existing GMC rate mechanism requires the submission of annual rate cases that are costly and time consuming, require resources to be employed by the ISO, stakeholders, and the Commission that could best be devoted to other endeavors, and that create uncertainty each year regarding the ISO's ability to recover its administrative and operating costs. In contrast, recovering the GMC through a formula rate provides greater rate predictability for customers, reduced regulatory risk and reduced regulatory lag, lower filing expenses, reduced administrative expenses, and reduced levels of litigation. *See Southern Company Services, Inc.*, 60 FERC ¶ 63,013, 65,151 (1992). In order to obtain these benefits for the ISO and its customers, the ISO devised its proposed GMC as a formula rate.

The ISO has, from its inception, believed that a formula rate was an appropriate funding mechanism for its costs, and has sought to effectuate this approach. The establishment of the unbundled GMC, and a finding in the 2001 GMC proceeding, left this goal temporarily unmet, because the GMC formula then lacked the specificity required of a formula rate, as the FERC staff indicated during the 2001 GMC proceeding. *See* Exh. No. ISO-89. With the Revised GMC Rate proposal, the ISO has proposed a GMC formula rate that is sufficiently "fixed [and] predictable" to meet the Commission's standards.

Directly addressing concerns raised by Commission staff in the 2001 GMC proceeding, the ISO developed a detailed formula rate that includes specified allocation factors, and has incorporated the detailed formula rate directly into its tariff. Because the ISO's proposal would incorporate the formula rate, including all allocation factors, into the ISO Tariff, it may not be modified without Commission approval in a subsequent Section 205 filing. *See* 16 U.S.C. § 824d(d). Market participants may address their concerns about the level of particular ISO costs by exercising their Section 206 rights, which are in no way affected by the adoption of a formula rate by the Commission, and by participating in the ISO's open budget development process. In addition, the ISO proposes to make an annual informational filing with the Commission to advise market participants of the charges that result each year from the application of the GMC formula rate.

Nevertheless, some intervenors expressed misgivings about the appropriateness of using a formula rate for the GMC. As explained below, none of their concerns has merit.

1. The GMC Formula Rate Is Detailed and Specific.

The Commission has found that "formula rates that are not specific are unacceptable," requiring that a formula rate "provide details of all formula calculations,"[30] although there is no "absolute prescribed standard literally set forth in the statute and regulations" regarding the level of detail in a formula rate. *Public Utilities Comm'n of California v. FERC*, 254 F.3d 250, 255 (D.C. Cir. 2001) (citations omitted). SWP contends that "it is not certain that the [GMC] proposal includes sufficient detail

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[30] *Maine Yankee Atomic Power Company*, 42 FERC ¶ 61,307, 61,923 (1988).

regarding the calculations in the rate schedule to satisfy the requirements for a formula rate." SWP at 11; *see also,* TANC at 8.

In fact, the proposed GMC formula rate does "provide details of all formula calculations." *Maine Yankee*, 42 FERC at 61,923. Although the intervenors do not make clear in what respect they believe that the formula rate lacks sufficient detail, the formula rate is sufficiently detailed to assuage any possible concerns. The formula rate includes both the description of the costs that are recoverable and the specific allocation factors used to allocate each cost center in the ISO's budget among the various GMC charges. The individual GMC charges therefore may be calculated by applying the allocation formulas incorporated in the tariff to the ISO's annual budget by cost center. The inclusion of a detailed matrix of allocation factors to allocate 73 cost centers and 91 systems to seven GMC charges provides not only a greater degree of precision and specificity than the current GMC formula, but greater precision and specificity thanother formula rates that the Commission has approved. *See, e.g., TRANSLink Development Co*., 103 FERC ¶ 61,208 (2003) (approval of formula rate with all costs allocated to only two separate administrative charges adjusted for over or under collections in previous years). Accordingly, the ISO submits that the formula rate is sufficiently precise, is explained in sufficient detail and is sufficiently accurate to meet the Commission's requirements so that the Commission may approve the formula rate.

a. The Formula Rate is Sufficiently Detailed to Meet the Commission's Requirements for Formula Rates

Intervenors are incorrect in suggesting that the ISO's formula rate is not sufficiently detailed. Mr. Philip Leiber explained in his testimony that "each ISO cost

center develops a proposed budget,"[31] which may be "presented to stakeholders for review and the ISO Governing Board for approval"[32] using the "ISO's approach of displaying costs by cost center and expense type." Exh. ISO-3 at 29:8-10. The CASIO 2004 budget by cost center, for instance, was presented in Exhibit No. ISO-10 at page 355 of 442 in the GMC filing. In subsequent years, the budget will be presented in a similar format to the public in a stakeholder review process and then the Commission in an informational filing.

Using the data provided in the 2004 budget by cost center included GMC filing, and in the budgets that the ISO will prepare in forthcoming years, the GMC charges may be calculated by allocating the costs assigned to each cost center across each of the seven GMC charges based on the percentages stated in Schedule 1, Part E, Table 1 of ISO OATT. Tab B; Exh. Nos. ISO-20 and 21. The sum of the portion of each cost center allocated to each category represents to total GMC costs recoverable through that category. Given that the rate may be calculated simply by applying allocation factors that are contained in the tariff to budgets that will be included in annual informational filings at the Commission, there can be no question that the proposed revisions to the GMC formula do not contain ample detail to meet the Commission's requirements.

b. The Formula Rate is Sufficiently Precise to Meet the Commission's Requirements for Formula Rates

If the intervenors were suggesting instead that the rate will not be calculated with a sufficient degree of precision based on the allocation factors that the ISO incorporated

[31] Exh. No. ISO-24 at 9:1.

[32] Exh. No. ISO-24 at 9:8-9.

into its tariff, the comments were equally misplaced. The formula rate incorporated into the tariff is significantly more precise than the rate approved by the Commission in 2001. To calculate the previously approved GMC, the ISO allocated its costs across three different functions in an attempt to base customer charges on the underlying costs related to the services provided to those customers. The allocation factors are not specified in the GMC formula currently included in the ISO Tariff. The proposed Revised GMC Rate formula, in contrast, allocates that ISO's costs across seven different functions using the matrix of allocation factors proposed for inclusion in the ISO Tariff, ensuring a greater degree of transparency and of alignment between cost causation and customer charges. To the extent that assignment of costs to three functions was sufficiently precise for the Commission to approve the 2001 GMC, the ISO's development of a GMC that assigns its costs to seven functions, allowing for a greater link between cost causation and customer charges, certainly meets the Commission's standards for precision.

c. The Formula Rate is Accurate, Thus Meeting the Commission's Requirements for Formula Rates

Finally, if the comments were suggesting that the parties believe that that the allocation factors are simply incorrect, the comments were once again misplaced. As explained in the testimony of Ms. Catherine Yap, the costs attributable to each cost center were either directly assigned to different functions in instances where, "upon completion of a detailed cost study, there is evidence that demonstrates the direct connection between the costs and the functional activities." Exh. No. ISO-3 at 29:8-10. Where there is no direct linkage, "costs are allocated using an allocation factor that best associates the costs with the various functional areas." Exh. No. ISO-3 at 29:10-12. In order to improve the precision of the GMC, the ISO significantly increased the percentage of costs that were

directly assigned (rather than allocated) over the percentage in the 2001-2003 GMC structure. Exh. No. ISO-3 at 29-30.

The formula rate is incorporated into the tariff with sufficient detail that when applied to an ISO budget by cost center (which, as discussed above, was included in the ISO's filing this year and will be made available for public comment and filed at the Commission in subsequent years), the resulting rates may readily be calculated and the calculations audited. The assignment of the revenue requirement to seven, instead of three categories represents an improvement in the precision of the link between cost causation and customer charges. And, the calculation of allocation factors based on the detailed analysis described by Ms. Yap ensures that the calculation is as accurate as possible. Accordingly, the ISO's formula rate unquestionably meets the Commission's standards that a formula rate be sufficiently detailed.

d. Stakeholders' Unanimous Acquiescence in Not A Require Precondition to the ISO Filing the GMC at the Commission

SWP claims that "even if sufficient detail is included, the parties, including SWP, have not agreed on whether the formula calculations are themselves just and reasonable." SWP at 11. While the ISO developed its Revised GMC Rate proposal through an extensive public stakeholder process, there is no requirement that stakeholders reach unanimous agreement on all elements of the ISO's proposal. The lack of complete consensus in no way precludes the ISO from submitting a rate filing. Because the transmission facilities subject to the GMC are operated by the ISO, and because the GMC

is collected by the ISO, it is the ISO's legal obligation to prepare and submit a Section 205 filing, and the Commission's obligation to review it.[33]

As part of the process of developing the GMC, the ISO engaged in a public discussion with market participants about the GMC proposal, a level of involvement by market participants not required by the FPA or the Commission's regulations. Interested parties also are encouraged to intervene and comment on the Commission's review of the filing. However, neither the FPA nor the Commission's regulations either require or expect that all market participants will concur with a rate schedule filing prior to its submission to the Commission for review and approval pursuant to Section 205 of the FPA.[34]

Additionally, while parties may not support the ISO's efforts to establish a formula rate, numerous parties have raised concerns about the ISO's costs. ISO management and staff sincerely believe that avoiding an annual rate case will help reduce ISO's overall costs, by avoiding the significant costs of discovery and litigation.

2. The GMC Formula Rate May Not Be Amended Without Subsequent Section 205 Filing

TANC contends that the "ISO proposes to maintain the ability to alter the rate formula without a Section 205 filing." TANC at 8. This simply is not true. The ISO has

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[33] *See* Section 205 of the Federal Power Act, 16 USC § 824d. *See also, Entergy Services, Inc*., 102 FERC ¶ 63,016 at P 42 (2003) (noting that only the utility providing jurisdictional wholesale sales service and transmission service, and not an intervenor in its rate filing, has the right to file a rate schedule under Section 205 of the Act.) While a jurisdictional entity may voluntarily restrict its right to submit filings under Section 205, *Papago Tribal Utility Authority v. FERC*, 723 F.2d 950, 953 (D.C. Cir. 1983), *cert. denied*, 467 U.S. 1241 (1984). SWP identifies no such agreement on the ISO's part, because there is none.

[34] In addition, while the ISO suggested a stakeholder process to reevaluate the GMC rate, a suggestion adopted by the Initial Decision and affirmed by the Commission, neither the Initial Decision, nor the Commission's Opinion No. 463 required that the stakeholders reach a consensus amongst themselves and / or with the ISO.

incorporated the formula rate directly into its tariff in order to meet the Commission's requirements that "the specific formula calculations be reduced to writing and incorporated into the rate schedule," *Maine Yankee Atomic Power Company*, 42 FERC ¶ 61,307 at 61,923 (1988), and to address concerns raised by Commission staff in the review of the 2001 GMC. *See* Exh. No. ISO-89 at 15-19.

The ISO recognizes that once the Commission accepts the GMC formula rate, it cannot modify any element of the approved formula, including the allocation factors included in it, without a filing under Section 205. This is clear from the testimony of Ms. Catherine Yap, who explained that, if the basis of any of the cost allocation factors changes significantly, the ISO would have to "file modifications to the table of allocators under Section 205," Exh. No. ISO-3 at 45:2-3. That Section states, in pertinent part:

> [u]nless the Commission otherwise orders, no change shall be made by any public utility in any such rate, charge, classification, or service, or in any rule, regulation, or contract relating thereto, except after sixty days' notice to the Commission and to the public.

16 USC § 824d(d). Accordingly, the ISO recognizes its obligation to file any forthcoming amendments to the formula rate with the Commission for approval pursuant to Section 205 of the FPA, and the intervenors' assertion to the contrary is groundless. Accordingly, the ISO respectfully requests that the Commission set aside this particular concern.

3. A Formula Rate Is Particularly Appropriate for the Recovery of Administrative and Operating Costs by Independent System Operators

MID claims that a "formula rate is not appropriate for an independent system operator or regional transmission organization . . . because such entities are, in principle, servants of the market and market participants." MID at 34. While the ISO agrees that

its objective is to operate a reliable and efficient transmission platform and market structure, this premise does not support MID's conclusion. In fact, MID's claim that ISOs and RTOs should not employ formula rates is belied by the Commission's acceptance of formula rates for the recovery of costs by other independent system operators. *See, e.g.*, New York Independent System Operator, Inc., FERC Electric Tariff, Original Volume No. 2, Rate Schedule 1.

4. Market Participants Will Retain Ability to Examine the ISO Budget and the Resulting GMC Charges and Seek Relief From the Commission if the GMC Formula Rate Results in Unjust and Unreasonable Charges

Several intervenors stated that the Commission should not approve a formula rate because doing so would undermine the ability of market participants to ensure that the ISO's future expenditures were not excessive. MID at 33; TANC at 8; SWP at 11-12. These intevenors ignore the other mechanisms that are available to them to ensure that the ISO's costs are just and reasonable. First, as described in Ms. Yap's testimony, market participants will have the opportunity to participate in the development of the ISO's annual budget and to review both the outcome and basis of the ISO's budget and the charges that will result from the application of the proposed GMC formula rate to each annual budget in a budget process that "includes the publication of a proposed budget, workshops in which the proposed budget is explained to stakeholders, who are given opportunities to ask questions and raise concerns, and adoption of the final budget by the ISO Governing Board in a public session." Exh. No. ISO-3 at 45: 7-12. Then ISO then will make an annual informational filing, which would "contain the information needed to update the ISO's GMC formula rate for the upcoming year, presented in conformance with FERC's uniform system of accounts." Exh. No. ISO-3 at 45:14-16.

Subsequently, if any market participant believes that the application of the GMC formula rate to an approved ISO budget results in excessive charges, it will have access to the information necessary to frame a request for relief from the Commission.

Approval of the GMC will in no way affect market participants' Section 206 rights -- market participants will retain their rights to file a complaint pursuant to Section 206 of the FPA to challenge the justness and reasonableness of the charges produced by the GMC rate formula, if they raise substantial questions about the reasonableness of the ISO's budgeted costs. Those rights are adequate and appropriate. In addressing the issue of whether Section 206 of the Act provides market participants adequate protection against unjust and unreasonable rates, the Court of Appeals for the District of Columbia stated that

> [i]n approving formula rates, the Commission has relied on [Section] 206 as a mechanism to ensure that the rates are just and reasonable, and its reliance on [Section] 206 has survived judicial scrutiny… .

Public Utilities Comm'n of California v. FERC, 254 F.3d 250, 257 (D.C. Cir. 2001) (citations omitted), noting that the availability of Section 206 means that the "Commission's acceptance of the ISO's formula rate without additional [Section] 205 filings does not leave CALPUC or ratepayers without any statutory recourse." *Id* at 258. If the market participants identify and document any meaningful concerns that the ISO's budget that forms the basis of the charges under the Revised GMC Rate formula includes excessive costs, they have the right and ability to bring those concerns to the Commission's attention and to obtain relief.[35]

[35] As an aside, the ISO notes that notwithstanding much carping by market participants concerning the ISO's expenses, the intervenors, who were first presented with the ISO's 2004 budget on September 25, 2003, have yet to identify a significant volume of inappropriate expenses in support of their contention that the ISO's budget is excessive.

5. The Forthcoming Implementation of Locational Marginal Pricing is no Impediment to Adoption of GMC Formula Rate

MID contends that the Commission should not approve the Revised GMC Rate because it will have to be redesigned when locational marginal pricing ("LMP") is introduced into the California market. MID at 35. The pending implementation of LMP, however, does not render the proposed Revised GMC Rate formula inappropriate *now.* The ISO acknowledges that when LMP is introduced to the California market, the ISO may need to make changes to the GMC rate formula. Because the detailed structure of the LMP mechanism that will be implemented by the ISO has not yet been established, however, it is unclear exactly what, if any, changes may need to be made to the GMC rate formula. Moreover, although the ISO anticipates that LMP may be introduced to California as soon as next fall, the ISO recognizes that this timetable is subject to delay.

The ISO does not believe that the possibility of a forthcoming change in the California energy market, which may require some modification to the GMC, justifies delaying implementation of a formula rate now, and at a minimum, should permit the avoidance of a new rate case for 2005, when ISO staff will be fully dedicated to the MD02 implementation effort and other important matters. When the ISO does submit a filing setting forth the detailed revisions to the ISO Tariff required to implement LMP, it will include any necessary changes to the GMC rate formula.

C. If FERC Institutes an Investigation, the Appointment of a Settlement Judge is an Appropriate First Step

In its initial filing, the ISO requested that in the event that the filing is set for investigation and evidentiary hearing, the Commission appoint a settlement judge to

determine whether a settlement may be concluded. At least one intervenor supported the ISO's request for the appointment of a settlement judge. MWD at 6. Other intervenors, however, indicated that the Commission should not appoint a settlement judge and should, instead, immediately initiate an investigation and hearing.

The ISO continues to believe that a settlement judge could help the parties assess areas of dispute and possibilities of resolution in a more efficient manner than if the parties simply continued to discuss the issues amongst themselves while preparing for an evidentiary hearing. Appointing a settlement judge would be consistent with Commission practice, which allows for the appointment of a settlement judge when "the parties may be able to resolve many issues through an informal information exchange," *South Mississippi Electric Power Association v. Entergy Services, Inc.*, 85 FERC ¶ 61,413 at 62,572 (1998), or when parties have demonstrated a "willingness to settle their past differences." *City of Wichita v. Western Resources, Inc.*, 90 FERC ¶ 61,082 at 61,285 (2000). In fact, the Commission routinely appoints settlement judges when it believes that the range of unresolved issues is limited, and that doing so will help the parties arrive at a settlement.[36]

The range of unresolved issues concerning the GMC is limited, particularly considering the scope of the filing and the implications that the filing could have on the GMC in coming years. Much of the agreement between the parties is attributable to the extensive stakeholder process that the ISO undertook in the development of the GMC proposal. The ISO believes that with the assistance of a settlement judge, the parties may

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[36] *See. e.g., NSTAR Services Co. v. New England Power Pool, et al.*, 99 FERC ¶ 61,188 (2002); *Arizona Public Service Co*., 96 FERC ¶ 61,357 (2001); *Entergy Louisiana*, 92 FERC ¶ 61,052 (2000); *Ocean State Power II*, 91 FERC ¶ 61,078 (2000); *PJM Interconnection, LLC*, 89 FERC ¶ 61,281 (1999).

be able to resolve certain issues that were raised by intervenors in their protests before the Commission which they had not raised during the stakeholder process[37] and other issues that the intervenors identified in their protests that were not addressed in the stakeholder process.

Moreover, the ISO believes that even if a complete settlement is not reached, the process nevertheless will reduce the number and focus the scope of unresolved issues that must be addressed in a formal investigation and hearing, thereby reducing both its complexity and its cost. Accordingly, the ISO continues to believe it is appropriate for the Commission, if it concludes that an investigation and hearing is necessary, first to set the filing for settlement so that the parties may seek to address outstanding issues, and at a minimum, narrow their scope so that an investigation will be as focused as possible.

D. WHILE THERE HAS BEEN NO SHOWING THAT THE PROPOSED REVISIONS TO THE GMC WOULD PRODUCE SUBSTANTIALLY EXCESSIVE REVENUES, THE ISO WOULD NOT OBJECT TO A FIVE MONTH SUSPENSION OF THE PROPOSED REVISIONS, LEAVING THE CURRENT GMC IN EFFECT, TO ENABLE THE PARTIES TO ATTEMPT TO RESOLVE OUTSTANDING ISSUES WITH THE ASSISTANCE OF A SETTLEMENT JUDGE

The ISO submitted its Revised GMC Rate filing to the Commission on October 31, 2003, in order that it could become effective sixty days later, on January 1, 2004, consistent with the sixty day notice requirement in the FPA[38] and the Commission's

[37] For example, in their protests, the BPA and Powerex protest the application of the CRD demand charge to exports and wheel through transactions. The ISO believes that this issue, which was not addressed by any party in the stakeholder consultations, might be resolved through settlement discussions.

[38] The Federal Power Act states that "[u]nless the Commission otherwise orders, no change shall be made by any public utility in any such rate, charge, classification, or service, or in any rule, regulation, or contract relating thereto, except after sixty days' notice to the Commission and to the public." 16 USC § 824d(d).

regulations.[39] Both TANC and MID argue that the Commission should suspend the proposal "to ensure that the Commission retains the full panoply of authority granted to it under the FPA with the result that the Commission can order refunds at the conclusion of this proceeding." TANC at 14-15; identical language in MID at 37. Powerex requests that the Commission suspend the filing for the full five months permitted by the Act because "of the significant rate increase for what is now CRS service." Powerex at 11.

It is the Commission's general policy, as outlined in *West Texas Utilities Co*., that when a preliminary review of a proposed increase indicates that it may be excessive, defined as "[w]here more than ten percent of the proposed increase is found to be excessive," *West Texas Utilities Co.*, 18 FERC ¶ 61,189, 61,375 (1982) ("*West Texas*"), the Commission would generally suspend the rate for five months, as permitted by the Act.[40] Otherwise, the Commission's practice is to impose a nominal suspension period, typically of one day, *see id.*; s*ee also, e.g., Tampa Electric Co*., 101 FERC ¶ 61,284 at 62,156 (2002); *Southern California Edison Co.*, 101 FERC ¶ 61,404 at P 32 (2002), which permits the rate to go into effect while reserving the right for the Commission to examine the rate and order refunds to utility customers if the rate is modified by the Commission as the result of its investigation and hearing. *See* 16 USC § 824d(d). In this instance, as explained above, no showing has been made that the proposed revisions to

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[39] The Commission's regulations state that "[A]ll rate schedules or any part thereof shall be tendered for filing with the Commission and posted not less than sixty days . . . prior to the date on which the . . . filing party proposes to make any change in electric service and/or rate." 18 CFR § 35.3(a).

[40] *Id. See also, Commonwealth Edison Co., et al*., 105 FERC ¶ 61,186 (2003*); Tampa Electric Co*., 101 FERC ¶ 61,284 (2002); *Pacific Gas and Electric Co*., 103 FERC ¶ 61,240 (2003); *Midwest Independent Transmission System Operator, Inc*., 103 FERC ¶ 61,090 (2003); *Southern California Edison Company*, 101 FERC ¶ 61,404 (2002); *Southern California Edison Company*, 99 FERC ¶ 61,032 (2002).

the GMC will produce substantially excessive revenues. Moreover, no substantial challenges have been raised to any of the costs that would be recovered through the Revised GMC Rate.

Nevertheless, the ISO recognizes the importance of the issues associated with the application of the CRS to exports, an issue that was not identified by any participant in the stakeholder process, which Powerex and BPA first raised in their protests to the filing. The ISO wants to ensure that the application of the proposed CRS to exports does not interfere with the reliable and efficient operation of the California power market and the other Control Areas with which the ISO is interconnected. Accordingly, although the ISO does not believe that the intervenors who sought a five-month suspension of the proposed rate have met the Commission's standard for such a suspension, the ISO would not object to a five-month suspension, as long as the Commission directs that the parties use the time to address outstanding issues with the assistance of a settlement judge appointed by the Commission and the Commission confirms that the ISO may continue to collect the 2003 GMC in the interim.

E. THE ISO'S REQUEST FOR CONTINGENT SURCHARGE AUTHORITY SHOULD BE GRANTED NOW

The ISO requests that the Commission grant the ISO conditional surcharge authority if the GMC Rate is set for hearing. October 31, 2003 Transmittal Letter at 11. The ISO explained that if the Commission orders refunds for customers who overpay their GMC, customers who underpaid should be assessed the amount they underpay. Without the availability of a surcharge, customers that underpay will be subsidized by all market participants, because the only choice that the ISO would have to fund the refunds would be through future rate assessments on all customers.

CMUA, MID and Powerex argue that a surcharge would amount to retroactive rate making. CMUA at 11, MWD at 9, Powerex at 11. Courts have considered whether this would constitute retroactive ratemaking, however, and held that there is no retroactive ratemaking "when parties have notice that a rate is tentative and may be later adjusted with retroactive effect . . . ."[41] Accordingly, if the GMC is set for hearing, and there is any possibility that the Commission may not simply alter the ISO's rate on a prospective basis, but would order refunds for charges paid after the effective date of the filing, the Commission should expressly allow for the possibility of surcharges as a later option by providing notice that the GMC rate is tentative in this respect and granting the ISO contingent surcharge authority.

CMUA and others alternatively argue that the surcharge proposal is premature. CMUA at 11, MWD at 9-10, SWP at 12. The ISO's request is not premature, because it is not asking the Commission to authorize the ISO to collect specific surcharges if the rate is set for hearing, but simply to put ratepayers on notice, consistent with the requirements outlined by the Commission in *Consolidated Edison*, that the GMC rate is tentative and that future surcharges are a possibility in order to maintain the ISO's revenue neutrality and avoid cross-subsidization among customers if refunds are ordered. Because such advance notice is required by Commission precedent, the ISO's request that the Commission notify ratepayers that the rate is tentative and that surcharges are a possibility is not premature.

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[41] *Consolidated Edison Co. of New York v. FERC,* 347 F.3d 964 (D.C.Cir. 2003). *See also, OXY USA, Inc. v. FERC*, 64 F.3d 679, 699 (D.C. Cir. 1995) quoting *Natural Gas Clearinghouse v. FERC*, 965 F.2d 1066 (D.C. Cir. 1992) ("the rule against retroactive ratemaking . . . 'does not extend to cases in which [customers] are on adequate notice that resolution of some specific issue may cause a later adjustment to the rate being collected at the time of service.' The goals of equity and predictability are not undermined when the Commission warns all parties involved that a change in rates is only tentative and might be disallowed.")

TANC and CMUA argue that the ISO has not provided any mechanism to impose surcharges. TANC at 14; CMUA at 11. Just as with refunds, no mechanism need be devised at the outset in order to place ratepayers on notice that in the future the Commission may order that ratepayers who are found to have underpaid to be billed additional amounts through a surcharge. In fact, the ISO could not propose a specific surcharge mechanism at this point, since the appropriate mechanism (if any is needed) would depend upon the refunds (if any) directed by the Commission's final order. While the ISO prefers for any changes to the GMC rates to be applied on a prospective basis only, if refunds and surcharges are ordered, the Commission will be able to define a mechanism with sufficient detail at the time they are ordered.

V. CONCLUSION

Wherefore, for the foregoing reasons, the ISO respectfully requests that the Commission accept its GMC filing, and grant such other relief as is discussed in the body of this pleading.

Respectfully submitted,

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Date: December 8, 2003

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in the above-captioned proceeding, in accordance with Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated at Washington, DC, on this 8th of December, 2003.

__*/s/ Theodore J. Paradise*__
Theodore J. Paradise