

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

**California Independent System
Operator Corporation**

Docket No. ER01-313-004

**Pacific Gas and Electric
Corporation**

Docket No. ER01-424-004

**BRIEF OPPOSING EXCEPTIONS OF THE
CALIFORNIA INDEPENDENT SYSTEM
OPERATOR CORPORATION**

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Pursuant to Rule 711 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.711, the California Independent System Operator Corporation (“ISO”) respectfully submits its Brief Opposing Exceptions.

I. EXCEPTIONS OPPOSED

The ISO opposes the following Exceptions:

Party	Exception
California Department of Water Resources/State Water Project (“SWP”)	The Initial Decision erred in finding that the ISO’s list of modeled generators, Exhibit No. ISO-55, provides a sufficient evidentiary basis for implementing an exemption from assessment of CAS based on CAGL consistent with the intent of Opinion Nos. 463 and 463-A.
	The Initial Decision erred in suggesting that a distinction between wholesale and retail behind-the-meter load for purposes of an exemption from CAGL assessment of the CAS is a potential issue for resolution in this limited-purpose proceeding.

SVP	The ID erroneously determined that the four behind-the-meter generators SVP identified were ineligible to receive the exemption from CAS.
CAC	The Initial Decision erred in finding that “the ISO’s use of base case models provided to it by the PTOs to conduct studies that examine the effects of different conditions under which the transmission system may have to operate and to determine the effects of different conditions under which the transmission system may have to operate and to determine the effects of the conditions of the transmission system, constitutes “modeling” within the meaning of the Commission’s inquiry.
SMUD	The Presiding Judge acted arbitrarily and capriciously in basing her Initial Decision on a flawed interpretation of the Commission-created exemption that could only be supported by writing out of existence the Commission-created exemption’s modifier “explicitly.”
	The Presiding Judge acted arbitrarily and capriciously in basing her Initial Decision on a flawed interpretation of the Commission-created exemption that could only be supported by writing out of existence the Commission-created exemption’s modifier “regular performance.”
	The Presiding Judge arbitrarily and capriciously held that the Commission-created exemption does not apply to wholesale behind-the-meter generation when the Commission expressly created the exemption for wholesale and retail behind-the-meter generation.
	The Presiding Judge errs in arbitrarily and capriciously narrowing the applicability of the Commission-created exemption on irrelevant grounds that include: benefits to load; reliability benefits; incurrence of “some” cost; and cost shifting.
	The Presiding Judge errs in adopting facts that relitigate aspects of Opinion No. 463 in order to narrow the scope of the Commission-created exemption.
	The Presiding Judge arbitrarily adopts an interpretation of explicitly modeled that would not require any factual findings in a fact finding proceeding, because the Presiding Judge finds that mere appearance in Exh. ISO-55 is definitive objective criteria, as the Exh. ISO-55 list was already supplied and applied by the ISO in the November 15 Compliance Filing.
	The Presiding Judge arbitrarily adopts an interpretation of explicitly modeled that reduces the fact finding proceeding to a mere determination of whether the Exh. ISO-55 list is an accurate copy of the list of the generators in the WECC-prepared base case.

	<p>The Presiding Judge’s finding that mere representation as a fixed constant in the base case model is conclusive proof that the generation unit was explicitly modeled by the ISO is arbitrary and capricious and not based on substantial evidence, as it is not possible for the ISO to perform a study of a fixed constant.</p>
	<p>The Presiding Judge errs in finding that explicit modeling is something qualitatively different than studying, because it is only in the studying process that the ISO would incur administrative costs of any significance.</p>
	<p>The Presiding Judge arbitrarily finds that generation that is merely represented as a fixed constant in the base case model cause the ISO “some costs,” as such finding is wholly unsupported by record evidence.</p>
	<p>The Presiding Judge errs in holding that all parties are similarly responsible for providing evidence in the record of this proceeding and that, as a result, all parties are equally at fault for the complete lack of evidence regarding the level of costs the ISO incurred related to unmodeled generation behind-the-meter.</p>
	<p>The Presiding Judge errs in arbitrarily holding that the complexity of the task of quantifying the extent to which behind-the-meter load netted against unmodeled generation imposes CAS costs excuses the ISO from providing this information into the record.</p>
	<p>The Presiding Judge’s finding that all generation in the base case is explicitly modeled by the ISO because the ISO performs studies using the base case information is arbitrary and capricious because, other than the RMR studies that the Presiding Judge rejects as irrelevant, there are no studies entered into the record upon which such finding could be made.</p>
	<p>The Presiding Judge’s finding that SMUD and Western Generation serving the SMUD Bubble is explicitly modeled by the ISO because the ISO performs studies using the base case information is arbitrary and capricious because, other the than RMR studies that the Presiding Judge rejects as irrelevant, there are no studies entered into the record demonstrating that the ISO actually studied such SMUD and Western generation units.</p>
	<p>The Presiding Judge errs in arbitrarily ruling that the ISO does study SMUD and Western generation serving the SMUD Bubble based on the ISO’s <i>may</i> or <i>could</i> testimony that is contradicted by substantial evidence to the contrary.</p>
	<p>The Presiding Judge’s interpretation of explicitly modeled is arbitrary and capricious because it is wholly based upon the opinion testimony of generalist witnesses and fails to rebut the contrary testimony and substantial evidence supplied by transmission planning experts.</p>

	<p>The Presiding Judge errs in holding that parties failed to refute Exh. ISO-55, by failing to consider evidence that SMUD disputed the inclusion of SMUD and Western generation units in the ISO’s list.</p>
	<p>The Presiding Judge errs in arbitrarily and capriciously reaching the irrelevant and incorrect determination that parties failed to present a methodology for calculating the load served by unmodeled generation, when the Commission did not request such showing and when SMUD’s witness provided such showing at hearing.</p>
	<p>The Presiding Judge errs in inconsistently holding that the ISO performs studies for purposes, yet fails to reach a finding of fact based on substantial evidence that identifies the purposes for which the ISO would explicitly model SMUD and Western Behind-the-meter generation serving SMUD Bubble load.</p>
	<p>The Presiding Judge arbitrarily and capriciously deems RMR study evidence irrelevant when the ISO admits that it is a significant part of its planning process, the studies apply to the relevant time frame and the ISO’s RMR business practices underlying the studies are un rebutted.</p>
	<p>The Presiding Judge arbitrarily and capriciously finds that retail behind-the-meter generation is next in line for an exemption with distinguishing it from the facts of the SMUD Bubble.</p>
MID	<p>The Initial Decision erred in its findings respecting the issue of the manner and extent to which the ISO modeled behind-the-meter generation during the time period at issue in the ISO’s transmission and operations planning studies, including a listing of generators that the ISO explicitly modeled in these studies.</p>
	<p>The Initial Decision erred in inferring that MID was attempting to litigate matters properly before the Commission.</p>
	<p>The Initial Decision erred in refusing to consider and adopt MID’s arguments concerning its behind-the-meter operation.</p>
	<p>The Initial Decision erred in discarding the term “modeled” as used by the Commission and substituting a new definition of “modeled.”</p>
	<p>The Initial Decision erred in failing to find that the ISO does not model generation according to the Commission’s use of the term.</p>
	<p>The Initial Decision erred in failing to find specifically that wholesale behind-the-meter entities are accorded virtually no relief under the modeling-based CAS exemption.</p>
	<p>The Initial Decision erred in its findings respecting the issue of the relevant factors the ISO has considered when modeling behind-the-meter generators in its transmission and operations planning studies.</p>
	<p>The Initial Decision erred in its findings respecting the extent to which behind-the-meter load netted against unmodeled generation imposes CAS costs on the ISO.</p>

	The Initial Decision failed to find that no cause-and-effect relationship exists between modeled generation resources and the ISO's operating and administrative expenses.
	The Initial Decision erred in finding that the extent to which behind-the-meter load netted against unmodeled generation imposes CAS costs is less for behind-the-meter <i>retail</i> load than for behind-the-meter <i>wholesale</i> load.
	The Initial Decision erred in summarily rejecting all arguments not discussed and/or adopted in the Initial Decision.

II. SUMMARY

In its Order in the 2001 Grid Management Charge (“GMC”) proceeding, the Commission determined that the Control Area Services (“CAS”) component of the GMC would be assessed based on Control Area Gross Load (“CAGL”), with an exemption for Load served by certain behind-the-meter generation. In the Order on Rehearing in the proceeding, the Commission redefined the exemption so that Load served by unmodeled behind-the-meter generation would be exempt from the CAS charge. In response to concerns about the manner in which the exemption would be implemented, the Commission initiated this limited hearing to determine which Generating Units were not modeled, what criteria the ISO used to determine which Generating Units to model, the nature of costs incurred on behalf of behind-the-meter Load netted against unmodeled generation, and what requirements were needed for the ISO to report in the future which generation and associated Load it does not model. The parties agreed that the last issue was moot, as the charge in question is no longer calculated on the same basis as it was between 2001 and 2003.

The conclusions of the Initial Decision are supported by the evidence submitted by the ISO, the Participating Transmission Owners (“PTOs”), and Commission Trial Staff (“Staff”). The ISO explained that while it does not model Generating Units, it uses models prepared by the PTOs that model Generating Units; entered into evidence a list of modeled Generating Units, and

indicated that WECC criteria generally were the basis of the PTOs' decision of which generators to model. Because the Commission was seeking to identify Generating Units that were not modeled as a surrogate for Generating Units that were less dependent on the ISO's Control Area Services, the ISO believed that its approach was consistent with the Commission's intent.

The majority of the issues raised in the Briefs on Exceptions related to the manner in which the ISO identified the list of modeled Generating Units, and emphasized the fact that the ISO itself does not model Generating Units. As just noted, however, the list of modeled Generating Units most closely reflected the Commission's intent in establishing the exemption, even though the models were prepared by other parties, a position buttressed by the fact that if the exemption applied to all Generating Units that were not modeled by the ISO, then the CAS charge would apply to no one, notwithstanding the fact that CASs benefit all users connected to the grid.

Several parties also contend that the ISO did not demonstrate sufficiently that it incurred costs in its provision of CAS to areas with behind-the-meter generation. The evidence was more than sufficient, however, to support the Initial Decision's conclusion that while the ISO did not possess all of the cost information sought by other parties to the proceeding, and could not precisely allocate the CAS costs to behind-the-meter generation, behind-the-meter generation did benefit from the provision of CAS, albeit to a lesser degree.

III. BACKGROUND

In Opinion No. 463, *Calif. Indep. Sys. Operator Corp., et al.*, 103 FERC ¶ 61,114 (2003) ("Opinion No. 463"), the Commission upheld the Presiding Judge's determination that the CAS component of the ISO's GMC should be allocated on the basis of CAGL. Opinion No. 463 at P

25. In doing so, however, the Commission created a partial exemption for wholesale and retail customers that rely on behind-the-meter generation to meet their energy needs because it concluded that they have a more limited reliance on the ISO's provision of CAS. *Id.* at P 28.

On rehearing, *Calif. Indep. Sys. Operator Corp., et al.*, 106 FERC ¶ 61,032 (2004) (“Opinion No. 463-A”), the Commission revised its exemption and directed that “generators which are not modeled by the ISO in its regular performance of transmission planning and operation should be exempted from the CAGL charge. That is, those generators that will not cause the ISO to incur administrative or operating expenses should . . . have the load exempted from the CAS charge.” Opinion No. 463-A at P 20. In response, the ISO compiled a list of all of the Generating Units that were incorporated into models that were used by the ISO for planning or operational studies, a list that subsequently was submitted into evidence as Exhibit ISO-55 to the proceeding. I.D. at P 17; *see also* Exh. ISO-54 at 6:1-10; Exh. ISO-55; Exh. S-79 at 8:7-14.

On November 16, 2004, the Commission issued an Order Deferring Rehearing Requests and Establishing Limited Hearing Procedures, *Calif. Indep. Sys. Operator Corp., et al.*, 109 FERC ¶ 61,162 (2004) (“Order Establishing Hearing”), in which it established a limited proceeding to identify factual information regarding:

1. The manner and extent to which behind-the-meter generation was included during the time period at issue in the ISO's transmission and operations planning studies, including a listing of generators that were explicitly modeled in these studies.
2. All relevant factors the ISO has considered when modeling behind-the-meter generators in its transmission and operations planning studies, including: (1) WECC requirements for modeling; (2) the generator size and location on the transmission and/or distribution system; (3) load associated with that generation; (4) voltage, stability, and short-circuit concerns; and (5) the impact of the generator on the transmission system.
3. How and to what extent behind-the-meter load netted against unmodeled generation imposes CAS costs, as delineated by ISO witness Lyon, on the ISO.

4. What regulatory controls (if any) are necessary for the ISO to report which generation and associated load it does not model.

Order Establishing Hearing at P 17.

An Initial Decision issued on April 15, 2005, *Calif. Indep. Sys. Operator Corp., et al.*, 111 FERC ¶ 63,008 (2005) (“Initial Decision” or “I.D.”), concluded, consistent with the evidence placed in the record, *see, e.g.*, Ex. ISO-54 at 6:1-3; Tr. at 82:13-83:14, that the list of modeled Generating Units placed into evidence by the ISO provided the type of information sought by the Commission in establishing the hearing. I.D. at PP 43, 45. While acknowledging that the ISO was not able to provide all of the cost information sought by the Commission, the Initial Decision recognized that this shortcoming was a result of the fact that the ISO lacked the ability to quantify the costs in question. *Id.* at P 87.

Briefs on Exceptions to the Initial Decision were filed by the Sacramento Municipal Utility District (“SMUD”), the California Department of Water Resources/State Water Project (“SWP”), the Modesto Irrigation District (“MID”), Silicon Valley Power (“SVP”) and the Cogeneration Association of California and the Energy Producers and Users Coalition (“CAC/EPUC”) on May 16, 2005.

IV. REBUTTAL OF POLICY CONSIDERATIONS

The Policy Considerations Warranting Review described by the parties identified above mirror their substantive arguments. As such, they are rebutted in the ISO’s arguments below.

V. ARGUMENT

A. **The Initial Decision Correctly Concluded that the List of Modeled Generating Units Provided by the ISO Reasonably Reflected the Commission’s Intent in Establishing the Exemption in Opinion No. 463-A**

1. **The Initial Decision Correctly Interpreted the Requirement of Modeling.**

The Initial Decision properly concluded, based on the evidence, that “the ISO uses models that include the units identified in Exhibit ISO-55 in its transmission planning and operations studies,” I.D. at P 49; *see* Exhibit S-79 at 8:7-14; Exhibit S-80, and that “[t]he record supports a finding that the generation included in Exhibit ISO-55 should be considered as ‘modeled’ by the ISO for purposes of the Commission’s inquiry.” I.D. at P 50; *see* Exh. ISO-54 at 6:1-10; Exh. ISO-55; Exh. SCE-56 at 7:1-3.

In Opinion No. 463-A, the Commission established a standard – that Load served by unmodeled behind-the-meter generation would be exempt from the CAS charge. Opinion No. 463-A at P 20. To the extent that there was any ambiguity regarding the meaning of that standard, the Initial Decision resolved the ambiguity based on the logic that prompted the exemption. Several parties to the proceeding have challenged the Initial Decision, apparently because they were disappointed with the results of the application of the standard. *See, e.g.*, Briefs on Exceptions filed by SMUD, MID, SVP and CAC/EPUC. In other words, they have filed outcome-determinative Briefs on Exceptions, which essentially conclude that because their facilities would not be exempt from the Control Area Services charge under the conclusions of the Initial Decision, the Initial Decision must be wrong. CAC/EPUC, for instance, argued that the fact that none of its Generating Units would “receive the exception contained in Opinion No. 463-A,” CAC/EPUC Brief on Exceptions at 10, is “plainly contrary to the Commission’s effort to develop an exception that would ‘take into account the more limited impact such customers

have on the ISO's grid.'" *Id.*

If it were so unambiguously clear to the Commission that certain Parties' facilities should be exempt from the CAS charge, the Commission could have explicitly exempted those facilities from the CAS charge in its Order. The Order, however, did not do so, but instead indicated that in order to obtain an exemption from the CAS charge, a Generating Unit must not be modeled. Opinion No. 463-A at P 20. To the extent that the parties' Briefs on Exceptions are really assaults on the standard – that Load served by unmodeled behind-the-meter generation be exempt from the CAS charge – and do not confine themselves to the narrow issues of the proceeding, those issues should be addressed by the Commission in response to requests for rehearing regarding the standard established by the Commission in Opinion No. 463-A.

In apparent attempts to avoid the ineligibility of their behind-the-meter Loads for the exemption from CAS charges by virtue of the inclusion of their Generating Units in Exhibit ISO-55, several parties argue that the definition of "modeling" adopted in the Initial Decision is flawed. The Initial Decision, however, adopted a definition of modeling fully supported by the evidence. *See, e.g.*, Exh. S-79 at 8:7-14; Exh. S-80; Exh. ISO-54 at 8:8-11; Exh. SCE-56 at 7:1-3. It was the definition as understood by the ISO, *see* Exh. S-80, Staff, *see* Exh. S-79 at 8:7-14, and Southern California Edison ("SCE"). *See* Exh. SCE-56 at 7:1-3. At the outset, the Initial Decision properly defined a model as "a quantitative representation of the facilities that constitute the grid, and their physical limitations," noting that "[t]he initial accumulation of data that constitutes the model may be referred to as a 'base case.'" I.D. at P 40. (citing Ex. S-79 at 5:25 – 6:10). Consistent with the evidence placed into the record, *see* Tr. 120:1-121:2, the Initial Decision recognized that "the ISO does not actually model generating units," but "[i]nstead . . . adopts the power flow models, including the representations of generating units, which are

developed by the investor-owned PTOs.” I.D. at P 40 (citing Ex. ISO-54 at 8:8-9; Tr. 120:1-121:2). The Initial Decision explained that “the ISO’s use of base case models provided to it by the PTOs to conduct studies that examine the effects of different conditions under which the transmission system may have to operate and to determine the effects of the conditions on the transmission system, constitutes ‘modeling’ within the meaning of the Commission’s inquiry.” I.D. at P 46 (citing Ex. ISO-54 at 6:16-18).

The Initial Decision’s definition was consistent with the ISO’s practices. To meet the requirements of this proceeding, the ISO entered into evidence at the proceeding the list of Generating Units that were incorporated by the Participating TOs into the models then used by the ISO to conduct studies between 2001 and 2003. I.D. at P 17 (citing Ex. ISO-54 at 6:1 – 3); *see also* Tr. 67:6-18; Tr. 121:6-11. Because the ISO does not model any generation itself, excluding from the list Generating Units that were not modeled by the ISO but were modeled by other parties would leave not a single party with the responsibility of paying the ISO for CAS. Accordingly, in concluding that the relevant factor was that the Generating Unit was modeled, and not who did the modeling, the Initial Decision was correct not only because the Commission was interested in *whether* a particular Generating Unit was modeled, and not *who* modeled the Generating Unit in question, but also because it is irrational to believe that the Commission intended for no one to pay the CAS charge.¹

¹ Modesto Irrigation District’s (“MID’s”) and the Cogeneration Association of California/Energy Producers and Users Coalition’s (“CAC/EPUC’s”) arguments against the Initial Decision’s definition do not stand up to logical scrutiny. MID is incorrect when it characterizes the Initial Decision’s adoption of a definition of “modeled” as a “new definition,” MID Brief on Exceptions at 30, or an “alternative definition.” *Id.* As the Commission never defined “model” or “modeling,” this definition was neither “new” nor “alternative,” but simply a statement of the commonly understood meaning of the word. Similarly, CAC/EPUC is incorrect when it states that the definition “is not consistent with the modeling standard proposed through Opinion No. 463-A.” CAC/EPUC Brief on Exceptions at 9.

2. Alternative Frameworks for What Constitutes a Modeled Generating Unit Are Flawed.

Rather than accept this simple logic, the Sacramento Municipal Utility District developed an alternative framework, which converts the task established by the Commission in Opinion No. 463-A of identifying “generators which are not modeled,” into a task of identifying Generating Units that were not “explicitly modeled,” SMUD Brief at pp. 14-17, according to SMUD’s unique definition of “explicitly.” Contrary to the definition of modeling understood by the Presiding Judge, ISO, Commission Staff, SCE, MID, and Santa Clara, SMUD contends that “explicit modeling” requires that the ISO “study, manipulate or vary its generation information represented in the base case when the ISO used the base case as a tool to perform studies,” SMUD Brief on Exceptions at 28, and that the “simple appearance of a generation unit in the WECC-prepared base case,” *id.* at 25, does not mean that a Generating Unit has been modeled. Under SMUD’s framework, development of the base case does not constitute modeling, but something short of modeling. *Id.* Only those Generating Units that “were . . . studied by the ISO in the regular course of its planning,” *id.* at 15, were explicitly modeled, according to SMUD. *Id.*

SMUD’s entire approach is somewhat tortured. Although, by SMUD’s own recognition, “base case models [are] prepared by the PTOs and the SRWG,” SMUD Initial Brief at 9, and while “entities like SMUD and Western create models of their own generation and provide this information to the WECC-designated area coordinator,” *id.* at 10, SMUD would nonetheless conclude that the “preparation” of models by the PTOs or the “creation” of models by SMUD does not constitute modeling. *Id.* at 11. Such interpretations simply cannot withstand any

meaningful scrutiny.²

3. The Initial Decision Did Not Necessarily Exclude Wholesale Generation From the Exemption.

SMUD states that the Initial Decision “arbitrarily adopt[ed] a definition of modeled that necessarily exclude[d] all wholesale generation,” SMUD Brief on Exceptions at 18, and characterized the Initial Decision as reaching “findings that are, effectively, collateral attacks on the Commission’s Opinion No. 463 overturning of her GMC Initial Decision,” *id.* at 19, which held that there was no exemption from CAGL for the CAS charge. *Id.* MID, echoing SMUD’s argument, stated that the “Initial Decision erred in finding that wholesale behind-the-meter entities are accorded virtually no relief under the modeling-based CAS exemption.” MID Brief on Exceptions at 34. SMUD and MID are simply wrong.

The Initial Decision’s adoption of a definition was consistent with the common meaning of modeled, and supported by the testimony of Mr. Lyon from the ISO, Exh. ISO-54, 8:8 – 15, 9:7 – 13, Mr. Shockey from SCE, Exh. SCE-61 at 2:18 – 3:3, and the Commission Trial Staff. Exh. S-79 at 5:25 – 6:10; I.D. at P 21. Such a determination certainly is not an attack on the Commission’s Opinion No. 463, but was more accurately a necessary part of measuring compliance with the Commission’s order that the ISO identify those Generating Units that had been modeled. It appears that the only definition of modeled that would have satisfied SMUD or MID is an outcome-determinative definition which would exclude its generation from the CAS

² SMUD also argued that the Initial Decision rendered meaningless the application of the exemption to Generating Units that are not modeled by the ISO in the “regular performance” of its operations of transmission planning and operation, because the fact that the Initial Decision stated that a model *may* study a Generating Unit in a study does not mean that it was studied in the “regular performance” of its operations. SMUD Brief on Exceptions at 17. SMUD also inappropriately states that one-time or episodic studying is not “studying in the ISO’s ‘regular performance.’” *Id.* As the Commission’s exclusion applied to modeled Generating Units, *see* Opinion 463-A at P. 20, it is irrelevant whether a Generating Unit may have been “studied.” Moreover, SMUD has not explained why studying a Generating Unit once cannot be within the ISO’s “regular performance” of its responsibilities. By its argument, SMUD is inappropriately equating “regular performance” with “recurring performance.”

charge. Moreover, the Commission's Order Establishing Hearing never directed the Presiding Judge to examine the extent to which to grant relief to wholesale, as opposed to retail, behind-the-meter entities. Thus, its failure to do so is reasonable.

4. SMUD Mischaracterized the Initial Decision's Requirement for an Exemption From the CAS Charge.

Dismissing the Initial Decision's straightforward conclusion that the presence of a Generating Unit on a list of modeled Generating Units means that the Generating Unit has been modeled, SMUD characterizes the Initial Decision's test for exemption from the CAS charge as "behind-the-meter generation that the ISO is not capable of studying because its information does not appear in the WECC-prepared base case used by the ISO to perform studies of the transmission system." SMUD Brief on Exceptions at 25. Once again, SMUD is rewriting the record in an attempt to seek in this proceeding a reversal of the Commission's decision to impose CAS charges on Load served by modeled generation. The obvious test for determining what generation has been modeled is to examine the models and determine what Generating Units have been incorporated into the model. SMUD's observation that Generating Units that are not modeled cannot be studied is irrelevant, because whether a Generating Unit has been studied is not the standard as established by the Commission. *See* Opinion No 463-A at P 20 ("it appears appropriate that generators which are not *modeled* by the ISO in its regular performance of transmission planning and operation should be exempted from the CAGL charge") (emphasis added). Moreover, failure to include a Generating Unit in a model is, perhaps, an indication that its effect on the grid is sufficiently limited that its operation poses no meaningful threat to grid reliability. Such a standard appears not only reasonable on its face, but also consistent with the Commission's underlying goal of excluding from the CAS charge Load served by Generating Units that have a minimal effect on the operation of the grid.

SMUD characterizes the Initial Decision's acceptance of the ISO's list of modeled Generating Units as making it "irrelevant, to the fact finding proceeding, for a party to prove that the ISO did not study, manipulate, or vary its generation information represented in the base case when the ISO used the base case as a tool to perform studies." SMUD Brief on Exceptions at 28. Even if one puts aside the fact that SMUD's argument ignores the Initial Decision's finding that the output of SMUD's Generating Units was indeed subject to adjustment in ISO studies, SMUD's argument must fail. No one other than SMUD suggested that proving "that the ISO did not study, manipulate, or vary its generation information represented in the base case when the ISO used the base case as a tool to perform studies," *id.*, was relevant to the proceeding. The Commission established the proceeding to identify factual information regarding:

1. The manner and extent to which behind-the-meter generation was included during the time period at issue in the ISO's transmission and operations planning studies, including a listing of generators that were explicitly modeled in these studies.
2. All relevant factors the ISO has considered when modeling behind-the-meter generators in its transmission and operations planning studies, including: (1) WECC requirements for modeling; (2) the generator size and location on the transmission and/or distribution system; (3) load associated with that generation; (4) voltage, stability, and short-circuit concerns; and (5) the impact of the generator on the transmission system.
3. How and to what extent behind-the-meter load netted against unmodeled generation imposes CAS costs, as delineated by ISO witness Lyon, on the ISO.
4. What regulatory controls (if any) are necessary for the ISO to report which generation and associated load it does not model.

Order Establishing Hearing at P 17. SMUD appears to have simply created a standard out of whole cloth and then alleged that the proceeding did not meet it.

5. The ISO's Treatment of SMUD Generating Units in RMR Studies Does Not Indicate How Such Generation Units Are Treated in Other Studies.

SMUD places great weight on the ISO's treatment of SMUD's and Western's Generation in the conduct of Reliability Must Run ("RMR") studies, stating that such treatment is

representative of how their Generation is treated in all other studies. I.D. at P 22. The Initial Decision correctly concluded, consistent with the record, that “SMUD’s reliance on RMR studies . . . is unpersuasive,” *id.* at P 47; *see also*, Ex. S-79 at 23 – 24 (citing Ex. S-87); Tr. at 153:16-22, 154:4 – 6, 154:11 – 17, 154:21 – 25, and correctly recognized that the evidence demonstrated that “the use of a constant, fixed output (*i.e.*, the historical output level) in a study shows that the unit *is* being modeled.” I.D. at P 47. Recognizing the evidence that different studies serve different purposes, *see* Tr. at 154:18-25, and the ISO’s practice of not adjusting the assumptions concerning SMUD and Western Generation as part of RMR studies because the ISO generally does not enter into RMR agreements with municipal Generating Units, *see* Tr. at 125:16-24, the Initial Decision concluded that the ISO’s “RMR studies are in no way representative of the manner in which the ISO treats SMUD’s and Western’s generation in studies conducted for any other purpose.” I.D. at P 47.

6. SVP Generators Are Modeled, and Therefore Not Eligible for Exemption From the CAS Charge.

While SMUD attempted to develop an alternative framework pursuant to which its Generating Units would be exempt from the CAS charge, SVP was much more direct; it simply concluded that the list was incorrect because its Generating Units were inappropriately on the list of modeled Generating Units, SVP Brief on Exceptions at 8-13, and should not be subject to the CAS charge prior to September 1, 2002, when SVP entered into a Metered Subsystem Agreement with the ISO. *Id.* at 6, n.12. SVP argues that “it is clear . . . by the ISO’s own admissions in this proceeding, that the four behind-the-meter generators identified by SVP should be exempted from CAS pursuant to Opinion Nos. 463 and 463-A and the Limited Hearing Order.” *Id.* at 9. SVP argued that “SVP is wholly responsible for SVP’s behind-the-meter load and generation, and thus the ISO conducted no modeling or studies of such load or

related generation,” *id.*, noting that “[b]y virtue of this fact alone, the ID is in error in finding that Exhibit No. ISO-55 ‘accurately reflects the universe of generating units that were included in the models used to conduct the ISO’s transmission and operations planning studies.’” *Id.*

As the Initial Decision concluded, SVP’s arguments are unsustainable. I.D. at PP 48-50. The Initial Decision correctly determined, consistent with the evidence in the record, *see* Exh. ISO-54 at 6:1-10; Exh. ISO-55; Exh. SCE-56 at 7:1-3, that the Generating Units included in Exh. ISO-55, including the four SVP Generating Units in question, were modeled, and therefore were subject to the CAS charge. I.D. at P 50. The Presiding Judge also correctly concluded that “prior to [September 1, 2002], SVP’s generating units and load [were] in the same category as any other behind-the-meter generating units and load.” I.D. at P 49.

Even if one examines the underlying basis for the Commission’s exemption, SVP’s argument that it should be exempt from the CAS charge because it is wholly responsible for its behind-the-meter load and generation is insufficient to earn an exemption from the charge, and is unsustainable. As the record indicates, it does not follow from SVP’s responsibility for its generation and load that SVP does not benefit from the ISO’s provision of Control Area Services. Tr. at 65:14 – 66:2. There is certainly no record evidence that the ISO can or does ignore the existence of SVP’s Generating Units in fulfilling its Control Area responsibilities. Accordingly, the Presiding Judge correctly concluded that SVP’s Generating Units are subject to the CAS charge. The Commission should sustain that conclusion.

7. Ample Evidence Supports the Conclusion that the List of Modeled Generators Provides the Information to Implement the Exemption in Opinion No. 463-A.

The SWP stated that the Initial Decision “erred in finding that the ISO’s list of modeled generators . . . provides a sufficient evidentiary basis for implementing an exemption from assessment of CAS based on CAGL consistent with the intent of Opinion Nos. 463 and 463-A.”

SWP Brief on Exceptions at 6. Noting that the Commission stated in Opinion No. 463-A that “those generators that will not *cause the ISO to incur* administrative or operating expenses should . . . have the load exempted from the CAS charge,” *id.* at 8, SWP concludes that “this intent is largely unsatisfied by exempting only those generators not included on the ISO’s list of ‘modeled’ generators.” *Id.* Accordingly, the SWP concludes that the Presiding Judge “err[ed] in readily accepting the ISO’s list as satisfactory despite its shortcomings.” *Id.*

At the outset, the ISO notes that the Presiding Judge did not “acknowledge[] that [the Commission’s] intent is largely unsatisfied by exempting only those generators not included on the ISO’s list of ‘modeled’ generators,” *id.*, in Paragraph 38 of the Initial Decision. The Initial Decision merely acknowledged that many of the parties to the litigation believed that the Commission’s intent was left unsatisfied. I.D. at P 38.

Setting that detail aside, the Order Establishing Hearing established a hearing to, in part, identify a list of modeled Generating Units. Order Establishing Hearing at P 17. The hearing did exactly that. *See, e.g.*, Exh. ISO-55. Regardless of whether, through the list, it is possible to fulfill the intent of the Commission in establishing its exemption, the list clearly was the list that the Commission requested. Accordingly, the Initial Decision correctly rejected “[a]rguments for the adoption of an entirely different exemption . . . as outside the scope of this limited proceeding,” I.D. at P 39, and correctly concluded that the Generating Units identified in Exh. ISO-55 were modeled, and are not eligible for the exemption from the CAS charge established in Opinion No. 463-A. *Id.* at PP 43, 45.

8. The Commission Established a Clear Exemption For Load Served by Unmodeled Behind-the-Meter Generating Units.

CAC/EPUC argued that “the Commission established a clear exception to CAGL for customers with behind-the-meter generation that primarily rely upon that generation for their

energy needs,” CAC/EPUC Brief on Exceptions at 6, and that “it is clear that the exception contained in Opinion No. 463-A should apply to retail behind-the-meter load.” *Id.* at 8.

CAC/EPUC is correct that the Commission established a clear exception – that unmodeled behind-the-meter generation may be exempt from the CAS charge. As already discussed, the Presiding Judge’s interpretation of the term “modeled” for the purpose of this proceeding, and acceptance of the list of Generating Units submitted into evidence by the ISO reflects the clear Commission exemption and the evidentiary record. CAC/EPUC is certainly not asserting that all retail behind-the-meter load is denied an exemption as a result of the Initial Decision. To the extent that CAC/EPUC believes that a broader exemption is appropriate, its complaint is with the exemption, not the Initial Decision.

CAC/EPUC also argues that “the ID’s alternative ‘modeling’ standard would unfairly impose costs upon customers which do not cause those costs to be incurred.” CAC/EPUC Brief on Exceptions at 10. While behind-the-meter Generating Units serving behind-the-meter load may impose a different level of costs on the ISO, the Commission has recognized the difficulty in allocating the ISO’s costs to such Generating Units with exact precision. *See* Opinion No. 463-A at PP 18-20. Instead, it has attempted, twice, to try to implement an exemption that reasonably reflects the fact that certain Generating Units impose fewer costs on the ISO, and exempts them from the CAS charge. *See Id.* at P 20; Opinion No. 463 at P 28. The Initial Decision, examining the second of those attempts, did not develop an “alternative” definition of modeling, but simply chose to acknowledge the only definition that made sense given the circumstances. If the Commission determines that the standard that it adopted fell short of its goal, the ISO expects that the Commission will address the issue in a forthcoming order.

9. Arguments for Alternative Exemptions Are Outside the Scope of This Limited Hearing.

CAC/EPUC finally argues that for retail customers, it is appropriate to impose the ISO's CAS charge on a net metered basis, CAC/EPUC Brief on Exceptions at 15, consistent with the Commission's order in other proceedings, including in Docket No. ER04-608, in which it upheld PJM's proposal to bill behind-the-meter generation on a total netting basis for energy, capacity, transmission service, ancillary services and administrative fees. *Id.* at 16. The ISO, once again, notes that the Commission established a limited hearing for the purpose of understanding the operation of the exemption that it established in Opinion No. 463-A. Order Establishing Hearing at 17. If CAC/EPUC seeks establishment of yet another exemption from the CAS charge, the ISO suggests that this proceeding is the wrong place to seek such relief.

10. The ISO's List of Modeled Generators Is Sufficiently Accurate for Use as the Basis of Exemption from the CAS Charge.

Finally, several parties asserted that the ISO's list of Generating Units is inaccurate, and therefore cannot be relied upon by the Commission. *See*, SWP Brief on Exceptions at 7, 9-11. The ISO explained that the list was developed by identifying the Generating Units included in the models that it used for planning and operation studies. Tr. at 88:20 – 89:9. It also acknowledged possibility, despite efforts to ensure the highest degree of accuracy, that the list contains an error. Exh. S-80. As the Presiding Judge concluded, that the list may contain errors “does not establish the need to abandon . . . the list of generators modeled by the ISO,” I.D. at P 45, noting that the “ISO's data response, as well as sworn testimony and supporting exhibits, establish that the ISO took appropriate steps to ensure that the list accurately reflects the universe of generating units that were included in the models used to conduct the ISO's transmission and operations planning studies between January 1, 2001, and December 31, 2003.” *Id.* Moreover, the ISO points out that if there are errors, they are errors of omission. Given that most of the

parties have complained that the list is over-inclusive, to suggest that it be abandoned on the grounds that it is under-inclusive seems counter-intuitive.

B. The Initial Decision Correctly Concluded That the Primary Relevant Factors That the PTOs Take Into Account When Forming Their Base Case Models Are the WECC Criteria

In its examination of the factors the ISO has considered when modeling behind-the-meter Generating Units in its transmission and operations planning studies, the Initial Decision correctly “adopt[ed] as persuasive the information offered by the ISO, Staff, and SCE,” I.D. at P 71, that the WECC oversees a process in which the PTOs develop transmission models consistent with WECC criteria. *See, e.g.,* Ex. SCE-56 at 8:1 – 10:3; S-79 at 9:23 – 14:7. The Initial Decision noted that “[t]o the extent that the information requested by the Commission was available in this case, these parties and Staff have offered the most insight into the factors that influence the base case models upon which the ISO relies and therefore the studies that the ISO conducts that are based on the base case models.” *Id.*

MID responded that “[t]he Initial Decision erred in failing to find that the factors purportedly considered by the ISO when modeling behind-the-meter generators in its transmission and operations planning studies do not exist, are insufficiently developed, or are logically impossible insofar as the ISO does not model.” MID Brief on Exceptions at 38-39. MID is incorrect. As the evidence demonstrated, *see* Ex. ISO-54 at 8:8 – 9; Tr. 120:1 – 121:2, the Initial Decision correctly noted that the ISO does not model generation itself, but “it relies upon power flow models developed by the PTOs to perform studies to fulfill its grid planning, operations engineering and other operations reliability responsibilities.” I.D. at P 60. Accordingly, a more informative inquiry is an exploration of the factors the PTOs consider in developing their guidelines consistent with WECC criteria. Consistent with the evidence provided in the proceeding, the Initial Decision noted that the ISO indicated that it

would expect the PTOs to model: (1) behind-the-meter generation that may deliver excess energy to the transmission system in the wholesale market arena; (2) behind-the-meter load serviced by the behind-the-meter generation that would remain connected and continue to draw power from the transmission system in the event the behind-the-meter generation tripped or was curtailed; and (3) behind-the-meter generation that is of such size, nature, and character or connected at a critical point within the transmission system such that the performance of the transmission system with respect to transient stability, voltage collapse, local area power quality, fault current contribution or coordination of protective devices.

I.D. at P 61. The Initial Decision then noted, and the record demonstrated, that “the primary relevant factors that the PTOs take into account when forming their base case models are the WECC criteria, which are reflected in WECC documents, such as the ‘WECC System Review Work Group Handbook.’” I.D. at P 63; *see* Ex. SCE-56 at 8 – 10; SCE-57; Ex. SCE-58; Ex. S-79 at 9:23 – 14:7.

MID asserts that because the evidence regarding several factors about which the Commission sought information was incomplete, including information regarding generator size and location, voltage, stability and short-circuit concerns, it was “insufficiently developed.” MID Brief on Exceptions at 38-39. In the Order Establishing Hearing, the Commission indicated that it was seeking information about:

relevant factors the ISO has considered when modeling behind-the-meter generators in its transmission and operations planning studies, including: (1) WECC requirements for modeling; (2) the generator size and location on the transmission and/or distribution system; (3) load associated with that generation; (4) voltage, stability, and short-circuit concerns; and (5) the impact of the generator on the transmission system.

Order Establishing Hearing at P 17. That the information provided to the Commission was not absolutely complete does not mean that it was not informative. As the Initial Decision stated, it was merely “adopt[ing] as persuasive the information offered by the ISO, Staff, and SCE,” I.D. at P 71, while recognizing that not all of the information that the Commission sought was available. *Id.* Accordingly, the Initial Decision was not in error, as asserted by MID.

C. The Initial Decision Correctly Concluded That the Behind-the-Meter Load Served by a Modeled Generating Unit Imposes Sufficient CAS Costs to Merit a CAS Charge

The Initial Decision correctly concluded that “because the ISO expends time and resources to ensure that the system is operating, which benefits all load – including retail behind-the-meter load – some share of the CAS charges should be passed on to such customers based on the loads the behind-the-meter generation serves,” I.D. at P 90. This finding is consistent with the evidence provided by the ISO that even behind-the-meter load benefits from activities including transmission planning, maintenance, and outage coordination, and that these activities help promote grid reliability. Exh. ISO-54 at 13:14-14:6.

SMUD criticized the ISO’s inability to provide information about the ISO’s costs “that it incurred in modeling generation” or “that were related to unmodeled generation.” SMUD Brief on Exceptions at 33. Those inquiries were, however, irrelevant to the instant proceeding. As the Initial Decision concluded and the evidence in the record demonstrated, the ISO did not model Generating Units. I.D. at P 60; *see also* Exh. ISO-54, 8:8-9; Tr. 120:1-121:2; Exh. S-79 at 8:7-14; Exh. S-80. The ISO, therefore, incurred no costs directly related to the conduct of an activity (modeling) that it did not undertake. Moreover, the ISO never characterized the CAS charge as intended to capture the cost of modeling Generating Units. In testimony accompanying the initial filing, the ISO explained that the CAS charge was:

the component of the Grid Management Charge that provides for recovery of the ISO’s costs of ensuring safe, reliable operation of the transmission grid and dispatch of bulk power supplies in accordance with regional and national reliability standards, including, but not limited to:

- performing operation studies;
- system security analyses;
- transmission maintenance standards;
- system planning to ensure overall reliability;
- integration with other Control Areas;

- emergency management;
- outage coordination;
- transmission planning; and
- scheduling Generation, imports, exports, and Wheeling in the Day-Ahead and Hour-Ahead of actual operations.

Ex. ISO-10 at 18. Given that the ISO did not model generation, and that the CAS charge was not intended to recover the cost of modeling generation, SMUD's criticism of the ISO's inability to provide information about the cost of modeling generation was baseless.

MID also argues that the "Initial Decision fails to come to the conclusion that . . . there is no cause-and-[effect] relationship between modeled generation resources and the ISO's operating and administrative expenses." MID Brief on Exceptions at 40-41. As the Initial Decision correctly noted, "Because of the complexity of the task of attempting to identify the extent to which behind-the-meter load netted against unmodeled generation imposes CAS costs, neither the ISO or any other party has been able to present quantifiable evidence on this issue." I.D. at P 85 (citing ISO Initial Brief at 9; SMUD Initial Brief at 30; MID Initial Brief at 23; SCE Initial Brief at 15). The Initial Decision then noted that the ISO indicated that "because all load benefits from the ISO's control area services, those costs are incurred on behalf of all load," I.D. at P 85 (citing ISO Reply Brief at 7), although behind-the-meter load benefits less directly from some ISO Control Area Services, than from others. The Initial Decision proceeded to recognize that "most, if not all, of the behind-the-meter generation of the parties disputing the ISO's definition of modeling are in fact included in Exhibit ISO-55 . . . and, thus, not eligible for the Opinion No. 463-A exemption." I.D. at P 92 (citing Staff Reply Brief at 3). Moreover, as the evidence demonstrated, Exh. ISO-54 at 13:14-14:6, the Presiding Judge correctly concluded that "because the ISO expends time and resources to ensure that the system is operating, which benefits all load – including retail behind-the-meter load – some share of the CAS charges

should be passed on to such customers based on the loads the behind-the-meter generation serves.” *Id.* at P 90 (citing Staff Initial Brief at 16).

Further, the ISO points out that the fact that some Load may impose a greater burden on the grid than other Load does not mean that the ISO can separate out such costs in the manner deemed desirable by the Commission. The fact that the ISO’s accounting system cannot attribute costs to categories that until now were never considered relevant does not, however, even remotely suggest that the costs were not prudently incurred to meet the ISO’s obligations.

CAC/EPUC argued that the Initial Decision erred in that it allowed the allocation of CAS costs to behind-the-meter Generating Units even though the ISO acknowledges that it performs certain CAS functions only with respect to the ISO Controlled Grid. While the Commission recognized that customers with behind-the-meter generation have a “more limited dependence on the ISO grid,” Opinion No. 463 at P 28, it designed an exemption that did not allow for a variable CAS charge to reflect the varying level of dependence that a particular unit may have on the ISO. See Opinion No. 463-A at P 20. By instead designing an absolute exemption for load served by specific Generating Units instead of a variable exemption, the Commission implicitly accepted that the exemption will not allocate costs with absolute precision. The Commission correctly understood that absolute precision may not be practicable, and that its less precise allocation of costs is nevertheless just and reasonable. Accordingly, the Commission should set aside CAC/EPUC’s concerns.

VI. CONCLUSION

WHEREFORE, the Commission should reject the exceptions submitted to the Commission and affirm the Presiding Judge's Initial Decision as discussed above.

Respectfully Submitted,

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Certificate of Service

I hereby certify that I have this day served a copy of this document upon all parties listed on the official service list compiled by the Secretary in the above-captioned proceedings, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010). Dated this 6th day of June in the year 2005 at Folsom in the State of California.

/s/ Stephen A.S. Morrison
Stephen A.S. Morrison