UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

City of Anaheim, California	**)**	**Docket No. EL03-15-000**
City of Riverside, California	**)**	**Docket No. EL03-20-000**

BRIEF OPPOSING EXCEPTIONS OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION

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TABLE OF CONTENTS

I. Summary 1

II. Exceptions Opposed 7

III. Rebuttal to Policy Considerations Warranting Commission Consideration 9

IV. Argument 12

A. Arguments that the Initial Decision Failed to Consider Whether the ISO's Rate Is Just and Reasonable and Failed to Consider "Subsidization of the Cities Without Countervailing Benefits" Misapprehend the Nature of the Proceeding. (CPUC Exceptions A and B; SWP Exception A) 12

1. Pacific Gas and Electric Company v. FERC Simply Requires that the Commission Review the TRRs of Nonjurisdictional Utilities in a Manner that Will Ensure Equivalent Results to Its Review of the TRRs of Jurisdictional Utilities 12

2. The Initial Decision Properly Set Forth and Applied the Standards for Determining Whether the ISO's Transmission Access Charge, After Inclusion of the NTS and the STS in the Cities' TRR, Would Be Just and Reasonable. 16

3. Issues of "Subsidization" Are Outside the Scope of This Proceeding. 18

4. The Used and Useful Standard Is Not Relevant to this Proceeding........ 19

5. The Initial Decision Did Not Misapply the Commission's Decision's in Docket No. EC03-27. 21

B. The ISO Has Operational Control Of the NTS and STS. (CPUC Exception D; SWP Exception D) 22

1. The Initial Decision Correctly Applied the Definition of Operational Control. 23

2. Efforts to Disprove Operational Control Factually Are Misplaced............ 25

3. The ISO's Exercise of Operational Control Is Consistent with the Transmission Control Agreement. 29

4. Issues Concerning Large Generator Interconnection Agreements Are Irrelevant to This Proceeding 31

C. The NTS and STS Are Network Facilities. (CPUC Exceptions C, E and F; SWP Exception B).. 32

1. The Initial Decision's Finding That the NTS and STS Are Integrated Network Facilities Is Supported by the Evidence. 32

2. The Initial Decision Applied the Proper Standard in Evaluating Network

Integration. 36

D. The Initial Decision Properly Rejected a Revenue Credit in Connection with Scheduling Limitations on the STS (SCE Exception 5-7) 39

E. The Record Does Not Support a Finding of Undue Discrimination in the Modeling of the Cities' Entitlements. (SWP Exception E, CPUC Exception E) 42

1. There Is No Basis for a Finding that the ISO's Scheduling Procedures Are Discriminatory. 42

2. There Is Similarly No Basis for a Finding that the ISO's Process for Developing Scheduling Procedures Is Discriminatory. 44

F. Claims that the Availability Of Transmission Capacity Has Decreased As A Result Of The Transfer Are Irrelevant. (SWP Exception C, F) 46

G. The Factual Errors Alleged by SCE Are Harmless (SCE Exceptions 1-4) 48

V. Conclusion 51

TABLE OF AUTHORITIES

COURT CASES

Alabama Power Co. v. FERC,
993 F.2d 1557 (D.C. Cir. 1993) 13

Montana-Dakota Utilities Co. v. Northwestern Public Service Co.,
341 U.S. 246 (1951) 41

NEPCO Municipal Rate Comm. v. FERC,
668 F.2d 1327 (D.C. Cir. 1981) 20

Northwestern Pub. Serv. Co. v. Montana-Dakota Util. Co., 181 F.2d 19
(8th Cir. 1950), *aff'd*, 341 U.S. 246 (1951) 29

Ocean State Power II,
69 FERC ¶ 61,146 (1994) 12, 13

Pacific Gas & Electric Co. v. FERC,
306 F.3d 1112 (D.C. Cir. 2002) 12, 14-15, 16, 17

Public Util. Comm'n of California v. FERC,
254 F. 3d 250 (D.C. Cir. 2001) 12-13

Tennessee Gas Pipeline v. FERC,
606 F.2d 1094 (D.C. Cir. 1979) 20

Town of Norwood v. FERC,
80 F. 3d 526 (D.C. Cir. 1996) 20

COMMISSION DECISIONS

California Indep. Sys. Operator Corp.,
91 FERC ¶ 61,205 (2000) 11

California Indep. Sys. Operator Corp.,
102 FERC ¶ 61,058 (2003) 11, 22

California Indep. Sys. Operator Corp.,
104 FERC ¶ 61,062 (2003) 11

California Indep. Sys. Operator Corp.,
107 FERC ¶ 61,150 (2004) 19, 24, 33

California Indep. Sys. Operator Corp.,
107 FERC ¶ 61,152 (2004) 26

California Indep. Sys. Operator Corp.,
109 FERC ¶ 61,301 (2004) ("Opinion No. 478") 13, 18, 29, 31

City of Azusa, et al.,
105 FERC ¶ 61,293 (2003) 33

City of Pasadena,
109 FERC ¶ 61,386 (2004) 10

City of Vernon,
109 FERC ¶ 63,057 (2004) 3, 17, 25

Consumers Energy Co.,
86 FERC ¶ 63,004 (1999), *aff'd*, 98 FERC ¶ 61,333 (2002) 37

El Paso Natural Gas Co.,
104 FERC ¶ 61,045 (2003) 43

Mansfield Municipal Electric Dep't et al. v. New England Power Co.,
97 FERC ¶ 61,134 (2001) ("Opinion No. 454") 36

Northeast Texas Electric Cooperative, Inc., et al.,
108 FERC ¶ 61,084 (2004) ("Opinion No. 474") 36-37

Northwest Pipeline Corp.,
88 FERC ¶ 61,298 (1999) 39

Pacific Gas & Electric Co.,
81 FERC ¶ 61,122 (1997) 25, 28

Pacific Gas & Electric Co.,
104 FERC ¶ 61,226 (2003) ("Opinion No. 466") 16, 23

Pacific Gas & Electric Co.,
106 FERC ¶ 61,144 (2004) ("Opinion No. 466-A") 15, 23, 34, 39

Pacific Gas & Electric Co.,
108 FERC ¶ 61,297 (2004) ("Opinion No. 466-B") 16

Wisconsin Electric Power Co.,
73 FERC ¶ 63,019 (1995) 20

STATUTES AND REGULATIONS

Federal Power Act, § 313(c), 16 U.S.C. § 825*l*(c) 38

Standardization of Generator Interconnection Agreements and Procedures, Order No. 2003, FERC Stats. & Regs. ¶ 31,146, 68 Fed. Reg. 49,846 (August 19, 2003) 31, 37-38

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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") submits its Brief Opposing Exceptions in this proceeding.

I. Summary

The California Public Utilities Commission ("CPUC") and the California Department of Water Resources State Water Project ("SWP") argue that the Initial Decision fails to fulfill the requirement that it determine whether the ISO's rates, with the inclusion of the Cities' Northern Transmission System ("NTS") and Southern Transmission System ("STS"), are just and reasonable. The Initial Decision performs precisely the type of review mandated by established precedent.

The ISO's transmission Access Charge is a formula rate, a rate that sets forth the specific cost components that define the rates a utility charges its customers. With an approved formula rate, a utility need not meet the filing and notice requirements of section 205 of the Federal Power Act ("FPA"), and the utility's charges can change repeatedly without notice subject only to the requirement that they be consistent with the formula. The Commission has found the ISO's transmission Access Charge to be just and reasonable. The Transmission Revenue Requirements ("TRR") at issue in this proceeding are simply components of the ISO's Access Charge formula rate. By ensuring that these individual TRR components of the ISO's just and reasonable formula rate are just and reasonable, the Commission fulfills its responsibility of ensuring that the ISO's charges are just and reasonable.

While SWP and the CPUC are correct that the Commission must conclude that the ISO's rates are just and reasonable following the inclusion of the TRR of the nonjurisdictional utility, they are incorrect to infer from this that the Commission must therefore conduct a review of the ISO's rates. The Commission simply must examine which facilities are properly included in the TRR and which costs are properly associated with those facilities. With regard to the NTS and STS, the latter issue was decided in a settlement. Thus the only issue at hearing was whether the NTS and STS are properly included in the Cities TRR. The determination of the facilities that are properly included in a jurisdictional utility's TRR has been addressed in various Commission decisions, which the Commission has applied to the ISO's transmission Access Charge.

The Commission has established a two-part test governing the determination of whether facilities of a Participating Transmission Owner ("Participating TO") should be included in its TRR. The facility must be under ISO Operational Control and the facility must be an integrated network facility. The ISO Tariff defines the Transmission Revenue Requirement as the costs of facilities and Entitlements under the ISO's Operational Control. The CPUC's suggestion that the issue of Operational Control is anything but a determinative issue in this proceeding is simply to ignore the relevant law.

The ISO believes that execution of the Transmission Control Agreement ("TCA") and its approval by the Commission are sufficient to establish the ISO's Operational Control over the facilities and Entitlements of a Participating TO. Although the ISO does not agree, in *City of Vernon*, 109 FERC ¶ 63,057 at P 58, the Presiding Judge's concluded that the establishment of Scheduling Points is an additional prerequisite for Operational Control. Each of these conditions has been met with regard to the Cities NTS and STS Entitlements, and the Initial Decision accordingly found them under the ISO's Operational Control.

Without mentioning the Initial Decision, SWP also asserts that the NTS and STS do not meet the criteria of the TCA for the transfer of facilities to the ISO's Operational Control. SWP fails to establish that the ISO Operational Control of the NTS and STS interfere with the reliable operation of the ISO Controlled Grid.

SWP faults the Initial Decision for not addressing the impact on the ISO's Operational of the NTS and STS of the ISO's failure to obtain a Large Generator Interconnection Agreement ("LGIA") with the Intermountain Generating Station ("IGS"). As the Commission is well aware, Order No. 2003 and LGIAs are concerned with Interconnection of *new* generating units, not with generating units that are already interconnected, and hence is not applicable as IGS was energized in 1986.

SWP and the CPUC also contend that the NTS and STS are not network facilities. The Initial Decision, however, found substantial evidence that the NTS and STS perform a network function, and correctly concluded that any degree of network function established the facilities as network facilities. Accordingly, SWP evidence that the facilities have the “characteristics” of direct assignment facilities is irrelevant, and does not therefore disturb the substantial support for the finding of the Initial Decision.

Moreover, SWP arguments regarding the “characteristics” of the NTS and STS are not even persuasive. Its argument regarding the impact of the IGS on the NTS and STS does not distinguish the NTS and STS from other transmission lines. Most of SWP remaining discussion focuses on the IPP-Lugo branch group rather than the NTS and STS. The issue in the proceeding, however, involves the Cities STS, NTS Entitlements. The ISO’s Branch Groups are not facilities or entitlements, but are merely constructs of the ISO’s Congestion Management modeling system. The ISO does not accept Operational Control of Branch Groups; the Commission does not approve transfers of Branch Groups; and the Commission does not examine TRRs according to Branch Groups.

The CPUC bases its exceptions to the Initial Decisions factual conclusions that the NTS and STS are network facilities on an assertion that the facilities are radial lines, relying on evidence regarding the ISO’s modeling. The ISO, however, models all interconnections with other Control Areas as radial tie lines because of limitations in the ISO’s congestion management programs. The CPUC fails to grasp the basic concept that radial lines refer to lines where power flows in one direction only, generally terminating at a generating station or load. Transmission lines that interconnect with other portions of the transmission grid cannot be described as radial lines.

SCE complains that the Initial Decision erred in rejecting its arguments that the Commission should apply a revenue credit in connection with the Cities TRRs associated with the NTS and STS analogous to that used in connection with Encumbrances. First, despite Southern California Edison's ("SCE") suggestion to the contrary, it is clear that the Initial Decision fully understood SCE's argument. The Initial Decision recognized SCE's suggestion that a revenue credit is appropriate to reflect the set-aside created by the original operating procedure, but properly concluded that nothing in the tariff definition of Encumbrance would support a revenue credit associated with restrictions on the use of the Cities' Entitlements. SCE also complains that it never argued for a Revenue Credit due to the Cities use of Firm Transmission Rights ("FTRs"). Because the Initial Decision has alternative grounds for rejecting the revenue credit, and because the revenue credit is otherwise unjustifiable, this error is harmless.

SCE contends that its proposed revenue credit is not inconsistent with Commission precedent because the TRRs at issue in Opinions No. 466, 466-A and 466-B had already been reduced by revenue credits due to Encumbrances. The Initial Decision properly rejected these arguments, because the Scheduling limitations on the Cities' Entitlements are both legally and factually distinct from the Encumbrances to which SCE analogizes them. An Encumbrance is a legal restriction on the ISO's use of an Entitlement – it limits the ISO's legal authority and cannot be negated by the ISO's actions. The Scheduling limitations at issue are matters that can be addressed by revisions to the ISO's Scheduling Procedures, as they have been in the past and will be in the future.

SCE's theory contends that the Cities' TRRs should similarly be reduced proportionally to the degree that any capacity was unavailable for use by Market Participants is highly suspect because to the extent that a Participating TO's facilities are network facilities properly recovered through its TRR – as SCE agrees the Cities' facilities are – such recovery must be governed by the ISO Tariff. Because the tariff does not provide for such a reduction, SCE's theory would violate the filed rate doctrine. Moreover, the scheduling limitations are not analogous to Encumbrances because Participating TOs are paid for the Existing Rights; in contrast, the Cities received no compensation for the scheduling limitations.

SWP contends that the Initial Decision disregarded evidence that the initial ISO scheduling procedures, which allowed only the Cities to schedule at the IPP scheduling point, were unduly discriminatory. The argument is baseless. While pre-September, 2004 Operating Procedures did not permit parties other than Cities to schedule on the Cities' 370 MW Entitlement on the IPP-Lugo Branch Group, the limitation simply reflected the fact that IPP is not a take-out point, and an entity that does not have entitlement to IGS generation could not inject energy at that point. Because other Market Participants did not have the right to use the IPP-Lugo capacity under any circumstances, the only purpose to be served in scheduling on the facilities would be to engage in gaming and market manipulation. The ISO's goal of avoiding market manipulation justified the disparate treatment.

SWP presents evidence purporting to demonstrate that the ISO has taken steps to reduce the availability of the STS and NTS capacity to the Cities and other market participants. SWP contends that this demonstrates that the ISO's acceptance of the facilities has not provided benefits to consumers but has reduced the amount of capacity available, and criticizes the Initial Decision for not addressing these matters.

As the record fully reflects, and the Initial Decision recognized, the scheduling limitations imposed by the ISO are due to limitations in the ISO's Congestion Management model, which the ISO is seeking to resolve in its Market Redesign. *See* Exh. ISO-8 at 8. These scheduling limitations, however, simply have no bearing on whether the NTS and STS are currently used and useful and should not affect the Commission's determination. All of the capacity provided by the NTS and STS is new capacity to ISO transmission customers.

Finally, SCE asserts that the Initial Decision included four factual errors. To the extent that these are indeed errors, they do not affect the soundness of the reasoning of the Initial Decision.

II. Exceptions Opposed

The ISO opposes the following Exceptions proposed by other parties[1] to this proceeding:

<u>California Public Utilities Commission</u>

A. The Initial Decision Fails to Articulate a Rationale Based On a Just and Reasonable Finding As Required By Section 205.

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[1] The CPUC did not provide a list of numbered exceptions as required by Rule 711(b)(2)(ii) of the Commission's Rules of Practice and Procedure, so the ISO is adopting the six major headings (A-F) in the "Argument" section as descriptive of the CPUC Exceptions. The ISO understands that the other Active Parties likewise will adopt this approach.

B. The Initial Decision Does Not Consider the Unjust Subsidization of the Cities Without Countervailing Benefits.

C. The Initial Decision Misplaces Reliance on Prior FERC Decisions That Are Still Pending Appeal and Are Factually Distinguishable

D. The Initial Decision Errs In Finding That The CAISO Has Operational Control of the Entitlements.

E. The Initial Decision Discusses the CAISO's Scheduling Of the Entitlements Without Explaining Its Relevance To Reaching a Just and Reasonable Decision.

F. The Initial Decision Relies On Inaccurate Summaries of the Record.

<u>State Water Project</u>

A. The Initial Decision Should Be Reversed For Failing To Apply The "Just And Reasonable" Standard Under Section 205 Of The Federal Power Act, And For Failing To Conclude That The ISO's Rates After Inclusion Of The Cities' TRRs Are Unjust and Unreasonable.

B. The Initial Decision Erred In Ruling That the STS and NTS Are Network Integrated Rather Than Direct Assignment Facilities.

C. The Initial Decision Does Not Adequately Consider Extensive Evidence That The Availability Of Transmission Capacity Has Decreased As A Result Of The Transfer, And That The Facilities Are Not Used And Useful To Market Participants Other Than The Cities.

D. The Initial Decision's Conclusion That The ISO Has Operational Control Over The Facilities Is Not Consistent With The Applicable Definition Of Operational Control And Is Contrary To the Evidence.

E. The Initial Decision Errs By Failing To Find That The ISO's Rates, Upon Inclusion Of The Cities' TRRs, Are Unduly Discriminatory.

F. The Initial Decision Errs By Failing To Reduce the Cities' TRRs Eligible For Inclusion In the ISO's Rates.

Southern California Edison

1. The I.D. erred in finding that “[i]f the Cities do not use their FTR in the Day-Ahead market, other Market Participants can schedule that capacity” for the time period January 1, 2003-September 16, 2004. I.D. at P 61.

2. The I.D. erred in finding that the following testimony was uncontroverted: “Only the Cities had contractual rights to take power from the [Intermountain Generating Station] at [the Intermountain Power Project (IPP) Scheduling Point]. Ex. S-7 at 18-21.” I.D. at P 46.

3. The I.D. erred in finding that the following testimony was uncontroverted: “Staff witness Gross testified that the restrictions which existed prior to revised Operating Procedure S-326 were due to limitations of the Branch Group Model and the ISO’s imperfect interpretation of the Cities contract rights. Ex. S-7 at 24-25. The scheduling limitations on certain branch groups prior to September 16, 2004, were due to engineering and technical constraints in the design of the Branch Groups. Ex. S-7 at 12. Full usage of total capacity rights turned over to the ISO may not be possible due to constraining elements inherent in the Branch Group model. Id. at 12.” I.D. at P 46.

4. The I.D. erred in finding that the IPP-Lugo Branch Group did not prevent use of available capacity on the STS line by others. I.D. at P 48.

5. The I.D. erred in holding that SCE argued that the Entitlements should be treated as Encumbrances. I.D. at P 60.

6. The I.D. erred in holding that SCE argued that the Cities “set aside” warranted a revenue credit based on the Cities use of their Firm Transmission Rights (FTRs). I.D. at P 61.

7. The I.D. erred in rejecting SCE’s revenue credit argument as not consistent with Commission precedent. I.D. at P 60.

III. Rebuttal to Policy Considerations Warranting Commission Consideration

SWP contends that the proceeding “presents a veritable litmus test for whether the Commission is seriously committed to enforcing its stated policy objectives of expanding available capacity on the transmission grid in a manner which improves efficiencies and thereby lowers costs to customers.” SWP Br. at 10.

The CPUC contends the Initial Decision "ignores basic principles the FERC has applied it achieving its statutory mandate to assure just and reasonable rates, such as cost-causation, unbundling by function, and the prohibition of anti-competitive subsidization."

As discussed below, both SWP and the CPUC are wrong. This proceeding, as well as the Initial Decision, involves the straightforward application of accepted provisions of the ISO Tariff and established Commission precedent to the facts educed at hearing.

Nonetheless, the ISO believes that the Commission should review the Initial Decision in order to put the rest the challenges raised by SWP and the CPUD to the Commission's policies regarding the rolled-in rate treatment of the network transmission facilities of Participating TOs. At the same time that these briefs are being submitted to the Commission, the TRRs of other new Participating TOs are being challenged by intervenors raising argument similar to those made in this proceeding. *See, e.g. City of Pasadena,* 109 FERC ¶ 61,386 at P 10 (2004). By confirming here the applicability of it settled precedents, the Commission can provide important guidance to the parties in these and future proceedings.

At the same time, the Commission can provide certainty that will provide the conditions necessary to encourage other utilities to add their transmission facilities and entitlements to the ISO Controlled Grid. The expansion of the ISO Controlled Grid beyond the facilities of the three original investor owned utilities was among the goals of the legislation establishing the ISO. *See* Cal. Pub. Util. Code §§ 330(m), 9600. The Commission has repeatedly recognized the value that new Participating

Transmission Owners bring by expanding the scope and robustness of the transmission network operated by the ISO. *See, e.g., California Indep. Sys. Operator Corp.,* 91 FERC ¶ 61,205 at 61,722 (2000); *see also California Indep. Sys. Operator Corp.,* 104 FERC ¶ 61,062 at P 29 (2003); *California Indep. Sys. Operator Corp.,* 102 FERC ¶ 61,058 at P 2 (2003).

Critical to the willingness of a utility to join the ISO, of course, is the assurance that the utility will continue to recover the revenue requirement associated with the facilities that it places under the ISO's Operational Control. The challenges presented by parties such as SWP and the CPUC present prospective Participating Transmission Owners with uncertainty regarding whether, for reasons beyond their control, they will be permitted fully to recover their costs. Under the theories advanced by SWP or the CPUC, a Participating TO's utility's recovery would be determined not by whether its transmission facilities or Entitlements are legally placed under the ISO's Operational Control and not by whether the facilities qualify as integrated network facilities, but by whether ISO's Scheduling model allows the facilities to be used at their full operating capacity. The Commission should review and affirm the Initial Decision to eliminate this uncertainly regarding recovery, and the resulting significant disincentive to additional transmission-owning utilities' participating in the ISO.

IV. Argument

A. Arguments that the Initial Decision Failed to Consider Whether the ISO's Rate Is Just and Reasonable and Failed to Consider "Subsidization of the Cities Without Countervailing Benefits" Misapprehend the Nature of the Proceeding. (CPUC Exceptions A and B; SWP Exception A)

The CPUC and SWP, relying upon *Pacific Gas and Electric Company v. FERC,* 306 F.3d 1112 (D.C. Cir. 2002) ("*PG&E")*, argue at length that the Initial Decision fails to fulfill the requirement that it determine whether the ISO's rates, with the inclusion of the Cities' NTS and STS, are just and reasonable. The CPUC's and SWP's arguments are based on a fundamental misunderstanding of the ruling In *PG&E* and the manner in which it applies to this proceeding. The Initial Decision performs precisely the type of review mandated by *PG&E*, and the Commission should reject arguments to the contrary.

1. *Pacific Gas and Electric Company v. FERC* Simply Requires that the Commission Review the TRRs of Nonjurisdictional Utilities in a Manner that Will Ensure Equivalent Results to Its Review of the TRRs of Jurisdictional Utilities

In *PG&E,* the court recognized that the ISO Access Charge is a formula rate. 306 F.3d at 1116. A formula rate sets forth the specific cost components that define the rates a utility charges its customers. *Public Util. Comm'n of Cal. v. FERC,* 254 F.3d 250, 254 (D.C. Cir. 2001) ("*CPUC")*. "The Commission's acceptance of formula rates is premised on the rate design's '***fixed, predictable nature****.*' . . .'[T]he formula itself is the rate, not the particular components of the formula.' " *Id. (quoting Ocean State Power II*, 69 FERC ¶ 61,146 at 61,552, 61,544-45 (1994) (emphasis added). By accepting a formula rate as filed, the Commission waives the filing and notice requirements of section 205 of the FPA, and the utility's charges can change repeatedly without notice subject only to the requirement that they be consistent with the formula. *Id.* citing *Alabama Power Co. v. FERC*, 993 F.2d 1557, 1567-68 (D.C. Cir. 1993). The court explained that, because "the formula itself is the rate, not the particular components of the formula, . . . periodic adjustments made in accordance with the Commission-approved formula do not constitute changes in the rate itself and accordingly do not require [§] 205 filings." *Id. quoting Ocean State Power II*, 69 FERC at 61,544-45.

The ISO's transmission Access Charge was the subject of a complex and lengthy litigation in which SWP fully participated and the CPUC intervened but chose not to participate actively. The ISO's formula rate was found to be just and reasonable by the Commission in Opinion No. 478, *California Indep. Sys. Operator Corp.*, 109 FERC ¶ 61,301 (2004), *reh'g pending.*

As the court observed in *CPUC,* the Commission has required Section 205 filings in connection with components of formula rates "for matters that are central to the determination of a level of payments that affect the rate charged for jurisdictional service." 254 F.3d at 254. This authority allows the Commission in approving a formula rate to require review of changes in rates of return; the allocation of costs between distribution, transmission, and generation; depreciation rates; the type of facilities included in the revenue requirement; or certain other matters. This requirement does not mean that the components of a formula rate, absent a section 205 filing by the utility, are subject to challenge without proceeding under Section 206.

The TRRs at issue in this proceeding and discussed in *PG&E* in connection with the ISO's current Access Charge formula rate methodology are simply components of the ISO's Access Charge formula rate. As the Court explained, "[T]he TRR of each participating transmission owner can be conceptualized not as its own rate but rather as a cost of the CAISO." 306 F.3d at 1116. Neither the Commission nor the ISO Tariff requires that the ISO make a Section 205 filing to adjust its transmission Access Charge when the TRR of a non-jurisdictional Participating TO (or a jurisdictional Participating TO, for that matter) is established or modified. Rather, the Commission required that jurisdictional Participating TOs file their TRRs with the Commission pursuant to section 205. *Id.* *See also* ISO Tariff § 7.1, Substitute Second Revised Sheet No. 189; ISO Tariff Appendix F, Schedule 3, § 9.1. By ensuring that these individual TRR components of the ISO's just and reasonable formula rate are just and reasonable, the Commission fulfills its responsibility of ensuring that the ISO's charges are just and reasonable.

In *PG&E*, one of the issues confronting the court was the manner in which the Commission should review the TRR of a nonjurisdictional utility, the City of Vernon. SWP and the CPUC are correct that the court concluded that the Commission must conclude that the ISO's rates are just and reasonable following the inclusion of the TRR of the nonjurisdictional utility; they are incorrect to infer from this that the Commission must therefore conduct a review of the ISO's rates. While the court stated that the Commission could evaluate the impact of a nonjurisdictional utility's TRR by examining "the final ISO composite rate," 306 F.3d at 1119, that was but one means to an end. The only real requirement is that the Commission provide an equivalent assurance regarding the just and reasonable nature of the TRR component of the ISO's formula rate as it provides with regard to the TRRs of jurisdictional utilities:

> While FERC does subject the TRRs of jurisdictional participating transmission owners to an independent § 205 just and reasonable review, FERC may take a different approach as to Vernon, over which FERC lacks independent jurisdiction, so long as FERC can ensure *by* ***examining Vernon's TRR*** that the [ISO's] rates will ultimately be just and reasonable.

306 F.3d at 1116 (emphasis added).

With regard to the TRRs of jurisdictional utilities, there are only two issues that the Commission examines to determine whether the inclusion of the costs of facilities in the ISO's rates will render the ISO's rates unjust or unreasonable. First, which facilities are properly included in the TRR? Second, which costs are properly associated with those facilities? In order to fulfill the mandate of *PG&E,* the Commission need only make an equivalent determination regarding the NTS and STS.

The Initial Decision properly noted that with regard to the NTS and STS, the latter issue was decided in a settlement. Contrary to the argument of SWP, SWP Br. at 19, the Initial Decision properly noted the significance of this settlement. Thus the only issue at hearing was whether the NTS and STS are properly included in the Cities' TRR. The determination of the facilities that are properly included in a jurisdictional utility's TRR has been addressed in various Commission decisions, which the Commission has applied to the ISO's transmission Access Charge in such decisions as Opinions No. 466-A[2] and 466-B.[3] The ISO Tariff formula rate itself also

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[2] *Pacific Gas and Electric Co.*, Opinion No. 466-A, 106 FERC ¶ 61,144 (2004).

sets forth requirements for the inclusion of facilities of a Participating TO's TRR. ISO Tariff § 7.1. The Commission has also recognized the ISO's Operational Control of a facility as a prerequisite for inclusion in the TRR in Opinion No. 466.[4] By employing its established precedent for the review of the facilities of jurisdictional utilities to review the inclusion of the Cities' facilities in the TRR component of ISO's formula rate, the Commission goes beyond the minimum necessary to fulfill its obligation to ensure that the ISO's rate is just and reasonable. *PG&E*, 306 F.3d at 1119.

2. The Initial Decision Properly Set Forth and Applied the Standards for Determining Whether the ISO's Transmission Access Charge, After Inclusion of the NTS and the STS in the Cities' TRR, Would Be Just and Reasonable.

Both the CPUC and SWP complain that the Initial Decision fails to make a specific finding that the ISO's rates, following the inclusion of the Cities' TRRs, would be just and reasonable. CPUC Br. at 23-24; SWP Br. at 25. No such finding was necessary. All that the Initial Decision needed to conclude was that the costs of the NTS and STS met the Commission and ISO Tariff criteria for inclusion in the Cities' TRRs.

As discussed above, contrary to SWP's assertions, SWP Br. at 27-28, the inclusion of the Cities' TRRs in the ISO's formula rate transmission Access Charge did not require a review of the ISO's rates under Section 205 of the FPA, and the ISO carried no burden to show that its rates were just and reasonable. CPUC Br.

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3 *Pacific Gas and Electric Co.*, Opinion No. 466-B, 108 FERC ¶ 61,297 (2004).

4 *Pacific Gas and Electric Co.,* Opinion No. 466, 104 FERC ¶ 61,226 (2003) at P 13.

at 20. The ISO did not need to present any evidence regarding the ultimate impact on the ISO's rates*.* CPUC Br. at 14. Indeed, the only reference that the *PG&E* court made to review of the "final composite" ISO rate was as ***an alternative*** to review of the nonjurisdictional utility's TRR.

Although the nature of the CPUC's complaint that the Initial Decision, contrary to the requirements of *PG&E,* failed to articulate the standard by which it was evaluating the Cities' TRRs, CPUC Br. at 17, is somewhat unclear, it is certainly unjustified. The Initial Decision includes a full discussion of the principles it applies in determining whether the NTS and STS are appropriately included in the Cities' TRRs and, accordingly, the ISO's rates. *See, e.g*., I.D. at PP 44, 45. It does not include a discussion of standards to be applied in evaluating the costs of the facilities, because those costs were agreed upon. In contrast, the court in *PG&E* was faced with numerous issues regarding the costs of the City of Vernon's facilities, including such matters as rate of return and depreciation. 306 F.3d at 1117, 1119. The Initial Decision in the remanded City of Vernon proceeding accordingly includes a discussion of the standard to be applied in evaluating such costs. *City of Vernon*, 109 FERC ¶ 63,057 (2004) at PP 22-29.

The CPUC contends, however, that the agreement on costs is not relevant, because the parties reserved the issue of the inclusion of the Cities' TRRs in the ISO's rates. CPUC Br. at 24. It is unclear whether the CPUC is suggesting that the review of the inclusion of the TRRs in the ISO's rates required review of the specific cost impact on the ISO's composite transmission Access Charge and that the Initial Decision failed to articulate standards for such review. As discussed above, neither the Federal Power Act nor *PG&E* requires such review of the ISO's formula rate; accordingly, the Initial Decision's failure to articulate standards for such a review cannot constitute error.

3. Issues of "Subsidization" Are Outside the Scope of This Proceeding.

The CPUC complains that the Initial Decision ignores its arguments that the inclusion of the Cities' TRRs in the ISO's transmission Access Charge constitutes unjust subsidization of the Cities' ratepayers. CPUC Br. at 29. The CPUC specifically complains about the "cost shift" of the Cities' Entitlements to other users of the ISO Controlled Grid. *Id.* at 30. It then devotes considerable argument to the "cost-benefit" analysis that it contends the Initial Decision should have performed.

The Commission has already addressed and ruled upon the just and reasonable extent of cost-shift in the ISO's transmission Access Charge. The "cost-shift" was the subject of extensive litigation is Docket No. ER00-2019. The Commission recognized that cost-shifts were a necessary transitional cost in order to encourage the expansion of the ISO Controlled Grid and the concomitant benefits of expansion. Opinion No. 478, 109 FERC ¶ 61, 301 at P 32. The Commission also established a "cap" on the cost shift, to ensure that it would not exceed the amount that the Commission considers just and reasonable. *Id*. The Commission has thus already concluded that cost shifts under that cap are just and reasonable. Moreover, as it related to the CPUC's concern over subsidization, the Commission's approval of the transmission Access Charge methodology recognizes that the current "subsidization" of the ratepayer of utilities with newer, more expensive, facilities will later be counterbalanced as the older facilities of other utilities need to be repaired and replaced and the costs are borne equally by all transmission users.

The CPUC's attempt to read the Commission's order denying rehearing of its order accepting the TCA as setting a "cost-benefit analysis" for review, CPUC Br. at 29-30, is not tenable. The Commission stated:

> Next, SWP contends that the examination of the justness and reasonableness of Southern Cities' TRR in Docket No. EL03-14, et al., does not excuse the January 24 Order's failure to consider cost consequences of the transfer of Southern Cities' facilities to the ISO. SWP believes that the Commission must examine the nature and extent of such costs as part of its section 203 analysis. We disagree. ***As discussed above, the benefits of this transaction outweigh any rate increases that result from the transaction****.* The Commission will ensure that any increase is not unjust and unreasonable in the proceeding in Docket No. EL03-14, et al.

California Ind. Sys. Oper. Corp., 107 FERC ¶ 61,150 at P 15 (emphasis added). Accordingly, it is clear that issues of cost-shift or cost-benefit analyses are simply not within this scope of this proceeding. Consequently, the CPUC's arguments regarding a cost-benefit analysis are irrelevant.[5]

4. The Used and Useful Standard Is Not Relevant to this Proceeding

SWP asserts that the Initial Decision erred by failing to evaluate the NTS and STS according to the "used and useful" standard, as part of prudent investment

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[5] To the extent benefits are relevant at all, the availability of *new transmission capacity for imports and exports at non-pancaked rates* is sufficient to support a Commission finding that benefits sufficiently outweigh the costs of the NTS and STS. In all of its discussion, the CPUC never discusses these benefits. Indeed, the CPUC's contention that the Entitlements are not now providing transmission service that could not have been provided prior to the transfer to the ISO's Operational Control, CPUC Br. at 39, demonstrates its failure to comprehend this fundamental major benefit to the users of the ISO Controlled Grid.

The ISO would also note that the policies and cost-benefit studies cited by the CPUC, CPUC Br. at 32, 38, 53-54, concern the construction of *new* transmission facilities or the expansion of existing transmission facilities. There are very different considerations theory. SWP Br. at 32-35. Specifically, SWP contends that rates must incorporate only the costs of facilities used and useful ***to the particular customers paying the rates***. *Id.* at 32. Notwithstanding that SWP attempts to prove this point merely in reliance on its own "emphasis added" to the court's discussion of the used and useful principle in *Tennessee Gas Pipeline v. FERC,* 606 F.2d 1094, 1109 (D.C. Cir. 1979), such a theory, taken to its extreme, would produce an individual rate for each customer. Neither the FPA nor the used and useful standard requires such a result.

The used and useful doctrine simply requires that a facility be used to provide service to customers. *NEPCO Municipal Rate Comm. v. FERC*, 668 F.2d 1327, 1333 (D.C. Cir. 1981). There is no question that the STS and NTS are being used to provide service. The ISO is unaware of any instance in which the Commission has employed the used and useful test, or even suggested that the test was applicable, to disallow costs because a transmission line was derated or a generating unit was operating at less than capacity.[6]

SWP nonetheless suggests that the Initial Decision should have evaluated the ISO's prudence in accepting the NTS and STS as part of the ISO Controlled Grid. A party challenging prudence has the burden of proof. *Wisconsin Electric Power Co*., 73 FERC ¶ 63,019 (1995). In order to demonstrate a lack of prudence, SWP would need to show that a reasonable transmission provider would not incur the additional

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when the issue is whether existing facilities can be integrated into a transmission network. Tr. 458.

[6] Moreover, the used and useful test does not preclude recovery of Construction-Work-in-Progress or the costs of a prudently prematurely retired plant, *see Town of Norwood v. FERC,* 80 F.3d 526, 532-33 (D.C. Cir. 1996). This suggests that even if the test were relevant (which it is not), it would be appropriate to include the costs related to the STS and NTS in the Cities' TRRs while the ISO revised its Congestion Management procedures.

costs represented by the costs associated with the NTS and the STS in order to obtain for ISO Market Participants at non-pancaked rates the transmission access represented by those facilities. To do so would require some showing of replacement or market value of the transmission capacity provided by the transmission facilities. There is no such evidence in this proceeding and thus no relevance of the prudence standard.

5. The Initial Decision Did Not Misapply the Commission's Decision's in Docket No. EC03-27.

The Initial Decision rejected SWP's arguments that the Cities' TRRs should not be included in the ISO's because the capacity was not fully available to Market Participants as a collateral attack on the Commission's order Docket No. EC03-27. ID at P 43. SWP complains that the Initial Decision misconstrues the Commission's orders, both because the statements on which the Initial Decision relies were general remarks constituting *dicta* and because the "message" of the Commission's order was the SWP would have the opportunity to address and resolve its concerns in this docket.

SWP is wrong on both counts. First, as the ISO has explained in connection with the CPUC argument in section IV.A.3. above, the Commission's finding, far from being *dicta*, was the basis for its rejection of SWP's objections to the ISO's assumption of Operational Control of the NTS and STS. Second, SWP takes an extremely expansive view of the "concerns" that the Commission stated would be addressed in this proceeding. SWP Br. at 23-24. The only SWP concerns that the Commission was addressing in the orders in question were SWP's assertions that

Scheduling Points had not been established and the NTS and STS were generation ties. The Commission dismissed the latter concern because Scheduling Points had been established. *California Ind. Sys. Oper. Corp.,* 102 FERC ¶ 61,058 at P 13 (2003). There is ***no*** suggestion, and SWP can point to none, that the Commission intended this proceeding to address whether "the benefits of ISO have . . . been realized with the transfer of the Cities entitlements to the ISO, where the transfer has actually ***reduced*** the overall transmission capacity available."[7] SWP Br. at 24.

B. The ISO Has Operational Control Of the NTS and STS. (CPUC Exception D; SWP Exception D)

SWP contends that the Initial Decision erroneously found that the ISO has Operational Control over the Cities' Entitlements in the NTS and STS and related LADWP contracts. SWP Brief on Exceptions at 51. The CPUC appears to make a similar argument. The CPUC argues that the ID fails to explain why it has discussed the question of Operational Control, and that Operational Control is irrelevant to the issues in this proceeding. CPUC at 46; 54.[8] These arguments highlight the fundamental flaw of the CPUC's arguments throughout its Brief: its failure to recognize that the Initial Decision's evaluation of whether the costs associated with the NTS and STS should be included in the Cities' TRRs must be guided by

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[7] As discussed below, there is no basis for an assertion that the transfer has reduced transmission capacity available to ISO transmission customers.

[8] The CPUC argues that the ISO lacks Operational Control, but also argues that the existence of Operational Control is not "dispositive" (CPUC Br. at 46), and is "not only irrelevant in determining whether the Entitlements are truly integrated in the network transmission system, it is also irrelevant with respect to the necessary finding that the TRRs for the Entitlements have or do not have a just and reasonable impact on the CAISO rates." CPUC Br. at 54.

Commission precedent and the ISO's filed formula rate.

The Commission has established a two-part test governing the determination of whether facilities of a Participating TO should be included in its Transmission Revenue Requirement ("TRR"). First, the facility must be under ISO Operational Control. Opinion No. 466, 104 FERC ¶ 61,226 at P 13 (2003).[9] Second, the facility must be an integrated network facility. Opinion No. 466-A, 106 FERC ¶ 61,144 at P 10, 22 (2004).[10] The ISO Tariff defines the Transmission Revenue Requirement as the costs of facilities and Entitlements under the ISO's Operational Control. To suggest that the issue of Operational Control is anything but a determinative issue in this proceeding is simply to ignore the relevant law.

1. The Initial Decision Correctly Applied the Definition of Operational Control.

The ISO Tariff defines Operational Control as

> The rights of the ISO under the Transmission Control Agreement and the ISO Tariff to direct Participating TOs how to operate their transmission lines and facilities and other electric plant affecting the reliability of those lines and facilities for the purpose of affording comparable non-discriminatory transmission access and meeting Applicable Reliability Criteria.

ISO Tariff Appendix A, Master Definitions Supplement. The Initial Decision recognized:

> Operational control varies depending on the location of the facilities. If the facilities are inside the ISO Control Area, then the ISO schedules, directs maintenance, coordinates outages, measures and controls power flows, and

[9] Witnesses for every participant that presented witnesses except SWP recognize that whether the ISO has Operational Control over the Cities' Entitlements in the STS and the NTS is relevant to determining whether to include the costs associated with those Entitlements in the Cities' TRRs. *See, e.g.*, Exhs. CIT-1 at 10-11; PGE-1 at 4; S-7 at 9; and SCE-1 at 3.

[10] The second element of this two-part test is discussed elsewhere in this brief.

> responds to system emergencies for ISO Controlled Grid facilities. If the facilities are outside the ISO Control Area, the ISO is limited to coordination of schedules and outages with the applicable Control Area Operator.

ID at n. 25. SWP contends that this recognition is inconsistent with, and has no basis in, the ISO Tariff definition. SWP Br. at 52.

SWP fails to distinguish the difference between the definition of the ISO's authority and the impact of that definition in different circumstances. The ISO has not proposed, and the Initial Decision has not accepted, a "dynamic" definition of Operational Control, *see* SWP Br. at 55. SWP could similarly argue that the definition of Existing Contract is "dynamic" because the terms of Existing Contracts vary (albeit to a far greater degree than the ISO's Operational Control of facilities). The ISO simply cannot exercise any greater Operational Control than that possessed by the Participating TO that signs the Transmission Control Agreement. Fortunately, the Commission does understand the difference. In the order denying SWP's request for rehearing of the approval of the Cities' transfer of their Entitlements to the ISO, the Commission explained:

> The Southern Cities sought to become Participating Transmission Owners in the ISO by transferring to it operational control of their transmission assets. The Southern Cities could only transfer to the ISO their scheduling rights to use the Cities' share of a given line's transfer capability, because most of their transmission assets were Entitlements and Encumbrances over facilities for which the Southern Cities are not operating agents and that were not in the ISO Control Area.

California Independent Sys. Operator Corp., 107 FERC ¶ 61,150 at P 3 (2004).

Because this is the Commission's understanding of the implementation of the transfer of Operational Control that the Commission accepted, SWP's arguments in this regard must be rejected.[11]

2. Efforts to Disprove Operational Control Factually Are Misplaced.

It is the ISO's position that the execution of the TCA and its approval by the Commission are sufficient to establish the ISO's Operational Control over the facilities and Entitlements of a Participating TO. Although the ISO does not agree, in *City of Vernon*, 109 FERC ¶ 63,057 at P 58, the Initial Decision concluded that the

[11] SWP also complains that since the ISO Tariff definition "says nothing about entitlements", the ISO may only accept Operational Control over physical assets. SWP at p. 55. It states, "FERC apparently never has been informed that the definition can now encompass strictly legal concepts, with no reference to physical assets, and FERC has certainly never approved a change in the filed Tariff to incorporate such a definition." *Id.* This argument ignores the reference in the definition to the TCA, in which "Entitlements" are specifically enumerated and included in the Participating TO's assets. *See, e.g.*, TCA Part (v), Original Sheet No. 2: "Each TO (1) owns, operates, and maintains transmission lines an associated facilities and/or (2) has Entitlements to use certain transmission lines and associated facilities, with responsibilities attached thereto." Moreover, as evidenced by the quotation above, the Commission is well aware that the definition of Operational Control is interpreted to encompass Entitlements. From the time the Commission authorized the ISO's Operations, it understood that Entitlements would be encompassed in the ISO's Operational Control. *See Pacific Gas & Elec. Co.,* 81 FERC ¶ 61,122 at 61,463, 61,466, 61,559 (1997) ("The ISO Tariff defines a Participating Transmission Owner as an entity that is a party to the Transmission Control Agreement which has placed its transmission assets and Entitlements under the ISO's Operational Control"; "[U]pon conversion under section 2.4.4.3.1.1 of the ISO Tariff, the recipient of transmission service "shall turn over Operational Control of its transmission entitlement to the ISO"; "The ISO proposes to maintain an ISO Register of those transmission lines, associated facilities and entitlements that are under the ISO's operational control on either a long-term or a temporary basis.").

The ISO Tariff also fully reflects the interpretation of the definition of Operational Control as including Entitlements. A Participating TO is defined as "A party to the TCA whose application under Section 2.2 of the TCA has been accepted and who has placed its *transmission assets and Entitlements under the ISO's Operational Control* in accordance with the TCA. . . . " ISO Tariff, Appendix A, Master Definitions Supplement (emphasis added.) The TRR is defined as "the total annual authorized revenue requirements associated with *transmission facilities and Entitlements turned over to the Operational Control* of the ISO by a Participating TO." ISO Tariff, Appendix A, Master Definitions Supplement (emphasis added).

establishment of Scheduling Points is an additional prerequisite for Operational Control. Each of these conditions has been met with regard to the Cities' NTS and STS Entitlements, and the Initial Decision accordingly found them under the ISO's Operational Control.

SWP and the CPUC nonetheless contend that the Initial Decision failed to recognize factual reasons for finding that the Entitlements are not under the ISO's Operational Control. SWP focuses on the Initial Decision's finding, based on Commission staff testimony, that the ISO secures compliance with all applicable reliability criteria. SWP Br. at 52. SWP contends that this is inconsistent with ISO testimony regarding its lack of real-time control, control of imbalances, and control over maintenance, and responsibility for system emergencies. *Id.* at 53-54. SWP misses the point. The reliability criteria applicable to the ISO with regard to facilities on which its schedules outside its Control Area are fundamentally different from the criteria applicable with regard to facilities and schedules within the Control Area.[12]

SWP also contends that it is the LADWP, as Control Area Operator, that actually exercises operational control of the NTS and STS. SWP Br. at 60. The majority of the CPUC's argument is devoted to its contention that LADWP performs

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[12] SWP most inaptly cites *California Independent System Operator Corp*., 107 FERC ¶ 61,152 (2004) for the proposition that the ISO's responsibility for acquiring Ancillary Services and related reliability support applies to the ISO Controlled Grid. That proceeding was concerned with the limitations on the ISO's ability to charge for Ancillary Services procured in connection with Schedules on facilities inside the ISO Control Area that are not part of the ISO Controlled Grid. It did not speak to the ISO's responsibility with regard to ISO Controlled Grid facilities outside the ISO Control Area. In fact, however, Scheduling Coordinator responsibilities for Ancillary Services under the ISO Tariff are based on total metered Demand, excluding exports. See, e.g., ISO Tariff § 2.5.20.1, First Revised Sheet No. 94. The ISO's procurement of Ancillary Services, therefore, does take into consideration Loads served by transactions on the NTS and STS.

the Control Area functions for the NTS and STS. CPUC Br. at 46-49, 52.[13]

SWP and the CPUC fail to distinguish between the operational control that allows a transmission provider to include facilities in rates and the operational responsibilities of a Control Area Operator. None of the factors cited by SWP or the CPUC distinguishes the STS and NTS from other Entitlements under the ISO's Operational Control. The Eldorado-Moenkopi-Four Corners line, the Pacific DC Intertie, Mead-Phoenix Project, the Mead-Adelanto Project, Marketplace-McCullough, Mead 500/230 kV, Marketplace-Mead, and Entitlements from Adelanto to the Victorville-Lugo Midpoint are all part of the ISO Controlled Grid and are all outside of the ISO Control Area. Exh. ISO 6 at 4. As Ms. Le Vine testified, Operational Control of facilities outside the Control Area typically does not include maintenance, measurement and control of power flows, or response to system emergencies. Exh. ISO-1 at 5. In addition, the treatment of imbalances and deeming schedules as delivered is typical of all Inter-Control Area schedules and pursuant to Western Electricity Coordinating Council ("WECC") procedures. Tr. at 1083-1094. These factors do not distinguish the STS and NTS from any other facilities outside the ISO Control Area that have been placed under the ISO's Operational Control. The effect of SWP's and the CPUC's arguments would be to

[13] The CPUC also contends that the ISO's level of Operational Control does not comport with the requirements of Order No. 2000. CPUC Br. at 50-51. The CPUC's arguments in this regard are directed toward the requirements for RTO status. This proceeding does not concern the ISO's RTO status. No purpose is served by exploring the permissible variations on achieving the goals of Order No. 2000, because that is not an issue here. It suffices to say that, *subsequent to Order No. 2000*, as discussed above, the Commission has approved the transfer of the Cities' and the City of Vernon's Entitlements outside the ISO's Control Area to the ISO's Operational Control where the nature of the ISO's Operational Control was largely limited to scheduling rights. Such Entitlements are

preclude the inclusion of facilities outside the ISO Control Area in the ISO Controlled Grid. Yet the Commission has explicitly rejected that suggestion. In *Pacific Gas & Electric Company, et al.,* 81 FERC ¶ 61,122 at 61,568, the Commission stated, "To the extent an entity located outside of California or in another Control Area wishes to turn operational control of its facilities over to the ISO, and thereby be included in the ISO Controlled Grid, that entity should be permitted to do so."

Although this is the logical outcome of its argument, the CPUC nonetheless asserts that the ISO distorts its position by claiming the CPUC is opposed to TCAs for facilities outside the ISO Control Area. CPUC Br. at 53. It asserts that Operational Control is actually irrelevant, and attempts to distinguish other facilities as "part of the backbone of or a major import line of the integrated system of the three California public utilities that formed the original Grid. The public utilities' integrated system was left intact in the statutory authorization of the CAISO . . . ." What the CPUC neglects to mention is that the ***same legislation*** expressed the intent that publicly owned, as well as investor-owned, utilities place their transmission facilities under the ISO's Operational Control. Cal. Pub. Util. Code § 330(m). What the CPUC also neglects to mention is that, as the Cities have been the primary users of the NTS and STS, the investor-owned utilities are the primary users of many of their facilities under the ISO's Operational Control. *See* Exh. ISO-10.

Be that as it may, the CPUC's most fundamental error is that Operational Control is not irrelevant. The ISO's filed rate, which, unless changed pursuant to the

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also included in the TRRs of jurisdictional Participating TOs by virtue of being included in the Participating TO's respective TCA Appendix A.

Federal Power Act, is as binding as a statute, *Northwestern Pub. Serv. Co. v. Montana-Dakota Util. Co.*, 181 F.2d 19, 22 (8th Cir. 1950), *aff'd*, 341 U.S. 246 (1951), makes it relevant. Opinions No. 466, 466-A, and 466-B make it relevant.

3. The ISO's Exercise of Operational Control Is Consistent with the Transmission Control Agreement.

Without mentioning the Initial Decision, SWP also asserts that the NTS and STS do not meet the criteria of the TCA for the transfer of facilities to the ISO's Operational Control. It claims the STS and NTS do not meet the criterion that facilities cannot have an adverse impact on reliability or cause the ISO to breach Applicable Reliability Criteria. SWP's first assertion is that the STS and NTS have led to phantom congestion. SWP Br. at 56. There are a number of problems with this evidence, but it suffices to mention just two. First, the ISO's management of the STS and NTS cannot lead to phantom congestion. The Commission has defined phantom congestion as "a condition occurring because the transmission capacity of Existing Transmission Contracts remains unscheduled by the contract holder, while the ISO cannot make use of the unscheduled capacity in the day-ahead and hour-ahead markets." *California Indep. Sys. Operator Corp.*, Opinion No. 478, 109 FERC ¶ 61,301 at P 17 (2004). All transmission capacity on the NTS and STS that is on ISO Controlled Grid facilities is Converted Rights and not Existing Contracts, thus there is no phantom congestion. Second, the Commission has never found any relationship between phantom congestion and reliability. Phantom congestion is an inefficient use of transmission capacity in the ISO's markets.

SWP's second assertion in this regard is that no reliability services are provided over the STS and NTS. SWP Br. at 56. There is in fact evidence that the

STS and NTS enhance the reliability of the ISO Controlled Grid. Tr. 1180-88 (Gross). Even if that were not so, however, the lack of any ***contribution*** to the reliability would not remotely establish that the STS and NTS ***adversely affect*** reliability or would cause a breach of Applicable Reliability Standards.

SWP also claims that under the TCA the ISO may refuse facilities that cannot be integrated because of technical considerations. It notes that Ms. Le Vine testified that a lack of ability to schedule on a facility would be such a technical consideration and that the ISO does not have a “threshold” level of use. SWP Br. at 57. It also complains that the ISO conducted no studies of the operational or economic feasibility of integrating the STS and NTS into the ISO Controlled Grid. *Id.* These may be interesting considerations, but they are irrelevant, because there is no evidence that the facilities are technically unusable. To the contrary, Scheduling Points have been established for the NTS and STS and are being used by Scheduling Coordinators other than the Cities. *See, e.g.,* ID at P 48, n.22.

Finally, SWP criticizes the ID for failing to recognize that the fact that the Cities have an Encumbrance associated with Deseret means that not all their facilities were transferred to ISO Operational Control - in alleged violation of TCA. SWP Br. at 59. This is a red herring. The ISO Tariff contemplates that facilities and Entitlements turned over to the ISO’s Operational Control may have Encumbrances such as Existing Contracts. There are multiple sections of the ISO Tariff that address the treatment of Existing Rights under the ISO Tariff. *See* ISO Tariff §§ 2.4.3 – 2.4.4.5.4. In addition, the TCA requires Participating TOs to provide notice of Existing Contracts that encumber their transmission, and both Anaheim and Riverside included this in Appendix B of the TCA. Indeed, SWP, as an Existing Rights holder, has engaged in protracted litigation regarding its rights under its Existing Contracts, which are Encumbrances on Southern California Edison's and Pacific Gas and Electric Company's facilities. *See, e.g., California Indep. Sys. Operator Corp.*, Opinion No. 478, 109 FERC ¶ 61,301 (2004).

4. Issues Concerning Large Generator Interconnection Agreements Are Irrelevant to This Proceeding

SWP faults the Initial Decision for not addressing the impact on the ISO's Operational Control of the NTS and STS and of the ISO's failure to obtain a Large Generator Interconnection Agreement ("LGIA") with the Intermountain Generating Station. SWP Br. at 57. SWP misunderstands fundamentally Order No. 2003 when it suggests that the ISO's failure to secure a Large Generator Interconnection Agreement ("LGIA") with the Intermountain Generating Station is indicative of a lack of Operational Control over the STS. As the Commission is well aware, Order No. 2003 and LGIAs are concerned with Interconnection of *new* generating units, not with generating units that are already interconnected. *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146, 68,. Fed. Reg. 49,846 (August 19, 2003) (2003) ("Order No. 2003"). The Intermountain Generating Station was energized in 1986. Because Order No. 2003 addresses issues concerning cost assignment in connection with the interconnection of new generating units, the standards are not directly applicable to this proceeding.

C. The NTS and STS Are Network Facilities. (CPUC Exceptions C, E and F; SWP Exception B)

1. The Initial Decision's Finding That the NTS and STS Are Integrated Network Facilities Is Supported by the Evidence.

SWP contends that the Initial Decision misunderstands its contention that the NTS and STS are direct assignment facilities, by discussing only its assertions regarding the relative use of these facilities. SWP Br. at 34-35. As a result, SWP contends that the Initial Decision's findings are not supported by substantial evidence. To the contrary, the Initial Decision found substantial evidence that the NTS and STS perform a network function. ID at P 53. It concluded that under Commission precedent any degree of network function established the facilities as network facilities. *Id.* Any SWP evidence that the facilities have the "characteristics" of direct assignment facilities is irrelevant to the standard established by the Commission, and does not therefore disturb the substantial support for the finding of the Initial Decision.

Moreover, SWP's arguments regarding the "characteristics" of the NTS and STS are not even persuasive. SWP first notes that the capacity of the STS is affected by the output of the IGS. SWP Br. at 35. ISO Witness Le Vine explained that the ability to use almost any transmission line is affected by generating units interconnected to the transmission line. In the case of transmission lines outside the ISO Control Area, most generating units are not subject to Participating Generator Agreements. The ISO cannot control the Dispatch of such generating units. Exh. ISO-6 at 3. This circumstance does not distinguish the Cities' STS and NTS Entitlements from all other Entitlements under the ISO's Operational Control outside the ISO Control Area. ISO witness Mr. Alaywan testified that Generation at Four Corners affects scheduling capacity on Moenkopi-Four Corners. The Eldorado Branch Group capacity is 1,555 MW maximum, but is reduced to 740 MW when Four Corners Unit 5 is off line. Exh. ISO-8 at 7. There was considerable debate at the hearing whether the derating is in fact a result of the unit being taken off-line (*see, e.g*., Tr. 825); although the ISO believes that the evidence would support that conclusion, it is not necessary to resolve the issue. It suffices that the capacity of the Eldorado Branch Group is subject to factors beyond the ISO's control in the same manner that the capacity of the IPP-Lugo, Gonder-Lugo, and Mona-Lugo branch groups are affected by the output of the Intermountain Generating Station. That the factor in the case of the STS is the output of the IGS does not render the STS a direct assignment facility.

Most of the remainder of SWP's argument discussed the IPP-Lugo branch group. There is an old expression: If you don't like the answer, change the question. SWP began this process by contending to the Commission that the STS and NTS were generation ties. *See California Indep. Sys. Operator Corp.,* 107 FERC ¶ 61,150 at PP 10-11 (2004). The issue set for hearing is whether the costs associated with the STS and NTS are to be included in the Cities' TRRs. *City of Azusa, et al.*, 105 FERC ¶ 61,293 at P 5. The issue to be briefed is "Should the Cities' STS, NTS, and related LADWP contract Entitlements be considered network facilities or direct assignment facilities?" Now SWP wants to argue that the ISO's IPP-Lugo Branch Group is a direct assignment facility.

The ISO's Branch Groups are not facilities. They are not Entitlements. They are merely constructs of the ISO's Congestion Management modeling system. The ISO does not accept Operational Control of Branch Groups; the Commission does not approve transfers of Branch Groups; and the Commission does not examine TRRs according to Branch Groups.

SWP's effort to divide the STS and NTS into segments and declare that one segment is a direct assignment facility would subvert entirely the Commission's policies on rolled-in pricing. A pro rata division of the costs of a facility between the generation and transmission function is precisely what the Presiding Judge endorsed and the Commission rejected in Order No. 466-A. Opinion No. 466-A at PP 4, 22, 24.

The CPUC bases it exceptions to the Initial Decision's factual conclusions that the NTS and STS are network facilities on an assertion that the facilities are radial lines. CPUC Br. at 59-60. The CPUC relies on evidence regarding the ISO's modeling. The ISO, however, models ***all*** interconnections with other Control Areas as radial tie lines because of limitations in the ISO's congestion management programs. Exh. ISO-8 at 4. Yet there is no question that such interconnections are part of the ISO's integrated network and ISO Controlled facilities. Without them the ISO would be an isolated island, with no resources other than those inside its own Control Area. Without the interconnections the ISO models as radial tie lines, California could not have survived the 2000-2001 energy crisis. The concept that a transmission line is any less a part of an integrated network because it terminates outside the Control Area has no basis in logic or law—and the CPUC provides no citations to suggest otherwise.

The CPUC fails to grasp the basic concept that radial lines refer to lines where power flows in one direction only, generally terminating at a generating station or load. Transmission lines that interconnect with other portions of the transmission grid cannot be described as radial lines. Indeed, the WECC map cited by the CPUC, Exh. CIT-3 (Protected), demonstrates the many loops by which the termini of the NTS and the STS are connected with the ISO Controlled Grid.

Both SWP, SWP Br. at 37, and the CPUC, CPUC Br. at 57, note the Initial Decision's finding that the NTS and STS provide an "inter-utility" connection. SWP finds it irrelevant because the Commission has not mentioned those words in its orders regarding the criteria for evaluating network facilities. The ISO, however, recognizes that the Initial Decision–as well as the Commission–is concerned with the analysis of the functions performed by the NTS and STS, not an idle game of reciting magic words. It is that function, the connection of the ISO Controlled Grid to other utilities and Control Areas, that makes the NTS and STS part of the ISO's integrated network.

Both the CPUC and SWP argue that the NTS and STS operating as an inter-utility connection prior to their transfer to the ISO's Operational Control. CPUC Br. at 57, SWP Br. at 37-38. They are correct. What they fail to understand is that the placement of that function under the ISO's Operational Control is what makes the NTS and STS integrated network facilities. Previously, users of the ISO Controlled Grid would need to make separate scheduling arrangements with and pay a separate transmission rate to Cities in order to use those facilities. Now they schedule the import or export of capacity and Energy with the ISO using the STS and NTS at a single, non-pancaked transmission rate. In this case, as the Initial Decision concluded, that is the essence of integration.

2. The Initial Decision Applied the Proper Standard in Evaluating Network Integration.

SWP faults the Initial Decision for failing to evaluate integration according to the criteria set forth in *Mansfield Municipal Electric Department et al. v. New England Power Company*, Opinion No. 454, 97 FERC ¶ 61,134 (2001). The Initial Decision, however, relied upon Opinion No. 474, *Northeast Texas Electric Cooperative, Inc, et al.*, 108 FERC ¶ 61,084 (2004), for relevant guidance regarding the nature of integration. In Opinion No. 474, the Commission refused to apply the *Mansfield* test[14] as recommended by certain participants. The Commission explained that the test was to be used in special circumstances to establish the lack of integration, not the existence of integration:

> The five-factor Mansfield Test was used to determine whether the radial lines at issue exhibited any degree of integration. Thus, the lines' negative showing with respect to all five factors established there were "exceptional circumstances" that merited direct assignment of their costs. In this proceeding, Trial Staff and [the utility] would have us require that facilities meet all five parts of the Staff Test to merit rolled-in treatment. This contradicts the Commission's policy that costs should be rolled in when any degree of integration has been shown.

[14] The five *Mansfield* Factors are (1) whether the facilities are radial, or whether they loop back into the transmission system; (2) whether energy flows only in one direction, from the transmission system to the customer over the facilities, or in both directions; (3) whether the transmission provider is able to provide transmission service to itself or other transmission customers over the facilities; (4) whether the facilities provide benefits to the transmission grid in terms of capability or reliability, and whether the facilities can be relied on for coordinated operation of the grid; and (5) whether an outage on the facilities would affect the transmission system. *Id.* at n. 31.

Id. at P. 51. SWP also relies upon *Consumers Energy Company,* 86 FERC ¶ 63,004 (1999), *aff'd,* 98 FERC ¶ 61,333 (2002). SWP Br. at 41. The Commission, however, has clarified that the *Consumers Energy* test was used to determine whether *customer-owned* facilities were eligible for transmission service credits, and that the test is not relevant to the determination of whether a facility of the *transmission provider* is a network facility. Opinion No. 474 at P 51. As a result, there was no reason for the Initial Decision to rely upon the criteria in either *Mansfield* or *Consumers Energy.*

SWP also contends that under Order No. 2003, the definition of "network upgrades is highly fact-driven.[15] Then, citing the Initial Decision's description of PG&E's position that the "sole use" standard demands that if facilities are not used solely for generation, they are network facilities, SWP asserts that PG&E and the ISO have rejected such a narrow assertion. SWP Br. at 42.

This matter was fully addressed in hearing, Tr. 1080-82, and in the ISO's post-hearing brief. Nonetheless, SWP persists in arguing that the ISO "recognizes" that under Paragraphs 749 and 750 of Order No. 2003, as well as Articles 9.9.2 and 11.6 of the pro forma LGIA contained in Order No. 2003-A and the LGIA, "there are circumstances in which even 'sole use' Interconnection Facilities may be utilized by the transmission provider or third parties." SWP Br. at 42. In fact, Paragraph 749 of Order No. 2003-A does not state, and SWP's witness so conceded, that Interconnection Facilities could be used to provide transmission service. Tr. 1080:25

[15] As discussed above, because Order No. 2003 addresses issues concerning costs assignment in connection with the interconnection of new generating units, the standards are not directly applicable to this proceeding. *Standardization of Generator Interconnection*

– 1081:3. Paragraph 750 concerns standby power arrangements and backup power arrangements for generating units. Order No. 2003, P 750.

Nothing in Order No. 2003 suggests that the “other services” that may be provided are transmission services. In reference to the particular services that may be provided under Article 9.9.2, the Commission refers to the housing of fiber optic circuits. Order No. 2003 PP 577-78. Article 11.6 is concerned with reactive power provided under Article 9.6.3, power and reactive power provided during emergencies under Article 9.6, and other emergency services under Article 13.5.1. As the Commission has already informed SWP, nothing in Orders No. 2003 and 2003-A marks a departure from the Commission’s policies on rolled-in pricing. *See, e.g.*, Order NO. 2003-A, 106 FERC ¶ 61,220 (2004) at PP 580-81.

The CPUC, for its part, contends that the Initial Decision improperly relied upon Opinions No. 466-A and 466-B because they are pending appeal. While innovative, this contention deserves no consideration. Under section 313(c) of the FPA, 16 U.S. C. § 825*l*(c*)*, Commission decisions are final although pending rehearing or appeal. Moreover, merely because an opinion establishing a policy is on appeal, the Commission is not required to hold similar cases in abeyance, or to fail to apply that policy. “If the Court determines that aspects of the Commission's . . policy are inappropriate, cases that have followed those aspects of the policy may be addressed again where the parties have preserved their positions through requests for rehearing or through appeal.” *Northwest Pipeline Corp.*, 88 FERC

Agreements and Procedures, Order No. 2003, FERC Stats. & Regs. ¶ 31,146, 68 Fed. Reg. 49,846 (August 19, 2003) (“Order No. 2003”).

¶ 61,298 at 61,911 (1999).[16]

The CPUC goes on to argue "Opinions Nos. 466-A and 466-B are also not dispositive because the ultimate issue is not whether the Cities' Entitlements are generation-ties or integrated network facilities, but rather whether they function and are operated in a way that reasonably justifies the impact on CAISO customers*, i.e.,* subsidizing Cities transmission costs without any countervailing benefits for market participants." CPUC Br. at 44-45. As the ISO has had occasion to note above, this is where the CPUC is simply wrong. Issues concerning cost-shifts and the benefits of expanding the ISO Controlled Grid were litigated or otherwise decided in the context of the ISO's transmission Access Charge and the transfer of the NTS and STS to the ISO's Operational Control. The only issue in this proceeding is whether the costs associated with the NTS and STS qualify under the ISO's formula rate and Commission precedent for inclusion in the transmission Access Charge. Opinion's No. 466-A and 466-B could not be more relevant.

D. The Initial Decision Properly Rejected a Revenue Credit in Connection with Scheduling Limitations on the STS (SCE Exception 5-7)

Edison complains that, in rejecting its arguments that the Commission should apply a revenue credit in connection with the Cities' TRRs associated with the NTS and STS analogous to that used in connection with Encumbrances, the Initial

[16] The CPUC also attempts to assert an inconsistency between Opinions No. 466-A and 466-B that does not exist, contending that Opinion No. 466-A requires proof of an "important" network function as a prerequisite to a finding of integration, while Opinion No. 466-B requires only a showing of any network function. In actuality, Opinion No. 466-A simply stated that the PG&E facilities in question were integrated facilities because they served an important network function, Opinion No. 466-A at P. 25. It did not specifically address the issue of a minimum threshold of integration.

Decision misstates SCE's arguments and the law. First, citing the Initial Decision's statement that "SCE is not correct as a matter of law that the Entitlements should be treated as Encumbrances," ID at 60, SCE contends it never argued that the Cities Entitlement should be treated as an Encumbrance. That the Initial Decision fully understood SCE's argument is clear from the discussion at P 26: "SCE suggests that a revenue credit is appropriate to reflect the set-aside created by the original operating procedure." SCE Initial Brief at 20-21. It contends that the effect of the original operating procedure is the same as an 'Encumbrance' for the period of time during which that Operating Procedure was in effect." Elsewhere, the Initial Decision notes, "SCE argues that the TRR must be reduced by the amount of these encumbrances to reflect the fact that the facilities and Entitlements are not usable by other Market Participants, and thereby avoid improper subsidization." I.D. P 9. In this context, the Initial Decision's statement can only be understood as a reference to SCE argument that the Entitlements were unusable. The I.D. properly found that nothing in the tariff definition of Encumbrance would support a revenue credit associated with restrictions on the use of the Cities' Entitlements.

SCE also complains that it never argued for a Revenue Credit due to the Cities' use of FTRs. Because the Initial Decision has alternative grounds for rejecting the revenue credit, and because the revenue credit is otherwise unjustifiable, this error is harmless.

Finally, SCE contends that its proposed revenue credit is not inconsistent with Commission precedent because the TRRs at issue in Opinions No. 466, 466-A and 466-B had already been reduced by revenue credits due to Encumbrances. SCE contends that the fact that the "encumbrance" at issue is not a literal Encumbrance as defined by the ISO Tariff is not determinative. SCE Br. at 30.

The Initial Decision properly rejected these arguments, as should the Commission. The Scheduling limitations on the Cities' Entitlements are not only legally distinct from the Encumbrances to which SCE analogizes them, as the Initial Decision recognized, but factually distinct. An Encumbrance is a legal restriction on the ISO's use of an Entitlement – it limits the ISO's legal authority and cannot be negated by the ISO's actions. The Scheduling limitations at issue are matters that can be addressed by revisions to the ISO's Scheduling Procedures, as they have been, and further addressed by development of revised Congestion Model, as the ISO plans. Exh. ISO-8 at 8-11; ISO-12 at 15-16.

SCE's contends that the Cities' TRRs should similarly be reduced proportionally to the degree that any capacity was unavailable for use by Market Participants. This theory is highly suspect. First, to the extent that a Participating TO's facilities are network facilities properly recovered through its TRR – as SCE agrees the Cities' facilities are, Exh. SCE-1 at 13 – such recovery must be governed by the ISO Tariff. Under the filed rate doctrine, "[A party] can claim no rate as a legal right that is other than the filed rate, whether fixed or merely accepted by the Commission, and not even a court can authorize commerce in the commodity on other terms." *Montana-Dakota*, 341 U.S. at 251. The ISO Tariff provides for the reduction of a Participating TO's TRR by ***revenue received*** in connection with Existing Rights. It does ***not*** provide for similar reductions for ***capacity unavailable*** due to ISO scheduling procedures.

Second, Participating TOs are paid for the Existing Rights; in contrast, the Cities received no compensation for the scheduling limitations.[17] Indeed, the definition of Transmission Revenue Requirement specifically provides that the revenue reduction is specifically tied to the compensation, not a reduction in capacity. For example, if a Participating TO's revenues for 75 MW of capacity that is unavailable to Market Participants is only 10 percent of its cost for that 75 MW, the Participating TO would only reduce its TRR by the actual revenues expected to be received. The Participating TO would recover the remaining 90 percent through the TRR even though the full 75 MW of capacity is unavailable. Yet SCE would reduce the Cities' TRRs commensurate with the capacity reduction. There is just no legal or rational basis for this argument.

E. The Record Does Not Support a Finding of Undue Discrimination in the Modeling of the Cities' Entitlements. (SWP Exception E, CPUC Exception E)

1. There Is No Basis for a Finding that the ISO's Scheduling Procedures Are Discriminatory.

SWP contends that the Initial Decision disregarded evidence that the initial ISO scheduling procedures, which allowed only the Cities to schedule at the IPP scheduling point, were unduly discriminatory. There is no basis for such an argument. It is true that under the original pre-September 15, 2004 version of Operating Procedure S-326, no one but the Cities could schedule on the Cities'

[17] SCE may claim that the Cities received compensation by virtue of their exclusive use of the Lugo-IPP branch group capacity. The Cities had use of that capacity as the owner of the Intermountain Generating Station generation. Exh. ISO-8 at 11-12. At any time, if another entity obtained title to such Generation, the ISO was ready and able to make the IPP-Lugo branch group capacity available to such party. Tr. 834, 839, 882, and 886.

370 MW Entitlement on the IPP-Lugo Branch Group, even when the Cities were not using their FTRs for this line. Tr. 92; 107; 334-35. This limitation simply reflects the fact that IPP is not a take-out point, and an entity that does not have entitlement to IGS generation could not inject energy at that point.[18] Tr. 182; Exh. S-7 at 20. For this reason, no other Market Participant could have used the IPP-Lugo capacity under any circumstances, and the only purpose to be served in scheduling on the facilities would be to engage in gaming and market manipulation. Tr. 704-705, 707. Undue discrimination is the unjustified differential treatment of similarly situated classes. *See El Paso Natural Gas Co.,* 104 FERC ¶ 61,045 at P 115 (2003). SWP and other Market Participants that do not have entitlements to generation at the Intermountain Generating Station are not similarly situated to the Cities, which have such an entitlement.[19] The ISO's goal of avoiding market manipulation justified the disparate treatment. It was standard ISO procedure to allow only entities with rights to generation to schedule from generating stations. Tr. 793-94.

SWP contends that standard ISO procedures do not justify discrimination and that ISO procedure would have allowed any party with rights to generation to schedule the power. SWP Br. at 64. It does not follow that the ISO may not impose requirements to ensure that the parties have such rights in order to prevent market manipulation. SWP neglects to note that the record is clear that, in the event that another Scheduling Coordinator obtained generation rights from the Intermountain

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18 SCE states that "the Cities themselves were the beneficiaries of the sole-use restriction." SCE IB at 21. In fact, the Cities gained no particular benefit from this restriction, since they already had secure access to the transmission capacity through their FTRs.

19 Such entities could not become similarly situated to the Cities merely by purchasing Energy from a utility with an entitlement to the generation. LADWP would require such

Generating Station, the ISO was willing and able to revise the scheduling procedures accordingly. Tr. 718.

2. There Is Similarly No Basis for a Finding that the ISO's Process for Developing Scheduling Procedures Is Discriminatory.

SWP also complains that the process by which the ISO developed and revised the scheduling models is discriminatory. There is no basis for this claim. Close collaboration between the ISO and the Cities in the development of procedures is only reasonable, given the Cities' unique knowledge of and familiarity with the Entitlements. The process followed by the ISO in developing operating procedures and methods with the Cities is the same that would be followed with any potential New Participating TO, and is analogous to what took place at the time that the Original Participating TOs joined the ISO. Tr. 199.[20] These entities are naturally the ones with the knowledge necessary to develop operating procedures, as they are intimately familiar with the facilities in question.

Significantly, although Anaheim and Riverside had expressed concerns when the procedures were developed, there had been no indication of problems with the procedures in practice. Until this proceeding, no party had brought to the ISO's attention any complaints about the operation of the models or access to the ISO Controlled Grid associated with NTS and STS. SWP contends that this is inaccurate, citing a letter reflecting comments by SWP and SCE. SWP Br. at 66.

Energy to be delivered at an LADWP Control Area tie point, such as Lugo. Tr. 796. Accordingly, LADWP would preclude the need to schedule the Energy at IPP.

[20] In this regard, *see* Tr. 244, where Cities' witness Mr. Nolff explains that the Cities had not been included in the discussions between the ISO and the Original Participating TOs regarding the appropriate operating procedures for those entities' facilities.

Those comments preceding the transfer of Operational Control and the development of procedures, and SWP's own citation demonstrates that the ISO responded to the comments. The is that following the implementation of the procedures, there was no significant Congestion on the branch group, which meant that no one who wanted to Schedule on the branch group was being denied the opportunity. Exh. ISO-12 at 13. Apparently, the concerns expressed did not reflect any actual deprivation of Scheduling opportunities.

After the close of the hearing in the initial phase of this proceeding, the ISO worked with the Cities and LADWP to revise the procedures to address, to the degree possible within the limitations of the ISO's Congestion Model, the concerns raised by certain parties. Exh. ISO-12 at 5-6, 8. That other Market Participants had a lesser role in these developments is natural – they would have had little to add. This is evidenced by the fact that, between the time when the general principles behind the revised operating procedures were articulated and made known to participants in this proceeding in Mr. Ledesma's testimony, Exh. ISO-12 on June 16, 2004, and the stakeholder meeting held to seek input on the changes on August 17, 2004 – a period of fully two months -- no specific alternatives were developed by other Market Participants including SWP and CPUC. It is true that SWP presented comments on the revised operating procedures (*see* Exh. ISO-20), but these were in the form of principles to be considered and not specific procedures to be adopted, and were more a statement of litigation principles than constructive technical or operating procedures. The parties to the discussions with the first-hand knowledge of the Entitlements and the limitations of the ISO's systems – *e.g.*, the Cities and the

ISO – had worked out the new operating procedures on an informed basis, with the insights of their knowledge and experience, and with the goal of responding to concerns raised in the first half of this proceeding in mind. Exh. ISO-14 at 4. SWP has not shown how the development or operation of those procedures in any manner discriminates against SWP or any other Market Participant.

F. Claims that the Availability Of Transmission Capacity Has Decreased As A Result Of The Transfer Are Irrelevant. (SWP Exception C, F)

SWP presents charts and analysis purporting to demonstrate that the ISO has (1) imposed severe restrictions on the STS and NTS capacity available to other Market Participants; (2) reduced the availability of the STS and NTS capacity to the Cities; and (3) reduced the availability of the capacity on other ISO facilities. SWP contends that this shows that the ISO's acceptance of the facilities has not provided benefits to consumers but has reduced the amount of capacity available, "thereby exacerbating an already constrained situation." SWP Br. at 50. SWP criticizes the Initial Decision for not addressing these matters. SWP Br. at 47, 48. Although SWP never so states, except in the heading, presumably SWP believes these matters are relevant to whether the NTS and STS are used and useful. SWP later contends that these restrictions justify a reduction in the Cities' TRRs.

As the record fully reflects, and the Initial Decision recognized, the scheduling limitations imposed by the ISO are due to limitations in the ISO's congestion management model, which the ISO is seeking to resolve in its Market Redesign. *See, e.g.,* Exh. ISO-8 at 8. These scheduling limitations, however, simply have no bearing on whether the NTS and STS are currently used and useful.

SWP's analysis is divorced from the reality of the needs of transmission customers. It simply compares the Cities' contractual capacity with the capacity available under the ISO's scheduling procedures. The simple fact is that, prior to the ISO's assumption of Operational Control of the NTS and STS, ***none*** of this capacity was available to ISO transmission customers. If an ISO transmission customer wished to use capacity on the NTS and STS, it would have to purchase and pay for the capacity the capacity in a separate transaction. ***Every*** megawatt of capacity available through the ISO's scheduling procedures is new capacity for the ISO's transmission customers, with the exception of the Cities.

With regard to the Cities, prior to the ISO's assumption of Operational Control, they would need to purchase transmission on the ISO Controlled Grid (either from the ISO or through an Existing Contract) to transmit power from their Entitlements to their Loads. The ability to reach their Loads is ***new*** capacity for the Cities.

SWP's complaint that the ISO reduced the available export capacity from Lugo to Marketplace in order to increase the export capacity to Mona and Gondor reveals the vacuity of its arguments. The export capacity from Lugo to Marketplace was has never been close to fully used, Tr. 1553. Readjusting the availably capacity is simply prudent management.

Finally, despite SWP's assertion that the ISO's assumption of Operational Control of the NTS and STS is "exacerbating an already constrained situation," the record is clear that there has been no significant congestion on those facilities. Exh. ISO-12 at 13. SWP's arguments that the Cities' TRRs should be reduced because the available capacity is less than the contractual capacity thus ring hollow.

G. The Factual Errors Alleged by SCE Are Harmless (SCE Exceptions 1-4)

SCE asserts that the Initial Decision included four factual errors. To the extent that these are indeed errors, they do not affect the soundness of the reasoning of the Initial Decision.

First, SCE points to the statement in the Initial Decision, "If the Cities do not use their FTR in the Day-Ahead market, other Market Participants can schedule that capacity." ID at P 61. The statement is true as a general proposition. *See* ISO Tariff Appendix A, Master Definitions Supplement (Definition of FTR). It was not true with regard to schedules from the IPP scheduling point prior to September 15, 2004. Tr. 682-84. The Initial Decision makes the statement in a paragraph that initially discusses SCE's arguments about the "set aside" for scheduling from the IPP scheduling point, but in the middle of a general discussion about FTRs. It is therefore unclear in which manner the Initial Decision intended the statement. In either event, the Initial Decision elsewhere makes clear its understanding that only the Cities could schedule from the IPP Scheduling Point under the ISO's initial Scheduling models. *See, e.g.,* ID at P 41. Because the Initial Decision also rejected a reduction of the TRRs based upon Scheduling limitations on grounds other than those discussed paragraph regarding FTRs, any error therein is harmless.

Second, SCE notes that statement at I.D. P 46 that only the Cities had contractual rights to take power from the IGS at IPP. SCE Br. at 16-17. SCE devotes considerable discussion to evidence that other owners of the IGS had such rights and that the ISO did not know if some of the owners other than the Cities might be Scheduling Coordinators. SCE is splitting hairs. The relevant point, recognized by the Initial Decision, is that the Cities were the only Scheduling Coordinators known to the ISO that had contractual rights to take power from the IGS at IPP. As SCE acknowledges, the ISO allows only owners of IGS Generation to Schedule at IPP. SCE Br. 17. Only Scheduling Coordinators can schedule with the ISO. ISO Tariff § 2.2.3, First Revised Sheet No. 5. As previously noted, in the event that a Scheduling Coordinator other than the Cities obtained generation rights from the Intermountain Generating Station, the ISO was willing and able to revise the scheduling procedures accordingly. Tr. 718. That there were owners of IGS Generation that were not Scheduling Coordinators, or had not brought that fact to the ISO's attention so that the ISO could make appropriate arrangement to allow them to Schedule from IPP, is not "crucial," but irrelevant.

Third, SCE objects to the conclusion that the restrictions in the ISO initial Scheduling Model were due to limitations in the Branch Group Model, imperfect interpretation of contract rights, and engineering and technical constraints. SCE complains that no technical reason was ever provided for applying a differing modeling approach than that applied to the Four Corner-Meonkopi-El Dorado line, and that the ability to change the procedures demonstrates that the restrictions were discriminatory and unnecessary. SCE Br. at 18.

SCE is simply wrong. With regard to the model itself, the ISO presented considerable testimony explaining why the "T" configuration of the NTS and the STS, and the need to prevent market manipulation, led to the original models. *See, e.g.*, Exh. ISO-8 at 4-6; Tr. 707:8-15. The ISO also provided testimony explaining the changes to these procedures. Exh. ISO12 at 3-16; Exh. ISO-14 at 5.

SCE confuses these issues, *i.e.*, the establishment of the branch groups and the assignment of capacity, with a separate issue of the ability of particular Scheduling Coordinators to schedule from the IPP Scheduling Point on the IPP Lugo Branch Group under that initial Scheduling model. As the testimony cited by SCE indicates, that limitation was not the effect of the manner in which Branch Groups were modeled. Rather, as previously discussed, it was to prevent market manipulation and, as also previously discussed, in the event that a Scheduling Coordinator other than the Cities obtained generation rights from the Intermountain Generating Station, the ISO was willing and able to revise the scheduling procedures accordingly. The ISO is not privy to information regarding the contractual rights of owners of IGS. If SCE arranged a purchase of Energy from an IGS owner who was a Scheduling Coordinator, that owner would simply need to contact the ISO to be added to those allowed to Schedule at IPP (subject, of course, to the Cities' FTRs). Indeed, that owner, if such an owner actually exists, could have contacted the ISO and made its presence known at any time even without arranging a sale. This is not evidence of undue discrimination.

Finally, SCE complains of the Initial Decision's finding that the limitations on the IPP-Lugo Branch Group did not prevent use of available capacity on the STS. SCE Br. at 21. As SCE acknowledges, despite the allocation of 370 MW to the IPP-Lugo Branch Group, 4 MW of capacity on the Gonder-Lugo Branch Group and 160 MW of capacity on the Mona-Lugo Branch Group remained available. Although SCE's witness identified some congestion on those lines, SCE Br. at 22, congestion was insignificant. Exh. ISO-12 at 13. The Initial Decision neither stated nor implied that the engineering, modeling, and market manipulation considerations that led to the ISO's Scheduling limitations did not impose any limits on the ability to Schedule. The record fully supports the conclusion, however, that Market Participants that wished to Schedule on the STS during the period in question were able to do so.

V. Conclusion

For the reasons described above, the Commission should reject the Exceptions to the Initial Decision's findings as proposed by other parties, and accept the findings of the Initial Decision in toto.

Respectfully submitted,

__***/s/ Michael E. Ward***___

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Date: March 28, 2005

CERTIFICATE OF SERVICE

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

Dated at Folsom, CA, on this 28th day of March, 2005.

/s/ Geeta O. Tholan
Geeta O. Tholan