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August 14, 2002

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

Re: **Annual Charges Billing – Fiscal Year 2002**
Docket No. RM00-7-000 *002*

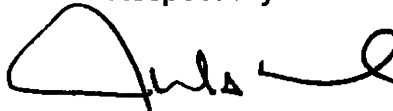
FILED
OFFICE OF THE SECRETARY
02 AUG 14 PM 4:31
FEDERAL ENERGY
REGULATORY COMMISSION

Dear Secretary Salas:

Enclosed please find an original and 14 copies of the Request for Rehearing and Clarification, and Request for Stay of the California Independent System Operator Corporation in the above-captioned matter.

Two additional copies of this filing are enclosed to be stamped with the date and time of filing and returned to our messenger. If there are any questions concerning this filing, please contact the undersigned.

Respectfully submitted,



Julia Moore

Counsel for the California Independent
System Operator Corporation

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

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Annual Charges Billing – Fiscal Year 2002)
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Docket No. RM00-7-000

**REQUEST FOR REHEARING AND CLARIFICATION AND MOTION FOR STAY
OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION**

Pursuant to Federal Power Act ("FPA") Section 313, 16 U.S.C. § 825l and Rules 212 and 713 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("Commission" or "FERC"), 18 C.F.R. § 385.212 and 385.713 the California Independent System Operator Corporation ("CAISO") hereby requests rehearing of and clarification of the Commission's "Annual Charges Billing, - Fiscal Year 2002," Bill No. M2E20058, dated July 15, 2002 ("July 15 Annual Charge Bill").¹ Specifically, the ISO requests the Commission take the following actions:

- Under the Commission's regulations, all public utilities that provide transmission service (*i.e.*, "transmission providers") are required to report each year their total megawatt hours ("MWH") of transmission of electric energy in interstate commerce for purposes of computing the Annual Charges due to the Commission. 18 C.F.R. § 382.201(c). However, it appears from the reported totals for other transmission providers (and in particular, other ISOs) that there is an inconsistency in such reporting

which has not been addressed by the Commission. In particular, it appears that no volumes have been reported by ISO New England. Since FERC Annual Charges are assessed against each transmission provider based on its percentage of total reported transmission volumes, the effect of this inconsistency is that the CAISO, among others, is paying a greater share of the Commission's Annual Charges. The CAISO requests that the Commission investigate whether all transmission volumes subject to assessment of Annual Charges have been reported in accordance with the Commission's revised Annual Charge regulations and, if it determines that transmission volumes have been under-reported, requests rehearing of the Commission's assessment of Annual Charges against the CAISO in light of the results of that investigation;

- The July 15 Annual Charge Bill sets forth a Charge Factor considerably higher than that anticipated by the CAISO. The CAISO is authorized under Section 7.5.3 of its tariff to adjust its Annual Charge Recovery Rate to reflect any under-recovery of Annual Charges or to issue a surcharge to Scheduling Coordinators in the event of any under-recovery of revenues greater than 10% of estimates. Due to the disparity between the estimated and actual Charge Factors, the CAISO has issued supplemental assessments to the appropriate Scheduling Coordinators for 2001 transmission volumes. The CAISO respectfully requests that the Commission confirm that this is the appropriate period over which to

¹ The July 15 Annual Charge Bill states that “[f]or the Commission to consider an argument of law or policy,” the CAISO must file a request for rehearing within 30 days.

assess such a surcharge, consistent with the CAISO's authority under its tariff;

- The CAISO understands that, as of 2001, it is expected to meet the reporting requirements set forth in 18 C.F.R., Part 382, Annual Charges, for the whole of the CAISO Controlled Grid. The CAISO included in its reported total transmission volumes for 2001 MWH totals for several entities which the CAISO understands have also been billed separately by the Commission. The CAISO respectfully submits either that the Commission erred to the extent that it has issued more than one Annual Charges Bill for the same transmission volumes, or, to the extent that the Commission determines that other public utilities must pay Annual Charges for transmission volumes that the CAISO has previously reported, that the CAISO is not liable for the Annual Charges which the Commission is invoicing separately and that the CAISO's assessment of Annual Charges be reduced accordingly;
- In reporting Annual Charge transmission volumes to the Commission and issuing charges to Scheduling Coordinators to recover the costs of such Annual Charges, the CAISO has made certain assumptions about what transactions the CAISO is required to report. A number of Scheduling Coordinators have indicated to the CAISO that they do not consider themselves liable for payment of Annual Charges through the recovery mechanism in the CAISO Tariff. The CAISO respectfully requests that the Commission confirm that such Scheduling Coordinators are required to

pay such charges and issue an Order directing these entities to pay their share of the Annual Charges assessed against the CAISO;

- Where Scheduling Coordinators indicate to the CAISO that they do not consider themselves liable for Commission-assessed Annual Charges, in whole or in part, and will either dispute them or simply refuse to pay, the CAISO is still expected to pay the amount of the Annual Charge Bill attributed to those Scheduling Coordinators. This means that the CAISO must either 'borrow' the required sums from the CAISO's financial Operating & Capital Reserve (to be repaid from later assessments), to the detriment of other programs and entities, or apply an off-set to these outstanding monies, assuming that is even possible. As neither prospect is palatable, the CAISO respectfully requests clarification regarding the most appropriate means of dealing with such issues pending their resolution.

I. BACKGROUND

Under the Federal Power Act, 16 U.S.C. §§ 803(e), 823(e), and the Omnibus Budget Reconciliation Act of 1986, 42 U.S.C. § 7178, the Commission is authorized to assess Annual Charges against regulated public utilities in order to recover the costs of administration of the Commission's electric regulatory program.

Until 2001, the Commission's then-effective Annual Charge regulations provided for the assessment of Annual Charges against regulated public utilities based on each such utility's total annual "long-term firm sales for resale and

transmission activities” and “short-term sales and transmission and exchange activities.” 18 C.F.R. § 382.201 (2000). Changes in the structure of the electric industry, including the Commission’s policy of encouraging the formation of and participation in new entities such as ISOs and RTOs, raised questions about how this Annual Charge methodology would apply to such new entities, especially where an ISO or RTO operates a transmission system owned by another public utility.

Order No. 641

On October 26, 2000, the Commission issued Order No. 641, adopting a new methodology for collecting Annual Charges from public utilities providing transmission service based on the total volume of electricity transmitted, in megawatt hours, by those public utilities.² Under Order No. 641, these volumes include unbundled transmission service, both wholesale and retail, and bundled wholesale power sales, but not bundled retail service. Pursuant to Order No. 641, Annual Charges are assessed under the new methodology for all transmission transactions occurring as of January 1, 2001. These transactions were to be reported to the Commission in calendar year 2002 on Form 582, and Annual Charges for these transactions, calculated by the Commission in accordance with the new methodology, were then to be billed to and paid by transmission providers in 2002.

² Revision of Annual Charges Assessed to Public Utilities, Order No. 641, 65 FR 65,757 (Nov. 2, 2000); FERC Stats. & Regs., Regulations Preambles July 1996-December 2000 ¶ 31,109 (2000), reh’g denied, Order No. 641-A, 66 Fed. Reg. 15,793 (Mar. 21, 2001), 94 FERC ¶ 61,290 (2001).

As to the issue of what entities will be responsible for paying the Annual Charges, Order No. 641 provided that Annual Charges will be assessed to the public utility providing the regulated transmission service under a tariff or rate schedule on file with the Commission. Therefore, if an ISO or RTO has taken over the function of providing transmission service from a transmission owner, and that ISO or RTO has a tariff or rate schedule on file with the Commission for such service, then the ISO or RTO is responsible for paying the Annual Charge under the new methodology.

In response to concerns raised by a number of public utilities about their ability to recover Annual Charge costs in their rates, Order No. 641 also addressed the issue of rate recovery for Annual Charges. In Order No. 641, the Commission stated that "the issue of rate recovery of annual charges is not within the scope of this Final Rule," but noted that public utilities can seek to recover such costs in their rates through existing mechanisms, such as a rate filing under Part 35 of the Commission's regulations. Order No 641, FERC Stats. & Regs. ¶ 31,109 at 31,857. The Commission further stated that:

[T]o allay the concerns of public utilities as to rate recovery, we will state here that we find that the annual charge assessments are costs that can be recovered in transmission rates as a legitimate cost of providing transmission service. We will otherwise leave this issue to be resolved in future rate change filings, as they may come before the Commission from time to time on a case-by-case basis; different public utilities may require different rate revisions to address this matter.

Id.

Consistent with this guidance, the CAISO submitted tariff revisions as part of Amendment No. 35 to the CAISO Tariff which permit the CAISO to recover the

projected costs of FERC Annual Charges from users of the CAISO Controlled Grid, i.e., Scheduling Coordinators, and provides mechanisms for the CAISO to address any under- or over-recovery of FERC Annual Charges. The Commission approved these tariff revisions in its order conditionally accepting Amendment No. 35.³

II. DISCUSSION

A. The Commission Should Investigate the Compliance of All Transmission Providers with the Reporting Requirements of the Annual Charge Regulations and Adjust the Assessment of Annual Charges Against the CAISO

The July 15 Annual Charge Bill to the CAISO reflects the Annual Charges assessed by the Commission on the “Total Company Megawatts”, i.e., MWH reported for the CAISO Controlled Grid by CAISO on Form 582. The Annual Charge assessment is determined by applying the Charge Factor to *reported* MWH. The billing from the Commission provided a listing of such reported volumes by all subject utilities. In reviewing this report, it is apparent that entities are either viewing their reporting obligations differently or misunderstanding their reporting obligations entirely. In particular, CAISO notes that the ISO New England apparently has not reported any volumes.

Given the Commission's methodology for determining its Annual Charges, under-reporting by an entity causes the share of the total Commission fees borne by all other entities who report volumes to be higher than appropriate. As the CAISO has fully reported the total of its transmission volumes for the last

³ *California Independent System Operator Corp.*, 94 FERC ¶ 61,266 (2001).

year, the potential of under-reporting by any other entity greatly concerns the CAISO.

It is also not clear whether other, non-ISO transmission providers have reported their transmission volumes in accordance with the Commission's Annual Charge regulations. Based on data from the Edison Electric Institute, CAISO had originally projected that over 2.6 billion MWH of transmission volumes would be reported industry wide for 2002. According to the July 15 Annual Charge Bill, however, only 1.7 billion MWH were reported. This disparity suggests that there has been significant under-reporting of transmission volumes subject to Annual Charges since the Commission's revised regulations went into effect.

Similarly, while not overtly underreporting, other ISOs appear to have adopted a different understanding of their reporting requirements vis-a-vis their participating transmission owners. PJM Interconnection apparently is reporting a portion of its control area load, while its participants are reporting major portions of the total control area load. In this instance, under-reporting for the region as a whole does not appear to have taken place, and CAISO and others do not appear to have been overcharged as a result.

The CAISO, therefore, respectfully requests that the Commission review the reported MWH of all public utilities subject to its authority to determine if there has been any under-reporting or non-reporting of MWH totals which would affect the liability of the entities. Should any disparity in reporting or approach become apparent, the CAISO respectfully requests rehearing on, and a

recalculation of, its liability for the current year's Annual Charges. Additionally, CAISO seeks clarification as to the appropriate treatment of volumes to be reported by an ISO versus its participants.

B. The Commission Should Confirm that the CAISO Has Appropriately Surcharged Scheduling Coordinators for Under Recovered Amounts of Annual Charges for Fiscal Year 2001

The shift of responsibility for reporting transmission volumes subject to Annual Charge assessment to the Commission from individual entities to ISOs has taken place only recently. By virtue of the change in the Commission's approach for fiscal year 2001 onwards, ISOs increasingly bear the burden of reporting MWH totals to the Commission. In 2001, CAISO (and other entities) were required to develop estimates of what the Annual Charge assessment would be when billed by the Commission in order to assess and collect the fees from participants as the controlled grid was used. The CAISO estimated the Commission's Charge Factor using the publicly available historic data for total MWH across the electric power industry (from the Edison Electric Institute). The CAISO estimate was for a Charge Factor of \$0.021 per MWH, which was thereafter assessed on monthly settlement statements throughout 2001, and has similarly been assessed to volumes in 2002.

The July 15 Annual Charge Bill issued by the Commission sets a Charge Factor of \$0.0385005775 per MWH. While the CAISO believes its estimate was not unreasonable at the time it was made, the recognizes that it will be liable for collecting the resultant under-recovery of this portion of the 2001 Annual Charge. Anticipating such potential shortfalls, the CAISO Tariff was amended after the

issuance of Commission Order 641 to permit supplemental assessments in such an event.

CAISO therefore issued a supplemental assessment billing to the appropriate Scheduling Coordinators for the calendar year 2001 for the difference between the initial billing by CAISO of \$0.021/MWH and the final Commission Charge Factor of \$0.0385005775.⁴ The CAISO notes that the July 15 Annual Charge Bill is entitled a "Statement of Annual Charges Under 18 CFR Part 382 For Period 10/01/2001 through 9/30/2002." The CAISO interprets this to be a reference to the Commission's fiscal year and requests confirmation that the July 15 Annual Charge Bill is for reported transactions for the 2001 calendar year as reflected in the surcharge issued by the CAISO.

In addition, for volumes in 2002, the 2001 Charge Factor of \$0.0385005775 would appear to be the most appropriate current estimate for the 2002 assessment that the CAISO will report to the Commission in May of 2003. Accordingly, CAISO believes it should begin assessing 2002 volumes this higher rate immediately, and should also issue a supplemental billing to participants for volumes in 2002 to date. The CAISO Tariff provides that the rate may be adjusted on a quarterly basis (Section 7.5.3.2), and that a surcharge may be issued when the final FERC Annual Charge assessment is published (Section 7.5.3.4). The CAISO intends to change the rate of \$0.0385005775 henceforth, and to issue an additional surcharge for 2002 for volumes from January 1 to the date of the new rate going into effect (via the quarterly adjustment mechanism).

⁴ See the Market Notice, dated July 24, 2002 provided as Attachment A.

The CAISO recognizes that a further surcharge may be necessary when the final FERC Charge Factor for next year is published.

C. The Commission Should Clarify Whether It Expects the CAISO to Pay Annual Charges for All Transactions on the CAISO Controlled Grid

As already noted, the CAISO understands that, as of 2001, responsibility for reporting the total MWH for all transactions on the CAISO Controlled Grid rested with the CAISO. Nonetheless, the CAISO has been informed of the fact that several CAISO Scheduling Coordinators have been billed separately for calendar year 2001 transmission volumes reported by the CAISO. The CAISO also understands that the Commission believed that such entities inadvertently failed to report figures for calendar year 2001, and that the Commission therefore estimated charge volumes based on the entities' 2000 reported volumes.

The CAISO seeks clarification as to the role the Commission expects it to perform in this respect and, where appropriate, seeks clarification of the amount of Annual Charges properly assessed to the CAISO.⁵

Where the Commission issues a separate bill for a portion of the Annual Charges already reported by the CAISO, the CAISO respectfully submits that either the non-CAISO invoice was issued in error or that the charge assessed against the CAISO should be reduced by such amount. In any event the same volume should not be assessed twice.

⁵ In this regard, the CAISO has been in communication with FERC personnel regarding the reporting of volumes attributable to Southern California Edison Company and Pacific Gas & Electric Company. See Letter to Herman Dalgetty, included with this filing as Attachment B.

D. The Commission Should Clarify the Liability of All Scheduling Coordinators for the Commission's Annual Charges

Several entities which either operate their own control area or operate, at least partially, in control areas other than the CAISO Control Area, also transact using the CAISO Controlled Grid. In some cases these entities question whether the CAISO should report any of their volumes to the Commission as part of the total for the CAISO Controlled Grid. It has been the position of the CAISO, based on guidance provided by the Commission, that any transaction using the CAISO Controlled Grid is liable to be reported to the Commission as part of the total volume of the CAISO's MWH and is, in consequence, liable for its portion of Commission Annual Charges.

The Commission confirmed as much in its order on Amendment No. 35, where it stated that the CAISO should “include the loads of all transmission users (public utility and non-public utility) in the calculation of the FERC Annual Charge Recovery Rate.” 94 FERC at 61,926. The CAISO therefore seeks clarification from the Commission that, subject to Commission response to the foregoing item C, all transactions on any portion of the CAISO Grid should be reported to the Commission by the CAISO. Further that this reporting specifically makes liable for Commission Annual Charges, all such transaction volumes and that the CAISO is expressly authorized to collect the same on behalf of the Commission. This includes any transactions reported for the Imperial Irrigation District (“IID”) making use of the Southwest Power Link (“SWPL”) facility, notwithstanding any arguments advanced elsewhere by IID regarding operational control of SWPL.⁶

E. The Commission Should Clarify the Approach CAISO Should Take for Recovery of Annual Charges

Given apparent issues of liability for Annual Charges, for which the foregoing clarifications are sought by the CAISO, and the fact that not all Scheduling Coordinators pay on the MWHs reported by the CAISO to the Commission, the CAISO can be left with a problem of temporary under-recovery.

The CAISO is, under its Tariff, either permitted to off-set amounts due to Scheduling Coordinators for any unpaid debts incurred under the ISO

⁶ San Diego Gas and Electric Company (“SDG&E”) has argued elsewhere that SWPL, which is co-owned by IID, Arizona Public Service, and SDG&E, was never turned over in its entirety to CAISO operational control, and that the CAISO only has control of the SDG&E owned percentage of the line. See, e.g., Cross-Answering Testimony of S.A. Yari, filed August 17, 2001 in the CAISO’s 2001 Grid Management Charge proceeding, Docket No. ER01-313-000, *et al.*, at 5-6. The CAISO position is that it is not possible to divide operational control of a non-physically

Settlements system or is required to meet all current obligations from the financial Operating & Capital Reserve account, while any dispute on such an obligation is pending.

The Commission's July 15 Annual Charge Bill to the CAISO specifies that in the event of any request for rehearing there will be no stay of the obligations contained therein and that full payment is due 45 days after the date of the invoice.

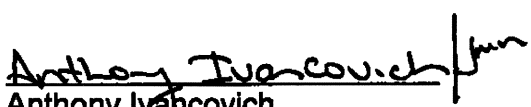

The CAISO does not consider that a potential off-set is always possible, and accordingly CAISO expects to have recovered less from participants than the amount billed by the Commission. Further, the option whereby the CAISO is obliged to 'borrow' funds from its financial Operating & Capital Reserve is wholly undesirable, is detrimental to the CAISO's overall financial situation and is a disservice to other entities which meet their payment obligations. Therefore, given the prospects of certain parties not paying their Annual Charges pending clarification of the issues raised herein etc., the CAISO respectfully requests a stay of the affected portions of the July 15 Annual Charge Bill. In the alternative the CAISO respectfully requests expedited consideration of the items raised above.

divided line. An operator either has operational control of a given line or it does not, and two or more parties cannot operate the same line at the same time.

III. CONCLUSION

Wherefore, for the reasons stated herein, the ISO respectfully requests that the Commission grant rehearing, provide the requested clarifications, and grant the motion for stay.

Respectfully submitted,

 Anthony Ivanovich Senior Regulatory Counsel Stephen A S Morrison Corporate Counsel The California Independent System Operator Corporation 151 Blue Ravine Road Folsom, CA 95630 Tel: (916) 608-7135	 Kenneth G. Jaffe David B. Rubin Julia Moore Sean A. Atkins Swidler Berlin Shereff Friedman, llp 3000 K Street, N.W., Suite 300 Washington, DC 20007 Tel: (202) 424-7500
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Dated: August 14, 2002

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in the above-captioned dockets.

Dated at Washington, DC, on this 14th day of August, 2002.

A handwritten signature in black ink, appearing to read 'Julia Moore', written over a horizontal line.

Julia Moore

ATTACHMENT A

From: CRCommunications
Sent: Wednesday, July 24, 2002 6:21 PM
To: ISO Market Participants; SC Settlements Contacts
Subject: CAISO Notice - Supplemental Assessment of FERC Fees related to 20 01

MARKET NOTICE
July 24, 2002

FERC Fees related to 2001 will be due and payable on August 2, 2002. The ISO will be issuing a supplemental assessment for 2001 FERC fees, in accordance with the provisions of ISO Tariff Section 7.5.3.4. The supplemental assessment will post on the May 31, 2002 Preliminary Settlement Statement under Charge Type 550 for trade date December 31, 2001 and the assessment will be invoiced the following day. Note that this supplemental FERC fee invoice must be paid on August 2, 2002, by 10:00 a.m., to the bank account specified on the invoice. Participants who had previously opted to pay the FERC fee invoices annually must pay all previously issued FERC fee invoices for 2001 on August 2, 2002, by the 10:00 a.m. deadline as well. The supplemental billing will recover a shortfall in FERC fees, as the ISO's assessed FERC fee rate in 2001 was significantly less than final published rate. A reconciliation of the rates is shown on the Appendix.

FERC Charge: \$0.0385005775 / MWh
Assessed thus far by ISO \$0.021 / MWh
Difference: \$0.0175005775 / MWh
Rounded to: \$0.01750 / MWh

The authority for this supplemental billing is ISO Tariff Section 7.5.3.4, which provides ".....If the ISO's collection of funds for FERC Annual Charges with respect to any year results in an under- or over-recovery of greater than 10%, the ISO shall either assess a surcharge against all active Schedule Coordinators for the amount under-recovered or shall issue a credit to all active Scheduling Coordinators for the amount over-recovered." If there is a shortfall in funds held by the ISO when the payment is due to FERC on August 29, 2002, the ISO will advance the funds necessary to pay the invoice (totaling \$9,094,334) from the ISO GMC account. Additionally, the ISO will issue a subsequent market notice regarding FERC fee assessments for 2002. Please remit payment to the FERC Fee Account listed on your FERC Fee Invoice - Account #14897-03272

Appendix

Here is a comparison of the originally estimated rate vs. the actual FERC charge:

Our November 2000 Estimate:

FERC Electric Program Costs	\$55,000,000	=
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\$.021 (rounded) / MWh	
Total Industry Sales	2,653,164,000 MWh

See Board memorandum at:
<<http://www.caiso.com/docs/09003a6080/09/d1/09003a608009d170.pdf>> for our

November 2000 Estimate.

July, 15 2002 FERC Invoice:

FERC Electric Program Costs	\$65,613,000	
<hr/>		=
\$.0385005775 / MWh		
Total Industry Sales	1,704,208,204 MWh	

1. See Board memorandum at:
<http://www.caiso.com/docs/09003a6080/09/d1/09003a608009d170.pdf>
2. (FERC-582): The total megawatt-hours of transmission of electric energy in interstate commerce, which for purposes of computing the annual charges and for purposes of this reporting requirement, will be measured by the sum of the megawatt-hours of all unbundled transmission (including MWh delivered in wheeling trans-actions and MWh delivered in exchange transactions) and the megawatt-hours of all bundled wholesale power sales (to the extent these latter megawatt-hours were not separately reported as unbundled transmission).

Cynthia Hinman
Client Representative
California ISO
(916) 608-7052 phone
(916) 802-1389 cell

ATTACHMENT B

SWIDLER BERLIN SHEREFF FRIEDMAN, LLP

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August 14, 2002

BY FACSIMILE

Mr. Herman Dalgetty
Supervisory Accountant
Federal Energy Regulatory Commission
888 First St., NE, Rm. 4V03
Washington, DC 20426

Re: Total Reported MWH Volumes for FERC Annual Charge

Dear Mr. Dalgetty:

This is to confirm the substance of your telephone conversation with Stephen A. S. Morrison, Corporate Counsel for the California Independent System Operator Corporation ("CAISO") of August 13, 2002. As discussed with Mr. Morrison, the CAISO has included in the volumes previously reported to FERC the volumes attributable to Southern California Edison Company ("Edison") and Pacific Gas & Electric Company ("PG&E") for purposes of assessing the FERC Annual Charge for the period from October 1, 2001 through September 30, 2002.

Therefore, per your discussion, Edison and PG&E need not be billed separately for FERC Annual Charges for these volumes. Please confirm with the CAISO, Edison and PG&E that this accords with your understanding of that conversation.

Mr. Herman Dalgetty
August 14, 2002
Page 2

Please let me know if you have any questions regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Julia Moore', with a large loop at the start and a long tail.

Julia Moore
Counsel for the California Independent
System Operator Corporation

cc: Jennifer L. Key
jkey@steptoe.com

Stuart Gardiner
SkG7@pge.com