

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

City of Vernon, California)	Docket No. EL00-105-007
)	
California Independent System)	Docket No. ER00-2019-007
Operator Corporation)	

**REPLY BRIEF OF
THE CALIFORNIA INDEPENDENT SYSTEM
OPERATOR CORPORATION**

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**To: The Honorable Carmen A. Cintron
Presiding Administrative Law Judge**

Pursuant to Rule 706 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.706 (2004), and the Order Establishing Procedural Schedule issued by the Presiding Administrative Law Judge in the above-captioned proceeding on March 9, 2004, the California Independent System Operator Corporation (“ISO”) submits its Reply Brief in this proceeding.

I. INTRODUCTION

Throughout this proceeding the ISO has maintained a limited position on the issues concerning the Transmission Revenue Requirement¹ (“TRR”) recovery of the City of Vernon, California (“Vernon”). That position is set forth in the ISO’s Initial Brief filed on October 25, 2004, and has not changed after the ISO’s review of the Initial Briefs submitted by other parties in this proceeding. In short, the ISO has maintained, and continues to maintain, that Vernon’s

¹ Unless otherwise defined, capitalized terms are used as defined in the ISO Tariff (Item by Ref. 2) Appendix A. The term “operational control” will be capitalized in this brief in accordance with the definition in the ISO Tariff. Nonetheless, it is the ISO’s position that from January 1, 2001 forward it had Operational Control over the relevant facilities in both the sense used in the ISO Tariff and as the term is used more generally by the Commission.

Entitlements on the Mead-Adelanto Project ("MAP") and the Mead-Phoenix Project ("MPP") and the associated contracts with the Los Angeles Department of Water and Power should be included in Vernon's TRR for the period from January 1, 2001 forward, with no exclusions. The ISO rests on its Initial Brief as to its affirmative position in this case.

The ISO addresses arguments from the Initial Briefs filed by other parties.

II. RESPONSE TO INITIAL BRIEFS

As the ISO explained in its Initial Brief, the Commission has established two inter-related criteria for the inclusion of transmission Entitlements and facilities in the TRR of a Participating Transmission Owner ("Participating TO"): 1) the Entitlement or facility must be under the ISO's Operational Control, and 2) the facility in question must be an integrated network facility.² The ISO's (and Vernon's) Initial Brief set forth the factual basis from which it must be concluded that the MAP and MPP met those criteria effective January 1, 2001. Commission Trial Staff ("Staff") and Southern California Edison ("SCE"), however, would deny Vernon recovery of its TRR for these facilities by redefining Operational Control in a manner contemplated by neither the Commission nor the ISO Tariff and by focusing on issues that should have no bearing on Vernon's cost recovery. The Presiding Judge should reject these efforts.

² See *Pacific Gas and Electric Co.*, Opinion No. 466, 104 FERC ¶ 61,226 (2003); *order on reh'g*, *Pacific Gas and Electric Co.*, Opinion No. 466-A, 106 FERC ¶ 61,144 (2004); *reh'g denied*, *Pacific Gas and Electric Co.*, Opinion No. 466-B, 108 FERC ¶ 61,297 (2004)

A. The ISO’s Operational Control of the MAP and MPP Was Not Affected by the Delay in Establishing Scheduling Points

1. Operational Control Is the ISO Legal Authority to Direct Participating TOs Regarding Transmission Facilities and Entitlements

As described in the ISO’s Initial Brief, the ISO assumed Operational Control over the MAP and MPP Entitlements effective January 1, 2001 as “Operational Control” is defined by the ISO Tariff:

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 . . . for the purpose of affording comparable non-discriminatory transmission access and meeting Applicable Reliability Criteria.³

Despite the clear language of the ISO Tariff, Staff argues that Operational Control requires actual operation of the facilities in question and that the ISO did not have the ability to do this during the disputed period from January 1, 2001 through December 31, 2002. *See, e.g.*, Staff Initial Brief (“Staff IB”) at 23-24. SCE, too, contends that the ISO lacked operational control over the Vernon Entitlements during the disputed period. *See, e.g.*, SCE Initial Brief (“SCE IB”) at 38.

Staff’s principal legal argument relies upon footnote 21 of Opinion No. 466 for the proposition that, in evaluating whether an entity has operational control, “actual, physical control of the facilities was the determining factor” rather than the ISO’s legal authority. Staff IB at 19. Staff misunderstands the import of footnote 21. The Commission was not distinguishing between legal control of facilities and the act of exercising such control. The Commission was responding to the issue of whether a filing under Section 203 was a necessary prerequisite for

³ ISO Tariff Appendix A, Master Definition Supplement, at Third Revised Sheet No. 336 (emphasis added).

Operational Control. It simply stated that the *mechanism* by which operational control is assumed is irrelevant, *i.e.*, whether it be by a Section 203 filing or (as was the case in Opinion No. 466), a subsequent listing in the ISO Transmission Registry, or otherwise. The Commission did *not* state that legal authority to exercise operational control is irrelevant or even that it is distinguishable from physical control. In fact, the ISO had complete legal authority to exercise physical control of the facilities during the disputed period, as is indeed acknowledged by Staff. Staff IB at 24. The fact that the ISO could at any time (had the resources been available) have implemented Scheduling Points demonstrates that the ISO's physical control was the same on January 1, 2001, as on January 1, 2003.

Both Staff and SCE also rely upon Opinion No. 445⁴ and the Order Denying Rehearing of Opinion No. 445⁵ to support their argument that the delay in the establishment of Scheduling Points for the MAP and MPP negates the ISO's Operational Control of the Entitlements. SCE contends that in Opinion No. 445 “[t]he Commission also noted that operational control is synonymous with provision of transmission service” based on the Commission's statement that “if the California ISO has no operational control over ... transmission facilities, it cannot use them to provide transmission service to its customers.” SCE IB at 33, *citing* Opinion No. 445 at 61,255. Staff interprets the Order Denying Rehearing as indicating “that the Commission perceives operational control to encompass the scheduling and control of facilities turned over to the ISO.” Staff IB at 20. SCE, too, cites this order for the principle that the ability of the transmission provider “to provide transmission scheduling service” is “the *sine qua non* of Operational Control.” SCE at 33-34.

⁴ *Southern Cal. Edison Co.*, 92 FERC ¶ 61,070 (2000) (“Opinion No. 445”).

⁵ *Southern Cal. Edison Co.*, 108 FERC ¶ 61,085 (2004) (“Order Denying Rehearing”).

In reality, Opinion No. 445 and the Order on Rehearing provide no support for Staff's or SCE's positions, and actually demonstrate why Vernon should be allowed to recover its TRR in this proceeding. The issue in the Opinion No. 445 proceeding was whether *non-Participating TOs* (specifically including Vernon at that time) should receive credits for their customer-owned transmission facilities. The Commission in Opinion No. 445 stated that "if the California ISO has no operational control over these facilities, it can not use them to provide transmission service to its customers." Opinion No. 445 at 61,255. The Commission found that until Vernon and the others joined the ISO by executing the Transmission Control Agreement ("TCA"), the ISO could have no Operational Control over their facilities (Opinion No. 445 at 61,255), and that "in order for the Municipals to receive credits for their facilities, they must join the California ISO and thereby *allow scheduling and control* of the facilities by the transmission owner." *Id.* at 61,256 (emphasis added). This, of course, is precisely what Vernon has done. In the case of the transmission capacity at issue Opinion No. 445, Vernon and the others allowed the ISO no legal authority to schedule the facilities, and hence no Operational Control; here, as the Commission stated was necessary in order to receive a credit, Vernon *has allowed* the ISO that legal authority by executing the TCA.⁶

⁶ SCE also cites Opinion No. 445 for the proposition that "it is inappropriate to require 'users of the California grid' to pay for credits but 'not be able to use the facilities.'" SCE at 33, *citing* Opinion No. 445 at 61,256. SCE makes similar arguments elsewhere in its brief. *See, e.g.*, SCE IB at 34, 35. In contrast to the situation in Opinion No. 445, in the current situation the ISO had the authority to allow Market Participants to use the facilities *at any time* during the disputed period had any Market Participants sought to use the facilities. Moreover, the ISO identified that it would take, at the most, three months to automate any usage of MPP and MAP.

2. The Manner in Which The ISO Exercises Its Discretion in Establishing Scheduling Points Does Not Affect Its Operational Control of the MAP or MPP

As described in the ISO's Initial Brief, the ISO did not establish Scheduling Points for the MAP and MPP Entitlements prior to January 1, 2003 due to the exigencies of the California Energy Crisis and to the expected efficiencies to be gained by establishing these points simultaneously with those necessary for the other New Participating TOs. *See* ISO IB at 5. A third and very significant reason for the delay, also discussed in the ISO's Initial Brief, was the fact that *NO* other Market Participants asked to use the facilities. ISO IB at 9; Tr. 528. As the ISO estimated it would take three months to establish the Scheduling Points (Tr. 579-80), had any Market Participants sought access to the facilities, the ISO could have accommodated them, at the latest, within three months by revising the network model and automating the process.⁷ It is with this in mind that ISO witness Deborah Le Vine accurately referred to the absence of Scheduling Points as a "temporary obstacle." Ex. No. ISO-1 at 7.

Much space in Staff's and SCE's Briefs is devoted to the nature of the ISO's discretion in the establishment of Scheduling Points as well as to the reasons for the delay in establishing Scheduling Points. With regard to the former, Staff argues that, if the ISO's interpretation of Operational Control is accepted, the level of discretion allowed to the ISO would be too great. Staff IB at 25. Staff warns that "[u]ltimately, the ISO would be able to offer virtually any explanation, or perhaps no explanation, for failing to exercise Operational Control or to provide access to the ISO Controlled Grid for Market Participants, but yet still collect its rates and charges." Staff IB at 26. Staff knows full well, though, the hollowness of this argument. The

⁷ Ms. Le Vine also indicated that there would have been other methods by which the ISO could have accommodated Market Participants desiring to use the Entitlements, such as developing a manual work-around. Tr. 581-82.

complaint provisions of the Federal Power Act and the Commission's oversight of the ISO – not disallowance of Vernon's TRR – are the proper mechanisms to ensure that the ISO does not abuse its discretion.

SCE takes a different tack. It goes so far as to say the ISO's position is that "it has complete discretion to indefinitely delay, for any reason whatsoever" access to the Entitlements, and thus that "the actual reasons claimed by the ISO for the lack of such access in this case, do not appear to be material" to the resolution of this case. SCE IB at 37, n. 17. This contention is entirely misplaced. The issue concerning the MAP and MPP is not how to police the ISO's exercise of its discretion or to hypothesize about how the ISO might exercise its discretion in other circumstances. It is to determine whether MAP and MPP were under the ISO's Operation Control and thereby eligible to receive their TRR since January 1, 2001 based on the factual circumstances presented in this proceeding.

With regard to those facts, both the Staff and SCE mischaracterize and misinterpret the ISO's explanation of the causes for and justification of its delay in establishing Scheduling Points. Staff states that the *only* explanation offered by the ISO for the delay in establishing the Scheduling Points was the California Energy crisis. Staff IB at 16. Indeed, it was important. The rolling blackouts in the first quarter of 2001, the State of California stepping in to pay for power for the Investor Owned Utilities ("IOUs") on January 19th, the bankruptcy of Pacific Gas and Electric Company ("PG&E") on April 6th and the near bankruptcy of SCE, the lack of payment by PG&E and SCE to the ISO, qualifying facilities and Generators throughout 2001, the months and months of negotiations to try and stabilize the volatility of Energy in the State and finally the California Public Utilities Commission's requirement that the IOUs to serve their Load dominated the events of the period. It was not, however, the only reason. While the ISO

agrees that its staff was delayed in implementing software improvements to its network model, the most significant among the causes of this delay, again, is the fact that no Market Participant sought access to the Entitlements. The evidence demonstrates that the ISO would have acted to accommodate any Market Participants that had sought such access. Tr. 581-82.⁸

Staff and SCE also make much of Ms. Le Vine's characterization of the absence of Scheduling Points as a "temporary obstacle" to the use of the facilities. *See, e.g.*, SCE IB at 36. As noted above, Ms. Le Vine explained that at any time during the two-year disputed period from January 1, 2001 to December 31, 2002, it would have taken the ISO approximately three months to establish such Scheduling Points once the ISO turned its attention to this issue, but given the other pressing issues, and no request for the services, it was not incorporated into the network model until the Southern Cities network build. Tr. 579-80. There can be little doubt that a three-month delay can be characterized as "temporary."

The Staff makes light of the undisputed evidence that, despite being aware that the facilities had been turned over to the ISO, no Market Participants asked to use the MAP and MPP Entitlements during the disputed period, dismissing it with the unsupported statement, "[S]ince the MAP and MPP capacity did not show up in the ISO Scheduling Infrastructure, other Market Participants could not have requested it. . . . Whether or not some savvy Market Participants were aware of these Entitlements is not the point. The fact is that this capacity was not posted on the Scheduling Infrastructure in the expected manner for consideration by all

⁸ In this regard, the ISO completely disagrees with SCE's characterization of the testimony of Vernon witness Baker Clay. The ISO certainly does not view the provision of open access transmission service as "a choice the ISO can make each time there is a request by a Market Participant" (SCE IB at 37), but rather considers the fact that no Market Participant asked for access to the Entitlements to be of great significance in influencing the ISO's actions during the disputed period.

potential customers.” Staff IB at 17-18. In fact, as explained by Ms. Le Vine, Market Participants had ample notice that the facilities were available, from Vernon’s initial notice of intent to become a Participating TO in June 2000, Vernon’s TRR filing in August 2000 and the TCA filing in December 2000, and through numerous Market Notices sent out by the ISO regarding ISO Governing Board meetings held to discuss Vernon’s joining the ISO. Tr. 528-29. Therefore, in no sense did the ISO prevent Market Participants from using the facilities.

B. The MAP and MPP Are Integrated Network Facilities

The ISO noted in its Initial Brief the lack of any serious question as to whether the MAP and MPP are integrated network facilities. Indeed, the fact that the facilities are under the ISO’s Operational Control should establish that fact. The following types of lines are excluded from a Participating TO’s transmission network:

- i. directly assignable radial lines and associated facilities interconnecting generation (other than those facilities which may be identified from time to time interconnecting ISO Controlled Grid Critical Protective Systems or Generators contracted to provide Black Start or Voltage Support) and
- ii. lines and associated facilities classified as “local distribution” facilities in accordance with FERC’s applicable technical and functional test and other facilities excluded consistent with FERC established criteria for determining facilities subject to ISO Operational Control.

See “Applications for Participating Transmission Owner Status” on the ISO Home Page at <<<http://www.caiso.com/docs/2002/02/05/2002020510511321938.html>>>.

In addition, the ISO can refuse to accept facilities that cannot be integrated into the ISO Controlled Grid. Thus, the TCA criteria for the transfer of Operational Control are consistent with and reflect the Commission’s criteria for the inclusion of facilities in rates, and issues regarding network integration properly are resolved when the ISO submits an amendment to the

TCA to provide for a New Participating TO. As a result, only those facilities that meet the Commission's criteria for inclusion in rates should be under ISO Operational Control.

Nonetheless, both Staff and SCE attempt indirectly to bring integration into dispute. Citing Opinion No. 466-A, Staff claims that "facilities that are to be included in the TRR must bring benefits to the network," and that "because the ISO failed to model Vernon's MAP and MPP Entitlements, none of these benefits were realized until January 1, 2003." Staff IB at 21. As noted in the ISO's Initial Brief, Commission precedent does not require that benefits be demonstrated in the manner suggested by Staff. ISO IB at 11. Despite Staff's repeated statements, the cited paragraphs of Opinion No. 466-A simply require that the facilities be integrated network facilities. 106 FERC ¶ 61,144 at PP 22, 25. The benefits arise by virtue of the integration itself; there is no suggestion that from the very initiation of Operational Control a measurable reliability benefit must appear.

SCE, on the other hand, discusses integration in the context of Operational Control, noting (as explained above) that the ISO can only assume Operational Control of facilities that it can integrate into the ISO Controlled Grid. SCE asserts that, for a facility to be integrated, the transmission provider must be "able to provide transmission service" to customers on the facility and that the MAP and MPP did not meet that criterion during the period in question. SCE IB at 35. As discussed below, however, SCE's authorities (Opinion No. 445, *Florida Municipal Power Agency v. Florida Power and Light Co.*, and Orders No. 888 and 888-A) do not support its argument that the MAP and MPP could not be integrated into the ISO Controlled Grid. As noted earlier, Opinion No. 445 was only concerned with the issue of legal authority. *Florida Municipal Power Agency v. Florida Power and Light Co.*, 96 FERC ¶ 61,130 (2001), provides an unenlightening statement in a rehearing order. The substantive order itself, *Florida Municipal*

Power Agency v. Florida Power and Light Co., 74 FERC ¶ 61,006 (1996) (“FMPA”) simply stands for the unremarkable proposition that a facility that is not part of a utility’s grid and upon which it has no right to schedule is not an integrated facility. Orders No. 888 and 888-A simply endorse the policy of FMPA. It is worth noting that FMPA and Orders No. 888 and 888-A were all concerned with the requirement to provide credits for facilities on which the transmission provider had *no authority* to schedule transmission. These orders were not concerned with the establishment of scheduling procedures or with a transmission owner’s TRR. In short, SCE’s arguments simply are not relevant here.

III. CONCLUSION

WHEREFORE, the ISO requests that the Presiding Judge rule on the issues in this proceeding in accordance with its Initial Brief and the discussion above.

Respectfully submitted,

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Dated: November 22, 2004

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 22nd day of November, 2004.

/s/ Geeta O. Tholan ___
Geeta O. Tholan