

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

San Diego Gas & Electric Company,)	
Complainant,)	
)	
v.)	Docket Nos. EL00-95-081
)	EL00-95-074
Sellers of Energy and Ancillary Services)	EL00-95-086
Into Markets Operated by the California)	EL00-95-062
Independent System Operator and the)	
California Power Exchange,)	
Respondents.)	
)	
Investigation of Practices of the California)	
Independent System Operator and the)	Docket Nos. EL00-98-069
California Power Exchange)	EL00-98-062
)	EL00-98-073
)	EL00-98-051
)	

**MOTION OF THE
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION,
CALIFORNIA PARTIES, AND SAN DIEGO GAS & ELECTRIC COMPANY
FOR CLARIFICATION OR, IF NECESSARY, RECONSIDERATION
OF PARAGRAPH 82 OF THE COMMISSION'S OCTOBER 16, 2003 ORDER
ON REHEARING**

Pursuant to Rule 212 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.212, as well as the Commission's directive in its May 12, 2004 order in this proceeding to advise it immediately of any outstanding issues requiring Commission guidance,¹ the California Independent System

¹ Order on Requests for Rehearing and Clarification, 107 FERC ¶ 61,159 (2004) at P 21.

Operator Corporation (“ISO”),² the California Parties³ and San Diego Gas & Electric Company (“SDG&E”) (collectively, the “Moving Parties”) submit this motion for clarification or, if necessary, reconsideration, of Paragraph 82 of the Commission’s Order on Rehearing dated October 16, 2003, 105 FERC ¶ 61,066 (“October 16 Order”). The Moving Parties request that the Commission act on this request in an expedited manner, because clarification of this issue is necessary in order for the ISO to begin refund rerun production, which the ISO plans to commence in September of this year.

I. OVERVIEW

Paragraphs 81 and 82 of the October 16 Order dealt with Charge Type (“CT”) 485 penalties, which were the penalties imposed by the ISO during the Refund Period on Participating Generators that failed to comply with Dispatch instructions during actual or threatened System Emergencies. The amount of the CT 485 penalty for each MWh of non-compliance was “twice the highest price for Energy, per MWh, paid in each hour by the ISO to any other entity to procure Energy.” See ISO Tariff, Section 5.6.3 (version in effect from December 8, 2000 to June 21, 2001). After first dealing with issues raised by the California Generators and the California Parties concerning whether certain transactions

² Capitalized terms not otherwise defined herein are used in the sense given in the Master Definitions Supplement, Appendix A to the ISO Tariff.

³ The California Parties consist of the California Attorney General, the California Public Utilities Commission, the California Electricity Oversight Board, Pacific Gas and Electric Company, and Southern California Edison Company.

should be considered in setting the amount of the penalties, the Commission, in Paragraph 82, stated that:

the ISO's procedures already provide for the allocation of penalties to customers. In particular, we find that the ISO Tariff in Settlement and Billing Protocol ("SABP") Section 3.1.1(b) allocates amounts collected from penalties to the Scheduling Coordinators who traded on that trading day pro rata to their metered demand (including exports) in MWh of energy for that trading day.

October 16 Order, at P 82. These comments mis-cite and therefore misconstrue both SABP Section 3.1.1(b) and the remainder of the ISO Tariff. The Moving Parties therefore seek clarification or, if necessary, reconsideration, of Paragraph 82 to conform the Commission's comments to the proper provision of the ISO Tariff, which the ISO – with Commission approval – has previously followed when allocating CT 485 penalties.⁴

In summary, at the time the CT 485 penalties were assessed, and contrary to the findings in Paragraph 82 of the October 16 Order, the ISO Tariff did *not* specifically provide for allocation of the penalties, other than providing that they would be applied to offset the ISO's costs. Further, allocating CT 485 penalties as contemplated in Paragraph 82 will conflict with CT 485 penalty allocations already made pursuant to a Commission-approved settlement agreement.

⁴ Recently, in discussions concerning implementation of the settlement between the Williams Companies and the three California IOUs, the ISO realized some parties were viewing Paragraph 82 of the October 16 Order as mandating an allocation of amounts collected from CT 485 penalties different from the allocation set forth in the ISO Tariff. After discussions between the ISO and California Parties, the California Parties and SDG&E agreed to join the ISO in this motion seeking clarification and, if necessary, reconsideration.

As discussed in more detail below, the ISO Tariff required it to apply the CT 485 penalties to reduce the ISO's Grid Management Charge ("GMC"),⁵ with any excess to be deposited into the ISO's Surplus Account and potentially distributed to Scheduling Coordinators and others in proportion to their responsibility for the GMC. In this instance, in the event that the Commission makes the clarification, or if necessary, reconsideration, requested herein, the ISO will apply any CT 485 penalties that remain after mitigation to reduce, in its next GMC filing, to the fullest extent possible, the rates of GMC categories that are billed based on load and exports. The Moving Parties believe that this allocation process will return the CT 485 penalties to the appropriate customers in the most efficient and timely manner possible, and will be in compliance with the relevant ISO Tariff provisions.

II. BACKGROUND

A. The Establishment of CT 485 Penalties

On December 8, 2000, the Commission approved Amendment No. 33 to the ISO Tariff. 93 FERC ¶ 61,239 (2000). Included in that Amendment was Section 5.6.3 of the ISO Tariff, which provided that a Participating Generator that failed to comply with an ISO Dispatch instruction during a System Emergency would be subject to a penalty for each MWh of non-compliance "equal to twice the highest price for Energy, per MWh, paid in each hour by the ISO to any other

⁵ The GMC is the "ISO monthly charge on all Scheduling Coordinators that is intended to recover the ISO's startup and development costs and the costs associated with the ongoing operation and maintenance, including financing costs, of the ISO Controlled Grid." ISO Tariff, Appendix A, Master Definitions Supplement.

entity to procure Energy.”⁶ This penalty was charged to Participating Generators under Charge Type 485 in the ISO’s settlements system and thus became known as the “CT 485 penalty.” It was in place from December 8, 2000 to June 21, 2001.⁷ During that period, the ISO charged Participating Generators approximately \$122 million in CT 485 penalties.

B. Paragraph 82 Misstates the ISO’s Tariff Provisions Regarding The Proper Allocation of CT 485 Penalties

In its July 25, 2001 order initiating the refund phase of this proceeding, the Commission directed the ISO to use the mitigated market clearing prices (“MMCPs”) for the Refund Period to rerun its settlement and billing process along with “all penalties.” 96 FERC ¶ 61,021, at 61,519 (2001). In its March 26, 2003 order, the Commission found, *inter alia*, in response to concerns raised by the California Parties, that section 202(c) transactions should be incorporated into the calculation of CT 485 penalties. 102 FERC ¶ 61,317 at P 88 (2003) (“March 26 Order”). The California Parties filed a Request for Clarification of the March 26 Order, raising for the first time the *allocation* of amounts collected from CT 485 penalties. In the section of their pleading in which they sought clarification that non-spot transactions would be considered in calculating the amount of CT 485 penalties, the California Parties stated that

⁶ The penalty was increased by \$1000/MWh if the ISO had to curtail firm load involuntarily.
⁷ In its order issued in this proceeding on June 19, 2001, the Commission directed the ISO to remove these penalties from the ISO Tariff, effective June 21, 2001. 97 FERC ¶ 67,293, 62,553 (2001).

. . . the Commission should provide clarification that these significant penalties will be allocated back to buyers. The ISO Tariff provides in Section 3.1.1(b) of the Settlement and Billing Protocol (SABP) that:

These charges will be allocated amongst the Scheduling Coordinators who traded on that Trading Day pro rata to their metered Demand (plus exports) in MWh of Energy for that Trading Day. In the event that the charges due from ISO Debtors are higher than the payments due to ISO Creditors, the ISO shall allocate a payment to the Scheduling Coordinators who traded on that Trading Day pro rata to their metered Demand (plus exports) in MWh of Energy for that Trading Day.

The Commission should order, consistent with the Tariff, that these penalty payments will in fact be allocated back to Scheduling Coordinators based on their Demand (plus exports), to compensate them for the costs imposed on the system by failures of sellers to respond to ISO dispatch instructions.

California Parties' Request for Rehearing at 118.⁸ In response, the Commission stated, in Paragraph 82 of the October 16 Order, that:

we believe the ISO's procedures already provide for the allocation of penalties to customers. In particular, we find that the ISO Tariff in Settlement and Billing Protocol Section 3.1.1(b) allocates amounts collected from penalties to the Scheduling Coordinators who traded on that trading day pro rata to their metered demand (including exports) in MWh of energy for that trading day.

The Commission's comments in Paragraph 82 concerning the allocation of penalties in SABP Section 3.1.1(b) are premised on an erroneous citation to the

⁸ SDG&E filed its own Request for Rehearing of the March 26 Order, in which it joined in certain of the arguments made by the California Parties, including the request for clarification concerning the allocation of CT 485 penalties, but added no additional arguments of its own.

wrong provision of the ISO Tariff. This error originates in the California Parties' Request for Clarification of the March 26 Order.

SABP Section 3.1.1 ("Additional Charges and Payments"), as it existed from the beginning of ISO operations, during the period in which the ISO levied the CT 485 penalties, and during the period in which it applied a portion of amounts collected from those penalties to reduce the GMC, provided as follows:⁹

The ISO shall be authorized to levy additional charges or payments as special adjustments in regard to:

(a) amounts required to round up any invoice amount expressed in dollars and cents to the nearest whole dollar amount in order to clear the ISO Clearing Account. These charges will be allocated amongst Scheduling Coordinators over an interval determined by the ISO and pro rata based on metered Demand (including exports) during that interval;

(b) amounts in respect of penalties which may be levied by the ISO in accordance with the ISO Tariff. These charges will be levied on the Market Participants liable for payment of the penalty; and

(c) amounts required to reach an accounting trial balance of zero in the course of the Settlement process in the event that the charges calculated as due from ISO Debtors are lower than payments calculated as due to the ISO Creditors for the same Trading Day. These charges will be allocated amongst the Scheduling Coordinators who traded on that Trading Day pro rata to their metered Demand (including exports) in MWh of Energy for that Trading Day. In the event that the charges due from ISO Debtors are higher than the payments due to ISO Creditors, the ISO shall allocate a payment to the Scheduling Coordinators who traded on that Trading Day pro rata to their metered Demand (including exports) in MWh of Energy for that Trading Day.

⁹ Provided as Attachment A to this Motion is the entire SABP as it existed during the period in which the ISO collected CT 485 penalties and offset those penalties against the GMC. This version of the SABP can also be found on the ISO's web site at: <http://www.caiso.com/docs/09003a6080/09/4f/09003a6080094fb2.pdf>

The language quoted by the California Parties in their Request for Clarification was not from subsection **(b)** of Section 3.1.1, as they believed, but from subsection **(c)** of Section 3.1.1. SABP 3.1.1**(c)** addresses not the allocation of amounts collected from penalties, but the collection and disbursement of amounts “required to reach a trial balance of zero” in the event that charges collected from ISO Debtors are less than the amounts due to ISO Creditors for a particular Trading Day.

SABP Section 3.1.1**(b)**, the section cited by the California Parties and the Commission, authorized the *levying* of charges for penalties but did not address the *allocation* of amounts collected from penalties. The methodology for allocating amounts collected from penalties was set forth in SABP Section 6.5.2 (“Other Funds in the ISO Surplus Account”). During the period in which the ISO collected the CT 485 penalties, and applied a portion of those penalties to offset the GMC, that section read as follows:

(a) Any amounts paid to the ISO in respect of acts or defaults giving rise to default interest referred to in SABP 6.10.5 or penalties referred to in SABP 3.1.1 shall be credited to the Surplus Account.

(b) *The funds referred to in SABP 6.5.2(a) shall first be applied towards any expenses, loss or costs incurred by the ISO. Any excess will be credited to the Surplus Account pursuant to SABP 6.5.2(a).*

(emphasis added). SABP Section 6.5.2(b) required that “funds referred to in SABP 6.5.2(a),” which include “amounts paid to the ISO in respect of . . . penalties referred to in SABP 3.1.1,” are to first be applied “towards any expenses, loss or costs incurred by the ISO.”

Thus, the Commission's statement in Paragraph 82 regarding how the ISO Tariff required amounts collected as CT 485 penalties to be allocated was based on an incorrect reading of the ISO Tariff. As shown above, neither SABP Section 3.1.1(b) nor SABP Section 3.1.1(c) provided for such an allocation of penalties. The provision of the ISO Tariff that governed the application of penalties, SABP Section 6.5.2(b), provided that penalties would be applied "towards any expenses, loss or costs incurred by the ISO." Previously, the ISO has applied this provision, with the Commission's approval, to reduce the ISO's GMC.

C. Allocating CT 485 Penalties Pursuant to Paragraph 82 Would Contradict Both the ISO Tariff and a Commission-Approved Settlement

Consistent with the sections of the SABP discussed above, the ISO, Southern California Edison Company ("SCE"), and Pacific Gas and Electric Company ("PG&E") proposed in settlement of the ISO's GMC filing for 2002 that the ISO apply a specific amount collected from CT 485 penalties to reduce the GMC rates for 2002, and additional amounts to reduce the GMC rates for 2003 and 2004. Following the Commission's approval of that settlement (the "2002 GMC Settlement"), which was unopposed, the ISO has applied approximately \$20 million of amounts collected in CT 485 penalties to reduce the GMC rates for those three years.¹⁰

¹⁰ This \$20 million represents the amount that the ISO, at the time of the 2002 GMC Settlement, estimated would remain after mitigation of CT 485 penalties.

Allocating amounts collected from CT 485 penalties “to the Scheduling Coordinators who traded on that trading day pro rata to their metered demand (including exports) in MWh of energy for that trading day,” as required by Paragraph 82, would be inconsistent with the ISO Tariff and at odds with the application of such penalties agreed to by the parties to the 2002 GMC Settlement and approved by the Commission.¹¹ Moreover, requiring the ISO to disburse to load and exports on the relevant trading days those amounts that it has already applied to reduce the GMC for three years pursuant to the 2002 GMC Settlement would retroactively render void that *unopposed and Commission-approved* settlement. That would be an inappropriate and unlawful result.¹²

III. CLARIFICATION OR RECONSIDERATION IS NECESSARY

A. The Commission Has The Authority To Correct Its Mistake

The Commission’s statement in Paragraph 82 was not an exercise of Commission discretion but a direct recitation of the purported terms of the ISO Tariff – unfortunately, an inaccurate recitation. No one challenges the premise that amounts paid as CT 485 penalties should be applied as required by the ISO Tariff; the Moving Parties are merely asking the Commission to clarify what the

¹¹ Offer of Settlement and Settlement Agreement, Docket Nos. ER02-250-000, *et al.* (October 17, 2002). The Commission approved this settlement in an order issued December 26, 2002. 101 FERC ¶ 61,371 (2002). A copy of the 2002 GMC Settlement is included with this Motion as Attachment B.

¹² See, e.g., *Tennessee Gas Pipeline Co.*, 40 FERC ¶ 61,140, 61,439 (1987) (“An approved agreement is binding on the Commission as well as the parties, in the absence of a showing under section 5 of the [Natural Gas] Act that the provision is unlawful.”); see also *Mobil Oil Corporation v. FPC*, 570 F.2d 1021, 1026 (D.C. Cir. 1978); *Panhandle Eastern Pipeline Co.*, 12 FERC ¶ 63,034, 65,096 (1980).

actual requirements of the ISO Tariff are. Such a clarification would be fully within the Commission's authority. The Commission has recognized that it has the "inherent power to correct mistakes resulting from over-sight or inadvertence." *Potomac Edison Company*, 5 FERC ¶ 61,158 (1978) (citing *American Trucking Associations, Inc. v. Frisco Transportation*, 358 U.S. 133 (1958)). The inadvertent misreading of the ISO Tariff in the October 16 Order should not override the clear terms of that tariff, upon which the ISO and Market Participants have relied, and which have been followed in the 2002 GMC Settlement approved by the Commission.

B. Request For Clarification

The Moving Parties respectfully request that the Commission clarify that Paragraph 82 of the October 16 Order mis-cited the ISO tariff; that SAPB Section 6.5.2(b) applies to allocation of CT 485 penalties; and that it did not intend that the ISO re-allocate those amounts of CT 485 penalties that the ISO *already* had applied to reduce the GMC pursuant to the 2002 GMC Settlement. Such clarification is warranted because a contrary interpretation of Paragraph 82 would effectively invalidate the 2002 GMC Settlement, which was approved by the Commission prior to the issuance of the October 16 Order.

The Moving Parties also request that the Commission clarify that it is appropriate under Paragraph 82, and pursuant to SABP 6.5.2(b), for the ISO to apply any remaining funds to reduce, in its next GMC filing, to the fullest extent possible, the rates of GMC categories that are billed based on load and exports.

This will have the effect of returning those funds to GMC ratepayers through reduced GMC rates.

Absent such clarification, following the letter of the instructions in Paragraph 82 of the October 16 Order would be contrary to Commission precedent and highly detrimental to the ISO and its customers. Practically speaking, implementation of Paragraph 82 of the October 16 Order would overturn the 2002 GMC Settlement, which the Commission approved on December 26, 2002, nearly 10 months prior to the issuance of the October 16 Order. Any finding that the ISO now must re-allocate to load and exports the CT 485 penalty amounts the ISO already used to reduce the GMC for three years would be arbitrary and capricious, given that the Commission has provided no justification for such a departure from the precedent established in its order approving the 2002 GMC Settlement.¹³ Further, it would constitute unlawful retroactive ratemaking.

Undoing the 2002 GMC Settlement would also have significant financial and operational impacts on the ISO Markets and Market Participants. If the Commission required the ISO to re-allocate the approximately \$20 million the ISO already used to reduce the GMC, the ISO would need to make such a distribution from its Operating Reserve Account, which the ISO maintains with

¹³ It is an accepted principle that if a regulatory agency wishes to depart from established precedent on a particular matter, it must provide a justification for doing so. See *Greater Boston Television Corp. v. FCC*, 444 F.2d 841, 852 (D.C. Cir. 1970) (noting that "if an agency glosses over or swerves from prior precedents without discussion it may cross the line from the tolerably terse to the intolerably mute"); see also *Williston Basin Interstate Pipeline Co. v. FERC*, 165 F.3d 54, 69 (D.C. Cir. 1999) ("By failing to distinguish the authority on which Williston Basin relied in support of its position, and which at least superficially contravened the Commission's ruling, the agency appeared to "gloss[] over or swerve[] from prior precedents without discussion . . . thereby foregoing reasoned decision making.").

amounts collected through the GMC. Absent the authority to concurrently collect an equal amount from Market Participants, such a distribution, constituting 86% of the ISO's \$23 million operating reserve, would seriously jeopardize the ISO's financial health as well as the ISO's ability to reliably operate the ISO Controlled Grid.¹⁴ The ISO's Operating Reserve cannot absorb such a large unanticipated reduction without fundamentally compromising the ISO's ability to continue to function.¹⁵ The ISO does not currently have access to a bank line of credit to meet unforeseen financing needs.

Additionally, a significant portion of the CT 485 penalties was used to reduce the rates for the Ancillary Services and Real Time Energy Operations ("ASREO") category in the 2002 and 2003 GMCs.¹⁶ The ASREO was assessed based on purchases and sales of Ancillary Services, Supplemental Energy, and Imbalance Energy (both instructed and uninstructed) plus 50 percent of effective self-provision of Ancillary Services. Thus, the reduction to this category realized by the application of the CT 485 penalties benefited both purchasers and sellers in the ISO Ancillary Services and Imbalance Energy Markets. On the other hand, Paragraph 82 of the October 16 Order suggests, erroneously, that amounts collected from CT 485 penalties are allocated only to Scheduling Coordinators based on their metered demand (*i.e.*, load and exports) during the interval in

¹⁴ If necessary, the ISO would contend that, if it had to re-allocate the \$20 million previously applied to reduce the GMC rates, Section 2.4 of the 2002 GMC Settlement provides authority for the ISO to collect the same amount from those who pay the GMC.

¹⁵ This is especially the case if there is any other potentially significant unbudgeted financial outflow, as there is at the moment as a result of pending litigation.

¹⁶ In its November 2001 filing for the 2002 GMC, the ISO explained that out of the \$5 million in total penalties offset against the 2002 GMC, the ISO allocated \$2.2 million to the ASREO category. Exh. ISO-1 in Docket Nos. ER02-250-000, *et al.*, at 36. Additionally, the 2002 GMC

which the penalties were assessed. Because of this difference in allocation methodologies, if the ISO were required to re-allocate, pursuant to the language of Paragraph 82, the almost \$20 million in CT 485 penalties already applied to reduce three years of GMC, a significant shift would occur in the financial position of parties. It is important to note that such a shift would be at odds with the negotiated agreement reached in the 2002 GMC Settlement.

All of these outcomes would likely embroil the ISO and Market Participants in additional litigation before the Commission and perhaps the courts, a result that could be avoided by granting the clarification sought herein. For this reason, and the reasons set forth above, the Commission should grant the requested clarification.

C. Motion For Reconsideration In The Alternative

The Moving Parties submit that clarification is the appropriate remedy in this instance because the Commission's comments in Paragraph 82 concerning allocation of amounts collected from CT 485 penalties were based solely on its stated understanding of the *already existing* requirements of the ISO Tariff – which was inaccurate. If, however, the Commission disagrees that clarification is the appropriate remedy, the Moving Parties request that the Commission treat this motion as a motion for reconsideration of Paragraph 82. The Commission

Settlement states that \$9 million in penalties was applied to the CAS and ASREO categories, and an additional \$2.7 million was applied to the ASREO category. 2002 GMC Settlement at ¶ 2.3.1.

has previously accepted and granted motions for reconsideration after expiration of the 30-day period for rehearing.¹⁷

IV. CONCLUSION

For the reasons set forth above, the Commission should grant clarification of Paragraph 82 of the October 16 Order, or, if necessary, reconsideration, and make clear that the ISO, pursuant to the terms of the ISO Tariff as they actually existed, should apply all amounts collected as CT 485 penalties to offset the ISO's costs as described above. If the Commission declines to grant this clarification (or reconsideration), it should, at a minimum, clarify that Paragraph 82 does not require the ISO to re-allocate the approximately \$20 million in CT 485 penalties that, pursuant to a Commission-approved settlement, it has already disbursed to Market Participants.

¹⁷ See *Tennessee Gas Pipeline Co.*, 40 FERC ¶ 61,140, 61,439-40 (1987) (treating a pleading filed a month past the 30-day period as a motion for reconsideration, and granting reconsideration of a portion of a Commission order that was inconsistent with the provisions of an applicable settlement); *Columbus & Southern Ohio Electric Co.*, 2 FERC ¶ 61,099, 61,239-40 (1978) (granting a motion for reconsideration filed almost four months after the applicable Commission decision, and explaining that the Commission has sometimes treated requests for rehearing filed out of time as motions for reconsideration under the theory "that it is better regulatory practice to decide cases based on the merits rather than on procedural grounds"). See also *Promoting Wholesale Competition Through Open Non-Discriminatory Transmission Services, et al.*, 81 FERC ¶ 61,248, 62,082 (1997) (treating a request for rehearing filed past the 30-day time period as a motion for reconsideration, and considering and ruling on the merits of that pleading); *Arkla Gathering Services Company*, 71 FERC ¶ 61,297 (1995) (same); *Appalachian Power Co.*, 49 F.P.C. 787 (1973) (same).

Respectfully submitted,

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Dated: June 18, 2004

ATTACHMENT A

The entire SABP as it existed during the period in which the ISO collected CT 485 penalties and offset those penalties against the GMC.

This version of the SABP can be found on the ISO's web site at
<http://www.caiso.com/docs/09003a6080/09/4f/09003a6080094fb2.pdf>

SETTLEMENT AND BILLING PROTOCOL

SETTLEMENT AND BILLING PROTOCOL

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SETTLEMENT AND BILLING PROTOCOL (SABP)

SABP 1 OBJECTIVES, DEFINITIONS AND SCOPE

SABP 1.1 Objectives

The objective of this Protocol (and of Annex 1) is to inform Scheduling Coordinators, Participating TOs, Utility Distribution Companies, Metered Subsystems, and Operators of Reliability Must-Run Units of the manner in which the charges referred to in Section 11.1.6 of the ISO Tariff shall be calculated and settled and of the procedures regarding the billing, invoicing and payment of these charges.

SABP 1.2 Definitions

SABP 1.2.1 Master Definitions Supplement

Any word or expression defined in the Master Definitions Supplement to the ISO Tariff shall have the same meaning where used in this Protocol. A reference to a Section is to a Section of the ISO Tariff. References to SABP are to this Protocol or to the stated paragraph of this Protocol. References to Annex 1 are to Annex 1 of this Protocol.

SABP 1.2.2 Special Definitions for this Protocol

In this Protocol, the following words and expressions shall have the meanings set opposite them:

“Black Start Generator” means a Participating Generator in its capacity as party to an Interim Black Start Agreement with the ISO for the provision of Black Start Services, but shall exclude Participating Generators in their capacity as providers of Black Start services under their Reliability Must-Run Contracts.

“Day 0” means the Trading Day to which the Settlement Statement or settlement calculation refers. For example “Day 41” shall mean the 41st day after that Trading Day and similar expressions shall be construed accordingly.

“Fed-Wire” means the Federal Reserve Transfer System for electronic funds transfer.

“Interim Black Start Agreement” means an agreement entered into between the ISO and a Participating Generator (other than a Reliability Must-Run Agreement) for the provision by the Participating Generator of Black Start capability and Black Start Energy on an interim basis until the introduction by the ISO of its Black Start auction (or until terminated earlier by either party in accordance with its terms).

“ISO Surplus Account” means the account established by the ISO pursuant to SABP 6.5.

“ISO Home Page” means the ISO internet home page at <http://www.caiso.com/iso> or such other internet address as the ISO shall publish from time to time.

“Security” means the form of security provided by a Scheduling Coordinator pursuant to Section 2.2.3.2 of the ISO Tariff (i.e. letter of credit, guarantee or cash deposit) to secure its trading obligations.

“Trading Interval” means a Settlement Period as defined in the Master Definitions Supplement of the ISO Tariff.

SABP 1.2.3

Rules of Interpretation

- (a) Unless the context otherwise requires, if the provisions of this Protocol and the ISO Tariff conflict, the ISO Tariff will prevail to the extent of the inconsistency. The provisions of the ISO Tariff have been summarized or repeated in this Protocol only to aid understanding.
- (b) A reference in this Protocol to a given agreement, ISO Protocol or instrument shall be a reference to that agreement or instrument as modified, amended, supplemented or restated through the date as of which such reference is made.
- (c) The captions and headings in this Protocol are inserted solely to facilitate reference and shall have no bearing upon the interpretation of any of the terms and conditions of this Protocol.
- (d) This Protocol shall be effective as of the ISO Operations Date.
- (e) A reference to a day or Trading Day is to a calendar day unless otherwise specified.

SABP 1.2.4

Time

All references to time are references to prevailing Pacific Time.

SABP 1.2.5

Financial Transaction Conventions

In this Protocol and its Appendices and Annex 1, the following conventions have been adopted in defining sums of money to be remitted to or received by the ISO:

- (a) where the ISO is to receive a sum of money under this Protocol, this is defined as a “Charge”;
- (b) where the ISO is to required to pay a sum of money under this Protocol, this is defined as a “Payment”.

SABP 1.2.6

Currency

All financial transactions are denominated in US dollars and cents.

SABP 1.3

Scope

SABP 1.3.1

Scope of Application to Parties

This Protocol (excluding Annex 1) applies to the ISO and to the following entities:

- (a) Scheduling Coordinators;

- (b) Participating TOs;
- (c) Black Start Generators;
- (d) Utility Distribution Companies, and
- (e) Metered Subsystems.

The settlement, billing and payment process between the ISO, Scheduling Coordinators, Participating TOs, Black Start Generators, Utility Distribution Companies, and Metered Subsystems shall be in accordance with Sections 11.3 to 11.24 inclusive of the ISO Tariff. References in those Sections to Scheduling Coordinators shall also apply to Participating TOs which receive Settlement Statements from the ISO in relation to the transactions referred to in those Settlement Statements but excluding the transactions referred to in Annex 1. Notwithstanding SABP 1.2.3(a), references in Sections 11.3 to 11.24 inclusive of the ISO Tariff to Scheduling Coordinators, ISO Debtors and ISO Creditors shall also apply to Black Start Generators which receive Settlement Statements from the ISO in relation to transactions under their Interim Black Start Agreements.

Annex 1 of this Protocol applies to the ISO, Owners of Reliability Must-Run Units and Participating TOs in relation to the billing and payment of amounts due under Reliability Must-Run Contracts and recovery of such amounts by the ISO from Participating Utilities. The provisions of this Protocol shall not apply to Annex 1 unless otherwise specified.

SABP 1.3.2 Liability of the ISO

Any liability of the ISO arising out of or in relation to this Protocol shall be subject to Section 14 of the ISO Tariff as if references to the ISO Tariff were references to this Protocol.

SABP 2 OVERVIEW OF SETTLEMENT AND BILLING PROCESS

SABP 2.1 Settlement Software

The ISO settlement software shall be audited by an independent firm of auditors competent to carry out audits of such software to determine its consistency with this Protocol and the ISO Tariff. In any dispute regarding Settlement calculations, a certificate of such firm of auditors that the ISO software is consistent with the ISO Tariff shall be prima facie proof that the charges shown in a Settlement Statement have been calculated in a method consistent with the ISO Tariff and this Protocol. Nothing in this section will be deemed to establish the burden of proof with respect to Settlement calculations in any proceeding.

SABP 2.2 ISO Accounts

SABP 2.2.1 Costs Associated with the ISO Trust Accounts

The ISO is authorized to establish and maintain bank accounts held in trust for Market Participants and obtain lines of credit and other banking facilities (not exceeding an aggregate amount set by

the ISO Governing Board) necessary for the operation of its Settlement and billing procedures. Unless otherwise specified in this Protocol the ISO will recover all costs incurred in connection with these ISO banking facilities through the appropriate component of the Grid Management Charge.

SABP 2.2.2 Location of the ISO Accounts

The ISO will maintain its bank accounts held on trust at a bank in California approved by the ISO Governing Board.

SABP 2.2.3 ISO Trust Accounts

The ISO will open and operate the following accounts which it will hold on trust for Market Participants:

- (a) the ISO Clearing Account to and from which payments are made pursuant to Section 11.8.2.1 of the ISO Tariff and SABP 6.3.1;
- (b) the ISO Reserve Account from which any debit balances on the ISO Clearing Account at the close of banking business are settled pursuant to Section 11.8.2.2 of the ISO Tariff and SABP 6.4; and
- (c) the ISO Surplus Account consistent with Section 11.8.2.3 of the ISO Tariff and SABP 6.5.

The ISO may establish additional trust accounts as necessary to implement the Settlement and billing procedures outlined in this Protocol. It shall notify the Market Participants of the establishment of such accounts through the WEnet.

SABP 2.2.4 The ISO Clearing Account

Subject to SABP 6.1.2, ISO Debtors shall make all payments of ISO invoices by Fed-Wire to the ISO Clearing Account by 10:00 am on the due date according to the ISO Payments Calendar.

SABP 2.2.5 The ISO Reserve Account

The ISO shall operate the ISO Reserve Account as a trust account as follows:

- (a) the proceeds of drawings under any line of credit or other credit facility of the ISO Reserve Account shall be held on trust for ISO Creditors;
- (b) if the Reserve Account is replenished as provided for in SABP 6.9, any credits shall be held on trust for all ISO Creditors.

SABP 2.2.6

Accounts of the SCs and Participating TOs

Each Scheduling Coordinator and each Participating TO shall establish and maintain a Settlement Account at a commercial bank located in the United States and reasonably acceptable to the ISO which can effect money transfers via Fed-Wire where payments to and from the ISO Clearing Account shall be made in accordance with this Protocol. Scheduling Coordinators may, but will not be required

to, maintain separate accounts for receipts and payments. Each Scheduling Coordinator shall notify the ISO of its account details and of any changes to those details in accordance with the provisions of its SC Agreement. Participating TOs will notify the ISO of their Settlement Account details in accordance with Section 2.2.1 of their Transmission Control Agreement and may notify the ISO from time to time of any changes by giving at least 7 days written notice before the new account becomes operational.

SABP 2.3

ISO Payments Calendar

SABP 2.3.1

Contents of ISO Payments Calendar

In September of each year, the ISO will prepare a draft ISO Payments Calendar for the following calendar year showing for each Trading Day:

- (a) The date by which Scheduling Coordinators are required to provide Settlement Quality Meter Data for all their Scheduling Coordinator Metered Entities for each Settlement Period in the Trading Day;
- (b) The date on which the ISO will issue Preliminary Settlement Statements and invoices to Scheduling Coordinators, Black Start Generators and Participating TOs for that Trading Day;
- (c) The date by which Scheduling Coordinators, Black Start Generators and Participating TOs are required to notify the ISO of any disputes in relation to their Preliminary Settlement Statements pursuant to SABP 4.4.1 and the ISO Tariff;
- (d) The date on which the ISO will issue Final Settlement Statements and invoices to Scheduling Coordinators, Black Start Generators and Participating TOs for that Trading Day;
- (e) The date and time by which ISO Debtors are required to have made payments into the ISO Clearing Account in payment of invoices for that Trading Day; and
- (f) The dates and times on which ISO Creditors will receive payments from the ISO Clearing Account of amounts owing to them for that Trading Day.
- (g) In relation to Reliability Must-Run Charges and Payments, the details set out in paragraph 3 of Annex 1.

SABP 2.3.2

Calendar Content and Format

In accordance with SABP 2.3.3, 2.3.4 and 2.3.5 the ISO may change the content or format of the ISO Payments Calendar. The ISO may also produce a summary outline of the Settlement and billing cycles.

SABP 2.3.3

Draft Payments Calendar

In September of each year, the ISO will make a draft of the ISO Payments Calendar available on the ISO Home Page to Scheduling Coordinators, Black Start Generators, Participating TOs and Owners

any of which may submit comments and objections to the ISO within two weeks of the date of posting of the draft on the ISO Home Page.

SABP 2.3.4 Final Payments Calendar

No later than October 31st in each year, the ISO will publish pursuant to Section 11.24.1 of the ISO Tariff the final ISO Payments Calendar for the following calendar year, after considering the comments and objections received from Scheduling Coordinators, Black Start Generators, Participating TOs and Owners. The final ISO Payments Calendar will be posted on the ISO Home Page.

SABP 2.3.5 Update the Final Payments Calendar

If as a result of a tariff amendment approved by FERC the final ISO Payments Calendar developed in accordance with SABP 2.3.3 and 2.3.4 above is rendered inconsistent with the timing set forth in the tariff, the ISO shall update the final ISO Payments Calendar to make it consistent with the tariff as approved by FERC on the date on which the tariff amendment goes into effect. The ISO shall simultaneously send out a notice to market participants that the final ISO Payments Calendar has been revised.

SABP 2.3.6 Final Calendar Binding

The final ISO Payments Calendar shall be binding on the ISO and on Scheduling Coordinators, Black Start Generators, Participating TOs and Owners.

SABP 3 COMPUTATION OF CHARGES

SABP 3.1 Description of Charges to be Settled

The ISO shall, based on the Settlement Quality Meter Data it has received, or, if Settlement Quality Meter Data is not available, based on the best available information or estimate it has received, calculate the following:

- (a) the amount due from each Scheduling Coordinator or other appropriate party for its share for the relevant month of the three components of the Grid Management Charge in accordance with Appendix A. These Charges shall accrue on a monthly basis.
- (b) the amount due from each Scheduling Coordinator for the Grid Operations Charge in accordance with Appendix A. This charge shall accrue on a monthly basis.
- (c) the amount due from and/or owed to each Scheduling Coordinator for the Charge for each Ancillary Service in accordance with Appendix C, for each of the Settlement Periods of Day 0.

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- (d) the amount due from and/or owed to each Scheduling Coordinator for Imbalance Energy in accordance with Appendix D, for each of the Settlement Periods of Day 0.
- (e) the amount due from and/or owed to each Scheduling Coordinator for Usage Charges in accordance with Appendix E, for each of the Settlement Periods of Day 0.

- (f) the amount due from each Scheduling Coordinator for Wheeling Out and Wheeling Through Charges and the amount owed to each Participating TO for these charges in accordance with Appendix F, for each of the Settlement Periods of Day 0.
- (g) the amounts due from/to Scheduling Coordinators for Voltage Support (supplemental reactive power charges) for each of the Settlement Periods of Day 0 in accordance with Appendix G.
- (h) the monthly charges due from/to Scheduling Coordinators for long term voltage support provided by Owners of Reliability Must-Run Units in accordance with Appendix G.
- (i) the amounts due from/to Scheduling Coordinators for the provision of Black Start Energy from Reliability Must-Run Units for each of the Settlement Periods of Day 0 in accordance with Appendix G.
- (j) the amounts due from/to Black Start Generators for the provision of Black Start Energy for each of the Settlement Periods of Day 0 in accordance with Appendix G.
- (k) the amount due from each UDC or MSS, or from a Scheduling Coordinator delivering Energy for the supply of Gross Load not directly connected to the facilities of a UDC or MSS, for the High Voltage Access Charge and Transition Charge in accordance with operating procedures posted on the ISO Home Page. These charges shall accrue on a monthly basis.
- (l) the amounts due from Scheduling Coordinators for FERC Annual Charges.

All of the data, information, and estimates the ISO uses to calculate these amounts shall be subject to the auditing requirements of Section 10.5 of the ISO Tariff.

The ISO shall calculate these amounts using the software referred to in SABP 2.1 except in cases of system breakdown when it shall apply the procedures set out in SABP 9 (Emergency Procedures).

SABP 3.1.1

Additional Charges and Payments

The ISO shall be authorized to levy additional charges or payments as special adjustments in regard to:

- (a) amounts required to round up any invoice amount expressed in dollars and cents to the nearest whole dollar amount in order to clear the ISO Clearing Account. These charges will be allocated amongst Scheduling Coordinators over an interval determined by the ISO and pro rata based on metered Demand (including exports) during that interval;

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- (b) amounts in respect of penalties which may be levied by the ISO in accordance with the ISO Tariff. These charges will be levied on the Market Participants liable for payment of the penalty; and
- (c) amounts required to reach an accounting trial balance of zero in the course of the Settlement process in the event that the charges calculated as due from ISO Debtors are lower

- than payments calculated as due to the ISO Creditors for the same Trading Day. These charges will be allocated amongst the Scheduling Coordinators who traded on that Trading Day pro rata to their metered Demand (including exports) in MWh of Energy for that Trading Day. In the event that the charges due from ISO Debtors are higher than the payments due to ISO Creditors, the ISO shall allocate a payment to the Scheduling Coordinators who traded on that Trading Day pro rata to their metered Demand (including exports) in MWh of Energy for that Trading Day.
- (d) amounts required with respect to payment adjustments for regulating Energy as calculated in accordance with Section 2.5.27.1 of the ISO Tariff. These charges will be allocated amongst the Scheduling Coordinators who traded on that Trading Day pro rata to their metered Demand (including exports) in MWh for that Trading Day.

SABP 3.2

Method of Settlement of Charges

SABP 3.2.1

Settlement of Payments to/from Scheduling Coordinators and Participating TOs

The ISO will calculate for each charge the amounts payable by the relevant Scheduling Coordinator, Black Start Generator or Participating TO for each Settlement Period of the Trading Day, and the amounts payable to that Scheduling Coordinator, Black Start Generator or Participating TO for each charge for each Settlement Period of that Trading Day and shall arrive at a net amount payable for each charge by or to that Scheduling Coordinator, Black Start Generator or Participating TO for each charge for that Trading Day. Each of these amounts will appear in the Preliminary and Final Settlement Statements that the ISO will provide to the relevant Scheduling Coordinator, Black Start Generator or Participating TO as provided in SABP 4.

The three components of the Grid Management Charge will be included in the Preliminary Settlement Statement and Final Settlement Statement with the other types of charges referred to in SABP 3.1, but a separate invoice for the Grid Management Charge, stating the rate, billing determinant volume and total charge for each of its three components, will be issued by the ISO.

SABP 4

SETTLEMENT STATEMENTS

SABP 4.1

Preliminary Settlement Statements

SABP 4.1.1

Timing of Preliminary Settlement Statements

The ISO shall provide to each Scheduling Coordinator, Black Start Generator or Participating TO for validation a Preliminary Settlement Statement for each Trading Day in accordance with the ISO Payments Calendar.

SABP 4.1.2

Contents of Preliminary Settlement Statements

Each Preliminary Settlement Statement will include a statement of:

- (a) the amount payable or receivable by the Scheduling Coordinator, Black Start Generator or Participating TO for each charge referred to in SABP 3 for each Settlement Period in the relevant Trading Day;
- (b) the total amount payable or receivable by that Scheduling Coordinator, Black Start Generator or Participating TO for each charge for all Settlement Periods in that Trading Day after the amounts payable and the amounts receivable under (a) have been netted off pursuant to SABP 3.2.1; and
- (c) the components of each charge in each Settlement Period except for information contained in the Imbalance Energy Report referred to in SABP 4.1.3.

SABP 4.1.3 Imbalance Energy Report

Each Preliminary Settlement Statement shall be accompanied by a breakdown of the components of the Imbalance Energy Charge (the "Imbalance Energy Report").

SABP 4.2 Final Settlement Statements

The ISO shall provide to each Scheduling Coordinator, Black Start Generator or Participating TO a Final Settlement Statement in accordance with the ISO Tariff and the ISO Payments Calendar. The Final Settlement Statement shall be in a format similar to that of the Preliminary Settlement Statement and shall include all the information provided in the Preliminary Settlement Statement as amended following the validation procedure set forth in SABP 4.3 and 4.4.

SABP 4.3 Review, Validation, Confirmation of Preliminary Settlement Statements

The provisions for confirmation, review and validation of Preliminary Settlement Statements set forth in Sections 11.6.1.2, 11.7.1, 11.7.2, 11.7.3 and 11.7.4 of the ISO Tariff shall apply to all Scheduling Coordinators, Black Start Generators or Participating TOs (save, in the case of Participating TOs, for charges or rebates referred to in Annex 1) who receive a Preliminary Settlement Statement from the ISO.

SABP 4.4 Resolving Disputes Relating to Preliminary and Final Settlement Statements

SABP 4.4.1 Notice

SABP 4.4.1.1 Notice of an ordinary dispute

If a Scheduling Coordinator, Black Start Generator or Participating TO disputes any item or calculation set forth in its Preliminary or Final Settlement, it shall provide the ISO by electronic means with a notice of dispute within eight (8) Business Days from the date of issue of the Preliminary Settlement Statement or within ten (10) Business Days from the date of issue of the Final Settlement Statement.

SABP 4.4.1.2 Notice of recurring dispute

If a Scheduling Coordinator, Black Start Generator or Participating TO believes a dispute will apply to subsequent Preliminary or Final Settlement Statements, it may request, in a notice provided in accordance with Section SABP 4.4.1.1 above, that the ISO treat the dispute as recurring. A request for recurring treatment may be made for any valid reason provided that subsequent Preliminary and Final Settlement Statements would be affected, including but not limited to, that the disputed calculation will recur, or that a disagreement as to policy will affect calculations in subsequent Preliminary and Final Settlement Statements.

SABP 4.4.2 Contents of Notice

SABP 4.4.2.1 Contents of a notice of dispute

The notice of dispute shall state clearly the Trading Day, the issue date of the Preliminary or Final Settlement Statement, the item disputed, the reasons for the dispute, the amount claimed (if appropriate) and shall be accompanied with all available evidence reasonably required to support the claim.

SABP 4.4.2.2 Contents of a request for treatment as a recurring dispute

If a Scheduling Coordinator, Black Start Generator or Participating TO wishes to request that the ISO treat a dispute as recurring, it shall, in the notice provided in accordance with Section SABP 4.4.2.1 above, clearly indicate that it requests such treatment and set forth in detail the reasons that support such treatment. To the extent possible, the Scheduling Coordinator, Black Start Generator or Participating TO shall state the types of charges and dates to which the dispute will apply, and provide estimates of the amounts that will likely be claimed on each date.

SABP 4.4.3 ISO determination of a recurring dispute

The ISO may deny a request that the ISO treat a dispute as recurring for any valid reason, including because the request is not adequately specific as to the basis for recurring treatment or the subsequent calculations that will be affected.

SABP 4.4.4 Amendment

Regarding a dispute related to a Preliminary Settlement Statement, if the ISO agrees with the amount claimed, it shall incorporate the relevant data into the Final Settlement Statement. Regarding a dispute related to an Incremental Change in a Final Settlement Statement, the ISO shall make a determination on the dispute no later than twenty-five (25) Business Days from the issuance of the Final Settlement Statement, and, if the ISO agrees with the amount claimed, shall incorporate the relevant data into the next available Preliminary Settlement Statement.

SABP 4.4.5 ISOContact

If the ISO does not agree with the amount claimed or if it requires additional information, it shall make reasonable efforts (taking into account the time it received the notice of dispute and the complexity of the issue involved) to contact the relevant Scheduling Coordinator, Black Start Generator or Participating TO to resolve the issue before issuing the Final Settlement Statement. If it is not possible to contact the relevant party, the ISO shall issue the Final Settlement Statement without taking into account the dispute notice.

SABP 4.4.6 Payment Pending Dispute

Each Scheduling Coordinator, Black Start Generator or Participating TO which receives an invoice shall pay any net debit and shall be entitled to receive any net credit shown in the invoice on the Payment Date, whether or not there is any dispute regarding the amount of the debit or credit. The provisions of Section 13 (Dispute Resolution) of the ISO Tariff shall apply to the disputed amount.

SABP 4.5 Settlement Statement Re-runs

SABP 4.5.1 Notice

If a Scheduling Coordinator, Black Start Generator or Participating TO, (having made reasonable efforts to resolve with the ISO any dispute relating to a Preliminary Settlement Statement pursuant to SABP 4.4) requires a Settlement Statement re-run, it shall send at any time to the ISO Governing Board a notice in writing.

SABP 4.5.2 ISO Tariff

The provisions of Sections 11.6.3, 11.6.3.1, 11.6.3.2 and 11.6.3.3 of the ISO Tariff relating to Settlement Statement re-runs shall apply to all Scheduling Coordinators, Black Start Generators or Participating TOs who require a Settlement re-run in accordance with this SABP 4.5.

SABP 5 INVOICES

The ISO shall provide on the day specified in the ISO Payments Calendar an invoice in the format set out in SABP Appendix I showing:

- (a) amounts which according to each of the Preliminary and Final Settlement Statements of that Billing Period are to be paid from or to each Scheduling Coordinator, Black Start Generator or Participating TO;
- (b) the Payment Date, being the date on which such amounts are to be paid or received and the time for such payment; and
- (c) details (including the account number, bank name and Fed-Wire transfer instructions) of the ISO Clearing Account to which any amounts owed by the Scheduling Coordinator, Black Start Generator or Participating TO are to be paid.

A separate invoice for the Grid Management Charge, stating the rate, billing determinant volume and total charge for each of its three components, will be issued by the ISO.

SABP 6

PAYMENT PROCEDURES

SABP 6.1

Time of Payment

SABP 6.1.1

Payment Date

Subject to SABP 6.1.2, payment will be made by the ISO and by each Scheduling Coordinator, Black Start Generator and Participating TO on the Payment Date as set forth in Section 11.3.2.

SABP 6.1.2

Prepayments

- (a) A Scheduling Coordinator may choose to pay at an earlier date than the Payment Date specified in the ISO Payments Calendar by way of prepayment provided it notifies the ISO by electronic means before submitting its prepayment.
- (b) Prepayment notifications must specify the dollar amount prepaid.
- (c) Prepayments must be made by Scheduling Coordinators via Fed-Wire into their ISO prepayment account designated by the ISO. The relevant Scheduling Coordinator shall grant the ISO a security interest on all funds in its ISO prepayment account.
- (d) On any Payment Date the ISO shall be entitled to cause funds from the relevant Scheduling Coordinator's ISO prepayment account to be transferred to the ISO Clearing Account in such amounts as may be necessary to discharge in full that Scheduling Coordinator's payment obligation arising in relation to that Payment Date.
- (e) Any funds held in the relevant Scheduling Coordinator's ISO prepayment account shall be treated as part of that Scheduling Coordinator's Security.
- (f) Interest (or other income) accruing on the relevant Scheduling Coordinator's ISO prepayment account shall inure to the benefit of that Scheduling Coordinator and shall be added to the balance of its ISO prepayment account on a monthly basis.
- (g) Funds held in an ISO prepayment account by a Scheduling Coordinator may be recouped, offset or applied by the ISO to any outstanding financial obligations of that Scheduling Coordinator to the ISO or to other Scheduling Coordinators under this Protocol.

SABP 6.2

Payments to be made by Fed-Wire

All payments by the ISO to Scheduling Coordinators, Black Start Generators and Participating TOs shall be made by Fed-Wire.

All payments to the ISO by Scheduling Coordinators, Black Start Generators and Participating TOs shall be made by Fed-Wire.

SABP 6.3 Payment Process

SABP 6.3.1 Use of the ISO Clearing Account

- (a) Subject to SABP 6.1.2 each ISO Debtor shall remit to the ISO Clearing Account the amount shown on the invoice as payable by that ISO Debtor for value not later than 10:00 am on the Payment Date.
- (b) On the Payment Date the ISO shall be entitled to cause the transfer of such amounts held in a Scheduling Coordinator's ISO prepayment account to the ISO Clearing Account as provided in SABP 6.1.2(c).

SABP 6.3.1.2 Distribution to ISO Creditors

The ISO shall calculate the amounts available for distribution to ISO Creditors on the Payment Date and shall give irrevocable instructions to the ISO Bank to remit from the ISO Clearing Account to the relevant Settlement Account maintained by each ISO Creditor for same day value the amounts determined by the ISO to be available for payment to each ISO Creditor. If required, the ISO shall instruct the ISO Bank to transfer amounts from the ISO Reserve Account to enable the ISO Clearing Account to clear by the close of banking business on the Payment Date.

SABP 6.3.1.3 Grid Management Charge

The ISO is authorized to instruct the ISO Bank to debit the ISO Clearing Account and transfer to the relevant ISO account sufficient funds to pay in full the Grid Management Charge falling due on any Payment Day with priority over any other payments to be made on that or on subsequent days out of the ISO Clearing Account.

SABP 6.4 Use of the ISO Reserve Account

If there are insufficient funds in the ISO Clearing Account to pay ISO Creditors and clear the account on any Payment Date, due to payment default by one or more ISO Debtors, the ISO shall transfer funds from the ISO Reserve Account to the ISO Clearing Account to clear it by close of banking business on that Payment Date pursuant to SABP 6.7.2.

SABP 6.5 Use of the ISO Surplus Account

SABP 6.5.1 Establishment

The ISO shall establish and maintain a bank account in accordance with this Protocol denominated the "ISO Surplus Account".

SABP 6.5.2 Other Funds in the ISO Surplus Account.

- (a) Any amounts paid to the ISO in respect of acts or defaults giving rise to default interest referred to in SABP 6.10.5 or penalties referred to in SABP 3.1.1 shall be credited to the Surplus Account.
- (b) The funds referred to in SABP 6.5.2(a) shall first be applied towards any expenses, loss or costs incurred by the ISO. Any

excess will be credited to the Surplus Account pursuant to SABP 6.5.2(a).

SABP 6.5.3 Distribution of Funds

In the event that there are funds in the ISO Surplus Account in excess of an amount to be determined by the ISO Governing Board and noticed by the ISO to Market Participants, the amount of such excess will be distributed to Scheduling Coordinators using the same method of apportioning the refund as the method employed in apportioning the liability for the Grid Management Charge.

SABP 6.5.4 Trust

All amounts standing to the credit of the ISO Surplus Account will be held at all times on trust for Market Participants in accordance with this Protocol.

SABP 6.6 System Failure

SABP 6.6.1 At ISO Debtor's Bank

If any ISO Debtor becomes aware that a payment will not, or is unlikely to be, remitted to the ISO Bank by 10:00 am on the relevant Payment Date for any reason (including failure of the Fed-Wire or any computer system), it shall immediately notify the ISO, giving full details of the payment delay (including the reasons for the payment delay). The ISO Debtor shall make all reasonable efforts to remit payment as soon as possible, by an alternative method if necessary, to ensure that funds are received for value no later than 10:00 am on the Payment Date, or as soon as possible thereafter.

SABP 6.6.2 At the ISO's Bank

In the event of failure of any electronic transfer system affecting the ISO Bank, the ISO shall use reasonable efforts to establish alternative methods of remitting funds to the ISO Creditors' Settlement Accounts by close of banking business on that Payment Date, or as soon as possible thereafter. The ISO shall notify the ISO Debtors and the ISO Creditors of occurrence of the system failure and the alternative methods and anticipated time of payment.

SABP 6.7 Payment Default

Subject to SABP 6.8, if by 10:00 am on a Payment Date the ISO, in its reasonable opinion, believes that all or any part of any amount due to be remitted to the ISO Clearing Account by any Scheduling Coordinator will not or has not been remitted and there are insufficient funds in the relevant Scheduling Coordinator's ISO prepayment account (the amount of insufficiency being referred to as the "Default Amount"), the ISO shall take the following actions to enable the ISO Clearing Account to clear not later than the close of banking business on the relevant Payment Date:

- SABP 6.7.1 Enforcing the Security of a Defaulting Scheduling Coordinator**
- Subject to SABP 6.8 the ISO shall make reasonable endeavors to enforce the defaulting Scheduling Coordinator's Security (if any) to the extent necessary to pay the Default Amount. If it is not practicable to obtain clear funds in time to effect payment to ISO Creditors on the same day the ISO shall proceed in accordance with SABP 6.7.2 or 6.7.4 as applicable.
- SABP 6.7.2 Use of ISO Reserve Account**
- If there are funds standing to the credit of the ISO Reserve Account (including the proceeds of drawings under banking facilities described in SABP 2.2.5) the ISO shall debit the ISO Reserve Account with the Default Amount in order to clear the ISO Clearing Account and effect payment to the ISO Creditors.
- SABP 6.7.3 Action against a Defaulting Scheduling Coordinator**
- The ISO shall as soon as possible after taking action under SABP 6.7.2 take any steps it deems appropriate against the defaulting Scheduling Coordinator to recover the Default Amount (and any default interest as set out in SABP 6.10.5) including enforcing any Security pursuant to Section 11.14 of the ISO Tariff, exercising its rights of recoupment or set-off pursuant to SABP 6.10.2 and/or bringing proceedings against the defaulting Scheduling Coordinator pursuant to Section 11.20.1 of the ISO Tariff.
- SABP 6.7.4 Reduction of Payments to ISO Creditors**
- If there are insufficient funds standing to the credit of the ISO Reserve Account, the ISO shall reduce payments to ISO Creditors on that Payment Date pursuant to Section 11.16.1 of the ISO Tariff to the extent necessary to clear the ISO Clearing Account by the close of banking business on the Payment Date.
- SABP 6.8 Default to be Remedied Promptly**
- In the event that the ISO reasonably believes that an outstanding amount which has not been paid by 10:00 am on the relevant Payment Date, is likely to be paid no later than close of banking business on the next Business Day then the ISO may, but shall not be obliged to, delay enforcing that ISO Debtor's Security or taking other measures to recover payment until after the close of banking business on the next Banking Day but default interest shall nonetheless accrue pursuant to SABP 6.10.5.
- SABP 6.9 Replenishing the ISO Reserve Account Following Payment Default**
- If the ISO has debited the ISO Reserve Account as provided in SABP 6.7.2 then:
- (a) If, after the ISO has debited the ISO Reserve Account on a Payment Date, the ISO Bank receives a remittance from an ISO Debtor which has not been (but should have been, if it

had been received on a timely basis) credited to the ISO Clearing Account by 10:00 am on the Payment Date and which required the debiting of the ISO Reserve Account, such remittance shall be credited to the ISO Reserve Account.

- (b) The proceeds of any enforcement of Security referred to in SABP 6.8.2 and/or amounts recovered under proceedings shall be credited to the ISO Reserve Account.
- (c) If after taking reasonable action the ISO determines that the Default Amount (or any part) and/or default interest referred to in SABP 6.10.5 cannot be recovered, such amounts shall be deemed to be owing by those Market Participants who were ISO Creditors on the relevant Payment Date pro rata to the net payments they received on that Payment Date and shall be accounted for by way of a charge in the next Settlement Statements of those ISO Creditors. Such charge shall be credited to the Reserve Account.

SABP 6.10 Application of Funds Received

Amounts credited to the ISO Clearing Account in payment of a Default Amount (as set out in SABP 6.9(a)) or as a result of enforcing the defaulting ISO Debtor's Security shall be applied to the ISO Reserve Account pursuant to SABP 6.9 to reduce amounts outstanding under any ISO banking facilities used to fund the ISO Reserve Account on the relevant Payment Date and the balance (if any) shall be applied to reimburse pro rata any ISO Creditors whose payments were reduced pursuant to SABP 6.7.4.

SABP 6.10.1 Termination of SC Agreement and Limitation on Trading

The provisions of Section 2.2.4.5 and 2.2.7.3 of the ISO Tariff shall apply.

SABP 6.10.2 Set-Off

The ISO is authorized to recoup, set off and apply any amount to which any defaulting ISO Debtor is or will be entitled, in or towards the satisfaction of any of that ISO Debtor's debts arising under the ISO Settlement and billing process. Each ISO Creditor and each ISO Debtor expressly acknowledges that the oldest outstanding amounts will be settled first in the order of the creation of such debts.

SABP 6.10.3 Defaulting SCs and Eligible Customers

If the ISO intends to terminate the SC Agreement of a Scheduling Coordinator (the "Defaulting SC") pursuant to Section 2.2.4.5 of the ISO Tariff, the ISO shall give written notice to the UDC or UDCs on whose service territory the customers of that Defaulting SC are located and shall post such notification on the ISO Home Page pursuant to Section 2.2.4.6 of the ISO Tariff.

SABP 6.10.4 Order of Payments

The ISO shall apply payments received in respect of amounts owing to ISO Creditors to repay the relevant debts in the order of the creation of such debts.

SABP 6.10.5 Default Interest

Unless the ISO is able to enforce the Security (if any) provided by the defaulting ISO Debtor, such ISO Debtor shall pay interest on Default Amount at the ISO Default Interest Rate for the period from the relevant Payment Date to the date in which the payment is received by the ISO together with any related transaction costs incurred by the ISO pursuant to SABP 6.7.2.

SABP 6.10.6 Interest Accruing while Enforcing the Security

If the ISO has debited the Reserve Account as provided in SABP 6.7.1, 6.7.2 or 6.8 and it subsequently succeeds in enforcing the Security provided by the defaulting Scheduling Coordinator, the ISO shall be entitled to withdraw from such Security in addition to the Default Amount, all costs incurred and interest accrued to the ISO as a result of debiting the Reserve Account from the date of such debit to the date of enforcement of the said Security.

SABP 7 PAYMENT ERRORS

SABP 7.1 Overpayments

SABP 7.1.1 Notification

If an ISO Creditor receives an overpayment on any Payment Date, it shall notify the ISO of such overpayment in accordance with the provisions of Section 11.18.1 of the ISO Tariff.

SABP 7.1.2 Overpayment held on Trust

Until an ISO Creditor refunds the overpayment to the ISO, the ISO Creditor shall be deemed to hold the amount of such overpayment on trust for any ISO Creditor which may have been underpaid in consequence of such overpayment, pro rata to the amount of the underpayment.

SABP 7.1.3 Interest on Overpayment

- (a) If an overpayment is repaid by an ISO Creditor in accordance with Section 11.18.1 of the ISO Tariff, the ISO shall be entitled to interest on the amount of the overpayment at the prime rate of the bank where the Settlement Account of the overpaid ISO Creditor is located from the date the overpayment was received to the time that the repayment is credited to the relevant ISO Account.
- (b) If the overpayment (or any part of it) is not repaid by an ISO Creditor in accordance with Section 11.18.1 of the ISO Tariff, the ISO shall be entitled to interest on the amount of the overpayment at the ISO Default Interest Rate from the expiry of the two day period referred to in that Section until the

repayment is credited to the relevant ISO Account and the ISO will be entitled to treat the overpayment (and any interest accruing thereon) as a Default Amount to which SABP 6.7 will apply.

SABP 7.1.4 Treatment of Amounts Outstanding as a Result of an Overpayment

The ISO shall apply the amount of any overpayment repaid (including interest received) to it under SABP 7.1.3 to credit any underpaid ISO Creditors pro rata to the amounts of their underpayments on the same day of receipt, or if not practicable, on the following Business Day.

SABP 8 COMMUNICATIONS

SABP 8.1 Method of Communication

Preliminary Settlement Statements and Final Settlement Statements will be published by the ISO on the WEnet. Invoices will be issued via EDI. Communications on a Payment Date relating to payment shall be made by the fastest practical means including by telephone. Methods of communication between the ISO and Market Participants may be varied by the ISO giving not less than 10 days notice to Market Participants on the WEnet.

SABP 8.2 Failure of Communications

The provisions of Section 11.23 of the ISO Tariff shall apply.

SABP 9 EMERGENCY PROCEDURES

SABP 9.1 Use of Estimated Data

In the event of an emergency or a failure of any of the ISO software or business systems, the ISO may use estimated Settlement Statements and invoices and may implement any temporary variation of the timing requirements relating to the Settlement and billing process contained in the ISO Tariff or this Protocol. Details of the variation and the method chosen to produce estimated data, Settlement Statements and invoices will be published on the ISO Home Page.

SABP 9.2 Payment of Estimated Statements and Invoices

When estimated Settlement Statements and invoices are issued by the ISO, payments between the ISO and Market Participants shall be made on an estimated basis and the necessary corrections shall be made by the ISO as soon as practicable. The corrections will be reflected as soon as practicable in later Settlement Statements and invoices issued by the ISO in the manner set forth in Section 11.5 of the ISO Tariff. Failure to make such estimated payments shall result in the same consequences as a failure to make actual payments under SABP.

SABP 9.3 Validation and Correction of Estimated Statements and Invoices

The ISO shall use its best efforts to verify the estimated data used under SABP 9.1 and to make the necessary corrections as soon as practicable. The corrections will be reflected as soon as practicable in later Settlement Statements and invoices issued by the ISO in the manner set forth in Section 11.5 of the ISO Tariff.

SABP 9.4 Estimated Statements to be Final

In the event that the ISO is of the opinion that, despite its best efforts, it is not possible for it to verify the estimated data because actual data is not reasonably expected to become available to the ISO in the foreseeable future, the ISO shall consult with the Market Participants in order to develop the most appropriate substitute data including using data provided by Market Participants. Following such determination of substitute data, the ISO shall send to the relevant Market Participants revised Settlement Statements and Invoices. The provisions of SABP 4.4.5 shall apply to payment of revised invoices issued in accordance with this SABP 9.4. Failure to make payments of such revised invoices shall result in the same consequences as a failure to make actual payments under SABP.

SABP 10 CONFIDENTIAL DATA

- (a) The ISO shall implement and maintain a system of communication with Scheduling Coordinators to ensure compliance with Sections 11.22 and 20.3 of the ISO Tariff regarding access to confidential data and with Participating TOs pursuant to Section 26.3 of the Transmission Control Agreement.
- (b) Access within the ISO to such data on ISO's communications systems, including databases and backup files, shall be strictly limited to authorized ISO personnel through the use of passwords and other appropriate means.

SABP 11 AMENDMENTS TO THE PROTOCOL

If the ISO determines a need for an amendment to this Protocol, the ISO will follow the requirements as set forth in Section 16 of the ISO Tariff.

ATTACHMENT B

"2002 GMC Settlement"

Offer of Settlement and Settlement Agreement, Docket Nos. ER02-250-000, *et al.*
Approved by the Commission on December 26, 2002 - 101 FERC ¶ 61,371 (2002).

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

California Independent System)	Docket Nos.	ER02-250-000
Operator Corporation)		ER02-527-000
)		
Pacific Gas and Electric)	Docket No.	ER02-479-000
Company)		

OFFER OF SETTLEMENT AND SETTLEMENT AGREEMENT

Pursuant to Rule 602 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission” or “FERC”), 18 C.F.R. § 385.602 (2002), the California Independent System Operator Corporation (“ISO”), Pacific Gas and Electric Company (“PG&E”), and Southern California Edison Company (“Edison”) (collectively, the “Sponsoring Parties”) hereby offer and agree to the terms of this Offer of Settlement and Settlement Agreement (“Settlement Agreement”) as the full and final resolution of all issues, apart from a single issue of interest only to San Diego Gas & Electric Company (“SDG&E”),¹ in the above-captioned Grid Management Charge (“GMC”) and GMC Pass-Through proceedings. Certain other parties have authorized counsel for the ISO to represent that such parties support this Settlement Agreement (“Supporting Parties”)² or

¹ The remaining issue relates to the Southwest Power Link (“SWPL”).

² The Supporting Parties are: The California Department of Water Resources and the Staff of the California Public Utilities Commission.

do not oppose this Settlement Agreement (“Non-Opposing Parties”).³ Sponsoring, Supporting, and Non-Opposing Parties are hereinafter referred to collectively as “Parties” and individually as “Party”. This use of the defined term “Parties” does not limit the legal effect of this Settlement Agreement on all parties to the above-captioned proceeding or the application of rates put into effect by this Settlement Agreement to all entities that are subject to the ISO’s rates pursuant to the ISO Tariff.

In accordance with Rule 602(d), 18 C.F.R. § 602(d), this Settlement Agreement is being served on the Public Utilities Commission of California, the California Energy Commission, the California Electricity Oversight Board, all entities with effective Scheduling Coordinator Service Agreements under the ISO Tariff, and on all parties on the Commission’s official service list for the above captioned proceedings. In addition, a copy of this Settlement Agreement is being electronically sent to all market participants via ISO market notice. Under Rule 602(f), 18 C.F.R. § 385.602(f), those entities will have an opportunity to comment on this Settlement Agreement.

BACKGROUND

The GMC is the administrative charge assessed by the ISO on its customers through a rate subject to FERC review under the Federal Power Act (“FPA”) in order to recover its costs. On November 2, 2001, the ISO filed its GMC for 2002, which was

³ The Non-Opposing Parties are: The California Electricity Oversight Board, The City and County of San Francisco, The City of Redding, The City of Santa Clara, The Metropolitan Water District of Southern California, Modesto Irrigation District, Northern California Power Agency, Sacramento Municipal Utility District, San Diego Gas and Electric Company, San Francisco Bay Area Rapid Transit District, Trinity Public Utility District, the Transmission Agency of Northern

assigned Docket No. ER02-250-000. On December 5, 2001, PG&E filed modifications to its GMC Pass-Through Tariff (“GMC P-TT”) which were assigned Docket No. ER02-479-000. The GMC P-TT is intended to allow PG&E to pass through and recover on a dollar-for-dollar basis the ISO’s GMC from PG&E’s Control Area Agreement (“CAA”) Customers to which the GMC is applicable.

The ISO assesses the GMC on PG&E for PG&E’s role as Scheduling Coordinator for its CAA Customers. Rather than impose on PG&E separate GMC charges for each CAA Customer, the ISO instead submits one invoice to PG&E assessing aggregated GMC charges for PG&E’s retail customers and the Western Area Power Administration, and a second invoice assessing aggregated GMC charges for PG&E’s remaining CAA Customers. PG&E, in turn, attempts to disaggregate and apportion the ISO’s GMC charges to PG&E’s individual CAA Customers pursuant to Schedule 1 of the GMC P-TT.

On December 7, 2001, the ISO made an errata filing related to its November 2, 2001 GMC filing. The purpose of this errata filing, which was assigned Docket No. ER02-527-000, was to include a proposed change to the ISO Tariff regarding the Quarterly Adjustment provision that was inadvertently left out of the November 2 filing.

Numerous parties filed protests and motions to intervene in the ER02-250-000 proceeding. On December 20, 2002, the Commission accepted the ISO’s filing in ER02-250-000, made the filing effective January 1, 2002 subject to refund and to the outcome of the 2001 GMC proceedings, and set the matter for hearing. The Chief Administrative

California, and Turlock Irrigation District. In addition, Commission Trial Staff does not oppose this Settlement Agreement.

Law Judge designated Judge Bobbie J. McCartney as Presiding Judge for the ER02-250-000 proceeding. A procedural schedule was established at a pre-hearing conference held in ER02-250-000 on January 10, 2002. During the pre-hearing conference, the Presiding Judge urged the parties “to fully explore the possibility of settlement in this proceeding.” Tr. 20-21.

In an order issued January 31, 2002,⁴ the Commission accepted for filing PG&E’s December 5, 2001 filing in ER02-479-000, and the ISO’s December 7, 2001 errata filing in ER02-527-000, effective January 1, 2002, subject to refund and the outcome of the 2001 GMC proceedings, and consolidated these dockets with ER02-250-000 for hearing.

During a subsequent pre-hearing conference held on May 30, 2002, the Presiding Judge again urged the parties to engage in settlement discussions, with the goal of settling at least some of the issues in the case. Tr. 181-82. The Presiding Judge instructed the parties to file, by June 28, either a request that a settlement judge be appointed or a new proposed procedural schedule. Tr. 183.

Following the May 30, 2002 pre-hearing conference, the Parties engaged in intensive settlement negotiations. On June 28, the Parties filed with the Presiding Judge a “Joint Motion for Appointment of Settlement Judge and Suspension of the Remaining Procedural Schedule.” As negotiations continued, it became apparent that a settlement in principle could be reached without the assistance of a settlement judge. Therefore, on August 7, the Parties filed with Judge McCartney a “Joint Motion to Suspend the

⁴ *Pacific Gas and Electric Company, et al.*, 98 FERC ¶ 61,089 (2002).

Procedural Schedule.” On August 15, a “Joint Motion to Institute Interim Rates” (“August 15 Motion”) was filed with the Commission, in order to allow the ISO’s customers to receive the benefit of the settlement rates while this Settlement Agreement was being finalized. The August 15 Motion was granted by the Commission in a letter order dated September 12, 2002, making settlement rates effective as of September 1, 2002. The rates made effective on an interim basis were anticipated to be recovered from July 1, 2002. In order to avoid an under-recovery and concerns about retroactive ratemaking, the active parties submitted a Joint Motion to Adjust Interim Settlement Rates on October 11, 2002 to have this Settlement Agreement’s ASREO rate for the period November 1, 2002 through December 31, 2002 made effective as an interim rate pending the Commission’s consideration of this Settlement Agreement. That motion is currently pending before the Commission.

TERMS OF SETTLEMENT

Article I: Scope of Settlement

1.1 This Settlement Agreement settles Docket Nos. ER02-250-000, ER02-527-000, and ER02-479-000 apart from a single issue of interest only to SDG&E.⁵ To the extent that any aspect of the ISO’s November 2, 2001 GMC filing, as amended by its errata filing of December 7, 2001, is not specifically addressed in this Settlement Agreement, the provisions of the ISO’s GMC filing shall be in effect as

⁵ One issue of importance to SDG&E related to SWPL is not resolved by this Settlement Agreement.

to that aspect following the effectiveness of this Settlement Agreement. Except as provided in Section 10.3 of this Settlement Agreement, any issue concerning the ISO's GMC revenue requirement and rates is precluded from being raised during the period from the effective date of this Settlement Agreement through December 31, 2003 or the date the ISO makes a rate filing under Section 205 of the FPA, whichever comes first.

1.2 Except as may be necessary to carry out the provisions of this Settlement Agreement, the effectiveness of this Settlement Agreement shall serve to terminate the captioned proceedings.

1.3 The terms of this Settlement Agreement shall be applied by the ISO, on a non-discriminatory basis, to all of its customers, and by PG&E to its customers.

Article II: Rates and Revenue Requirement

2.1 The following rates (the "Settlement Rates") are effective as of January 1, 2002, for the Control Area Services Charge ("CAS"), the Congestion Management Charge ("CM"), and the Ancillary Services and Real Time Energy Operations Charge ("ASREO")⁶:

CAS	\$0.553/MWh
CM	\$0.312/MWh
ASREO	\$0.957/MWh

⁶ Provisions in this Settlement Agreement addressing the ASREO Charge also shall apply to the "Market Operations" charge in 2003, if the term is redefined.

For ASREO, the following rate is effective as of September 1, 2002 through October 31, 2002:

\$1.048/MWh

For ASREO, the following rate is effective as of November 1, 2002 through December 31, 2002:

\$1.158/MWh

The ASREO rate to be in effect on January 1, 2003 will be established by a filing to be made by the ISO pursuant to Article IV. The GMC rates for 2003 may be adjusted as described in Section 4.1 of this Settlement Agreement.

- 2.2 No portion of ASREO will be assessed based on volumes of self-provided Ancillary Services for 2002 and 2003.
 - 2.2.1 The ISO withdraws its filed charge of 50% of ASREO based on volumes of self-provided Ancillary Services in its 2002 GMC, effective January 1, 2002, and will not propose to assess an ASREO charge based on volumes of self-provided Ancillary Services for calendar year 2003.
 - 2.2.2 In 2002 and 2003, the ISO will recover through the CAS category the costs the ISO proposed to recover through the 50% of ASREO based on volumes of self-provided Ancillary Services.
 - 2.2.3 PG&E will submit a change to its Pass-Through Tariff, effective January 1, 2002, to reflect the ISO's withdrawal of its filed charge as set forth in Section 2.2.1 and the stipulated rates specified in Section 2.1.

2.3 The ISO's gross revenue requirement⁷ for 2002 is stipulated to be \$239,200,000. The stipulated gross revenue requirement represents a reduction of \$5,593,886 from the gross revenue requirement in the ISO's filing of November 2, 2001, which reduction was accomplished by the ISO reducing its Operating and Maintenance expenses by that amount. The gross revenue requirements for the GMC service categories are:

CAS: \$138,585,863

CM: \$27,787,380

ASREO: \$72,826,757

2.3.1 The rates in Section 2.1 result from reducing the amounts in Section 2.3 by (i) reallocating Operating & Maintenance expenses among the three GMC service categories; (ii) applying \$9 million in fines and penalties revenues to the CAS and ASREO categories; and (iii) applying an additional \$2,782,847 in fines and penalties revenues to the ASREO category.

2.4 The ISO may raise the GMC rates through a filing in order to restore the ISO's Operating and Capital Reserves Account (ISO Tariff 8.5) to the level specified in Appendix F, Schedule 1, Part C of the ISO Tariff, if that is necessitated by an effective FERC order requiring the ISO to return to sellers an amount of fines and penalties, or any portions thereof, without which the ISO would be unable to

⁷ For purposes of this Settlement Agreement, the term "gross revenue requirement" means the ISO's revenue requirement after application of any surplus funds from the Operating and Capital Reserves Account.

derive the rates in Section 2.1 and maintain the specified Operating and Capital Reserves Account level. Parties may contest in such filing only: (1) the ISO's calculation of the amount proposed to restore the financial reserve requirement, and (2) the extent of the above-described fines and penalties revenues attributed by the ISO as a cause of any financial reserve requirement deficiency.

- 2.5 The ISO shall reflect in the 2003 and 2004 GMC revenue requirements such amounts of fines and penalties collected that the ISO reasonably believes will not be subject to refund.
- 2.6 The Settlement Rates are based on the following stipulated annual billing determinant volumes for calendar year 2002:

CAS:	246,487,000 MWh
CM:	88,992,846 MWh
ASREO	63,148,156 MWh

The stipulated billing determinant volumes are based on a number of facts and assumptions, which include, among others: (1) the fact that the Sacramento Municipal Utility District has formed its own control area; (2) significant changes in market conditions prevailing at the time of settlement (excluding changes directly arising from implementation of the ISO's market design 2002 ("MD02") pursuant to the FERC order of July 17, 2002);⁸ (3) removal of the estimated volumes for self-provided Ancillary Services from the ASREO category; and (4)

⁸ *California Independent System Operator Corp.*, 100 FERC ¶ 61,060 (2002).

actual settlement volumes for each category in 2001, which the ISO represents are true and accurate settlement volumes, and, as-available, estimated volumes for each category for 2002, which the ISO represents are estimates the ISO relied upon or will rely upon for budget or forecast purposes for the 2001 through 2003 GMC, as provided in the following table:

	CAS	Inter-Zonal	Market Operations
January 2001	20,663,075 ACTUAL	6,480,464 ACTUAL	13,452,739 ACTUAL
February	18,726,287 ACTUAL	5,318,393 ACTUAL	13,316,834 ACTUAL
March	20,564,315 ACTUAL	5,842,217 ACTUAL	11,847,271 ACTUAL
April	18,733,132 ACTUAL	5,761,919 ACTUAL	10,953,532 ACTUAL
May	21,095,581 ACTUAL	5,791,935 ACTUAL	10,465,734 ACTUAL
June	20,922,499 ACTUAL	6,346,920 ACTUAL	8,924,529 ACTUAL
July	22,505,115 ACTUAL	6,960,162 ACTUAL	7,547,313 ACTUAL
August	23,035,644 ACTUAL	7,284,050 ACTUAL	7,177,991 ACTUAL
September	20,079,250 ACTUAL	6,375,279 ACTUAL	5,888,591 ACTUAL
October	19,225,939 ACTUAL	6,406,781 ACTUAL	5,640,005 ACTUAL
November	17,883,866 ACTUAL	6,677,315 ACTUAL	5,360,027 ACTUAL
December 2001	23,440,374 ACTUAL	6,701,249 ACTUAL	5,669,350 ACTUAL
	CAS	CM	ASREO
January 2002	21,013,172 BUDGETED	7,220,471 ACTUAL	CURRENTLY UNAVAILABLE
February	18,988,507 BUDGETED	6,446,138 ACTUAL	CURRENTLY UNAVAILABLE
March	20,729,433 BUDGETED	6,651,576 ACTUAL	CURRENTLY UNAVAILABLE
April	19,017,441 BUDGETED	7,261,737 ACTUAL	CURRENTLY UNAVAILABLE
May	19,895,433 BUDGETED	7,535,500 ACTUAL	CURRENTLY UNAVAILABLE

		/ESTIMATED	
June	21,285,646 BUDGETED	8,193,432 ACTUAL /ESTIMATED	CURRENTLY UNAVAILABLE

The ISO projects the volumes for the remainder of 2002 to be as follows:

	CAS	CM	ASREO
July	22,868,840 BUDGETED	8,335,474 FORECAST	CURRENTLY UNAVAILABLE
August	23,642,742 BUDGETED	8,622,897 FORECAST	CURRENTLY UNAVAILABLE
September	20,338,665 BUDGETED	7,395,779 FORECAST	CURRENTLY UNAVAILABLE
October	19,672,643 BUDGETED	7,148,421 FORECAST	CURRENTLY UNAVAILABLE
November	19,830,962 BUDGETED	7,207,220 FORECAST	CURRENTLY UNAVAILABLE
December	19,203,545 BUDGETED	6,974,200 FORECAST	CURRENTLY UNAVAILABLE

TOTAL 2002 VOLUMES PER SETTLEMENT	246,487,029 rounded to 246,487,000	88,992,846	63,148,156
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- FORECAST IS AS OF JUNE 2002.
- BUDGETED FIGURES ARE LISTED FOR CAS FOR 2002, AS THE FORECAST AS OF JUNE 2002 DID NOT INDICATE 2002 FORECASTED LEVELS OUTSIDE THE 5% BAND SPECIFIED PER ISO TARIFF SCHEDULE 1, PART B.
- FIGURES MAY INCLUDE THE EFFECT OF RETROACTIVE ADJUSTMENTS BILLED IN THE LISTED MONTH. SUBSEQUENT ADJUSTMENTS/RE-RUNS MAY AFFECT THE ABOVE "ACTUAL" FIGURES.
- MONTHLY VOLUME BREAKDOWN FOR ASREO CATEGORY IS UNAVAILABLE. THE ISO DID NOT RETAIN MONTHLY FIGURES WHICH WERE USED FOR THIS ANNUAL FORECAST. TOTAL FORECASTED FIGURE FOR 2002, EXCLUDING ANCILLARY SERVICE SELF-PROVISION VOLUME IS 63,148,156 MWH.

2.7 If a filing under Section 205 of the FPA is required for 2003 to increase the revenue requirement to make up any under-recoveries due to volume shortfalls in

2002,⁹ no Party may contest the ISO's right to such collection except that a Party has the right to investigate and challenge any erroneous aspect of such ISO filing, including the basis on which such under-recoveries are claimed.

Article III: Refunds

3.1 The ISO will provide refunds plus interest to customers to the extent amounts have been collected, pursuant to the GMC rates filed on November 2, 2001, in excess of the amounts that would have been collected pursuant to the Settlement Rates in Section 2.1 and for the terms of Section 2.2, had those rates and terms been in effect as of January 1, 2002. Interest shall be calculated as required in 18 CFR § 35.19a. Refunds plus interest shall be provided by the ISO by payment or credit to affected customers within 30 days of the effective date of this Settlement Agreement.

3.1.1 If, after the ISO makes refunds plus interest pursuant to Section 3.1, this Settlement Agreement except for this Section 3.1.1. is rendered null and void, the ISO shall have the right to recover the amount of refunds plus interest from those entities receiving such payments through separate charges on invoices for those entities reflecting the amount of refunds and interest received from the ISO under Section 3.1 above, plus interest from the dates refunds were received.

⁹ To the extent the forecasted ISO Operating and Capital Reserves Account balance as of December 31, 2002 for each category is less than 15% of budgeted O&M spending for the service category for 2003, a shortfall would be budgeted in 2003.

- 3.1.2 The ISO shall be permitted to recover in 2003 GMC rates the amounts paid or credited by the ISO to affected GMC service customers as interest on refunds, whether or not the ISO must file under Section 205 of the FPA.
- 3.2 PG&E agrees to pass through any refunds and credits from the ISO pursuant to Section 3.1 that are associated with amounts that previously were collected from PG&E's CAA customers.

Article IV: Trigger for a Section 205 Filing

- 4.1 The ISO shall seek approval under Section 205 of the FPA for (1) any increase in the GMC gross revenue requirement for 2003 over \$239,200,000; or (2) in the case of the gross revenue requirement for any individual service category, over \$138,585,863 for CAS, \$27,787,380 for CM, or \$72,826,757 for ASREO; or (3) in the event the ISO's gross revenue requirement – *excluding* the effect of the Operating and Capital Reserves Account – exceeds \$246,000,000. For its GMC rates to be effective January 1, 2003, the ISO may adjust its rate for each service category based on any change in the estimated billing determinant volumes from the volumes for 2002, provided that the ISO shall employ the actual budgeted gross revenue requirement not to exceed \$239,200,000 in establishing the rates for the GMC to be effective January 1, 2003. After January 1, 2003, the ISO may implement a quarterly rate adjustment based on changes in estimated billing determinants only pursuant to Appendix F, Schedule 1, Part B of the ISO Tariff. Notwithstanding Sections 8.3 and 8.4 of the ISO Tariff, the ISO may adjust its 2003 GMC rates to produce the revenue levels described above without making a

Section 205 filing, *provided* (1) the GMC rates as adjusted do not produce (i) revenues for 2003 in excess of the settlement gross revenue requirement of \$239,200,000, or (ii) revenues for 2003 by service category in excess of the settlement amounts for the three service categories, as follows: CAS \$138,585,863, CM \$27,787,380, ASREO \$72,826,757; (2) the ISO does not propose a change in the three service categories reflected in the ISO's filing in this proceeding; and (3) the ISO's gross revenue requirement – *excluding* the effect of the Capital and Operating Reserves Account – does not exceed \$246,000,000.

- 4.2 For the purpose of determining whether the ISO must make a filing under Section 205 of the FPA as described in Section 4.1, the ISO shall retain discretion (in calculating the forecast 2002 year-end Operating and Capital Reserves Account balances) regarding the allocation of up to \$9 million in fines and penalties among the three service categories, consistent with the objective of avoiding, to the extent possible, increases in the revenue requirement for 2003 for any GMC service category above the levels set forth in Section 4.1.

Article V: 2003 Budgeting/Rate Development Process

The agreements reached concerning the 2003 Budgeting/Rate Development Process, found in Appendix A, are incorporated into and made a part of this Settlement Agreement as if set forth in this Article V.

Article VI: 2003 Re-evaluation Process for 2004 GMC

The provisions concerning the 2003 Re-evaluation Process for 2004 GMC, found in Appendix B, are incorporated into and made a part of this Settlement Agreement as if set forth in this Article VI.

Article VII: Change to Section 8.5 and Appendix F, Schedule 1, Part B of the ISO Tariff

7.1 The following text will replace the revision to Section 8.5 of the ISO Tariff proposed in the ISO's November 2 filing:

“Revenue collected to fund the ISO financial operating reserves shall be deposited in an Operating and Capital Reserves Account until such account reaches a level specified by the ISO Governing Board. If the Operating and Capital Reserves Account is fully funded, surplus funds will be considered revenues in the next fiscal year's operating budget.”

7.2 The following text will replace the current Appendix F, Schedule 1, Part B of the ISO Tariff:

“Each component rate of the Grid Management Charge will be adjusted automatically on a quarterly basis, up or down, so that rates reflect the ISO's FERC approved revenue requirement, if the estimated billing determinant volumes for that component, on an annual basis, change by 5% or more during the year.

“Each year the Grid Management Charge may be recalculated to reflect the following year's budget estimates and to adjust for any difference between

the previous year's revenue and cost estimates and actual revenues and costs, as reflected in Part D of this Schedule, 'Information Requirements'. The annual or periodic filing (which is described in Part D and is not the quarterly adjustment) shall not affect the automatic adjustment of the Grid Management Charge on a quarterly basis as set forth in the first paragraph of this Part B."

Article VIII: Precedential Effect

8.1 Except as otherwise indicated above, this Settlement Agreement is non-precedential with respect to any future proceeding and its terms may not be referred to in any future proceeding before the Commission for the purpose of supporting any specific approach to any issue. Notwithstanding the foregoing, the rights and obligations established by this Settlement Agreement may be enforced, by any Party, in any future rate case or other proceeding, and this Settlement Agreement may be referred to, and introduced, for that sole purpose and no other.

Article IX: Reservations

9.1 Agreement to or acquiescence in this Settlement Agreement shall not be deemed in any respect to constitute an admission by any Party that any allegation or contention made by any other Party in these proceedings is true or valid. In negotiating the Settlement Agreement, the Parties specifically agreed that the Settlement Agreement represents a negotiated agreement for the sole purpose of settling all issues in the captioned dockets. Except as expressly provided in this Settlement Agreement, no Party or affiliate of any Party shall be deemed to have

approved, accepted, agreed to, or consented to any fact, concept, theory, rate methodology, principle or method relating to jurisdiction, prudence, reasonable cost of service, cost classification, cost allocation, rate design, tariff provisions, or other matters underlying or purported to underlie any of the resolutions of the issues provided herein. The Commission's approval of the Settlement Agreement shall not constitute approval of, or precedent regarding, any principle or issue in these proceedings.

- 9.2 The resolution of any matter in this Settlement Agreement shall not be deemed to be a "settled practice" as that term was interpreted and applied in *Public Service Commission of the State of New York v. FERC*, 642 F.2d 1335 (D.C. Cir. 1980).
- 9.3 The discussions among the Parties that have produced the Settlement Agreement have been conducted on the explicit understanding that they were undertaken subject to Rule 602(e) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.602(e), and the rights of the Parties with respect thereto shall not be impaired by the Settlement Agreement.
- 9.4 The titles and headings of the various Articles in this Settlement Agreement are for reference purposes only. They are not to be construed or taken into account in interpreting this Settlement Agreement, and do not qualify, modify, or explain the effects of this Settlement Agreement.

Article X: No Protest or Appeal of Settlement; No Challenge to Rates

10.1 No Party shall:

- a. file comments or reply comments opposing this Settlement Agreement in whole or in part;
- b. seek rehearing of an order which approves this Settlement Agreement without condition or modification;
- c. appeal a final order which approves this Settlement Agreement without condition or modification;
- d. seek to set aside this Settlement Agreement or any provision thereof if approved without condition or modification; or
- e. challenge its applicability to such Party once it has become effective.

10.2 Pursuant to Rule 602(f)(3), 18 C.F.R. § 385.602(f)(3), any entity that chooses not to file comments within the time allowed for comments is deemed to have waived all objections to this Settlement Agreement. Therefore, such an entity may not seek rehearing or judicial review of the Commission order(s) approving this Settlement Agreement, or challenge any provision or rate put into effect by such order(s).

10.3 Nothing in this Settlement Agreement shall restrict the right of any Party to submit a complaint under Section 206 of the FPA seeking a Commission hearing to investigate (1) any aspect of the ISO's Tariff not covered by this Settlement Agreement, or (2) the ISO's implementation of any aspect of this Settlement Agreement.

Article XI: Successors and Assigns

11.1 The rights conferred and obligations imposed on any Party or other customer of the ISO by this Settlement Agreement shall inure to the benefit of or be binding on that Party's or customer's successors in interest or assignees as if such successor or assignee were itself a Party or customer.

Article XII: Execution in Counterparts

12.1 This Settlement Agreement may be executed in counterparts, each of which shall be deemed to be an original, but which together shall constitute one and the same instrument.

Article XIII: Parties' Rights and Obligations

13.1 Section 3.1.1 of this Settlement Agreement shall survive the nullification of the remainder of the Settlement Agreement unless Section 3.1.1 is specifically rejected by the Commission or a court.

13.2 If the Commission's approval of this Settlement Agreement is conditioned or the Settlement Agreement is modified in a way that significantly affects the benefits of this Settlement Agreement for any Party, it shall be considered to be accepted upon:

(a) acceptance by the Parties, other than the ISO, adversely affected by such condition or modification, who shall be deemed to have accepted it unless written notice of objection to and withdrawal from the Settlement Agreement, as modified or conditioned, is filed by such Party with the Commission and served on the other Parties:

(i) within a period of eight (8) days from the date of such order; or

(ii) if any Party has objected to or withdrawn from the Settlement Agreement under clause (i), within a period of thirteen (13) days from the date of such order;

and

(b) acceptance by the ISO, who shall be deemed to have accepted it unless within a period of twenty (20) days from the date of such order, written notice of objection to the Settlement Agreement, as modified or conditioned, is filed by the ISO with the Commission and served on the other Parties.

13.3 This Settlement Agreement shall survive the objection and withdrawal of any Party other than the ISO.

13.4 If the ISO provides notice of its objection and withdrawal pursuant to section 13.2(b), then this Settlement Agreement shall not become effective and it shall be a nullity for any and all purposes.

13.5 Failure of a Party to notify the other Parties and the Commission pursuant to Section 13.2 above shall be deemed agreement to the Settlement as modified or conditioned by such Party.

Article XIV: Giving Effect to Commission Opinion in Docket Nos. ER01-313-000, et al. During the Term of This Settlement Agreement

14.1 The ISO shall conform the rates, terms and conditions of the 2002 and 2003 GMC to the Commission's opinion in Docket Nos. ER01-313-000, *et al.*, except as provided in Section 14.2. If it appears that an opinion or reviewing court decision would result in the ISO's failure to recover or retain its gross revenue requirement during the term of this Settlement Agreement, the Parties shall meet within ten (10) days of the issuance of such an opinion or decision to determine if such an under-recovery or refunds would occur, were the opinion or decision to be

implemented. If such an under-recovery or refunds appear possible, the Parties shall determine how to modify this Settlement Agreement in a manner that will allow the ISO to recover or retain its gross revenue requirement during the term of this Settlement Agreement. The Parties shall have thirty days from the date of such Commission opinion or court decision to submit an amended settlement agreement to the Commission for approval. If Parties are unable to submit a modified settlement agreement to the Commission within 30 days of such an opinion or decision, and the ISO believes that it will under-recover or fail to retain its gross revenue requirement during the term of this Settlement Agreement without modification of the Settlement Agreement, the ISO shall implement the opinion or decision, but the ISO will be free to make a filing under Section 205 of the FPA in order to ensure the recovery of the gross revenue requirement during the term of this Settlement Agreement.

- 14.2 If a Commission order or reviewing court decision reduces the revenue requirement filed by the ISO in Docket Nos. ER01-313-000, *et al.*, such a reduction in an order or decision shall not affect the terms of this Settlement Agreement.
- 14.3 Should the 2001 GMC Initial Decision in Docket Nos. ER01-313-000, *et al.*, be reversed as to the propriety of PG&E's ability to pass through GMC costs to CAA customers, then provisions in this Settlement Agreement addressing PG&E's ability to pass through GMC costs shall be removed without otherwise affecting the Settlement Agreement. PG&E shall refund all amounts collected from CAA

customers pursuant to its GMC P-TT in 2002 to the extent directed by the Commission in Docket Nos. ER01-313-000, *et al.*

Article XV: Effective Date

15.1 This Settlement Agreement shall become effective upon issuance by the Commission of a Final Order approving this Settlement Agreement. For purposes of this Settlement Agreement, the term Final Order means a Commission order that is no longer subject to rehearing before the Commission. A Commission order shall be deemed a Final Order when the last date for filing an application for rehearing has expired and no application is filed by that date. If any application for rehearing is filed, a Commission order shall be deemed a Final Order when the Commission has acted on the merits of all requests for rehearing and no further requests for rehearing remain pending before the Commission.

WHEREFORE, the Sponsoring Parties respectfully request that the Commission approve this Settlement Agreement without condition or modification.

IN WITNESS WHEREOF, the Sponsoring Parties have agreed to and caused this Settlement Agreement to be duly executed by their duly authorized representatives on this 17th day of October, 2002.

CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION

BY _____

TITLE _____

DATE _____

PACIFIC GAS AND ELECTRIC COMPANY

BY _____

TITLE _____

DATE _____

SOUTHERN CALIFORNIA EDISON COMPANY

BY _____

TITLE _____

DATE _____

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused to be served the foregoing document upon each person designated on the official service list compiled by the Secretary in these proceedings.

Dated at Folsom, CA, this 18th day of June, 2004.

/s/ Gene L. Waas
Gene L. Waas