

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

**Cities of Anaheim, Azusa,  
Banning, Colton, and  
Riverside, California and  
City of Vernon, California  
("Petitioners")**

**v.**

**California Independent System  
Operator Corporation**

**Docket No. EL03-54-000**

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

August 27, 2003

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

Pursuant to the Commission's July 23, 2003 order in this proceeding,<sup>1</sup> the California Independent System Operator Corporation (the "ISO") hereby submits its Reply Brief.<sup>2</sup> The ISO contends that the Commission should affirm the Arbitration Findings and Award in Cities of Anaheim et al. v. the ISO & Southern California Edison, American Arbitration Association Case No. 71 198 00758 00.<sup>3</sup>

**OVERVIEW**

Pursuant to the Alternative Dispute Resolution procedures within the Commission-approved ISO Tariff, Petitioners and the ISO entered into arbitration regarding the ISO's allocation of the costs for Intra-Zonal Congestion Management dispatches between February and March 2000.<sup>4</sup> After a Stipulation, discovery, various rounds of pre-filed testimony, a hearing

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<sup>1</sup> Cities of Anaheim et al. v. California Independent System Operator Corp., 104 FERC ¶ 61,099 (July 23, 2003).

<sup>2</sup> References to testimony from the January 28, 2002 arbitration hearing are referenced as [Witness Name], Tr. at page number. References to arbitration exhibits include the exhibit's name, e.g., [Witness] Direct Testimony, at page number. All capitalized terms (e.g. Intra-Zonal Congestion, Reliability Must-Run, Scheduling Coordinator, and Voltage Support) refer to those terms as defined in the ISO Tariff.

<sup>3</sup> The Arbitrator issued the Arbitration Award on April 15, 2002. He issued his Findings of Fact and Conclusions of Law, which describe the basis for his Arbitration Award, on January 23, 2003.

<sup>4</sup> Southern California Edison timely intervened in the arbitration below in support of the ISO's position. City of Vernon timely intervened in the arbitration below in support of the other Southern Cities. Petitioners as a group are

and post-hearing briefing by all parties, the Arbitrator, an electrical engineer, found that the ISO had properly allocated the Intra-Zonal Congestion dispatch costs at issue to the Scheduling Coordinators, including Petitioners, within Zone SP-15.

Unhappy with the Award, which rejected their attempts to avoid payment for the properly allocated Intra-Zonal Congestion dispatch costs, Southern Cities petitioned the Commission for review. The Award should not be reviewed and should be affirmed, because Petitioners have not demonstrated that the Award is "contrary to or beyond the scope of the relevant ISO Documents, United States federal law, including, without limitation, the FPA, and any FERC regulations or decisions, or state law."<sup>5</sup> Moreover, this issue does not merit close review by the Commission: The dispatches happened more than three years ago and do not implicate broader regulatory issues. Petitioners are merely attempting to relitigate that which has been fully litigated below. To bolster their attempts to overcome the substantial deference standard afforded to the Arbitrator's Findings, Petitioners attempt to recast this issue as symptomatic of a trend at the ISO, by improperly misrepresenting both the Record and the ISO's arguments, and by erroneously asserting that the ISO mischaracterized, misallocated or misclassified costs.

The Record demonstrates that Petitioners did not and cannot refute the underlying critical factual determinations regarding the dispatches at issue: The dispatches were for increases in real power generation and increases in real power generation are consistent with Intra-Zonal Congestion Management, not Voltage Support. The Arbitration Award reflects the underlying Record, the Arbitrator's consideration of the evidence, his knowledge of electrical transmission and his factual determination that the dispatches at issue were for Intra-Zonal Congestion and were, therefore, properly allocated pursuant to the ISO Tariff to the Scheduling Coordinators,

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referred to as "Petitioners" or "Southern Cities." Petitioners' post-arbitration hearing briefs are referred to as "Southern Cities' Post-Hearing Initial Brief" and "Southern Cities' Post-Hearing Reply Brief." Petitioners' Initial Brief filed with the Commission on August 13, 2003 is referred to as "Petitioners' Initial Brief."

<sup>5</sup> ISO Tariff § 13.4.1. The ISO incorporates by reference its Motion to Intervene and Protest against the Petition for Review (filed with the Commission on March 11, 2003); Opposition to the Department of Water Resources' Motion to Intervene (filed with the Commission on March 31, 2003); Opposition to Petitioners' Motion to Answer and Answer (filed with the Commission on April 10, 2003); and Opposition to the Department of Water Resources' Answer (filed with the Commission on April 23, 2003).

who were not exempt as holders of Existing Transmission Contracts rights. The Arbitrator's Conclusions of Law and the resulting Award arise from the Arbitrator's Findings of Fact, which are afforded substantial deference. Therefore, the Award must be affirmed.

### **FACTUAL BACKGROUND**

Between February 7, 2000 and March 22, 2000, the ISO detected constraints in the system that caused congestion within Zone SP-15 and prevented the ISO from accepting all load and generation schedules.<sup>6</sup> The ISO Controlled Grid was experiencing localized Intra-Zonal Congestion,<sup>7</sup> which the ISO Tariff broadly defines as congestion occurring due to transmission system constraints within a Zone.<sup>8</sup>

To relieve the Intra-Zonal Congestion, the ISO assessed that it needed to dispatch specific units in the Southern California Edison (SCE) service territory.<sup>9</sup> Finding the economically efficient Reliability Must-Run (RMR) units unavailable, the ISO turned to other resources for the real time dispatches for increased real power generation.<sup>10</sup> Petitioners concede that the dispatches were for increased real power generation.<sup>11</sup> Dispatches for increases in real power generation are consistent with Intra-Zonal Congestion, not with Voltage Support.<sup>12</sup> Local area problems only causing voltage deficiency that have not escalated to transmission congestion are

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<sup>6</sup> ISO's Post-Hearing Initial Brief, at 2; ISO's Post-Hearing Reply Brief, at 3; Woertz Direct Testimony, at 2; Woertz Reply Testimony, at 4; Woertz, Tr. at 75.

<sup>7</sup> ISO's Post-Hearing Initial Brief, at 2-15; ISO's Post-Hearing Reply Brief, at 3-4. Woertz Direct Testimony, at 2; Woertz Reply Testimony, at 3-4; Intra-Zonal Congestion is the inability to accept all loads and generation schedules with a Zone. ISO Tariff, App. A. Definitions (Congestion and Intra-Zonal Congestion).

<sup>8</sup> ISO's Post-Hearing Initial Brief, at 3-4; ISO Tariff § 7.2.1.3; Rahman Direct Testimony, at 1-2.

<sup>9</sup> ISO's Post-Hearing Initial Brief, at 2; Stipulation No. 1.

<sup>10</sup> ISO's Post-Hearing Initial Brief, at 2, 15; ISO's Post-Hearing Reply Brief, at 3-4; see also ISO Tariff § 7.2.6.2 (real time Intra-Zonal Congestion); see also Stipulation Nos. 13, 14.

<sup>11</sup> See Southern Cities' Post-Hearing Initial Brief, at 3, 14-15. Similarly while cross-examining Woertz and Rahman, counsel for Petitioners emphasized that the dispatches were for increased real power generation. Woertz, Tr. at 97-99; Rahman, Tr. at 128. Moreover, Petitioners asserted that the dispatches were not decreases in real power generation. Southern Cities' Post-Hearing Initial Brief, at 15-16. See also ISO's Post-Hearing Reply Brief, at 3-4 (discussing Petitioners' concession that the dispatches were for increases in real power).

<sup>12</sup> ISO's Post-Hearing Initial Brief, at 5-6; ISO's Post-Hearing Reply Brief, at 3-4; Rahman Direct Testimony, at 2; Rahman, Tr. at 127-28, 135-36.

resolved through Voltage Support in which the real power generation is usually decreased.<sup>13</sup> Petitioners have not and cannot refute that increases in real power generation are consistent with Intra-Zonal Congestion.

The ISO can only allocate Intra-Zonal Congestion dispatch costs to the Transmission Owner if the Intra-Zonal Congestion dispatches were for an RMR unit under an RMR contract<sup>14</sup> or if the units were dispatched out of market (OOM).<sup>15</sup> In all other circumstances, the costs of relieving congestion within a Zone are allocated under the Tariff's Intra-Zonal Congestion procedures, which direct that the costs for Intra-Zonal Congestion Management dispatches must be allocated to all Scheduling Coordinators in proportion to their metered demand within the relevant Zone.<sup>16</sup>

Before April 12, 2000, if the ISO rejected an existing non-competitive bid and then called on resources OOM, the ISO allocated the costs according to the ISO Tariff's OOM settlement procedures.<sup>17</sup> Because the ISO had rejected available market bids before dispatching the units to relieve the Intra-Zonal Congestion, the ISO initially considered the dispatches at issue to be OOM and allocated the costs to SCE, the Transmission Owner, under the ISO Tariff's OOM procedures for Intra-Zonal Congestion.<sup>18</sup> In its April 12, 2000 Order, however, the Commission denied the ISO's request for rehearing and disallowed the ISO's request, in certain non-

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<sup>13</sup> Rahman Direct Testimony, at 2; Rahman, Tr. at 127-28, 135-36; Woertz, Tr. at 88; ISO's Post-Hearing Initial Brief, at 3-7; ISO's Post-Hearing Reply Brief, at 3-4.

<sup>14</sup> If the ISO addresses Intra-Zonal Congestion through dispatching RMR units, the RMR contracts and ISO Tariff provide that costs are to be allocated to the relevant Transmission Owner. ISO Tariff § 5.2.8; Stipulation No. 21; see also ISO's Post-Hearing Initial Brief, at 16 (discussing same); ISO's Post-Hearing Reply Brief, at 9 (discussing same).

<sup>15</sup> If the ISO resolves Intra-Zonal Congestion by dispatching units out of market, it may allocate the portion of those costs that exceeds market revenues to the Transmission Owner. ISO Tariff § 11.2.4.2.1; ISO's Post-Hearing Initial Brief, at 16, 18-22; ISO's Post-Hearing Reply Brief, at 8-9.

<sup>16</sup> Stipulation No. 21; ISO Tariff § 7.3.2; Woertz Direct Testimony, at 6; ISO's Post-Hearing Initial Brief, at 17; ISO's Post-Hearing Reply Brief, at 9.

<sup>17</sup> See ISO's Post-Hearing Initial Brief, at 18-20; Woertz Direct Testimony, at 6.

<sup>18</sup> Stipulation Nos. 6, 28; ISO Tariff § 11.2.4.2 ("In circumstances where an RMR unit would be used to resolve Intra-Zonal Congestion and there are no such RMR units available, a resource may be called upon and paid under this Section to resolve the Intra-Zonal Congestion.").

competitive situations, to reject an existing bid, call on resources OOM and pay those resources an OOM rate.<sup>19</sup>

The Commission's April 12th Order established that resources with existing bids are to be paid "as bid" if called upon to resolve Intra-Zonal Congestion, i.e., if market bids are available to address the Intra-Zonal Congestion, the ISO has to accept those bids and follow Intra-Zonal Congestion, not OOM, cost allocation procedures.<sup>20</sup> Petitioners have conceded that, pursuant to the Commission's Order, the dispatch charges at issue could not be considered OOM and therefore could not be charged to the Transmission Owner, because bids were available.<sup>21</sup> Following the Commission's Order and the ISO Tariff, the ISO therefore properly allocated the Intra-Zonal Congestion Management dispatch costs to the Scheduling Coordinators, including Petitioners, in the affected Zone.<sup>22</sup>

Petitioners are Existing Transmission Contract (ETC) rights holders.<sup>23</sup> The ISO Tariff specifically exempts ETC rights holders from Inter-Zonal Congestion charges (i.e. Usage Charges),<sup>24</sup> but not from Intra-Zonal Congestion charges (i.e., Grid Operation Charges).<sup>25</sup> Petitioners' arguments that the ETC rights holders were not subject to Intra-Zonal Congestion Management dispatch charges are undermined by their stipulation that the Commission in Docket No. ER98-3760 will address the authority of the ISO to impose Intra-Zonal Congestion

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<sup>19</sup> California Independent System Operator Corp., 91 FERC ¶ 61,026 (Apr. 12, 2000); Stipulation Nos. 15, 16; Woertz Direct Testimony, at 6. In its January 7, 2000 Order, the Commission held that the ISO Tariff required that if generators had submitted bids, the ISO must accept those bids and follow Intra-Zonal Congestion, not OOM, cost allocation procedures. California Independent System Operator Corp., 90 FERC ¶ 61,006 (Jan. 7, 2000).

<sup>20</sup> Stipulation No. 17; ISO's Post-Hearing Initial Brief, at 18-20; Woertz Direct Testimony, at 6.

<sup>21</sup> Southern Cities' Post-Hearing Initial Brief, at 16, 18; see also Woertz, Tr. at 74-76, 93, 103.

<sup>22</sup> ISO Tariff § 7.3.2; Stipulation Nos. 7, 16, 17, 18, 28, 29, 30; Woertz Direct Testimony, at 6-8. On May 9, 2000, the ISO issued a notice regarding a significant retroactive adjustment for trade months February and March 2000. Stipulation No. 8. This adjustment affected all participants with metered Demand (including exports) in Zone SP-15. Stipulation No. 9. Petitioners were impacted by the adjustment because their loads are scheduled with the ISO through a Scheduling Coordinator and are located in Zone SP-15. Stipulation No. 31.

<sup>23</sup> Nolff Direct Testimony, at 8; McCann Direct Testimony, at 5.

<sup>24</sup> Stipulation No. 27; ISO Tariff § 2.4.4.4.1.

<sup>25</sup> Nolff, Tr. at 58; ISO Tariff § 7.3.2.

charges on ETC rights holders.<sup>26</sup> Petitioners are participants in that Docket.<sup>27</sup> However, resolution of that issue is beyond the scope of the Arbitration regarding Dispatches between February 7, 2000 and March 22, 2000.

## STANDARD OF REVIEW

### **A. Pursuant To The ISO Tariff, The Arbitrator's Factual Findings Are Reviewed With Substantial Deference.**

As Petitioners concede and the Commission has stated, the ISO Tariff provides that the Arbitrator's Factual Findings are entitled to substantial deference.<sup>28</sup> In addition, the Commission has noted that it is "desirable and appropriate, if otherwise consistent with the public interest, to attempt to adhere to the results of a binding arbitration award because arbitration is a valuable way to avoid time-consuming and expensive administrative proceedings."<sup>29</sup> The Arbitrator's Findings have substantial support and relationship to the Arbitration Record, including the pre-filed testimony, ISO Tariff, hearing testimony, exhibits and briefs. Because the Record supports the Arbitration Award, the Award must be upheld.

Petitioners attempt to overcome the ISO Tariff's explicit substantial deference standard and the Commission's policy of affording deference to arbitration awards by ignoring the Arbitrator's Factual Findings and instead claiming that the ISO arbitrarily allocated costs and therefore acted contrary to Commission policy.<sup>30</sup> Petitioners cite NF&M Corp. v. United Steel Workers of America,<sup>31</sup> for the proposition that arbitration awards must be vacated "if an examination of the record before the arbitrator reveals no support whatever for his

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<sup>26</sup> Stipulation No. 33.

<sup>27</sup> Stipulation No. 34.

<sup>28</sup> See Petitioners' Initial Brief, at 7 n.3; Commission Orders, 101 FERC ¶ 61,235 (Nov. 22, 2002) & 104 FERC ¶ 61,099 (July 23, 2003); ISO Tariff § 13.4.2 ("The parties intend that FERC or the court of competent jurisdiction should afford substantial deference to the factual findings of the arbitrator.").

<sup>29</sup> Commission Policy Statement Regarding Regional Transmission Groups, 58 Fed. Reg. 41626, 41631 (1993) (citations and internal quotations omitted). The Commission gives appropriate deference to decisions that meet the standards of the Federal Power Act. Id. at 41632.

<sup>30</sup> Petitioners' Initial Brief, at 7-10.

<sup>31</sup> 524 F.2d 756 (3d Cir. 1975).

determinations."<sup>32</sup> In NF&M, the court expanded on the arbitrator's role and the limited review of arbitration awards:

An arbitrator is not required to list his reasons for the award, nor should an ambiguity in his opinion be seized upon to support an inference that he exceeded his authority. Further, a court is precluded from overturning an award for errors in assessing the credibility of witnesses, in the weight accorded their testimony, or in the determination of factual issues.<sup>33</sup>

The NF&M court then reviewed the Record and upheld the arbitration award because the award was derived in a rational way from the contract at issue and "other indicia of the parties' intentions" in the Record. 524 F.2d at 760. NF&M supports upholding the Arbitration Award at issue.

The Record demonstrates that the dispatches were for increases in real power generation and that increases in real power generation are consistent with Intra-Zonal Congestion Management, not Voltage Support. The Arbitrator found that the dispatches at issue were to address Intra-Zonal Congestion and that the ISO had therefore properly allocated the charges to the Scheduling Coordinators, within the relevant Zone (SP-15), including Petitioners. His Findings, which are supported by the Record, are afforded substantial deference. See United Paperworkers International Union, AFL-CIO v. Misco, Inc., 484 U.S. 29, 38 (1987) (Because the parties have bargained for the arbitrator's decision, "it is the arbitrator's view of the facts and of the meaning of the contract that they have agreed to accept."); McKesson Corp. v. Local 150 IBT, 969 F.2d 831, 833 (9th Cir. 1992) (arbitrator's decision must be upheld if shown to be plausible, "notwithstanding the erroneousess of any factual findings"); (Todd Shipyards Corp. v. Cunard Line, Ltd., 943 F.2d 1056, 1060 (9th Cir. 1991) ("arbitrator's decision must be upheld unless it is completely irrational"); Manhattan Coffee Co. v. International Brotherhood of Teamsters, 743 F.2d 621, 624 (8th Cir. 1984) ("any doubts are to be resolved in favor of the

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<sup>32</sup> Petitioners' Initial Brief, at 8-9 (quoting NF&M, 524 F.2d at 760). Petitioners cite to cases involving the Federal Arbitration Act, arbitration of labor issues and the National Railroad Adjustment Board. Id.

<sup>33</sup> 524 F.2d at 759 (citations omitted).

validity of the arbitrator's award").<sup>34</sup>

The Arbitrator's Conclusions of Law, which explicitly arise from his Factual Findings, are correct: The increased real power generation dispatches were to address Intra-Zonal Congestion and therefore the dispatch costs were properly allocated under the ISO Tariff to all Scheduling Coordinators in Zone SP-15. See, e.g., Arista Technologies, Inc. v. Arthur D. Little Enterprises, Inc., 27 F. Supp. 2d 162, 168 (E.D. N.Y. 1998) (when the Arbitrator does not provide a detailed explanation for his findings, the Court must confirm the decision "if a ground for the arbitrator's decision can be inferred from the facts of the case."). And, as the ISO demonstrated and the parties stipulated, the ISO Tariff did not specifically exempt ETC rights holders from Intra-Zonal Congestion dispatch charges.

Finally, Petitioners' claim that "basic fairness" dictates that the Commission address their evidence and arguments<sup>35</sup> rings false. Petitioners submitted pre-trial testimony, exhibits and post-hearing initial and reply briefs. Petitioners had the opportunity to examine and cross-examine the witnesses during the arbitration hearing. Petitioners specifically agreed upon the Arbitrator, the stipulated facts, the hearing time and length and the briefing method. The determinative factual issues were resolved against Petitioners by someone who, given his electrical engineering background, was particularly qualified.<sup>36</sup> This is not, therefore, a question of Petitioners suffering from any unfairness: Petitioners merely want to relitigate their claims, which is in violation of the basic purposes of arbitration: efficient and inexpensive resolution of claims.

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<sup>34</sup> These cases describe the "substantial deference" that is afforded arbitration awards. Here, ISO Tariff Section 13.4.2 specifically mandates that the Arbitrator's Factual Findings are to be given "substantial deference." Similar to this narrow substantial deference standard of review for Factual Findings, the Federal Arbitration Act establishes very limited grounds for review. 9 U.S.C. § 10.

<sup>35</sup> Petitioners' Initial Brief, at 9.

<sup>36</sup> The Arbitrator heard testimony from both sides, and the issues were extensively briefed. The parties chose the Arbitrator because of his electrical engineering background, which would give him the ability to understand the dynamics and electrical characteristics of transmission systems. The Arbitrator addressed both parties at the end of the hearing: "I wanted to thank you and compliment on what I thought was a very well-prepared case on both sides, and I appreciate [your] not repeating everything and so on because I do feel [that] I understand the jargon and that sort of stuff." Tr. at 157.

Based on extensive testimony and briefing, the Arbitrator made his Findings that the dispatches at issue were to address Intra-Zonal Congestion and therefore properly allocated under the Tariff's Intra-Zonal Congestion provisions. The Findings reflect the Arbitrator's consideration of the evidence, including the prepared testimony, testimony from the arbitration hearing, the ISO Tariff and the various exhibits introduced by each side. Simply put, Petitioners disagree with the Arbitrator's Findings and the Arbitration Award, because they reflect the ISO's position. Their disagreement, however, is not sufficient to invoke review of, let alone vacate, the Award. Arista Technologies, Inc. v. Arthur D. Little Enterprises, Inc., 27 F. Supp. 2d 162, 168 (E.D. N.Y. 1998) (party moving to vacate or modify an arbitration award "bears a heavy burden of proof"). Because the Record supports the Arbitrator's decision, the Award must be confirmed.

## ARGUMENT

**A. The Record Supports The Arbitrator's Finding That The Dispatches At Issue Were To Resolve Intra-Zonal Congestion And Therefore The Costs For The Dispatches Were Properly Charged Under The ISO Tariff's Intra-Zonal Congestion Provisions.**

The Arbitrator found that "[t]he laws of physics and good utility practice, as applied to operating the ISO power system during the relevant time period, resulted in voltage support actions related to Intra-Zonal Congestion Management." Arbitrator's Findings, at 2. This Factual Finding, which is supported by the Record, is afforded substantial deference under the ISO Tariff and Commission policy.

**1. The Record Indisputably Establishes That The Dispatches Were For Increases In Real Power Generation, Which Are Consistent With Intra-Zonal Congestion Management.**

The ISO's testimony included an explanation of the general management of transmission systems, and the interrelated nature of a transmission system's electrical characteristics.<sup>37</sup> One aspect of these electrical characteristics is that, what in the California ISO's Control Area are termed, Voltage Support and Intra-Zonal Congestion are points along the same electrical

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<sup>37</sup> See Rahman Direct Testimony, at 1-2.

continuum.<sup>38</sup> The ISO Tariff broadly defines Intra-Zonal Congestion to exist whenever the ISO is unable in real time to serve all generation and demand within the Zone; therefore, anything which prevents the ISO from implementing all schedules can be considered Congestion.<sup>39</sup> Insufficient voltage that limits the ISO's ability to meet generation and load schedules within a Zone is Intra-Zonal Congestion and actions taken to address the insufficient voltage are Intra-Zonal Congestion Management.<sup>40</sup> The dispatches at issue were to resolve a real-time constraint in Zone SP-15: Intra-Zonal Congestion.<sup>41</sup>

Brian Rahman, the ISO's technical witness and ISO Market Engineering Manager, a former power plant operator, transmission system operator and dispatcher, provided uncontroverted testimony that the ISO dispatches were for increases in real power generation and that increases in real power generation are consistent with Intra-Zonal Congestion Management, not Voltage Support.<sup>42</sup> Petitioners concede that the dispatches were for increased real power generation.<sup>43</sup> Insufficient voltage that escalates to cause Intra-Zonal Congestion, not just voltage deficiency, is relieved under Intra-Zonal Congestion Management procedures.<sup>44</sup> Local problems only causing voltage deficiency are resolved through Voltage Support and are not mitigated by such increases in real power generation but generally by decreases in generation.<sup>45</sup>

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<sup>38</sup> See Rahman Direct Testimony, at 1-2; Rahman, Tr. at 112-13; Woertz Direct Testimony, at 3; Woertz, Tr. at 95, 107; ISO's Post-Hearing Initial Brief, at 3-7; ISO's Post-Hearing Reply Brief, at 3-4.

<sup>39</sup> ISO Tariff, App. A. Definitions; Woertz Reply Testimony, at 2-3; Woertz, Tr. at 95, 107.

<sup>40</sup> Rahman Direct Testimony, at 1-2; Woertz Direct Testimony, at 3; Woertz, Tr. at 107-09; Rahman, Tr. at 112-13; ISO's Post-Hearing Initial Brief, at 4-5; ISO's Post-Hearing Reply Brief, at 3-4.

<sup>41</sup> Woertz Direct Testimony, at 2.

<sup>42</sup> Rahman Direct Testimony, at 2; Rahman, Tr. at 135-36; ISO's Post-Hearing Initial Brief, at 3-7; ISO's Post-Hearing Reply Brief, at 3-4.

<sup>43</sup> See ISO's Post-Hearing Reply Brief, at 4 n.10 (discussing same); Southern Cities' Post-Hearing Initial Brief, at 3, 14-16 (asserting that the dispatches were not decreases in real power generation); Woertz, Tr. at 97-99; Rahman, Tr. at 128 (emphasizing that the dispatches were for increased real power generation).

<sup>44</sup> Rahman Direct Testimony, at 2; ISO's Post-Hearing Initial Brief, at 3-7; ISO's Post-Hearing Reply Brief, at 3-4.

<sup>45</sup> Rahman Direct Testimony, at 2; Rahman, Tr. at 127-28, 135-36; ISO's Post-Hearing Initial Brief, at 3-7; ISO's Post-Hearing Reply Brief, at 3-4.

Contrary to Petitioners' continued misrepresentations,<sup>46</sup> the ISO has not and does not contend that Voltage Support and Intra-Zonal Congestion are synonymous. Given the characteristics of electrical transmission, Voltage Support and Intra-Zonal Congestion are, however, related and along the same continuum.<sup>47</sup> The ISO Tariff's classification of Voltage Support and Intra-Zonal Congestion does not mean that insufficient voltage cannot cause Intra-Zonal Congestion, nor can the classifications change the transmission system's electrical characteristics,<sup>48</sup> i.e. the "laws of physics," such as the interrelated nature of these electrical actions.<sup>49</sup>

The ISO presented unrefuted testimony that Intra-Zonal Congestion is generally addressed with increases in real power generation, whereas Voltage Support issues are usually addressed with decreases in real power generation. Petitioners concede that the dispatches at issue were for increases in real power generation. Based on the evidence, including the extensive testimony and briefing, and the ISO Tariff, the Arbitrator found that the dispatches at issue were for Intra-Zonal Congestion.<sup>50</sup> This Finding, which is supported by the Record and afforded substantial deference, must be upheld.

**2. Petitioners' Arguments Regarding Alleged Procedural Issues Do Not Change Or Address The Nature Of The Dispatches For Increases In Real Power Generation To Address Intra-Zonal Congestion.**

In order to argue against the Intra-Zonal Congestion Management dispatch charges, Petitioners avoid the nature of the dispatches at issue: increases in real power generation. Petitioners instead focus on procedural arguments that are ultimately irrelevant. Even if there

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<sup>46</sup> Southern Cities' Post-Hearing Initial Brief, at 13, 22 (erroneously stating that the ISO argues that Voltage Support and Intra-Zonal Congestion Management are synonymous); Petitioners' Initial Brief, at 18 (same).

<sup>47</sup> Rahman Direct Testimony, at 2; Rahman, Tr. at 112-13, 127-28; ISO's Post-Hearing Initial Brief, at 3; ISO's Post-Hearing Reply Brief, at 3.

<sup>48</sup> See Rahman Direct Testimony, at 2; Woertz Direct Testimony, at 3; Woertz, Tr. at 95, 107; ISO's Post-Hearing Initial Brief, at 3-7; ISO's Post-Hearing Reply Brief, at 3-4.

<sup>49</sup> Rahman, Tr. at 112-13; ISO's Post-Hearing Initial Brief, at 4-5; ISO's Post-Hearing Reply Brief, at 3-4.

<sup>50</sup> See also SCE's Post-Hearing Initial Brief, at 4-6, 11-14; SCE's Post-Hearing Reply Brief, at 3-6.

were a procedural irregularity, which there was not, it would not change the nature of the dispatches: increases of real power generation to address Intra-Zonal Congestion.

Notwithstanding any purported procedural irregularity, which the Record demonstrates did not occur, between February 2000 and March 2000 the ISO dispatched units to increase real power generation. The ISO's arbitration briefs and testimony refuted Petitioners' misguided arguments that asserted procedural irregularities somehow changed the nature of the dispatches from Intra-Zonal Congestion Management to Voltage Support. As the ISO demonstrated below,<sup>51</sup> there were no procedural irregularities and even if there were, they could not have changed the nature of the electrical dispatches: increases in real power generation.

Petitioners claim that the dispatches had to have been for Voltage Support because the ISO would have used the RMR units had they been available.<sup>52</sup> This claim is without merit. RMR units can be a source of more economic real power generation to address Intra-Zonal Congestion and are therefore economically efficient.<sup>53</sup> ISO Tariff Dispatch Protocol 7.4 specifically recognizes that the ISO may go to RMR units to address Intra-Zonal Congestion.<sup>54</sup> Accordingly, during the time period in question, the ISO first sought to dispatch the appropriate RMR units. Finding them unavailable, and needing to mitigate the Intra-Zonal Congestion, the ISO then followed Operating Procedure M-401 and Dispatch Protocol 8.4 by using the available market bids.<sup>55</sup> ISO executed the dispatches at issue pursuant to ISO procedures for addressing Intra-Zonal Congestion.

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<sup>51</sup> Ignoring the nature of the dispatches at issue, Petitioners erroneously focus on asserted procedural irregularities, which did not occur or reflect the Petitioners' misunderstanding of the ISO Tariff and applicable procedures. Petitioners' Initial Brief, at 11-18.

<sup>52</sup> Petitioners' Initial Brief, at 13; ISO's Post-Hearing Reply Brief, at 5-6 (refuting argument). The parties stipulated that dispatches to resolve Intra-Zonal Congestion can be for a local need or RMR units. See Stipulation No. 17 ("The Out-of-Market payment rates and cost allocation procedures approved by FERC in its January 7, 2000 order apply in situations where the ISO has Intra-Zonal Congestion and there are no existing bids (or RMR units) available that can assist in resolving the local need.").

<sup>53</sup> ISO's Post-Hearing Reply Brief, at 5-6.

<sup>54</sup> ISO's Post-Hearing Reply Brief, at 5-6.

<sup>55</sup> ISO's Post-Hearing Initial Brief, at 15; ISO's Post-Hearing Reply Brief, at 5-6.

The ISO fully addressed Petitioners' other asserted procedural irregularities in detail below<sup>56</sup> and summarizes its responses here:

- (1) Contrary to Petitioners' contentions, Intra-Zonal Congestion is seasonally dependent and can happen on a daily basis.<sup>57</sup>
- (2) In determining how to alleviate Intra-Zonal Congestion, the ISO considers aggregated, not specific, schedules.<sup>58</sup>
- (3) Under the ISO Tariff, Available Transfer Capacity (ATC) is relevant to the forward scheduling time period, i.e., not real time.<sup>59</sup> Under the ISO Tariff, Intra-Zonal Congestion is addressed initially through dispatches and ATC only becomes relevant if the dispatches fail to resolve the congestion.<sup>60</sup> ATC was not relevant here, because the dispatches were managing the Intra-Zonal Congestion in real time.
- (4) The ISO Tariff does not require adjustment of generation levels in incremental and decremental pairs.<sup>61</sup> In particular, when resolving Intra-Zonal Congestion, operators will generally increase generation without a matching decrease in generation.<sup>62</sup> Here, the ISO committed units to an increased minimum generation level to resolve a congested path; the units were free to generate above that level.<sup>63</sup>
- (5) Operating Procedure M-401 Section 1.2 only requires market notification if and when additional bids are necessary.<sup>64</sup> Here, additional bids were not necessary.
- (6) The ISO logs cannot change the Intra-Zonal Congestion Management nature of the dispatches at issue.<sup>65</sup> The logs within Exhibit H-2, the Operator Log, are

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<sup>56</sup> Woertz Reply Testimony, at 2-6; ISO's Post-Hearing Initial Brief, at 7-14; ISO's Post-Hearing Reply Brief, at 5-8.

<sup>57</sup> Woertz Reply Testimony, at 3-4; Rahman, Tr. at 116-17; ISO's Post-Hearing Initial Brief, at 8; ISO's Post-Hearing Reply Brief, at 8.

<sup>58</sup> Woertz Reply Testimony, at 3-4; ISO Tariff § 7.2.6.2; ISO's Post-Hearing Initial Brief, at 8-9; ISO's Post-Hearing Reply Brief, at 7.

<sup>59</sup> ISO Tariff, App. L, Dispatch Protocol 8.4 & 8.5; ISO's Post-Hearing Initial Brief, at 9; ISO's Post-Hearing Reply Brief, at 7.

<sup>60</sup> ISO Tariff, App. L, Dispatch Protocol 8.4 & 8.5; ISO's Post-Hearing Initial Brief, at 9; ISO's Post-Hearing Reply Brief, at 7.

<sup>61</sup> Woertz Reply Testimony, at 5-6; Woertz, Tr. at 84-85; ISO's Post-Hearing Initial Brief, at 10-12; ISO's Post-Hearing Reply Brief, at 7. Moreover, if there is any conflict between the ISO Tariff language and an Operating Procedure, the ISO Tariff takes precedence. Woertz, Tr. at 80; ISO's Post-Hearing Initial Brief, at 11-12; ISO's Post-Hearing Reply Brief, at 7.

<sup>62</sup> Rahman, Tr. at 129; Woertz, Tr. at 86; ISO's Post-Hearing Initial Brief, at 10-12; ISO's Post-Hearing Reply Brief, at 7.

<sup>63</sup> Rahman, Tr. at 127-29, 135; ISO's Post-Hearing Reply Brief, at 8.

<sup>64</sup> Woertz Reply Testimony, at 5; ISO's Post-Hearing Initial Brief, at 10; ISO's Post-Hearing Reply Brief, at 6-7.

<sup>65</sup> ISO's Post-Hearing Initial Brief, at 9-10, 13-14; ISO's Post-Hearing Reply Brief, at 6.

made by the Generation Dispatcher, whose main responsibility is the reliable operation of the system, not the characterization and allocation of the disputed charges.<sup>66</sup> The Record demonstrates that the logs within Exhibits H-2 and H-3 are consistent with the dispatch of Intra-Zonal Congestion Management.<sup>67</sup> Nonetheless, any inaccuracies in the logs would not change the nature of the dispatches at issue: dispatches for increased real power generation to relieve Intra-Zonal Congestion.<sup>68</sup>

The dispatches at issue were dispatches for real power generation increases, which are consistent with Intra-Zonal Congestion Management, not Voltage Support. In responding to the Intra-Zonal Congestion, the ISO followed its Tariff and dispatched resources accordingly. To characterize those dispatches as anything other than Intra-Zonal Congestion Management would be contrary to the nature of the dispatches, the ISO Tariff and Commission policy.

**3. Given His Finding That The Dispatches Were To Address Intra-Zonal Congestion, The Arbitrator Correctly Found That The Intra-Zonal Congestion Management Dispatch Costs Were Properly Allocated To All Scheduling Coordinators, Including Petitioners, In The Affected Zone.**

As the Record demonstrates and the Arbitrator found, the dispatches at issue were to address Intra-Zonal Congestion. Therefore, pursuant to the ISO Tariff, the ISO had to allocate the costs for Intra-Zonal Congestion Management to the Scheduling Coordinators, including Petitioners, in the affected Zone.<sup>69</sup>

Petitioners would rather the ISO not follow the Tariff and urge the ISO to somehow allocate the costs to the Transmission Owner, SCE. Under the ISO Tariff, however, there are only two instances in which the Intra-Zonal Congestion dispatches costs can be allocated to the Transmission Owner: (1) if the ISO resolves the Intra-Zonal Congestion by dispatching RMR units that are subject to RMR contract,<sup>70</sup> and (2) if the ISO resolves the Intra-Zonal Congestion

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<sup>66</sup> Rahman, Tr. at 134-35; ISO's Post-Hearing Initial Brief, at 13-14; ISO's Post-Hearing Reply Brief, at 6.

<sup>67</sup> ISO's Post-Hearing Initial Brief, at 13-14.

<sup>68</sup> Rahman, Tr. at 133-34; ISO's Post-Hearing Initial Brief, at 9-10, 13-14; ISO's Post-Hearing Reply Brief, at 6.

<sup>69</sup> Woertz Direct Testimony, at 2; Woertz, Tr. at 93; ISO Tariff § 7.2.1.3. Petitioners agree that in relieving Intra-Zonal Congestion, the ISO Tariff requires that the ISO charge Scheduling Coordinators in proportion to their meter demand and exports within the Zone at issue. Nolf, Tr. at 65-66.

<sup>70</sup> ISO Tariff Section 5.2.8 states that "costs incurred by the ISO under each Reliability Must-Run Contract shall be payable to the ISO by the Responsible Utility in whose Service Area the Reliability Must-Run Generating Units covered by such Reliability Must-Run Contract are located."

by dispatching units out of market (OOM). The dispatches at issue do not fit within either of these instances.

As the parties have stipulated, the dispatches at issue could not be characterized as RMR dispatches: The appropriate RMR units were unavailable and could not be dispatched to resolve the Intra-Zonal Congestion.<sup>71</sup> Nonetheless, Petitioners argued and continue to argue that the dispatches should be charged to the Transmission Owner under the Tariff's RMR provisions, even though no RMR units were dispatched.<sup>72</sup> This position directly conflicts with the ISO Tariff, the Commission's policy and the parties' stipulation that the ISO can only levy rates that it has on file with the Commission.<sup>73</sup>

Nor can the dispatches be allocated pursuant to the Tariff's OOM procedures. Prior to the Commission's April 12, 2000 Order, the ISO considered the dispatches at issue as OOM calls, a part of which is charged to the Transmission Owner.<sup>74</sup> Conversely, as the parties have stipulated, pursuant to the Commission's April 12th Order, if the ISO must call on a resource to resolve "Intra-Zonal Congestion and there are no existing bids (or RMR units) available that can assist in resolving the local need,"<sup>75</sup> the dispatches can be allocated according to the Tariff's OOM procedures.<sup>76</sup> Because bids were available, pursuant to the Commission's April 12, 2000 Order, the dispatches for increased real power generation to address the Intra-Zonal Congestion could

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<sup>71</sup> Stipulation No. 11 ("On many trade days from February 7th through March 22nd, 2000, the ISO dispatched units in the SCE service area to substitute for RMR units that became unavailable because they were either on scheduled maintenance or forced out of service.").

<sup>72</sup> Southern Cities' Post-Hearing Initial Brief, at 16-19 ("Alternatively, because the costs at issue were incurred to provide Voltage Support that normally would have been provided by RMR units that were not available, the costs could have been treated as RMR costs."); Petitioners' Initial Brief, at 21-23.

<sup>73</sup> Stipulation No. 26; Nolf, Tr. at 61 ("I believe that if [the ISO] has a course of direction that's delineated in the Tariff, they would have to follow that, that direction."); see also Southern Cities' Post-Hearing Initial Brief, at 3, 17 (acknowledging that the ISO cannot impose charges not permitted by the Tariff).

<sup>74</sup> Woertz Direct Testimony, at 6; ISO's Post-Hearing Initial Brief, at 21; Stipulation No. 14.

<sup>75</sup> Stipulation No. 17. Petitioners have therefore stipulated that dispatches to resolve Intra-Zonal Congestion can be for a local need.

<sup>76</sup> See also Southern Cities' Post-Hearing Initial Brief, at 15 (acknowledging that pursuant to the Commission's April 12th Order, the ISO could not charge the dispatches under the Tariff's OOM provisions because "the resources that were dispatched to replace the unavailable RMR units in SCE's area had submitted bids").

not be considered OOM (which would have charged a portion directly to the Transmission Owner, SCE) and were, therefore, required to be paid according to the Tariff's Intra-Zonal Congestion Management provisions (which charge all relevant Scheduling Coordinators).<sup>77</sup>

Similarly, the Department of Water Resources' groundless assertion that the ISO arbitrarily reallocated costs from OOM to Intra-Zonal Congestion must be disregarded.<sup>78</sup> The Department misstates the testimony at the Arbitration Hearing, selectively and incompletely cites to the Hearing Transcript, and makes the groundless claim that someone at the ISO revised dispatch logs to reallocate the costs from SCE to the Scheduling Coordinators, including Petitioners.<sup>79</sup> The Department relies on testimony that does not support its contention. Contrary to the Department's mischaracterizations, the witness specifically testified that his comments regarding any changes to a log had been in response to a theoretical question regarding settlement processes, and that no such review process had occurred in this case.<sup>80</sup> Counsel for Petitioners agreed and stated that the testimony "did not relate to this particular case."<sup>81</sup> The Department's misleading brief is premised on a mischaracterization of the Record and is therefore irrelevant.

The Arbitrator found that the dispatches at issue were for Intra-Zonal Congestion Management and therefore properly charged to the Scheduling Coordinators pursuant to the ISO

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<sup>77</sup> Stipulation No. 16; Woertz Direct Testimony, at 6-9; Woertz, Tr. at 74-76, 94, 103; ISO's Post-Hearing Initial Brief, at 20-22; ISO's Post-Hearing Reply Brief, at 8-9.

<sup>78</sup> Department of Water Resources' Initial Brief, at 5.

<sup>79</sup> Department of Water Resources' Initial Brief, at 5.

<sup>80</sup> Rahman, Tr. at 150-157.

Counsel (Morrison): ...Did you understand the question to be referring to a determination that was made by some person or persons of the ISO historically?

Rahman: No, I believed it was more of a theoretical question. If these were determined, then would they have been considered irrelevant?

Counsel (Blair): Let me make sure I understand, then. Sitting here today, do you know of any determination by anyone that the log entries reflected in Exhibit H-2 are incorrect?

Rahman: No.

Id. at 151.

<sup>81</sup> Tr. at 157.

Tariff. These Findings are supported by the Record and afforded substantial deference. The parties stipulated that the dispatches could not be allocated under the ISO Tariff's OOM provisions and the RMR units were not dispatched. Therefore, under the ISO Tariff the only manner available to allocate the costs of the Intra-Zonal Congestion Management dispatches was through the Intra-Zonal Congestion provisions. The Record supports the Arbitration Award and the Award must therefore be upheld.

**B. The Arbitrator Properly Found That During The Time Period In Question, Existing Transmission Contract Rights Holders Were Not Exempt From The ISO Charges For Intra-Zonal Congestion Management Costs.**

Petitioners concede that the ISO Tariff does not exempt ETCs from Intra-Zonal Congestion charges,<sup>82</sup> and that the ISO is bound to follow the ISO Tariff in allocating costs.<sup>83</sup> Petitioners, however, asked the Arbitrator to ignore the plain language of the Tariff, ignore that the issue was pending at the Commission and exempt them from the Intra-Zonal Congestion Management charges.<sup>84</sup> The Arbitrator rightfully found Petitioners' arguments lacking and found that ETC rights holders, including Petitioners, were not exempt from ISO charges for Intra-Zonal Congestion Management.<sup>85</sup>

The ISO Tariff exempts ETC rights holders from Inter-, not Intra-, Zonal Congestion Management charges.<sup>86</sup> ISO Tariff Section 2.4.4.4.1 provides: "The holders of Existing Rights and Non-Converted Rights will not be responsible for paying Usage Charges related to those rights, nor will they be entitled to receive Usage Change revenues related to those rights."

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<sup>82</sup> Southern Cities' Post Hearing Initial Brief, at 5 ("[T]he ISO Tariff does not contain an explicit provision exempting ETC rights holders from charges for Intra-Zonal Congestion . . ."); see also Nolf, Tr. at 60 (Q: ... There's no specific tariff exemption for ETC holders from these Intra-Zonal charges, correct? A: Correct.).

<sup>83</sup> Southern Cities' Post Hearing Initial Brief, at 3 ("[T]he ISO cannot impose charges that are not permitted by its Tariff."); Stipulation 26.

<sup>84</sup> Contrary to Petitioners' continued misleading suggestions (Southern Cities' Post-Hearing Initial Brief, at 21; Petitioners' Initial Brief, at 26), the Commission has not already decided this issue. The parties stipulated that the issue of whether the ETC holders are subject to Intra-Zonal Congestion Management charges was pending before the Commission. Stipulation No. 33.

<sup>85</sup> Arbitration Findings of Fact & Conclusions of Law, at 2-3; ISO's Post-Hearing Initial Brief, at 22-25; ISO's Post-Hearing Reply Brief, at 9-10; SCE's Post-Hearing Opening Brief, at 16-19; SCE's Post-Hearing Reply Brief, at 8-10.

<sup>86</sup> Stipulation No. 27; ISO Tariff § 7.3.2; Nolf, Tr. at 58.

Usage Charges are the amount that the ISO charges a Scheduling Coordinator for use of a specific congested Inter-Zonal interface.

The ISO Tariff specifically requires that the ISO recover redispatch costs for Intra-Zonal Congestion Management from all Scheduling Coordinators.<sup>87</sup> ISO Tariff Section 7.3.2, "Grid Operations Charge for Intra-Zonal Congestion," provides:

Scheduling Coordinators whose resources are redispatched by the ISO, in accordance with Intra-Zonal Congestion Management, will be paid or charged based on the Adjustment Bids or Imbalance Energy bids that they have provided to the ISO. The net redispatch cost will be recovered for each Settlement Period through the Grid Operations Charge, which shall be paid to the ISO by all Scheduling Coordinators in proportion to their metered Demands within the Zone with Intra-Zonal Congestion, and scheduled exports from the Zone with Intra-Zonal Congestion to a neighboring Control Area. (Emphasis added.)

Therefore, the ISO Tariff requires the ISO to bill all Scheduling Coordinators within the relevant Zone for Intra-Zonal Congestion Management charges. Accordingly, by design, the ISO scheduling, dispatch and settlement protocols do not have a mechanism for identifying whether ETC rights holders are using constrained Intra-Zonal facilities.<sup>88</sup>

On appeal, Petitioners argue that the terms of the ETCs do not allow the ISO to charge ETC rights holders for Intra-Zonal Congestion Management. Petitioners, however, did not include the ETCs in the Record below. ISO Tariff Section 13.4.2 mandates that the arbitration record shall not be expanded on appeal unless the reference is to "legal authority which did not exist at the time of the arbitrator's decision, or if such party contends the decision was based upon or affected by fraud, collusion, corruption, misconduct or misrepresentation." Petitioners' action does not fit within those two exceptions: the ETCs existed at the time of the arbitrator's decision and Petitioners have not contended that the decision was based on misconduct. Petitioners' improper attempt to expand the Record before the Commission by referring to ETCs filed in other Commission dockets<sup>89</sup> must be denied.

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<sup>87</sup> Five of the Southern Cities are their own Scheduling Coordinators. The sixth retains a Scheduling Coordinator.

<sup>88</sup> Woertz Direct Testimony, at 10.

<sup>89</sup> Petitioners' Initial Brief, at 25 n.12.

The plain language of the ISO Tariff requires the ISO to charge all Scheduling Coordinators, including Petitioners, for Intra-Zonal Congestion Management charges. Therefore, the Arbitrator properly found that during the time period at issue, "ETC holders were not exempt from ISO charges for such Intra-Zonal Congestion costs."<sup>90</sup> This Finding, which is entitled to substantial deference, must be upheld.

**C. Petitioners' Argument That There Is A Gap In The ISO Tariff Is Not Supported By The Record And Is Therefore Irrelevant.**

Petitioners argued unpersuasively below that the dispatches at issue were for Voltage Support and that the ISO Tariff does not address the recovery of costs for Voltage Support when RMR units are not available due to a supposed "gap."<sup>91</sup> Relying on their faulty premise, Petitioners then asserted and continue to assert that the ISO deliberately mislabeled the dispatches to avoid the purported "gap."<sup>92</sup> Petitioners are wrong. As the Record demonstrates there is no such "gap" in the Tariff. Moreover, if the dispatches for increased real power generation at issue had been to address Voltage Support, which they were not, the ISO would have had to charge the Scheduling Coordinators, including Petitioners, for the costs at issue.

Petitioners misstate the ISO's position and actions when they argue that: "If, as it claims, the ISO did not believe its Tariff permitted it to charge the dispatches, correctly, as Voltage Support, it should have recorded the costs at issue in a holding account and requested permission from the Commission to fill the Tariff gap."<sup>93</sup> Contrary to Petitioners' misstatement, the ISO has not asserted that there is a gap in the ISO Tariff.<sup>94</sup> The ISO did not charge the dispatches as Voltage Support because the dispatches were for Intra-Zonal Congestion Management.<sup>95</sup>

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<sup>90</sup> Arbitration Findings of Fact & Conclusions of Law, at 2.

<sup>91</sup> Southern Cities' Post-Hearing Initial Brief, at 14-16; Southern Cities' Post-Hearing Reply Brief, at 12-14.

<sup>92</sup> Southern Cities' Post-Hearing Initial Brief, at 3, 14-16.

<sup>93</sup> Petitioners' Initial Brief, at 19.

<sup>94</sup> ISO's Post-Hearing Initial Brief, at 25-28; ISO's Post-Hearing Reply Brief, at 10-12; Woertz, Tr. at 97.

<sup>95</sup> Stipulation No. 26 ("The ISO can levy only the rates that it has on file with the FERC.").

Nonetheless, if the dispatches had been consistent solely with Voltage Support, which they were not, the ISO would have had to charge the Scheduling Coordinators, including Petitioners, the same as for Intra-Zonal Congestion Management.<sup>96</sup> ISO Tariff Section 2.5.1, "Ancillary Services," lists Voltage Support as one of the enumerated Ancillary Services and establishes that the ISO is responsible for procuring Ancillary Services to ensure reliability and billing Scheduling Coordinators accordingly: "The ISO will calculate payments for Ancillary Services to Scheduling Coordinators and charge the cost to Scheduling Coordinators."<sup>97</sup> ISO Tariff Section 2.5.28 states that the cost of Voltage Support "shall be allocated to Scheduling Coordinators as described in Sections 2.5.28." And, as Petitioners have conceded, pursuant to ISO Tariff Section 2.5.28.5, Voltage Support not handled through an RMR contract would be charged to the affected Scheduling Coordinators.<sup>98</sup> Under the plain terms of ISO Tariff Section 2.5.28.5, and assuming that the dispatches were consistent with Voltage Support, the ISO would have properly charged the Scheduling Coordinators for Voltage Support.<sup>99</sup>

Ironically, assuming that the dispatches at issue were for Voltage Support, which they were not, when confronted with Tariff provisions providing that Scheduling Coordinators would have had to pay for Voltage Support in this situation, Petitioners asserted that because the ISO

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<sup>96</sup> Woertz, Tr. at 97, 106-07.

<sup>97</sup> ISO Tariff § 2.5.1; see also ISO Tariff § 2.2.6.7 (Scheduling Coordinators are to provide Ancillary Services in accordance with Section 2.5).

<sup>98</sup> Nolff, Tr. at 53-54.

<sup>99</sup> Petitioners attempted to cloud the issue by arguing that ISO Tariff Section 2.5.18 does not allow for allocating the Voltage Support costs to the Scheduling Coordinators because that Section only applies to decrements in real power output. Southern Cities' Post-Hearing Initial Brief, at 15-16. Therefore, Petitioners argued that the Voltage Support costs could not be allocated because they were for increases in real power generation. Id.

As the ISO demonstrated below, Section 2.5.18, along with Section 2.5.27, only provides for calculating the opportunity cost of decrementing real power: It does not address or calculate the dispatch of costs for increasing real power or increasing or decreasing reactive power. Given that the dispatches at issue did not involve decrementing real power, Section 2.5.18 is irrelevant. Therefore, the ISO would have properly referred to ISO Tariff § 2.5.28, which provides how to charge for Voltage Support dispatches. ISO's Post-Hearing Reply Brief, at 11-12; Woertz, Tr. at 106-07.

As noted below, Petitioners' arguments regarding Section 2.5.18 and the increases in real power generation, underscored that the dispatches at issue were for increases in real power generation. ISO's Post-Trial Reply Brief, at 11 n.71.

would have mislabeled the charges as Intra-Zonal Congestion Management, they should not have to pay.<sup>100</sup> On appeal, Petitioners do not and cannot refute the relevant Tariff provisions, which demonstrate that even if the Petitioners' erroneous claim were found to be true, it would not have changed the Dispatch cost allocation. Avoiding the issue, Petitioners merely contend that "if the Tariff section were applicable to recovery of Voltage Support costs," the ISO should have billed the costs as Voltage Support.<sup>101</sup> This misses the point: The ISO properly charged the dispatches under the Tariff's Intra-Zonal Congestion provisions. As the Record demonstrates, in the alternative, Petitioners' efforts to avoid paying for Voltage Support dispatches are similarly without merit.

## CONCLUSION

Southern Cities' petition of the Award is nothing more than an attempt to relitigate that which has been fully litigated below. Through misstatements and hyperbole, Petitioners hope to make this issue something that it is not in order to urge the Commission to review the Award and to overcome the substantial deference standard. Petitioners use the alleged and nonexistent "gap" as their linchpin and attempt to create a fictional world in which the ISO in its effort to avoid this (nonexistent) gap, misallocated the Intra-Zonal Congestion dispatch costs.<sup>102</sup> This unfounded reasoning and conclusion permeate Petitioners' brief and must be rejected.

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<sup>100</sup> Southern Cities' Post-Hearing Initial Brief, at 16 n.6.

<sup>101</sup> Petitioners' Initial Brief, at 20 n.9.

<sup>102</sup> Southern Cities' Initial Brief, at 24.

Pursuant to the ISO Tariff's Alternative Dispute Resolution provisions, the ISO and Petitioners entered into the arbitration process and chose an electrical engineer as the Arbitrator. The parties fully litigated the issues below through the pre-filed testimony, exhibits, hearing and extensive post-hearing briefing. Petitioners did not and cannot refute that the dispatches for increases in real power generation are consistent with Intra-Zonal Congestion Management. Neither can Petitioners argue that the cost allocation they desire is permitted either by the ISO Tariff or by RMR contract. The Arbitrator found that the dispatches at issue were for Intra-Zonal Congestion Management and that the ISO had properly allocated the dispatch costs to the Scheduling Coordinators, who were not exempt as ETC rights holders. The Arbitration Award and its underlying Factual Findings, which are afforded substantial deference, are supported by the Record and must therefore be upheld.

Charles F. Robinson,  
General Counsel  
Stephen A. S. Morrison  
Corporate Counsel  
The California Independent System  
Operator Corporation  
151 Blue Ravine Road  
Folsom, CA 95630  
Tel: (916) 351-2207  
Fax: (916) 351-4436

Charles M. Sink  
Julie E. Grey  
Attorneys for The California Independent  
System Operator Corporation  
Farella Braun & Martel LLP  
Russ Building, 30th Floor  
235 Montgomery Street  
San Francisco, CA 94104  
Tel: (415) 954-4400  
Fax: (415) 954-4480

Respectfully submitted,

/s/ Charles M. Sink  
Charles M. Sink  
Farella Braun & Martel LLP  
Russ Building, 30th Floor  
235 Montgomery Street  
San Francisco, CA 94104

Dated: August 27, 2003

**CERTIFICATE OF SERVICE**

I hereby certify that I have this 27<sup>th</sup> day of August, 2003, caused a copy of the foregoing document to be sent by first class mail to each person designated on the official service list compiled by the Secretary.

/s/ Julie E. Grey

Julie E. Grey  
Farella Braun & Martel LLP  
Russ Building, 30<sup>th</sup> Floor  
235 Montgomery Street  
San Francisco, CA 94104