UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

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

REPLY BRIEF OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION

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Dated: January 10, 2005

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Pursuant to the procedural schedule adopted in this proceeding, the California Independent System Operator Corporation ("ISO")[1] submits its Reply Brief. The ISO's positions will be presented under headings in the Joint Narrative Stipulation of Issues adopted in this proceeding.

I. What Factors Should Be Considered And What Standards Should Be Applied In Determining Whether The Transmission Revenue Requirements ("TRRs") Of The Cities, For Purposes Of Developing The ISO's Access Charges, Should Include Costs, In Whole Or In Part, Associated With Their STS, NTS, And Related LADWP Contract Entitlements?

In its Initial Brief, the ISO explained that the Commission has established a two-part test governing the determination of whether facilities of a Participating Transmission Owner ("Participating TO") should be included in its Transmission Revenue Requirement ("TRR"). First, the facility must be under ISO Operational

[1] Capitalized terms not otherwise defined herein are defined in the Master Definitions Supplement, ISO Tariff Appendix A, as filed August 15, 1997, and subsequently revised.

Control. *Pacific Gas and Electric Co.*, Opinion No. 466, 104 FERC ¶ 61,226 at P 13 (2003).[2] Second, the facility must be an integrated network facility. *Pacific Gas and Electric Co*., Opinion No. 466-A, 106 FERC ¶ 61,144 at P 10, 22 (2004). " '[A]ny degree of integration is sufficient' " to justify rolled-in rate treatment. *Pacific Gas and Electric Co*., Opinion No. 466-B, 108 FERC ¶ 61,297 (2004) at P 19.[3]

The Commission has also stated, "Transmission facilities are presumed to be part of the integrated network and thus should be rolled in unless there is a special circumstance (such as lack of a fully integrated network, facilities so isolated from the network that they are and will remain non-integrated, or customer-specific distribution facilities that are not supportive of the network)." *Northeast Texas Electric Cooperative, Inc, et al.*, Opinion No. 474, 108 FERC ¶ 61,084 (2004), P 9 at n. 13. Thus, the test of network integration that the Presiding Judge must apply is whether any participant has shown such special circumstances that the Presiding Judge must conclude that Anaheim's and Riverside's ("Cities'") Southern Transmission System ("STS") and Northern Transmission System ("NTS") Entitlements are not integrated with the ISO's network *to any degree*. *Only then* may the Presiding Judge conclude that the Cities are not entitled to include in the TRRs the costs associated with those Entitlements on the basis that the Entitlements are not integrated network facilities.

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[2] In her decision in *City of Vernon*, 109 FERC ¶ 63,057 at P 49 (2004), the Presiding Judge focused on this first test. Although the ISO does not agree with all of the conclusions of the Initial Decision, it does agree that Operational Control is the prerequisite to inclusion in the TRR.

[3] Q*uoting Northeast Texas Electric Cooperative, et al*., Opinion No. 474, 108 FERC ¶ 61,084, at P 48 & n.66 (2004) (emphasis supplied by Order No. 466-B), *citing American Electric Power Service Corp*., Opinion No. 311, 44 FERC ¶ 61,206 at 61,478 (1988), *reh'g denied*, Opinion No. 311-A, 45 FERC ¶ 61,408 (1988), *reh'g denied*, Opinion No. 311-B, 46 FERC ¶ 61,382 (1989).

Finally, the ISO explained that, once it is determined that a facility is properly included in a Participating TO's TRR, the Presiding Judge may not reduce the TRR by "analogy" to adjustments set forth in the ISO Tariff. Any reduction in the TRR must be limited to the ISO Tariff definition of Transmission Revenue Requirement.

Neither the Public Utilities Commission of the State of California ("CPUC") nor the California Department of Water Resources-State Water Project ("SWP") address the definitive Commission precedent on these issues.

A. The CPUC Would Have the Presiding Judge Disregard Commission Policy and Precedent.

The CPUC provides a basic primer of energy law to urge the Presiding Judge to undertake a broad-based "cost-causation" review of the Cities' TRRs for the STS and NTS. The CPUC would have the Presiding Judge write on a blank slate, ignoring and undermining the precedent and principle that the Commission has developed, and the Courts have endorsed, to ensure that rates are just and reasonable. As an initial matter, the CPUC would have the Presiding Judge ignore the fact that the ISO Tariff, including the transmission Access Charge, is a filed rate, accepted and approved by the Commission. *See California Indep. Sys. Operator Corp.*, Opinion No. 478, 109 FERC ¶ 61,301 (2004); *California Indep. Sys. Operator Corp.,* 91 FERC ¶ 61,205 (2000). The Commission has approved "cost shifts" resulting from TRRs that were incurred prior to joining the ISO as just and reasonable as part of that tariff. Once a rate is accepted by the Commission, the "filed rate doctrine" dictates that it is determinative. *Montana-Dakota Utilities Co. v. Northwestern Public Service Co.*, 341 U.S. 246 (1951); *FPC v. Sierra Pacific Power Co*., 350 U.S. 348, 353 (1956); *Atlantic City Elec. Co. v. FERC*,

295 F.3d 1, 10 (D.C. Cir. 2002). The Commission has not set the ISO Tariff for hearing in this proceeding.

Contrary to the implications of the CPUC, the Presiding Judge is not writing on a blank slate. The Presiding Judge cannot apply new theories of cost-causation in evaluating the Cities' TRRs, assigning the costs of transmission lines only to those that use them. Commission precedent and principles, not the CPUC's desire to insulate the ratepayers under its jurisdiction from a fair share of the costs of the transmission network, govern transmission pricing. As the Commission affirmed in Opinion No. 466-B, in response to a challenge by the SWP:

> [T]he Commission has generally and routinely authorized rolled-in pricing for transmission facilities. Indeed, in a decision issued on July 29, 2004, the Commission emphasized that, in determining whether the costs of facilities should be rolled into transmission rates,
>
> > [i]t is still our policy, as it has been for many years, to prohibit direct assignment of network facilities. Due to the integrated nature of the transmission network, network facilities benefit all network users.
>
> As Opinion No. 466-A also explained, our policy concerning rolled-in pricing for transmission facilities has been repeatedly affirmed by the courts. As recently as July 16, 2004, the District of Columbia Circuit once again upheld the application of the rolled-in methodology for transmission pricing. In so doing, the court emphasized that it has "never required a ratemaking agency to allocate costs with exacting precision." Thus, to the extent that [SWP's] argument here is that rolled-in pricing must be rejected because a subfunctionalized method might arguably more precisely allocate costs, its claim has already been rejected.

108 FERC ¶ 61,297 at P 14-15. The Presiding Judge must indeed be guided by cost causation, but the relevant principles of cost causation are those embodied in Opinions No. 466, 466-A, and 466-B.

B. SWP Ignores Relevant Commission Precedent.

Like the CPUC, SWP ignores the principles that the Commission itself has applied to determine whether facilities should be included in a Participating TO's TRR.[4] Instead, SWP contends that the Presiding Judge should consider whether the ISO's rates are just and reasonable and non-discriminatory (citing *Pacific Gas & Electric Company v. FERC,* 306 F.3d 1112 (D.C. Cir. 2002)); whether the facilities are used and useful; and whether the applicable criteria of the ISO Tariff and the Transmission Control Agreement have been met.

The first criterion is so overly broad as to be useless. While it is true that the ultimate issue is whether the ISO's transmission Access Charge, with the inclusion of the costs related to the STS and NTS, is just and reasonable, SWP's statement of the issue provides the Presiding Judge with no guidance.

It bears repetition that the ISO's Access Charge formula rate is *not* in any manner at issue in this hearing. In *Pacific Gas & Electric v. FERC,* the Court concluded only that the Commission must review whether the inclusion of a non-jurisdictional Participating TO's TRR would render the charge that results from the formula unjust and unreasonable. 306 F.3d at 1116. In this proceeding, the only issue before the

[4] SWP does address Order No. 466-A briefly in response to Issue V, suggesting that the Commission's statement that TRRs will be addressed in individual rates cases provides a basis for ignoring the Commission's reiteration of its commitment to rolled-in pricing of transmission facilities. SWP Br. at 60. Opinions No. 466-A and 466-B make it very clear that such is not the case.

Presiding Judge is whether the inclusion of the costs associated with the STS and NTS in the Cities' TRRs would render the ISO's access charge that results from the formula rate unjust and unreasonable. *City of Azusa, et al.*, 105 FERC ¶ 61,293 at P 5 (2003).

Contrary to SWP's argument, the ISO does not bear a burden of proving that the ISO's Access Charge will be just and reasonable after the inclusion of the costs associated with the STS and NTS in the Cities' TRRs. Because the ISO's Access Charge is a formula rate that has been approved by the Commission, the Federal Power Act does not require a Section 205 filing for a rate change unless the Commission has specified such a requirement (which it has not). *Public Util. Comm'n of Cal. v. FERC,* 254 F.3d 250, 254 (D.C. Cir. 2001). Neither the Commission nor the ISO Tariff requires that the ISO make a Section 205 filing to adjust its transmission Access Charge when the TRR of a non-jurisdictional Participating TO (or a jurisdictional Participating TO, for that matter) is established or modified. While *Pacific Gas & Electric v. FERC* required that the Commission review the results of the TRR of a non-jurisdictional Participating TO under the Section 205 "just and reasonable" standard, it specifically did not impose any procedures upon the Commission or establish any burden on the ISO.

In fact, the ISO did not initiate this proceeding under Section 205. Cities initiated the proceeding in a petition for a declaratory order, specifically noting that they were not subject to the Commission's Section 205 jurisdiction. Whether Cities or those challenging their TRRs carry the burden of proof in such circumstances appears to be an issue of first impression. In *City of Vernon*, 109 FERC ¶ 63,057 at PP 28-29, the Presiding Judge determined that a non-jurisdictional Participating TO was due some

deference in the review of its TRR, with the degree of deference dependent upon the circumstances under which the TRR was developed. Such deference suggests that the burden may be on those challenging the TRR.

This proceeding, however, with its single issue of whether the STS and NTS should be included in the Cities' TRRs, presents particular circumstances. As the ISO has noted in its Initial Brief, the Commission has already approved the transfer of the STS and NTS to the ISO's Operational Control, *California Independent System Operator Corp.,* 102 FERC ¶ 61,058 (2003), and, as noted above, transmission facilities are presumed to be part of the integrated network and thus should be rolled in unless there is a special circumstance, *Northeast Texas Electric Cooperative* 108 FERC ¶ 61,084 (2004), P 9 at n. 13. Under such circumstances, it would appear appropriate to place the burden on those asserting the existence of such a special circumstance and, on that basis, challenging the inclusion of the STS and NTS in the Cities' TRRs. Ultimately, however, the resolution of this issue is not critical, because the evidence establishes that the STS and NTS are integrated network facilities eligible for inclusion in the Cities' TRRs.

SWP's contention that the facilities must be used and useful is also of little assistance. SWP contends that "because much of the Cities' TRRs for the STS and NTS represent costs for facilities which the ISO and other market participants do not or cannot currently use, they should be excluded from the Cities' TRRs." SWP Br. at 11. As an initial matter, SWP does not, and cannot, point to any precedent suggesting that costs are disallowed because customers "do not" use the facilities in question. More generally, the "used and useful" doctrine is simply not applicable to the circumstances of

this proceeding. The doctrine simply requires that a facility be used to provide service. *NEPCO Municipal Rate Comm. v. FERC*, 668 F.2d 1327, 1330 (D.C. Cir. 1981). There is no question that the STS and NTS are being used to provide service. The ISO is unaware of any instance in which the Commission has employed the used and useful test, or even suggested that the test was applicable, to disallow costs because a transmission line was derated or a generating unit was operating at less than capacity.[5]

SWP's suggestion that the Presiding Judge apply a prudence standard, SWP Br. at 10-11, is similarly off-point. A party challenging prudence has the burden of proof. *Wisconsin Electric Power Co*., 73 FERC ¶ 63,019 (1995). In order to demonstrate a lack of prudence, SWP would need to show that a reasonable transmission provider would not incur the additional costs represented by the costs associated with the NTS and the STS in order to obtain for ISO Market Participants at non-pancaked rates the transmission access represented by those facilities. To do so would require some showing of replacement or market value of the transmission capacity provided by the transmission facilities. There is no such evidence in this proceeding and thus no relevance of the prudence standard.

The only relevant standard that SWP offers is that the STS and NTS must meet the applicable requirements of the ISO Tariff. SWP Br. at 12. It is noteworthy that SWP attempts to read out of the Transmission Control Agreement the fact that under those

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[5] Moreover, the used and useful test does not preclude recovery of Construction-Work-in-Progress or the costs of a prudently prematurely retired plant, *see Town of Norwood v. FERC,* 80 F.3d 526, 533 (D.C. Cir. 1996). This suggests that even if the test were relevant (which it is not), it would be appropriate to include the costs related to the STS and NTS in the Cities' TRRs while the ISO revised its Congestion Management procedures.

provisions it is the responsibility of the ISO to determine whether technical considerations preclude the integration of a facility into the ISO Controlled Grid. *Id.*

SWP also contends that Cities failed to turn all of their facilities over to the ISO because the STS and NTS are encumbered by a contract with Deseret. SWP Br. at 13-14. This is a red herring. The ISO Tariff contemplates that facilities and Entitlements turned over to the ISO's Operational Control may have Encumbrances such as Existing Contracts. There are multiple sections of the ISO Tariff that address the treatment of Existing Rights under the ISO Tariff. *See* ISO Tariff §§ 2.4.3 – 2.4.4.5.4. In addition, the TCA provides Participating TOs to provide notice of Existing Contracts that encumber their transmission, and both Anaheim and Riverside included this in Appendix B of the TCA. Indeed, SWP, as an Existing Rights holder, has engaged in protracted litigation regarding its rights under its Existing Contracts, which are Encumbrances on Southern California Edison's and Pacific Gas and Electric Company's facilities. *See, e.g., California Indep. Sys. Operator Corp.*, Opinion No. 478, 109 FERC ¶ 61,301 (2004).

In section V of its Brief, SWP turns to Orders No. 2003 and 2003-A in an attempt to avoid the conclusion that network facilities must be rolled-in. It cites exceptions to the rule that Network Upgrades must be rolled in, such as an instance when the customer receives congestion rights. SWP Br. at 59. Of course, the transfer of the STS and the NTS to the ISO's Operational Control is not an Interconnection, and the STS and the NTS are not Network Upgrades, so SWP's authority is entirely off-point. Moreover, the purpose of providing free FTRs to New Participating TOs is to provide an incentive to New Participating TOs to join the ISO. *See, e.g., California Independent System*

Operator Corp., Opinion No. 478, 109 FERC 61,301 (2004) at P 33. This incentive would be completely destroyed if the New Participating TOs were denied the opportunity to recover their TRR. SWP's references are entirely off-point.

C. Edison's Proposed Reduction If a Integrated Network Facility Is Less Than Fully Usable Violates the Filed Rate Doctrine

Southern California Edison ("SCE") discusses a two-step process for calculating a TRR. For the first step, SCE proposes reliance on the test for acceptance of facilities as set forth in the Transmission Control Agreement. SCE Br. at 11-12. As the ISO noted in its Initial Brief, the standard in the Transmission Control Agreement reflects the Commission's test for integrated network facilities, such that any facility under the ISO's Operational Control should meet that test.

As a second test, SCE argues that the TRR should be reduced to the extent that a facility is not usable by Market Participants, analogously to the manner in which a TRR is reduced by revenues from an Encumbrance. SCE Br. at 17. As the ISO noted in its Initial Brief, there is no provision in the ISO Tariff for such a reduction. The ISO Tariff applies a Transmission *Revenue* Credit against the TRR. ISO Tariff Section 7.1, ISO Tariff Appendix A, Master Definitions Supplement. This is a credit for revenue received, not a capacity credit. Under the filed rate doctrine, "[A party] can claim no rate as a legal right that is other than the filed rate, whether fixed or merely accepted by the Commission, and not even a court can authorize commerce in the commodity on other terms." *Montana-Dakota*, 341 U.S. at 251. Therefore, the only applicable standards are those the ISO has described or, in the alternative, the comparable standard set forth as SCE's first step.

II. Should the Cities' STS, NTS, And Related LADWP Contract Entitlements Be Considered Network Facilities Or Direct Assignment Facilities?

A. SWP Presents No Argument or Evidence that the STS, NTS, and Related LADWP Contract Entitlements Should be Considered Direct Assignment Facilities.

SWP asserts that the STS and NTS must be shown to be network facilities, and discusses standards for determining whether they are network facilities, but presents no evidence or arguments as to why they should not be considered network facilities. As discussed in the ISO's Initial Brief and above, transmission facilities are presumed to be part of the integrated network and thus should be rolled in unless there is a special circumstance, Opinion No. 474, 108 FERC ¶ 61,084 (2004), P 9 at n. 13. SWP has shown no special circumstance.

Moreover, the standards SWP discusses are inapt. SWP relies on *Mansfield Municipal Electric Department et al. v. New England Power Company*, Opinion No. 454, 97 FERC ¶ 61,134 (2001). SWP Br. at 16. As discussed in the ISO's Initial Brief, the Commission stated in Opinion No. 474 that the manner in which the *Mansfield* factors were applied in *Mansfield* was to be used in special circumstances to establish the lack of integration, not the existence of integration. Opinion No. 474 at P 51. SWP also relies upon *Consumers Energy Company,* 86 FERC ¶ 63,004 (1999), *aff'd,* 98 FERC ¶ 61,333 (2002). SWP Br. at 17-18. The Commission has clarified that the *Consumers Energy* test was used to determine whether *customer-owned* facilities were eligible for transmission service credits, and that the test is not relevant to the determination of whether a facility of the *transmission provider* is a network facility.

Finally, even though the matter was fully addressed in hearing, Tr. 1080-82, SWP persists in arguing that the ISO "recognizes" that under Paragraphs 749 and 750

of Order No. 2003, as well as Articles 9.9.2 and 11.6 of the pro forma LGIA contained in Order No. 2003-A and the LGIA,[6] "there are circumstances in which even 'sole use' Interconnection Facilities may be utilized by the transmission provider or third parties." SWP Br. at 19. SWP witness Marcus conceded that Paragraph 749 of the Order No. 2003-A did not state that Interconnection Facilities could be used to provide transmission service. Tr. 1080:25 – 1081:3. Paragraph 750 concerns standby power arrangements and backup power arrangements for generating units. Order No. 2003, P 750.

Nothing in Order No. 2003 suggests that the "other services" that may be provided are transmission services. In reference to the particular services that may be provided under Article 9.9.2, the Commission refers to the housing of fiber optic circuits. Order No. 2003 PP 577-78. Article 11.6 is concerned with reactive power provided under Article 9.6.3, power and reactive power provided during emergencies under Article 9.6, and other emergency services under Article 13.5.1. As the Commission has already informed SWP, nothing in Orders No. 2003 and 2003-A marks a departure from the Commission's policies on rolled-in pricing.

B. The IPP-Lugo Branch Group Cannot Be a Direct Assignment Facility

There is an old expression: If you don't like the answer, change the question. SWP began this process by contending to the Commission that the STS and NTS were

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[6] Because Order No. 2003 and the ISO's Large Generator Interconnection Agreement Filing ("LGIA") address issues concerning costs assignment in connection with the interconnection of new generating units, the standards are not directly applicable to this proceeding. *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, Stats. & Regs. ¶ 31,146, 68 Fed. Reg. 49,846 (August 19, 2003) ("Order No. 2003").

generation ties. *See California Indep. Sys. Operator Corp.,* 107 FERC ¶ 61,150 at PP 10-11 (2004). The issue set for hearing is whether the costs associated with the STS and NTS are to be included in the Cities' TRRs. *City of Azusa, et al.*, 105 FERC ¶ 61,293 P 5. The issue to be briefed is "Should the Cities' STS, NTS, and related LADWP contract Entitlements be considered network facilities or direct assignment facilities?" Now SWP wants to argue that the ISO's IPP-Lugo Branch Group is a direct assignment facility.

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

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

C. The CPUC's Arguments that the Presiding Judge Should Disregard Opinion No. 466-A Are Baseless.

The CPUC begins its arguments by questioning the validity of the Commission's reasoning in Opinion No. 466-A, and then suggests that Opinion No. 466-A is not relevant to the instant proceeding because of factual distinctions. CPUC Br. at 39-40. The Commission's rolled-in pricing policy does not depend upon the type of factual

distinctions drawn by the CPUC, and the CPUC's efforts to distinguish Opinion No. 466-A are invalid and must fail.

The CPUC primarily focuses on the fact that the facilities involved in Opinion No. 466-A were loop facilities, and that the ISO models the STS and NTS as radial tie lines. CPUC Br. at 41. The CPUC fails to explain the significance of this fact. The ISO models *all* interconnections with other Control Areas as radial tie lines. Exh. ISO-8 at 4. Yet there is no question that such interconnections are part of the ISO's integrated network and ISO Controlled facilities. Without them the ISO would be an isolated island, with no resources other than those inside its own Control Area. Without the interconnections the ISO models as radial tie lines, California could not have survived the 2000-2001 energy crisis. The concept that a transmission line is any less a part of an integrated network because it terminates outside the Control Area has no basis in logic or law---and the CPUC provides no citations to suggest otherwise.

It is true, as the CPUC later suggests, CPUC Br. at 42, that under the Transmission Control Agreement, certain radial lines do not form part of a Participating TO's transmission network. Those, however, are only "*directly assignable* radial lines and associated facilities *interconnecting generation.*" TCA § 4.11(i) (emphasis added). They are also known as "Generation-Tie Lines." *Id.* The ISO's Application for Participating TO status, under the criteria for distinguished transmission and generation facilities, states, "Generation-Tie Lines are facilities that are primarily radial in character and used *exclusively* for the purpose of transporting energy from a power plant to the point of interconnection with the transmission network." Exh. ISO-3 at 4 (emphasis added). As the ISO explained in its Initial Brief, the evidence is undisputed that neither

the STS nor the NTS is used exclusively for such a purpose. ISO Br. at 16. Any suggestion that the STS or NTS should have been precluded from the ISO's integrated network by the ISO Tariff is thus completely without foundation.[7]

The CPUC's other effort to distinguish Opinion No. 466-A is its statement that there is no evidence that the "flows" on the STS and NTS "serve [ ] transmissions" for participants other than the Cities. CPUC Br. at 41. First, the CPUC is wrong. There is evidence that parties other than the Cities have used the STS and NTS. *See* Exh. ISO-10 at 3. Second, there is no logical connection between the particular party that takes advantage of a transmission path under the ISO's Operational Control and whether the transmission line is a network facility. As Mr. Alaywan demonstrated, the owners of transmission paths under the ISO's Operational Control are frequently the dominant user of that particular transmission path. *Id.* The CPUC also complains that the Cities and the ISO have not identified a market for exports and specific sources of generation that flows on the STS and the NTS. CPUC Br. at 41-42. The existence of markets might have something to do with the prudence of an investment; it has nothing to do with whether a transmission line serves a network function. It might well be relevant if the STS and NTS terminated at a distribution system, with no connection to sources of generation – but they do not. The evidence is unambiguous that the STS and NTS connect the ISO with other Control Areas. *See* Exh. CIT-11. Identifying specific generating units is not only unnecessary, it is foolhardy; electrons cannot be traced and

[7] Much like SWP suggested that the IPP-Lugo Branch Group was directly assignable, the CPUC at one point mentions a "specifically identified Entitlement, such as the 370 MWs of Entitlements comprising the IPP-Lugo Transmission Path." CPUC Br. 43. There is, however, no such "specifically identified Entitlement." The CPUC cannot turn a transmission facility into a Generation-Tie by isolating a certain amount of MWs of capacity that carries generation -- all transmission facilities carry generation.

flow on the path of least resistance. Cities quite properly referred the CPUC to a list of existing Generation. *See* Exh. CIT-22. The Presiding Judge can take judicial notice of the fact that the connection of the STS and NTS with other Control Areas makes generation available from throughout the Western Interconnection.

The CPUC makes one correct statement. "The [STS and NTS] are capable of the same functions that they were capable of prior to the TCA's effective date of January 1, 2003, the importation of power into California via a very long-distance Intertie."[8] What the CPUC fails to understand is that the placement of that function under the ISO's Operational Control is what makes the STS and NTS integrated network facilities. Previously, users of the ISO Controlled Grid would need to make separate scheduling arrangements with and pay a separate transmission rate to Cities in order to use those facilities. Now they schedule the import or export of capacity and Energy with the ISO using the STS and NTS at a single, un-pancaked transmission rate. In this case, that is the essence of integration.

III. Does The ISO Have Meaningful Operational Control Over The Cities' STS, NTS, And Related LADWP Contract Entitlements?

A. SWP Misconstrues the Nature of the ISO's Operational Control

SWP begins is discussion of Operational Control by challenging the explanation provided by ISO witness Deborah Le Vine as contrary to the ISO Tariff definition. SWP correctly identifies the ISO Tariff definition of Operational Control:

> The rights of the ISO under the Transmission Control Agreement and the ISO Tariff to direct the Participating TOs how to operate their transmission lines and facilities and other electric plant affecting the reliability of those lines and

[8] The STS and NTS are, of course, also capable of exporting capacity and Energy.

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

ISO-Tariff, Appendix A. Ms. Le Vine explained that the ISO's Operational Control varies according to whether a facility is inside or outside the ISO Control Area, and that outside the ISO Control Area, Operational Control is largely limited to coordinating scheduling and outages with the applicable Control Area Operator. Exh. ISO-1 at 5. SWP complains that this explanation is inconsistent with the ISO Tariff and the ISO's reliability responsibilities. SWP Br. at 26.

SWP apparently does not understand the difference between the statement of the ISO's authority and the implementation of that authority. The ISO cannot exercise any greater Operational Control than that possessed by the Participating TO that signs the Transmission Control Agreement. Fortunately, the Commission does understand the difference. In the order denying SWP's request for rehearing of the approval of the Cities' transfer of their Entitlements to the ISO, the Commission explained:

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

City of Azusa, et al., 105 FERC ¶ 61,293 P 3. Because this is the Commission's understanding of the implementation of the transfer of Operational Control that it

accepted, SWP's arguments in this regard must be rejected.[9]

SWP goes on to contend that Ms. Le Vine improperly described Operational Control to include Entitlements, because the tariff definition only mentions the words facilities. It states, "FERC apparently never has been informed that the definition can now encompass strictly legal concepts, with no reference to physical assets, and FERC has certainly never approved a change in the filed Tariff to incorporate such a definition." SWP Br. at 28. To the contrary, as evidenced by the quotation above, the Commission is well aware that the definition of Operational Control is interpreted to encompass Entitlements. From the time the Commission authorized the ISO's Operations, it understood that Entitlements would be encompassed in the ISO's Operational Control. *See Pacific Gas & Elec. Co.,* 81 FERC ¶ 61,122 at 61,463, 61,466, 61,559 (1997) ("The ISO Tariff defines a Participating Transmission Owner as an entity that is a party to the Transmission Control Agreement which has placed its transmission assets and Entitlements under the ISO's Operational Control"; "[U]pon conversion under section 2.4.4.3.1.1 of the ISO Tariff, the recipient of transmission service "shall turn over Operational Control of its transmission entitlement to the ISO"; "The ISO proposes to maintain an ISO Register of those transmission lines, associated facilities and entitlements that are under the ISO's operational control on either a long-term or a temporary basis.").

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[9] SWP's here *improperly attributes to the ISO* a statement in deposition by an ISO employee, *explicitly speaking for himself not the ISO at the suggestion of SWP counsel*, regarding the concept of only having Operational Control on leap years. The employee simply said in it was not his area of expertise and in all such matters one must weigh costs and benefits. *See Exh.* SWP-9 at 130:14-21, 131:8-13. The misuse of such statement, even for rhetorical purposes, is inappropriate.

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

Finally, the Presiding Judge has just recently concluded that the City of Vernon's Entitlements are under the ISO's Operational Control. *City of Vernon*, 109 FERC ¶ 63,057 at P 58.

SWP next asserts that the STS and NTS violate the ISO's standards for eligibility to be incorporated into the ISO Controlled Grid. SWP Br. at 28-29. It claims the STS and NTS do not meet the criterion that facilities cannot have an adverse impact on reliability or cause the ISO to breach Applicable Reliability Criteria. SWP's first "evidence" is that the STS and NTS have led to phantom congestion. There are a number of problems with this evidence, but it suffices to mention just two. First, the ISO's management of the STS and NTS cannot lead to phantom congestion. The Commission has defined phantom congestion as "a condition occurring because the transmission capacity of Existing Transmission Contracts remains unscheduled by the contract holder, while the ISO cannot make use of the unscheduled capacity in the day-ahead and hour-ahead markets." *California Indep. Sys. Operator Corp.*, Opinion

No. 478, 109 FERC ¶ 61,301 at P 17 (2004). All transmission capacity on the NTS and STS that is on ISO Controlled Grid facilities is Converted Rights and not Existing Contracts, thus there is no phantom congestion. Second, the Commission has never found any relationship between phantom congestion and reliability. Phantom congestion is an inefficient use of transmission capacity in the ISO's markets.

SWP's second evidence is that no reliability services are provided over the STS and NTS. There is in fact evidence that the STS and NTS enhance the reliability of the ISO Controlled Grid. Tr. 1180-88 (Gross). Even if that were not so, however, the lack of any contribution to the reliability would not remotely establish that the STS and NTS adversely affect reliability or would cause a breach of Applicable Reliability Standards.

SWP next asserts that the ISO may refuse facilities that cannot be integrated because of technical considerations. It notes that Ms. Le Vine testified that a lack of ability to schedule on a facility would be such a technical consideration and that the ISO does not have a "threshold" level of use. SWP Br. at 29. These may be interesting considerations, but they are irrelevant, because there is no evidence that the facilities are technically unusable.

B. The ISO Has No Less Operational Control Over the STS and NTS Than It Has Over Other Facilities Outside the ISO Control Area

In its Initial Brief, the ISO addressed SWP's various contentions presented in testimony that the ISO had less Operational Control over the STS and NTS than over other ISO Controlled Grid facilities outside the ISO Control Area. In its Brief, SWP points to the ISO's inability to schedule bi-directionally on the facilities and the lack of real-time control and control over imbalance between schedules and actual operations. SWP Br. at 30. While the lack of bidirectional scheduling was, at least with regard to

Riverside, only an implementation issue, not a lack of ability (Exh. CIT-9 at 11-12; Exh. CIT-10 at A-1), it is also unrelated to Operational Control. There is no reason to believe that the ISO cannot just as easily take Operational Control of a unidirectional Entitlement as a bidirectional Entitlement. Either can add functionality to the ISO Controlled Grid by making additional capacity available to Market Participants at non-pancaked transmission rates. Indeed, SWP presents no data to indicate the degree to which the import and export capacity of other Entitlements outside the ISO Control Area is in balance. SWP's theory would also suggest that the ISO would have less Operational Control over an Entitlement of 50 MW than over an Entitlement of 200 MW. There is simply no logic behind such a proposition.

The ISO's lack of real-time control and control over imbalances between schedules and actual operations does not distinguish the STS and the NTS from any other facility under the ISO's Operational Control outside the ISO Control Area. SWP's witness admitted as much. Tr. 1086-94.

At the risk of stating the obvious, the ISO notes that SWP fundamentally misunderstands or misstates Order No. 2003 when it suggests that the ISO's failure to secure an LGIA with the Intermountain Generating Station is indicative of a lack of Operational Control over the STS. SWP Br. at 31. As the Presiding Judge is well aware (and as the ISO explained in its Initial Brief), Order No. 2003 and LGIAs are concerned with *interconnection* with new generating units, not with generating units that

are already interconnected.[10]

SWP would also have the Presiding Judge believe that the ISO's misunderstanding regarding Riverside's northbound contractual rights on the STS and NTS and the occurrence of inadmissible schedules are in some manner related to the existence, or lack thereof, of Operational Control under the ISO Tariff and Commission policies. SWP Br. at 32-34. SWP makes no effort to tie these matters to relevant language of the ISO Tariff or Commission precedent because it cannot. They have nothing to do with the ISO's legal authority and control over the STS and NTS. At most they might be addressed in the manner in which the ISO has exercised its Operational Control, which is not a factor in this proceeding.

SWP asserts that the ISO's Operational Control is infirm because it has engendered the need for "costly manual workarounds." SWP Br. at 34. Because the citation contained in SWP's brief does not refer to manual workarounds, the ISO has difficulty responding to this assertion. SWP's only evidence that workarounds are costly is an *extra record* citation from another proceeding. Not only is this citation improper, it

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[10] As the Commission stated in the Notice of Proposed Rulemaking,

> Generators seeking to build and interconnect their new energy resources with interstate transmission have been hindered by the lack of standardized interconnection procedures and agreements that would enable an expeditious and economic approval and construction process. As discussed below, it has become apparent that the case-by-case approach is insufficient to address these problems and there is a pressing need for a single, uniformly applicable interconnection agreement and set of procedures. Having a standardized set of procedures applicable to all interstate transmission facilities will expedite the development of new generation.

Standardization of Generator Interconnection Agreements and Procedures, Notice of Proposed Rulemaking, 67 Fed. Reg. 22,250 (May 2, 2002), FERC Stats. & Regs. ¶ 32,560 (2002) at 34,173.

is dealing with a particular type of workaround the relevance to this proceeding of which is unknown.[11] The only reference to workarounds that immediately comes to mind for the ISO is that the original Scheduling procedures were designed to avoid manual workarounds, and that the ISO was able to revise them when it concluded that the workarounds could be avoided. Exh. ISO-12 at 11-12.

SWP concludes its discussion of the ISO's "comparative" Operational Control by asserting that because the Los Angeles Department of Water and Power is the Control Area Operator, path manager, and operating agent for the STS and NTS, the ISO cannot have Operational Control. SWP Br. at 36. As the ISO has noted, these factors do not distinguish the STS and NTS from any other Entitlement under the ISO's Operational Control that is outside the ISO's Control Area. SWP's position, therefore, puts it at odds with both the Commission and the Presiding Judge.

C. The Presiding Judge Should Disregarding the CPUC's Arguments on Operational Control As Irrelevant

To the extent the CPUC's arguments concern the definition of Operational Control under the ISO Tariff, they are addressed in part III.A above. The majority of the CPUC's arguments regarding Operational Control, however, are directed toward the requirements for RTO status. CPUC Br. 35-38. This proceeding does not concern the ISO's RTO status. No purpose is served by exploring the permissible variations on achieving the goals of Order No. 2000 because that is not an issue here. It suffices to say that, subsequent to Order No. 2000, as discussed above, the Commission has

[11] This, of course, is precisely why references to material outside the record are improper. The ISO has not moved to strike such references in SWP's Brief because it believes the Presiding Judge will appropriately disregard them.

approved the transfer of Entitlements outside the ISO's Control Area to the ISO's Operational Control where the nature of the ISO's Operational Control was largely limited to scheduling rights. Such Entitlements are included in the TRRs of Participating TOs by virtue of being included in the Participating TO's respective TCA Appendix A, and the Presiding Judge has just concluded that such an Entitlement is under the ISO's Operational Control in *City of Vernon*, 109 FERC ¶ 63,057 at P 58. The Presiding Judge should disregard the CPUC's arguments as irrelevant.

IV. Do Restrictions on Access to or Usage of the Cities' STS, NTS, and Related LADWP Contract Entitlements Justify the Exclusion of Costs, or the Imposition of a Revenue Credit, Associated with those Entitlements in Developing the Cities' TRRs to be Reflected in the ISO's Access Charges?

Under relevant Commission precedent discussed above and the ISO Tariff, once a New Participating TO has turned integrated network facilities over to ISO Operational Control, the costs of these facilities may be included in the New Participating TO's TRR, and the New Participating TO receives Firm Transmission Rights ("FTRs") on the capacity. The system was designed, and approved by the Commission, in order to create incentives for transmission owners to join the ISO. By design, it creates advantages for New Participating TOs that they would not otherwise have.

As shown above, the STS and NTS are integrated network facilities that are under the ISO's Operational Control. Although the ISO does not agree with the Presiding Judge's conclusion that the establishment of Scheduling Points is a prerequisite for Operational Control, *City of Vernon*, 109 FERC ¶ 63,057 at P 58, the ISO notes that Scheduling Points were established for the STS and NTS, and the ISO scheduled transactions on those lines. Exh. ISO-10 at 3; Exh. ISO-12.

SCE and SWP assert that the Cities' TRRs should nonetheless be reduced because the Cities were given preferential access to the STS and NTS from January 2003 through September 2004. The ISO has explained in its Initial Brief that undue discrimination is the treatment of similarly situated entities differently. ISO Br. at 25. This has not been the case with regard to the Cities' STS and NTS Entitlements, because there are no entities similarly situated with the Cities. It is true that under the original pre-September 15, 2004 version of Operating Procedure S-326, no one but the Cities could schedule on the Cities' 370 MW Entitlement on the IPP-Lugo Branch Group, even when the Cities were not using their FTRs for this line. Tr. 92; 107; 334-35. This limitation simply reflects the fact that IPP is not a take-out point, and an entity that does not have entitlement to IGS generation could not inject energy at that point.[12] Tr. 182; Exh. S-7 at 20. For this reason, no other Market Participant could have used the IPP-Lugo capacity under any circumstances, and the only purpose to be served in scheduling on the facilities would be to engage in gaming and market manipulation. Tr. 704-705, 707.

Further, as discussed above and in the ISO's initial Br. at 26, there is no proper mechanism in the ISO Tariff for reducing a TRR in such circumstances. The appropriate avenue for relief is a complaint.

SWP would also preclude recovery because the capacity available under the ISO Scheduling procedures, due to the ISO's Congestion Management modeling system, is less than the contractual capacity. There is no logical or legal basis for such a reduction

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

in the Cities' TRRs. The question the Presiding Judge must ask herself is whether the Commission, if presented with an amendment to the TCA that included all of the Cities' Entitlements, but with the capacity of the STS and NTS as stated in the ISO's branch groups, would have rejected the TCA. There is no reason to believe so. There is also no reason to conclude that the TRRs for the STS and NTS are not just and reasonable for including that capacity. There is therefore no reason to reduce the Cities' TRRs because of any restrictions on capacity.

A. SWP's Discussion of Inefficiencies of ISO Control Is Misleading and Irrelevant

SWP devotes considerable discussion to the proposition that the ISO's assumption of Operational Control of the STS and NTS imposed a "myriad of restrictions on use" that did not exist before, blaming them on administrative and bureaucratic convenience. SWP Br. at 36. In reality, these so-called restrictions are not as described. With regard to the initial Scheduling procedures, SWP notes that the southbound IPP-Lugo capacity of 370 MW was only available to Anaheim and Riverside; that the Mona-Lugo capacity was limited to 160 MW even though the Mona to IPP contract capacity was 460 MW; and that the Gonder-Lugo capacity was limited to 4 MW, even though the Gonder to IPP contract capacity was 43 MW. SWP Br. at 38.

The reality is that the ISO assumed Operational Control of the STS and NTS to integrate them into the ISO Controlled Grid for the import and export of capacity and Energy. Prior to the assumption of the ISO's Operational Control, the 370 MW of import capacity on the STS would have been just as unavailable, because Anaheim and Riverside were using it to import Energy from the Intermountain Generating Station. Prior to the assumption of the ISO's Operational Control, Anaheim and Riverside's

capacity from IPP to Adelanto was still only 534 MW, so prior to the ISO's Operational Control, only a combined 164 MW could be imported from Mona and Gonder to the ISO Control Area using Anaheim's and Riverside's facilities. If one wanted to bring additional Energy into the ISO Control Area, one would need to purchase STS capacity from another party, in which case it would make sense to purchase the NTS capacity from that same party. The difference between then and now is that then one would need to pay Anaheim's rate *and* the ISO's rate. Today, one pays only the ISO's rate. That is hardly an inefficiency.

SWP's statement that the ISO "just said no" to the northbound schedules unnecessarily, unfairly, and without any supporting evidence implies that the ISO intentionally disregarded an opportunity to provide additional scheduling opportunities for Market Participants. SWP Br. at 37. The ISO's prompt correction of this error, *see* ISO-12 at 4-6, belies such an implication. In any event, the error does not suggest any inefficiency inherent in the ISO's Operational Control.

Contrary to SWP's contention, SWP Br. at 38, the September revisions have improved the efficiencies of the STS and NTS from the perspective of the users of the ISO Controlled Grid. Additional STS import capacity is available if the Cities do not use their Firm Transmission Rights in the Day Ahead Market, SWP-12 at 8-10, and export capacity has been made available. That the export capacity on some branch groups was reduced to make room on the Victorville-Lugo segment for the export capacity to Mona and Lugo, *see* SWP Br. at 41, is irrelevant. The amount of reduced capacity by which it was reduced was never used. Tr. 1553.

The remainder of SWP's discussion of the relationship between the capacity limitations on the ISO branch groups and contractual capacities of the Entitlements under the ISO's Operational Control, including the discussion of the Cities' access to its Hoover entitlement, *see* SWP Br. 40-43, is entirely irrelevant to this proceeding, which is not concerned with reform of the ISO's Congestion Management system, but is *solely* concerned with whether the costs associated with the STS and NTS should be included in the Cities' TRRs.

Moreover, as discussed above, at the end of the day one must ask how relevant even the particular capacity limitations on the STS and NTS are. The Commission's approval of the transfer of Operational Control was not premised on a particular available transfer capacity and the TRR is not premised on a particular cost per MW of available transfer capacity. All that is relevant for the purposes of the issue set for hearing is whether the prerequisites for inclusion in the TRR have been met.

B. Cost-Benefit Analyses Are Not Relevant to the Issue Set for Hearing

Both the CPUC (at length) and SWP attempt to engage in a cost-benefit analysis regarding the STS and the NTS. *See* CPUC Br. at 17-30; SWP Br. at 43-45. To the extent benefits are relevant at all, they are only relevant to the issue of whether the STS and NTS are integrated, network facilities. As the ISO has explained, the availability of new transmission capacity for imports and exports and non-pancaked rates is sufficient benefit to establish the nature of the facilities. The ISO will only make a few observations in this regard.

First, the various cost-benefit studies cited by the CPUC, CPUC Br. at 21, all concern the construction of *new* transmission facilities or the expansion of existing

transmission facilities. There are very different considerations when the issue is whether existing facilities can be integrated into a transmission network. Tr. 458.

Second, the ISO's administrative costs raised by SWP in their Initial Brief at p. 45) are completely irrelevant to this proceeding, which is not concerned with how efficiently the ISO can manage the STS and NTS. *See* SWP Br. at 41. Despite SWP's efforts to avoid the topic, the stated issue is "Do Restrictions on Access to or Usage of the Cities' STS, NTS, and Related LADWP Contract Entitlements Justify the Exclusion of Costs, or the Imposition of a Revenue Credit, Associated with those Entitlements in Developing the Cities' TRRs to be Reflected in the ISO's Access Charges?"

Third, as noted above, although the Cities have been the predominant users of the STS and NTS, *see* CPUC Br. at 23, the same can be said of other Participating TOs' use of their transmission assets and Entitlements under the ISO's Operational Control. Exh. ISO-10. This does not mean that other Market Participants are unable to use the facilities if they so desire.

Fourth, the Commission has definitively found that the cost shifts resulting from the disparate TRRs of Participating TOs are just and reasonable, and has approved a cost shift cap to ensure that they remain so. Opinion No. 478, 109 FERC ¶ 61,301 at P 32. Arguments that the cost shift justifies disallowance of the costs of the STS and NTS, *see* CPUC Br. at 24-25, cannot be heard.

C. The Cities' Significant Role in Designing and Revising the Operating Procedures is Entirely Appropriate Given Their Familiarity with and Expertise Regarding the Entitlements

SWP complains about the "discriminatory" manner in which the operating procedures were developed and revised, in that the Cities worked closely with the ISO

in their development. SWP Br. at 46-49. In fact, such close collaboration is only reasonable, given the Cities' unique knowledge of and familiarity with the Entitlements. That other Market Participants had a lesser role in these developments is natural – they would have had little to add. This is evidenced by the fact that, between the time when the general principles behind the revised operating procedures were articulated and made known to participants in this proceeding in Mr. Ledesma's testimony, Exh. ISO-12 on June 16, 2004, and the stakeholder meeting held to seek input on the changes on August 17, 2004 – a period of fully two months -- no specific alternatives were developed by other Market Participants including SWP and CPUC. It is true that SWP presented comments on the revised operating procedures (*see* Exh. ISO-20), but these were in the form of principles to be considered and not specific procedures to be adopted, and were more a statement of litigation principles than constructive technical or operating procedures. The parties to the discussions with the first-hand knowledge of the Entitlements and the limitations of the ISO's systems – e.g., the Cities and the ISO – had worked out the new operating procedures on an informed basis, with the insights of their knowledge and experience, and with the goal of responding to concerns raised in the first half of this proceeding in mind. Exh. ISO-14 at 4.

It is important to recognize that the ISO does not have some sort of unfair bias in favor of the Cities – the process followed by the ISO in developing operating procedures and methods with the Cities is the same that would be followed with any potential New Participating TO, and is analogous to what took place at the time that the Original

Participating TOs joined the ISO. Tr. 199.[13] These entities are naturally the ones with the knowledge necessary to develop operating procedures, as they are intimately familiar with the facilities in question. Nonetheless, the ISO did provide an opportunity for other Market Participants to comment on the new operating procedures at the August 17, 2004 stakeholder meeting.

D. SWP's Complaints of Continued Discriminatory Access Are Totally Unfounded

SWP asserts the ISO continues to provide discriminatory access to the Cities following the September revisions. The bases for this complaint are somewhat unclear, but appear to be threefold. The first is SWP's assertion that the revisions were "cooked up" by the ISO and the Cities. The ISO has shown above that this assertion is baseless. Moreover, SWP offers no evidence that the new procedures in any manner favor the Cities. SWP certainly does not explain why reducing the Lugo-Marketplace export capacity, SWP Br. at 51 (which has never been close to fully used, Tr. 1553), discriminates against it.

Second, SWP finds its discriminatory that the ISO has not required a LGIA with the Intermountain Generating Station so as to provide assurance that others can deliver Energy from the Intermountain Generating Station. Inasmuch as the Intermountain Generation Station is already interconnected to the STS and is not requesting to interconnect with the ISO Controlled Grid, the ISO has no authority to require a LGIA. The failure of the ISO to accomplish that which it cannot is certainly no discrimination.

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

Third, SWP attempts to find discrimination in the ISO's allocation of FTRs to the Cities because the process is different than the allocation to the Original Participating TOs and because the ISO has discretion in the process. At the time that the ISO first proposed providing FTRs as an incentive to potential New Participating TOs, the Commission found that

> [T]he proposal to exempt new Participating TOs from the auction process during the transition period is a feature that has been offered as an inducement to encourage participation in the ISO. The proposal will afford new Participating TOs protection against cost increases during the transition period.[ ]

California Independent System Operator Corp., 91 FERC ¶ 61,205 (2000) at 61,726. More recently, the Commission has stated that it continues to "recognize[] the importance of this temporary incentive of providing free FTRs during the transition period as a benefit of becoming a Participating TO." *California Independent System Operator Corp*., Opinion No. 478, 109 FERC 61,301 (2004) at P 33. Moreover, the Commission specifically concluded:

> We also deny [SWP's] exception on the methodology issue. As we have previously observed, in determining the precise number of FTRs to allocate, the ISO requires a measure of flexibility. The ISO agrees that before such FTRs are issued to new Participating TOs, the proposed award will be published, there will be an opportunity to protest, and the issued FTRs will be subject to the Commission's Standards of Conduct requirements. Accordingly, we find that section 9.4.3 and section 4.5 of Appendix F, Schedule 3, of the ISO Tariff provide sufficient detail for the allocation of FTRs to new Participating TOs provided that the ISO files simultaneously with the Commission the amendment to the Transmission Control Agreement regarding each new Participating TO.

Id. P 34.

E. Even if Revenue Credits for the TRRs were Appropriate, the Figure Proposed by SCE and SWP is Significantly Excessive

Even if it were true that some sort of diminution of the Cities' TRRs were warranted for transmission to which other Market Participants did not have access due to the branch group modeling – a premise with which the ISO strongly disagrees – the 69.3% revenue credit proposed by SCE witness Cuillier (Exh. SCE-1 at 22-23; Exh. SCE-10 at 7) and endorsed by SWP (SWP Br. at 57) would be ludicrously excessive. Regardless of whether other Market Participants could have used the facilities when the Cities did not use their FTRs, the record demonstrates that the vast majority of the time the Cities *did* use their FTRs, consistent with the Commission's approval discussed above. See Exh. ISO-10 at 3. That being the case, absent the branch group modeling restrictions under the previous version of S-326, in most months other Market Participants would have had access to the lines a mere 5-14% of the time, and it this 5-14% of the time for which any such discount (or "revenue credit") could in any sense be considered appropriate, if at all.[14]

[14] This point also was made by the Cities, who noted in their Initial Brief that Cities' utilization of the branch group in the year 2003 ranged from 86 to 95%, with the exception February (71.2%) and March (45.6%). Cities Br. at 37; Exh. ISO-10 at 3.

V. CONCLUSION

For the reasons set forth above, the ISO respectfully requests that the Presiding Judge issue an Initial Decision approving recovery of the NTS and STS in the Cities' TRRs and adopting the positions set forth herein.

Respectfully submitted,

/s/ Julia Moore

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Dated: January 10, 2004

CERTIFICATE OF SERVICE

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

Dated at Folsom, CA, on this 10th Day of January, 2005.

_/s/ Geeta O. Tholan_____
Geeta O. Tholan