UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

OPINION NO. 483

City of Anaheim, California	Docket Nos. EL03-15-000
City of Riverside, California	EL03-20-000

OPINION AND ORDER AFFIRMING INITIAL DECISION

Issued: October 25, 2005

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

City of Anaheim, California	Docket Nos. EL03-15-000
City of Riverside, California	EL03-20-000

OPINION NO. 483

APPEARANCES

Bonnie S. Blair, Esq., and Mark L. Parsons, Esq., on behalf of the Cities of Anaheim and Riverside, California.

Ida M. Passamonti, Esq., on behalf of the Public Utilities Commission of the State of California.

Deborah Barnes, Esq., Peter C. Kissel, Esq., Elisa J. Grammer, Esq. and Holly E. Chapman, Esq., Edna Walz, Esq., Michael Warner, Esq., Peggy Bernardi, Esq., and S*teve Cohen, Esq.,* on behalf of the California Department of Water Resources State Water Project.

John Anders, Esq., Deborah Le Vine, Esq., Anthony Ivancovich, Esq., Bradley Miliavskas, Esq., David B. Rubin, Esq., Michael E. Ward, Esq., and Julia Moore, Esq., on behalf of the California Independent System Operator Corporation.

Anna J. Valdberg, Esq., Erin K. Moore, Esq. and Jennifer L. Key, Esq., on behalf of Southern California Edison Company.

Mark Patrizo, Esq., Stuart K. Gardiner, Esq. and Charles R. Middlekauff, Esq., on behalf of Pacific Gas and Electric Company.

Erik Saltmarsh, Esq. and Lisa V. Wolfe, Esq., on behalf of the California Electricity Oversight Board.

Lisa Gast, Esq. and Derek Dyson, Esq., on behalf of the City of Redding, California and the M-S-R Public Power Agency.

Sean Neal, Esq. and Derek Dyson, Esq., on behalf of the Modesto Irrigation District.

Wallace L. Duncan, Esq., Michael Postar, Esq. and Diana Mahmud, Esq., on behalf of the Metropolitan Water District of Southern California.

Wallace L. Duncan, Esq., Michael Postar, Esq. and Derek Dyson, Esq. on behalf of the Transmission Agency of Northern California.

Carmen Gastillo Machuga Esq. and Hollis J. Alpert, Esq., on behalf of the Federal Energy Regulatory Commission Trial Staff.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

City of Anaheim, California Docket Nos. EL03-15-000

City of Riverside, California EL03-20-000

OPINION NO. 483

OPINION AND ORDER AFFIRMING INITIAL DECISION

(Issued October 25, 2005)

1. On February 3, 2005, the Presiding Administrative Law Judge (ALJ) issued an Initial Decision in this proceeding.[1] The Initial Decision determined that entitlements of the Cities of Anaheim and Riverside (Cities) on facilities known as the Northern Transmission System (NTS) and Southern Transmission System (STS)[2] are integrated network transmission facilities. It also determined that the costs associated with the entitlements should be included in the Transmission Revenue Requirements (TRRs) of the Cities which are, in turn, incorporated in charges of the California Independent System Operator Corporation (CAISO). The Commission affirms the Initial Decision, as discussed below.

Background

2. On October 18, 2002, the Cities filed petitions in Docket Nos. EL03-15-000 and EL03-20-000 for approval of their TRRs and other matters so that they might become Participating Transmission Owners (PTOs) of the CAISO. On December 2, 2002, the CAISO filed an application in Docket No. EC03-27-000 pursuant to section 203 of the Federal Power Act (FPA) for authorization to acquire control of the jurisdictional facilities of the Cities consisting of the scheduling rights on the NTS and STS under transmission agreements between the Cities and the Los Angeles Department of Water

[1] 110 FERC ¶ 63,023 (2005) (Initial Decision).

[2] Hereafter, variously, NTS and STS facilities and related agreements, NTS/STS facilities, or NTS and STS entitlements.

and Power (LADWP). In November, 2002, the CAISO submitted filings in Docket Nos. ER03-218-000 and ER03-219-000 to, among other things, amend its Transmission Control Agreement (TCA)[3] to add the Cities as signatories.[4]

3. The Commission approved the CAISO's acquisition of control of the scheduling rights.[5] The Commission conditionally accepted the amendments to the CAISO's TCA effective January 1, 2003.[6] The Commission conditionally accepted the Cities TRRs. Anaheim and Riverside became PTOs of the CAISO on January 1, 2003[7] and their TRRs were included in the CAISO's transmission rates and charges as of that date.

4. However, there were disputed issues concerning the Cities' TRRs. The Commission made the Cities' TRRs effective January 1, 2003, subject to refund and to the outcome of settlement proceedings.[8] In December, 2003, the Commission accepted a settlement [9] that conditionally resolved issues concerning the Cities' TRRs subject to a

---

[3] The TCA is part of the CAISO Tariff. The current version is California Independent System Operator, Corporation, FERC Electric Tariff No. 7, Second Replacement Transmission Control Agreement. The TCA can be found on the CAISO website www.caiso.com under Contracts/Agreements.

[4] *California Independent System Operator Corp.*, 102 FERC ¶ 61,061; *order on reh'g*, 103 FERC ¶ 61,113; *order on reh'g and compliance filing*, 105 FERC ¶ 61,207 (2003) (TCA orders).

[5] *California Independent System Operator Corporation*, 102 FERC ¶ 61,058 (2003) (authorizing the acquisition by the CAISO of the Cities' scheduling rights on the NTS, STS, and the LADWP system); *order denying reh'g*, 107 FERC ¶ 61,150 (2004) (2004 Order) (collectively section 203 orders).

[6] *California Independent System Operator Corp.*, 102 FERC ¶ 61,061 at Ordering Paragraph A (2003).

[7] *City of Azusa, Order Consolidating Dockets and Initiating Settlement Proceedings*, 101 FERC ¶ 61,352 (2002); *order Granting Clarification*, 102 FERC ¶ 61,153 at P 4 and 5 (2003).

[8] *City of Azusa*, 102 FERC ¶ 61,153 at P 4 and 5 (2003). The settlement proceedings were established in *City of Azusa*, 101 FERC ¶ 61,353 (2002).

[9] Settlement of July 18, 2003, Docket No. EL03-14-000 *et al*.

hearing.[10] The hearing was to determine whether the Cities' TRRs associated with the NTS and STS facilities and related transmission agreements should be included in the CAISO's transmission rates and charges. In the settlement, the amounts for the TRRs associated with the NTS and STS facilities and related transmission agreements were set forth as $18,365,000 for Anaheim and $10,612,000 for Riverside.[11]

5. The NTS and the STS transmission lines are located outside the CAISO control area. They connect the Intermountain Generating Station (IGS) in Utah to substations in Utah and Nevada.[12] The IGS has two generation units. The NTS runs generally north of the IGS and the STS runs south of the IGS.[13]

6. The NTS consists of one 230kv line which extends about 144 miles west from the IGS to the Gonder substation in Nevada and two 345kv lines which extend about 50 miles east from the IGS to the Mona substation in Utah. At Mona and Gonder, there are connections to other control areas and utility systems.[14]

7. The STS consists of a single 500kv DC line which extends about 490 miles southwest from the IGS to the Adelanto substation in California near Los Angeles.[15] At Adelanto, there are 500kv transmission lines that are within the LADWP control area.

---

[10] *City of Azusa*, 105 FERC ¶ 61,293 (2003).

[11] Settlement of July 18, 2003 at P 10.

[12] Initial Decision at P 38 and 40. *See, especially*, schematic at P 40.

[13] The Initial Decision states the NTS, STS, and IGS comprise the Intermountain Power Project (IPP). (*See* Initial Decision at P 38.) In addition, the term IPP is used in the Initial Decision to denote the Intermountain AC switchyard (Initial Decision at P 41), facilities that appear to be located at the site of the IGS generating units. In this order, the Commission will use the term IPP to mean the Intermountain AC switchyard, unless otherwise noted.

[14] Initial Decision at P 48 and n. 21. At Mona, PacificCorp, Deseret Generation and Transmission Cooperative, Inc. (Deseret), and Utah Associated Municipal Power systems have access rights. At Gonder, Sierra Pacific Power Company (Sierra pacific) has access rights.

[15] Initial Decision at P 38 and nn. 7 and 8; *City of Azusa, California*, 105 FERC ¶ 61,293 at P 5 nn. 7 and 8.

These lines extend to the Victorville/Lugo interconnection. The Victorville/Lugo interconnection is a point on the boundary between the LADWP control area and the CAISO control area.[16] At the Victorville/Lugo interconnection, the STS interconnects with the Southern California Edison (SCE) transmission system which is part of the CAISO control area.[17]

8. In schematic form, these facilities are configured as shown below:

```
                    NTS                                NTS
Gonder ----------  IGS (IPP scheduling point)----------  Mona
                    |
                    |

                    |  STS
                    |

Victorville/Lugo --------- Adelanto
```

9. Anaheim and Riverside together are entitled to 370 MW of power from the IGS.[18] Anaheim and Riverside have transmission entitlements on the NTS and STS systems and contracts with the LADWP for transmission on the lines between Adelanto and the Victorville/Lugo interconnection. The entitlements on the NTS and STS of both Cities include import (inbound) and export (outbound) capacity. All of the energy the Cities import on the NTS and STS must flow on the STS.[19] The Cities' combined import capacity on the STS is 534 MW. Only Riverside has both import and export capacity on the lines from Adelanto to Victorville/Lugo.[20] The Cities' combined import capacity on the Adelanto to Victorville/Lugo lines is 762 MW.

---

[16] Initial Decision at P 41 n.12.

[17] *Id.* at P 40.

[18] *Id.* at P 41 and 42 n.13.

[19] *Id*. at P 41.

[20] *Id*. at P 39 and 40.

10. Effective January 1, 2003, the CAISO developed scheduling and outage procedures for the Cities' NTS and STS entitlements in Scheduling Protocol S-326 (S-326).[21] The CAISO considered the 534 MW on the STS as the limiting factor since all the energy from the NTS and STS must flow on the STS. The CAISO divided the NTS/STS into three separate branch groups, Mona-Lugo, IPP-Lugo, and Gonder-Lugo, each with its own individual Operating Transmission Capacity (OTC).[22]

11. The CAISO divided the STS OTC between the three scheduling points on the NTS/STS: IPP, Mona, and Gonder. The CAISO made the IPP Branch Group OTC 370 MW, the full amount of the Cities' capacity from the IGS. The only energy that could be injected at IPP was generation from the IGS. The CAISO divided the remainder of the STS rating between Mona and Gonder. Thus, the IPP-Lugo import capacity was 370 MW; the Mona-Lugo import capacity was 160 MW; and the Gonder-Lugo import capacity was 4 MW. The CAISO prohibited exports at IPP, Mona, and Gonder.

12. Effective September 17, 2004, the CAISO revised the scheduling procedures in S-326 for the NTS/STS as a result of concerns raised in the initial part of the hearing in this proceeding. The CAISO merged the Mona and IPP scheduling points, effectively creating one branch group. The total capacity of the new branch group is 530 MW.[23] The revised procedures also allow Riverside 116 MW of export capacity from Lugo to Mona and 2 MW of export capacity from Lugo to Gonder.

<u>The Hearing</u>

13. The hearing was held from May 4 - 12, 2004. On June 3, 2004, the hearing was reopened. It then recommenced from October 5 - 7, 2004. The ALJ issued her Initial Decision on February 3, 2005.[24]

---

[21] *Id*. at P 41 and nn. 10 and 11.

[22] A branch group is a set of transmission lines which are modeled and treated by the CAISO as one contiguous transmission line for the purpose of managing congestion.

[23] 4 MW were reserved for schedules from Gonder. Initial Decision at P 42.

[24] 110 FERC ¶ 63,023 (2005).

The Initial Decision

14. The Initial Decision considered whether costs associated with the Cities' entitlements in the NTS and STS and related transmission agreements between the Cities and LADWP should be included in the CAISO's transmission rates. This issue turns on two factors, first, whether the NTS and STS entitlements and the related LADWP contracts are integrated network transmission facilities (integrated network facilities or network facilities). [25] Commission policy requires that the costs of the Cities' integrated network facilities be rolled into the CAISO's Transmission Access Charge (TAC).[26] If the NTS/STS facilities are not network facilities, then their costs would be a direct charge to the Cities' customers. Whether the entitlements should be included in the CAISO's rates also depends on whether they are under the operational control of the CAISO as required by Commission precedent[27] and the CAISO Tariff.[28] The ALJ concluded that the NTS and STS entitlements are network facilities and that they are under the operational control of the CAISO.

15. First, the ALJ considered whether the NTS/STS entitlements and contracts were integrated into the CAISO network. She found that the Commission's test for determining whether facilities are network facilities consists of a showing of any degree of integration.[29]

---

[25] *Pacific Gas and Electric Company*, Opinion No. 466, 104 FERC ¶ 61,226 (2003); *order on Reh'g and Initial Decision*, Opinion No. 466-A, 106 FERC ¶ 61,144 at P 12 (2004); *order Denying Reh'g*, Opinion No. 466-B, 108 FERC ¶ 61,297 at P 5, 19 (2004).

[26] *Western Massachusetts Electric Co. v. FERC*, 165 F.3d 922, 927 (D.C. Cir. 1999); Opinion No. 466-A at P 12; *American Electric Power Service Corp.*, 101 FERC ¶ 61,211 at P 11 (2002); *Otter Tail Power Company*, 12 FERC ¶ 61,169 at p. 61,420 (1980).

[27] Opinion No. 466, 104 FERC ¶ 61,226 at P 4 and 12.

[28] CAISO Tariff, App. A, Substitute Third Revised Sheet No. 354.

[29] Initial Decision at P 44 *citing* Opinion No. 466-B, 108 FERC ¶ 61,297 at P 19. Opinion No. 466-B, in turn, cited *Northeast Texas Electric Cooperative, Inc.*, Opinion No. 474, 108 FERC ¶ 61,084 at P 47-48 & n. 66 (2004) (*Northeast Texas*).

16. She found that non-IGS generation can flow over the STS.[30] She also found that there are transmission rights under the Cities' NTS and STS entitlements (534 MW) in excess of their entitlement to IGS generation (370 MW). She found that the CAISO had modeled the Cities' entitlements for scheduling purposes under its Operating Procedure S-326 (S-326) which became effective January 1, 2003. She found that the CAISO initially modeled the Cities' entitlements as three separate branch groups each with its own operating transmission capacity (OTC) and scheduling point and that this initial modeling limited the availability of the Cities' entitlements to other market participants in certain respects. For example, she found that capacity available for scheduling by other market participants was limited to 164 MW on the Mona to Lugo branch group prior to September 16, 2004.[31] The ALJ found that the limitations on the availability of the Cities' entitlements were due to engineering and technical constraints in the design of the branch groups.[32]

17. The ALJ found that the Cities' entitlements could be and were used by the ISO to accept schedules from others relying on the NTS and STS paths[33] The ALJ also found that the NTS/STS facilities provide reliability benefits to the ISO-controlled grid. She found that even though the NTS and STS facilities are outside the CAISO control area, the CAISO's ability to schedule and manage outages on the STS and NTS potentially enhances its scheduling ability and the ability to manage other parts of the CAISO Controlled Grid.[34] In addition, she found that the NTS and STS provide interconnections

---

[30] Initial Decision at P 48.

[31] The ALJ found that after September 16, 2004, CAISO adopted revised procedures. The revisions facilitated scheduling by other customers by treating Mona to Lugo and IPP to Lugo as one branch group with the scheduling point at Mona. She found this made import capacity of 530 MW available to all customers at Mona. She also found the revised procedure made 118 MW of export capacity available. Initial Decision at P 51.

[32] Initial Decision at P 46 citing S-7 at 12, 18-21, and 25 and S-10.

[33] Initial Decision at P 48 citing S-11 to the effect that the limitation did not prevent use of available capacity on the STS line by others.

[34] Initial Decision at P 49 citing Tr. 1184-85.

between utilities that increase reliability and improve economic efficiency[35] and concluded that the facilities serve more than one purpose, *i.e.*, that they are used for transmission as well as for generation.

18. The ALJ found, in addition, that the NTS/STS facilities are not direct assignment facilities. She held that non-Cities' usage was sufficient to render them network facilities because any degree of network integration is sufficient to establish that the costs of the facilities should be treated as transmission.[36]

19. Based on the above findings, the ALJ determined the evidence showed that the NTS/STS facilities serve more than one purpose and that they perform some network function. Accordingly, she held they satisfy the requirement of any degree of integration[37] and are network transmission facilities.

20. With respect to operational control, the ALJ found that the CAISO exercised such control over the facilities as of January 1, 2003.[38] She based this finding first on the execution of the TCA in the CAISO Tariff by the Cities effective January 1, 2003.[39] This enabled the CAISO to exercise operational control over the facilities. She also based her finding of operational control on the CAISO's adoption of S-326 which became effective January 1, 2003. S-326 applied to the STS and NTS and to other facilities and entitlements under the operational control of the CAISO which are outside the ISO Control Area.[40]

---

[35] *Id.* at P 50.

[36] *Id.* at P 52-53 *citing* Opinion No. 466-B, 108 FERC ¶ 61,297 at P 20 and Opinion No. 474, 108 FERC ¶ 61,084 at P 47.

[37] *Id.* at P 53.

[38] January 1, 2003 was the date on which the Commission made the Cities' TRRs effective, subject to refund and to the outcome of the settlement proceedings (*City of Azusa*, 102 FERC ¶ 61,153 at P 4 and 5 (2003)) which ultimately lead to and include the results of the instant hearing.

[39] ISO-1 at 4; CIT-1 at 6.

[40] Initial Decision at P 41 and n. 10.

21. The ALJ found that S-326 covers scheduling and the handling of outages.[41] She further found that, pursuant to S-326, CAISO modeled the rights to the Cities' facilities into its scheduling infrastructure effective January 1, 2003.[42] She found that the CAISO's actions under S-326 satisfied the requirements of the CAISO's Tariff for operational control.[43] The ALJ found that under S-326, the CAISO exercises control over the NTS/STS facilities by coordinating schedules and outages and monitoring the applicable Control Area Operator.[44] The ALJ also found that her finding of operational control over the facilities was consistent with prior Commission decisions authorizing the transfer to the CAISO of control of facilities located outside the CAISO Control Area.[45]

---

[41] *Id.* at P 57.

[42] *Id.* at P 55; *see also id. at* P 41.

[43] The CAISO Tariff provides that operational control is:

> The rights of the ISO under the Transmission Control Agreement and the ISO Tariff to direct participating TOs how to operate their transmission lines and facilities and other electric plant affecting the reliability of those lines and facilities for the purpose of affording comparable non-discriminatory transmission access and meeting Applicable Reliability Criteria.

CAISO Tariff, App. A, Third Revised Sheet No. 336; CIT-1.

[44] Initial Decision at P 57. The ALJ did point out, however, that the CAISO exercises greater control over facilities inside the ISO Control Area. When facilities are inside the CAISO Control Area, the ISO schedules, directs maintenance, coordinates outages, measures and controls power flows, and responds to system emergencies for ISO Controlled Grid facilities. If the facilities are outside the CAISO Control Area, the CAISO is limited to coordination of schedules and outages with the applicable Control Area Operator. Initial Decision at P 55 n. 25 citing ISO-1 at 5:11-19.

[45] The Initial Decision cites *Pacific Gas & Electric Company*, 81 FERC ¶ 61,122 at 61,568 (1997), and examples given by Cities' witness Daniel--PG&E's, SCE's and SDG&E's entitlements in the Pacific High Voltage DC tie in the LADWP control area and SCE's entitlements in the Eldorado-Moenkopi-Four Corners 500 kV AC transmission line in the Arizona Public Service Company (APSC) control area, CIT-1 at 21; CIT-9 at 18:13-17; ISO-1 at 7; and S-7 at 9.

22. Based on her conclusion that the NTS/STS facilities and entitlements are integrated network transmission facilities under the operational control of the CAISO, the ALJ held that the Cities' TRRs associated with these facilities and entitlements should be included in the CAISO's rates and charges.[46]

23. The ALJ rejected claims that there should be a revenue credit against the TRRs for the period January 1, 2003 through September 16, 2004 based on the allegation that the CAISO's original scheduling procedure had limited the capacity available to other customers besides the Cities. She found that a revenue credit would be inconsistent with Commission precedent prohibiting apportionment of network transmission costs based on relative use and requiring that the entire cost of facilities be rolled in as long as they perform some network function.[47] She held further that a credit could not be justified on the ground that the limitation was an encumbrance as the limitation was not an encumbrance within the definition of the CAISO Tariff.[48]

24. The ALJ also denied requests for cost exclusions from the Cities' TRRs based on arguments that the use of the Cities' NTS and STS entitlements is restricted by Financial Transmission Rights (FTRs) allocated to the Cities. The ALJ found the CAISO allocated FTRs to the Cities in accordance with its Tariff.[49] She also held the Commission rejected arguments for cost exclusions based on restricted use in Opinion Nos. 466-B and 474.[50]

25. The ALJ found that the policy considerations concerning whether control of the Cities' NTS and STS entitlements should be transferred to the CAISO have been previously addressed by the Commission in the section 203 proceeding in which the

---

[46] Initial Decision at P 59.

[47] *Id*. at P 21 and 60, citing Cities Initial Brief at 23, 33-34 and Staff Initial Brief at 20-21.

[48] CAISO Tariff, App. A, First Revised Sheet No. 313. The Initial Decision states the Tariff defines an encumbrance as a legal restriction or covenant binding on a participating TO that affects the operation of any transmission lines or associated facilities.

[49] Initial Decision at P 61.

[50] *Id*. at P 52, 53, and 62 referring to and citing Opinion No. 466-B, 108 FERC ¶ 61,297 at P 19 and 20 and Opinion No. 474, 108 FERC ¶ 61,084 at P 47 and 48.

CAISO acquired the Cities' scheduling rights to the NTS and STS entitlements.[51] She found the Commission had determined in that proceeding, among other things, that there were benefits to CAISO market participants from the transfer of control of the Cities' NTS/STS facilities and entitlements to the CAISO and that the transfer was consistent with the public interest.

Briefs On and Opposing Exceptions

26. The following parties filed briefs on exceptions: the Public Utilities Commission of the State of California (CPUC); the California Department of Water Resources State Water Project (SWP); Pacific Gas and Electric Company (PG&E); and Southern California Edison Company (SCE). The following parties filed briefs opposing exceptions: the Cities of Anaheim and Riverside, California (Cities); Commission Trial Staff (Trial Staff); the California Independent System Operator Corporation (CAISO); PG&E; SCE; and SWP.

Discussion

A. Whether the NTS/STS Entitlements Are Integrated Network Transmission Facilities

27. The Initial Decision used the test of any degree of integration to determine whether the NTS/STS entitlements are network facilities and, finding that there was some degree of integration, held that the entitlements are network facilities. SWP and the CPUC challenge the test used in the Initial Decision and the factual findings on which the Initial Decision relied to conclude that the Cities' entitlements are network facilities. Trial Staff, the Cities, the CAISO, SCE, and PG&E support the Initial Decision's use of the test of any degree of integration and its factual findings that the NTS/STS entitlements meet this test. The Commission affirms the test used by the Initial Decision. It also affirms that the NTS/STS entitlements meet this test and are integrated network transmission facilities.

[51] *California Independent System Operator Corporation*, 102 FERC ¶ 61,058 (rate benefits at P 13-14) (2003), *order denying reh'g*, 107 FERC ¶ 61,150 (rate benefits at P 14) (2004).

1. Legal Arguments

a. Briefs on Exceptions

28. The CPUC states the Initial Decision's reliance on *Northeast Texas* for the principle that any degree of integration is sufficient to make a facility a network facility[52] is misplaced. The CPUC asserts that in *Northeast Texas* the Commission relied on specific record evidence of actual usage, function, and benefits to the entire grid consisting of transmission switching of existing network facilities to complete a circuit on the transmission provider's system that, in turn, limited the extent and duration of service interruptions.[53] The CPUC also asserts Opinion Nos. 466-A and 466-B are not dispositive of the issue of whether the Cities' entitlements are network facilities. It states that if any degree of network function were sufficient, then even a scintilla of network transmission would justify shifting all costs to CAISO's rates of what is a generation tie and that this is unreasonable.

29. SWP asserts the five-factor test in *Mansfield Electric Department v. New England Power Company* [54] is the correct test for determining whether a facility is an integrated network facility. SWP states the factors that must be met are (1) the facilities are not radial; (2) energy flows in more than one direction; (3) the transmission provider is able to provide transmission service to itself or other transmission customers over the facilities in question; (4) the facilities provide benefits to the transmission grid in terms of capability or reliability, and (5) an outage on the facilities would affect the transmission system. SWP asserts the STS fails three of these criteria because the STS facilities are radial, power essentially flows in only one direction on them, and they do not provide capability or reliability benefits to the grid.

---

[52] Initial Decision at P 44.

[53] 108 FERC ¶ 61,084 at P 50, 53, and 54.

[54] 94 FERC ¶ 63,023, *aff'd*, 97 FERC ¶ 61,134 at 61,613-14 (2001), *reh'g denied*, 98 FERC ¶ 61,115 (2002) (*Mansfield*).

30. SWP also relies on Order No. 2003 and related orders concerning large generator interconnections.[55] SWP asserts Order No. 2003-A defined network upgrades as facilities required "at or beyond the point at which the Interconnection Facilities connect to the Transmission Provider's Transmission System . . . ."[56]

b. Briefs Opposing Exceptions

31. Trial Staff, the Cities, the CAISO, SCE, and PG&E assert the Initial Decision correctly applied Commission precedent in Opinion Nos. 466-A and 466-B[57] and found that the Cities' NTS and STS facilities and related LADWP contracts are network facilities and that their costs should be included in the Cities' TRRs.[58] Trial Staff asserts that in those orders the Commission established that any degree of integration with the transmission network is sufficient to permit the costs of facilities to be rolled into the CAISO's rates. Trial Staff asserts that Opinion No. 474, similarly, did not require that a facility perform an important network function to be a network facility, but that any degree of network integration is sufficient.[59] PG&E asserts that the Opinion No. 466 orders[60] and Order No. 2003-A establish a sole use standard that defines facilities as network facilities unless their sole use is for the transmission of specified generation resources.

---

[55] *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 104 FERC ¶ 61,103 (2003); *order on reh'g*, Order No. 2003-A, 106 FERC ¶ 61,220 (2004); *order on reh'g*, Order No. 2003-B, 109 FERC ¶ 61,287 (2004); *order on reh'g*, Order No. 2003-C, 111 FERC ¶ 61,401 (2005).

[56] *Citing* Order No. 2003-A, *Standard Large Interconnection Agreement*, Art. 1.

[57] Opinion No. 466-A, 106 FERC ¶ 61,144 at P 21, 24; Opinion No. 466-B, 108 FERC ¶ 61,297 at P 19.

[58] They assert the Initial Decision may rely on these orders even though they are pending on rehearing or appeal because Commission decisions are final (*citing* section 313(c) of the FPA, 16 U.S.C. § 825l(c) (2000); *Northwest Pipeline Corp*., 88 FERC ¶ 61,298 at 61,911 (1999)) and they have not been stayed.

[59] *Citing*, Opinion No. 474, 108 FERC ¶ 61,084 at P 48.

[60] *Citing* Opinion No. 466-A, 106 FERC ¶ 61,144 at P 18, 19, 20, and 22.

32. Trial Staff and the CAISO also assert *Mansfield* is not the applicable standard. The CAISO asserts that *Mansfield* is to be used only in special circumstances to establish a lack of integration and not to establish that integration exists.[61]

33. Trial Staff asserts the Commission has already rejected SWP's arguments concerning Order No. 2003 in Opinion No. 466-B. Trial Staff asserts that in Opinion No. 466-B, the Commission determined that it did not abandon any of the fundamental principles concerning the Commission's transmission pricing policy in Order No. 2003 and did not mandate an incremental pricing policy with respect to any facilities.[62]

c. Commission Decision

34. The Commission affirms the test used in the Initial Decision. The Initial Decision is correct that any degree of integration in the transmission network is sufficient to establish that a facility is a network facility and that its costs must be rolled into transmission rates and not directly assigned to specific customers. As the Commission explained in Opinion Nos. 466-A, 466-B, and 474, the transmission network is a single interconnected system serving and benefiting all transmission customers and it is this interconnected nature that makes for a reliable system consistently providing for the delivery of electric energy to all customers.[63] Thus, a showing of any degree of integration is sufficient to show that a facility is a network facility.[64]

35. The Commission previously rejected the five-factor *Mansfield* test in Opinion No. 474 as the test for determining whether a facility is a network facility.[65] There we stated that *Mansfield* has been used to determine whether special circumstances exist such that a

---

[61] *Citing* Opinion No. 474, 108 FERC ¶ 61,084 at P 51. The CAISO states the Commission clarified in Opinion No. 474 at P 51 that the test in *Consumers Energy Company*, 86 FERC ¶ 63,004 (1999), *aff'd*, 98 FERC ¶ 61,333 (2002), on which SWP also relies, was used to determine whether customer-owned facilities were eligible for transmission service credits and that the *Consumers Energy* test is not relevant to the determination of whether a facility of the transmission provider is a network facility.

[62] *Citing* Opinion No. 466-B, 108 FERC ¶ 61,297 at P 12.

[63] *E.g.*, Opinion No. 466-A, 106 FERC ¶ 61,144 at P 22

[64] Opinion No. 474, 108 FERC ¶ 61,084 at P 48 and n. 66; Opinion No. 466-B, 108 FERC ¶ 61,297 at P 19.

[65] Opinion No. 474, 108 FERC ¶ 61,084 at P 51.

facility is *not* a network facility. A negative showing with respect to all five *Mansfield* factors indicates that a facility is *not* integrated with the transmission network and that its costs should *not* be rolled into transmission rates. In contrast, it is not necessary that a facility make a positive showing with regard to all five *Mansfield* factors to be a network facility.

36. Order No. 2003 concerned the pricing of network upgrades needed to connect generators to the transmission grid. Order No. 2003 does not establish a test for determining whether facilities that are not such network upgrades are integrated, network facilities. That test, as affirmed here, is whether the facilities have any degree of network integration. As we explained in Opinion No. 466-B, the Commission did not intend to abandon any of the fundamental principles that have guided its transmission pricing policy. [66] Those principles have favored rolled-in pricing for transmission facilities.

2. Factual Arguments

a. Briefs on Exceptions

37. The CPUC asserts the Initial Decision is incorrect in finding that the NTS and STS entitlements are not radial lines. The CPUC states that under both the original and revised S-326, the entitlements, including those on the Adelanto-Lugo line, are designed for scheduling purposes in a radial configuration.[67] It states that, in addition, the NTS and STS are geographically radial in that the power either from the NTS or from the IGS all flows into California on the STS.

38. The CPUC states the NTS and STS are not loop facilities such as those reviewed in Opinion Nos. 466-A and 466-B.[68] It asserts there is no evidence that the NTS and STS are looped transmission or that they perform any export function. Therefore, the CPUC states, there is no evidence showing any loop service using the Cities' entitlements that would open access to additional generation not available prior to the Cities' execution of the CAISO's TCA.

---

[66] Opinion No. 466-B, 108 FERC ¶ 61,297 at P 10-12. *See* Order No. 2003-A, *FERC Stats. & Regs.* ¶ 31,160 at P 580 - 87.

[67] *Citing* Tr. 1541, 1542:3-5 and 17-19.

[68] *Citing* SWP-50-A at 67:12-14, 210:7-25, 211:1; SWP-1 at 4.

39. SWP claims the NTS/STS entitlements fail three out of the five *Mansfield* factors—the entitlements are radial, power essentially flows in only one direction, and the entitlements do not provide capability or reliability benefits to the grid and, hence, are not network facilities. SWP also asserts the NTS/STS entitlements fail other tests for network integration such as those that apply when a transmission-owning network customer should receive credit for its facilities under an open-access transmission tariff [69] and when an upgrade to the transmission system is a network upgrade.[70]

40. SWP asserts the NTS/STS entitlements are direct assignment facilities, not network facilities. It argues that the OTC of the STS is directly dependent on the IGS and decreases when the IGS units are out of service and that the CAISO's entitlement share depends on generation sales contracts.[71]

41. The CPUC and SWP assert the testimony of the Cities' witness Daniels[72] that the NTS and STS form inter-utility connections and that the interconnections increase reliability and improve economic efficiency by providing access to more sources of energy and alternative ancillary services is not probative. The CPUC asserts there is no evidence that the entitlements changed their functioning with any of the utility interconnections because of the transfer of the entitlements to the CAISO. The CPUC also asserts Mr. Daniels' testimony does not include any evidence of increased reliability or improved economic efficiencies, nor does it identify or quantify more sources of energy or alternative ancillary services. The CPUC states that since the Cities joined the CAISO, their entitlements are no more integrated with the CAISO Grid than they were before the Cities joined the CAISO and do not function to provide any important network function for the grid that they did not provide before the Cities joined the CAISO.

---

[69] SWP states generalized, sweeping claims of integration will not suffice, citing *Consumers Energy Co*., 86 FERC ¶ 63,004 at 65,015-16, *aff'd*, 98 FRC ¶ 61,333 (2002) and *Southwest Power Pool*, 106 FERC ¶ 61,110 at P 114 (2004).

[70] SWP states a network upgrade is one that is at or beyond the point of interconnection with the transmission system, citing Order No. 2003-A, *Standard Large Interconnection Agreement*, Art. I

[71] SWP cites SWP-1 at 7, 12, 13, 22-31; SWP-49 at 10-13.

[72] Initial Decision at P 50.

42. The CPUC and SWP assert the NTS/STS facilities are not network facilities because the Cities' entitlements are not available for use by other market participants. They argue that even with the revisions to S-326, the STS will still be reserved primarily by the Cities to deliver generator output from the IGS. The CPUC argues that the actual point of injection onto the STS remains at IPP and that only the Cities can schedule at IPP[73] and also that the Cities retain their scheduling priority for their IPP generation through the use of their FTRs.[74] SWP argues that other customers can only use the STS if they schedule power from a point on the NTS. SWP claims that both before and after September 16, 2004, flows by other customers on the NTS/STS were *de minimis*—6.9 percent of the ISO's total NTS/STS usage in January through August, 2004[75] and only 37.5 gwh, or an average of 6.4 Mw each hour after the revision to S-326.[76]

b. <u>Briefs Opposing Exceptions</u>

43. Trial Staff, the CAISO, and SCE assert the Initial Decision correctly found that the NTS/STS entitlements are network transmission facilities, not direct assignment or connection facilities. They assert this finding is supported by the following evidence. They assert the NTS/STS facilities are connected to other utility lines and control areas at Mona and Gonder so that energy can flow over the NTS/STS lines irrespective of the IGS and the NTS/STS lines are not devoted exclusively to the transmission of energy generated at the IGS.[77] In addition, they assert power can flow over the NTS/STS facilities even if the IGS is not generating, with the STS having over 40 percent of its rated capability when both IGS units are down. They also assert the NTS/STS lines are bi-directional. They assert that, given these characteristics, the NTS/STS lines are not radial. The CAISO also states it is immaterial that the CAISO models all interconnections with other control areas, including the NTS and STS, as radial tie lines because such interconnections remain part of the CAISO's integrated network and of CAISO controlled facilities and give the CAISO resources in addition to those inside its own control area. Trial Staff asserts it is not necessary that the NTS/STS lines be loop

---

[73] *Citing* Tr. 1524-1531; ISO-22 at 18.

[74] *Citing* ISO-12 at 8:10-11; Tr. 1534.

[75] SWP-94 at 2:8-10.

[76] *Id.* at 2:3-8.

[77] *Citing* ISO-1 at 7.

lines in order to be network facilities, only that they perform some network function. If *Mansfield* is the standard, then Trial Staff and SCE assert the NTS/STS facilities meet some of the *Mansfield* criteria and are integrated network facilities under that test.[78]

44. Trial Staff also asserts that the NTS/STS facilities create additional reliability benefits for the CAISO through the CAISO's ability to schedule these facilities.[79] It asserts forward scheduling of the Cities' entitlements enhances the CAISO's knowledge of and ability to control (that is, cut or increase) schedules on the STS and NTS facilities and entitlements. Trial Staff also asserts the CAISO could use the NTS/STS facilities to help control or compensate for any unusual events which could impact reliability on the CAISO controlled grid.

45. The CAISO asserts it is not determinative that the NTS and STS operated as an interutility connection prior to the transfer of the Cities' entitlements to the CAISO. It states that it is the placement of that function under the CAISO's operational control that makes the NTS/STS entitlements integrated network facilities. The CAISO states that before the transfer, users of the CAISO controlled grid would have had to make separate scheduling arrangements with and pay a separate transmission rate to the Cities in order to use the facilities. After the transfer, the CAISO states, users of the entitlements can schedule the import or export of capacity and energy with the CAISO and pay a single, non-pancaked transmission rate. The CAISO states that these features are the essence of integration.

46. Trial Staff and SCE assert that primary use of the NTS/STS entitlements by the Cities and restrictions on these entitlements do not serve to make them direct assignment facilities. Moreover, they assert that the relative use of the NTS/STS facilities is not

---

[78] They cite the following factors: the NTS/STS lines are not radial; the flow over the lines can be bi-directional; the CAISO has and does provide transmission service to the Cities and other customers over these lines; and the NTS/STS lines provide reliability benefits to the CAISO controlled grid. With regard to the last factor, Trial Staff cites Tr. 1184-85 and states that the CAISO's ability to schedule and manage outages on the NTS and STS enhance the CAISO's scheduling and ability to manage other parts of the CAISO controlled grid.

[79] *Citing* Tr. 1184-85.

relevant under the Opinion No. 466 orders. Trial Staff asserts that, contrary to SWP's arguments, usage of the NTS/STS facilities of 6.9 percent by other customers shows that the NTS/STS facilities performed some network function.[80]

c. Commission Decision

47. The Commission affirms the ALJ's finding that the Cities' NTS/STS entitlements are network facilities. As discussed above, the ALJ was correct concerning the test for determining whether a facility is a network facility—any degree of integration as discussed in Opinion Nos. 474 and 466-B. It is the same test that the Commission used prior to the formation of ISOs and RTOs. The focus of the test is whether the facility performs any transmission functions.

48. In this case, the facilities at issue are entitlements to the NTS and STS transmission lines. The record shows that these entitlements are rights to use high voltage lines that are designed to and do carry bulk power. It also shows these lines are interconnected with other utilities and other transmission systems at Mona, Gonder, and Adelanto. Thus the evidence shows the entitlements can be used to transmit power from other generators besides the IGS. In addition, the evidence shows that power can flow in either direction on the entitlements. The Commission also agrees with Trial Staff that the NTS/STS entitlements provide reliability benefits to the CAISO grid by giving the CAISO increased ability to control scheduling. The evidence shows further that other market participants were able to and did use the NTS/STS entitlements to transmit power; it is not necessary that the entitlements provide service to other market participants in order for them to be network facilities, but it is further evidence that they do perform network functions. The record thus indicates that the NTS/STS entitlements not only perform network functions but perform some substantial network functions.

49. The record also shows the NTS/STS entitlements are not entitlements to use radial lines or generation ties, as the excepting parties claim. The NTS/STS lines are not physically limited to serving only the Cities and they do not serve only generation from

---

[80] Trial Staff states this is well within the range the Commission found acceptable in the Opinion No. 466 orders in which some of the PG&E facilities were used 81-100 percent of the time to bring power from generators onto the PG&E system.

Trial Staff also asserts that even before revisions to S-326, any entity could schedule from Mona or Gonder across IPP and through to California, irrespective of the IPP-Lugo Branch Group. It states that SCE scheduled a 25 MW import at the Mona scheduling point on the NTS in March, 2003. *Citing* S-11.

the IGS. The record thus shows that the NTS/STS entitlements perform transmission functions. Consequently, the Commission finds the NTS/STS entitlements perform transmission functions, are integrated with the CAISO grid, and are network facilities.

50. The Commission rejects the excepting parties' argument that the NTS/STS entitlements are no more integrated with the CAISO grid than they were before the Cities joined the CAISO because the entitlements did not change their physical configuration or functioning when the Cities joined the CAISO. Prior to the Cities joining the CAISO, the entitlements were not available for use by other market participants. When the Cities joined the CAISO, the CAISO modeled scheduling rights for the entitlements and made the entitlements available to third parties for transmission. Thus, the entitlements became far more available and so far more integrated with the CAISO grid than they had been before the Cities transferred them to the CAISO.

51. As Trial Staff and SCE assert, the relative actual use of the NTS/STS entitlements is not relevant under the Opinion No. 466 orders to determine whether a facility is a network facility. The issue is whether there is any degree of network integration. Use of the entitlements by other customers may be additional proof of network integration, but it is not necessary that other customers make actual use of the entitlements for them to be network facilities (although here the record does indicate some substantial use).

B. Whether There Must Be an Additional Showing of Benefits to Include the Cities' TRRs in the CAISO's Rates

52. The ALJ found the Commission had already determined in the section 203 proceeding that there were benefits to CAISO market participants from the transfer of control of the NTS/STS entitlements to the CAISO. The CPUC asserts that whether there are benefits from the entitlements must be considered here in connection with whether the CAISO's rates are just and reasonable. The Commission finds that no further showing of benefits is needed to include the Cities' TRRs in the CAISO's rates.

1. Briefs On Exceptions

53. The CPUC asserts the inclusion of the Cities' TRRs in CAISO's rates is only just and reasonable if there are benefits to the CAISO system. It cites as support for the need for a showing of benefits the Commission's statement that "even if rates increase for some customers, the transaction can still be consistent with the public interest if there are countervailing benefits from the transaction."[81] The CPUC states the Initial Decision

[81] 102 FERC ¶ 61,058 at P 14.

failed to consider the lack of countervailing benefits from the Cities' entitlements. The CPUC also asserts cost-benefit studies must be performed of the impact of the Cities' entitlements as such studies are required for planning and expansion of the CAISO grid.[82]

2. Briefs Opposing Exceptions

54. SCE asserts there is no need for a cost-benefit test to allow the inclusion of the costs of existing facilities in a PTO's TRR. PG&E asserts the Commission rejected a cost-benefit approach in Opinion Nos. 466-A and 466- B finding that its rolled-in pricing policy recognizes the inherent benefit of the integrated grid to customers.[83] Thus, PG&E contends, the Commission has held that no further cost-benefit analysis is necessary to justify including the costs of network facilities in the CAISO's rates.

55. Trial Staff, the Cities, and the CAISO assert the Initial Decision is correct that the Commission has already addressed the issue of whether the transfer of the Cities' entitlements to the CAISO benefits the public in the section 203 orders.[84] They assert the Commission has already determined that the benefits of the transfer of the Cities' facilities outweigh any rate increases that result from the transaction and that the transfer is in the public interest. They assert SWP's and CPUC's exceptions alleging that customers will not benefit from the entitlements are collateral attacks on the section 203 orders.[85]

56. The CAISO and the SCE assert that the issue of a cost-benefit analysis is outside the scope of this proceeding. The CAISO also asserts that the Commission did not intend this proceeding to address whether the benefits of the transfer have been realized.

3. Commission Decision

57. The issue set for hearing was whether the NTS and STS entitlements are integrated network transmission facilities. The Initial Decision determined, and the

---

[82] *Citing* CPUC-13 and Tr. 452-53.

[83] Opinion No. 466-A, 106 FERC ¶ 61,144 at P 22.

[84] 102 FERC ¶ 61,058 at P 13-14; 107 FERC ¶ 61,150 at P 13-15.

[85] The CAISO asserts the Commission has already addressed the CPUC's arguments that the inclusion of the Cities' TRRs in the CAISO's TAC constitutes unjust subsidization of the Cities' ratepayers in Opinion No. 478, 109 FERC ¶ 61,301 at P 32 and concluded that cost shifts under a specified cap are just and reasonable.

Commission affirms in this order, that these entitlements are integrated network transmission facilities. The Commission's orders establish that such network facilities benefit all customers. "Due to the integrated nature of the transmission network, network facilities benefit all network users."[86] Network facilities comprise the integrated transmission grid which "is a single interconnected system serving and benefiting all transmission customers . . . ."[87] The grid's interconnected nature "makes for a reliable system consistently providing for the delivery of electric energy to all customers even when particular facilities go out of service . . . ."[88] This is true even if facilities would not currently be needed but for a particular customer's service.[89]

58. It is the Commission's policy that the costs of network transmission facilities be included in transmission rates. There is no need to identify further actual benefits in order to include the costs of network transmission facilities in transmission rates. The fact that they are network facilities means that they are providing benefits to all network users. Since the NTS and STS entitlements have been determined to be integrated network transmission facilities, there is no need for the Cities or the CAISO to establish further actual benefits in order to include the costs of the entitlements in the Cities' TRRs and in the CAISO's rates.

C. Whether the CAISO Has Operational Control Over the Cities' Entitlements

59. The Initial Decision found the CAISO has operational control over the Cities' entitlements. SWP and the CPUC assert the CAISO does not have operational control over the Cities' entitlements, while Trial Staff, the Cities, the CAISO, and SCE support the Initial Decision. The Commission affirms the Initial Decision.

---

[86] Opinion No. 474, 108 FERC ¶ 61,084 at P 47.

[87] Opinion No. 466-A, 106 FERC ¶ 61,144 at P 22.

[88] *Id.*

[89] Opinion No. 474, 108 FERC ¶ 61,084 at P 47 and 50.

1. Operational Control Over Entitlements

a. Briefs on Exceptions

60. SWP asserts that management of entitlements, as compared with physical assets does not meet the definition of operational control in the CAISO's Tariff. It asserts the Tariff definition refers only to hard physical assets, that is, the operation of transmission lines and facilities. The CPUC asserts that Order No. 2000 requires actual physical control for an RTO to have operational authority. That physical control, it asserts, includes switching transmission elements into and out of operation, monitoring and controlling real and reactive power flows, monitoring and controlling voltage levels, scheduling and operating reactive resources, and authority for generator redispatch of any generator connected to the transmission facilities it operates to prevent or manage emergency situations.[90]

b. Briefs Opposing Exceptions

61. Trial Staff, the CAISO, and SCE assert the CAISO Tariff, the TCA, and Commission precedent permit and recognize that the CAISO may accept operational control over entitlements.[91] Trial Staff and the Cities assert the Commission has previously accepted the transfer of control of entitlements as well as facilities that are located outside the CAISO Control Area.[92] They state the Commission has permitted entities outside California or in another control area to turn over operational control of entitlements and facilities to the CAISO, consistent with the principle that the ISO should cover as large an area as possible.[93] SCE states an entitlement or facility located outside

---

[90] *Citing* Order No. 2000, FERC Stats. & Regs. ¶ 31,089 at 31,090 and 31,104.

[91] The CAISO cites definitions of Participating TO and TRR in Appendix A, Master Definitions Supplement, CAISO Tariff; Part (v), Original Sheet No. 2, TCA; and *Pacific Gas and Electric Company*, 81 FERC ¶ 61,122 at 61,463, 61,466, 61,559 (1997). SCE cites sections 4.1.1 and 4.1.2 of the TCA.

[92] They cite as examples the transmission rights included in PG&E's, SCE's, and San Diego Gas & Electric Company's (SDG&E) entitlements in the Pacific High Voltage DC tie (Pacific HVDC) which are located in the LADWP control area and SCE's entitlements in the Eldorado-Moenkopi-Four Corners 500 kV AC transmission line in the APSC control area.

[93] *Citing Pacific Gas & Electric Company*, 81 FERC ¶ 61,122 at 61,568 (1997) and ISO-1 at 7.

the CAISO control area can be under the CAISO's operational control because the primary requirement for operational control is that the CAISO has exercised its authority to make open access service available.

62. Trial Staff asserts that the language the CPUC cites in Order No. 2000 concerning operational and redispatch authority needed by RTOs is merely general language that does not address the precise issue in this case. Trial Staff and the CAISO assert Order No. 2000 does not contain the Commission's subsequent determinations concerning operational control by the CAISO of entitlements outside its control area, including the transfer of the NTS/STS entitlements. The CAISO also asserts the CPUC's arguments are directed at requirements for RTO status and that this proceeding does not concern the CAISO's RTO status.

c. <u>Commission Decision</u>

63. The Commission finds that SWP is incorrect and that the CAISO may assert operational control over contractual rights or entitlements as well as over physical assets. As the opposing parties state, the CAISO's Tariff and TCA specifically recognize that a Transmission Owner (TO) may transfer control of entitlements to the CAISO. The Tariff defines a TO as an entity owning transmission facilities or having firm contractual rights to use transmission facilities[94] and a Participating Transmission Owner (PTO) as a party to the TCA that has placed its transmission assets and entitlements under the CAISO's operational control.[95] The TCA provides that an applicant shall describe its entitlements[96] and that a PTO shall place the transmission lines and associated facilities to which it has entitlements under the CAISO's operational control.[97]

64. The Commission agrees that the portion of Order No. 2000 that SWP cites was more general language associated with qualification for RTO status. It also was issued prior to the Commission's orders referenced above concerning facilities outside the CAISO control area, and did not expressly address the circumstances addressed by the Commission in those later orders and here. Consequently, it is not dispositive here. The Commission agrees with SCE that the primary requirement for operational control is that

---

[94] Second Revised Sheet No. 352, Appendix A, CAISO Tariff.

[95] First Revised Sheet No. 338, Appendix A, CAISO Tariff.

[96] Section 2.2.1 (ii) and (iv), Original Sheet No. 4, TCA.

[97] Section 4.1.1, Second Revised Sheet No. 15, TCA.

the CAISO has authority to make open access service available. That is, the ability to post scheduling points related to the entitlements on the CAISO Open Access Same-Time Information System and determine the use of the entitlements through scheduling. The Commission also agrees that excluding the transfer of entitlements would be contrary to Commission precedent on the scope of the CAISO. [98]

2. The Requirements for Operational Control

a. Briefs on Exceptions

65. SWP argues that the definition of operational control is established by the CAISO's Tariff and must be the same for all facilities and entitlements, whether they are inside the CAISO control area or outside the CAISO control area. SWP asserts the Initial Decision is incorrect because it adopts a definition of operational control for entitlements outside the CAISO that is lesser in degree than the definition of operational control for entitlements inside the CAISO.[99] They argue the Cities must turn over operational control of their entitlements to the CAISO to have the costs of the entitlements included in their TRRs. [100]

66. The CPUC and SWP also assert that the CAISO does not have operational control over the Cities' entitlements because the CAISO does not meet some of its Tariff requirements for operational control. The CPUC asserts the CAISO does not comply with section 2.3.3.1 of the CAISO Tariff which, it asserts, provides that the CAISO "shall coordinate and approve Maintenance Outages."[101] SWP asserts the CAISO has failed to secure a Large Generator Interconnection Agreement (LGIA) for the IGS and that this is required by Article 9 of the Standard LGIA. SWP asserts that lack of such an LGIA

---

[98] *Pacific Gas & Electric Company*, 81 FERC ¶ 61,122 at 61,568 (1997).

[99] *Citing* Initial Decision at P 55 n. 25 and P 57.

[100] *Citing* CAISO Tariff, App. A, Substitute Third Revised Sheet No. 354. SWP states that the TRR is the total annual authorized revenue requirements associated with transmission facilities and entitlements turned over to the operational control of the CAISO by a PTO.

[101] Substitute First Revised Sheet No. 40, California Independent System Operator Corporation, FERC Electric Tariff, First Replacement Volume No. 1.

shows the CAISO's lack of operational control over the IGS and the lines connecting it to the CAISO controlled grid and that the CAISO does not have the right to dispatch the Cities' IGS entitlements for reliability purposes.[102]

67. SWP and the CPUC assert the LADWP is the Control Area Operator for the NTS/STS transmission lines and exercises operational control over these lines including operation, maintenance, and management. The CPUC asserts the record shows that the CAISO does not add anything to the control of the entitlements that would warrant including the Cities' TRRs in the CAISO's rates.

68. The CPUC asserts that the LADWP controls and performs operation and maintenance of the NTS/STS lines, reliability functions, overloads, and the actual flow of power. SWP asserts that unlike with respect to facilities within the CAISO, the CAISO lacks real-time control and control over imbalances of the NTS/STS entitlements and that it does not obtain ancillary services [103] for these entitlements. SWP also asserts that the CAISO does not secure compliance with reliability criteria for the NTS/STS entitlements and that the Initial Decision is incorrect in this regard.

69. The CPUC asserts the LADWP manages NTS/STS outages and directs NTS/STS outage coordination.[104] The CPUC asserts the CAISO does not direct outage coordination for the NTS/STS because the CAISO does not control the transmission facilities subject to the Cities' entitlements and because the CAISO does not have a participating Generator Agreement for the generators that comprise the IGS [105] and cannot dispatch generation feeding into the NTS/STS lines. The CPUC asserts the CAISO's coordination of schedules and outages with the LADWP is no more than that of the other control areas interconnected with LADWP, Sierra Pacific and PacificCorp.

---

[102] *Citing* SWP-49 at 11-12.

[103] *Citing California Independent System Operator Corp.*, 107 FERC ¶ 61,152 at P 28 (2004).

[104] *Citing*, *inter alia*, ISO-1 at 5:14-19; ISO 12 at 10:3-4; Tr. 12:12-19, 14:14-24, 1545:2-25; 1546:1-5; SWP-9.

[105] *Citing* Tr. 114:16-25, 115:1-22,174:13-25, 175:1-11; SWP-50.

b. Briefs Opposing Exceptions

70. The CAISO and Trial Staff assert the Initial Decision correctly applied the CAISO Tariff definition of operational control[106] to the Cities' entitlements and that the CAISO's operational control over the entitlements satisfies the Opinion No. 466 orders. They assert the Initial Decision is correct that operational control varies depending on the location of the facilities and also that a lesser degree of control over entitlements outside the CAISO control area is sufficient.[107]

71. The CAISO asserts that the operational control that allows a transmission provider to include facilities in rates is different from the operational responsibilities of a control area operator. The CAISO states that for facilities and entitlements outside its control area, it does not perform such control area operator functions as maintenance, measurement and control of power flows, or response to system emergencies. The CAISO states that this is true for all facilities and entitlements outside its control area, not just the NTS/STS entitlements.[108] The CAISO asserts that it could not include facilities and entitlements outside the CAISO control area in the CAISO controlled grid if it had to perform these functions and that such a limit on its expansion would be contrary to Commission policy.[109]

72. The Cities state that the CAISO relies on other entities to maintain all of the facilities it controls, whether the facilities are inside or outside the CAISO control area.[110] The Cities also assert that the CAISO's control over their entitlements is the same as the control it exerts over the other facilities outside its control area.[111]

---

[106] Third Revised Sheet No. 336, Appendix A, CAISO Tariff; CIT-1.

[107] Trial Staff states that for facilities located outside the CAISO control area, operational control is limited to the CAISO's coordinating of schedules and outages and monitoring the applicable Control Area Operator. *Citing* ISO-1 at 5:11-19.

[108] *Citing* ISO-1 at 5; ISO-6 at 4.

[109] *Citing Pacific Gas & Electric Company*, 81 FERC ¶ 61,122 at 61,568 (1997).

[110] *Citing* CIT-14 at 4.

[111] The Cities state that APSC performs maintenance on and coordinates maintenance and outages with the CAISO and the LADWP for the Eldorado-Moenkopi-Four Corners transmission facilities. They also state that LADWP and the Bonneville

(continued)

73. Trial Staff asserts the CAISO has operational control of the NTS/STS entitlements under the CAISO Tariff regardless of whether the LADWP performs functions such as maintenance. Trial Staff asserts that the core of operational control is the ability to schedule facilities and entitlements for the purpose of affording comparable non-discriminatory transmission access. Trial Staff states the CAISO has exercised the right to schedule the NTS/STS entitlements as of January 1, 2003 and that, since that time, the CAISO has exercised operational control over the Cities' transmission.[112]

74. Trial Staff asserts that, contrary to the CPUC's position, the CAISO does coordinate outages for facilities outside its control area, such as the NTS and STS. It states S-326, which applies to the NTS and STS, contains such procedures. Trial Staff asserts it is not relevant whether the CAISO's involvement causes inefficiencies because the essence of operational control is the actual scheduling of facilities and entitlements.

75. The CAISO, SCE, and the Cities assert that lack of an LGIA with IGS does not indicate a lack of operational control over the STS. They assert that Order No. 2003 and LGIAs apply to the interconnection of new generating units, not units that are already interconnected.[113] The CAISO asserts the IGS was energized in 1986 so that the standards of Order No. 2003 are not directly applicable to this proceeding. The Cities state there was no showing that under the Commission's rules or regulations the IGS is the type of entity that must execute a LGIA. The Cities believe that the existing generation interconnection arrangements for the IGS would be grandfathered under the Order No. 2003 orders.

c. <u>Commission Decision</u>

76. The Commission rejects the exceptions of the CPUC and SWP to the Initial Decision's finding that the CAISO has had operational control over the entitlements since January 1, 2003. The CAISO is correct that the functions of an ISO are different from those of a control area operator. The CAISO Tariff defines operational control for the CAISO as:

Power Administration (BPA) perform the same functions with respect to the PACFIC HVDC. *Citing* CIT-14 at 4-5.

[112] *Citing* S-7 at 8.

[113] *Citing* Order No. 2003-A, LGIA, Appendix B, section 1, Definitions.

> [t]he rights of the ISO under the Transmission Control Agreement and the ISO Tariff to direct Participating TOs how to operate their transmission lines and facilities and other electric plant affecting the reliability of those lines and facilities for the purpose of affording comparable non-discriminatory transmission access and meeting Applicable Reliability Criteria.[114]

Thus operational control under the CAISO Tariff is the ability to direct participating TOs how to operate their facilities. It is not necessary that the CAISO itself perform operational tasks in order for it to exert operational control over the Cities' entitlements. Nor is it necessary that the CAISO have an LGIA with the IGS. The Commission agrees with the Initial Decision that the CAISO exercises operational control over the entitlements through its ability to schedule the entitlements and to coordinate outages.[115] In addition, the evidence showed that the CAISO secures compliance with applicable reliability criteria. [116]

77. Section 2.3.3.1 of the CAISO Tariff does provide the CAISO with responsibilities with respect to the coordination of outages and maintenance. That section provides the ISO Outage Coordination Office "shall coordinate and approve Maintenance Outages of . . . all facilities that comprise the ISO Controlled Grid . . . . The ISO shall additionally coordinate and approve Outages required for new construction and for work on de-energized and live transmission facilities . . . and associated equipment." Operators may only take facilities that comprise the ISO controlled grid out of service for planned maintenance or new construction or other work as approved by the ISO Outage Coordination Office.[117]

---

[114] Third Revised Sheet No. 336, California Independent System Operator Corporation, FERC Electric Tariff, First Replacement Volume No. I.

[115] Initial Decision at P 57.

[116] *Id*. at P 57 *citing* S-7 at 8.

[117] Original Sheet No. 40A, California Independent System Operator Corporation, FERC Electric Tariff, First Replacement Volume No. I. All forced outages must be communicated to the ISO Control Center and the ISO Control Center shall coordinate any operational changes necessary to accommodate a Forced Outage. Section 2.3.3.9.2 and 2.3.3.9.3, Third Revised Sheet No. 45 and Second Revised Sheet No. 46, California Independent System Operator Corporation, FERC Electric Tariff, First Replacement Volume No. I.

78. The CPUC asserts that the CAISO has, in practice, failed to coordinate and approve maintenance outages as required by the Tariff. But there is no evidence that the CAISO has failed in these respects. And, as the Initial Decision found, the evidence shows that the CAISO's operating procedures, S-326, cover the NTS and STS entitlements and that the CAISO exercises control over the entitlements, in part, by coordinating outages under these procedures.[118]

79. Consequently, the Commission finds that the CAISO satisfies its Tariff requirements for operational control over the NTS and STS entitlements.

3. TCA Requirements

a. Briefs on Exceptions

80. SWP asserts the CAISO has not applied the requirements of the TCA regarding operational control. SWP asserts the NTS/STS entitlements do not meet the reliability criteria of section 2.2.3 of the TCA. SWP also asserts the Cities did not turn over all of their entitlements as they are required to do by section 3.1 of the CAISO Tariff and by the TCA. SWP states the Cities have a contract providing Deseret with rights to the facilities which the Initial Decision decided was not pertinent to this proceeding.[119] SWP also states the CAISO's management of the Cities' entitlements has led to phantom congestion which causes reliability concerns and that services that contribute to reliability are unavailable on Cities' entitlements.[120]

b. Briefs Opposing Exceptions

81. The Cities and the CAISO assert that all of the TCA requirements have been met. They assert that section 2.2.3 of the TCA only requires that the inclusion of transmission facilities shall not have an "adverse impact on reliability" and that the Cities' entitlements meet this criterion.[121] The CAISO asserts that, contrary to SWP's position, the NTS/STS

---

[118] Initial Decision at P 57.

[119] Initial Decision at P 60.

[120] *Citing* SWP-49:17- 50:3. This citation, at p. 56 of SWP's Brief on Exceptions, appears to contain only page and line numbers. There does not appear to be an exhibit number in the citation.

[121] *Citing* ISO-1 at 5:20-7:5.

entitlements do not have an adverse impact on reliability or cause the CAISO to breach Applicable Reliability Criteria because of alleged phantom congestion.[122] The CAISO asserts there was no evidence that the NTS and STS adversely affect reliability or would cause a breach of Applicable Reliability Standards, but that, instead, the evidence indicated that the NTS and STS enhance the reliability of the CAISO controlled grid.[123]

82. The Cities and the CAISO assert that section 4.1.3 of the TCA only permits the CAISO to refuse facilities that cannot be integrated into the CAISO grid due to technical considerations. They assert the CAISO was able to model the Cities' entitlements so that all market participants can schedule on the associated capacity.[124] Thus, they assert, there was no need for the CAISO to perform studies as to whether the entitlements were usable or to refuse to accept operational control over them.

83. The CAISO asserts that the Cities' gave notice in each City's Appendix B to the TCA[125] of encumbrances associated with Deseret, as required by the TCA, and that these appendices were accepted by the Commission. The Cities assert that they transferred all of their entitlements, including the Deseret entitlements, to the CAISO. The CAISO states sections 2.4.3 through 2.4.4.5.4 of the CAISO Tariff address the treatment of these existing rights.

c. **Commission Decision**

84. The Commission rejects SWP's exceptions concerning compliance with TCA requirements. Section 2.2.3 of the TCA provides that an applicant can become a PTO if the CAISO determines that its facilities can be incorporated into the CAISO Controlled Grid "without any material adverse impact on its reliability" and that incorporating the

---

[122] The CAISO asserts phantom congestion can only occur when transmission capacity under an Existing Transmission Contract is unscheduled by the contract holder and the CAISO cannot make use of the unscheduled capacity in the day-ahead and hour-ahead markets. *Citing* Opinion No. 478, 109 FERC ¶ 61,301 at P 17. The CAISO asserts all transmission capacity on the NTS and STS that is on CAISO controlled grid facilities consists of converted rights and not existing contracts so that the NTS and STS capacity cannot cause phantom congestion.

[123] *Citing* Tr. 1180-88.

[124] *Citing* Tr. 666.

[125] CIT-10.

facilities into the ISO Controlled Grid "will not put the ISO in breach of Applicable Reliability Criteria and its obligations as a member of WSCC."[126] The CAISO made these determinations concerning the applications of the Cities and submitted filings in Docket Nos. ER03-218-000 and ER03-219-000 to amend its TCA to add the Cities, among other things. The Commission accepted the filings in the TCA orders.[127] SWP's exceptions constitute a collateral attack on those orders and will not be entertained here as they are made beyond the statutory deadline for such challenges.

85. Similarly, the exceptions to the treatment of the Deseret contracts are also collateral attacks on the TCA orders. As the Cities state, they listed these contracts in Appendix B to their applications to become PTOs[128] as required by the TCA[129] and, as stated above, the Commission accepted their filings in the TCA orders. Those orders are not subject to collateral attack here.

86. In any event, the CAISO Tariff recognizes that when an applicant has given transmission service rights to a third party under an existing contract, the applicant cannot convert these rights to ISO transmission service rights and cannot turn over operational control of these rights to the CAISO.[130] As the CAISO states, its Tariff recognizes existing contracts like the Deseret contract as existing rights and administers them separately under such sections as 2.4.3 through 2.4.4.1.4 and 2.4.4.4 through 2.4.4.5 of its Tariff. Section 3.1 of the Tariff, which SWP cites, requires that PTOs turn over operational control of facilities and entitlements to the CAISO for which they have

---

[126] Sections 2.2.3 (i) and (ii), Original Sheet No. 6, California Independent System Operator Corporation, FERC Electric Tariff No. 7, Second Replacement Transmission Control Agreement.

[127] *See supra* note 4.

[128] *See, e.g.,* CIT-10 at pp. i and B-1, showing a contract between Riverside and Deseret for bi-directional transmission from Mona to Gonder for 20 MW terminating December 31, 2009 as an encumbrance in Riverside's application for PTO status.

[129] Section 2.2.1 (iii) requires a statement of any encumbrances. Original Sheet No. 4, California Independent System Operator Corporation, FERC Electric Tariff No. 7, Second Replacement Transmission Control Agreement.

[130] Section 2.4.4.1.1, First Revised Sheet No. 51 and Original Sheet No. 52; California Independent System Operator Corporation, FERC Electric Tariff, First Replacement Volume No. 1.

converted their existing rights to ISO transmission. Section 3.1 does not address existing rights of third parties such as Deseret and does not require the Cities to turn over operational control of Deseret's rights to the CAISO.

87. The Commission is unable to identify the exhibit to which SWP cites to support its allegation of phantom congestion as SWP did not provide the exhibit number, only page numbers in that exhibit. In any event, if SWP believes that phantom congestion is a problem on the NTS and STS entitlements, it may raise this issue with the CAISO or file a complaint with the Commission.

D. Whether the Amounts of the Cities' TRRs Should Be Reduced Because of Alleged Restrictions on the Use of the Cities' Entitlements

88. The Initial Decision determined that costs should not be excluded from the Cities' TRRs based on restricted use of the STS. The CPUC and SWP except to this holding while Trial Staff, the Cities, and the CAISO support the Initial Decision. SCE and PG&E oppose the excepting parties' arguments concerning the used and useful standard. The Commission affirms the Initial Decision and declines to reduce the Cities' TRRs.

1. Briefs On Exceptions

89. The CPUC and SWP argue market participants should not have to pay for the NTS/STS entitlements because they are not used and useful, citing *Tennessee Gas Pipeline Co. v. FERC*, 606 F.2d 1094, 1109 (D.C. Cir.), *cert. denied*, 445 U.S. 920 (1980) (*Tennessee*). *Tennessee* concerned whether certain advance payments for exploration could be included in rate base. The court in that case reiterated the general rule that an item may be included in rate base only when it is "used and useful" in providing service.

90. SWP asserts that the transfer of entitlements did not result in increased benefits to customers but that availability of the capacity of the Cities' entitlements decreased once under CAISO control. SWP asserts that the revisions to S-326 did not increase allowable export capacity, but merely reallocated the existing export capacity on different paths.[131] SWP also asserts there has been no overall increase in capacity as a result of the NTS/STS transfer and that netting of schedules, which was previously allowed on these entitlements is now disallowed on all facilities. It asserts that thus it is not justified to roll in all of the Cities' costs associated with the NTS, STS, and related LADWP contracts.

[131] *Citing* SWP-76 at 3:9-10, 16-18.

91. SWP and the CPUC argue the CAISO has restricted the availability of the NTS/STS entitlements under both the original and the revised S-326 procedures [132] because other market participants cannot schedule power from the IGS, the sole generators interconnected with the entitlements,[133] and cannot schedule on the STS until after the Cities have exercised their priority FTRs in the day-ahead market.

92. With respect to the IGS, SWP asserts that only those with an ownership share in the IGS, such as the Cities, could schedule IGS power from the former IPP scheduling point under the original S-326 procedure and only the Cities can currently schedule IGS power at the Mona scheduling point under the revised S-326 procedure. SWP asserts this restriction stems from an LADWP contract that did not allow a third party to schedule generation at IPP or currently at Mona.[134] SWP asserts that, as a result, the Cities have not unequivocally transferred control of their entitlements to the CAISO and their TRRs should be reduced.

93. The CPUC asserts that the September, 2004 revisions merely substituted the Cities' sole right to 370 MWs on the STS with the Cities' FTRs for 540 MWs, the total entitlement capacity on the STS. In addition, the CPUC states that the Cities will retain FTRs for the entire capacity of their entitlements on the STS until at least 2010 [135] and must take or pay for their share of the IGS generation and must use or pay their share of

---

[132] SWP cites SWP-76 at 9. It states, for example that on the IPP-Mona path, only 116 Mw out of 543 Mw is available. It also states that only the Cities have access to the IPP-Lugo segment. SWP asserts that CIT-11, on which the ALJ relied for availability information, is inaccurate and incomplete. SWP also asserts that the Cities have less access than they did before the facilities were turned over to the CAISO and have lost, for example, Anaheim's access to power from Hoover Dam and Riverside's bi-directional rights between Lugo and Mona. SWP asserts that the availability of other existing CAISO facilities has also been decreased as a result of the transfer of the NTS/STS facilities, such as the capacity on the Lugo to Marketplace and Mona to Marketplace paths. *See, inter alia*, SWP-76 at 3:12-18 and ISO-20 at 2.

[133] *Citing* SWP-1 at 16 and n. 20, 21; Tr. 679, 682, 684, 1533-34.

[134] *Citing* TR. 795:7-10 and, also, Tr. 794-812, 674, 679-684; ISO-11.

[135] *Citing* Tr. 1624:15-19.

the STS capacity until 2027. [136] The CPUC states these factors severely restrict equitable access and the possibility of actually integrating the Cities' entitlements into the CAISO Grid for the benefit of all market participants.

94. SWP asserts reduction of the Cities' TRRs is not inconsistent with the allocation of free FTRs to the Cities as new PTOs. SWP asserts the allocation has not been reviewed or approved by the Commission as required by section 9.4.3 of the CAISO Tariff. Further, SWP asserts FTRs are to be allocated in an amount commensurate with the transmission capacity turned over to ISO operational control. Given the restrictions on access to the entitlements and the CAISO's inadequate operational control over those entitlements, SWP asserts it is inappropriate to grant the Cities' FTRs in equal proportion to the capacity in the Cities' entitlements.

95. SWP asserts that intent is irrelevant with respect to undue discrimination[137] but that the evidence it presented showed a discriminatory intent did exist in favor of the Cities. It asserts there was continuing discrimination on the IPP-Lugo branch as now incorporated into the Mona-Lugo branch group. In addition, it asserts the entire branch group configuration for all the Cities' entitlements was designed to preserve the Cities' access to its generation entitlements to the detriment of other market participants. SWP asserts this discrimination was deliberate in that the CAISO and the Cities did not consult with market participants in drafting the original branch group configuration, these parties failed to acknowledge complaints by SWP, and the CAISO explicitly stated that it was giving priority to the Cities in revising the branch group for the Cities.[138]

---

[136] *Citing* CPUC-1 and CPUC-2.

[137] SWP presented the arguments in this paragraph of the order in its Brief Opposing Exceptions. *See* SWP Brief Opposing Exceptions at p. 5 *citing* section 205(b) of the FPA, 16 U.S.C. § 824d(b) (2000).

[138] *Citing* SWP-69B at 49:1-6 ("Our first priority is to the cities . . . we always meet with you before we design . . . we want to make sure you are satisfied in a way."); SWP-69B at 84:14-16 ("let the Cities tell us what they want and let's try to accommodate it".); Tr.

96. SWP asserts its arguments concerning reduction of the Cities' TRRs due to lack of availability of the NTS/STS entitlements are not a collateral attack[139] on the Commission's section 203 rehearing order.[140] SWP asserts these arguments were not rejected in that order and should be addressed in this proceeding.

97. SWP asserts the Initial Decision did not address its arguments that the allocation of FTRs to the Cities, together with the CAISO-imposed restrictions on the Cities' entitlements, results in unduly discriminatory access to the available transmission capacity.[141] Nor, states SWP, did the Initial Decision address SWP's argument that lack of transparency in the CAISO's allocation of FTRs to the Cities contravenes the CAISO Tariff and Commission precedent. SCE argues[142] that to the extent SWP's and CPUC's arguments that restrictions on the use of the entitlements pertain to the period January 1, 2003 through September 16, 2004, the Initial Decision did not address them.[143] SCE asserts the Initial Decision denied objections based on orders in Docket No. EC03-27-000 that were issued prior to the time that the Commission became aware of the limitation of available capacity on the STS to 164 MW.[144]

98. SWP asks the Commission to direct the CAISO to issue refunds for the portions of the Cities' TRRs reflecting the costs of the STS, NTS, and related LADWP contracts included in the CAISO's rates from January 1, 2003 forward.

2. <u>Briefs Opposing Exceptions</u>

99. Trial Staff, the Cities, and the CAISO assert the Cities' TRRs should not be reduced because of alleged restrictions on the use of the Cities' entitlements. Trial Staff and the Cities reiterate that to do so would be contrary to the Opinion No. 466 orders which determined that any degree of integration with the transmission system is sufficient

---

[139] Initial Decision at P 62.

[140] 107 FERC ¶ 61,150 at P 14 (2004).

[141] SWP Brief Opposing Exceptions at p. 4 citing SWP-1 at 37-42.

[142] In its Brief Opposing Exceptions at p. 15.

[143] *Citing* Initial Decision at P 62.

[144] The orders SCE refers to are the section 203 orders authorizing the acquisition by the CAISO of the Cities' scheduling rights on the NTS, the STS, and the LADWP system. *See supra* note 5.

to justify rolling a facility's costs into the CAISO's rates.[145] Trial Staff asserts the Initial Decision was correct in relying on the Opinion No. 466 orders and declining to exclude costs from the Cities' TRRs based on the degree of use of the Cities' entitlements by other market participants.

100. The CAISO, SCE, and PG&E assert the used and useful standard is used for determining whether investments have been prudent and should be included in rate base, not for distinguishing among types of electric plant. They assert the used and useful doctrine is not applicable to whether costs should be disallowed because of circumstances like a transmission line derating or a generating unit operating at less than capacity. Trial Staff asserts the used and useful argument goes to the degree of use by market participants and should be rejected since any degree of use is sufficient to permit the costs to be rolled-in. In any event, the CAISO states the NTS/STS entitlements are being used to provide service to customers and there is no evidence of imprudence in this proceeding. SCE asserts that "a portion of the capacity on the STS/NTS Entitlements was physically available for all Market Participants to use even during the period of the set-aside."[146] SCE asserts that even when there is an encumbrance, all the facilities costs are included in the TRR and a revenue credit is given rather than finding that the facilities subject to the encumbrance are not used and useful.

101. The Cities assert that restrictions on the use of the NTS/STS entitlements both before and after September 16, 2004 are the result of the CAISO's scheduling model which is composed of radially connected congestion zones and does not allow the full capacity of a transmission line to be scheduled if there are constraining factors. The Cities assert that the transmission capacity of all PTOs is reduced by the model. The Cities assert that a PTO should not be vulnerable to cost disallowances because the CAISO fails to make available all the contract entitlements that the PTO has transferred to it.

102. SCE asserts that the allocation of free FTRs to the Cities is not a basis for excluding the costs of the Cities' entitlements from their TRRs. SCE asserts the Commission has already ruled on this issue in both Opinion No. 478 and in earlier rulings on the TAC. It states that while free FTRs do limit the use of other market participants to CAISO-controlled facilities and entitlements, the Commission decided to permit them to be issued for a ten-year transition period.

---

[145] Opinion No. 466-B, 108 FERC ¶ 61,297 at P 19.

[146] SCE Brief Opposing Exceptions at pp. 26 and 27.

103. The CAISO asserts that prior to the CAISO's assumption of operational control of the NTS/STS entitlements none of the Cities' capacity was available to CAISO transmission customers. These customers would have had to purchase and pay for the NTS/STS capacity in a separate transaction. Thus, the CAISO asserts every megawatt of capacity available through the CAISO's scheduling procedures for the NTS/STS entitlements is new capacity for the CAISO's customers except the Cities.

104. The CAISO asserts no weight should be given to SWP's complaint that available export capacity from Lugo to Marketplace was reduced in order to increase the export capacity to Mona and Gonder. The CAISO asserts that the export capacity from Lugo to Marketplace has never been fully used and it was prudent to readjust the available capacity.[147] The CAISO also asserts that assumption of operational control by the CAISO has not resulted in increasing congestion on the NTS/STS facilities. It states the record shows there has been no significant congestion on these entitlements.[148]

3. Commission Decision

105. The Commission affirms the Initial Decision's denial of cost exclusion based on restricted use of the NTS and STS entitlements. The Commission agrees with the Initial Decision[149] that to reduce the Cities' TRRs based on use would be contrary to the Opinion No. 466 orders and to Opinion No. 474. These orders affirmed the Commission's historic policy that any degree of integration with the transmission system is sufficient to justify rolling a facility's costs into the CAISO's transmission rates.[150] Once the Commission determines that a facility is a network facility, the costs of that facility may be rolled into transmission rates. There is no further allocation of the facility's costs based on actual use; the extent to which a facility actually performs a network function is irrelevant.[151] The transmission network cannot be dismembered in this manner.[152]

---

[147] *Citing* Tr. 1553.

[148] *Citing* ISO-12 at 13.

[149] In the portion of the Initial Decision discussing the requested revenue credit, Initial Decision at P 21 and 60.

[150] Opinion No. 466-B, 108 FERC ¶ 61,297 at P 19.

[151] *Id.* at P 20.

[152] Opinion No. 474, 108 FERC ¶ 61,084 at P 50.

106. As part of this holding, the Commission affirms the Initial Decision's determination that the Cities' TRRs should not be reduced because the Cities received FTRs. In Opinion No. 478, the Commission approved the allocation of free FTRs for a period of up to ten years as a temporary incentive to encourage market participants to transfer operational control of their facilities to the CAISO.[153] The Commission also found in Opinion No. 478 that the CAISO's Tariff contained sufficient detail in section 9.4.3 and section 4.5 of Appendix F, Schedule 3 for the allocation of FTRs to new PTOs with the provision that the CAISO file simultaneously with the Commission the amendment to the TCA regarding a new PTO.[154] These provisions provide that a new PTO shall receive FTRs for transmission rights which it turns over to the operational control of the CAISO. They also provide that the CAISO and the new PTO shall determine the amount of FTRs to be allocated to the new PTO; the amount of FTRs shall be commensurate with the transmission capacity the new PTO is turning over to the CAISO's operational control. The Commission has affirmed in this order that the Cities transferred operational control of their NTS/STS entitlements to the CAISO. The CAISO and the Cities determined the amounts of FTRs the Cities would receive in accordance with the CAISO's Tariff. Those amounts are commensurate with the Cities' NTS/STS entitlements. Last, the CAISO filed the amendment to its TCA regarding the new PTOs in Docket Nos. ER03-218-000 and ER03-219-000.[155] Consequently, the Commission affirms the Initial Decision's findings that the CAISO allocated FTRs to the Cities in accordance with its Tariff and that the FTR allocations to the Cities provide no grounds for reduction of the Cities' TRRs.

107. The Commission rejects the excepting parties' arguments based on the "used and useful" doctrine. The Commission agrees that the used and useful doctrine is applicable to whether costs should be included in rate base and does not apply here where the issue is whether facilities and costs should be considered network transmission facilities and costs.

108. The Commission agrees with the CAISO that prior to the CAISO's assumption of

---

[153] *California Independent System Operator Corp.*, Opinion No. 478, 109 FERC ¶ 61,301 (2004); *order denying reh'g and granting clarification*, 111 FERC ¶ 61,337 at P 34, 38-41 (2005).

[154] 111 FERC ¶ 61,337 at P 34.

[155] *California Independent System Operator Corp.*, 102 FERC ¶ 61,061; *order on reh'g*, 103 FERC ¶ 61,113; *order on reh'g and compliance filing*, 105 FERC ¶ 61,207 (2003).

operational control of the NTS/STS entitlements none of the Cities' capacity was available to CAISO transmission customers and that every megawatt of capacity available through the CAISO's scheduling procedures for the NTS/STS entitlements is new capacity for the CAISO's customers (except the Cities).

109. The Commission also finds that the CAISO did not engage in undue discrimination in formulating the branch groups and devising scheduling procedures for the NTS/STS entitlements. This issue is discussed in the later section of this order concerning the request for a revenue credit.

E. Whether There Should Be A Revenue Credit For the Period January 1, 2003 through September 16, 2004

110. The Initial Decision denied a revenue credit for the period January 1, 2003 through September 16, 2004, sought by SCE. The ALJ found that scheduling limitations on the availability of the Cities' entitlements were not an encumbrance. She also found the limitations were due to engineering and technical constraints in the design of the branch groups.[156] SCE asks the Commission to reverse the Initial Decision and grant the revenue credit. SWP asserts that while it does not oppose a revenue credit, it has not argued in this case that the Cities' alleged set aside warrants a revenue credit as the Initial Decision states.[157] Trial Staff, the Cities, and the CAISO support the Initial Decision. The Commission finds the scheduling limitations were not an encumbrance and should not be treated as though they were an encumbrance. The Commission also finds the scheduling limitations did not result in undue discrimination. The Commission affirms the Initial Decision's denial of a revenue credit.

1. Treating Scheduling Restrictions Like an Encumbrance

a. Briefs on Exceptions

111. SCE asserts the Initial Decision erred in failing to provide a revenue credit against the Cities' TRRs for a twenty-one month period in which, it asserts, the CAISO did not make 370 MW of scheduling rights on the Cities' entitlements available to market participants. SCE asserts facts that came to light during the hearing showed that the original S-326 contained privileged information that provided that at the IPP Scheduling Point, and, hence on the IPP-Lugo Branch Group, 370 MW of CAISO Controlled Grid

---

[156] Initial Decision at P 46 citing S-7 at 12, 18-21, and 25 and S-10.

[157] SWP's Brief Opposing Exceptions at pp. 3-4 citing Initial Decision at P 61.

capacity was set aside for the Cities' sole use and was not available on the STS to other market participants. SCE asserts that, as a result of the hearing in this docket, the Cities and the CAISO corrected the alleged set-aside through a revised S-326, effective September 17, 2004.

112. SCE states it does not claim that the alleged set-aside was an encumbrance within the CAISO tariff definition of this term but that the original S-326 had the same effect as an encumbrance in that it limited access to facilities after they were placed under CAISO operational control.[158] SCE asserts the CAISO mistakenly prevented all but two Scheduling Coordinators from using a portion of the CAISO Controlled Grid, 370 megawatts on IPP, for the twenty-one month period. During these twenty-one months, SCE states, the Cities were permitted to fully recover from the CAISO and its ratepayers the costs of the facilities that were allegedly set aside for the Cities' sole use. SCE argues that those customers that were prohibited from using the alleged set-aside capacity should not have to pay for that capacity. SCE argues that there should be a revenue credit of 69.3% of the costs of the NTS/STS entitlements and 52.3 percent and 43.2 percent of the LADWP contracts for Anaheim and Riverside respectively.[159] SCE disagrees that this alleged failure to provide open-access service cannot be remedied solely because the CAISO tariff did not contemplate the CAISO violating its own filed tariff.

b. <u>Briefs Opposing Exceptions</u>

113. Trial Staff and the Cities assert revenue crediting is inconsistent with the Opinion No. 466 orders. They assert these orders require the costs of network facilities over which the CAISO has assumed operational control to be fully recovered in the Cities' TRRs, regardless of usage. The Cities assert that disallowing approximately 70 percent of the Cities' TRRs based on the percentage of the Cities' STS entitlement assigned to the IPP-Lugo Branch Group is contrary to the Commission's rolled-in pricing policy.[160] They assert that even though scheduling limitations were placed on the capacity that they turned over to the CAISO, they should still recover the full amount of their TRRs under the Opinion No. 466 orders.

---

[158] SCE states it never argued that the set-aside warranted a revenue credit because the Cities' received FTRs.

[159] SCE's proposed revenue credits for the January 1, 2003 through September 16, 2004 period are contained in SCE-22.

[160] *Citing* CIT-13 at 14:12-24; Opinion No. 466-B at P 19.

114. Trial Staff, the Cities, and the CAISO assert the NTS/STS facilities are not encumbrances under the CAISO Tariff and should not be treated as if they have the same effect as an encumbrance, *i.e.*, result in a reduction in a TO's TRR, as SCE advocates.[161] They assert encumbrances under the CAISO Tariff are binding legal restrictions on the CAISO's ability to use transmission capacity based on existing contracts under which a third party has rights to use the capacity that the CAISO cannot change. They assert that, in contrast, the scheduling restrictions on the capacity the Cities turned over to the CAISO were temporary operational limitations that applied to capacity that the CAISO had the exclusive right to schedule. They assert the scheduling restrictions were created by the CAISO in order to implement its branch group model and were not based on third party agreements or other legal restrictions.

115. Trial Staff and the Cities assert SCE's use of the term encumbrance would extend the definition of encumbrance in the CAISO Tariff to non-legal impediments such as extended outages, maintenance, or upgrades. The Cities assert that transmission customers could then seek cost disallowances in any circumstance where transmission capacity was not fully available to all market participants on a continuous basis. Trial Staff asserts that since these restrictions can occur with any facility, treating them as encumbrances is tantamount to reducing the TRR based on extent of use, contrary to the Commission's determination that any degree of network integration is sufficient to permit the costs of the facilities to be rolled into the CAISO's rates.

116. The Cities assert encumbrances are credited against a PTO's TRR because when there is an existing transmission contract, it benefits the PTO by generating revenues.[162] In the case of an encumbrance, the ISO reserves capacity so that only a third party can use it, and the PTO receives financial benefit from the usage so that other transmission

---

[161] Trial Staff states the definition of an Encumbrance in the CAISO Tariff is:

> A legal restriction or covenant binding on a Participating TO that affects the operation of any transmission lines or associated facilities and which the ISO needs to take into account in exercising Operational Control over such transmission lines or associated facilities if the Participating TO is not to risk incurring significant liability.

First Revised Sheet No. 313, Appendix A, CAISO Tariff.

[162] *Citing* Tr. 495:12-17. The Cities state that their contracts with Deseret are true encumbrances and that their TRRs reflect credits for all revenues received from the Deseret Encumbrances. *Citing* Tr. 535:23-536:1; CIT-10.

customers should not pay for the reserved capacity. But, state the Cities, they did not benefit from the inability of other entities to schedule the IPP-Lugo capacity when the Cities did not exercise their FTRs in the Day-Ahead Market because the Cities could not sell the unused capacity. The Cities state they gave up the right to sell their unused transmission capacity to other market participants when they transferred operational control of the NTS/STS entitlements to the CAISO.[163]

117. The CAISO states that recovery of the Cities' TRRs is governed by the CAISO Tariff. The CAISO states that its Tariff provides for the reduction of a PTO's TRR only when revenue is received in connection with existing rights. The CAISO, Trial Staff, and the Cities state the Tariff does not provide for reductions for capacity that is unavailable due to CAISO scheduling procedures.[164] The CAISO and the Cities assert that without a provision permitting a credit in the Tariff there can be no credit because the credit would constitute a retroactive modification of the CAISO Tariff that is prohibited by the filed rate doctrine.[165]

118. The Cities and Trial Staff assert that if SCE's proposal for a credit of 70 percent of the Cities' TRRs is accepted, it will have an adverse impact on the Cities' FTRs. The Cities assert that they used, for the most part, 86 to 95 percent per month of its 370 MW, and thus an equivalent amount of their FTRs, to import generation in the January 1, 2003 to September 16, 2004 period.[166] They assert that if there were a credit of 70 percent for this period, they would recover less than one-third of their costs for the NTS/STS facilities and the value of their FTRs would be negated, along with their ability to import their historical generation resources using those FTRs. The Cities assert that, at most, a credit should be limited to from five to fourteen percent, which represents the amount of

---

[163] *Citing* Tr. 276:19-24.

[164] *Citing* Tr. 539:3-5.

[165] *Citing Montana-Dakota Utilities Co. v. Northwestern Public Service Co.*, 341 U.S. 246, 251 (1951) and *Cities of Anaheim, Azusa, Banning, Colton, and Riverside, California v. California Independent System Operator Corp.*, 102 FERC ¶ 61,274 at P 40-41 (2003) (rejecting an Offer of Settlement because it effected a retroactive rate increase under the CAISO Tariff against a non-settling party).

[166] The Cities assert that in ten months in 2003, they scheduled between 86 and 95 percent of the total 370 MW on the IPP-Lugo Branch Group; in February, 71.2 percent; and in March, 45.6 percent, citing ISO-10 at 3.

their FTRs that they did not use. The Cities assert that granting the credit would undercut the Commission's policy to allocate FTRs as an incentive to encourage increased ISO participation.

c. Commission Decision

119. The Commission affirms the Initial Decision's finding that the scheduling procedures under the original S-326 did not create an encumbrance within the meaning of the CAISO's Tariff. The Commission also agrees with the opposing parties that these scheduling procedures should not be treated as though they were an encumbrance for which a credit must be provided against the Cities' TRRs. Scheduling of transmission capacity may be restricted for many reasons. Permitting a credit where transmission capacity is not fully available to market participants amounts to reducing TRRs based on the extent of use. The Commission agrees with the Initial Decision that reducing TRRs based on the extent of use is contrary to the rolled-in pricing policy affirmed in Opinion Nos. 466-A, 466-B, and 474.[167]

120. The Commission has found in this order that the NTS/STS entitlements are network facilities. Since they are network facilities, Commission policy requires that the costs of the NTS/STS entitlements be rolled into the CAISO's transmission rates and does not allow a reduction of the costs of these entitlements based on the extent to which they are actually used. Consequently, the Commission affirms the Initial Decision's denial of a revenue credit for the period January 1, 2003 through September 16, 2004.

2. Undue Discrimination

a. Briefs on Exceptions

121. The ALJ found that scheduling limitations prior to September 17, 2004 were due to engineering and technical constraints in the design of the branch groups.[168] SCE asserts, however, that the Initial Decision did not address SCE's discrimination argument, and that the Commission should find that undue discrimination occurred. SCE argues

---

[167] See the earlier discussion in connection with the proposed exclusion of costs from the Cities' TRRs because of claimed restrictions in use of the NTS/STS entitlements.

[168] Initial Decision at P 46 citing S-7 at 12, 18-21, and 25 and S-10.

that the alleged set-aside was contrary to open-access principles and was unduly discriminatory and that it should be remedied though a revenue credit applied against the Cities' TRRs.

122. According to SCE, the alleged set-aside "was not due either to imperfect contract interpretations or engineering and technical constraints in the design of the branch group, but was the product . . . [of] the discriminatory manner in which the CAISO set up the particular branch group model, coupled with the unnecessary restriction on all Scheduling Coordinators other than the Cities . . . ."[169] SCE contends that Scheduling Coordinators were harmed by the capacity set-aside during this time and were prevented from using capacity that should have been available to all customers under the CAISO tariff. SCE is concerned that the Initial Decision does not reflect the fact that the discrimination at issue had an adverse impact, such as congestion on the line during some hours.

b. <u>Briefs Opposing Exceptions</u>

123. Trial Staff asserts there is no proof that the CAISO intended to discriminate or that it actually engaged in undue discrimination. The CAISO asserts it supported the initial model of the NTS/STS entitlements by explaining the "T" configuration and the need to prevent market manipulation.[170] Trial Staff, the CAISO, and the Cities assert the Initial Decision correctly determined that the restrictions on access to the entitlements from January 1, 2003 to September 16, 2004 were caused by engineering and technical constraints in the design of the branch groups that could be revised. The Cities reiterate that the quality and nature of transmission access is not a factor in TRR cost recovery by a PTO and that the Cities' NTS/STS entitlements meet the standards in the Opinion No. 466 orders for full TRR cost recovery.

124. The CAISO asserts that undue discrimination is the unjustified differential treatment of similarly situated classes.[171] It states that SWP and the other market participants that did not have entitlements to generation at the IGS were not similarly situated to the Cities and that, therefore, CAISO did not have to afford them scheduling

---

[169] SCE Brief on Exceptions at p. 18.

[170] *Citing* ISO-8 at 4-6; Tr. 707:8-15; ISO-12 at 3-16; ISO-14 at 5.

[171] *Citing El Paso Natural Gas Co.*, 104 FERC ¶ 61,045 at P 115 (2003).

rights at IPP. The CAISO asserts that if another IGS owner who was a Scheduling Coordinator at IPP had made itself known to the CAISO, it would have accommodated the additional Scheduling Coordinator. [172]

125. The CAISO asserts it is standard ISO procedure to allow only entities with rights to generation to schedule from generating stations and that it may impose such requirements to prevent market manipulation. The CAISO and Trial Staff state the limitation on the IPP-Lugo Branch Group prior to September 17, 2004 simply reflected the fact that the 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.[173] The CAISO states that entities that did not have entitlements to IGS generation would only schedule at the IPP for the purpose of engaging in gaming and market manipulation.[174]

126. The CAISO asserts there is no basis for a finding that its process for developing the Cities' scheduling procedures was unduly discriminatory. It asserts it was reasonable to consult with the Cities given their unique knowledge of the entitlements. The CAISO and the Cities assert that the modeling process for their entitlements was the same as that used for the original PTOs. The Cities assert that they were concerned that all market participants be able to fully utilize the facilities.[175]

127. Trial Staff and the Cities assert that the restrictions did not cause congestion so that no one was denied the opportunity to schedule on the Mona-Lugo Branch Group. [176] The Cities assert there was available, unused transmission capacity on the Mona-Lugo Branch during the January 1, 2003 through September 16, 2004 period[177] so that no

---

[172] The Initial Decision found that only the Cities had contractual rights to take power from the IGS at IPP and so only the Cities could schedule at IPP. Initial Decision at P 46. However, the Cities state in their Brief Opposing Exceptions at 50-51 and n.23 that other IGS participants, such as LADWP, Burbank, Glendale, and Pasadena, also have IGS generation entitlements but that these entities, like the Cities, have their own entitlements to NTS/STS transmission to import their IGS entitlements and are therefore differently situated from other market participants.

[173] *Citing* S-7 at 20-21.

[174] *Citing* Tr. 704-05, 707, 793-94.

[175] *Citing* CIT-20 at 3; Tr. 244:12-22.

[176] *Citing* ISO-13 at 13:10-13.

[177] *Citing* Initial Decision at P 53 n. 24.

market participant was denied access to the capacity associated with the NTS/STS entitlements. The CAISO states there were no complaints about the scheduling process prior to the hearing.

128. The Cities assert that if SCE believed that the CAISO improperly denied market participants access to the Cities' NTS/STS entitlements, the appropriate course of action would have been to file a complaint under section 206 of the FPA, not to give a credit against their TRRs. They indicate that such a complaint was filed against the CAISO in *Morgan Stanley Capital Group, Inc. v. California Independent System Operator Corp.*, [178] and that in that complaint, the complainant correctly sought a remedy from the entity statutorily responsible for making transmission available on a non-discriminatory basis and not from the PTOs.

c. <u>Commission Decision</u>

129. Open access to transmission is at the heart of the Commission's restructuring of the electric industry and is required by Order No. 888. SCE claims that it was denied access on the same terms as the Cities to the Cities' entitlements and that the CAISO unduly discriminated against it in denying that access. The Commission, however, finds the CAISO did not unduly discriminate against market participants in allocating scheduling capacity under the original S-326 procedures.

130. Discrimination is undue when there is a difference in rates or services among similarly situated customers[179] that is not justified by some legitimate factor.[180] In this

---

[178] 96 FERC ¶ 61,354 (2001).

[179] If customers have different rights or abilities, they are not similarly situated. For example, customers who have the ability to use alternate fuels or sources of supply are not similarly situated to customers who cannot use alternate fuels or sources of supply, so that providing discounts on natural gas transmission to the first group of customers but not the second group is not unduly discriminatory. *See Policy for Selective Discounting by Natural Gas Pipelines*, 111 FERC ¶ 61,309 at P 3, 18 (May 31, 2005). Customers who pay a demand rate and have a fixed maximum quantity are not similarly situated to customers who do not pay a demand rate and may take any quantity, so that capping the quantity of gas the second group may take and not capping the amount the first group may take is not unduly discriminatory. *El Paso Gas Co.*, 104 FERC ¶ 61,045 at P 115-117 (2003).

[180] *E.g.*, *El Paso Natural Gas Co.*, 104 FERC ¶ 61,045 at P 115 (2003).

case, the CAISO produced evidence which showed that it models scheduling rights in accordance with a branch group model and that the original branch groups for the Cities' entitlements were established in conformance with its branch group model.[181] The CAISO's evidence showed that the branch group model itself may result in limitations if transmission lines or segments are combined in a branch group because ordinarily the capacity of combined transmission lines is limited to the lowest capacity of any of the lines.[182] Thus, combining the NTS and STS and all three scheduling points, Mona, Gonder, and IPP, would have resulted in only 43 MW being available for transmission by market participants other than the Cities.

131. The CAISO's evidence showed it had decided not to combine the IPP and Mona scheduling points into one branch group for several reasons. First, it was concerned about operational constraints, specifically that it could not control the redistribution of OTC when there was a curtailment.[183] The CAISO showed, in addition, that it did not combine the IPP and Mona scheduling points because it was concerned about gaming.[184] The CAISO showed that restrictions on export capacity were the result of misinterpreting the Riverside contracts.[185] Finally, the CAISO showed it considered the original branch groups to be interim arrangements because the CAISO was in the process of changing its modeling process.[186] The Commission finds the evidence shows that there were operational and market factors that lead the CAISO, initially, to use separate branch groups for the IPP and Mona scheduling points. Consequently, the Commission affirms the ALJ's finding that the limitations were due to engineering and technical constraints in the design of the branch groups.[187] In any event, as the CAISO asserts, undue discrimination can only come into play between similarly situated customers. In this situation, the Cities' IGS generation entitlements put them in a unique position vis-a-vis other customers so that other customers were not similarly situated to the Cities. The Commission thus finds there were legitimate factors that resulted in the limitations on

---

[181] ISO-8 at 2-5.

[182] ISO-12 at 9, 11.

[183] ISO-8 at 5; ISO-12 at 12.

[184] ISO-12 at 12.

[185] *Id.* at 5-6.

[186] ISO-12 at 12-13, 15-16.

[187] Initial Decision at P 46 citing S-7 at 12, 18-21, and 25 and S-10.

access to the Cities' entitlements from January 1, 2003 through September 16, 2004 and the CAISO did not unduly discriminate against other market participants during this period.

132. Even if the CAISO had unduly discriminated against SCE in establishing a separate branch group for the IPP scheduling point, however, the Commission would not require the CAISO to provide a credit against the Cities' TRRs as SCE requests. Section 206(a) of the FPA requires that, when the Commission finds a rate or practice is unduly discriminatory, it determines the just and reasonable rate or practice to be observed thereafter, that is, in the future.[188] In this case, the parties have already devised new practices which are embodied in the revised S-326. The new practices consist of merging the Mona and IPP branch groups and considering Mona as the scheduling point for a new branch group and permitting use of Riverside's export capacity. These changes made the majority of the capacity of the Cities' entitlements available to all market participants as of September 17, 2004, remedying any undue discrimination assuming any had existed.

F. Whether the Cities' TRRs and the CAISO's Rates are Lawful Under Section 205

133. SWP and the CPUC assert the Initial Decision is in error because it made no finding as to the justness and reasonableness of the CAISO's rates with the Cities' TRRs included. Trial Staff, the Cities, the CAISO, and SCE assert the Initial Decision was not required to make a separate finding of justness and reasonableness of the CAISO's rates with the Cities' TRRs included. The Commission finds that the Cities' TRRs and the CAISO's TAC with the Cities' TRRs included are lawful rates under section 205 of the FPA.

1. Briefs On Exceptions

134. SWP and the CPUC assert the Commission is required to make a finding of justness and reasonableness of the CAISO's rates with the Cities' TRRs included by section 205 of the FPA and *Pacific Gas and Electric Company v. FERC*, 306 F.3d 1112, 1118-19 (D.C. Cir. 2002) (*PG&E*). SWP also asserts the CAISO had the burden of proving that its rates are just and reasonable with the Cities' TRRs included.

135. The CPUC asserts the Commission intended the justness and reasonableness of including the Cities' TRRs to be determined in this proceeding.[189] It states that in

---

[188] Section 206(a) of the FPA, 16 U.S.C. § 824e(a) (2000).

[189] *Citing* 107 FERC ¶ 61,150 at 61,490-491, 105 FERC ¶ 61,293 at P 5 (2003).

establishing this hearing the Commission stated it was to decide whether the Cities' TRRs associated with the NTS, STS, and related contracts with the LADWP should be included in the CAISO's transmission rates and charges.[190] The CPUC asserts the Initial Decision erred by finding, instead, that the Commission's TCA Orders had already approved the inclusion of the Cities' TRRs in the CAISO's rates.

136. SWP asserts the amount of the Cities' TRRs associated with the NTS and STS entitlements to be included in the CAISO's rates was not determined in the Settlement of July 18, 2003.[191] It asserts the settlement only identified the amounts associated with the NTS and STS entitlements and that the issue of how much of those amounts should be included in the CAISO's rates was to be determined in this proceeding.

2. Briefs Opposing Exceptions

137. Trial Staff, the Cities, the CAISO, and SCE assert the ALJ was not required to make a separate finding that the CAISO's rates are just and reasonable with the Cities' TRRs included. The Cities and the CAISO assert that the purpose of this hearing was solely to determine whether the Cities' TRRs should include the amounts specified in the settlement for their NTS/STS entitlements. SCE asserts the Initial Decision made an implicit finding that the CAISO's rates with the Cities' TRRs included are just and reasonable as this was the purpose of the hearing.

138. The CAISO asserts that its TAC is a formula rate approved by the Commission.[192] The CAISO states the TAC is comprised of the TRRs of PTOs, and that the Commission reviews the TRRs of the PTOs, but does not review the CAISO's rates when a TRR is established or modified.[193] The CAISO asserts *PG&E* requires that the Commission

---

[190] 105 FERC ¶ 61,293 at P 5 (2003).

[191] *Citing* P 9 and 10.

[192] *California Independent System Operator Corp.*, Opinion No. 478, 109 FERC ¶ 61,301 (2004), *order denying reh'g and granting clarification*, 111 FERC ¶ 61,337 (2005).

[193] *Citing Public Utilities Commission of California v. FERC*, 254 F.3d 250, 254 (D. C. Cir. 2001) (*CPUC*) (stating the formula itself is the rate, not the particular components of the formula; the Commission waives the section 205 notice and filing requirements for formula rates; and the utility's changes under a formula rate can change repeatedly as long as they are consistent with the formula).

review the TRRs of non-jurisdictional utilities in a manner that will ensure equivalent results to the review of the TRRs of jurisdictional utilities.[194] The CAISO, along with Trial Staff and the Cities, assert the cost issue was decided in the settlement accepted December 18, 2003[195] and thus that the only issue at the hearing was whether the NTS/STS entitlements should be included in the Cities' TRRs. The CAISO asserts that by reviewing the NTS/STS entitlements according to Commission precedent for jurisdictional facilities, the Commission goes beyond the minimum necessary to fulfill its obligation to ensure that the Cities' TRRs, and thus the CAISO's TAC, are just and reasonable.[196] Trial Staff asserts the standard in *City of Vernon*,[197] the just and reasonable standard of section 205, should be used to determine whether the Cities' TRRs are just and reasonable.

139. SCE asserts the Commission already found the CAISO's TAC is just and reasonable in Opinion No. 478. It asserts the CAISO's Tariff provides that any facility under the CAISO's operational control (which must be an integrated network facility) may be included in a PTO's TRR. SCE asserts the Initial Decision's determination that the Cities' entitlements should be included in the TAC made the inclusion of the relevant costs in the Cities' TRRs just and reasonable.

---

[194] *Citing PG&E*, 306 F.3d at 1116:

> While FERC does subject the TRRs of jurisdictional participating transmission owners to an independent § 205 just and reasonable review, FERC may take a different approach as to Vernon, over which FERC lacks independent jurisdiction, so long as FERC can ensure by examining Vernon's TRR that the [ISO's] rates will ultimately be just and reasonable.

[195] Trial Staff and the Cities assert the parties in this proceeding, including SWP and CPUC, agreed in the Settlement of July 18, 2003 to fixed dollar amounts for the challenged components of the Cities' TRRs and that the Commission accepted those amounts on December 18, 2003. *Citing* 105 FERC ¶ 61,293 (2003).

[196] *Citing PG&E*, 306 F.3d at 1119.

[197] *City of Vernon, California*, 109 FERC ¶ 63,057 at P 28-29 (2004); *opinion and order affirming initial decision as modified*, Opinion No. 479, 111 FERC ¶ 61,092 at P 35-44 (2005), *order on reh'g*, Opinion No. 479-A, 112 FERC ¶ 61,207 at P 26-7, 30, and 37 (2005).

3. Commission Decision

140. The Commission finds that both the Cities' TRRs and the CAISO's TAC with the Cities' TRRs included are lawful rates under section 205 of the FPA.

141. The Commission has previously made determinations concerning the Cities' TRRs in an order issued December 18, 2003.[198] The December 18, 2003 order addressed a settlement that included costs associated with the NTS and STS entitlements.

142. In the December 18, 2003 order, the Commission accepted a Settlement filed July 18, 2003 which concerned, among other things, the amounts of the costs in the Cities' TRRs.[199] The Settlement described the total costs of the Cities' TRRs and, contrary to SWP's assertions, also specified the amounts of the Cities' TRRs associated with the Cities' NTS and STS entitlements. The Settlement provided that the "agreed upon" annual amounts of the Cities' TRRs associated with the NTS and STS entitlements were $18,365,000 for Anaheim and $10,612,000 for Riverside.[200] The costs in the Settlement, including the amounts attributable to the NTS and STS entitlements, were uncontested. The Commission reviewed the Settlement under its regulations.[201] The Commission found that the uncontested portions of the Settlement, including the costs associated with the Cities' NTS and STS entitlements, were fair and reasonable and in the public interest and approved them.[202]

143. In this order, the Commission has considered the NTS and STS entitlements themselves and has found that they are network facilities. The Commission has made this finding on the merits based on substantial evidence of record. The Commission has thus found that the costs associated with the Cities' NTS and STS entitlements may be included in the Cities' TRRs.

---

[198] *City of Azusa*, 105 FERC ¶ 61,293 (2003).

[199] Paragraph 6 of the Settlement of July 18, 2003 sets forth the total amounts of the Cities' TRRs.

[200] Settlement of July 18, 2003 at P 10, Docket No. EL03-14-000 *et al*.

[201] The Commission's regulations provide that the Commission may approve uncontested settlements if they are fair and reasonable and in the public interest. 18 C.F.R. §§ 385.602 (g) and (h) (2005).

[202] *City of Azusa*, 105 FERC ¶ 61,293 (2003).

144. The CAISO's TAC is comprised of the TRRs of its PTOs. Since the Commission has found that the costs associated with the entitlement may be included in the TRRs, they likewise may be reflected in the TAC. There is no need to remand this case to the ALJ to make findings as to the lawfulness of the Cities' TRRs or of the CAISO's rates with the Cities' TRRs included as the Commission has made those determinations here.

145. *PG&E* requires that the standards by which the Commission reviews the TRRs of non-jurisdictional entities must be clear. It also requires that the Commission ensure that the TRRs of non-jurisdictional entities meet the standards for rates in section 205 of the FPA.[203] The Commission's review of the Cities' TRRs meets the requirements set out in *PG&E*.

146. First, the standards of review the Commission has applied are clear. In determining whether the Cities' entitlements are integrated network transmission facilities, the Commission has applied the same standard of review that it applies to entitlements and facilities of jurisdictional entities, the requirement that there be any degree of integration.

147. Second, the Commission has fulfilled the *PG&E* requirement that the Commission's review meet the rate standards of section 205. The Commission has found in this order that it is just and reasonable to include the Cities' entitlements in the CAISO's TAC because the Cities' entitlements are network facilities that can be included in the TRRS and, in turn, in the TAC.

G. SWP's Renewed Motion to Vacate Order to Reopen the Record

148. SWP renews its motion to vacate the order reopening the record in this proceeding and asks the Commission to disregard the evidence presented during the reopened hearing. As discussed below, the Commission denies SWP's motion to vacate and its request to strike.

---

[203] 306 F.3d at 1118-20. *PG&E* required that the Commission ensure that the CAISO's rates are just and reasonable. *Id.* 306 F.3d at 1119. However, the rates at issue in *PG&E* were not the subject of a settlement and were not subject to the "fair and reasonable and in the public interest" standard which is the applicable standard here for the costs associated with the NTS and STS entitlements.

1. <u>SWP's Arguments</u>

149. Rule 716 (c) of the Commission's Adjudicative Rules of Practice and Procedure[204] provides that a presiding judge may reopen the record if she has reason to believe that reopening is warranted by a change in conditions of fact or law or by the public interest. The CAISO and the Cities made a joint motion to reopen the record on June 1, 2004 for the submission of evidence regarding a revision to the operating procedures in S-326. The motion was granted by the Chief ALJ on June 3, 2004 (June 3 Order). SWP opposed the motion and sought interlocutory appeal of the June 3 order.

150. SWP here renews its request that the Commission vacate the June 3 Order.[205] SWP also asks the Commission to disregard the evidence presented during the reopened hearing as fatally tainted. SWP reiterates arguments made in its answer and in subsequent petitions for interlocutory appeal. SWP states first that the June 3 order was issued before SWP filed its answer and thus that SWP was denied the opportunity to respond to the motion to reopen. SWP asserts the failure to consider its answer violated Commission rules[206] and constitutional requirements of procedural due process.[207]

151. SWP also repeats its arguments against granting the motion to reopen. It reiterates that the CAISO and the Cities did not demonstrate a change in condition of fact that would justify reopening the record. SWP asserts the motion to reopen did not demonstrate that the CAISO was in the process of implementing any revised operating procedures, only that such revisions were anticipated or proposed. SWP asserts that the

---

[204] 18 C.F.R. § 385.716(c) (2005):

> If the presiding officer or the Commission, as appropriate, has reason to believe that reopening of a proceeding is warranted by any changes in conditions of fact or of law or by the public interest, the record in the proceeding may be reopened by the presiding officer before the initial or revised initial decision is served or by the Commission after the initial decision or, if appropriate, the revised initial decision is served.

[205] SWP Brief on Exceptions at pp. 7-10.

[206] 18 C.F.R. §§ 385.213(a) and (d) (2005). This rule provides for the filing of an answer to a motion and a fifteen-day period in which to file an answer.

[207] *Citing Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (*Mathews*).

need to hold the reopened hearing in abeyance pending the CAISO's completion of the revised operating procedures demonstrates that there was no change in condition of fact supporting the motion.

152. SWP also reiterates that movants could have obtained the information in their motion earlier because the revisions were debated for two years[208] and that, therefore, the circumstances did not justify reopening the record.[209] SWP repeats that granting the motion to reopen sets an ill-advised precedent of encouraging parties to delay rectifying known restrictions on open access transmission until and unless injured parties expend considerable resources to litigate the restrictions.

2. Commission Decision

153. With regard to SWP's claims of denial of due process, constitutional due process requires that a party affected by government action be given "the opportunity to be heard at a meaningful time and in a meaningful manner."[210] However, circumstances vary and the sufficiency of the procedures supplied must be decided in the light of the circumstances of each case.[211] To determine what process is constitutionally due requires analysis of the governmental and private interests that are affected. The courts have generally balanced three factors:

> First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural

---

[208] *Citing* CIT-9 at 3 (October, 2002); CIT-20 (November, 2002).

[209] *Citing Central Maine Power Co.,* 55 FERC ¶ 61,060 at 61,171 (1991).

[210] *Mathews*, 424 U.S. at 333 (internal quotation marks and citations omitted).

[211] *Id*. at 334 ("'[D]ue process,' unlike some legal rules, is not a technical conception with a fixed content unrelated to time, place and circumstances." (citation omitted)); *Goldberg v. Kelly*, 397 U.S. 254, 268-69 (1970) (welfare termination proceeding); *Southern California Edison Co. v. Lynch*, 307 F.3d 794, 807-08 (9th Cir. 2002); 353 F.3d 648 (9th Cir. 2003) (given the totality of the circumstances, expedited briefing schedule did not deprive appellant of procedural due process).

> safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.[212]

This analysis is equally applicable to whether SWP suffered prejudicial error from a violation of the Commission's rules.

154. First we consider the private interests affected by the failure to consider SWP's answer to the motion to reopen. The private interests[213] are avoidance of further litigation expense; delay in the payment of refunds for the Cities' TRRs; and continued payment of the Cities' TRRs at levels that should be reduced.[214] The Commission finds these interests are speculative. They assume that SWP's opposition to the motion to reopen would have been granted if the answer had been considered. But the arguments in SWP's answer were repeated in its two motions for interlocutory appeal and these motions were denied. SWP's renewed motion to vacate is also addressed, and denied, in this order. Refunds and reductions in the TRRs were issues to be decided in the hearing. SWP could not assume that these issues would be decided in its favor, and, indeed they have not been.

155. Second, we consider the risk of an erroneous deprivation of SWP's interests through the procedures used and the probable value, if any, of additional or substitute procedural safeguards. To do that, we must look at the procedures that were used. Following the June 3 Order, as indicated above, SWP sought to overturn it. On June 18, 2004 SWP filed a motion to permit an interlocutory appeal of the June 3 Order. The ALJ denied SWP's motion in an order issued June 22, 2004.[215] On June 29, 2004, SWP

---

[212] *Matthews*, 424 U.S. at 334-35.

[213] The Commission assumes, without deciding, that all of these interests are property interests cognizable under the Fifth Amendment to the Constitution.

[214] *See* SWP's Motion to Permit Interlocutory Appeal, and Interlocutory Appeal at 6, 7, and 27 (June 29, 2004).

[215] 107 FERC ¶ 63,055 (2004) (*citing* 18 C.F.R, § 385.715(a) (2005)). She found reopening the record was in the public interest because the CAISO's proposed modification of its operating procedures changed the facts underlying the case.

appealed the ALJ's denial of its motion to permit interlocutory appeal to the Motions Commissioner.[216] The Motions Commissioner denied SWP's motion in a Notice of Determination issued July 2, 2004.

156. Subsequently, and most importantly, trial-type hearing procedures applied to the reopened proceeding. SWP filed testimony which was introduced into the record as exhibits at the reopened hearing from October 5 – 7, 2004.[217] SWP also conducted cross-examination on opposing witnesses.[218] Thereafter, SWP had an opportunity to make and made post-hearing arguments.[219] After the Initial Decision was issued on February 3, 2005, SWP filed exceptions.

157. In short, the alleged changed condition of fact, the revised procedures, was the subject of trial-type procedures. In these trial-type procedures, SWP was afforded the opportunity to be heard on the alleged changed condition of fact through filed direct testimony and exhibits, cross-examination, briefs, and exceptions. The ALJ considered SWP's arguments in her Initial Decision. The Commission has considered SWP's arguments in this order.

158. Third, we must consider the Commission's interests. These were an interest in a complete record and a decision that was not rendered nugatory by material changes of fact. The changes in the scheduling procedures in S-326 which became effective September 17, 2004, and have been in effect ever since, were material and affected several of the issues in this case. These issues were whether scheduling restrictions on the Cities' entitlements could prevent them from being network facilities; whether such scheduling restrictions supported refunds (a credit) of the Cities' TRRs or reductions of the Cities' TRRs; and whether the scheduling restrictions were unduly discriminatory.[220] Furthermore, it would be useless and a waste of resources to render a decision based on facts related to scheduling restrictions that had been eliminated. Consequently, the Commission finds that it had significant interests both in a complete record and in a meaningful decision.

---

[216] 18 C.F.R. § 385.715 (c) (5) (2005).

[217] *See,e.g.*, SWP-76 and SWP-94.

[218] *See, e.g.*, Tr. 1415-44; 1452-96; 1683-94; 1706-21.

[219] *See, e.g.*, SWP's Initial Brief at pp. 39 and 49-51 and SWP's Reply Brief at 32.

[220] *See* discussions of these issues in this order and also SWP's Motion to Permit Interlocutory Appeal, and Interlocutory Appeal at 17-18 (June 29, 2004).

159. Taking all of these factors together, the nature of the private interests, the small risk of erroneous deprivation, and the Commission's strong interests in a complete record and a meaningful decision, the Commission finds that the failure to consider SWP's answer was harmless error and that, thus, no deprivation of procedural due process occurred. The Commission finds its procedures afforded SWP adequate opportunity to be heard.[221]

H. Other

160. PG&E requests that Commission correct the Initial Decision's characterization of PG&E's arguments in this proceeding. The Initial Decision states that PG&E concluded the facilities are network facilities and should be included in the Cities' TRR. However, PG&E asserts it expressly stated that it was not taking a position as to whether or not the Cities' entitlements should be included in their TRRs. PG&E states that its participation in this proceeding was limited to the issue of the appropriate standard to apply to make such a determination. PG&E states it believes the ALJ applied the appropriate standard in her Initial Decision, but requests that the Commission correct the statement of PG&E's position.

161. The Commission notes, in response, that PG&E did not take a position as to whether the Cities' entitlements should be included in their TRRs.

---

[221] *See State of California v. FERC*, 329 F.3d 700 (9th Cir. 2003). Assuming that petitioners were initially deprived in that case of an opportunity for hearing by a short notice period, the court found the Commission still had provided all the procedural protections required when it "carefully considered all the evidence and arguments that the petitioners offered in their petitions for rehearing and motions to intervene." *Id*. at 711. "In light of the private interests affected, the small risk of erroneous deprivation through the procedures used, and the government's strong interest in expedient decisionmaking, we hold that, under the circumstances of this case, the Commission's consideration of the petitioners' evidence and arguments in their motions to intervene and petitions for rehearing gave the petitioners all the procedural safeguards they were due under the Due Process Clause or the FPA." *Id*. at 713.

The Commission orders:

The Commission affirms the Initial Decision, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.