

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. EL03-15-004

City of Riverside, California

EL03-20-004

OPINION NO. 483-A

ORDER DENYING REHEARING AND DISMISSING CLARIFICATION

(Issued March 27, 2006)

1. On October 25, 2005, the Commission issued Opinion No. 483,¹ affirming that entitlements of the Cities of Anaheim and Riverside, California (Cities) to use facilities known as the Northern Transmission System (NTS) and Southern Transmission System (STS)² are integrated, network transmission facilities of the California Independent System Operator Corporation (CAISO). Accordingly, it affirmed 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 CAISO.

2. The California Public Utilities Commission (CPUC) and the California Department of Water Resources State Water Project (SWP) requested rehearing of Opinion No. 483. Southern California Edison Company (SCE) requested clarification. The Commission denies the requests for rehearing and dismisses the request for clarification, as discussed below.

¹*City of Anaheim, California*, Opinion No. 483, 113 FERC ¶ 61,091 (2005), (*aff'g* 110 FERC ¶ 63,023 (2005) (Initial Decision)).

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

Background

3. The procedural and factual background of this proceeding is provided at length in Opinion No. 483 and the Initial Decision³ and will not be repeated here.

4. Opinion No. 483 determined whether costs associated with the Cities' entitlements to the NTS/STS facilities should be included in the Cities' TRRs and in the CAISO's transmission rates. As indicated in Opinion No. 483, with respect to the CAISO, these issues turn on two factors, first, whether the entitlements are integrated, network transmission facilities (integrated, network facilities or network facilities)⁴ and, second, whether they are under the operational control of the CAISO as required by Commission precedent⁵ and the CAISO Tariff.⁶

5. In Opinion No. 483, the Commission made a number of findings with respect to whether the NTS/STS entitlements are integrated, network transmission facilities. The Commission affirmed that the test for determining that a facility is an integrated, network transmission facility is whether there is any degree of integration⁷ and rejected the *Mansfield* test.⁸ The Commission found that the NTS/STS entitlements perform some substantial network transmission functions for the CAISO and thus are integrated with the CAISO grid and are network facilities.

³ Opinion No. 483 at P 2-12; Initial Decision at P 2-6, 38-42.

⁴ *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).

⁵ Opinion No. 466, 104 FERC ¶ 61,226 at P 4 and 12.

⁶ CAISO Tariff, App. A, Substitute Third Revised Sheet No. 354.

⁷ *Citing, inter alia*, Opinion No. 466-B, 108 FERC ¶ 61,297 at P 19 ; *Northeast Texas Electric Cooperative, Inc.*, Opinion No. 474, 108 FERC ¶ 61,084 at P 48 & n.66 (2004), *order denying reh'g*, Opinion No. 474-A, 111 FERC ¶ 61,189 (2005).

⁸ *Mansfield Electric Department v. New England Power Company*, 94 FERC ¶ 63,023, *aff'd*, 97 FERC ¶ 61,134 at 61,613-14 (2001), *reh'g denied*, 98 FERC ¶ 61,115 (2002) (*Mansfield*).

6. The Commission found further that once it is determined that a facility is a network facility, its costs must be included in transmission rates. Network facilities benefit all customers due to the integrated nature of the transmission network. Thus, there is no need to identify further actual benefits in order to include the costs of network transmission facilities in transmission rates. Since the NTS/STS entitlements are integrated, network transmission facilities (and since the requirement for operational control is satisfied, as discussed below), their costs must be included in the CAISO's transmission rates.

7. In Opinion No. 483, the Commission also made a number of findings with respect to operational control. The Commission found the CAISO may assert operational control over contractual rights or entitlements as well as over physical assets. It stated that the primary requirement for operational control is that the CAISO has authority to make open access service available. The Commission found that operational control under the CAISO Tariff is the ability of the CAISO to direct participating transmission owners (TOs) how to operate their facilities, and not the performance of operational tasks by the CAISO itself.

8. The Commission also determined that alleged restrictions on the use of the Cities' entitlements due to the Cities' Financial Transmission Rights (FTRs), CAISO scheduling procedures, and lack of access to power from the Intermountain Generating Station (IGS) did not warrant reducing the Cities' TRRs. It reiterated that once facilities are determined to be network transmission facilities, their costs are rolled into the CAISO's transmission rates. The extent to which a facility actually performs a network function is not relevant.⁹

9. For similar reasons, the Commission found there should be no credit for a twenty-one month period during which the CAISO's modeling of the entitlements in the original S-326 operating procedure resulted in restricting the amount of the entitlements that were available to third parties on the IPP-Lugo Branch Group. The Commission also found that the original modeling of the entitlements did not result in undue discrimination. The Commission found that other market participants were not similarly situated to the Cities and that the CAISO had legitimate operational and market reasons for the original modeling.

10. The Commission found that the Cities' TRRs and the CAISO's rates with the Cities' TRRs included are both lawful rates under section 205 of the Federal Power Act

⁹ *Citing* Opinion No. 466-B, 108 FERC ¶ 61,297 at P 20; Opinion No. 474, 108 FERC ¶ 61,084 at P 50.

(FPA).¹⁰ It stated it had accepted the costs of the entitlements in an uncontested settlement and that it had found in Opinion No. 483 that the costs associated with the entitlements may be included in the Cities' TRRs. It explained that the CAISO's Transmission Access Charge (TAC) is comprised of the TRRs of its Participating Transmission Owners (PTOs). Thus, it concluded that since the entitlements may be included in the Cities' TRRs, they may also be included in the CAISO's TAC.

11. The Commission denied SWP's renewed motion to vacate the Chief ALJ's June 3, 2004 Order. The June 3 Order granted the Cities' and the CAISO's joint motion to reopen the record to examine changes to the CAISO's modeling procedures for the entitlements. The Commission found that, because the Chief ALJ's failure to consider SWP's answer to the joint motion was harmless error, SWP was not deprived of procedural due process.

Discussion

A. The Legal Standard for Determining Whether the NTS/STS Entitlements are Integrated, Network Facilities

1. The "Any Degree of Integration" Standard

a. Rehearing Requests

12. SWP and the CPUC assert that "any degree of integration" is not the correct standard for determining whether the entitlements are network facilities.¹¹ They assert that a facility must perform more than a minimal transmission function to be a network facility. They assert that the cases cited by the Commission¹² do not support the any

¹⁰ 16 U.S.C. § 824d (2000).

¹¹ The CPUC states that the test has been appealed as part of the appeal of the Opinion No. 466 orders. *California Dep't of Water Resources v. FERC*, No. 04-76131 (9th Cir. filed November 22, 2004).

¹² The rehearing parties cite Opinion No. 466-A and Opinion No. 474. The rehearing parties also assert the Commission cited *Western Massachusetts Electric Co. v. FERC*, 165 F.3d 922, 927 (D.C. Cir. 1999) (*Western Massachusetts*); *American Electric Power Service Corp.*, 101 FERC ¶ 61,211 at P 12 (2002) (*American Electric*); and *Otter Tail Power Company*, 12 FERC ¶ 61,169 at 61,420 (1980) (*Otter Tail*) with regard to this test. However, the Commission cited the *Western Massachusetts*, *American Electric*, and

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degree of integration standard. The CPUC also asserts the test is only a policy and that a policy does not have the force and effect of law. Instead, the CPUC argues, the Commission must demonstrate with substantial evidence why relying on the policy produces just and reasonable consequences. The CPUC also asserts Opinion No. 466-A does not state that the policy requires the use of the any degree of integration test in all circumstances.¹³

b. Commission Decision

13. The Commission rejects rehearing parties' contentions that the "any degree of integration" test is not the correct test for determining whether a facility is an integrated, network facility. The focus of the analysis should be, and the focus of the test is, whether a facility performs transmission functions. The test thus requires that a facility must perform a transmission function to be an integrated, network facility. But that transmission function is not required to be exclusive or to outweigh other functions to justify a finding that a facility performs a transmission function and thus is an integrated, network facility.¹⁴ Nor must the transmission function be characterized as "critical" or "important" to justify a finding that a facility performs a transmission function and thus is an integrated, network facility.¹⁵

14. In applying the test, the Commission makes its finding that a facility is an integrated, network facility based on evidence of record (as discussed further below). If such evidence shows that the facility performs a transmission function, then the facility is part of the integrated transmission network and is an integrated, network facility. In this regard, the CPUC's reliance on Opinion No. 466-A is misplaced. The Commission explained and applied the any degree of integration test in Opinion No. 466-B,¹⁶ which

Otter Tail cases with regard to the rolling in of the costs of integrated, network facilities rather than the any degree test. See Opinion No. 483 at P 14.

¹³ The CPUC cites Opinion No. 466-A, 106 FERC ¶ 61,144 at P 22.

¹⁴ Opinion No. 466-A, 106 FERC ¶ 61,144 at P 3, 4, 13, 20.

¹⁵ See Opinion No. 466-B, 108 FERC ¶ 61,297 at P 19, 20.

¹⁶ In Opinion No. 466-B, 108 FERC ¶ 61,297 at P 19-20, the Commission affirmed that a showing of any degree of integration is sufficient. It found that the bulk transmission and other facilities at issue there all performed some transmission function, and so their costs should be rolled in to transmission rates. The Commission also found that the particular extent to which the particular facilities at issue performed such

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modified Opinion No. 466-A, and in Opinion No. 474.¹⁷ In any event, the Commission set the issue of whether the NTS/STS entitlements are network facilities for hearing in this proceeding and provided for the creation of an evidentiary record. It has relied on substantial evidence from that record for its determination that the NTS/STS entitlements are integrated, network facilities.

2. Evidentiary Showing

a. Rehearing Requests

15. SWP and the CPUC assert that, for a facility to be an integrated, network facility, *Southern California Edison Co.*¹⁸ and Opinion No. 474¹⁹ require a showing of benefits to all users. The CPUC asserts there is no evidence that the NTS/STS entitlements actually provide system-wide benefits. It asserts the CAISO cannot assure the reliability of the system using the NTS/STS entitlements because it cannot dispatch the IGS and that only the Cities can access power from the IGS for transmission on the entitlements.

16. SWP asserts that, instead of producing benefits to all users, the transfer of the Cities' entitlements to the CAISO and the inclusion of the Cities' TRRs in the CAISO's rates have reduced the capacity available to market participants on most of the transmission segments that were transferred, even with the revised scheduling procedures adopted in September 2004.²⁰ The CPUC asserts that the costs of the Cities' entitlements are almost completely subsidized by others.

17. The CPUC also argues that *Western Massachusetts, American Electric, and Otter Tail* require that the Commission make a detailed analysis and look at specific concrete evidence of integration to determine whether transmission facilities are integrated with a

function was not relevant to whether the facilities were transmission facilities and thus whether their costs should be rolled in to transmission rates.

¹⁷ Opinion No. 474, 108 FERC ¶ 61,048 at P 48. This opinion is discussed further below.

¹⁸ 112 FERC ¶ 61,014 at P 42 (2005) (*Southern California Edison*).

¹⁹ Opinion No. 474, 108 FERC ¶ 61,084 at P 47.

²⁰ SWP cites SWP-76 at 9; SWP-68 at 14.

network.²¹ The CPUC states that, in Opinion No. 474, the Commission reviewed specific record evidence of actual usage and function and found that the facilities at issue there performed switching and looping functions and provided system-wide benefits.²²

b. Commission Decision

18. The Commission denies these rehearing requests. Contrary to rehearing requesters' assertions, the findings in Opinion No. 483 are consistent with Opinion No. 474 and *Southern California Edison*, and the cited orders support the holding in Opinion No. 483 that the NTS/STS entitlements are integrated, network facilities. In addition, the Commission has considered specific concrete evidence to determine that the NTS/STS entitlements are integrated with the CAISO network, as discussed elsewhere in this order.

19. In Opinion No. 474, the facilities consisted of in-line power circuit breakers; amp switches, meter facilities, transmission and bus differential relaying panels; and tap structures on a radial line owned by the utility which could be looped. These facilities permitted service to be restored more quickly when there were faults, by providing dual feeds or by isolating line segments on which the faults occurred.²³ Based on its review of the record, the Commission found that the facilities were network facilities.²⁴ The Commission found that they operated in-line with the transmission network and performed a switching function to maintain the reliability of service over the transmission network. The Commission stated it had previously held that such facilities are part of an integrated network.²⁵ The Commission also rejected the argument that the facilities were not needed for reliability, stating that the transmission network cannot be dismembered and that the facilities at issue maintained continuity of service and allowed faster restoration of looped transmission lines thereby benefiting other loads. Thus, the

²¹ Opinion No. 483 at P 14 n.26 references these cases in support of the statement that Commission policy requires that the costs of the Cities' integrated, network facilities be rolled into the CAISO's TAC.

²² The CPUC cites Opinion No. 474, 108 FERC ¶ 61,084 at P 50, 53.

²³ Opinion No. 474, 108 FERC ¶ 61,084 at P 4-6.

²⁴ *Id.* at P 48.

²⁵ *Id.* at P 49.

Commission concluded the facilities were integrated into the utility's transmission network and performed a system-wide function.²⁶

20. On rehearing of Opinion No. 474, the Commission stated that it had considered benefits to other transmission system users to be relevant to its finding of integration and found in Opinion No. 474 that the new facilities benefited other users.²⁷ The Commission stated that, by providing a switching function for transmission, the facilities supported and increased the reliability of the transmission grid.

21. In *Southern California Edison*, SCE intended to build three segments that might be needed to interconnect future wind generation projects to be developed by independent generators. SCE was building the segments to satisfy the state of California's renewable portfolio standard of twenty percent by 2010. SCE characterized Segment 3 as a generation-tie line, the cost of which is ordinarily paid by interconnecting generators.²⁸

22. The Commission found Segments 1 and 2 consisted of various high-voltage lines, towers, and substation expansions and upgrades. The Commission found Segments 1 and 2 were not radial in nature, would be part of a looped transmission system, could be reversed, and would serve multiple purposes, that is, serve load and increase transfer capacity for existing generation facilities. The Commission concluded that Segments 1 and 2 would be upgrades to existing network transmission facilities or would operate in parallel with existing network transmission facilities, that they could be fully integrated with the CAISO-controlled grid once they were constructed, and that they would be part of the looped transmission system.²⁹

23. SCE also stated that Segments 1 and 2 would provide additional benefits to the transmission grid in that they would increase transfer capability and resolve certain stability problems, that they could be relied upon for CAISO scheduling purposes, and that they would permit the CAISO to provide service to participating transmission owners as well as other transmission customers. The Commission agreed and concluded that Segments 1 and 2 would provide capability and reliability benefits to the transmission

²⁶ *Id.* at P 50.

²⁷ Opinion No. 474-A, 111 FERC ¶ 61,189 at P 14, 19 (*citing* Opinion No. 474, 108 FERC ¶ 61,084 at P 49).

²⁸ *Southern California Edison*, 112 FERC ¶ 61,014 at P 22.

²⁹ *Id.* at P 36-37.

grid and could be relied on for coordinated operation of the transmission grid.³⁰ Based on its findings, the Commission held that Segments 1 and 2 were network upgrades and that their costs could be recovered through SCE's TRR.

24. The Commission found that Segment 3, in contrast, was not a network upgrade and therefore not eligible for rolled-in rate treatment. It stated Segment 3 appeared to be generation-tie facilities and that Commission precedent has not permitted shifting the costs of such facilities from the interconnection customers to all users of the transmission grid. In addition, the Commission stated, SCE had neither shown that all users of the CAISO-controlled grid would receive the benefits of these facilities, nor how Segment 3 would provide benefits to the grid.³¹ The Commission also added that it did not have a determination from the CAISO as to whether these facilities should be transferred to its operational control.

25. The Commission made findings in Opinion No. 483 concerning benefits to other users or system-wide benefits that are similar to the findings in Opinion No. 474 and *Southern California Edison* noted above. In Opinion No. 483, noting that the NTS/STS entitlements are rights to use high-voltage facilities that are designed to and that do carry bulk power and that the facilities are interconnected with other utilities (and that power can flow in either direction), the Commission found that the NTS/STS entitlements can be used to transmit power from other generators besides the IGS and that other market participants were able to and did use the NTS/STS entitlements to transmit power.³² It also found that the NTS/STS entitlements provide reliability benefits to the CAISO grid by giving the CAISO increased ability to control scheduling.³³ In this regard, as discussed elsewhere in this order, the CAISO can curtail the amount of power on the NTS/STS entitlements by curtailing schedules without having to redispatch the IGS.

26. Just as it similarly found in Opinion No. 474 for the facilities at issue there, the Commission finds in this order that the NTS/STS entitlements at issue here provide additional reliability benefits, in this case, through scheduling by the CAISO. And just as it similarly found in *Southern California Edison* as to the facilities at issue there, the Commission finds in this order that the NTS/STS entitlements at issue here provide

³⁰ *Id.* at P 38.

³¹ *Id.* at P 42.

³² Opinion No. 483 at P 48.

³³ *Id.*

additional reliability and other benefits to the transmission grid in that they can be relied upon for CAISO scheduling purposes and they permit the CAISO to provide service to participating transmission owners as well as other transmission customers over the entitlements. Thus, Opinion No. 483 is consistent with Opinion No. 474 and *Southern California Edison* with respect to finding that the facilities at issue provide system-wide benefits.

27. The Commission does not agree with rehearing requesters that capacity available to market participants has been reduced. Prior to the transfer to the CAISO, none of the capacity of the Cities' NTS/STS entitlements was available for scheduling through the CAISO, so that capacity now available on the Cities' NTS/STS entitlements is new capacity that can be scheduled through the CAISO.

28. With respect to the claim that as a result of the Commission's decision the costs of the Cities' entitlements are being subsidized by others, we note that the issue set for hearing was whether the Cities' costs associated with the NTS/STS entitlements could be included in their TRRs, that is, whether the NTS/STS entitlements are integrated, network facilities. The Commission determined in Opinion No. 483, and reaffirms here, that the NTS/STS entitlements are integrated, network facilities. Having made that finding, the costs are properly included in transmission rates. As the Commission stated in Opinion No. 483: "Once the Commission determines that a facility is a network facility, the costs of that facility may be rolled into transmission rates."³⁴

3. May 10, 2004 Order

a. Rehearing Requests

29. The CPUC argues that the Commission's May 10, 2004 Order in the section 203 proceeding requires that the Commission must balance "the rate impacts with countervailing benefits"³⁵ before the Cities' TRRs may be reflected in the CAISO's rates. The CPUC asserts the May 10, 2004 Order states that rate increases that may result from the Cities' joining the CAISO could be found to be in the public interest "if there are countervailing benefits."³⁶ The CPUC asserts the May 10, 2004 Order stated

³⁴ *Id.* at P 105.

³⁵ *California Independent System Operator*, 107 FERC ¶ 61,150 at P 5, 14 (2004) (May 10, 2004 Order) (holding that the CAISO could acquire the NTS/STS entitlements under section 203 of the FPA, 16 U.S.C. § 824b (2000).)

³⁶ *Id.* at P 14.

countervailing benefits could consist of elimination of rate pancaking, the increase in competitive options, and the enhancement of the reliability and operation of the transmission grid in a way that benefits all users of the grid. The CPUC asserts the Commission has not shown any of these benefits by means of record evidence in this proceeding and insists that such a showing of benefits is required to roll the Cities' TRRs associated with the NTS/STS entitlements into the CAISO's rates.

30. The CPUC asserts that, instead, the costs of including the Cities' TRRs associated with the NTS/STS entitlements in the CAISO's rates outweigh the benefits. It asserts that other customers pay 96 percent of these costs. It also asserts that there are no benefits from the NTS/STS entitlements for other customers because there is no enhancement to the CAISO grid operations and because the Cities monopolize the NTS/STS entitlements through FTRs and their rights and obligations to buy power from the IGS. The CPUC asserts that, contrary to Opinion No. 483, the transfer of the entitlements to the CAISO has not made the NTS/STS entitlements far more available and so far more integrated with the CAISO grid.³⁷ The CPUC states that the Cities control their transmission capacity now to the same extent that they did before they joined the CAISO; the CPUC states the Cities controlled their transmission capacity in sales and swaps with third parties prior to joining the CAISO³⁸ and that since joining the CAISO they control their transmission capacity through FTRs and exclusive access to the IGS.

b. Commission Decision

31. The Commission denies the CPUC's rehearing requests based on the May 10, 2004 Order. The May 10, 2004 Order was issued in the proceeding in which the CAISO acquired the Cities' scheduling rights on the NTS/STS entitlements. The discussion of benefits in the May 10, 2004 Order, on which the CPUC relies, refers to the transfer of the NTS/STS entitlements to the CAISO in the section 203 proceeding, not to the determination of whether the NTS/STS entitlements are integrated, network facilities.³⁹ Moreover, the May 10, 2004 Order affirmed that the transfer produced benefits: making scheduling rights on the NTS/STS entitlements available to market participants, market power mitigation, better management of grid congestion, reduction or elimination of rate pancaking, increased competitive options for wholesale customers, and enhanced

³⁷ The CPUC cites Opinion No. 483 at P 50.

³⁸ The CPUC cites Tr. 309-312.

³⁹ May 10, 2004 Order, 107 FERC ¶ 61,150 at P 5, 14.

reliability and enhanced operation of the transmission grid for all market participants.⁴⁰ The May 10, 2004 Order did not require that these benefits be proved in this proceeding.

32. Moreover, the May 10, 2004 Order was issued after the Commission accepted a settlement in this proceeding on December 18, 2003.⁴¹ The settlement, as accepted by the December 18, 2003 Order, resolved all issues in this proceeding except whether the costs associated with the NTS/STS entitlements should be included in the Cities' TRRs, that is, whether the NTS/STS entitlements are integrated, network facilities. The May 10, 2004 Order did not modify the December 18, 2003 Order, so, again, the May 10, 2004 Order did not require any separate consideration of benefits in this proceeding.

4. Other

a. Rehearing Requests

33. The CPUC asserts the Commission must explain why *Consumers Energy Company*⁴² does not apply. It asserts *Consumers Energy* uses a benefits analysis to determine whether customer-owned facilities are integrated facilities eligible for transmission credits and that such an analysis should be used here as well to decide whether to increase the CAISO's TAC to include the costs of the entitlements. SWP further asserts that the standards applied in Order No. 2003⁴³ must be considered and

⁴⁰ *Id.* at P 14 (The Commission stated that “[w]ith the transfer of these facilities and entitlements [*i.e.*, the NTS/STS entitlements], market participants in California now have access to a broad spectrum of resources in Nevada, Arizona and Utah.”)

⁴¹ *City of Azusa, California*, 105 FERC ¶ 61,293 (2003) (*City of Azusa*).

⁴² 86 FERC ¶ 63,004 (1999) (*Consumers Energy*), *aff'd*, 98 FERC ¶ 61,333 (2002).

⁴³ *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160 (2004), *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2005), *order on reh'g*, Order No. 2003-C, 111 FERC ¶ 61,401 (2005).

applied to find that a facility is a network facility.⁴⁴

34. The CPUC also asserts the Commission must explain why economic and cost-benefit studies that include impacts on market participants are necessary for expansion projects that would add transmission and generation to the grid but are not appropriate for expanding the CAISO grid with the Cities' NTS/STS entitlements.

b. Commission Decision

35. *Consumers Energy* concerned, in relevant part, whether customer-owned transmission facilities were entitled to transmission service credits under section 30.9 of Consumer Energy's Open Access Transmission Tariff. Section 30.9 provided that credits would be given if a network customer could show that transmission facilities that it owned were integrated into the plans or operations of the Transmission Provider to serve its power and transmission customers.⁴⁵ The *Consumers Energy* initial decision explained that the transmission customer must show that its facilities provide additional benefits to the transmission grid in terms of capability and reliability.⁴⁶

36. This case does not involve a customer seeking credits in its transmission rates for its customer-owned transmission facilities, and the standards applicable to providing such credits do not apply here. The Cities are not merely customers of the CAISO; instead, as relevant here, they are participating transmission owners of the CAISO. As the Commission explained in a more recent case concerning customer credits,⁴⁷ the standard for granting credits is not the same as the standard for determining whether a transmission provider may recover the costs of its transmission facilities in its rates. In *East Texas*, the Commission stated that costs may be rolled in to the transmission provider's transmission rates if the transmission provider's facilities have any degree of integration. The Commission stated that the standard for granting credits to a

⁴⁴ The CPUC also asserts the *Mansfield* factors should be applied. The Commission considered and rejected application of these factors in Opinion No. 483 at P 35.

⁴⁵ *Consumers Energy*, 86 FERC ¶ 63,004 at 65,010.

⁴⁶ *Id.* at 65,010, 65,016.

⁴⁷ *East Texas Electric Cooperative, Inc. v. Central and South West Services, Inc.*, Opinion No. 475-A, 114 FERC ¶ 61,027 at P 42 (2006) (*East Texas*) (*denying reh'g* of Opinion No. 475, 108 FERC ¶ 61,077 (2004)).

transmission customer is higher. The Commission explained:

The reason for this distinction is that customer-owned facilities are generally constructed to serve that individual customer's needs; before their costs may be assigned to all users (which is what a credit effectively does), it must be demonstrated that those facilities are relied upon by the transmission provider to provide service to its transmission customers. By contrast, the transmission provider-owned system is planned, constructed and owned, from the very beginning, by the transmission provider to meet its obligation to its customers. . . . [U]se of a different standard is appropriate for customer-owned facilities because they involve not just a determination of whether facilities are part of a single transmission system (in a sense, virtually all transmission facilities are part of a single transmission system because they are all physically interconnected, but that has never warranted a customer automatically receiving a credit), but also whether the customer's and the transmission provider's systems should be considered separate systems or an integrated transmission system.⁴⁸

In this case, the issue is whether the entitlements of participating transmission owners⁴⁹ are integrated, network facilities and thus the appropriate standard is the any degree of integration standard.

37. The standards in Order No. 2003 are equally inapplicable here. Order No. 2003 concerns the interconnection of new large generators, which is not what is at issue in this case. The Commission concluded that facilities constructed in order to interconnect a new generator are considered to be network upgrades if they are at or beyond the point at which the so-called Interconnection Facilities connect to the transmission system.⁵⁰ A determination that all users benefit from a particular network upgrade was not required.⁵¹

⁴⁸ *East Texas*, 114 FERC ¶ 61,027 at P 42.

⁴⁹ *See, e.g.*, May 10, 2004 Order, 107 FERC ¶ 61,150 at P 3, 9 (noting that the Cities would now be participating transmission owners).

⁵⁰ Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160 at P 76.

⁵¹ *Id.* at P 66.

But, that policy does not, and was never intended to, establish the test that would be applicable here.⁵²

38. Finally, as the Commission indicated in Opinion No. 483,⁵³ economic and cost-benefit studies are not necessary here. If the NTS/STS entitlements are integrated, network facilities, and we have held that they are, then they are providing benefits to users of the integrated transmission grid – that is the nature of an integrated transmission grid.⁵⁴ There is no need for the Cities or the CAISO to provide more in order to include the costs of the NTS/STS entitlements in the Cities' TRRs and in the CAISO's rates. There is no requirement that a cost-benefit study be performed.

B. Whether the Evidence Supports a Finding that the NTS/STS Entitlements are Integrated, Network Facilities

1. Rehearing Requests

39. The CPUC and SWP assert the Commission fails to reference substantial evidence showing the integrated network functions the NTS/STS entitlements perform⁵⁵ and that Opinion No. 483 errs in concluding that the entitlements perform substantial or even adequate network functions. They also challenge the factual findings of Opinion No. 483 concerning the physical characteristics of the entitlements that underlie Opinion No. 483's conclusion that the entitlements perform transmission functions and are thus network facilities. These factual findings include interconnection with other systems, increased access to generation and ability to serve generation from generators besides the

⁵² Indeed, in the Commission's subsequent decision in *Northeast Texas Electric Cooperative, Inc.*, Opinion No. 474-A, 111 FERC ¶ 61,189 at P 1, 4 & n.10 (2005) (and also its subsequent decision in *East Texas Electric Cooperative, Inc. v. Central and South West Services, Inc.*, Opinion No. 475-A, 114 FERC ¶ 61,027 at P 42 (2006)), the Commission reaffirmed the applicability of the any degree of integration test in the circumstances at issue here – and expressly notwithstanding the issuance of Order No. 2003. See *Northeast Texas Electric Cooperative, Inc.*, Opinion No. 474-A, 111 FERC ¶ 61,189 at P 34 (2005).

⁵³ Opinion No. 483 at P 58.

⁵⁴ See generally *Northeast Texas Electric Cooperative, Inc.*, Opinion No. 474-A, 111 FERC ¶ 61,189 (2005).

⁵⁵ SWP cites Opinion No. 483 at P 49.

IGS, increased reliability, actual use by others, and physical availability to serve others.

40. The CPUC indicates that there can be no finding of integration in this case because the configuration and interconnections of the NTS/STS entitlements with the CAISO Control Area at Victorville/Lugo were exactly the same before the TCA was executed. SWP asserts the entitlements were available for use by other market participants prior to the Cities joining the CAISO⁵⁶ because the Cities were free to enter into bilateral contracts for the sale of transmission on the entitlements. The CPUC asserts the transfer did not change or increase access to generation because the NTS/STS entitlements were interconnected with other transmission systems prior to the transfer to the CAISO. The CPUC asserts, in addition, that there are no generators connected to the Mona and Gonder termini other than the IGS and that Opinion No. 483 and the Cities did not identify any generators besides the IGS that could transmit power over the NTS/STS entitlements.⁵⁷

41. Rehearing requesters assert that Opinion No. 483's findings of improved reliability are not based on substantial evidence and cannot be used to support the determination that the NTS/STS entitlements are integrated, network facilities.⁵⁸ The CPUC asserts the Commission identified evidence submitted by Trial Staff for the finding of improved reliability and that Trial Staff did not provide any such evidence. SWP asserts the entitlements do not provide reliability benefits to the CAISO grid by giving the CAISO increased ability to control scheduling because the control area operator, the Los Angeles Department of Water and Power (LADWP), performs the scheduling function, not the CAISO.

42. Both SWP and the CPUC assert actual use by other entities is necessary to show that facilities are integrated, network facilities. But rehearing requesters contend use of the NTS/STS entitlements by entities other than the Cities -- an actual 6.9 percent of total CAISO NTS/STS usage from January through August 2004⁵⁹ and a 25 MW import

⁵⁶ SWP cites Opinion No. 483 at P 50.

⁵⁷ The CPUC cites CIT-22 which, it states, refers to a Department of Energy website for "Existing Generating Units at U.S. Electric Utilities by State, Company, and Plant, 2000."

⁵⁸ The CPUC cites Opinion No. 483 at P 48.

⁵⁹ SWP cites SWP-94 at 2:8-10.

scheduled by SCE at Mona on the NTS in March, 2003⁶⁰ -- is *de minimis*. The CPUC asserts the 6.9 percent could have been used by non-CAISO entities such as Utah municipalities or other members of the Southern California Public Power Authority (SCPPA) other than the Cities.⁶¹ SWP asserts that even if the new S-326 procedures had been in effect from January through August 2004, only an average of 6.4 MW per hour would have been available for other entities on the new Mona-Lugo branch group.⁶²

43. The CPUC asserts that Opinion No. 483 does not require that the entitlements provide service to other market participants to be network facilities⁶³ and does not explain why provision of service to others is unnecessary. Rehearing requesters assert that, in any event, Opinion No. 483 relies on actual usage of the NTS/STS entitlements by others to show that the NTS/STS entitlements are integrated, network facilities, but that these instances are insufficient.

44. SWP asserts that even though the NTS/STS lines are not physically limited to serving only the Cities, the limitations on access to the NTS/STS entitlements imposed by the CAISO and the LADWP render the entitlements unusable by other market participants. SWP also asserts that Opinion No. 483 relies on evidence that power can flow in either direction, but ignores evidence that scheduling northbound (export) on the STS was prohibited prior to the revisions to Operating Procedure S-326 (S-326). SWP asserts substantial evidence shows that the IPP-Lugo branch group operated as a radial generation tie for the period January 1, 2003 through September 15, 2004.⁶⁴

2. Commission Decision

45. The Commission rejects rehearing requesters' assertion that its finding that the NTS/STS entitlements are network facilities is not based on substantial evidence. The Commission examined the physical characteristics and functions of the entitlements as

⁶⁰ The CPUC cites Opinion No. 483 at P 36, P 46 n.80.

⁶¹ The CPUC states that the Cities of Anaheim and Riverside are members of SCPPA.

⁶² SWP cites SWP-94 at 2:3-8.

⁶³ The CPUC cites Opinion No. 483 at P 48.

⁶⁴ SWP asserts total usage on the STS was 93 percent for generation from the IGS in 2003, citing SWP-1 at 6-7, 10-15.

shown in the record.⁶⁵ It also examined evidence that the NTS/STS entitlements had, in fact, been used by market participants other than the Cities.⁶⁶ The Commission's holding that the NTS/STS entitlements perform transmission functions and are thus integrated, network facilities is based on evidence of record as indicated by the citations in Opinion No. 483 and in this order to such evidence and by the citations in the cited portions of the Initial Decision.

46. The Commission rejects rehearing requesters' contentions that the NTS/STS entitlements are not more integrated with the CAISO grid since joining the CAISO because they have the same configuration as before joining the CAISO and because other customers could use the entitlements prior to the Cities joining the CAISO. Before the Cities joined the CAISO, the Cities were not obligated to make the NTS/STS entitlements available for use by others when the Cities were not using the entitlements themselves. In addition, prior to the transfer of the entitlements to the CAISO, a customer would have had to contract separately with the Cities to use the NTS/STS entitlements and would have had to pay a separate rate to the Cities. Once the Cities joined the CAISO, the NTS/STS entitlements became available to CAISO market participants. In addition, since the transfer, market participants can request scheduling of the entitlements through the CAISO and only have to pay one rate, the CAISO TAC, when they use the entitlements. The Commission affirms its holding in Opinion No. 483 that these features make transmission on the NTS/STS entitlements far more available and so far more integrated with the CAISO grid than they had been before the Cities transferred the entitlements to the CAISO.⁶⁷

⁶⁵ Opinion No. 483 describes the NTS/STS entitlements in paragraphs 5-9, which reference the Initial Decision. The referenced portions of the Initial Decision, in turn, contain citations to record evidence. In addition, see CIT-1 at 7-16; ISO-1 at 4, and ISO-2 for descriptions of the NTS/STS entitlements.

⁶⁶ See Opinion No. 483 at P 42, 46 (citing or referring to SWP-94 at 2:3-10). The cited lines in SWP-94 state that, from January through August 2004, usage of the NTS/STS entitlements by entities other than the Cities was 6.9 percent of total CAISO usage of the NTS/STS entitlements. The Initial Decision contains additional references to record evidence of use of the entitlements by others or availability of the entitlements for use by others, generally at usage rates higher than 6.9 percent. Initial Decision at P 53 n.24 (citing, *inter alia*, CIT-1 at 10, 20-21; CIT-7; ISO-10 at 3; S-1 at 19-20; S-11); see also SWP-97.

⁶⁷ Opinion No. 483 at P 50.

47. The Commission rejects SWP's arguments that limitations on access to the NTS/STS entitlements by the CAISO render them unusable by other market participants.⁶⁸ The CAISO has made the NTS/STS entitlements available for scheduling by other market participants since January 1, 2003. The Commission has found that the CAISO's limitations on scheduling prior to September 16, 2004 were the result of legitimate factors.⁶⁹ And the revised CAISO S-326 procedures provide that 530 MW of the NTS/STS entitlements may be scheduled at the combined Mona/IPP scheduling point and 4 MW may be scheduled at the Gonder scheduling point. This is the entire amount of the Cities' import capacity on the NTS/STS facilities.⁷⁰ In addition, the revised S-326 procedures also provide for export capacity from Lugo to Mona of 116 MW and Lugo to Gonder of 2 MW. This is the maximum export capacity possible given the constraint of 118 MW on the Lugo to Adelanto segment.⁷¹

48. The Commission also rejects SWP's argument that limitations on access made the STS a radial generation tie prior to September 16, 2004. SWP ignores the fact that the STS is interconnected with the NTS which is, in turn, interconnected with other utility systems at Mona and Gonder. Scheduling capacity on the NTS/STS entitlements was available at Mona and Gonder during the January 1, 2003 through September 16, 2004 period. The STS facilities could have been used during this period to import power flowing from Mona or Gonder over the NTS and the evidence indicates that, in fact, both the Cities and other market participants imported power from Mona using the NTS and the STS facilities during this period.⁷²

⁶⁸ With respect to limitations imposed by the LADWP, we note that the record evidence cited above indicates that notwithstanding any such limitations the NTS/STS entitlements were available to – and were used by – transmission customers other than the Cities. Separately, we note that LADWP is not a public utility under the FPA, *see* 16 U.S.C. § 824 (2000), and so the Commission does not have authority under sections 205 or 206 of the FPA, *see* 16 U.S.C. §§ 824d, e (2000), to address any limitations that it might impose.

⁶⁹ Opinion No. 483 at P 131.

⁷⁰ Opinion No. 483 at P 9; Initial Decision at P 39-41.

⁷¹ Initial Decision at P 40 (schematic) and 41.

⁷² Initial Decision at P 53 n.24; SWP-97.

49. The Commission also rejects the CPUC's argument that the transfer did not change or increase access to generation. This argument suggests that the NTS/STS entitlements serve only the IGS and are thus generation ties. The CPUC relies on Exhibit CIT-22 to show lack of access to more generating sources. However, the evidence showed that the NTS facilities at Mona are interconnected with other utility systems, and, in Exhibit CIT-22, the Cities state that, through Mona, market participants will have greater access to all generation, including generation from the Pacific Northwest and Rocky Mountain regions.⁷³ In Exhibit CIT-22, the Cities state that, from Mona, accessible generators include those in the states of Nevada, Colorado, Utah, Idaho, Oregon, Montana, and Washington, and the Cities refer to a listing of such generators entitled "Existing Generating Units at U.S. Electric Utilities by State, Company, and Plant, 2000" available on the U.S. Department of Energy website.⁷⁴ We find that the evidence supports the factual finding that the NTS/STS entitlements serve generating resources in addition to the IGS⁷⁵ and thus supports the conclusion that the NTS/STS entitlements are not merely generation ties.

50. The Commission affirms its finding that the NTS/STS entitlements improve the reliability of the CAISO grid by giving the CAISO increased ability to control scheduling.⁷⁶ Contrary to SWP's assertions, the CAISO, not the LADWP, schedules capacity for the NTS/STS entitlements.⁷⁷ This ability to schedule over an increased area improves the reliability of the CAISO grid.

51. The Commission, as suggested earlier, does not agree that actual use of the NTS/STS entitlements' capacity by customers other than the Cities is necessary to show the entitlements are integrated, network facilities, although such evidence can support

⁷³ CIT-22 at numbered pages 6-7.

⁷⁴ Given as www.eia.doe.gov/cneaf/electricity/ipp/html/ippvlt20;1.html on page 2 of First Supplemental Responses of the Cities . . . to Fifth Set of Discovery Requests, CIT-22.

⁷⁵ Cf. May 10, 2004 Order, 107 FERC ¶ 61,150 at P 14 (in the context of whether to approve the CAISO's acquisition of the NTS/STS entitlements the Commission found that with the transfer of the entitlements, market participants in California now have access to a broad spectrum of resources in Nevada, Arizona, and Utah).

⁷⁶ Opinion No. 483 at P 48.

⁷⁷ Initial Decision at P 57; S-7 at 7-8, and see further discussion below.

such a finding. Whether the NTS/STS entitlements are integrated, network facilities depends on whether they perform transmission functions, not on who is using them or when or even how much or how often. Opinion No. 483 found the NTS/STS entitlements make use of a portion of the NTS and STS facilities. It found the NTS/STS facilities are high voltage transmission lines that are bi-directional and interconnected to the transmission lines of other utility systems and that they can and do carry bulk power and can and do transmit power of generators other than the IGS. Thus, Opinion No. 483 held NTS/STS facilities and entitlements perform transmission functions (indeed, of a substantial nature) and are part of the integrated transmission grid.⁷⁸

52. The NTS/STS facilities perform transmission functions regardless of who is using them. That is, they carry bulk power, they carry power bi-directionally, and they can and do transmit power from multiple generators. If entities other than the Cities actually use the NTS/STS entitlements (as they do), it is further, but not necessary, evidence that the entitlements perform transmission functions. Contrary to the rehearing requesters' contentions, Opinion No. 483 relied on evidence of the characteristics and functions of the NTS/STS entitlements to find that they perform transmission functions and are integrated, network facilities, and cited actual usage of the NTS/STS entitlements by others only as further evidence for this finding.⁷⁹

C. Whether the CAISO Has Operational Control Over the Entitlements

1. Rehearing Requests

53. Rehearing requesters argue the CAISO itself must perform functions such as maintenance and dispatch⁸⁰ and must have actual, physical control over the NTS/STS entitlements in order to have operational control over them. SWP asserts Opinion No. 483 errs in adopting a definition of operational control that varies according to the location of facilities.⁸¹ Rehearing requesters assert the evidence shows that the CAISO does not have adequate operational control over the NTS/STS entitlements through scheduling. The CPUC asserts that the extent and nature of the CAISO's operational control of the NTS/STS entitlements is not like the CAISO's operational control of other entitlements that are outside its control area. SWP asserts that the CAISO did not follow

⁷⁸ Opinion No. 483 at P 48.

⁷⁹ *Id.*

⁸⁰ SWP refers to Opinion No. 483 at P 76. *See also id.* at P 60, 64.

⁸¹ SWP cites Opinion No. 483 at P 76.

the requirements of the Transmission Control Agreement (TCA) in taking operational control over the NTS/STS entitlements and that this argument is not a collateral attack on prior Commission orders.

2. Commission Decisions

a. What is Necessary for Operational Control?

54. SWP asserts the Commission errs in concluding that “it is not necessary that the CAISO itself perform operational tasks in order for it to exert operational control over the Cities’ entitlements”⁸² and that if the CAISO merely oversees operational tasks without decisional authority with respect to those tasks, there is no independent system operator. The CPUC asserts the CAISO must have control over dispatching generation, maintenance, outages, reliability, overloads, and the actual flow of power in order to have operational control over the NTS/STS entitlements relying, in part, on Order No. 2000.⁸³ The CPUC asserts that, instead, the LADWP performs these functions.

55. The Commission rejects these rehearing requests. The CAISO’s Tariff provides that operational control consists of the CAISO’s right to direct participating transmission owners (like the Cities) how to operate their facilities to afford non-discriminatory transmission access and meet reliability criteria.⁸⁴ The CAISO is not obliged to perform operational tasks itself such as maintenance and dispatch to have operational control. What is necessary is that the CAISO has the authority to direct the Cities how to operate their entitlements to, as particularly relevant here, afford non-discriminatory transmission access.

56. The Commission has held that the CAISO is able to direct a participating transmission owner how to use its facilities to provide open access transmission when the

⁸² Opinion No. 483 at P 76.

⁸³ The CPUC cites *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089 at 31,090 and 31,104 (1999), *order on reh’g*, Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092 (2000), *aff’d sub nom. Public Utility District No. 1 of Snohomish County, Washington v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

⁸⁴ Third Revised Sheet No. 336, California Independent System Operator Corporation, FERC Electric Tariff, First Replacement Volume No. I.

CAISO is responsible for scheduling.⁸⁵ That is, the CAISO must provide scheduling points for the facilities and post the availability of the facilities for non-discriminatory open access transmission. If the CAISO has provided scheduling points and posts availability, then the CAISO has operational control because the CAISO is able to direct a participating transmission owner how to use its facilities to afford non-discriminatory open access transmission. The Commission found in Opinion No. 483 that the CAISO has provided scheduling points for the NTS/STS entitlements and has made them available for non-discriminatory open access transmission. Thus, the CAISO has operational control over the Cities' NTS/STS entitlements.

57. Rehearing requesters also assert Commission precedent requires that the CAISO have actual, physical control over the entitlements, citing Opinion No. 466 at P 13 n.21, and *City of Vernon*, 111 FERC ¶ 61,092 at P 79.⁸⁶ The CPUC asserts the entitlements are

⁸⁵ See *City of Vernon, California*, 109 FERC ¶ 63,057 at P 55-56 (2004), *aff'd in relevant part*, Opinion No. 479, 111 FERC ¶ 61,092 at P 54, 73, *order on reh'g*, Opinion No. 479-A, 112 FERC ¶ 61,207 (2005) (*City of Vernon*); *accord City of Vernon*, 111 FERC ¶ 61,092 at P 74-79.

⁸⁶ SWP also cites *Pacific Gas & Electric Co.*, 77 FERC ¶ 61,204 at 61,795 (1996), in which the Commission stated the CAISO proposed to be responsible for second-to-second balancing of generation and load in one of the series of orders concerning formation of the CAISO. But SWP's citation merely describes a CAISO proposal for operations as an ISO. Moreover, the 1996 order was superceded by a subsequent order issued October 30, 1997 authorizing the transfer of the operational control of the facilities and entitlements of the three original participating transmission owners to the CAISO; the Commission accepted the transfer to the CAISO of entitlements to the Pacific High Voltage DC Intertie and to the Eldorado-Moenkopi-Four Corners, facilities which are located outside the CAISO control area. The CAISO could not perform operational tasks such as balancing of generation and load for these facilities. See *Pacific Gas & Electric Co.*, 81 FERC ¶ 61,122 at 61,558-59 (1997); Appendix A, Transmission Control Agreement (pages 723-34 as designated in FERC eLibrary), California Independent System Operator Corporation's Phase II Tariff Filing in Docket No. EC96-19-001 (March 31, 1997) (showing entitlements to the Pacific High Voltage DC Intertie (*e.g.*, Original Sheet No. 56) and to facilities associated with the Eldorado-Moenkopi-Four Corners 500 kV Act transmission line (*e.g.*, Original Sheet Nos. 60 and 63); entitlements to these facilities can be found in the current CAISO Transmission Control Agreement, Second Replacement Transmission Control Agreement, for example, at Original Sheet Nos. 78, 82, 86, and 89.)

not newly integrated with the CAISO grid just because the TCA states the CAISO has the right to exercise operational control over them.⁸⁷

58. In Opinion No. 466,⁸⁸ the Commission stated that the determining factor in deciding whether operational control had been turned over to the CAISO was the "actual, physical operational control" of the facilities, rather than the "legal mechanism" employed to transfer control.⁸⁹ In the Opinion No. 466 orders, the Commission found that PG&E had turned over operational control of the facilities at issue there based on the fact that some of the facilities were included in its original petition describing facilities to be turned over to ISO control⁹⁰ and most of the remaining facilities were listed in the CAISO Transmission Register of facilities that were under the CAISO's operational control.⁹¹ (The Commission required PG&E to make a compliance filing delineating the status of the facilities to ensure that control of the facilities at issue was turned over to the CAISO.⁹²)

59. In this case, the NTS/STS entitlements are included in each City's Appendix A to the CAISO TCA.⁹³ Thus, consistent with the Opinion No. 466 orders, the CAISO had (and has) actual, physical operational control over the NTS/STS entitlements.

60. In *City of Vernon*, on which rehearing requesters also rely, the Commission also stated that control entails actual, physical operational control over facilities.⁹⁴ *City of Vernon* considered entitlements to the Mead-Adelanto Project and the Mead-Phoenix

⁸⁷ The CPUC cites Opinion No. 483 at P 63.

⁸⁸ Opinion No. 466, 104 FERC ¶ 61,226 at P 14 & n.22.

⁸⁹ *See id.* at P 13 n.21.

⁹⁰ This petition was granted in *Pacific Gas and Electric Company*, 81 FERC ¶ 61,122 (1997).

⁹¹ Opinion No. 466, 104 FERC ¶ 61,226 at P 14 & n.22

⁹² Opinion No. 466, 104 FERC ¶ 61,226 at P 14; *accord* Opinion No. 466-B, 108 FERC ¶ 61,297 at P 25.

⁹³ CIT-5 at 1; CIT-6 at 1; CIT-1 at 8.

⁹⁴ *City of Vernon*, 111 FERC ¶ 61,092 at P 79; *accord id.* at P 46, 54, 73.

Project, both of which are outside the CAISO's control area.⁹⁵ *City of Vernon* determined that the CAISO did not have operational control over these facilities from January 1, 2001 until January 1, 2003,⁹⁶ because during that time the CAISO had not established scheduling points for the entitlements and had not posted capacity on the entitlements for open access transmission.⁹⁷ In *City of Vernon*, the Commission found that in order to have operational control over the entitlements at issue there, the CAISO had to provide scheduling points for the entitlements, post the capacity of the entitlements, and thus make the entitlements available to market participants. Once the CAISO had established scheduling points for the City of Vernon's entitlements and posted the availability of the entitlements' capacity, the Commission found the CAISO had actual, physical operational control over the City of Vernon's entitlements.⁹⁸

61. In this case, the CAISO established scheduling points and made the Cities' NTS/STS entitlements available for scheduling as of January 1, 2003. Thus, consistent with the requirements of the *City of Vernon*, the CAISO had actual, physical operational control over the NTS/STS entitlements as of January 1, 2003.

b. Whether the Definition of Operational Control Varies According to Location

62. SWP asserts Opinion No. 483 adopts a definition of operational control that varies according to whether facilities are located inside the CAISO control area or outside the CAISO control area. It asserts that such a definition is in error because it is not found in the CAISO Tariff and that such a definition thus violates the filed rate doctrine.

63. The Commission denies this rehearing request. The CAISO defines operational control in its Tariff as

[t]he rights of the ISO under the Transmission Control Agreement and the ISO Tariff to direct Participating . . . [Transmission Owners] how to operate their transmission lines and facilities and other electric plant

⁹⁵ *Id.* at P 46.

⁹⁶ The City of Vernon collected its TRR through the CAISO TAC beginning January 1, 2001. *Id.* at P 46. The CAISO adopted scheduling points for the City of Vernon's entitlements on January 1, 2003. *Id.* at P 56.

⁹⁷ *Id.* at P 73-79.

⁹⁸ *Id.* at P 46, 73.

affecting the reliability of those lines and facilities for the purpose of affording comparable non-discriminatory transmission access and meeting Applicable Reliability Criteria.⁹⁹

The definition requires that the CAISO have the right to direct participating transmission owners how to operate their facilities to provide open access transportation. The Commission has not changed this definition; indeed, the Commission references it in its discussion immediately above addressing what is necessary for operational control. Nor has the Commission adopted different definitions of operational control for facilities in different locations.

64. The CAISO, as described above, has the ability to direct participating transmission owners how to operate their transmission facilities to afford non-discriminatory open access transmission when the CAISO has provided scheduling points for the participating transmission owners' facilities and posted the availability of the facilities.¹⁰⁰ In this case, again as described above, the CAISO has provided scheduling points for the NTS/STS entitlements and has made them available for non-discriminatory open access transmission. Thus, the CAISO has operational control over the Cities' NTS/STS entitlements. That is, the CAISO has the ability to direct the Cities how to operate the NTS/STS entitlements in order to provide non-discriminatory open access transmission and, consequently, has operational control over the NTS/STS entitlements – as provided in the CAISO's Tariff. The Commission found in Opinion No. 483 and affirms here that the CAISO has operational control, as defined in its Tariff, with respect to the Cities' NTS/STS entitlements.

65. The CPUC asserts that the extent and nature of the CAISO's operational control of the NTS/STS entitlements is not like the CAISO's operational control of entitlements on the Pacific High Voltage DC Intertie, which is in the LADWP control area, and on the Eldorado-Moenkopi-Four Corners 500 kV Act transmission line, which is in the Arizona Public Service Company control area. The CPUC asserts that these other entitlements are on high voltage lines that are either part of the backbone of or a major import line of the integrated system of PG&E, SCE, and SDG&E. It states the operational control of entitlements on these facilities was built-in and mandated by law to form the CAISO

⁹⁹ Third Revised Sheet No. 336, California Independent System Operator Corporation, FERC Electric Tariff, First Replacement Volume No. I.

¹⁰⁰ *E.g.*, *City of Vernon*, 109 FERC ¶ 63,057 at P 55-56; *City of Vernon*, 111 FERC ¶ 61,092 at P 46, 54, 73-79.

grid.¹⁰¹ The CPUC asserts these other entitlements have not been shown to have created windfalls for PG&E, SCE, or SDG&E, while, in its opinion, other customers will pay 96 percent of the TRRs associated with the NTS/STS entitlements.

66. Operational control under the CAISO Tariff, as noted above, consists of providing scheduling points for capacity and making that capacity available for non-discriminatory open access transmission. Thus, operational control is the same for out-of-control area facilities like the Eldorado-Moenkopi entitlements as it is for CAISO control area facilities. It is also the same for the NTS/STS entitlements as it is for other out-of-control area entitlements like the Eldorado-Moenkopi entitlements.

c. Whether the CAISO Has Control Over the Entitlements Through Scheduling

67. SWP asserts the CAISO lacks adequate operational control of the entitlements because the CAISO does not have the ability to schedule the entitlements, but only coordinates schedules with the applicable control area operator.¹⁰² The record evidence shows, however, that the CAISO schedules the entitlements. The testimony of record shows that the CAISO has adopted scheduling points for the entitlements and makes the entitlements available for non-discriminatory open access transmission.¹⁰³ The CAISO thus has operational control over the entitlements, as discussed above. The testimony also shows that the CAISO performs scheduling functions for the NTS/STS entitlements. The S-326 procedures prescribe the CAISO scheduling procedures applicable to the NTS/STS entitlements.¹⁰⁴ These scheduling procedures include the posting of capacity and formation of schedules by CAISO personnel. The evidence of record is that the CAISO posts the capacity of the entitlements, sells available transmission represented in the posting, and schedules the transmission that it sells.¹⁰⁵ The evidence describes in detail the scheduling functions performed by CAISO personnel with respect to the NTS/STS entitlements, including reducing congestion with congestion management

¹⁰¹ The CPUC cites Cal. Pub. Util. Code § 330(k), § 330k(1)(2), § 330l, and § 345.5(b)(1)(2).

¹⁰² SWP refers to Opinion No. 483 at P 76, and cites ISO-1 at 5:17-19 and ISO-12 at 10:2-4.

¹⁰³ SWP-8; SCE-3; CIT-7; ISO-12 at 7-8.

¹⁰⁴ SCE-3 at 3-7; SWP-8 at 3-7.

¹⁰⁵ S-7 at 7-8; SWP-9 at 104:11-21 and 184:1-9; *see generally* SWP-9 at 182-184.

software; monitoring and approving electronic tags for scheduled quantities; creating listings of transactions; and redispatching or curtailing schedules when there is a decrease in available capacity.¹⁰⁶

68. The CPUC contends that the CAISO does not exercise operational control over the NTS/STS entitlements because it does not make them available for open access transmission. The CPUC contends the CAISO initially gave the Cities exclusive rights to 370 MWs of capacity on the STS, the scheduling procedures are still subject to revision, and the Cities will monopolize all of the STS capacity since they have take or pay agreements for IGS power through 2027 and FTRs on the entitlements through 2010. The CPUC states the CAISO has not demonstrated how it can or will exercise operational control of the NTS/STS entitlements to assure that PG&E, SCE, and SDG&E will have equitable access to transmission on the entitlements to reach IGS generation any time before 2027.

69. The Commission rejects the CPUC's contentions that the CAISO has not made the NTS/STS entitlements available for non-discriminatory open access transmission. As discussed in Opinion No. 483 and elsewhere in this order, the CAISO assigned scheduling points to the entitlements and posted capacity on the entitlements beginning January 1, 2003, thus making them available for non-discriminatory open access transmission. The Commission has found that the initial restrictions on the entitlements were due to legitimate factors such as, among other things, concerns about operational constraints and the fact that other customers were not similarly situated to the Cities with respect to IGS generation since the Cities have rights to IGS power and other customers do not.¹⁰⁷ As discussed elsewhere in this order, under the revised S-326 procedures, all of the import capacity and the maximum amount of export capacity given constraints is available to other market participants. The CAISO allocated FTRs to the Cities in accordance with the then-existing provisions of its Tariff and with the Commission's policy of encouraging transmission owners to join the CAISO.¹⁰⁸ The Cities have FTRs just like other firm transmission customers. Thus, capacity is available on their NTS/STS entitlements if they are not using their FTRs, just as capacity is available on other transmission lines and entitlements if firm customers are not using their FTRs.

¹⁰⁶ SWP-9 at 38-53, 62-65.

¹⁰⁷ Opinion No. 483 at P 131.

¹⁰⁸ *California Independent System Operator Corp.*, Opinion No. 478, 109 FERC ¶ 61,301 at P 4, 22, 34, 36 (2004), *order denying reh'g and granting clarification*, 111 FERC ¶ 61,337 at P 34, 38-41 (2005); Opinion No. 483 at P 106.

70. The CPUC asserts the CAISO does not control outages or coordination of outages for the NTS/STS entitlements, as, it asserts, is required by section 2.3.3.1 of the CAISO's Tariff, because the LADWP directs and approves maintenance outages¹⁰⁹ and because the CAISO does not have a Large Generator Interconnection Agreement (LGIA) with the IGS and, so, cannot redispatch the IGS.¹¹⁰

71. Section 2.3.3.1 of the CAISO's Tariff requires that the CAISO "shall coordinate and approve Maintenance Outages of . . . all facilities that comprise the ISO Controlled Grid . . ." ¹¹¹ The testimony and exhibits of record indicate that the CAISO coordinates prescheduling outages with the LADWP for the NTS/STS entitlements.¹¹² The testimony also indicates that the CAISO engages in preplanning coordination of outages with the LADWP with respect to the NTS/STS entitlements.¹¹³ Such coordination involves discussion and a decision as to the outages.¹¹⁴ It is not necessary for the CAISO to have an LGIA with the IGS to coordinate outages on the NTS/STS transmission lines in real time. The CAISO addresses these outages by curtailing schedules.¹¹⁵ The CAISO acts through its markets to manage congestion on the NTS/STS entitlements. If there is a

¹⁰⁹ The CPUC cites ISO-1 at 5:14-19.

¹¹⁰ The CPUC also asserts the Commission does not explain why it is not necessary that the CAISO have an LGIA with the IGS, citing Opinion No. 483 at P 76, which concerns the definition of operational control in the CAISO Tariff. It is unnecessary for the CAISO to have an LGIA with the IGS to have operational control over the NTS/STS entitlements. As held in Opinion No. 483 at P 64 and affirmed in this order, the CAISO has operational control over the NTS/STS entitlements because it has provided scheduling points on them and made them available for non-discriminatory open access transmission and can thus direct the Cities how to operate these entitlements to provide such transmission.

¹¹¹ Substitute First Revised Sheet No. 40, California Independent System Operator Corporation, FERC Electric Tariff, First Replacement Volume No. I.

¹¹² SCE-3; SWP-9 at 51-3.

¹¹³ SWP-9 at 115-16, 118-19. *See also* ISO-1 at 5:18-19 (for ISO Controlled Grid facilities outside the ISO Control Area, the CAISO "coordinate[es] schedules and outages with the applicable Control Area Operator").

¹¹⁴ SWP-9 at 129.

¹¹⁵ SWP-9 at 61-5.

curtailment on the NTS/STS entitlements in real time, including one due to an outage, the CAISO curtails schedules on the NTS/STS entitlements through updating electronic tags and phone messages to customers that provide the new, lower transfer capability. Therefore, the Commission finds the CAISO fulfills the Tariff-required outage coordination and approval functions with respect to the NTS/STS entitlements.

d. Whether Arguments Concerning the Requirements of the TCA Are Collateral Attacks on Prior Orders

72. SWP contends Opinion No. 483 erred in finding that SWP's assertions concerning failure to meet the requirements of section 2.2.3 of the CAISO's TCA were collateral attacks¹¹⁶ on the orders in Docket Nos. ER03-218 and ER03-219.¹¹⁷ SWP asserts the CAISO failed to properly execute requirements of section 2.2.3 of the TCA in taking operational control over the NTS/STS entitlements because the NTS/STS entitlements did not meet the requirements for reliability.¹¹⁸ SWP also asserts these issues were to be determined in this proceeding.¹¹⁹ SWP asserts that, with respect to these issues, the Commission must now consider evidence concerning its allegations of phantom congestion and that the CAISO's control over the entitlements has not improved grid reliability.

73. The Commission rejects this rehearing request and affirms its holding that SWP's assertions concerning the application of section 2.2.3 and the propriety of the transfer of control of the NTS/STS entitlements are collateral attacks on prior Commission orders in Docket Nos. ER03-218-000 and ER03-219-000 (i.e., the TCA Orders) concerning the

¹¹⁶ Opinion No. 483 at P 84.

¹¹⁷ *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).

¹¹⁸ Specifically, SWP asserts the NTS/STS entitlements do not meet the requirements of section 2.2.3 that (1) an applicant's facilities can be incorporated into the CAISO controlled grid without any material adverse impact on its reliability and that (2) incorporating the applicant's lines and facilities into the CAISO controlled grid will not put the CAISO in breach of applicable reliability criteria. *See* 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.

¹¹⁹ SWP cites TCA Orders, 102 FERC ¶ 61,061 at P 27.

revision of the CAISO TCA to include the Cities.¹²⁰ The CAISO's application in those dockets included the NTS/STS entitlements over which the CAISO was to take operational control. Claims that it was improper for the CAISO to take control of the NTS/STS entitlements because of reliability concerns under section 2.2.3 could and should have been raised in Docket Nos. ER03-218-000 and ER03-219-000.

74. In addition, SWP's allegations that section 2.2.3 issues were set for hearing in this proceeding are incorrect. The portion of the January 2003 TCA Order that SWP cites addresses, in pertinent part, allegations that the NTS/STS entitlements were generation tie lines and thus that they were not network facilities and their revenue requirements should not be rolled in to the CAISO's TAC.¹²¹ The Commission determined that whether it was appropriate to include the revenue requirements in the CAISO's TAC was more appropriately addressed in this case.¹²² In contrast, however, the Commission did not set issues concerning section 2.2.3 of the TCA for determination in this proceeding. The Commission considered issues related to the transfer of control of the NTS/STS entitlements in the TCA and section 203 proceedings. In fact, the Commission stated in the January 2003 TCA Order that it had approved the transfer of the Cities' facilities and entitlements to the CAISO and would not revisit that decision.¹²³

75. The application of section 2.2.3 is beyond the scope of the hearing in this proceeding which concerns only whether the costs associated with the NTS/STS entitlements can be included in the Cities' TRRs, that is, whether the NTS/STS entitlements are integrated, network facilities.

D. Whether the S-326 Scheduling Procedures Were or Are Unduly Discriminatory

76. SWP requests rehearing of the Commission's determination that the S-326 scheduling procedures were not unduly discriminatory.¹²⁴ SWP asserts that the modeling of the entitlements for scheduling and the formulation of the procedures, for both the original and the revised S-326 scheduling procedures failed to include parties other than

¹²⁰ See *supra* note 117.

¹²¹ TCA Orders, 102 FERC ¶ 61,061 at P 24, 27.

¹²² *Id.*

¹²³ *Id.*

¹²⁴ Opinion No. 483 at P 109, 129-132.

the Cities and were unduly discriminatory. It also asserts that non-Cities customers could not use the entitlements on a basis comparable to the Cities under either the original or revised S-326 scheduling procedures because firm transmission capacity is reserved for the Cities equal to their contract amounts for IGS power. SWP adds that it is similarly situated to the Cities with respect to the Cities' NTS/STS entitlements.

77. SWP's rehearing requests do not raise any new arguments with respect to the original S-326 scheduling procedures. The Commission rejected these arguments in Opinion No. 483.¹²⁵ The Commission found that the CAISO did not unduly discriminate in the original modeling of the entitlements and the original scheduling procedures for the entitlements. It found that the CAISO had established the original scheduling rights according to legitimate engineering and technical factors. The Commission also found that the non-Cities customers were not similarly situated to the Cities because only the Cities had contracts for power from IGS.¹²⁶ Thus, there was no undue discrimination against non-Cities customers.

78. The Commission here rejects SWP's assertion that the process for revising the S-326 scheduling procedures was unduly discriminatory. The evidence of record shows that the CAISO did involve non-Cities customers in revising the S-326 scheduling procedures. It gave notice of the proposed changes to S-326 and held a stakeholders' meeting.¹²⁷ Stakeholders commented on the proposed changes, including SWP, which submitted written comments.¹²⁸ As a result of the comments, the CAISO updated the proposed branch group capacities. The Commission also rejects SWP's assertion that there are restrictions on its access to the NTS/STS entitlements under the revised S-326 scheduling procedures that are unduly discriminatory. As the Commission held in Opinion No. 483, SWP and the non-Cities customers are not similarly situated to the Cities.¹²⁹ The Cities have contractual rights to power from the IGS and corresponding firm transmission rights on their NTS/STS entitlements that they may use to transport the IGS power. Non-Cities customers are not similarly situated to the Cities because they do not have contractual rights to IGS power, nor do they have corresponding firm transmission rights on the NTS/STS entitlements to transport such power. Consequently,

¹²⁵ *Id.* at P 95, 97, 109, 121-132.

¹²⁶ *Id.* at P 131.

¹²⁷ ISO-14 at 2-4; ISO-21.

¹²⁸ ISO-20.

¹²⁹ Opinion No. 483 at P 131.

the Commission affirms its prior finding in Opinion No. 483 that the revised S-326 scheduling procedures do not unduly discriminate against SWP or other non-Cities customers.¹³⁰

E. Whether the Commission’s Review of the Cities’ TRRs Associated With the NTS/STS Entitlements Is Sufficient Under Section 205 of the FPA

1. Rehearing Requests

a. SWP

79. SWP asserts the July 18, 2003 settlement did not determine the amounts of the TRRs associated with the NTS/STS entitlements and only provides these costs for refund purposes. SWP asserts the settlement did not approve the amounts of these costs as fair and reasonable and in the public interest and that, in any event, the settlement standard is not the applicable standard for the Cities’ TRRs associated with the NTS/STS entitlements. SWP asserts the Commission must find the costs are just and reasonable. It also argues that the costs can only be included in the CAISO’s rates if the Commission’s review is sufficient to ensure that the CAISO’s rates with the costs included will be just and reasonable under section 205 of the FPA, citing *Pacific Gas & Electric Company v. FERC*, 306 F.3d 1112 (D.C. Cir. 2002) (*PG&E*).¹³¹ SWP asserts the settlement did not approve the costs as just and reasonable and did not determine whether the CAISO’s rates were just and reasonable after inclusion of the costs.¹³²

b. CPUC

80. The CPUC accepts the level of costs in the settlement¹³³ and, for the sake of argument, the classification of the NTS/STS facilities as integrated, network facilities. But the CPUC asserts that, when the Commission examines the TRRs of non-

¹³⁰ See also *id.* at P 132 (changes to S-326 remedied any undue discrimination, assuming any had existed).

¹³¹ SWP also cites *City of Azusa*, 101 FERC ¶ 61,352.

¹³² SWP cites TCA Orders, 102 FERC ¶ 61,058 at P 15.

¹³³ CPUC Request for Rehearing at 12 n.17 (“In the present proceeding the level of costs included in the TRRS is not at issue, having been a matter of settlement approved by the FERC. See, Order on Settlement and Establishing Hearing Procedures, 105 FERC ¶ 61,293 (2003).”).

jurisdictional entities such as the Cities, it must find that the impact of the TRRs on the CAISO's rates is just and reasonable, citing *PG&E*, 306 F.3d at 1116, 1118-19. The CPUC argues that, even though the TRRs may reflect the legitimate costs of facilities subject to a TCA, the Commission must articulate its reasoning as to whether those TRRs, when added to the CAISO's rates, have a just and reasonable impact on the users of the grid and on ratepayers. The CPUC asserts the Commission has not offered any evidence that the automatic inclusion of the Cities' TRRs in the CAISO's TAC based on the any degree of integration test leads to rate consequences that are just and reasonable and that Opinion No. 483 avoids the required analysis that would explain why the TRRs can be included in the CAISO TAC.¹³⁴

2. Commission Decision

81. Rehearing requesters rely on *PG&E* in arguing that the Commission must find that the Cities' TRRs associated with the NTS/STS entitlements are just and reasonable and that the CAISO's rates with the Cities' TRRs included are just and reasonable. *PG&E* concerned the costs of a non-public utility, the City of Vernon, California, that had joined the CAISO. There was no settlement in *PG&E*. Instead, the Commission reviewed the costs of the City of Vernon on the merits. *PG&E* found the Commission's review deficient and required that the Commission specify the approach it took to reviewing the City of Vernon's costs and the standard it used to implement that approach. It also required that the approach used and the standard applied ensure that the CAISO's rates were just and reasonable under section 205 of the FPA¹³⁵ with the costs of the City of Vernon included.

82. In this case, however, the amounts of the Cities' costs, including those associated with the NTS/STS entitlements, were resolved through a settlement.¹³⁶ The Commission

¹³⁴ The CPUC cites Opinion No. 483 at P 146-47.

¹³⁵ 16 U.S.C. § 824d (2000).

¹³⁶ Contrary to SWP's assertions, the costs associated with the NTS/STS entitlements were approved in the order on the July 18, 2003 settlement as fair and reasonable and in the public interest. *City of Azusa, California*, 105 FERC ¶ 61,293 (2003). The settlement order provided for a hearing only on whether these costs should be included in the CAISO's rates, not on the costs themselves. This issue depended on whether the NTS/STS entitlements are network facilities and the CAISO has operational control over them. The Commission has previously noted that it set for hearing in this proceeding the factual determination of whether the NTS/STS facilities are generation tie

(continued)

may approve settlements;¹³⁷ indeed, our Rules of Practice and Procedure expressly provide for settlements,¹³⁸ we encourage settlements,¹³⁹ and it has long been the case that most hearings before the Commission, including most rate case hearings, are resolved through settlements.¹⁴⁰ The Commission's regulations provide that it may approve an uncontested settlement if it appears to be fair and reasonable and in the public interest.¹⁴¹ *PG&E* does not require that the Commission in the context of a settlement require the same result that would be reached in litigation; if the Commission had to decide every case as if it had been litigated, cases would rarely if ever settle.¹⁴² Thus, as applicable here, where there has been a settlement of the amounts of the Cities' costs, *PG&E* requires simply that the Commission specify its approach and the standard it is using to implement that approach when reviewing the Cities' filings and that the Commission ensure that the Cities' TRRs meet the standards applicable to rates under section 205 of the FPA.¹⁴³ The Commission has, in fact, done that.

83. With respect to the costs associated with the NTS/STS entitlements, the Commission used the approach and standards laid out in its regulations governing settlements in approving the amounts of the Cities' costs.

84. With respect to the NTS/STS entitlements, the Commission has used the any degree of integration test and operational control by the CAISO to determine whether the entitlements are integrated, network facilities and thus whether their costs may be included in the Cities' TRRs, and, in turn, in the CAISO's rates. It is Commission policy

facilities. *California Independent System Operator Corp.*, 107 FERC ¶ 61,150 at P 12 (2004).

¹³⁷ *United Municipal Distributors Group v. FERC*, 732 F.2d 202, 207 n.7 (D.C. Cir. 1984).

¹³⁸ 18 C.F.R. § 385.602 (2005).

¹³⁹ *E.g.*, *Interstate Power Co.*, 75 FERC ¶ 61,321 at 62,022 (1996); *Century Power Corp.*, 56 FERC ¶ 61,087 at 61,300 (1991)

¹⁴⁰ *E.g.*, *Texas Eastern Transmission Corp.*, 32 FERC ¶ 61,056 at 61,151 (1985).

¹⁴¹ 18 C.F.R. § 385.602(g)(3) (2005).

¹⁴² See *Avista Corp.*, 111 FERC ¶ 61,089 at P 27 n.40 (2005).

¹⁴³ 306 F.3d at 1118-20.

that it is just and reasonable to include the costs of transmission owners' facilities in an ISO's transmission rates if they perform a network transmission function and the ISO has operational control over them. The Commission has affirmed in Opinion No. 483, and in this order, that the NTS/STS entitlements perform network transmission functions and that the CAISO has operational control over them. Therefore, it is just and reasonable to include the costs associated with the NTS/STS entitlements in the Cities' TRRs. The CAISO's TAC is, in turn, made up of the TRRs of its participating transmission owners such as the Cities. Thus, it is also just and reasonable to include the Cities' TRRs (with their NTS/STS entitlements costs) in the CAISO's TAC.

85. In sum, the Commission has found both that the amounts of the NTS/STS entitlements costs and their inclusion in the Cities' TRRs are lawful under section 205 of the FPA. Thus, the CAISO's rates with the Cities' TRRs included are likewise lawful under section 205 of the FPA.

F. Are Encumbrances Subject to the Operational Control of the CAISO?

1. SCE's Request for Clarification

86. SCE asks for clarification of the statement in Opinion No. 483 that "[s]ection 3.1 of the Tariff, which SWP cites, requires that . . . [participating transmission owners] turn over operational control of facilities and entitlements to the CAISO for which they have converted their existing rights to ISO transmission."¹⁴⁴ SCE asks the Commission to

¹⁴⁴ Opinion No. 483 at P 86. Section 3.1 of the CAISO Tariff provided:

Each participating [Transmission Owner] shall enter into a Transmission Control Agreement with the ISO. In addition to converting Existing Rights in accordance with section 2.4.4.2, and except as provided in section 3.1.3, new participating [Transmission Owners] will be required to turn over Operational Control of all facilities and Entitlements that: (1) satisfy the FERC's functional criteria for determining transmission facilities that should be placed under ISO Operational Control; (2) satisfy the criteria adopted by the ISO Governing Board identifying transmission facilities for which the ISO should assume Operational Control; and (3) are the subject of mutual agreement between the ISO and the Participating [Transmission Owners]. . . .

clarify that a participating transmission owner must turn over all of its network facilities and entitlements to the operational control of the CAISO, including the capacity associated with rights on the facilities and entitlements that are encumbered by non-converted existing transmission contracts. SCE asks the Commission to revise this sentence so that it reads: “Section 3.1 of the Tariff, which SWP cites, requires that . . . [participating transmission owners] turn over operational control of all their network facilities and entitlements to the CAISO, including the capacity encumbered by a non-converted existing transmission contract.”

87. SCE asserts the Cities did, in fact, turn over to the operational control of the CAISO all of their entitlements encumbered by the Deseret Generation and Transmission Cooperative, Inc.’s (Deseret) existing transmission contract. SCE asserts that, thus, the CAISO must develop operating procedures for this capacity, the capacity must be scheduled through the CAISO with the scheduling rights honored, there must be a Scheduling Coordinator that schedules the Deseret capacity, and the transactions are subject to charges on existing transmission contracts.

2. The Cities’ Answer

88. The Cities oppose SCE’s request for clarification. They state the CAISO does not have access to and does not schedule Deseret transmission capacity. The Cities assert that requiring the CAISO to schedule transmission capacity committed to Deseret or requiring that Deseret or some other party become a Scheduling Coordinator in order to schedule transmission capacity under Deseret’s entitlements would violate section 2.4.4.1.3 of the Tariff.

89. The Cities assert the Opinion No. 483 findings appear to be consistent with the CAISO Tariff. They assert Opinion No. 483 correctly states that section 3.1 of the CAISO Tariff does not deal with unconverted rights and that these rights are addressed under sections 2.4.3 through 2.4.4.1.4 and 2.4.4.4 through 2.4.4.5 of the Tariff.¹⁴⁵ The Cities assert section 3.1 states that participating transmission owners shall enter a TCA with the CAISO and convert Existing Rights (the transmission rights of Non-Participating Transmission Owners such as Deseret)¹⁴⁶ in accordance with section 2.4.4.2. The Cities state that section 2.4.4.2 deals with the conversion of rights under

¹⁴⁵ *See id.*

¹⁴⁶ Section 2.4.4.1.1, First Revised Sheet No. 51, CAISO Tariff, First Replacement Volume No. 1.

existing contracts, not unconverted rights. The Cities assert that sections 2.4.4.1.3¹⁴⁷ and 3.1 of the Tariff mean that a participating transmission owner like the Cities can only transfer operational control of its rights to a transmission entitlement and that a non-participating transmission owner's (such as Deseret's) rights to use that entitlement are unaffected by a participating transmission owner's actions.

90. The Cities also assert that the CAISO Tariff and the TCA do not precisely address the issue of whether unconverted rights are technically under the CAISO's operational control. However, they assert that whether or not encumbrances or unconverted rights are technically under the CAISO's operational control is not a dispositive issue in this proceeding and does not affect the fact that the CAISO may not use the capacity associated with the Deseret contract rights.

3. Commission Decision

91. In paragraph 86 of Opinion No. 483, the Commission was addressing SWP's assertion that the Cities did not turn over all of their NTS/STS entitlements to the CAISO, specifically those under contract to Deseret, and that they were required to do so by section 3.1 of the CAISO Tariff and by the TCA.

92. The Commission first responded in paragraph 85 of Opinion No. 483 that SWP's exceptions concerning turning over the Deseret contracts to the CAISO were collateral attacks on the orders in which the Commission accepted amendments to the TCA showing the Cities' entitlements, and would not be entertained.¹⁴⁸ The Commission then stated in paragraph 86 of Opinion No. 483 that, in any event, under the CAISO Tariff an applicant cannot convert transmission service rights given to a third party (i.e., what

¹⁴⁷ Section 2.4.4.1.3 provides:

If a Non-Participating [Transmission Owner] has an Existing Contract with a Participating [Transmission Owner] under which the Non-Participating [Transmission Owner]'s transmission facilities are subject to use by the Participating [Transmission Owner], the Non-Participating [Transmission Owner]'s rights to the use and ownership of its facilities shall remain unchanged, regardless of the Participating [Transmission Owner]'s act of turning over the Participating [Transmission Owner]'s entitlement to use the Non-Participating [Transmission Owner]'s facilities to the extent possible to the Operational Control of the ISO.

¹⁴⁸ Opinion No. 483 at P 85 (*citing* TCA Orders, *see supra* note 117).

would now be a third party's rights) under an existing contract to ISO transmission service rights and cannot turn over operational control of the third-party's rights to the CAISO.

93. As stated in paragraph 85 of Opinion No. 483, the Commission had previously considered the Deseret contracts in issuing the TCA Orders. SWP's allegations were collateral attacks on those orders and, as such, were not properly within the scope of this proceeding. Consequently, paragraph 86 of Opinion No. 483, and its "in any event" response addressing whether the Deseret contracts had to be turned over to the CAISO, was likewise not within the scope of this proceeding and so will be vacated. This renders moot SCE's request for clarification, which will be dismissed.

G. Whether SWP Was Deprived of Due Process By the Reopening of the Record and Whether There Was Good Cause to Reopen the Record

94. On June 1, 2004, the Cities and the CAISO filed a joint motion to reopen the record for the submission of evidence regarding a revision of the S-326 scheduling procedures for the NTS/STS entitlements.¹⁴⁹ The motion was granted in an order issued June 3, 2004.¹⁵⁰ SWP requests rehearing of the decision in Opinion No. 483 that it was not deprived of procedural due process by the failure to consider its answer in opposition to the motion prior to issuance of the June 3, 2004 Order.¹⁵¹

95. SWP asserts it was not given the opportunity to be heard at a meaningful time, that is, prior to the June 3, 2004 order granting the motion. SWP asserts that the opportunity to be heard on the merits in a subsequent hearing did not rectify the initial deprivation of its right to be heard in opposition to the motion to reopen. SWP asserts the initial deprivation resulted in continued litigation and biased decisionmaking. SWP also asserts the Commission did not give the proper weight to the private and governmental interests when it determined that a deprivation of procedural due process had not occurred. SWP asserts the Commission erred in finding that SWP's private interests were speculative

¹⁴⁹ Joint Motion of the California Independent System Operator Corporation and the Cities of Anaheim and Riverside to Reopen Record and Modify Procedural Schedule and for Expedited Responses to this Motion, Docket Nos. EL03-15-000, *et al.* (June 1, 2004) (Joint Motion).

¹⁵⁰ Order of Chief Judge Granting Motion to Reopen the Record and Establishing New Procedural Schedule, Docket Nos. EL03-15-000, *et al.* (June 3, 2004).

¹⁵¹ Opinion No. 483 at P 153-59.

because SWP did not prevail on the merits. SWP asserts further that the Commission erred in finding that the Commission's interest in a meaningful opinion would have been harmed by rendering an opinion on the original S-326 procedures because Opinion No. 483 relied on the "any degree of integration" test to determine whether the Cities' TRRs should be included in the CAISO's rates, not on the S-326 procedures.

96. The Commission affirms its finding in Opinion No. 483 that SWP was not deprived of due process.¹⁵² SWP was afforded substantial opportunities to be heard with respect both to its opposition to the motion to reopen and on the merits concerning changes to the S-326 procedures. SWP filed a motion to permit an interlocutory appeal of the order granting the motion to reopen the record on June 18, 2004, and subsequently, on June 29, 2004, appealed the denial of its motion to permit an interlocutory appeal – and both motions were denied. On the merits, more importantly, SWP had the opportunity to and did file testimony of its own, had the opportunity to and did conduct cross-examination of other party's witnesses, and filed briefs, both to the judge and to the Commission, on the substantive matters at issue in this proceeding.

97. The Commission affirms that it correctly balanced private and governmental interests in ultimately deciding that SWP was not deprived of due process. SWP's interest in refunds and reduced rates depended on the outcome of the hearing, and were thus speculative; indeed, in Opinion No. 483 and here we found and continue to find against SWP on the merits. SWP's procedural concerns, to the extent that they can be matched against the need for a more complete record on the merits, were addressed by the postponement of post-hearing briefs¹⁵³ and by the opportunity to submit and the submission of further evidence. The parties in this proceeding had argued that the S-326 procedures and changes to those procedures affected the issues of whether the Cities' entitlements were integrated, network facilities; whether the parties were entitled to refunds or reductions of the Cities' TRRs; and whether the parties were unduly discriminated against. The Commission's interest in a meaningful decision on these issues, i.e., on the merits, was furthered by considering the revised S-326 procedures.

98. SWP asserts further that the changes proposed in S-326 in June 2004 did not warrant reopening the record because they did not go to the very heart of the case – the inclusion of the costs of the entitlements in the Cities' TRRs. In this regard, SWP asserts

¹⁵² Opinion No. 483 at P 153-59.

¹⁵³ See Order of Chief Judge Granting Motion to Reopen the Record and Establishing New Procedural Schedule, Docket Nos. EL03-15-000, *et al.* (June 3, 2004).

the reopening did not satisfy Rule 716(c) of the Commission's Rules of Practice and Procedure,¹⁵⁴ which, SWP argues, provides that an evidentiary record may be reopened based on changes of fact only where the changes have already been made, and here the changes in S-326 were only anticipated.

99. The Commission disagrees. First, SWP's interpretation of when a record may be reopened is not the standard laid out in Rule 716. Second, as stated above, the parties' arguments concerning the S-326 procedures were relevant to several issues in this proceeding, including whether the Cities' NTS/STS entitlements were integrated, network facilities. Third, the motion satisfied the requirements of Rules 716(a) and (c), which address motions to reopen the record.¹⁵⁵ Movants stated that the CAISO had determined that the procedures in S-326 could be modified to eliminate several restrictions, consistent with its branch model.¹⁵⁶ Movants listed the modifications to be made and stated that the CAISO was in the process of implementing the modifications.¹⁵⁷ The Commission found, and finds, that these circumstances were changes that constituted good cause for reopening the record. Finally, we note that, as to procedural matters such as this, i.e., essentially the receipt of evidence, the Commission has discretion,¹⁵⁸ and here, as explained above, has reasonably exercised its discretion.

¹⁵⁴ 18 C.F.R. § 385.716(c) (2005).

¹⁵⁵ 18 C.F.R. §§ 385.716(a), (c) (2005).

¹⁵⁶ Joint Motion at 2.

¹⁵⁷ *Id.* at 1-3. The revised procedures became effective September 17, 2004, prior to the resumption of the hearing on October 5, 2004. Initial Decision at P 6, 42.

¹⁵⁸ *See, e.g., Michigan Public Power Agency v. FERC*, 963 F.2d 1574, 1579 (D.C. Cir. 1992).

The Commission orders:

(A) The requests for rehearing are hereby denied, as discussed in the body of this order.

(B) The request for clarification is hereby dismissed, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.