

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

California Independent System
Operator Corporation

Docket Nos. ER01-313-007

Pacific Gas and Electric Company

ER01-424-007

OPINION NO. 463-C

ORDER DENYING REHEARING

(Issued September 7, 2006)

1. This order denies the requests for rehearing of Opinion No. 463-B as described below.

Background

2. On November 1, 2000, as amended on December 15, 2000, the California Independent System Operator Corporation's (CAISO or ISO) submitted to the Commission its proposed grid management charge (GMC) for 2001, including amendments to the ISO Tariff that revised the manner in which the ISO charged the GMC to Scheduling Coordinators.¹ The ISO proposed to allocate the GMC to three cost categories. One such category was Control Area Services (CAS), which includes the administrative costs that the ISO incurs as the control area operator in connection with ensuring safe, reliable operation of the transmission grid within its control area. CAS costs include, among other things, costs arising from performance of operation studies, system security analyses, system planning for reliability, transmission planning and the cost of scheduling generation, imports,

¹ In addition, Pacific Gas and Electric Company (PG&E) submitted to the Commission its proposed Pass Through Tariff, which was consolidated with the GMC proceeding.

exports and wheeling transactions the day before and the hour before actual operations.²

3. The Commission issued an order that accepted the GMC, suspended it for a nominal period to become effective January 1, 2001, subject to refund, and set it for hearing.³ On May 10, 2002, the presiding judge issued an Initial Decision which, in relevant part, recommended approval of the ISO's proposal to employ Control Area Gross Load (CAGL) allocation for the CAS category.⁴

4. In Opinion No. 463,⁵ the Commission generally affirmed the presiding judge's decision that CAS costs should be allocated on the basis of CAGL.⁶ However, the Commission determined that customers with behind-the-meter generation who "primarily rely on that generation to meet their energy needs" are allocated too great a share of CAS costs under the CAGL method.⁷ Therefore, the Commission explained:

To take into account the more limited impact such customers have on the ISO's grid, the Commission finds that they should be allocated CAS costs on the basis of their highest monthly demand placed on the ISO's grid, rather than on gross load. In this manner, their more limited dependence on the ISO grid will be reflected in their allocation of CAS costs. Customers eligible for such treatment are those with generators with a 50 percent or greater capacity factor.⁸

² See Exhibit ISO-29 at 13, the Master Definition Supplement of the ISO Tariff. The two other GMC cost categories in addition to CAS for the locked-in period (*i.e.*, January 1, 2001 through December 31, 2003) were the Inter-Zonal Scheduling category, which included the ISO's costs of administering congestion management, as well as the auction, monitoring and secondary market monitoring, and scheduling of Firm Transmission Rights, and the Market Operations category, which reflects the ISO's costs of market and settlement-related services.

³ *California Indep. Sys. Operator Corp.*, 93 FERC ¶ 61,337 (2000).

⁴ *California Indep. Sys. Operator Corp.*, 99 FERC ¶ 63,020 (2002).

⁵ *California Indep. Sys. Operator Corp.*, 103 FERC ¶ 61,114 (2003).

⁶ *Id.* at P 20 - 26.

⁷ *Id.* at P 27.

⁸ *Id.* at P 28 (footnote omitted).

5. In Opinion No. 463-A,⁹ the Commission denied the requests for rehearing of Opinion No. 463 concerning the CAGL allocation for CAS charges, but it granted those requests contesting the exception for customers who primarily relied on behind-the-meter generation to meet their energy needs. On this issue, the Commission determined that the exception was not supported by record evidence and would create implementation problems.¹⁰ However, we expressed continued support for an exclusion from the CAS charges for certain behind-the-meter generators.¹¹ Therefore, we ordered that behind-the-meter load served by:

generators which are not modeled by the ISO in its regular performance of transmission planning and operation should be exempted from the CAGL charge. That is, those generators that will not cause the ISO to incur administrative or operating expenses should . . . have the load exempted from the CAS charge.[¹²]

6. Several parties requested rehearing of Opinion No. 463-A, for the most part raising issues concerning the behind-the-meter exception. Having considered these requests, on November 16, 2004, the Commission issued an order in which it deferred further action on the rehearing requests “pending the compilation of a sufficient record on this issue” and “establish[ed] limited (with respect to both time and subject matter) hearing procedures so that such a record may be compiled.”¹³ On April 15, 2005, the judge presiding over the remanded proceedings issued her Initial Decision.¹⁴

7. In Opinion No. 463-B, the Commission found that: (1) the ISO, using models provided by the Participating Transmission Owners (PTOs), conducted studies concerning transmission planning and operation during the locked-in period; (2) the generating units included in these studies were modeled by the ISO during the locked-in period, and thus the ISO incurred costs recovered by the

⁹ *California Indep. Sys. Operator Corp.*, 106 FERC ¶ 61,032 (2004) (Opinion No. 463-A).

¹⁰ *Id.* at P 19.

¹¹ *Id.* at P 20.

¹² *Id.*

¹³ *California Indep. Sys. Operator Corp.*, 109 FERC ¶ 61,162 at P 2 (2004) (November 16 Order).

¹⁴ *California Indep. Sys. Operator Corp.*, 111 FERC ¶ 63,008 (2005) (Initial Decision).

ISO's CAS charge; (3) there is record evidence that unmodeled behind-the-meter generation did not impose CAS costs because it was not taken into account by the ISO's transmission planning and operations; and (4) Exh. ISO-55 does not provide a sufficiently accurate basis for determining which generators were modeled, and accordingly a compliance filing to address any deficiencies was ordered.¹⁵

8. Finally, the Commission ruled in Opinion No. 463-B on a number of requests by PG&E, including a request for rehearing regarding PG&E's settlement with Turlock Irrigation District (Turlock). The Commission found with respect to the PG&E/Turlock settlement that while PG&E is precluded from passing through GMC Market Operations costs associated with positive deviations, and permitted by settlement to make the GMC charge for negative deviations, it may otherwise pass through to Turlock those portions of the ISO's GMC charge that are entirely unrelated to deviations. In particular, the Commission confirmed that PG&E could pass through to Turlock the CAS component of the GMC, as well as the Market Operations GMC component unrelated to deviations.

Requests for Rehearing

9. The following parties filed timely requests for rehearing of Opinion No. 463-B: the City of Santa Clara (Santa Clara), through its electric utility division, Silicon Valley Power (SVP); the Cogeneration Association of California (CAC), which filed jointly with the Energy Producers and Users Coalition (EPUC); Modesto Irrigation District (Modesto); Sacramento Municipal Utility District (SMUD); and Turlock.

Discussion

A. Behind-the-Meter CAGL Exemption

1. Rehearing Requests

10. SVP maintains that the Commission erred when it concluded that SVP provided no basis for excluding four contested generators from the ISO's CAS charges as behind-the-meter generation. SVP states that it relied on the position of the ISO itself, which admitted that the four generators in question were located in the SVP retail service territory and that those generators were "behind-the-meter," as that term was used in Opinion No. 463-A.¹⁶ SVP maintains that the

¹⁵ *California Indep. Sys. Operator Corp.*, 113 FERC ¶ 61,135 at P 61 (2005) (Opinion No. 463-B).

¹⁶ Santa Clara Rehearing Request at 3-4.

Commission was inconsistent and arbitrary when it adopted the ISO's definition of "behind-the-meter" but rejected the ISO's admission that the four generators in question were behind-the-meter.¹⁷ SVP argues that the record shows that the ISO had not included the four plants in any ISO transmission and planning operation study and thus were not modeled by the ISO. SVP also notes that the ISO recognized that SVP, as a Metered Sub-System (MSS), is "wholly responsible" for its own load and resources.¹⁸

11. Modesto maintains that the Commission's definition of "behind-the-meter" generation in Opinion No. 463-B as "generation serving load to which it is connected by private wires" is not based on record evidence. Modesto claims that the definition also is arbitrary and capricious because, when applied in conjunction with the modeling-based exemption set forth in Opinion No. 463-A, it has the effect of depriving relief from CAS charges for parties that the Commission stated in Opinion No. 463 had "made a convincing argument" that they were being charged too great a share of CAS costs. Modesto states that the Commission never expressly overturned its decision that these parties were entitled to relief, but the new definition of behind-the-meter generation has the effect of giving them nothing "but the most minute measure of relief. . . ." Modesto maintains that "[i]t does not make logical sense for the Commission to intend to create an exemption yet accord virtually no relief under the exemption ultimately selected."¹⁹

12. Modesto also maintains that the Commission erred by failing to address its proposed definition of behind-the-meter generation, which included "entities that balance their loads and resources via contractual mechanisms."²⁰ Modesto states that the Commission failed to address its arguments and that the distinction between types of behind-the-meter entities is essential to developing just and reasonable criteria for eligibility for relief from CAS charges.²¹

13. Modesto also argues that the record in this case provides no evidence to support the use of modeling-based criteria for relief from CAS charges and that the Commission erred when it rejected Modesto's arguments that the CAISO does not model generation. It says that these findings cannot be made consistent with

¹⁷ *Id.* at 4.

¹⁸ *Id.* at 5.

¹⁹ Modesto Rehearing Request at 5-7.

²⁰ *Id.* at 8.

²¹ *Id.* at 8-9.

the finding that CAS charges are driven by the CAISO's administrative costs, and that since the CAISO does not model generation, the Commission erred in not finding that the factors used to model generation were deficient.²²

14. Modesto states that the Commission erred when it failed to address or consider its arguments that there is no cause and effect relationship between modeled generation resources and the CAISO's administrative costs. It states that the Commission, in effect, concedes that there is no factual record to support the justness and reasonableness of the modeling-based CAS exemption, and the Commission therefore erred in failing to consider Modesto's arguments on this issue.²³

15. Modesto states that the Commission erred when it failed to give credence to its arguments against basing an entity's CAS liability on a portfolio of behind-the-meter generating units rather than individual units. It says that a generator-specific test places a higher burden on affected parties and that a focus on generators could end up giving a CAS exemption to customers that do not rely primarily on behind-the-meter resources.²⁴

16. Modesto states that the Commission erred in basing the eligibility for CAS relief on discretionary actions taken or not taken by the CAISO rather than the objective verifiable performance of each behind-the-meter load-serving entity. Modesto maintains that the concern it expressed earlier on this point has been borne out, as no wholesale entity has been accorded relief under the modeling-based exemption.²⁵

17. Modesto states that the Commission erred when it did not accept its proposal that entities that served no more than 50 percent of their behind-the-meter load from the CAISO-controlled grid should be assessed CAS charges based on their highest monthly demand. Modesto maintains that it demonstrated that such entities impose a lesser impact of the grid, but that the Commission rejected its reasoning by retreating from a criterion for eligibility premised on entities that rely

²² *Id.* at 9-10.

²³ *Id.* at 11.

²⁴ *Id.* at 12.

²⁵ *Id.* at 12-13.

primarily on behind-the-meter generation and by remaining silent on the merits of Modesto's proposed eligibility criteria.²⁶

18. CAC/EPUC argue that the Commission erred in Opinion No. 463-B in affirming that the only loads that should receive an exception from the CAGL allocation of the CAS charge are loads with behind-the-meter generation not modeled by the CAISO. CAC/EPUC maintain that the evidence demonstrates that retail behind-the-meter loads should receive an exception from the CAGL billing determinant because they do not cause the CAISO to incur costs, other than when they are actually using the CAISO grid.²⁷ CAC/EPUC also argue that this finding is at odds with the Commission's own pronouncements on the type of customer that should qualify for an exception, as expressed in Opinion Nos. 463, 463-A, and 463-B.²⁸

19. CAC/EPUC argue that the record from the limited hearing demonstrated that the ISO does not model retail behind-the-meter generation and that retail behind-the-meter load served by that generation should be assessed the CAS on a "net metered load" basis. However, the Commission adopted a new standard that exempts from CAGL billing of the CAS charge only behind-the-meter load served by generators that do not appear in models conducted by the PTOs, and that may be used by the ISO to conduct studies. CAC/EPUC thus assert that since the great majority of generation serving retail behind-the-meter load, but unseen by the ISO, is modeled in some form by the PTO's, it is therefore assessed the CAS charge on a gross load basis, contrary to the Commission's determination in Opinion No. 463.²⁹ CAC/EPUC state that the record shows that retail customers served by behind-the-meter generation do not cause the CAISO to incur costs of the type included in the CAS component of the GMC. CAC/EPUC argue that the Commission should adopt a nondiscriminatory net-load exception from the CAGL that would allocate the CAS costs on a net-load basis to those scheduling coordinators serving customers that rely primarily on behind-the-meter generation for their energy needs.³⁰

²⁶ *Id.* at 13-14.

²⁷ CAC/EPUC Rehearing Request at 3, 14.

²⁸ *Id.* at 3.

²⁹ *Id.* at 6-7.

³⁰ *Id.* at 18-20.

20. SMUD maintains that Opinion No. 463-B defeats the Commission's original cost-causation rationale for exempting certain load served by unmodeled behind-the-meter generation. According to SMUD, Opinion No. 463-B applies the exemption test contrary to its plain terms and without considering cost causation by limiting it to generation units not listed in the "base case" developed by the WECC and the PTOs, irrespective of whether the ISO "explicitly modeled" the listed units.³¹

21. SMUD argues that the Commission has unreasonably narrowed the definition of behind-the-meter generation by exempting only load served by retail generation and that it unreasonably broadened its interpretation of "explicitly modeled." SMUD claims the result was a failure to exempt load that would not cause CAS costs. SMUD argues further that the exemption ignores whether the ISO, or another entity, modeled the generation in question. This means SMUD will be denied an exemption if the generation has been included by someone in the base case model, even if the ISO incurred no modeling costs.³²

22. SMUD maintains that the Commission ignored Order No. 888-A precedent in adopting a "private wires" limitation to the definition of behind-the-meter generation. This categorically bars wholesale load from the exemption and also contradicts the Commission's express finding that the exemption is available to both wholesale and retail load.³³

23. SMUD maintains that the Commission erred in adopting an unsupported and inconsistent definition of "explicitly modeled" that is blind to cost-causation principles. It claims that the issue in this case is whether the ISO's modeling costs and CAS costs have been allocated properly. However, under the Commission's definition of modeling, a fixed constant can be explicitly modeled, even though the ISO does not expend any resources studying a constant.³⁴

24. SMUD maintains that the Commission ignored evidence that establishes which generation units the ISO explicitly models in favor of a test based on a list of retail generation units not listed in the WECC-prepared base case. SMUD claims that the Commission also wrongly rejected SMUD's evidence showing that the ISO incurred no modeling costs from SMUD behind-the-meter generation and

³¹ SMUD Rehearing Request at 3.

³² *Id.* at 3-4.

³³ *Id.* at 4, 28-30.

³⁴ *Id.* at 4-5.

Western Area Power Administration behind-the-meter generation units that serve SMUD Bubble load.³⁵

2. Commission Determination

25. While various parties have commented that the exception to CAGL billings found to be just and reasonable in Opinion No. 463-B diverges from the determinations made in Opinion No. 463 and Opinion No. 463-A, the Commission notes that while the mechanics of the exemption from allocation of CAS costs based on CAGL has evolved in the course of this proceeding as the factual record has developed, the Commission has held firm to its view that generators that will not cause the ISO to incur expenses should have their load exempted from CAS charges. As in any process of this type, while the Commission began with an initial position regarding the mechanics of the exemption based on its knowledge and understanding of the facts at the time, as more information became known, that initial position underwent refinement. In fact, as we stated in our November 16 Order Establishing Limited Rehearing Procedures, we sought record evidence to test the reasonableness of the exemption under discussion and contemplated in Opinion No. 463-A. As a result of this process, the Commission has arrived at an exemption with respect to behind-the-meter generation that is reasonable and supported by record evidence.³⁶ The Commission did not begin with a pre-conceived idea concerning the exemption, and for this reason we reject any contention that the exemption we have ultimately adopted is inconsistent with the Commission's original intentions because it reaches too small a set of behind-the-meter generators.

26. SVP requests that its four generators should be afforded the exemption because they are located within its retail service territory, are behind-the-meter, are not modeled by the ISO, and are resources within an MSS where the MSS is wholly responsible for all load and generation within the MSS "bubble." Our review indicates that SVP is correct that these generators are behind-the-meter and in SVP's retail service territory. However, we disagree that they are not modeled by the CAISO.³⁷ Exh. ISO-55 submitted by the ISO clearly lists these units as units that are included in modeling studies conducted by the ISO or by PTOs on behalf of the ISO. The ISO considered these units to be of significance for

³⁵ *Id.* at 6.

³⁶ November 16 Order at P 15, 17.

³⁷ To the extent that SVP's generating units are not included in the revised Exh. ISO-55 that is filed in compliance with Opinion No. 463-B, they are exempt.

modeling purposes, and it therefore will be aware of them and, in conducting studies, recognize them.³⁸ As we stated in Opinion No. 463-A, in determining the exemption to CAS charges, only those units not seen by the ISO in its modeling studies would be exempted.³⁹ Furthermore, SVP's argument that it is wholly responsible for all load and generation within the MSS bubble is irrelevant. As we explained previously, the relevant criterion is whether the generators are seen by the ISO.⁴⁰ Therefore, we will deny SVP's rehearing request.

27. CAC/EPUC's rehearing request focuses primarily on what they maintain is the overly-narrow character of the exemption and resulting inconsistency between the exemption and the findings in Opinion No. 463 and Opinion No. 463-A. SMUD makes similar arguments in its rehearing request. As discussed above, we reject those arguments. CAC/EPUC's remaining rehearing argument focuses on what they characterize as a change in the "standard for exception" from generators not modeled by the ISO to generators who do not appear in models conducted by the PTOs. Modesto and SMUD make a similar argument. CAC/EPUC and SMUD argue that this modification denies the behind-the-meter exemption to the majority of generation serving the customer class to whom the Commission intended to provide relief. We disagree.

28. The Commission previously noted that based on cost-causation principles, certain customers should be exempted from the allocation of CAS costs, and upon further investigation the Commission refined that exception to better match the specifics of cost-causation in this proceeding. The CAISO incurs administrative costs in conducting such activities as transmission planning studies and transmission operation studies.⁴¹ Accordingly, we disagree with Modesto's assertion that there is no cause and effect relationship between modeled generation and CAISO's administrative expenses. Additionally, PTOs historically have been the source of the transmission and generation data required to conduct such studies and analyses. To the extent that generators are included in PTO studies and/or models and the ISO subsequently receives the information, the ISO will decide whether that information is relevant and useful in conducting its various studies and in modeling the transmission system. If the ISO decides that the information regarding behind-the-meter generators is relevant to its studies and system modeling, then those generators are ineligible for the exemption because they are

³⁸ Initial Decision at P 17; Opinion No. 463-B at P 26 and n. 32.

³⁹ Opinion No. 463-A at P 20.

⁴⁰ Opinion No. 463-B at P 79.

⁴¹ Exh. ISO-9 at 21 and 22 of 65; Exh. ISO-10 at 25-26 of 29.

significant for study and modeling purposes and thus ultimately relate to administrative costs incurred by the ISO. We therefore will deny rehearing requests of CAC/EPUC and SMUD on this issue.

29. With respect to Modesto and SMUD's argument that the Commission erred in defining behind-the-meter generation as generation serving load to which it is connected by private wires, we provide the following clarifications. Behind-the-meter generation is that generation serving load to which it is directly connected. With respect to the criticisms that this definition was not based on record evidence, we disagree. ISO witness Lyon provided a variant of this definition in the course of the remanded proceedings,⁴² and we modified it to ensure that it provides a clearer method for defining behind-the-meter generation. We therefore deny rehearing on this point.

30. With respect to Modesto's claim that we erred in rejecting its argument regarding the appropriate definition for behind-the-meter operations by failing to address it, we find that Modesto's argument was outside the scope of the issues under consideration. Modesto's argument pertained to costs incurred in balancing load. Those costs pertain to Market Operations, and as such are not part of the CAS costs that are the focus here. The Commission therefore did not err in failing to address Modesto's argument, and we will deny rehearing on this point.

31. Modesto and SMUD argue that the Commission erred in failing to find that the CAISO does not model generation. We have addressed this issue above, and we also addressed it in Opinion No. 463-B in response to Modesto and SMUD.⁴³ The fact that the CAISO relies on information supplied by other parties does not mean that it does not model generation. Modesto and SMUD have raised no new arguments on this point, and we therefore deny their requests for rehearing.

32. For the most part, SMUD's rehearing request centers on its contention that because the ISO did not explicitly model SMUD behind-the-meter generation and Western hydroelectric behind-the-meter generation that serves SMUD Bubble load, the ISO incurred no modeling costs from these entities.⁴⁴ SMUD raises many of the same arguments it raised in its Brief on Exceptions to the Initial Decision and which we addressed in Opinion No. 463-B.⁴⁵ It argues that the ISO

⁴² Exh. ISO-54 at 5.

⁴³ Opinion No. 463-B at P 75.

⁴⁴ *See, e.g.*, SMUD Rehearing Request at 6.

⁴⁵ *See, e.g.*, Opinion No. 463-B at P 68-69.

must “actively study” a generator in its studies for the generator to be explicitly modeled, as the Commission’s exemption test required.⁴⁶ SMUD believes that, to the extent that the generator is represented as a fixed quantity in the ISO’s studies, the ISO performs no work and incurs no costs on behalf of the load served by a generator that is behind-the-meter. We dismiss SMUD’s arguments, as we did Modesto’s, as neither of them has raised any new points, and we have previously addressed their arguments in this regard. For example, we explained in Opinion 463-B that:

[w]hether or not SMUD’s behind-the-meter generation is considered a constant is irrelevant. What is relevant is whether its generation is in the model studied by the ISO. If it is, it causes the ISO to incur Control Area Services costs and is not eligible for the exemption.⁴⁷

33. The Commission also stated that “SMUD’s related claim that its generation was not ‘explicitly modeled’ because it is considered always on also runs afoul of record evidence”⁴⁸ and pointed to specific evidence refuting that claim. In short, SMUD has not raised any new arguments for us to reconsider.

34. SMUD argues that the Commission inappropriately relied on extra-record evidence to reach its determination.⁴⁹ This argument is without merit. When the Commission stated in the November 16 Order that the “material issues of fact” presented “cannot be resolved based on the record before us,”⁵⁰ it in no way implied that this record was irrelevant, only that it was necessary to supplement it

⁴⁶ *E.g.*, SMUD Rehearing Request at 14. Throughout its rehearing request, SMUD uses various terms to characterize, expand on, and give attributes to “active” modeling, for example: “SMUD and Western [generating] units are not varied or manipulated by the ISO in its studies” (*id.* at 27); “the ISO failed to provide any evidence in this proceeding showing that it would, with any degree of regularity, vary, manipulate and test SMUD or Western generation” (*id.* at 28); “[the Commission’s orders] establish a test that is concerned with ‘modeled’ in the active tense, and not as a mere noun” (*id.* at 36); and “[t]he ISO partakes in an active process when it explicitly models a particular generation by studying its effect on surrounding system” (*id.* at 39).

⁴⁷ Opinion No. 463-B at P 68.

⁴⁸ *Id.* at P 76 and Exh. S-79 at 23-24.

⁴⁹ SMUD Rehearing Request at 16.

⁵⁰ November 16 Order at P 16; SMUD Rehearing Request at 16.

with additional evidence. The testimony of Mr. Price that the Commission found to be significant, and which SMUD claims is “extra-record” evidence because it predates the limited hearing instituted by the November 16 Order, is part of the record in this proceeding, and it was entirely appropriate for the Commission to consider it for the purposes of Opinion No. 463-B.

35. SMUD also argues that even if the testimony of Mr. Price is not “extra-record,” it was denied due process when the Commission chose to rely on it. SMUD supports this argument with two cases, but they are distinguishable from the present proceeding. The cases SMUD cites turned on the proposition that a Federal agency must provide parties “with adequate notice of the *issues* that would be considered, and ultimately resolved at [a] hearing.”⁵¹ However, the issues in the present proceeding were beyond doubt and clearly articulated in the November 16 Order. SMUD does not argue that it did not receive notice of the issues that would be considered; it argues that it did not receive notice that all record evidence would be considered relevant to the resolution of those issues. That the Commission would base its decisions on the record is a matter that hardly requires notice, and we therefore reject SMUD’s argument on this point.

36. Finally, SMUD contends that the Commission erred in finding that all of its generation units were correctly included on PG&E’s list of modeled generation. SMUD argues first that inclusion in the model by PG&E does not demonstrate that the ISO incurred costs and, second, that two of SMUD’s generating units that do not appear in Exh. ISO-55 should be exempted. We have already addressed SMUD’s first argument and will not repeat that discussion. As for the two generating units that were not included in Exh. ISO-55, in Opinion No. 463-B we directed the ISO and the PTOs to address any deficiencies in Exh. ISO-55 in a compliance filing.⁵² To the extent that the generating units in question (*i.e.*, Keifer Landfill and Hdege PV) are not included in the revised Exh. ISO-55 that is filed in compliance with Opinion 463-B, they are exempt.

⁵¹ *Public Serv. Comm’n of Kentucky v. FERC*, 397 F.3d 1004, 1012 (D.C. Cir. 2005) (citing *Williston Basin Interstate Pipeline Co. v. FERC*, 165 F.3d 54, 60, 63, (D.C. Cir. 1999)) (emphasis supplied); *Hatch v. FERC*, 654 F.2d 825, 835 (D.C. Cir. 1981).

⁵² Opinion No. 463-B at P 81.

B. PG&E and Turlock Issues

1. Request for Rehearing

37. Turlock argues that Opinion No. 463-B wrongly ignored the unique and special circumstances of the 1999 Settlement Agreement (Settlement Agreement) and Turlock's Interconnection Agreement with PG&E. Turlock states that PG&E agreed in settlement that it could pass through the GMC charge only to the extent that Turlock "leaned on" the CAISO Controlled Grid, *i.e.*, to the extent that Turlock's actual load exceeded the resources it scheduled to meet that load, and that section 4.6 of the Interconnection Agreement, as amended in the settlement, permits PG&E to flow through the GMC charge only to the extent this occurs.⁵³ In addition, Turlock once again states that at the time of the Settlement Agreement, PG&E knew that the CAISO had committed to perform an unbundling study and to file an unbundled GMC. It argues that PG&E is therefore incorrect when it states that the Settlement Agreement did not contemplate an unbundled rate structure. Turlock maintains that because PG&E knew of the CAISO's impending unbundling of the GMC, it agreed that the GMC pass-through provisions of the Interconnection Agreement apply simply to those GMC charges that arise when Turlock's actual load exceeds its resources. Turlock also maintains that even if PG&E honestly believed at the time of the Settlement Agreement that the GMC would remain a single, bundled charge, that belief does not support its claim that the Settlement Agreement should be interpreted to permit the pass through of all GMC charges on all services except negative deviation energy. Turlock claims that to allow PG&E to pass through only certain unbundled portions of that charge is flatly at odds with PG&E's intent when it executed the Settlement Agreement.⁵⁴

2. Commission Determination

38. Turlock maintains that both the circumstances of the Settlement Agreement and the plain meaning of the relevant portion of the Interconnection Agreement, section 4.6, support its position that PG&E is entitled to flow the GMC through to Turlock only to the extent that it "leaned" on the system. However, Turlock's arguments fail to overcome the Commission's central contention in Opinion No. 463-B. Section 4.6 of the Interconnection Agreement deals with deviations from schedule, and the Commission noted in Opinion No. 463-B that the Settlement

⁵³ Turlock Rehearing Request at 6-7, 9.

⁵⁴ *Id.* at 9-14.

Agreement “involved more than just negative deviation charges under the Interconnection Agreement.”⁵⁵ Moreover, the Commission also noted that the Settlement Agreement was “ambiguous” regarding “the possibility of PG&E charging Turlock additional ISO GMC charges such as Control Area Services charges that are unrelated to positive and negative deviations. . . .”⁵⁶ Turlock never directly contests this point, but rather devotes most of its rehearing request to resolving the ambiguity in question through reference to circumstances surrounding the Settlement Agreement, *i.e.*, matters outside the four corners of the document.

39. In short, Turlock seeks to introduce parole evidence, *i.e.*, PG&E’s knowledge in 1999 that the ISO would file an unbundled GMC charge in the future, to resolve the issue presented. The purpose of parole evidence or extrinsic circumstances in cases of uncertainty is to establish intent.⁵⁷ However, Turlock fails to explain how mere knowledge proves intent or agreement, and Opinion No. 463-B pointed to a number of circumstances suggesting that PG&E did not agree that it could not pass through to Turlock charges unrelated to schedule deviations. For example, the Commission noted that the “silence of the February 1999 Settlement with respect to the possibility of PG&E charging Turlock additional ISO GMC charges such as Control Area Services charges that are unrelated to positive and negative deviations reflects the uncertainty at that time of future charges by the ISO.”⁵⁸ Even if PG&E knew of future unbundling, it could not know how the process would play out on the points relevant to the issue at hand. In addition, as noted in Opinion No. 463-B, section 8(c) of the Settlement Agreement confirms that PG&E retained its rights to seek Commission authorization to impose charges on its provision of transmission service to Turlock as may be authorized in the future pursuant to changes in the ISO Tariff or protocols.⁵⁹ In short, Turlock has provided nothing to cause us to reconsider our conclusion in Opinion No. 463-B that the evidence supports the position that the settlement did not address or even contemplate the recovery of ISO GMC-related

⁵⁵ Opinion No. 463-B at P 90.

⁵⁶ *Id.* at P 91.

⁵⁷ *Florida Power & Light Co*, 60 FERC ¶ 61,001 at 61,003-004 (1992).

⁵⁸ Opinion No. 463-B at P 91.

⁵⁹ *Id.* at P 93.

costs unconnected to positive and negative deviations.⁶⁰ Turlock's request for rehearing is therefore denied.

The Commission orders:

The requests for rehearing of Opinion No. 463-B are hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

⁶⁰ Turlock's alternative argument fails for similar reasons. It claims that even if "PG&E honestly believed . . . that the GMC would remain a single, bundled charge, . . . to allow PG&E to now pass through only certain unbundled portions of that charge is flatly at odds with PG&E's intent when it executed the settlement." *Id.* at 13. As noted above, the relevant section of the Interconnection Agreement, section 4.6, as amended in the settlement, deals with deviations from schedule. Turlock presents no evidence to support its contention that PG&E intended that section 4.6 would also apply to charges unrelated to deviations from schedule.