

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

Dynegy Oakland, LLC)	Docket Nos.	ER21-292-000
)		ER21-292-001
)		ER21-292-002

**ANSWER OF THE CALIFORNIA
INDEPENDENT SYSTEM OPERATOR CORPORATION
IN OPPOSITION TO MOTION FOR LATE INTERVENTION
OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION**

Pursuant to Rules 213 and 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“FERC” or “Commission”), 18 C.F.R. §§ 385.213 and 385.214, the California Independent System Operator Corporation (“CAISO”) hereby submits this answer in opposition to the Motion for Leave to Intervene and Submit Protest Out-of-Time and Protest to the Dynegy Oakland, LLC Reliability Must-Run Agreement with the California Independent System Operator (“Late Intervention Request”) filed in these dockets on November 18, 2022 by the California Public Utilities Commission and the People of the State of California (“CPUC”). The CAISO requests that the Commission deny the CPUC’s Late Intervention Request because the CPUC has failed to demonstrate that late intervention is warranted and because allowing intervention at this extremely late date will significantly disrupt this proceeding.

Dynegy Oakland, LLC (“Oakland Power”)¹ filed its initial annual Reliability Must Run Agreement (“RMR”) update setting forth proposed rate changes for the 2021 contract year pursuant to Section 205 of the Federal Power Act and in accordance with the RMR Agreement in

¹ Oakland Power explained in its request for deferral of Commission action to permit ongoing settlement discussions, filed in this docket on December 4, 2020 (“Deferral Request”), that it had changed its name to Oakland Power Company, LLC.

these dockets on October 20, 2020, *25 months prior to the CPUC's Late Intervention Request*. Interventions were due on November 20, 2020.² During these 25 months, the CAISO, Oakland Power and other parties have been actively engaged in settlement discussions³ and have made substantial progress toward a possible settlement. The CAISO is hopeful that the matter can be settled soon. Now, years past the deadline for timely participation, the CPUC seeks to inject itself into those settlement discussions, a move that will have a profoundly disruptive impact on the proceeding, in clear violation of key factors the Commission considers in determining whether to grant a request for late intervention.

I. ANSWER

Rule 214(b)(3) requires that any motion to intervene filed after the deadline for intervention “show good cause why the time limitation should be waived,” and Rule 214(d) sets out the following factors that the Commission may consider in acting on such a motion:

- (i) The movant had good cause for failing to file the motion within the time prescribed;
- (ii) Any disruption of the proceeding might result from permitting intervention;
- (iii) The movant's interest is not adequately represented by other parties in the proceeding;
- (iv) Any prejudice to, or additional burdens upon, the existing parties might result from permitting the intervention; and
- (iv) The motion conforms to the requirements of paragraph (b) of this section.

In *Tennessee Gas Pipeline Co., L.L.C.*, 162 FERC ¶61,167, at PP 49-50 (2018), the Commission took the opportunity “to express our concern with the increasing degree to which participants in [Commission] proceedings have come to file late motions to intervene without

² Combined Notice of Filings, Docket No. ER21-292-000 (Nov. 2, 2020). Two subsequent Oakland Power submissions (the Deferral Request and an errata filing) were also noticed, with intervention dates of December 28, 2020 and January 19, 2021. Combined Notice of Filings, Docket No. ER21-292-001 (Dec. 4, 2020) and Combined Notice of Filings, Docket No. ER21-292-002 (Dec. 30, 2020). The CPUC failed to file anything in response to any of those notices.

³ See Deferral Request at 2 (“CAISO, PG&E, and Oakland Power are in the process of exchanging information, and Oakland Power is optimistic that these discussions will lead to a mutually agreeable resolution with respect to issues raised in the protests.”).

adequately addressing the factors set forth in our regulations” and stated that “going forward we will be less lenient in the grant of late interventions.” The Commission further explained that its orders “require movants to explain why they should not be held to the Commission’s expectation that entities should intervene ‘in a timely manner based on reasonably foreseeable issues arising from the applicant’s filing and the Commission’s notice of the proceeding.’”⁴

In support of its claims that good cause exists to permit its late intervention, the CPUC cites two arguments, neither of which meet this Commission standard. First, the CPUC states it “was not able to timely intervene in this proceeding due to resource constraints.”⁵ The CPUC provides no further explanation and does not address that it was able to intervene in over a dozen other Commission proceedings in October, November and December 2020,⁶ notwithstanding its claimed resource constraints. Moreover, the CPUC has had two years since the initial Oakland Power filing to intervene. During this time, it has been active in numerous Commission matters, but it failed to make any filings in these dockets.

Second, the CPUC argues that good cause exists because its protest of the latest Oakland Power RMR update filing (in Docket No. ER23-254-000, for 2023) is timely and the proceedings are related.⁷ However, the three pending annual update filings are not consolidated, and the CAISO anticipates that the proceeding in this docket can be settled on its own, separate from the 2022 or 2023 update dockets.

⁴ *Id.*, at P 51 (quoting *Alcoa Power Generating, Inc.*, 144 FERC ¶61,218, at P 13 (2013)).

⁵ Late Intervention Request at p. 4.

⁶ Based on review of CPUC notices of interventions and motions to intervene on the Commission’s eLibrary system for those months.

⁷ Late Intervention Request at p. 4.

The CAISO routinely welcomes CPUC participation in matters such as this, so the CPUC has an opportunity to bring its perspective to bear.⁸ However, allowing the CPUC to intervene and file a protest in this docket at this late date will not promote “administrative efficiency,”⁹ but will, instead, significantly delay the resolution of matters in this docket.

The CPUC has also failed to support its claims that “no disruption will result” and “no parties will be prejudiced” from permitting intervention at this late stage in the proceeding.¹⁰ As noted, settlement discussions in this matter have been ongoing for many months, and the CAISO and Oakland Power have made significant progress on a settlement in principle. It is the CAISO’s hope that this matter can be settled soon. Allowing the CPUC to intervene and protest the Oakland Power filing, two years after the fact, cannot help but significantly disrupt the progress made to date in settling this case.

The Chief Administrative Law Judge has repeatedly denied late intervention requests where settlement discussions have been ongoing for a lengthy period of time, due to the potential disruption to those discussions. For example, in *Tri-State Generation and Transmission Assoc., Inc.*, Letter Order, Docket Nos ER20-686-000, et al (Sept. 29, 2021) (C.J. Cintron), Chief Administrative Law Judge Cintron denied a late motion to intervene, explaining that:

Movant fails to establish good cause to permit its intervention. Given that intervention requests were due many months ago, and that settlement discussions have been ongoing related to this matter for well over a year, Movant fails to show good cause to excuse this significant delay in requesting intervention.¹¹

⁸ The CPUC has also filed a similar late intervention and protest in the 2022 update docket (ER22-290-000). The CAISO is not filing an opposition to that request, because settlement discussions in that docket are not as advanced as they are with respect to the 2021 update at issue in these dockets, and thus the prejudicial disruption the CAISO fears in the 2021 proceeding is not an issue.

⁹ Late Intervention Request at p. 5.

¹⁰ *Id.*

¹¹ *Tri-State Generation and Transmission Assoc.*, at P 5 (citation omitted).

The Chief Judge further noted that:

Movant also fails to show that its intervention will not disrupt the present proceeding or burden existing parties. Movant alleges that settlement is near, but makes no attempt to explain if and to what extent its intervention will, or will not, disrupt this significant development in the proceeding, or affect the parties.¹²

In this case, the CPUC does not even mention the ongoing settlement discussions, or attempt to explain how allowing its late intervention will not disrupt them or unduly burden the parties. Given its failure to adequately address the potential significant disruption to the proceeding and burden on other parties if it were allowed to intervene at this extremely late date, the CPUC has failed to demonstrate that its late intervention is justified.¹³

¹² *Id.*, at P 6. *See also PJM Interconnection, L.L.C.*, 143 FERC ¶63,006, at P 3 (2013) (C.J. Wagner) (denying a late motion to intervene and explaining that “granting SDI’s motion to intervene out of time may disrupt the ongoing settlement negotiations and may place additional burdens on parties that have been actively engaged in settlement discussions during the past two months.”).

¹³ The Commission is not required to consider each of the enumerated factors in Rule 214(d). Findings that the movant has failed to show good cause and that allowing the late intervention will disrupt the proceeding and burden the parties are sufficient grounds to deny a request for late intervention. *See Pacific Gas and Electric Co.*, Letter Order, Docket Nos. ER22-619-001, et al., at P 2 and fn. 7 (Oct. 5, 2022) (J. Hessler) (*citing Cal. Trout v. FERC*, 572 F.3d 1003, 1022 (9th Cir. 2009)).

II. CONCLUSION

For the foregoing reasons, the CAISO requests that the Commission deny the CPUC's request for late intervention in this proceeding.

Respectfully submitted,

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December 5, 2022

CERTIFICATE OF SERVICE

I hereby certify that I have this 5th day of December 2022, caused to be served a copy of the forgoing Answer of the California Independent System Operator Corporation in Opposition to the Motion for Late Intervention of the California Public Utilities Commission upon all parties listed on the official service list compiled by the Secretary of the Federal Energy Regulatory Commission in this proceeding.

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