

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

|   |        |   |
|---|--------|---|
| <b>California Independent System<br/>Operator Corporation</b> | )<br>) | <b>Docket Nos. ER98-997-000<br/>ER98-1309-000</b> |
|---|--------|---|

**ANSWER OF THE  
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION  
TO MOTION TO INTERVENE OF  
WESTERN SYSTEMS COORDINATING COUNCIL**

Pursuant to Rule 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission” or “FERC”), 18 C.F.R. § 385.213, the California Independent System Operator Corporation (“ISO”) hereby answers the Motion to Intervene Out-of-Time of the Western Systems Coordinating Council (“WSCC”). The ISO urges the Commission to grant the Motion. In the alternative, if the Commission determines that the WSCC has not shown good cause for intervening out-of-time, the ISO requests that the Commission treat WSCC’s filing as an amicus curiae brief.

**I. BACKGROUND**

The issue in this proceeding is whether Qualifying Facilities (“QFs”) should be required to sign a Participating Generator Agreement obligating the QF to abide by the same ISO Tariff provisions that are applicable to other Generators. The primary dispute involves compliance with the ISO Tariff’s provisions requiring gross telemetry of QF Generation, gross metering of QF Generation and Load, and scheduling of that Generation and Load on a gross basis. The

need for these requirements derives from the ISO's obligation – under California law, Commission orders, and the ISO Tariff – to maintain the reliability of the ISO Controlled Grid consistent with reliability criteria of the WSCC.

Not surprisingly, the nature of the WSCC criteria was a controversial issue before the presiding judge in this proceeding. The Cogeneration Association of California subpoenaed a representative of the WSCC to testify. In the deposition and during the hearing, the representative of the WSCC unambiguously testified that the ISO's "load responsibility" under WSCC criteria includes a Load that is served by on-site QF generation. Nonetheless, the Initial Decision concluded that the ISO could fulfill its reliability obligations under the WSCC criteria without taking behind-the-meter Load into account.

On October 1, 2001, the WSCC filed a motion to intervene out-of-time in this proceeding. The WSCC wishes to intervene in order to file a Brief on Exceptions setting forth the WSCC's position on the meaning of its criteria.

## **II. DISCUSSION**

In affirming or reversing the Initial Decision in this matter, the Commission must determine the meaning of the WSCC criteria. The interest of the WSCC in the Commission's decision cannot be gainsaid.

Moreover, the Commission has stated:

The Commission's historical position has been that the responsibility for establishing mutually acceptable operating practices falls, in the first instance, on the owners and operators of interconnected systems. [FN17] Consistent with this practice and acknowledging the longstanding role of WSCC in formulating regional reliability standards, we will give substantial deference to WSCC in the development of reliability standards.

Western Systems Coordinating Council, 87 FERC ¶ 61,060, at 61,234 (1999). Accordingly, the WSCC's own interpretation of its criteria is critical to the Commission's deliberations regarding the meaning of those criteria.

The WSCC has good cause for not previously intervening in this proceeding.<sup>1</sup> The WSCC presented a witness to testify to the meaning of its criteria, which it could reasonably have considered sufficient participation to protect its interests. WSCC cannot be faulted for failing to anticipate that the testimony of its witness would be disregarded.

If, however, the Commission determines that the WSCC has not shown good cause for late intervention, the Commission should nonetheless ensure that it has the benefit of the WSCC's positions by accepting the WSCC's filing as an amicus brief. Such treatment would be consistent with previous Commission practices. For example, in *Trailblazer Pipeline Co.*, 87 FERC ¶ 61,110, at 61,438 (1999), the Commission rejected a late-filed motion to intervene by El Paso Natural Gas Co., but treated El Paso's filing as an amicus curiae brief because it "raised issues concerning . . . procedures in general, and the Commission finds that it will be helpful to the industry for the Commission to address these questions." *Id.* Moreover, the Commission's decision regarding reliability criteria will entail issues of policy and law, which are particularly amenable to exploration in amicus curiae briefs. See *SFPP, L.P.*, 86 FERC ¶ 61,022 (1999).

---

<sup>1</sup> The ISO notes that two other parties to this proceeding intervened out-of-time, and in one case the Presiding Judge permitted intervention after trial briefs had been filed and despite the lack of a showing of good cause because the party had an interest in the outcome of the proceeding.

Inasmuch as all parties will have the opportunity to respond in Briefs Opposing Exceptions, none will be prejudiced. *Id.* The lack of prejudice is particularly compelling in this instance, where the parties had full opportunity to cross-examine WSCC's witness and through cross-examination to explore fully the basis for his opinions which, as WSCC's brief makes clear, represent the considered view of the WSCC.

The fact that some parties, such as Southern California Edison Company, will no longer be able to make the unfounded argument that the interpretations of WSCC criteria offered by the WSCC witness are simply the unauthorized opinions of a single person (see, e.g., Southern California Edison Initial Brief at 7 - 9), does not amount to the type of prejudice that would warrant disregarding the views of the WSCC. Neither can the parties contend that the late intervention would deny them discovery opportunities. They knew the WSCC witness would testify and participated at his deposition. WSCC's lack of party status did not preclude any additional discovery to WSCC to explore the witnesses authority. 18 C.F.R. §§ 385.402, 385.405, 385.409. Indeed, inasmuch as Southern California Edison is itself a member of the WSCC Operating Committee (*id.* at 9) and has known of the WSCC witness's interpretation of WSCC criteria since his deposition in February 2001, it has had ample opportunity to seek action from the WSCC Operating Committee or Board of Directors disavowing the interpretation. It failed to avail itself of those opportunities, choosing instead merely to rely on

speculation that the witness's testimony was unauthorized. The WSCC's brief demonstrates that Southern California Edison's speculation is groundless.

The Commission is entitled to the views of the WSCC on this important issue. It should at the very least, therefore, accept the WSCC Brief on Exceptions as a Brief of Amicus Curiae.

### **III. CONCLUSION**

For the foregoing reasons, The ISO urges the Commission to grant WSCC's Motion. In the alternative, if the Commission determines that the WSCC failed to show good cause for intervening out-of-time, the ISO requests that the Commission treat WSCC's filing as an amicus curiae brief.

Respectfully submitted,

Charles F. Robinson, General Counsel  
Jeanne Sole, Regulatory Counsel  
California Independent System  
Operator Corporation  
151 Blue Ravine Road  
Folsom, CA 95630

---

Edward Berlin  
Michael E. Ward  
Michael Kunselman  
Swidler Berlin Shereff Friedman, LLP  
3000 K Street, N.W.  
Washington, D.C. 20007  
Tel: (202) 424-7500  
Fax: (202) 424-7643

Counsel for the  
California Independent  
System Operator Corporation

Dated: October 16, 2001

## **CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon each person designated on the restricted service list compiled by the Presiding Judge in this proceeding.

Dated at Washington, D.C., this 16<sup>th</sup> day of October, 2001.

---

Michael E. Ward

October 16, 2001

The Honorable David P. Boergers  
Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, D.C. 20426

**Re: California Independent System Operator Corporation  
Docket Nos. ER98-997-000 and ER98-1309-000**

Dear Secretary Boergers:

Enclosed is an original and fourteen copies of the Answer of the California Independent System Operator Corporation to Motion to Intervene of Western Systems Coordinating Council. Two copies have been provided to the Presiding Judge. Also enclosed is an extra copy of the filing to be time/date stamped and returned to us by our messenger. Thank you for your assistance.

Yours truly,

Michael E. Ward  
Swidler Berlin Shereff Friedman, LLP  
3000 K Street, N.W.  
Washington D.C. 20007

Counsel for the California  
Independent System Operator Corporation

Enclosures

cc: Service List  
Honorable Jacob Leventhal

October 16, 2001

The Honorable Jacob Leventhal  
Presiding Administrative Law Judge  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Room 11F-15  
Washington, D.C. 20426

**Re: California Independent System Operator Corporation  
Docket Nos. ER98-997-000 and ER98-1309-000**

Dear Judge Leventhal:

Enclosed are two copies of the Answer of the California Independent System Operator Corporation to Motion to Intervene of Western Systems Coordinating Council filed today with the Commission in the above-captioned dockets.

Yours truly,

Michael E. Ward  
Swidler Berlin Shereff Friedman, LLP  
3000 K Street, N.W.  
Washington D.C. 20007

Counsel for the California  
Independent System Operator Corporation

Enclosures