

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

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

**JOINT MOTION OF THE CITIES OF ANAHEIM AND
RIVERSIDE AND THE CALIFORNIA INDEPENDENT SYSTEM
OPERATOR CORPORATION (1) TO IMPOSE A LIMITATION
ON THE LENGTH OF SWP’S POST-HEARING REPLY BRIEF
AND (2) FOR SHORTENED ANSWER PERIOD**

To: The Honorable Carmen A. Cintron, Presiding Administrative Law Judge

Pursuant to Rules 212 and 706 of the Commission’s Rules of Practice and Procedure, 18 CFR §§385.212 and 385.706, the Cities of Anaheim and Riverside, California (“Cities”) and the California Independent System Operator Corporation (“ISO”) (collectively, “Joint Movants”) hereby move that the Presiding Judge impose a thirty-seven page or 12,000-word limitation on the length of the post-hearing reply brief of the California Department of Water Resources State Water Project (“SWP”). Such a limitation represents a reduction in the length of SWP’s allowance for its reply brief equivalent to the number of pages or words by which SWP’s initial brief exceeded, without prior authorization by the Presiding Judge, the established page and/or word limitations for initial briefs. In the interests of resolving this issue prior to the final preparation of reply briefs, Joint Movants requested a shortened time period for answers to this motion.

At the close of the hearing on May 12, 2004, the parties and the Presiding Judge agreed that both the initial post-hearing briefs and the post-hearing reply briefs of all parties should be limited to a 15,000-word limit, including footnotes, as a way to approximate 50 pages and

ensure that parties did not manipulate the font or the margins to fit a lengthier argument within 50 pages. *See generally* Tr. 1209 – 1211. Although it may be arguable whether 15,000 words or 50 pages was the agreed upon standard, it is abundantly clear from the transcript that one of these two roughly equivalent limitations would apply.

SWP, without consulting the other parties to this proceeding or seeking an exemption from the Presiding Judge, has not complied with either a 50-page limit or a 15,000-word limit. SWP's initial brief is 63 pages and exceeds the 15,000 word limit by between 2,000 and 3,000 words.¹

Permitting SWP to exceed the page or word limitations provides it with an unfair advantage. If SWP had exceeded the page limitation by only one, two, or even several pages, the Joint Movants would not be filing this motion. The Joint Movants recognize that the issues in this case are both numerous and complicated, and that the record is voluminous. If a party required one or two additional pages to conclude its argument, the Joint Movants certainly would not begrudge a minimal overage of pages. However, SWP did not exceed the page limitation merely for purposes of concluding its final point. In fact, SWP began two new arguments between pages 50 and 63. *See* SWP Initial Post-Hearing Reply Brief at 55 and 57. The Cities made significant efforts to condense their analysis of the issues to conform to the page limit, as evidenced by the fact that the Cities' brief is 49 pages and under 15,000 words. All of the other parties managed to brief their arguments within the established limits as well.

Pursuant to Rule 705, 18 CFR § 385.705, Presiding Judges are authorized to impose limitations on post-hearing briefs. Allowing deviations from such limitations without prior

¹ The precise number of words by which the SWP brief exceeds the agreed-upon limitation cannot be readily verified because SWP submitted its brief in PDF form. Adobe Acrobat, the software commonly used to open and review PDF files, does not have a word count function.

authorization and equivalent treatment of all parties would both nullify the limitations and be inequitable. Among a number of potential remedies (*e.g.*, striking all pages of SWP’s initial brief after page 50), the Joint Movants believe that deducting the unauthorized overage in SWP’s initial brief from SWP’s allowance for its reply brief is the most appropriate relief. Accordingly, the Joint Movants respectfully request that SWP’s post-hearing reply brief be limited to either 37 pages or approximately 12,000 words. The page and word limitations for all other parties should remain at 15,000 words.

Given that reply briefs in this proceeding must be filed by Monday, January 10, Joint Movants also request that the Presiding Judge establish a shortened answer period for this motion. Under Commission rules, an answer to motion must normally be filed within 15 business days. *See* 18 CFR § 385.213. This would result in answers to this motion being due the Friday before reply briefs are due, which would not allow the Presiding Judge sufficient time to review the arguments and make a ruling before reply briefs are filed. Joint Movants would therefore recommend an answer due date of Monday, January 3, 2004.

Respectfully submitted,

/s/ Bonnie S. Blair

/s/ Michael E. Ward

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December 23, 2004

CERTIFICATE OF SERVICE

I hereby certify that I have on this 23rd day of December, 2004, caused a copy of the foregoing document to be sent by first-class mail and by electronic mail to all parties on the list compiled by the Secretary of the Commission in this proceeding.

/s/ Mark L. Parsons

Mark L. Parsons

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