

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

**Cities Of Anaheim, Azusa, Banning,  
Colton, and Riverside, California and  
City Of Vernon, California**

vs.

**California Independent System  
Operator Corporation,**

**Docket No. EL03-54-000**

**MOTION TO INTERVENE AND PROTEST BY THE CALIFORNIA INDEPENDENT  
SYSTEM OPERATOR CORPORATION TO THE PETITION FOR REVIEW OF  
ARBITRATOR'S AWARD, MOTION TO ESTABLISH PROCEDURAL SCHEDULE,  
AND REQUEST FOR WAIVER OF FILING FEE**

Under Rules 211 and 214 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.211, § 385.214 (2001), the California Independent System Operator Corporation ("ISO") hereby moves to intervene and to protest the "Petition for Review of Arbitrator's Award, Motion to Establish Procedural Schedule, and Request for Waiver of Filing Fee," dated February 26, 2003 ("Petition") filed by the Cities of Anaheim, Azusa, Banning, Colton, Riverside, and Vernon, California ("Petitioners"). The ISO has a right to participate in this proceeding as the underlying arbitration was brought against the ISO and the ISO was the prevailing party in that same arbitration. Petitioners seek to overturn both the Arbitration Award and the Arbitrator's Findings of Fact and Conclusions of Law. Petitioners, however, have not established a single basis for appeal and are, therefore, not entitled to review.

All communications in this docket should be sent to Stephen A. S. Morrison and Charles M. Sink, at the addresses listed hereafter.

## **I. BACKGROUND**

The Federal Energy Regulatory Commission ("FERC"), by its Order in Docket No. EL02-87-000, remanded the matter to the original parties to obtain the Findings of Fact and Conclusions of Law from the Arbitrator. Following the Order, the parties obtained the Arbitrator's three-page "further description of the basis for the April 15, 2002 Award of Arbitrator." See Arbitrator's Findings of Fact and Conclusions of Law (attachment to Petition).

## **II. ARGUMENT**

### **A. The Petition Should Be Denied Because Petitioners' "Statement Of Errors" Does Not Provide The Required Basis For Appeal To The FERC.**

Petitioners have only very limited grounds to appeal under the ISO Tariff:

A party may apply to the FERC ... to hear an appeal of an arbitration award *only* upon the grounds that the award is contrary to or beyond the scope of the relevant ISO Documents, United States federal law, including, without limitation, the FPA, and any FERC regulations or decisions, or state law.

ISO Tariff § 13.4.1 (emphasis added).

Petitioners have provided three arguments why the FERC should grant their Petition. Not one establishes that the Arbitration Award is "contrary to or beyond the scope of the relevant ISO Documents, United States federal law, including, without limitation, the FPA, and any FERC regulations and decisions, or state law." Id. Accordingly, the FERC should not indulge Petitioners any further and should deny the Petition.

#### **(1) The Arbitrator's Conclusion Properly Relies On His Findings Of Fact.**

The Arbitrator found that "[t]he laws of physics and good utility practice, as applied to operating the ISO power system during the relevant time period, resulted in voltage support actions related to Intra-Zonal Congestion management." Arbitrator's Findings of Fact, I(C). These Findings, which are based on the evidence and laws of physics, are entitled to substantial deference: "The parties intend that the FERC or the court of competent jurisdiction should afford substantial deference to the factual findings of the arbitrator." ISO Tariff § 13.4.2.

Specifically, Petitioners' contention that voltage support cannot be related to Intra-Zonal Congestion ignores both the extensive testimony heard by the Arbitrator and the laws of physics. Clearly, voltage deficiencies can rise to become Intra-Zonal Congestion. Moreover, the undisputed evidence demonstrated that the ISO's real time dispatches were for an *increase* in real power generation: Such increases are, according to the evidence and basic electrical principals, consistent with ISO Intra-Zonal Congestion Management. Petitioners could not and cannot refute the inherent nature of the energy dispatches at issue. The Arbitrator's evaluation of the evidence and basic principles of physics undoubtedly form the basis of his Findings. The Arbitrator's Award, which is based on those Findings, is well founded.

Petitioners' continued focus on the existence of distinct ISO Tariff descriptions of Voltage Support and Intra-Zonal Congestion misses the point and is irrelevant. The ISO Tariff's classification of the two related functions does not mean that insufficient voltage cannot cause Intra-Zonal Congestion, nor does it change the evidence or the laws of physics, upon which the Arbitrator relied. Moreover, Petitioners fail to recognize that the ISO Tariff permits the ISO to charge only Scheduling Coordinators, whether for Voltage Support (Petitioners' contention) or for Intra-Zonal Congestion (the ISO's position). Under either scenario, the ISO properly charged the Scheduling Coordinators, including Petitioners, for the energy dispatches at issue in the Arbitration.

(2) **Petitioners' Existing Transmission Contract Holder Argument Duplicates An Issue Pending Before The FERC And Is An Attempt To Circumvent The FERC Docket.**

Petitioners' second ground for appeal is procedurally flawed and without merit. Petitioners claim that Existing Transmission Contract ("ETC") holders are exempt from charges for *Intra-Zonal Congestion*. This issue is currently pending before the FERC in Docket No. ER98-3760-000. Since the matter is unresolved, the Award clearly cannot be contrary to a FERC decision. The status of ETC holder rights will be addressed in Docket No. ER98-3760-000. Petitioners

should not be allowed to accomplish an "end run" around the FERC's procedures and docket by (unsuccessfully) arbitrating and then appealing the same issue.

**(3) Petitioners' Attack On The ISO Tariff Cannot Be Raised For The First Time On Appeal And Is, Therefore, Procedurally Barred.**

In their third and final attempt to provide a basis for appeal, Petitioners claim that the Arbitration Award and the Findings are contrary to the ISO Tariff. Petitioners *cannot* raise this or any other issue for the first time on appeal: Therefore, this contention regarding the ISO Tariff cannot and does not constitute a basis for appeal.

Throughout the proceedings, Petitioners *never* claimed that the Arbitrator was compelled by the Tariff to rule in their favor. Instead, Petitioners relied upon the theory that there was a "gap" in the Tariff that the Arbitrator had the authority to, and should, rectify. The Arbitrator declined to fill that supposed "gap" and denied Petitioners' claims in their entirety. In order for Petitioners to use successfully this denial as a basis for appeal, the purported "gap" in the Tariff must in fact be "contrary" to the Tariff itself. Something merely missing from the Tariff, however, cannot also be affirmatively contrary to it.

Moreover, the Arbitration Award and the Findings deny the relief sought by Petitioners without reference to the ISO Tariff. The Award and Findings therefore cannot be contrary to any ISO Document; rather, they merely establish that Petitioners failed to convince the Arbitrator that they should prevail. It would be a gross misreading of the Award or Findings to assume that they contradicted anything, much less that they specifically contravened the Tariff. The Award and the Findings therefore should be upheld and not be contorted after the fact into an effective contradiction of the ISO Tariff.

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**B. The Petition Should Be Denied Because Granting The Petition Would Set A Bad Precedent And Render The Alternative Dispute Resolution Meaningless And Redundant.**

Petitioners have not satisfied a single basis for the FERC to review the Arbitration Award. Therefore, the FERC should not grant the Petition because granting this Petition would be the same as granting automatic review of *all* awards made under the auspices of the appropriate provisions of the FERC approved ISO Tariff.

The Arbitrator did what the FERC directed and the ISO Tariff requires. He considered the testimony (both prepared and live) of all the witnesses offered by Petitioners and the ISO, hundreds of pages of exhibits (including the ISO Tariff), and six lengthy briefs. Not one scrap of evidence was excluded nor was any witness turned away. There is no good purpose to be served by re-arguing what has been thoroughly considered and decided. To do otherwise is to encourage parties – especially in routine cases such as this one, involving matters without broad issues or significant consequences – to invoke arbitration, and then start all over again by appealing to the FERC.

No other entity has disputed the ISO allocation of the costs concerned. Despite the fact that the ISO reallocation affected "all loads in the SP-15 Zone" (Petition, at 5), only Petitioners protested: The other affected Scheduling Coordinators accepted the ISO allocation. According to the Petition itself, the relevant events occurred during a 44 day span almost three years ago. Petition, at 4. This Petition presents no important or broadly relevant issues. Therefore, the FERC should exercise its discretion and deny the Petition.

**III. CONCLUSION**

The ISO respectfully requests that the Commission deny the "Petition for Review of Arbitrator's Award, Motion to Establish a Procedural Schedule, and Request for Waiver of Filing Fee."

Simply put, Petitioners lost. Unhappy with the result, they seek to set aside the result and ignore the fact that the Arbitrator, whose background in electrical engineering and understanding

of power generation was appealing to all sides, considered extensive prepared direct testimony and cross-examination of the witnesses. There is no useful purpose in rearguing the claims, reweighing the evidence, and reviewing the Findings of Fact beyond the substantial deference that must be afforded them. The Arbitrator's Findings are supported by the evidence and fundamental concepts of physics. Moreover, the Petitioners have failed to provide a proper basis for appeal. Therefore, the FERC should deny the Petition.

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Respectfully submitted,

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Dated: March 11, 2003

**CERTIFICATE OF SERVICE**

I hereby certify that I have this 11<sup>th</sup> day of March, 2003, caused a copy of the foregoing document to be sent by electronic mail and/or facsimile and first class mail to each person designated on the official service list compiled by the Secretary and on the Arbitrator through his designated representative at the American Arbitration Association.

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