

SWIDLER BERLIN SHEREFF FRIEDMAN, LLP

THE WASHINGTON HARBOUR
3000 K STREET, NW, SUITE 300
WASHINGTON, DC 20007-5116
TELEPHONE (202) 424-7500
FACSIMILE (202) 424-7647
WWW.SWIDLAW.COM

BRADLEY R. MILIAUSKAS
DIRECT DIAL: (202) 295-8431
FAX: (202) 424-7643
BRMILIAUSKAS@SWIDLAW.COM

NEW YORK OFFICE
THE CHRYSLER BUILDING
405 LEXINGTON AVENUE
NEW YORK, NY 10174
TEL. (212) 973-0111
FAX (212) 891-9598

January 9, 2004

The Honorable Magalie R. Salas
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

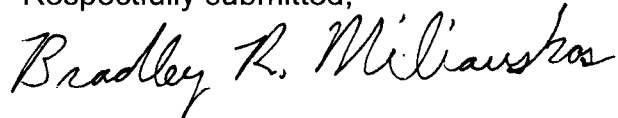
**Re: City of Banning, California
Docket No. EL04-42-000**

Dear Secretary Salas:

Enclosed are one original and fourteen copies of the Motion to Intervene and Comments of the California Independent System Operator Corporation, submitted in the above-captioned proceeding.

Also enclosed are two extra copies of the filing to be time/date stamped and returned to us by the messenger. Thank you for your assistance. Please contact the undersigned if you have any questions regarding this filing.

Respectfully submitted,



David B. Rubin
Bradley R. Miliauskas

Counsel for the California
Independent System Operator
Corporation

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

City of Banning, California

)

Docket No. EL04-42-000

**MOTION TO INTERVENE AND COMMENTS OF THE CALIFORNIA
INDEPENDENT SYSTEM OPERATOR CORPORATION**

Pursuant to Rule 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("Commission"), 18 C.F.R. § 385.214, and the Commission's December 30, 2003 Notice of Filing, the California Independent System Operator Corporation ("ISO")¹ hereby moves to intervene and provides comments in the captioned proceeding. In support thereof, the ISO states as follows:

I. COMMUNICATIONS

Please address communications concerning this filing to the following persons:

Anthony J. Ivancovich*
Senior Regulatory Counsel
Deborah A. Le Vine
Director of Contracts
The California Independent
System Operator Corporation
151 Blue Ravine Road
Tel: (916) 351-4400
Fax: (916) 608-7296

David B. Rubin*
Bradley R. Miliauskas
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Washington, D.C. 20007
Tel: (202) 424-7500
Fax: (202) 424-7643

¹ Capitalized terms not otherwise defined herein are used in the sense given in the Master Definitions Supplement, Appendix A to the ISO Tariff, as filed August 15, 1997, and subsequent revised.

* Individuals designated to receive service pursuant to Rule 203(b)(3) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.203(b)(3).²

II. BACKGROUND

As stated in the December 30, 2003 Notice of Filing, on December 19, 2003, the City of Banning, California ("Banning") submitted to the Commission changes to its Transmission Revenue Balancing Account Adjustment ("TRBAA") and to Appendix I of its Transmission Owner Tariff ("TO Tariff"). Banning requested an effective date for its filing of January 1, 2004. Further, on page 2 of the transmittal letter for the December 19 filing, Banning stated in relevant part as follows:

The calculation of Net FTR Revenue requires a review of Banning's hourly schedules and transactions by transmission path, which constitutes confidential and commercially sensitive information which, if disclosed to other market participants, would expose Banning to competitive harm. Banning is submitting the detailed back-up data supporting the Net FTR Revenue calculation to the Commission on a confidential basis. In *City of Vernon, California*, Docket No. EL02-103-000, the parties proposed and the Commission approved as part of the settlement in that docket a procedure for review and validation of Vernon's Net FTR Revenue calculations. Under that procedure, set forth in § 1.4 of the Offer of Settlement approved by the Commission in its Letter Order dated February 5, 2003, Vernon submits the back-up data for its Net FTR Revenue calculations only to the Commission and to the ISO on a confidential basis. The ISO then compares Vernon's data against its own records to validate the data relied upon by Vernon. If the ISO confirms that Vernon's data are accurate, the detailed back-up information remains confidential and is not disseminated to the other parties. Banning respectfully requests that the Commission institute the same procedure approved in the Vernon docket for

² In addition to Mr. Ivancovich and Mr. Rubin, the ISO respectfully requests that Ms. Le Vine be included on the Official Service List. Mr. Ivancovich and Ms. Le Vine work in separate buildings and it would be of significant assistance to the ISO if both were included on the list.

review and validation of the confidential back-up data for Banning's Net FTR Revenue calculations.

III. BASIS FOR MOTION TO INTERVENE

The ISO is a non-profit public benefit corporation organized under the laws of the State of California and responsible for the reliable operation of an electricity transmission grid comprising the transmission systems of San Diego Gas & Electric Company, Southern California Edison Company, Pacific Gas and Electric Company, and the Cities of Vernon, Anaheim, Azusa, Banning, and Riverside, California, as well as for the coordination of the competitive electricity market in California. As the operator of the grid, the ISO believes that it has a unique interest in any Commission proceeding concerning the filing described above, which involves the participation of Banning in the ISO as a Participating TO. Accordingly, the ISO requests that it be permitted to intervene herein with full rights as a party.

IV. COMMENTS

The ISO appreciates Banning's providing, for the ISO's review and verification, the confidential information concerning Banning's Net FTR Revenue as described above. The ISO has reviewed the calculation and cannot at this time agree to the Net FTR Revenue amount. However, Banning and the ISO are very close and continue to work together to resolve the difference. If Banning and the ISO can reach agreement, the ISO believes that it can then validate the Net FTR Revenue data.

V. CONCLUSION

Wherefore, for the foregoing reasons, the ISO respectfully requests that the Commission permit it to intervene, and that it be accorded full party status in this proceeding.

Respectfully submitted,



David B. Rubin
Bradley R. Miliauskas
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Washington, D.C. 20007

Counsel for the California Independent
System Operator Corporation

Date: January 9, 2004

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list for the captioned proceeding, in accordance with Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated at Folsom, CA, on this 9th day of January, 2004.

Anthony J. Ivancovich ^{BJM}
Anthony J. Ivancovich