

**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

**CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION'S
OPPOSITION TO THE CALIFORNIA DEPARTMENT OF WATER RESOURCES /
STATE WATER PROJECT'S MOTION TO INTERVENE.**

The California Independent System Operator Corporation ("ISO") hereby opposes the California Department of Water Resources / State Water Project's Motion to Intervene in this proceeding.

The Cities of Anaheim, Azusa, Banning, Colton, and Riverside, California ("Southern Cities") brought the underlying arbitration against the ISO. Southern California Edison and the City of Vernon intervened during the arbitration open period. See ISO Tariff § 13.2.5. The ISO was the prevailing party in the underlying arbitration. Southern Cities and Vernon ("Petitioners") have appealed to the Federal Energy Regulatory Commission ("FERC") for review of the award, findings of facts, and conclusions of law in the underlying arbitration. The California Department of Water Resources / State Water Project ("DWR") has moved to intervene in these proceedings. DWR's Motion to Intervene is without merit and should be denied.

ARGUMENT

The FERC should deny DWR's Motion to Intervene because DWR chose not to intervene during the ISO Tariff mandated arbitration open period and DWR does not have a compelling interest in this proceeding. Allowing DWR to intervene at this late stage would disadvantage the

ISO, impact the fairness and efficiency of the FERC appellate review process, and undermine the FERC-approved ISO Tariff alternative dispute resolution process.

1. DWR *Chose Not To Intervene During The ISO Tariff Mandated Arbitration Open Period.*

ISO Tariff Section 13.2.5 requires the ISO to publish any demand for arbitration on the ISO website. This requirement ensures that all parties who may be affected by the outcome of arbitration are notified and afforded the opportunity to intervene.¹ Two different entities, Southern California Edison and the City of Vernon, intervened and participated in the underlying arbitration. If DWR had an interest in the arbitration (which it plainly does not), it should have intervened when the demand for arbitration was published. DWR, however, chose not to intervene at the appropriate time and chose not to participate in the underlying arbitration. The FERC must not allow DWR to circumvent the ISO Tariff and intervene at this late stage.

2. *Granting DWR's Motion To Intervene Would Contradict The Plain Terms Of ISO Tariff Section 13 And The Policy Underlying Section 13's Dispute Resolution Provisions.*

The ISO Tariff mandates that all disputes are to be first adjudicated according to the provisions of ISO Tariff Section 13.² The plain language of the ISO Tariff precludes parties from claiming an interest only upon and solely because of the appeal of an arbitration in which they did not timely participate. Moreover, the underlying policy of ISO Tariff Section 13's dispute resolution provisions is to alleviate the administrative burden on the FERC and the ISO. DWR's untimely attempt to intervene contradicts the ISO Tariff's plain language and the policy underlying the Tariff's alternative dispute resolution process.

¹ ISO ADR Supplemental Procedure 3.1, Right to Intervene. (The ISO ADR Supplemental Procedures are also published on the ISO website and intended to supplement specific parts of ISO Tariff Section 13.)

² Section 13.1.1 of the ISO Tariff states that: "Except as limited below or otherwise as limited by law . . . the ISO ADR Procedures *shall* apply to all disputes between parties which arise under the ISO Documents. . . ." (Emphasis added.)

3. DWR's *Choice Not To Intervene During The Arbitration Period Belies Its Belated Assertion Of A "Direct Interest."*

DWR claims, without actually demonstrating, that it "has a direct interest in this proceeding that cannot be represented by any other party." Motion to Intervene, page 2. DWR already chose not to intervene, which casts severe doubt on the strength and relevance of DWR's recently discovered "direct interest." More importantly, DWR's cursory Motion to Intervene does not demonstrate how DWR has a "direct interest" in the issue involved in the underlying arbitration: the ISO's allocation of costs in Zone SP-15 for dispatches that occurred almost three years ago. The DWR claims no financial interest, nor does it offer the slightest rationale for why FERC should consider it to be affected materially by this matter.

Not only has DWR offered no explanation for why it actually has an interest in this appeal, but it also remains mute as to why it only now has moved to join the process. Therefore, DWR's Motion to Intervene should be denied for failure to offer any basis for granting the request.

4. Allowing DWR To Intervene At This Late Stage Would Disadvantage The ISO.

According to ISO Tariff Section 13.4.2, the record for arbitration appeals shall not be expanded upon before the FERC, unless there is new legal authority or fraudulent behavior has been shown. DWR, which was *not* part of the underlying arbitration discovery, testimony, legal briefing, or award, could not possibly serve any other purpose in this appeal than to weigh down the proceedings with attempts to offer information outside the scope of appellate review. Moreover, given the appellate rules, the ISO would not be able to cross-examine views that DWR may advance. DWR's participation in the proceedings, therefore, could be detrimental to the parties to the underlying arbitration (the ISO, Southern California Edison, and Petitioners) and the FERC. Denial of DWR's Motion, however, would simply leave DWR in the same position as before, having chosen not to timely intervene in the underlying arbitration.

5. The FERC Should Not Allow Such Untimely Interventions; Otherwise, There Will Be A Flood Of Last Minute Intervenors Impacting The Fairness And Efficiency Of The Appellate Review Process.

DWR chose not to intervene in the underlying arbitration, in which the arbitrator considered the testimony (both prepared and live) of all the offered witnesses, hundreds of pages of exhibits (including the ISO Tariff), and six lengthy briefs. There is no good purpose to be served by adding DWR – or any other party that chose not to intervene in the underlying arbitration – to a proceeding whose established appellate record cannot be disturbed or expanded upon. To allow DWR to intervene at this stage would undercut the ISO Tariff's alternative dispute resolution process and encourage a flood of untimely and irrelevant motions to intervene.

CONCLUSION

DWR must not be allowed to circumvent the ISO Tariff's clear requirements and to intervene at this late stage. DWR chose not to intervene in the underlying arbitration. DWR's intervention at this late stage would negatively impact the efficiency and fairness of the FERC appellate review process. Therefore, the FERC should deny DWR's Motion to Intervene.

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Respectfully submitted,

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Dated: March 31, 2003

CERTIFICATE OF SERVICE

I hereby certify that I have this 31st 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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