

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

California Independent System Operator Corporation)	Docket Nos. ER98-997-000 ER98-1309-000
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**ANSWER OF THE
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
TO MOTION TO INTERVENE OF AERA ENERGY, LLC**

**To: Honorable Jacob Leventhal
Presiding Administrative Law Judge**

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 of Aera Energy, LLC (“Aera”).

I. BACKGROUND

On December 9, 1997, the ISO filed a *pro forma* Participating Generator Agreement (“PGAs”) and a number of executed PGAs. Additional PGAs were filed on December 30, 1997, February 18, 1998, and March 6, 1998. These and subsequent PGA filings were consolidated in Docket No. ER98-992-000, *et al.* Pursuant to testimony filed by the Cogeneration Association of California (“CAC”) recommending that “the Commission order the ISO to develop a separate and independent *pro forma* Participating Generator Agreement for Qualifying Facilities,”¹ the ISO filed a motion to sever the PGA dockets for certain Qualifying Facilities (“QF”) from the other PGA dockets and to participate in

¹ Direct Testimony of James A. Ross in Docket No. ER98-992-000 at 2.

settlement discussions regarding the possible development of a *pro forma* PGA for QFs. That motion was granted by order of the Chief Judge on November 19, 1998. Settlement efforts regarding a *pro forma* PGA for QFs were unsuccessful and an evidentiary hearing was held before Judge Leventhal in Docket Nos. ER98-997 and ER98-1309 beginning on May 1, 2001. Judge Leventhal's initial decision is due to be issued on August 1, 2001.

On March 14, 2001, the ISO filed with the Commission a Participating Generator Agreement ("PGA") between the ISO and Aera, which was assigned Docket No. ER01-1531. In the transmittal letter accompanying the PGA, the ISO explained that it was filing the agreement in an unexecuted form based on Aera's unwillingness to comply with the ISO's metering requirements and to abide by ISO Dispatch instructions relating to the curtailment of power except in a System Emergency, pending the outcome of the proceedings in Docket Nos. ER98-997 and ER98-1309. The ISO asked that the Commission accept the filing and make it subject to the outcome of the proceedings in Docket Nos. ER98-997 and ER98-1309.

On April 25, 2001, by letter order, the Commission accepted the Aera PGA for filing. Aera has subsequently moved for a stay of the order and clarification that its PGA be subject to the outcome of these proceedings.

On June 21, 2001, Aera filed a motion to intervene in Docket Nos. ER98-997 and ER98-1309 ("Aera Motion").

II. DISCUSSION

Aera has offered no justification for allowing it to intervene at this late date. Aera had notice when the ISO filed the PGA on March 14 – well before the hearing in this proceeding – that the ISO had asked that the Aera PGA be subject to the outcome in these dockets. Yet, Aera did not move to intervene until June 21, 2001.

Nonetheless, the ISO does not object to allowing Aera to intervene if its participation is subject to two conditions. First, the Presiding Judge should require that Aera accept the procedural schedule and evidentiary record as they now stand. This should not present a problem, as Aera already has explicitly agreed to accept the record in its motion to intervene. Aera Motion at 3. Second, Aera should be required to submit any pleadings in this proceeding jointly with CAC and ARCO CQC Kiln (“ARCO”). This requirement is appropriate because Aera’s interests in this proceeding are virtually identical to those of CAC and ARCO. In its intervention, Aera states that its objections to the PGA are the same as those asserted by the QFs in these dockets. *Id.* at 2. Moreover, Aera is represented in this matter by the same counsel as are CAC and ARCO. Under the circumstances, allowing Aera to make individual pleadings would unduly prejudice the other parties.

III. CONCLUSION

For the foregoing reasons, the ISO does not object to the Presiding Judge granting Aera's motion to intervene subject to the conditions described above.

Respectfully submitted,

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Counsel for the
California Independent
System Operator Corporation

Dated: July 6, 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 6th day of July, 2001.

Michael Kunselman

July 6, 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 Aera Energy, LLC. 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 the messenger. Thank you for your assistance.

Respectfully submitted,

Michael Kunselman
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Washington D.C. 20007

Counsel for the California
Independent System Operator Corporation

Enclosures

cc: Service List
Honorable Jacob Leventhal

July 6, 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 Aera Energy, LLC filed today with the Commission in the above-captioned dockets.

Yours truly,

Michael Kunselman
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Enclosures

