

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

**Cities of Anaheim, Azusa, Banning,  
Colton, and Riverside, California and  
City of Vernon, California  
("Petitioners")**

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 ANSWER TO THE CALIFORNIA INDEPENDENT  
SYSTEM OPERATOR CORPORATION'S OPPOSITION TO THE MOTION TO  
INTERVENE**

The California Independent System Operator Corporation ("ISO") hereby objects to the "Answer of the California Department of Water Resources State Water Project to [the ISO's] Opposition to Motion to Intervene" ("Answer") filed April 9, 2003. Pursuant to Rule 213(a) (2) of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("FERC"), answers to answers or protests are not allowed "unless otherwise ordered by the decisional authority." The Department of Water Resources State Water Project ("DWR"), however, has failed to demonstrate the requisite good cause and DWR should, therefore, not be allowed to answer the ISO's Opposition.<sup>1</sup> Although DWR should not be allowed to answer for lack of good cause, the ISO will address some of the more offensive aspects of the Answer.

The ISO objected to DWR's Motion to Intervene because DWR did not participate in the proceedings below, DWR's intervention in the appeal would most likely not serve any purpose other than providing information outside the scope of appellate review, and DWR's intervention

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<sup>1</sup> DWR cites three cases in urging the FERC to allow it to answer the ISO's Opposition to DWR's Motion to Intervene. Answer, at 1 n.1. The three cases did not involve an intervention in the appeal of an arbitration award.

would most likely disadvantage the ISO and the other parties to the underlying arbitration.<sup>2</sup> DWR's Answer demonstrates why the ISO's concerns are valid. The Answer ignores the Arbitrator's decision, ignores the record below, and attacks the ISO. Answer, at 3-6. These attacks are outside the scope of appellate review, unrelated to the proceedings below, and serve no purpose other than to promote bias against the ISO. See, e.g., ISO Tariff § 13.4.2 (providing that "[n]o party shall seek to expand the record before the FERC").

In addition to attacking the ISO, DWR asserts that resolution of the matter without DWR's presence would be prejudicial. Answer, at 3. DWR elected to not intervene in the proceedings below and instead now appears to be taking its case directly to the FERC. The FERC, however, in approving the ISO Tariff's alternative dispute resolution provisions, specifically noted that it "does not have the time or resources to address the myriad of potential issues that Parties may have. All Parties should utilize the ISO's and PX's ADR Procedures to resolve disputes **before** coming to the Commission." Pacific Gas & Electric Co., et al., 81 FERC ¶ 61, 122 at 61,489 (1997) (emphasis added) (rejecting the California Department of Water Resources' recommendation that the ISO Tariff's ADR provisions "specify the right of parties to file a petition with the Commission without resorting to the ISO or PX ADR procedures"). The ISO should not be prejudiced because DWR deliberately chose to not intervene in the proceedings below. Answer, at 6.

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<sup>2</sup> See California Independent System Operator Corporation's Opposition to the California Department of Water Resources / State Water Project's Motion to Intervene filed with the Federal Energy Regulatory Commission on March 31, 2003. By submitting its opposition to DWR's Motion to Intervene and DWR's Motion to Answer, the ISO does not imply that the FERC should grant Petitioners' Petition for Review of the underlying arbitration award.

The ISO respectfully requests that the FERC not allow DWR to answer the ISO's Opposition to DWR's Motion to Intervene. DWR has not demonstrated the good cause necessary to overcome Rule 213(a) (2)'s general bar against answers to answers or protests. If the FERC allows DWR to answer, the ISO should be allowed to respond in order to correct DWR's misstatements, clarify the record, and move to strike portions of the Answer as outside the scope of review.

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Respectfully submitted,

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Dated: April 23, 2003

**CERTIFICATE OF SERVICE**

I hereby certify that I have this 23<sup>rd</sup> day of April, 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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*/s/ Julie E. Grey*

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