

**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 MOTION TO FILE ANSWER AND ANSWER TO THE
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION'S PROTEST
TO THE PETITION FOR REVIEW OF ARBITRATOR'S AWARD**

The California Independent System Operator Corporation ("ISO") hereby objects to Petitioners' "Motion to Answer and Answer to the ISO's Protest to the Petition for Review of the Arbitrator's Award" filed March 26, 2003. Pursuant to Rule 213(a)(2) of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("FERC"), answers to protests are not allowed "unless otherwise ordered by the decisional authority." FERC allows such answers to be filed only if good cause is demonstrated.¹ Petitioners, however, have failed to demonstrate good cause. Rather than providing "clarification," the Motion to Answer and Answer mischaracterize and/or misread the ISO's Opposition to the Petition for Review and the Arbitrator's Findings, and either mischaracterize or ignore the ISO's arguments in the underlying proceedings. The Motion to Answer should, therefore, be denied.

Although the Motion to Answer should be denied, the ISO will, out of an abundance of caution, address some of the more egregious misstatements contained within the Answer. If the FERC grants the Motion to Answer, the ISO should be allowed to respond to the Answer in order

¹ See, e.g., Central Power & Light Co. & West Texas Utilities Co., 69 FERC ¶ 61,353 (1995) (following Rule 213(a)(2) and denying motion to answer and answer for lack of good cause); Duke Power Co., 46 FERC ¶ 61,315 (1989) (same).

to lead to a more accurate and complete record, and to clarify misstatements contained in Petitioners' Answer.

ARGUMENT

Contrary to their repeated assertions, Petitioners have not provided the required basis to appeal to the FERC.² Of Petitioners' three asserted bases for appellate review, not one demonstrates 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 § 13.4.1.³ Therefore, following the appellate provisions of the ISO Tariff, FERC should deny the Petition for Review. If FERC were to grant the Petition, even though Petitioners have patently failed to provide a single basis for appellate review, the FERC-approved ISO Tariff's ADR Provisions, including its Appellate Provisions, would be rendered meaningless.

A. The Arbitrator Properly Found That The Dispatches At Issue Were For Intra-Zonal Congestion Management.

Petitioners' purported inability to understand the Arbitrator's Findings and the basis of the Arbitrator's decision is disingenuous, at best. See Motion to Answer and Answer. 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, at 2 (emphasis added). This Finding is a reflection of the ISO testimony presented below. Petitioners, however, misquote and misinterpret the Arbitrator's Findings and claim that the "Arbitrator's finding acknowledges that the dispatches

² See Motion to Intervene and Protest by the California Independent System Operator Corporation to the Petition for Review of the Arbitrator's Award, Motion to Establish Procedural Schedule, and Request for Waiver of Filing Fee, filed with the FERC on March 11, 2003.

³ Perhaps in recognition of this failure, Petitioners, in their Motion to Answer and Answer, attack the ISO's Opposition by presenting an incomplete, biased rendition of the evidence presented in the underlying proceeding and by misrepresenting and misconstruing the ISO's arguments during the underlying proceedings and within the ISO's Opposition to the Petition for Review. Although Petitioners attempt to cast doubt on the ISO's Opposition to the Petition for Review by noting that the Opposition does not contain references to the record below, Petitioners do not cite to the record below. See Motion to Answer and Answer, at 3. To ensure that it is not biased by the Petitioners' comments and to ensure that the FERC comprehends the scope of Petitioners' avoidance of the ISO's testimony below, upon which the Arbitrator based his Findings, the ISO will provide citations to the record below.

were for **Voltage Support** but seems to conclude that **Voltage Support** is a subset of Intra-Zonal Congestion Management." Motion to Answer and Answer, at 3 (emphasis added). This misreading of the Arbitrator's Findings essentially regurgitates Petitioners' unpersuasive arguments below, and deliberately ignores the ISO's testimony and briefing.

The Arbitrator heard testimony from both sides, and the issues were extensively briefed.⁴ The ISO presented undisputed evidence demonstrating that the ISO's real time dispatches at issue were for increases in real power generation,⁵ and unrefuted testimony that such increases are consistent with Intra-Zonal Congestion Management.⁶ The ISO's testimony included an explanation of the general management of transmission systems, and the interrelated nature of a transmission system's electrical characteristics.⁷ One aspect of these electrical characteristics is that Voltage Support and Intra-Zonal Congestion are along the same electrical continuum; they are neither mutually exclusive nor inclusive.⁸ Moreover, insufficient voltage can be considered a form of Intra-Zonal Congestion.⁹ The ISO also proved that the ISO Tariff's classification of Voltage Support and Intra-Zonal Congestion does not mean that insufficient voltage cannot cause

⁴ The Arbitrator was chosen by all parties presumably for his electrical engineering background, which would give him the ability to understand the dynamics and electrical characteristics of transmission systems.

⁵ Petitioners conceded that the dispatches were for increased real power generation. See Post-Hearing Reply Brief on Behalf of the California Independent System Operator, at 4 n.10 (discussing same); Southern Cities (Petitioners) Initial Brief, at 3, 14, 15-16 (asserting that the dispatches were not decreases in real power generation); Southern Cities' Cross-Examination of B. Woertz, at 97-99 & Cross-Examination of B. Rahman, at 128 (emphasizing that the dispatches were for increased real power generation).

⁶ See Direct Testimony of B. Rahman, at 2; Re-Direct Testimony of B. Rahman, at 135-36; Post-Hearing Initial Brief on Behalf of the California Independent System Operator, at 3-7; Post-Hearing Reply Brief on Behalf of the California Independent System Operator, at 3-4.

⁷ See Direct Testimony of B. Rahman, at 1-2.

⁸ See Direct Testimony of B. Rahman, at 1-2; Cross-Examination of B. Rahman, at 112-13; Direct Testimony of B. Woertz, at 3; Southern Cities' Cross-Examination of B. Woertz, at 95 & 107; Post-Hearing Initial Brief on Behalf of the California Independent System Operator, at 3-7; Post-Hearing Reply Brief on Behalf of the California Independent System Operator, at 3-4.

⁹ See Direct Testimony of B. Rahman, at 2; Post-Hearing Initial Brief on Behalf of the California Independent System Operator, at 4-5; Post-Hearing Reply Brief on Behalf of the California Independent System Operator, at 3-4.

Intra-Zonal Congestion, nor can the classifications change the transmission system's electrical characteristics,¹⁰ i.e. the "laws of physics."

The Arbitrator's Finding that the dispatches at issue were for Intra-Zonal Congestion are clearly based on the evidence presented by the ISO during the arbitration and argued by the ISO within its post-hearing briefs. The Arbitrator's Findings are entitled to substantial deference. See ISO Tariff § 13.4.1.¹¹ While the Arbitrator's decision might not sit well with Petitioners, dissatisfaction at not prevailing in the proceedings below does not provide a basis for appellate review. See ISO Tariff § 13.4.1.

B. Petitioners Should Be Barred From Untimely Recasting Their Failed Attack On The Tariff Into Their "Gap" Argument From The Proceedings Below.

Petitioners argued below that the Arbitrator should have filled a "gap" in the ISO Tariff. The Petition for Review, however, did not reference Petitioners' "gap" argument, and claimed that the ISO Tariff had the **clear intent** to assign Voltage Support costs to the responsible Transmission Owner. Petition for Review, at 9. This argument that the Arbitrator was compelled by the Tariff to rule in Petitioners' favor **cannot** be raised for the first time on appeal and, therefore, cannot be a basis for appeal.

Perhaps in grudging recognition of their inability to bring a new issue for the first time on appeal,¹² Petitioners now recast their second claimed ground for appeal and assert that there is a

¹⁰ See Direct Testimony of B. Rahman, at 2; Direct Testimony of B. Woertz, at 3; Cross-Examination of B. Woertz, at 95 & 107; Post-Hearing Initial Brief on Behalf of the California Independent System Operator, at 3-7; Post-Hearing Reply Brief on Behalf of the California Independent System Operator, at 3-4.

¹¹ Petitioners note that FERC has "approvingly cited the deferential standard for review found in the ISO Tariff," and Petitioners "do not disagree with this standard." See Motion to Answer and Answer, at 2 (citing FERC order in Docket EL02-87-000).

¹² Petitioners mischaracterize the ISO's arguments below. See Motion to Answer and Answer at 3 n.8. The ISO argued in the alternative below that even if the Arbitrator found that the dispatches were for Voltage Support, there was no gap in the Tariff with regard to charging for such dispatches. See Post-Hearing Initial Brief on Behalf of the California Independent System Operator, at 25-28 (discussing ISO Tariff provisions for Ancillary Services, including Voltage Support, and the plain terms of ISO Tariff § 2.5.28.5, which provide that the ISO would have had to charge the Scheduling Coordinators if the dispatches had been for Voltage Support); Post-Hearing Reply Brief on Behalf of the California Independent System Operator, at 10-12 (same). The ISO argued in the alternative that if the Arbitrator found that there was a gap in the Tariff, which he should not, "FERC, not the Arbitrator, would have the authority to fill it." Id. at 12 (citing Federal Power Act §.205(a), 16 U.S.C. § 824(d)).

"gap" in the Tariff and that the Arbitrator should have filled the gap. Motion to Answer and Answer, at 3-4. This revised claimed ground for appeal must be denied because it was not properly articulated in the Petition for Review. Moreover, even if the FERC were to allow this untimely addition, this ground for appeal fails because **there is no gap** in the Tariff with regard to the dispatches at issue.

Petitioners urged the Arbitrator to fill in this non-existent gap. After reviewing extensive briefing on this issue from all parties, he declined to do so. His decision to not fill in a non-existent gap does not meet the standard for appellate review. See ISO Tariff § 13.4.1. In fact, instead of being contrary to the ISO Tariff, the relevant ISO document, his decision follows the Tariff's provisions: The ISO Tariff permits the ISO to charge **only** Scheduling Coordinators for the dispatches at issue, which were for Intra-Zonal Congestion.¹³ Finally, even if the Arbitrator had found that the dispatches at issue were for Voltage Support, which he did not, the ISO Tariff permits the ISO to charge **only** the Scheduling Coordinators for such dispatches.¹⁴

C. Petitioners' ETC Holder Argument Cannot Form A Basis For Appeal.

Petitioners' ETC holder argument, their third and final asserted ground for appeal, is procedurally flawed and without merit. The Award clearly demonstrates that the Arbitrator found Petitioners' ETC holder argument unpersuasive. Petitioners' argument against the ISO's Opposition to the Petition for Review and the Petition for Review fails to demonstrate how the

¹³ Under the ISO Tariff, there are only two instances when the ISO may charge the Transmission Owner: (1) when the dispatch is for an RMR unit under an RMR Contract (ISO Tariff § 5.2.8) or (2) when the ISO dispatches the unit OOM (ISO Tariff § 11.2.4.2). Neither instance applies here: (1) the dispatches at issue did not involve the RMRs because the RMR units were unavailable (see Stipulation Nos. 4 & 5), and (2) the dispatches at issue were not OOM calls. (Petitioners conceded below that the dispatches at issue were not OOM calls. See Post-Hearing Reply Brief on Behalf of the California Independent System Operator, at 8; Southern Cities (Petitioners') Initial Brief, at 16, 18.) Therefore, the ISO properly followed ISO Tariff § 7.3.2, which directs that in all other instances costs for dispatches for Intra-Zonal Congestion are to be allocated proportionally to all Scheduling Coordinators. See Post-Hearing Initial Brief on Behalf of the California Independent System Operator, at 16-17 (discussing the ISO's proper charging of the Intra-Zonal Congestion Management dispatch costs to all Scheduling Coordinators, including Southern Cities, in the affected Zone); Post-Hearing Reply Brief on Behalf of the California Independent System Operator, at 8-9 (same).

¹⁴ The ISO contends, and the Arbitrator agreed, that the dispatches at issue were for Intra-Zonal Congestion Management, not Voltage Support. If, however the Arbitrator found that the dispatches had been for Voltage Support, the ISO presented evidence that there is no gap in the Tariff and the Scheduling Coordinators would have been properly charged. See, note 12, supra.

Arbitrator's decision comes within the explicit and limited grounds for appeal. Motion to Answer and Answer, at 4 n.10; ISO Tariff § 13.4.1.

Petitioners argued below and within the Petition for Review that as ETC holders they are exempt from charges for Intra-Zonal Congestion. Petition for Review, at 9-10. This argument flies in the face of the ISO Tariff's plain language. See, e.g., ISO Tariff § 2.4.4.4.1 (explicitly exempting ETC holders from **Inter**, not Intra, Zonal Congestion Management). The Award is, therefore, not against the relevant ISO document and, given that the matter is currently pending at FERC (Docket No. ER98-3760-000), the Award cannot be contrary to a FERC decision. The ETC holder argument, therefore, cannot constitute a basis for appeal.

D. The Petition Should Be Denied Because Petitioners Have Failed To Provide A Basis For Appeal.

Granting review of the Petition for Review **would be** the same as granting review of all awards made under the auspices of the appropriate provisions of the FERC-approved ISO Tariff. Based on extensive testimony and briefing, the Arbitrator made his Findings of Facts and Conclusions of Law. The Findings reflect the Arbitrator's consideration of the evidence, and his agreement with the ISO's position that the dispatches at issue were for Intra-Zonal Congestion and were, therefore, properly charged to the Scheduling Coordinators, who are not exempt from the charges as ETC holders. The Arbitrator's Findings are entitled to substantial deference, a fact known to the Petitioners.

Although Petitioners do not agree with the Arbitration Award or Findings, their reasons for urging review do not come within the limited grounds for appeal under ISO Tariff § 13.4.1. Therefore, the Petition should be denied.

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CONCLUSION

The ISO respectfully requests that the FERC deny the Motion to Answer and Answer. Petitioners have not demonstrated the good cause necessary to overcome Rule 213(a)(2)'s general bar against answers to protests. The Answer does not "clarify" issues, as Petitioners claim. Rather, granting the Motion to Answer would merely provide Petitioners another chance to attack the Arbitration Award and Findings, and misrepresent the ISO's arguments. The Motion should, therefore, be denied.

If the FERC grants the Motion to Answer, the ISO should be allowed to respond in order to correct Petitioners' misstatements and to clarify the record.

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Respectfully submitted,

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Dated: April 10, 2003

CERTIFICATE OF SERVICE

I hereby certify that I have this 10th 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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