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.	**Docket No. EL02-87-0000**
California Independent System Operator Corporation,	

MOTION TO INTERVENE AND PROTEST BY THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION TO PETITION FOR REVIEW OF ARBITRATOR'S AWARD

Under Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.211, § 385.214 (2001), the California Independent System Operator Corporation ("ISO") hereby moves to intervene and to protest the Petition for Review of Arbitrator's Award ("Petition") filed by the Cities of Anaheim, Azusa, Banning, Colton, Riverside, and Vernon, California ("Petitioners"). ISO has a right to participate in this proceeding as the underlying arbitration was brought against the ISO and the ISO was the prevailing party in that same arbitration. Petitioners now seek to overturn the award which is in favor of ISO. All communications in this docket should be sent to Charles F. Robinson and Charles M. Sink, at the addresses listed hereafter.

The petitioning parties are not entitled to review because:

1) **The Petitioners are raising an issue for the first time on appeal.** Petitioners have only very limited grounds to appeal under the ISO's Tariff:

> A party may apply to the FERC … to hear an appeal of an arbitration award **only** upon the grounds that the award is **contrary to** or beyond the scope of the relevant ISO Documents, United States federal law, including … any FERC regulations or decisions…. [Tariff Section 13.4.1; emphasis added.]

The term "ISO Documents" is defined under ISO's Tariff to cover only:

> The ISO Tariff; the ISO Protocols [separately defined as those "rules, protocols, procedures and standards attached to the ISO Tariff as Appendix L"], ISO bylaws, and any agreement entered into between the ISO and a Scheduling Coordinator, a Participating TO or any other Market Participant pursuant to the ISO Tariff.

According to Petitioners' own Statement of Errors, the only ISO Document to which the award conceivably may be contrary is the Tariff, since the other documents referred to [Petition pages 6-7] are not and can not be alleged to be "ISO Protocols, ISO bylaws," or agreements between ISO and anyone else. As to the ISO Tariff, Petitioners throughout the proceedings below never took the position that the Arbitrator was **compelled** by the Tariff to rule in their favor, only that there was a "gap" in the Tariff which Petitioners asserted he had the authority to, and should, rectify.

Simply stated, Petitioners' main theory throughout the arbitration and even now on appeal is that there is a "gap" in the ISO Tariff. Equally clearly, the arbitrator declined to fill that supposed "gap" and instead denied Petitioners' claims in their entirety. Whether or not the issue decided by the arbitrator of voltage support versus Intra-Zonal Congestion represented something missed in the Tariff, it cannot be re-characterized by Petitioners to suddenly fall within the ISO Tariff's very limited grounds for appeal. For Petitioners to be correct, the supposed "gap" in the Tariff must be "contrary" to that ISO Document itself. However, something claimed to be missing from the Tariff cannot simultaneously be contrary to it.

The award, moreover, never states in anyway that it accepts "the ISO's [supposed] misapplication of its Tariff." [Petition page 6.] It simply denies the relief sought by Petitioners. That denial is not contrary to any ISO Document; it merely establishes that Petitioners failed to convince the arbitrator that they should prevail. It would be a gross misreading of the award to assume that it contradicted anything, much less that it specifically contravened the Tariff. All the arbitrator's decision did was to deny certain requested relief; it did not affirmatively establish anything. The award therefore should not be contorted into a contradiction of the ISO Tariff.

2) **Petitioners' other ground for appeal duplicates an issue pending before the Commission; no good reason exists to allow Petitioners to effectively circumvent the FERC docket by taking this appeal.** Petitioners' only other ground for appeal concerns whether Existing Transmission Contract ("ETC") holders are or are not exempt from charges for Intra-Zonal congestion. Petitioners admit this issue is currently pending before the Commission in Docket No. ER98-3760-000. [Petition page 5.] Since the matter is indeed unresolved, the award clearly cannot be contrary to Commission decision. The status of ETC holder rights will be addressed in Docket No. ER98-3760-000 and Petitioners should not be allowed to accomplish an "end run" around the Commission's procedures by trying (unsuccessfully) to arbitrate and then appeal the same issue.

3) **The arbitration concerns a narrow time frame and a limited number of parties.** No other entity has disputed the ISO allocation of costs; only the Petitioners have even made an issue out of it. Despite that fact that the ISO reallocation affected "all loads in the SP-15 Zone," [Petition, page 4] only Petitioners have protested; all other Scheduling Coordinators have accepted the ISO decision. According to the Petition itself, the relevant events occurred during only a 45 day span more than two years ago. [Petition page 4.] This Petition presents no important or broadly relevant issues; the FERC should not exercise its discretion and accept this appeal.

4) **The FERC should not automatically review routine arbitration awards such as this, otherwise, there will be a flood of such appeals and arbitrators will be essentially superfluous because the loser will always appeal the decision.** Petitioners' position amounts to arguing that the dispatches did not follow all ISO internal procedures, while not recognizing that the Tariff only allows ISO to charge the Scheduling Coordinators, whether the charges were for voltage support (Petitioners' view) or for Intra-Zonal congestion (ISO's position). Moreover, the undisputed evidence was that the ISO directed the units in question to **increase** real power, which according to the evidence and basic principles of physics would be: consistent with the ISO's position and generally inconsistent with that of the Petitioners. Most importantly, the arbitrator considered the testimony (both prepared and live) of all the witnesses offered by Petitioners, hundreds of pages of exhibits (including the Tariff), and six lengthy

briefs. Not one scrap of evidence was excluded nor was any witness turned away. There is no good purpose to be served by re-arguing what has been thoroughly considered and decided. To do otherwise is to encourage parties – especially in routine cases such as this one, involving matters without broad issues or significant consequences - to invoke arbitration, and then start all over again by appealing to the FERC.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this 7th day of June, 2002, caused a copy of the foregoing document to be sent by electronic mail and/or facsimile and first class mail on all parties to the arbitration and on the Arbitrator through his designated representative at the American Arbitration Association.

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Charles M. Sink

Attorney for California Independent System Operator Corporation