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.	

CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION'S OPPOSITION TO THE MOTIONS TO INTERVENE FILED WITH THE FEDERAL ENERGY REGULATORY COMMISSION BY THE CALIFORNIA DEPARTMENT OF WATER RESOURCES, CALIFORNIA ELECTRICITY OVERSIGHT BOARD, CITIES OF SANTA CLARA AND REDDING, THE MODESTO IRRIGATION DISTRICT, THE M-S-R PUBLIC POWER AGENCY AND THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA.

California Independent System Operator Corporation ("ISO") hereby opposes the motions to intervene in this proceeding filed with the Federal Energy Regulatory Commission ("Commission") by the California Department of Water Resources, California Electricity Oversight Board, Cities of Santa Clara and Redding, the Modesto Irrigation District, the M-S-R Public Power Agency and the Metropolitan Water District of Southern California ("Proposed Intervenors").

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, ISO Tariff Section 13.2.5. The ISO was the prevailing party in the underlying arbitration. This proceeding is an appeal of the award of the arbitrator in that underlying arbitration brought by the Southern Cities and Vernon.

The Proposed Intervenors are not entitled to intervene because:

1) **The Proposed Intervenors chose not to intervene during the ISO Tariff mandated arbitration open period.**

2) **Granting the Proposed Intervenors' motions to intervene *after* the arbitration award would contradict the plain terms of ISO Tariff Section 13 as well as the policy underlying Section 13's dispute resolution provisions.**

3) **The Proposed Intervenors' *choice* to not intervene during the arbitration period belies their assertions of a compelling interest.**

4) **Allowing the Proposed Intervenors to intervene at this late stage would greatly disadvantage the ISO.**

5) **The Commission should not automatically allow such untimely interventions; otherwise, there will be a flood of untimely Intervenors impacting the fairness and efficiency of the appellate review process.**

ARGUMENT

1) The Proposed Intervenors chose not to intervene during the ISO Tariff mandated arbitration open period.

Following ISO Tariff Section 13.2.5, the Proposed Intervenors should have intervened when the demand for arbitration was published. The ISO is required to publish any such demand for arbitration on the ISO website. That requirement is precisely to ensure that all parties who may be affected by the outcome of the arbitration are so notified and afforded the opportunity to intervene.[1] In fact, two different entities, Southern California Edison and the City of Vernon, did intervene and participate in the arbitration. Given that the Proposed Intervenors chose not to intervene at the appropriate time, they must not be allowed to circumvent the ISO Tariff and intervene at this late stage.

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

2) Granting the Proposed Intervenors' motions to intervene *after* the arbitration award would contradict the plain terms of ISO Tariff Section 13 as well as the policy underlying Section 13's dispute resolution provisions.

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 . . ."[2]

Thus, the plain language of the Tariff, in mandating that all such disputes are to be first adjudicated according to the provisions of Section 13, precludes parties from intimating their interest only upon and solely because of the appeal of an arbitration in which they did not timely partake. Moreover, the underlying policy of ISO Tariff Section 13's dispute resolution provisions is to alleviate the administrative burden on the Commission and the ISO. Allowing the Proposed Intervenors to circumvent ISO Tariff Section 13's clear requirements and intervene at this late date would contradict this policy. Therefore, the Commission should deny the motions to intervene.

3) The Proposed Intervenors' *choice* to not intervene during the arbitration period belies their assertions of a compelling interest.

If the Proposed Intervenors had a compelling interest in the issues involved in the underlying arbitration, they should have intervened at that time. Their choice not to intervene casts doubt on the strength of their recently discovered "compelling interest." Moreover any such compelling interest as may exist can not be advanced in this appellate proceeding, for the reasons set out below (see 4 & 5 *infra*). Therefore, the Proposed Intervenors would not be disadvantaged by having their attempted interventions denied.

4) Allowing the Proposed Intervenors to intervene at this late stage would greatly disadvantage the ISO.

[2] ISO Tariff Section 13.1.1 (emphasis added).

The ISO does not know what is the Proposed Intervenors' true interest in this matter. And, given the appellate rules, the ISO would not be able to cross-examine views that the Proposed Intervenors may advance. Whereas, should the Proposed Intervenors attempted interventions be denied, they would be no worse off than the position in which they already find themselves, having chosen not to make a timely intervention in the underlying arbitration. Moreover, according to ISO Tariff Section 13.4.2, the record for arbitration appeals shall not be expanded upon before the Commission, unless there is new legal authority or an assertion of fraud-type behavior. Therefore, the Proposed Intervenors, who were *not* part of the underlying arbitration discovery, testimony, legal briefing or award, could not possibly serve any other purpose in this appeal than to clutter the proceeding with information outside the scope of appellate review to the detriment of the ISO, the parties who timely intervened, the appellants and the Commission.

5) The Commission should not automatically allow such untimely interventions; otherwise, there will be a flood of untimely Intervenors impacting the fairness and efficiency of the appellate review process.

The Proposed Intervenors 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 Tariff), and six lengthy briefs. There is no good purpose to be served by adding the Proposed Intervenors to a proceeding whose established appellate record cannot be disturbed or expanded upon.

CONCLUSION

For the reasons set forth, *supra*, the Commission should not permit the intervention of the parties noted above, the Proposed Intervenors, and should deny their motions accordingly.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have on this 21st day of June, 2002, caused a copy of the foregoing document to be served upon each person designated on the official service list compiled by the Secretary of State and on the Arbitrator through his designated representative at the American Arbitration Association.

Dated at San Francisco, California, this 21st day of June, 2002.

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