

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman:
Nora Mead Brownell, and Suedeen G. Kelly.

California Independent System
Operator Corporation

Docket No. EL05-114-001

Mirant Delta, LLC and
Mirant Potrero, LLC

Docket No. EL01-35-003

ORDER DENYING LATE INTERVENTION AND
DISMISSING REHEARING REQUEST

(Issued September 26, 2005)

1. On July 1, 2005, the Commission issued an order,¹ in response to a petition for declaratory order (Petition) filed by the California Independent System Operator Corporation (CAISO), finding, among other things, that CAISO's Board of Governors (Board), as currently constituted, meets the independence requirements of Order No. 888² and Order No. 2000.³ On July 10, 2005, Californians for Renewable Energy, Inc.

¹ *California Indep. Sys. Oper. Corp.*, 112 FERC ¶ 61,010 (2005) (July 1 Order).

² *See Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

³ *See Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089 (1999), *order on reh'g*, Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092 (2000), *aff'd, Public Utility District No. 1 of Snohomish County, Washington v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

(CARE) filed a late motion to intervene⁴ and request for rehearing of the July 1 Order.⁵ In this order, we deny CARE's motion for leave to intervene out of time and dismiss its request for rehearing.

I. Motion to Intervene Out of Time

2. CARE states that its failure to timely intervene was due to the fact that CAISO did not provide CARE with adequate notice that CAISO had filed the Petition. According to CARE, CAISO should have provided it with such notice because of CARE's "participation in the underlying proceedings [i.e., earlier proceedings concerning the issue of the independence of the CAISO]."⁶

II. Discussion

3. When late intervention is sought after the issuance of a dispositive order, the prejudice to other parties and burden upon the Commission of granting the late intervention may be substantial. Thus, movants bear a higher burden to demonstrate good cause for granting such late intervention.⁷ CARE has failed to meet its burden to justify the granting of its out-of-time intervention in this proceeding.⁸ Accordingly, we

⁴ Notice of CAISO's Petition was published in the *Federal Register*, 70 Fed. Reg. 30,711 (2005), with interventions due on or before May 31, 2005. See July 1 Order, 112 FERC ¶ 61,010 at P 7.

⁵ Despite CARE's characterization of its filing as "comments and protest," it filed after the Commission issued the July 1 Order and its filing protests that order. CARE Motion to Intervene and Comment Out of Time, Docket No. EL05-114-001 at 6 (July 10, 2005). Therefore, we will treat it as a request for rehearing of the July 1 Order.

⁶ *Id.*.

⁷ See, e.g., *Midwest Indep. Transmission Sys. Oper., Inc.*, 102 FERC ¶ 61,250 at P 7 (2003).

⁸ We note that the CAISO was not required to serve notice of the filing of its Petition upon CARE. The Commission's notices are typically published in the Federal Register. See 18 C.F.R. § 2.1(a) (2005). The Commission's Secretary posted a notice of the filing of the Petition, see Notice of CAISO's Filing of the Petition, Docket No. EL04-15-000 (May 19, 2005), and notice was also posted in the *Federal Register*, see *supra* note 4. Publication of notice in the *Federal Register* provides constructive and adequate

(continued)

deny CARE's motion to intervene. As CARE is not a party to this proceeding, it may not seek rehearing of the July 1 Order, and we dismiss its request for rehearing on that basis.⁹

The Commission orders:

(A) The Commission hereby denies CARE's motion for late intervention, as discussed in the body of this order.

(B) The Commission hereby dismisses CARE's request for rehearing, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

notice. *See, e.g., Point Arguello Natural Gas Line Co.*, 31 FERC ¶ 61,257 at 61,501, *reh'g dismissed*, 32 FERC ¶ 61,130 (1985); *Pontook Operating Ltd. Partnership v. Public Serv. Co. of New Hampshire*, 94 FERC ¶ 61,144 at 61,550 & n.6 (2001). Thus, CARE had adequate and constructive notice that CAISO filed the Petition and the opportunity to file a timely intervention.

⁹ *See, e.g., American Elec. Power Serv. Corp.*, 111 FERC ¶ 61,372 at 18 & n.6 (2005).