

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

Cities of Anaheim, Azusa, Banning, Colton,
and Riverside, California and City of Vernon,
California

v.

Docket No. EL03-54-000

California Independent System Operator Corporation.

ORDER ESTABLISHING SCHEDULE FOR SUBMISSION OF PLEADINGS

(Issued July 23, 2003)

1. In this order, we establish a schedule for the submission of pleadings in response to a petition for review of the April 15, 2002 and January 23, 2003 arbitrator's award in American Arbitration Association Case No. 71 198 00758 00.

Background

2. The Cities of Anaheim, Azusa, Banning, Colton, and Riverside, California (Southern Cities) and the City of Vernon (Vernon) (collectively, Cities or Petitioners), following negotiations with the California Independent System Operator Corporation (ISO), filed a statement of claim and initiated arbitration against the ISO, pursuant to Section 13.2.2 of ISO Open Access Transmission Tariff (Tariff). The Petitioners claimed, among other things, that the ISO, over which the Commission exercises jurisdiction under the Federal Power Act, improperly allocated certain transmission costs to Southern Cities and to Vernon. The Petitioners contend that the ISO improperly characterized Voltage Support costs as Intra-Zonal Congestion costs, and, on the basis of that characterization, improperly allocated such costs to all Scheduling Coordinators within the relevant ISO Zone. The Petitioners also contend that this resulted in more than \$1.5 million in improper overcharges to the Southern Cities and more than \$350,000 in improper overcharges to Vernon.

3. Following arbitration proceedings, the arbitrator issued an award (Award) on April 15, 2002. The Award denied the Petitioners' claims but did not include findings of fact and conclusions of law. On May 17, 2002, the Petitioners filed a petition asking that the Commission review the Award. On November 25, 2002, the Commission issued an order that granted the petition in part, denied the petition in part, and referred the matter back for findings of fact and conclusions of law by the arbitrator.¹

4. In response to that order, on January 23, 2003, the arbitrator issued a decision that contained findings and conclusions, which found that the ISO took "voltage support actions related to Intra-Zonal Congestion management, and that "Existing Transmission Contract (ETC) holders were not exempt from ISO charges for Intra-Zonal Congestion costs." The arbitrator concluded that the findings do not support the claims of the Southern Cities and Vernon, and that the claims are therefore denied.

5. Relying on Section 13.4 of the Tariff, which provides for appeals to the Commission of an arbitrator's award, the Southern Cities and Vernon have requested that the Commission institute a proceeding for review of the Award. The Petitioners suggest a briefing schedule in which the Southern Cities and Vernon would submit an initial brief, followed by briefs of intervenors supporting the Petitioners' position, of the ISO, and of intervenors supporting the ISO. The Petitioners also request permission to file a reply brief.

Notice, Interventions, Comments and Protests

6. Notice of the petition was published in the Federal Register, 68 Fed. Reg. 11,542 (2003), with motions to intervene or protests due on or before March 29, 2003. The ISO filed a motion to intervene and protest on March 11, 2003. The California Department of Water Resources/State Water Project timely filed a motion to intervene and the California Electricity Oversight Board timely filed a motion to intervene and comments. Southern California Edison Company also filed a motion to intervene and protest.

7. On March 26, 2003, the Petitioners filed an answer to the ISO's protest. On March 31, 2003, the ISO filed a motion in opposition to the California Department of Water Resources/State Water Project's motion to intervene. On April 8, 2003, the ISO filed a motion in opposition to the California Electricity Oversight Board's motion to intervene, and a response to Southern California Edison Company's motion to intervene.

¹ Cities of Anaheim, Azusa, Banning, Colton and Riverside, California, and City of Vernon, California v. California Independent System Operator Corporation, 101 FERC ¶ 61,235 (2002).

The California Department of Water Resources/State Water Project filed an answer to the ISO's opposition to its motion to intervene on April 9, 2003.

8. On April 10, 2003, the ISO filed a motion in opposition to the Petitioner's motion to answer and answer to the ISO's protest. On April 23, 2003, the ISO filed a motion in opposition to the California Department of Water Resources/State Water Project's answer.

Discussion

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2002), each timely, unopposed motion to intervene serves to make the entity that filed it a party to this proceeding. We will grant the opposed motions to intervene of the California Department of Water Resources/State Water Project and the California Electricity Oversight Board, in light of the interests they represent, the absence of any undue prejudice or delay, and the early stage of the proceeding.

10. Section 13.4.1 of the ISO's tariff provides for appeals of an arbitrator's award to the Commission or to a court:

"A party may apply to the FERC or any court of competent jurisdiction 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, without limitation, the FPA, and any FERC regulations and decisions, or state law. Appeals shall, unless otherwise ordered by FERC or the court of competent jurisdiction, conform to the procedural limitations set forth in this Section 13.4.1."

Section 13.4.2 of the ISO's tariff further provides that,

"the parties intend that FERC or the court of competent jurisdiction should afford substantial deference to the factual findings of the arbitrator. No party shall seek to expand the record before the FERC or court of competent jurisdiction beyond that assembled by the arbitrator, except (i) by making reference to legal authority which did not exist at the time of the arbitrator's decision, or (ii) if such party contends the decision was based upon or affected by fraud, collusion, corruption, misconduct or misrepresentation."

11. In their pleadings to date, the parties have provided the record below, along with summaries of their positions. While mindful of the deferential standard of review we are to accord the arbitrator's decision, we recognize that the parties may not have fully

explained their arguments. Accordingly, the Commission here establishes a schedule for the submission of additional pleadings in this proceeding:

- 21 days from the date of issuance of this order, the Cities, as well as intervenors supporting the Cities, may file initial briefs addressing the Award and Cities' appeal of the Award;
- 14 days from the date of filing of initial briefs, the ISO, as well as intervenors supporting the ISO, may submit reply briefs addressing the Award and Cities' appeal of the Award;
- 14 days thereafter, the Cities, as well as intervenors supporting the Cities, may file rebuttal briefs.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.