

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

DCR Transmission, L.L.C.

)

Docket No. ER23-2309-000

**MOTION FOR LEAVE TO INTERVENE OUT OF TIME
OF THE ELECTRICITY TRANSMISSION COMPETITION COALITION**

Pursuant to Rules 212 and 214 of the Federal Energy Regulatory Commission’s (“Commission” or “FERC”) Rules of Practice and Procedure, 18 C.F.R. §§ 385.212 and 385.214, the Electricity Transmission Competition Coalition (“Competition Coalition”) hereby moves to intervene out-of-time in Docket No. ER23-2309-000.

I. BACKGROUND

On November 5, 2021, the California Public Utilities Commission (“CPUC”) issued Decision 21-11-003, granting DCR Transmission, L.L.C. (“DCRT”) a certificate of public convenience and necessity (“CPCN”) to construct the Ten West Link Transmission Line Project, a 125-mile, 500 kilovolt transmission line with a conductor capacity of approximately 3200 megawatts between the Colorado River 500 kilovolt substation, owned by Southern California Edison Company, and Delaney 500 kilovolt substation, owned by Arizona Public Services Company (“Project”).¹ DCRT had been selected as the Approved Project Sponsor for the Project in a competitive transmission process during the California Independent System Operator

¹ “Protest of the California Public Utilities Commission,” *DCR Transmission, L.L.C.*, Docket No. ER23-2309-000 at p. 2 (filed July 21, 2023) (hereinafter “CPUC Protest”).

(“CAISO”) 2013-2014 Transmission Planning Process.² In Decision 21-11-003, the CPUC, per California Public Utilities Code §1005.5, determined that \$389,045,968 was the maximum reasonable and prudent cost for the Project.³

On June 30, 2023, DCRT filed an application in the above-referenced docket requesting acceptance of transmission owner tariff and transmission revenue requirement, a request for waivers, and a request for confidential treatment.⁴ DCRT requested FERC approval of rates associated with the Project.⁵ DCRT explained that its request for a Base Transmission Revenue Requirement is now based on a total Project cost of \$553,261,497.⁶

On July 21, 2023, several parties protested DCRT’s application, including the CPUC, because DCRT’s significant increase of the Project exceeded the previously established cost caps.⁷ Northern California Power Agency; the CPUC; the Cities of Anaheim, California; and the California Department of Water Resources State Water Project also protested. Comments were filed by Pacific Gas & Electric Company; LS Power Grid, LLC; and CAISO.

On or around July 31, 2023, members of the ETCC became aware of DCRT’s Filing and the potential adverse impact on transmission competition in the event the Commission were to grant DCRT’s requests in its application and accept DCRT’s rationale for avoiding DCRT’s prior commitment to adhere to the binding cost containment commitments that CAISO materially relied on in awarding the Project to DCRT and that the CPUC relied on in awarding the CPCN to DCRT.

² See CPUC Protest at 2.

³ CPUC Protest at 3 (citing D.21-11-003, Conclusion of Law 20 at p. 96).

⁴ *DCR Transmission, L.L.C.*, Docket No. ER23-2309-000 (filed June 30, 2023) (hereinafter “DCRT Transmittal”). DCRT subsequently made several supplemental filings in this docket on July 3, 2023.

⁵ DCRT Transmittal at 6.

⁶ DCRT Transmittal at 1.

⁷ CPUC Protest at 4-6.

II. STATEMENT OF INTEREST AND COMMENTS

The Electricity Transmission Competition Coalition (“Competition Coalition”) is a broad-based, nation-wide coalition committed to increasing competition in America’s electricity transmission infrastructure. The Competition Coalition advocates for common-sense policies and solutions that result in competitively priced transmission projects, which reduce energy costs for all ratepayers – from large manufacturers to residential consumers. The Competition Coalition represents a diverse group of approximately 85 companies and organizations from all 50 states, including manufacturing groups, retail electric consumers, state consumer advocates, public power representatives, think tanks, and non-incumbent transmission developers.⁸

The Competition Coalition supports transmission investment driven by the needs of consumers and competitive market outcomes. Competition in transmission planning and construction reduces costs to consumers and results in project construction to meet reliability requirements and market-driven transmission needs. Competition in transmission planning and construction would achieve the Commission’s objective of planning for changes in the resource mix and demand, but at a lower cost than what would be achieved through other means. “It is long-established that the ‘primary aim’ [of the Federal Power Act] is the protection of consumers from excessive rates and charges.”⁹

One or more Competition Coalition members have facilities in the State of California. The Competition Coalition is concerned about how this proceeding could directly impact the rates that its members with facilities in California pay for transmission as a result of permitting

⁸ More information about the Competition Coalition and its members/partners is available here: [Who we are - ETC Coalition \(electricitytransmissioncompetitioncoalition.org\)](https://www.electricitytransmissioncompetitioncoalition.org) (last accessed Aug. 4, 2023).

⁹ *Xcel Energy Services v. FERC*, 815 F.3d 947, 952-53 (D.C. Cir. 2016).

substantial cost increases in the Project beyond the previously established, binding cost cap. Further, granting DCRT's request for a Base Transmission Revenue Requirement based on a total Project of \$553,261,2497 – over 70% higher than the original cost cap – would adversely impact transmission competition and cast a shadow over the important cost containment commitments that developers propose and maintain in a competitive solicitation process.

DCRT advances a position that, if accepted, could eviscerate the importance of making binding cost containment commitments when responding to a competitive solicitation and when being awarded a certificate of public convenience and necessity by the respective state utility/service commission. As highlighted by another competitive developer protesting DCRT's request, DCRT's argument that cost containment commitments have no value because the Commission has ultimate authority over rates filed under Section 205 of the Federal Power Act ("FPA")¹⁰ is contrary to Commission precedent holding that binding contract rate commitments cannot be undone because one of the parties to the contract later wants to get out of a contract that, in its unilateral view, turned out to be a bad deal.¹¹ The Commission must not passively review DCRT's request under Section 205 of the FPA, but must review DCRT's request under the public interest standard or the heightened just and reasonable standard established in the *Mobile-Sierra* doctrine.¹² Here, a binding contract for cost caps for the Project (*i.e.*, the Approved Project Sponsor Agreement) was established between DCRT and the CAISO.¹³ Under

¹⁰ 16 U.S.C. § 824d.

¹¹ See LS Power Grid, LLC Comments at 3 (citing Public Utilities Commission of the State of California v. Sellers of Long Term Contracts to the California Department of Water Resources, 105 FERC ¶ 61,182 (2003)).

¹² *United Gas Pipeline Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332 (1956); *FPC v. Sierra Pac. Power Co.*, 350 U.S. 348 (1956) (*Mobile-Sierra*).

¹³ See CAISO Comments at 1 (explaining that under the Approved Project Sponsor Agreement DCRT is subject to a cost cap of \$258,961,024 for the Project). CAISO urged FERC not to accept DCRT's requested annual Base

the *Mobile-Sierra* doctrine, a freely negotiated contract between parties of equal bargaining power can be expected to result in just and reasonable rates.¹⁴ Any adjustments to the Approved Project Sponsor Agreement to remove or further adjust the binding cost cap in that agreement harms the public interest.

Authorizing DCRT's request will embolden incumbent transmission owners to further engage in efforts to undercut transmission competition to protect their monopolistic footholds, and as result, ensure high electric transmission prices for captive consumers. The Commission must proceed to reject DCRT's request, apply a heightened standard of review when adjudicating that request, and issue relief that is necessary and proper in this proceeding in light of the several protests and concerns raised regarding DCRT's application.

III. MOTION TO INTERVENE OUT-OF-TIME

The Competition Coalition respectfully submits that, pursuant to the Commission's rules governing late-filed motions to intervene in Rule 214, 18 C.F.R. § 385.214,¹⁵ good cause supports granting this motion to intervene out-of-time. The Commission will grant late-filed motions to intervene if the movant has a significant interest in the proceeding, if the proceeding is at an early stage, and if there is not any undue prejudice or delay.¹⁶

Transmission Revenue Requirement and to set this proceeding for hearing and settlement judge procedures. *See id.* at 1-2.

¹⁴ *See Morgan Stanley Capital Group Inc. v. Pub. Util. Dist. No. 1.*, 554 U.S. 527, 530 (2008) (finding that the Commission must "presume that the rate set out in a freely negotiated wholesale-energy contract meets the 'just and reasonable' requirement imposed by law"); *NRG Power Mktg., LLC v. Me. Pub. Utils. Comm'n*, 558 U.S. 165, 167 at n. 4 (2010) (finding that "well-informed wholesale-market participants of approximately equal bargaining power generally can be expected to negotiate just-and-reasonable rates")

¹⁵ As to the grant of a late intervention, Rule 214 allows the Commission to consider whether 1) the movant had good cause for failing to file the motion within the time prescribed; 2) any disruption to the proceeding might result from permitting the intervention; 3) the movant's interest is not adequately represented by other parties to the proceeding; 4) any prejudice would result from granting the late intervention; and 5) the motion conforms to Commission regulations. 18 C.F.R. § 385.214.

¹⁶ *Tilton Energy LLC v. PJM Interconnection, L.L.C.*, 171 FERC ¶ 61,150 at P 13 (2020).

Competition Coalition members only recently became aware of this proceeding and how the outcome of this proceeding could adversely impact the rates consumers pay and the future opportunities for transmission competition both in and outside of CAISO. No other party can adequately represent the Competition Coalition's specific interests and perspective in this proceeding.

The Competition Coalition submits that granting this out-of-time motion to intervene will not disrupt this proceeding. Importantly, the Competition Coalition is only submitting this brief motion to intervene and comments. The Competition Coalition submits that, given the early stage of this proceeding, no party will be prejudiced by the Competition Coalition's participation in this proceeding. The Competition Coalition does not seek to delay the outcome of this proceeding. The Competition Coalition agrees to accept the record as it stands in Docket No. ER23-2309. Accordingly, good cause supports granting this out-of-time motion to intervene.

IV. COMMUNICATIONS

The Competition Coalition requests that all communications and notices regarding this proceeding be provided to:

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V. **CONCLUSION**

WHEREFORE, the Electricity Transmission Competition Coalition respectfully requests that the Commission to grant this motion to intervene out-of-time and consider the comments raised herein when rendering an adjudication in this proceeding.

Respectfully submitted,

/s/ Robert A. Weishaar, Jr.

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*Counsel to the Industrial Energy Consumers of
America and on behalf of the Electricity
Transmission Competition Coalition*

August 4, 2023

CERTIFICATE OF SERVICE

I hereby certify that I have this day served, via first-class mail, electronic transmission or hand-delivery the foregoing upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated this 4th day of August, 2023.

/s/ Kenneth R. Stark
Kenneth R. Stark