

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

ITC Grid Development LLC

Docket No. EL15-86-000

**MOTION TO INTERVENE, ANSWER, AND COMMENTS OF THE  
ELECTRICITY CONSUMERS RESOURCE COUNCIL (“ELCON”)**

Pursuant to Rules 213 and 214 of the Commission’s Regulations (18 C.F.R. §§ 385.211, 385.214), ELCON files this motion to intervene, answer, and comments in support of the Joint Motions, Request for Expedited Action, and Request for Shortened Response Time (the “Motion”) filed in this docket on August 21, 2015. The Motion in turn was filed in response to the Petition for Declaratory Order (the “Petition”) filed on July 28, 2015 by ITC Grid Development LLC (“ITC”).

In the Petition, ITC seeks a Commission ruling: (1) that binding revenue requirement bids selected as the result of Commission-approved, Order No. 1000-compliant, and demonstrably competitive transmission project selection processes will be deemed just and reasonable when filed at the Commission as a stated rate pursuant to Federal Power Act (“FPA”) Section 205; (2) that such binding bids are entitled to protection under the *Mobile-Sierra* standard, and may not subsequently be changed by means of a complaint filed under FPA Section 206 unless required by the public interest; and (3) that in the alternative the Commission should make *Mobile-Sierra* protection available on a project-specific basis as a “policy-based incentive.”

In the Motion, the American Public Power Association (“APPA”), the Kansas Corporation Commission (“KCC”), and the National Rural Electric Cooperative Association (“NRECA”) (collectively, the “Movants”) request that the Commission

grant the following relief: (1) shorten the comment period on the Movants' request to August 24, 2015; (2) issue an expedited order granting the Movants' motion to hold the August 27, 2015 comment date in abeyance pending a ruling on the Movants' Motion to Dismiss Petition Without Prejudice; and (3) dismiss ITC Grid Development, LLC's July 28, 2015 Petition for Declaratory Order without prejudice to allow ITC Grid Development, LLC an opportunity to submit a properly supported Petition for Rulemaking.

ELCON is the national association representing large industrial consumers of electricity. ELCON member companies produce a wide range of products from virtually every segment of the manufacturing community. ELCON members operate hundreds of major facilities and are consumers of electricity in the footprints of all organized markets and other regions throughout the United States, including the Midcontinent ISO ("MISO") and Southwest Power Pool ("SPP"), which are specifically referenced in the Petition. Accordingly, ELCON's members are significant transmission customers and have a strong economic interest in assuring that transmission costs are just and reasonable, and ELCON participated in the Commission's Order No. 1000 proceeding. Therefore, ELCON and our members have interests which may be directly affected by the outcome of this proceeding, and ELCON's participation in this proceeding is in the public interest. For these reasons, ELCON requests that the Commission permit their intervention in this proceeding, as provided by Rule 214.

### **ANSWER AND COMMENTS OF ELCON**

ELCON supports the Motion. ELCON specifically agrees with Movants that the relief requested by ITC should have been submitted in a Petition for Rulemaking under Rule 207(a)(4) rather than in a Petition for Declaratory Order under Rule 207(a)(2). The Petition seeks a new rule that (1) would significantly change the law on the standard of review and burden of proof for Order No. 1000 tariffs, and (2) would have general, nation-wide applicability. This would be a new legislative rule that would "create new law, rights, or duties," not merely an interpretive rule or a general statement of policy.

Accordingly, the Administrative Procedure Act requires notice and comment rulemaking.

As noted by the Movants (Motion at p. 10), the special relief sought by the Petition presents a number of significant issues that should be carefully considered before the Commission takes any action to grant the special relief sought by ITC. Moreover, the Commission has recently recognized that *Mobile-Sierra* protection represents a substantial change that requires a showing of extraordinary circumstances. *El Paso Natural Gas Co., LLC*, Opinion No. 517-A, 152 FERC ¶ 61,039 P 240 (2015). A notice and comment rulemaking proceeding under a normal time schedule would allow for full stakeholder participation and assessment of comments.

It would be particularly inappropriate for the Commission to expedite action on the Petition to accommodate ITC's request for a decision prior to the November 2, 2015 date that its bid is due on a single project. ITC could have submitted the Petition long ago, and the limited evidence in the Petition shows that others have submitted similar bids in Order No. 1000 transmission selection proceedings without the relief that ITC seeks. ITC should not be allowed, by the belated filing of its Petition, to short-change what should be a full, robust notice and comment rulemaking process.

If the Petition is not dismissed before the deadline for responsive filings, ELCON also plans to separately submit a protest and comments strenuously opposing the Petition and urging that the Commission deny it.

**NOTICES AND COMMUNICATIONS**

Notices and communications with regard to these proceedings should be addressed to:

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Respectfully submitted,

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Dated: August 24, 2015

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary of this proceeding.

Dated at Washington, D.C.: August 24, 2015

/s/ W. RICHARD BIDSTRUP  
W. Richard Bidstrup