

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

Oakland Power Company, LLC)

Docket No. ER22-290-001

**OBJECTIONS OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR
CORPORATION TO OAKLAND POWER COMPLIANCE FILING**

On February 22, 2022, Oakland Power Company, LLC (“Oakland”) submitted a compliance filing (“Compliance Filing”) to notify the Commission of the implementation of certain completed Capital Items. Oakland made this filing pursuant to the December 30, 2021 order of the Federal Energy Regulatory Commission (the “Commission”) in this proceeding. In the filing, Oakland also provided an updated Schedule B to its annual 205 filing under its Reliability Must Run Agreement with the California Independent System Operator Corporation (“CAISO”), which reflects Oakland’s recalculation of the Hourly Capital Item Charge and corresponding Hourly Surcharge Penalty Rate to account for the costs of completing the work associated with the covered Capital Items, provided the date on which each completed Capital Item was placed into service and requested a January 1, 2022 effective date for those charges to be reflected in Oakland’s rates. The Commission set March 15, 2022 as the date for responding to the Oakland submission.

The CAISO, which is an intervenor in this proceeding and in Oakland’s 2021 annual Section 205 filing proceeding, FERC Docket No. ER21-292, has concerns about the adequacy of the Compliance Filing and the justification for the claimed cost recovery, which the CAISO describes below. Additionally, Oakland and the CAISO are actively engaged in settlement discussions concerning many of the issues raised by the Compliance Filing. The CAISO therefore

requests that the Commission make any changes in rates that it might approve subject to refund and that it defer action any other action on the Compliance Filing until the parties complete the ongoing settlement discussions.¹ This would be consistent with the Commission’s previous order setting this matter for settlement judge proceedings.²

A. The Oakland Compliance Filing Fails to Adequately Document Costs

Under Article 7 of its RMR Agreement, Oakland is typically required to seek CAISO approval of Capital Items before undertaking the work³ and include estimates of the costs. After receiving CAISO approval for and completing the work on Capital Items, Oakland is required to provide documentation supporting the actual costs.⁴ To date, Oakland has not adequately supported its cost claims, some of which significantly exceed the cost estimates the CAISO received from Oakland before approving the projects.⁵ (The total costs exceed the estimates by approximately 33%.) Additionally, for two of the eight capital projects, Oakland noted in its Compliance Filing that it does not yet have final cost information, and thus it anticipates a further filing with the Commission.

Sections 7.4(c), 7.5(f) and 7.6(f) of the RMR Agreement provide for Alternative Dispute Resolution to determine the reasonableness of the costs when the actual costs exceed the estimates, and the RMR Owner bears the burden of proving the reasonableness of the additional costs. Oakland has not provided any supporting invoices, and it has not invoked the ADR provisions of

¹ In its Compliance Filing, Oakland asserts that it has “tentatively agreed” to characterize the projects in question as Capital Items. While the CAISO believes that is the appropriate treatment under the terms of the RMR Agreement, Oakland’s tentative agreement is presumably conditioned on satisfactory resolution of all issues under discussion in the ongoing settlement talks.

² *Oakland Power Company, LLC*, 177 FERC ¶ 61,226, Ordering Paragraph E (Dec. 30, 2021).

³ There is an exception for unplanned repairs requiring immediate attention. RMR Agreement Section 7.5.

⁴ RMR Agreement, Section 7.5(e) and 7.6(b).

⁵ This is an issue with respect to the Generator Inspections and the Stack Refurbishments for both Units 1 and 3 of the Oakland facility.

the RMR Agreement. Thus, Oakland has not satisfied its burden under the RMR Agreement to justify its costs. The CAISO cannot make reasoned judgments about the reasonableness of the claimed actual costs without the supporting invoices for the work.

The CAISO is hopeful that, if Oakland provides supporting documentation for the costs it has submitted in its Compliance Filing, the Parties will be able to reach settlement on the question of whether the costs are just and reasonable for the work that was done. To date, however, Oakland has not borne its burden of establishing the reasonableness of the costs, and thus Commission approval of recovery of these costs in rates is not warranted at this time.

B. Oakland Is Seeking Cost Recovery in a Manner and for Cost Items Not Authorized Under the RMR Agreement

In its workpapers supporting its amended Schedule B filing, which reflect Oakland's Capital Item treatment for the eight projects covered by the Compliance Filing, Oakland has assumed a method of cost recovery contrary to that reflected in the RMR Agreement. The proposed method of cost recovery involves multiple unresolved points of dispute between the Parties in the ongoing settlement negotiations. Because there is a conflict between Oakland's approach as reflected in its filing and the Commission-approved RMR *pro forma*, even if the capital costs Oakland is claiming were agreed to be reasonable, there is no justification for the Commission to accept the cost recovery methodology Oakland has built into its filing.

Specifically:

i) The Commission-approved RMR *pro forma* provides for ten-year depreciation of Capital Items. Oakland's Compliance Filing is based on a five-year depreciation period. While the Parties may ultimately agree on five years as part of a comprehensive settlement, that has not yet occurred, and Oakland offers no basis for the Commission to accept it.

ii) The RMR Agreement likewise makes no provision for bonus tax depreciation, and Oakland claims a 100% bonus tax depreciation without explaining why it is entitled to such an adjustment. The CAISO understands that there may be a benefit to ratepayers from use of this mechanism, and thus it is willing to entertain such an adjustment as part of a comprehensive settlement, but that is the context in which this issue should be resolved.

iii) Oakland seeks to recover its income tax expense on its RMR Agreement-authorized rate of return of 12.25%. The RMR Agreement makes no provision for recovering that income tax cost. Again, the principle built into the RMR Agreement is that cost recovery is on a pre-tax basis, and thus this cost element appears to be unjust and unreasonable.

iv) Oakland employs straight-line depreciation of the capital base while applying a levelized formula for calculating an annual Capital Item Surcharge for each Schedule L-1 Project, and Oakland does not explain in its filing why this depreciation methodology is warranted here. Historically, RMR Owners have amortized their cost recovery so that the costs to ratepayers remain constant over the life of a Capital Item, and CAISO believes this historic approach is appropriate here. However, the CAISO is willing to consider the alternative depreciation methodology in the context of a comprehensive settlement, given the interdependency among the various components of the Capital Item Surcharge calculation and recovery.

C. Conclusion

As set forth above, Oakland asks the Commission to approve a Compliance Filing despite Oakland's failure to adequately document the costs of the Capital Items in question and its use of a cost recovery methodology that departs from the RMR *pro forma* in four different respects. The CAISO remains hopeful that all of these points of difference between the Parties will be resolved

in the relatively near-term through a comprehensive settlement. In its Compliance Filing, however, Oakland has not provided the Commission any basis for accepting the costs Oakland seeks to incorporate in its RMR rates. In light of the ongoing settlement discussions, the CAISO respectfully requests that the Commission make any order it might issue approving the requested change in rates subject to refund and that, consistent with its order setting this proceeding for settlement judge procedures, it defer any other action on the filing in order to avoid what might prove to be an unnecessary contested hearing over the costs Oakland seeks to recover.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this 15th day of March 2022, caused to be served a copy of the forgoing Objections of the California Independent System Operator Corporation to Oakland Power Compliance Filing upon all parties listed on the official service list compiled by the Secretary of the Federal Energy Regulatory Commission in this proceeding.

/s/Mary Anne Sullivan
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