

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

**California Independent System) Docket No. ER21-2064-000
Operator Corporation)**

**MOTION TO INTERVENE, MOTION FOR LEAVE TO ANSWER,
AND ANSWER OF THE
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION**

The California Independent System Operator Corporation (“CAISO”)¹ submits this motion to intervene, motion for leave to answer, and answer to the protest filed by CXA La Paloma, LLC (“La Paloma”)² on the Pacific Gas and Electric Company’s (“PG&E”) Notice of Termination in this proceeding. The Commission should disregard La Paloma’s protest as untimely and inaccurate.

I. Answer

La Paloma objects to the termination of its original Generator Interconnection Agreement (“GIA”) because the CAISO has indicated the replacement GIA the parties are currently negotiating may reconcile the interconnection service capacity La Paloma originally requested, 1,160 MW, with

¹ Capitalized terms not otherwise defined herein have the meanings set forth in appendix A to the CAISO tariff. References herein to specific tariff sections are references to sections of the CAISO tariff.

² The CAISO submits this motion for leave to answer and answer pursuant to Rules 212 and 213 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. §§ 385.212, 385.213. The CAISO respectfully moves for waiver of Rule 213(a)(2), 18 C.F.R. § 385.213(a)(2), to permit it to answer La Paloma’s protest. Good cause for this waiver exists here because the answer will aid the Commission in understanding the issues in the proceeding, provide additional information to assist the Commission in the decision-making process, and help to ensure a complete and accurate record in the proceeding. *See, e.g., Equitrans, L.P.*, 134 FERC ¶ 61,250 at P 6 (2011); *Cal. Indep. Sys. Operator Corp.*, 132 FERC ¶ 61,023 at P 16 (2010); *Xcel Energy Servs., Inc.*, 124 FERC ¶ 61,011 at P 20 (2008).

the generating capacity La Paloma actually constructed, which may be a capacity value. La Paloma argues that the “right to interconnection service at the quantity contracted for in the interconnection agreement is to last for as long as the generator remains in operation and does not default on its obligations under the interconnection agreement.”³ La Paloma cites to Order Nos. 2003 and 845 and other Commission precedent to support this argument.⁴ However, La Paloma’s argument is both premature and inaccurate. The CAISO, La Paloma, and PG&E are still negotiating the replacement GIA, including the correct interconnection service capacity. If a dispute remains regarding the replacement GIA, then an unexecuted GIA proceeding is the proper forum to resolve it; not this proceeding.⁵ La Paloma indicates it protested the termination proceeding to avoid an unexecuted GIA proceeding, but this intent is misplaced. La Paloma should not force the parties to litigate in the incorrect context simply because La Paloma does not want to litigate in the correct context. Replacement GIA issues should be presented to the Commission only upon the parties completing their investigation and negotiation, and the parties are still engaged in both.

More critically, La Paloma misunderstands the Commission precedent cited in its protest. La Paloma argues that it should retain the interconnection

³ La Paloma Protest at 4.

⁴ *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. 31,146 at PP 21-24 (2003), *order on reh’g*, Order No. 2003-A, FERC Stats. & Regs. 31,160 (2004), *order on reh’g*, Order No. 2003-B, FERC Stats.& Regs. 31,171 (2004), *order on reh’g*, Order No. 2003-C, FERC Stats. & Regs. 131,190 (2005), *affirmed sub nom. Nat’l Ass’n of Regulatory Util. Com’rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007).

⁵ See Section 13.2 of Appendix DD to the CAISO tariff; Order No. 2003 at P 233 *et seq.*

service capacity it originally “contracted for.”⁶ Although frequently that is the case, the Commission has been clear that there are exceptions to this rule. Commission precedent holds that the interconnection capacity in a GIA does not confer a property right, and that where an interconnection customer *builds* less generating facility capacity than that for which it requested interconnection service, it does not retain that interconnection capacity indefinitely.⁷ In these cases, transmission providers like the CAISO may subsequently remove interconnection service capacity for generators that did not construct their requested capacity.⁸ This practice is critical in the CAISO because generation developers generally finance network upgrades, but ratepayers ultimately pay for them.⁹ The Commission reiterated this holding in Order No. 845, stating, “where the original interconnection customer, for example, reduces the generating facility capacity of its facility from what was originally proposed for interconnection, it would not retain rights indefinitely to any excess interconnection capacity thus created.”¹⁰

Under this precedent, the CAISO’s established practice in negotiating replacement GIAs includes investigating what the generating facility’s interconnection service capacity should be. This investigation looks at the generating facility’s average and peak operating levels over its history, the

⁶ La Paloma Protest at 4.

⁷ *CalWind Resources Inc. v. California Independent System Operator Corp.*, 146 FERC ¶ 61,121, at PP 33 *et seq.* (2014).

⁸ *Id.*

⁹ See Article 11.4.1 of Appendix EE to the CAISO tariff.

¹⁰ Order No. 845 at P 493 (the Commission reiterated this holding in Order No. 845-A at P 164).

original interconnection studies, and can even include PMax testing and site visits. In some cases, it is readily apparent the generating facility owner did not construct as much generating capacity as it originally requested, and the parties agree that the replacement GIA should reflect what was actually constructed. If they cannot agree, the parties file the replacement GIA unexecuted to put all unresolved issues before the Commission.

The parties are still negotiating the replacement GIA for La Paloma, and hope to resolve all issues. If they cannot agree upon the correct interconnection service capacity based upon the generating capacity La Paloma actually constructed and uses, they will file the replacement GIA unexecuted. Until either happens, it is premature to resolve these issues before the Commission.

II. Motion to Intervene Out of Time

The CAISO will be a party to the replacement GIA, and La Paloma's protest generally is directed at the CAISO. As such, the CAISO has a substantial and direct interest in this proceeding. Because no other party can adequately represent the CAISO's interests in the proceeding, the CAISO's intervention is in the public interest and should be granted. The CAISO requests waiver to the extent this motion to intervene is out of time.¹¹

¹¹ The CAISO did not originally intervene in the termination proceeding because typically such proceedings are perfunctory.

III. Conclusion

For the foregoing reasons, the Commission should disregard La Paloma's protest.

Respectfully submitted,

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Dated: July 7, 2021

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon all of the parties listed on the official service list for the above-referenced proceeding, pursuant to the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated at Washington, DC this 7th day of July, 2021.

/s/ Jacqueline Meredith
Jacqueline Meredith