UNITED STATES OF AMERICA BEFORE THE FEDERAL ENERGY REGULATORY COMMISSION

)

)

Pacific Gas & Electric – La Paloma Unexecuted LGIA Docket No. ER21-2592-____

RESPONSE OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION

The California Independent System Operator Corporation ("CAISO")¹ submits this response pursuant to the Federal Energy Regulatory Commission's ("Commission") December 15, 2022 Order Lifting Abeyance and Establishing Paper Hearing Briefing Schedule ("December 15 Order"). Because CXA La Paloma, LLC ("La Paloma")² did not file a brief or support its allegations with any credible evidence, the Commission should order the unexecuted generating interconnection agreement ("Replacement GIA") approved with the appropriate interconnection service capacity of 1,062 MW.

La Paloma did not file a brief in this proceeding. The Commission's December 15 Order expressly directs La Paloma to provide evidence supporting two of its specific allegations: one pertaining to La Paloma's claimed capacity, and one pertaining to La Paloma's requested compensation.³ These two questions are the crux of La Paloma's protest to the Replacement GIA, and without any evidence La Paloma cannot credibly make its allegations. In contrast, the CAISO provided ample evidence demonstrating the justness and reasonableness of the Replacement GIA on the basis of La Paloma's own data,

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 La Paloma refers to CXA La Paloma, LLC, its predecessors in interest, and its representatives.

³ See December 15 Order, p. 4 and 5, question nos. 4 and 5.

and the CAISO's compliance with its tariff.⁴ Based on clear Commission precedent, the CAISO's tariff provisions, and good utility practice, the appropriate interconnection service capacity for the Replacement GIA is 1,062 MW. La Paloma has presented no evidence except for a single attachment to its original protest: an affidavit by an expert who has elsewhere contradicted his own attestation.⁵ Based on the evidence, the Commission must rule in favor of the CAISO's offered interconnection service capacity of 1,062 MW.

The December 15 Order also expressly states that "No answers or additional briefs will be permitted."⁶ The Order contemplates that all parties present their evidence in their initial briefs and all parties have the same opportunity to respond. To the extent La Paloma seeks to provide new evidence in a response, the Commission's schedule expressly prohibits the CAISO from responding. The Commission cannot accept any new evidence or arguments that La Paloma may put forth in its response because it failed to include them in an initial brief. This is consistent with the basic tenets of administrative procedure, reasoned decisionmaking, and Commission precedent to maintain equity within the paper hearing process. In several cases the Commission has prohibited reply briefs when a party failed to file an initial brief.⁷ Commission Administrative Law Judges also have prohibited parties from raising new arguments in reply.⁸

⁴ The CAISO's tariff expressly addresses conversions from two-party to three-party GIA, including the conversion that gave rise to this dispute. The CAISO submitted eighteen attachments to its initial brief demonstrating that it relied on La Paloma's own representations of its capacity in determining the appropriate interconnection service capacity under those tariff provisions.

⁵ See Initial Brief of the California Indep. Sys. Operator Corp., Docket No. ER21-2592 (filed Feb. 13, 2023) at 28.

⁶ *Id.* at 5.

⁷ See, for example, El Paso Natural Gas Co., 46 FERC ¶ 63,029 at 65,104 (1989) (ignoring reply brief of party who did not file initial brief because all parties wishing to address issues must set forth their position in an initial brief so that other participants could respond in their reply briefs).

⁸ See Confederated Salish and Kootenai Tribes and Energy Keepers Incorporated, 156 FERC § 63,036 (2016) (noting that submitting new arguments and new evidence on reply "deprives opposing participants of any opportunity to respond, thus depriving them due

Instead of filing an initial brief in this proceeding, La Paloma filed a separate complaint against the CAISO, making the same baseless claim that it constructed a generating facility larger than it has ever represented, but again provided no credible evidence.⁹ La Paloma then filed a motion to consolidate the two proceedings, disregarding the hearing schedule set in this proceeding by attempting to re-litigate the issue of material fact already at issue in this paper hearing. The Commission should stop such procedural gamesmanship and issue an order in this proceeding accepting the Replacement GIA as proposed.

The CAISO respectfully requests the Commission approve the Replacement GIA with a capacity of 1,062 MW, consistent with the compelling evidence submitted by the CAISO.

<u>/s/ Sarah E. Kozal</u>

Roger E. Collanton General Counsel Anthony Ivancovich Deputy General Counsel William H. Weaver Assistant General Counsel Sarah E. Kozal Counsel California Independent System Operator Corporation 250 Outcropping Way Folsom, CA 95630 (916) 351-4400 skozal@caiso.com

Dated: March 15, 2023

Counsel for the California Independent System Operator

process."); *see also Texas Eastern Transmission Corp.*, 39 FERC ¶ 63,036 at 65,204 (1987) (motion to strike granted because "to hold otherwise would deny [the] opponents a chance to... refute late evidence....").

⁹ *CXA La Paloma, LLC v. Cal. Indep. Sys. Op. Corp.*, Complaint of CXA La Paloma, LLC, Docket No. EL23-24- 000, at 3 (filed Jan. 23, 2023). La Paloma only provided the affidavit mentioned above, which the CAISO has rebutted.

CERTIFICATE OF SERVICE

I certify that I have served the foregoing document upon the parties listed on the official service list in the captioned proceedings, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated at Folsom, California this 15th day of March, 2023.

<u>/s/ Jacqueline Meredith</u> Jacqueline Meredith An employee of the California ISO