

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

Greenleaf Energy Unit 2, LLC ) Docket No. ER20-2787-000

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

Pursuant to Rules 212 and 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“FERC” or “Commission”), 18 C.F.R. §§ 385.212 and 385.213, the California Independent System Operator Corporation (“CAISO”) hereby submits this motion for leave to answer and answer to the Comments of Pacific Gas and Electric Company (“PG&E”) filed in this docket on November 6, 2020 ("Comments").

**I. BACKGROUND**

On August 31, 2020, Greenleaf Energy Unit 2, LLC (“Greenleaf”) filed a Notice of Termination pursuant to Section 2.2(b)(vi) of the Reliability Must Run Agreement filed in Docket No. ER20-1947 between Greenleaf and the CAISO (“Greenleaf RMR Agreement”), requesting that the Notice of Termination take effect on October 30, 2020. The CAISO agreed to the termination provision in the course of its negotiations with Greenleaf concerning the terms under which Greenleaf would provide critical reliability services in the Drum-Rio Oso sub-area of the Sierra local reliability area, when Greenleaf had no obligation to provide reliability service.

The CAISO filed a motion to intervene and comments on September 16, 2020, recognizing Greenleaf’s right to exercise the termination provision, but expressing

hope the parties would be able to settle the ongoing proceeding in Docket No. ER20-1947 regarding the justness and reasonableness of the Greenleaf RMR Agreement in order to avoid termination. On September 21, both PG&E and the California Public Utilities Commission ("CPUC") filed pleadings asking the Commission to reject the notice of termination, and on October 1, PG&E and the CPUC filed a joint request that the Commission consolidate this docket with ER19-1947-000.

Commission Staff issued a letter on October 16, informing Greenleaf that its filing was deficient and requiring the submission of additional documents related to the termination request. Greenleaf submitted the requested documents on October 16 and October 19. PG&E filed its Comments in response to the Greenleaf deficiency notice responses.

## **II. MOTION FOR LEAVE TO ANSWER**

The CAISO requests waiver of Rule 213, 18 C.F.R. § 385.213(a)(2), which prohibits answers to answers. The Commission routinely allows such answers when they serve to complete the record, clarify the issues in dispute, or otherwise assist the Commission in the decision-making process.<sup>1</sup> Because PG&E's Comments raise specific issues regarding the CAISO's authority under its Tariff, its negotiation of the termination provision with Greenleaf, and the role and responsibility of CAISO to ensure reliable operation of the grid, this response allows the CAISO to respond directly to those arguments and to place them in relevant context. This filing

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<sup>1</sup> See, e.g., *Citizens Energy Corp.*, 157 FERC ¶ 61,150, at P 10 (2016) (accepting answers to comments and answer "because they have provided information that assisted us in our decision making process"); *HORUS Central Valley Solar 1, LLC v. California Independent System Operator Corp.*, 157 FERC ¶61,085, at P 29 (2016).

supplements the record to reply to issues raised by PG&E and thus assists the Commission in its deliberative process.

### **III. ANSWER**

PG&E argues in its Comments that the CAISO's negotiations with Greenleaf that led to the filing of the Greenleaf RMR Agreement resulted in: "(1) material, unjustifiable, and unreasonable changes in the long-standing and careful balance of rights and responsibilities under CAISO Tariff's RMR provisions, (2) proposed terms, conditions, and rates in the RMR Service Agreement filed in Docket No. ER20-1947-000 that are unjust and unreasonable . . . , and (3) a potential violation of the CAISO's obligation under Section 345 of the California Public Utilities Code to ensure reliable operation of the grid."<sup>2</sup>

This argument reflects a fundamental misunderstanding of the circumstances underlying the negotiations regarding the Greenleaf RMR Agreement and a mischaracterization of the efforts the CAISO engaged in to fulfill its statutory obligation to ensure reliable operations. The CAISO takes that obligation very seriously and worked diligently to convince Greenleaf to provide needed RMR service.

As explained in the CAISO's prior filings in this docket and in ER20-1947-000, Greenleaf is not a party to a Participating Generator Agreement with the CAISO, is not obligated to comply with the CAISO Tariff, and cannot be forced to provide RMR service. The CAISO has no mechanism to require an entity like Greenleaf, a

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<sup>2</sup> PG&E Comments at 10.

QF that has reached the end of its PURPA contract and had never signed a Participating Generator Agreement, to provide reliability services under an RMR agreement. Rather, the CAISO had to reach a mutually acceptable agreement with Greenleaf because no load serving entity had entered into a resource adequacy agreement with Greenleaf even though public CAISO studies indicated the resource was needed for reliability.

Specifically, the CAISO determined after study that Greenleaf was required to meet the 2020 local capacity requirement in the Drum-Rio Oso sub-area of the Sierra local reliability area because, for many years, PG&E had deferred the upgrade that would eliminate the sub-area requirement; no load serving entity had secured Greenleaf for reliability service; and there was no available alternative to mitigate the need for this resource.<sup>3</sup> Accordingly, the CAISO negotiated with Greenleaf to arrive at terms of service that would ensure Greenleaf would provide the RMR service necessary to maintain reliability. Greenleaf and the CAISO engaged in extended negotiations, and although the parties could not reach agreement on all elements of Greenleaf's cost of service, they agreed on certain critical terms of the Greenleaf RMR Agreement that Greenleaf filed unexecuted in Docket No. ER20-1947-000.

Among the terms to which the CAISO and Greenleaf agreed was Section 2.2(b)(vi), which allows Greenleaf to terminate the agreement on sixty days' notice if Greenleaf determined it would be uneconomical, impractical, or illegal to continue operation after FERC issued an order on the Greenleaf RMR Agreement filing. Had the parties not reached agreement on this termination provision, the Greenleaf facility

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<sup>3</sup> See Attachment F to Greenleaf's June 1 filing in Docket ER20-1947-000 (March 18, 2020 Memorandum to CAISO Board of Governors).

would have ceased operation, and the CAISO would have had to find other ways to meet the local reliability needs Drum-Rio Oso sub-area of the Sierra local reliability area, which in the near-term would almost certainly involve load shedding.

This termination provision, a necessary condition to obtaining the reliability services from Greenleaf in 2020, was narrowly crafted to give Greenleaf a one-time right to withdraw from its conditional agreement to provide reliability services to the California grid.<sup>4</sup> It is noteworthy that, in consideration for this termination right, Greenleaf agreed to provide reliability service for the critical high demand months of the year without knowing what its final compensation would be. Section 2.2(b)(vi) also included the following sentence: "At the end of that notice period and for the remainder of 2020 and 2021, CAISO will not expect or pay for performance by Owner under this Agreement or under any other reliability services or other agreement signed contemporaneously with this Agreement." This CAISO commitment, to allow Greenleaf to terminate the agreement and to forego seeking reliability services from Greenleaf for the remainder of 2020 and 2021, was both necessary and reasonable as a means to obtain Greenleaf's agreement to provide reliability services for the critical summer period in 2020. Agreeing to this provision and having Greenleaf available greatly contributed to local and system reliability in the affected area during the record-setting heat and load conditions of this summer.

The CAISO's obligation under Section 345 of the California Public Utilities Code, is to operate the "transmission grid consistent with planning and operating

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<sup>4</sup> The CAISO would protest inclusion of such a termination provision if the resource owner was, in contrast to Greenleaf, contractually bound to the CAISO Tariff and the attendant obligation to provide RMR service.

reserve criteria . . . .” The CAISO meets this obligation through planning studies to make sure it operates the grid reliably. This obligation does not require the CAISO to contract with resources. Load shedding is another reliability tool if the CAISO has insufficient resources. The CPUC has assumed the obligation to ensure the CAISO had the resources it needs to keep power flowing. However, when that fails, the CAISO has the right under its Tariff to contract for the resources it needs to meet operating criteria as part of its resource adequacy backstop authority.

The CAISO's willingness to be flexible and agree to a nonstandard termination provision reflected the CAISO's dedication to keeping the lights on using all of its available tools. PG&E's argument to the contrary is unfounded and ignores the additional load shedding that could have occurred this past summer had Greenleaf been unavailable. PG&E's criticisms of the CAISO for "attempt[ing] to shoehorn *voluntary* procurement of previously non-market participating resources, like the Greenleaf 2 Unit, into the *mandatory* Section 41 RMR framework" ignore this critical point that the alternative would have been load shedding. Moreover, allowing Greenleaf the option to terminate the agreement if FERC did not accept its proposed rate was a reasonable compromise, given Greenleaf's agreement to provide service over the critical summer months without assurance of full recovery of its filed rates.

By its terms, the Greenleaf RMR Agreement terminates at the end of 2020, whether the Commission accepts the Notice of Termination or not. The CAISO agreed, as a required condition to obtaining Greenleaf's consent to provide RMR services in 2020, that it would not direct or ask Greenleaf to provide such services into 2021 if Greenleaf exercised its termination right. As Greenleaf's response to the

deficiency notice indicates, the CAISO has notified Greenleaf of its intent to re-designate the Greenleaf facility as an RMR resource for 2021, but only if the parties reach settlement in Docket No. ER20-1947-000.<sup>5</sup> This is consistent with the CAISO's agreement to accept the termination provision in the Greenleaf RMR Agreement. As such, if the parties can reach settlement in Docket No. ER20-1947-000, the CAISO looks forward to having Greenleaf remain available to meet affected local reliability needs. However, if no such settlement can be reached, the CAISO has already agreed it will not expect or pay for reliability services from Greenleaf for 2021.

PG&E's suggestion that the CAISO should renege on its commitment to not designate the Greenleaf facility as an RMR resource for 2021 could ultimately harm reliability. If generators cannot trust the CAISO to uphold its commitments in negotiated contracts, it will make it more difficult for the CAISO to obtain commitments for such resources in the future.

Thus, at issue in this docket is the question of whether Greenleaf can terminate the Greenleaf RMR Agreement a month or less sooner than the agreement would otherwise terminate by its terms. Absent a settlement, the Greenleaf RMR Agreement will terminate either: (1) on the date authorized by the Commission if it accepts the Notice of Termination, or (2) on December 31, 2020 if the Commission does not accept the Notice of Termination.<sup>6</sup> In either case, Greenleaf will no longer

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<sup>5</sup> PG&E's characterization of the September 29 letter to Greenleaf as an "unconditional" re-designation of Greenleaf facility as an RMR resource is not accurate. The CAISO specifically explained in its October 14 letter that the re-designation was conditioned on a settlement resolving Docket No. ER20-1947-000, but, more importantly, the CAISO had already agreed, in Section 2.2(b)(vi) to the Greenleaf RMR Agreement, that it would not re-designate the facility as an RMR resource for 2021 if Greenleaf exercised its termination right.

<sup>6</sup> Prior notice to the Commission for the termination of the Greenleaf RMR Agreement "by its own terms" is not required. See 18 C.F.R. § 35.15(b)(2) (2019).

provide RMR service in 2021, absent a settlement in Docket No. ER20-1947-000. Because the agreement may be terminated regardless of the outcome of this docket, there is no compelling reason to set this matter for hearing or to consolidate it with the proceeding in Docket No. ER20-1947-000.

In addition to its arguments against the termination provision that was the linchpin to obtaining reliability services from Greenleaf in 2020, PG&E argues the CAISO exceeded its authority in several other respects: (i) acting contrary to Section 41 of its Tariff by turning a mandatory RMR provision into a voluntary one; (ii) modifying for Greenleaf's benefit the terms of its standard Participating Generator Agreement ("PGA"), Large Generator Interconnection Agreement ("LGIA") and Metering Service Agreement ("MSA") without FERC approval; and (iii) granting Greenleaf an exemption from the RAIM penalty provisions of the Tariff.<sup>7</sup> PG&E is mistaken in each of these claims.

As described above, the non-standard termination provision included as Section 2.2(b)(vi) of the filed RMR Agreement reflects that the mandatory RMR provisions in Section 41 of the Tariff had no applicability because Greenleaf was not a Participating Generator under the Tariff. Moreover, the RMR agreement as filed is the rate-schedule of the RMR owner, which distinguishes the RMR Agreement from the CAISO's other pro forma agreements. Over the years, RMR owners have included nonconforming provisions in their RMR agreements based on individual

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<sup>7</sup> PG&E also complains that the CAISO consented to a Greenleaf request for an extension of time to make a Section 205 filing for 2021. Over the years, the CAISO has probably agreed to hundreds of such unremarkable requests for extensions of time. The case for the extension was particularly compelling here because the filing will not be required if the parties reach a multi-year settlement, as the CAISO hopes, or if the RMR Agreement simply terminates because of the failure the reach a settlement.

circumstances. The RMR owner, of course, has the burden under section 205 of the Federal Power Act of demonstrating the justness and reasonableness of any non-conforming terms. The pro forma agreements (the PGA, LGIA and MSA) Greenleaf signed contain only the standard terms; there was no revision to them. Section 2.2(b)(vi) of the RMR Agreement explained the circumstances under which those standard terms would not apply, *i.e.*, if the RMR Agreement terminated. The terms of the pro forma RMR Agreement provide that the RMR Agreement controls in case of any inconsistency with the Tariff.

Finally, the CAISO acknowledged the RAAIM penalty that would otherwise apply to an RMR generator that failed to make itself available when called, would not apply before the effective date of the RMR Agreement and before a required Scheduling Coordinator was in place. This was not an exemption from the penalty, but a mere common sense recognition of when Greenleaf would become subject to the RAAIM penalty, *i.e.*, only after it actually began to perform under the RMR Agreement. In fact, this would have been true even if it had not been memorialized in writing.

The sum and substance of the non-standard elements of Greenleaf's and the CAISO's understanding are fully reflected in Section 2.2(b)(vi): Greenleaf is entitled to terminate the RMR Agreement if a settlement on rates is not reached, and if it does so, the CAISO will not call on Greenleaf thereafter through 2021 under the RMR Agreement or any of the collateral agreements Greenleaf was required to sign in order to provide reliability service to the CAISO grid – putting Greenleaf back in the

position it would have been in had it never agreed to provide RMR service.<sup>8</sup> Because of the controversy this provision has generated, Greenleaf has requested confirmation of the shared understanding of the parties with respect to this provision, and the CAISO has provided that confirmation. None of this is beyond the scope of the CAISO's discretion and authority under its Tariff.

#### **IV. CONCLUSION**

For the foregoing reasons and the reasons set forth in its September 16, 2020 Motion to Intervene and Comments, the CAISO requests that the Commission accept this answer, and accept Greenleaf's Notice of Termination.

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<sup>8</sup> Once the collateral agreements, most notably the Participating Generator Agreement, are no longer in effect, Greenleaf once again has no obligation to provide the CAISO a notice of retirement, because it would again be outside the CAISO Tariff. The absence of a notice of retirement is still another objection PG&E raised in its filing.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that I have this 19th day of November, 2020 caused to be served a copy of the forgoing Motion for Leave to Answer and Answer upon all parties listed on the official service list compiled by the Secretary of the Federal Energy Regulatory Commission in this proceeding.

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