

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

Gilroy Energy Center, LLC

)

Docket No. ER18-230-000

**MOTION TO INTERVENE AND LIMITED PROTEST OF THE
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION**

Pursuant to Rules 211, 212, and 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“FERC” or “Commission”), 18 C.F.R. §§ 385.211, 385.212, 385.214, the California Independent System Operator Corporation (“CAISO”) submits in the captioned proceeding this motion to intervene and limited protest for the reasons discussed herein. The CAISO does not ask the Commission to reject or dismiss the filing, but rather asks that the Commission to subject to dispute resolution procedures before a settlement judge and establish a refund date at the proposed effective date of January 1, 2018.¹

I. MOTION TO INTERVENE

The CAISO is a non-profit public benefit corporation organized under the laws of the State of California. The CAISO is the balancing authority responsible for the reliable operation of the electric grid comprising the transmission systems of a number of utilities. As part of its mandate to operate the electric grid, the CAISO’s Tariff contains provisions that give it the authority to designate units as necessary for reliability purposes and enter into reliability must-run agreements. Therefore,

¹ In asking for “dispute resolution” before a settlement judge, CAISO is requesting that the Commission appoint an Administrative Law Judge to conduct non-public settlement proceedings under FERC Rules of Practice and Procedure 603, 604 and 606. 18 C.F.R. §§ 385.603, 385.604, 385.606.

because the CAISO has an interest in this proceeding that cannot be represented adequately by any other party, the CAISO requests that the Commission permit it to intervene in this proceeding.

The CAISO requests that communications and notices concerning this motion and these proceedings be provided to²:

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II. BACKGROUND AND DESCRIPTION OF PROCEEDING

The CAISO is responsible for the reliability of the CAISO controlled grid, which includes the transmission facilities of a number of utilities, including Pacific Gas and Electric (“PG&E”). One tool that the CAISO has to ensure reliability is reliability must-run agreements (“RMR Agreements”), the *pro forma* version of which arose out of two multi-lateral settlement agreements entered into by a diversity of CAISO market participants.³ The RMR Agreements provide a cost-based call option to the CAISO to exercise when the resource is needed for reliability and “must

² These individuals are designated to receive service pursuant to Rule 203(b)(3) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.203(b)(3).

³ See *Pacific Gas & Electric Co.*, 93 FERC ¶ 61,089 (2000) (order accepting settlement agreement).

run.” The cost-based call option mitigates the ability of the resource to exercise market power.

There are two options available to the RMR owner to operate the resource – Condition 1 and Condition 2.⁴ Under Condition 1, the resource operates as a market resource and the fixed costs paid under the RMR Agreement are net of anticipated market revenues. Accordingly, the resource is expected to participate in the market and may even have a bilateral capacity contract. When this occurs, fixed cost contribution under the RMR Agreement can be as low as zero. Under Condition 2, the resource is available to the CAISO only when the CAISO needs the resource for local reliability or to mitigate non-competitive congestion. However, when this occurs, the RMR owner must make all of its capacity available in the CAISO market using cost-based bids for the duration of the RMR call. The RMR resource does not otherwise participate in the market (although the CAISO may also issue an exceptional dispatch for energy pursuant to the CAISO Tariff under certain circumstances when needed and no other resources are available). Under Condition 2, the RMR Agreement provides full cost-of-service recovery, and the RMR owner is not receiving fixed cost contribution from any other source.

In the early 2000’s, when the settlements were reached, the use of RMR Agreements was relatively extensive. Over the years, two developments reduced the need for RMR Agreements. First, utilities developed infrastructure improvements, reducing the need for RMR Agreements. Second, the California Public Utilities Commission (“CPUC”) and other local regulatory authorities developed Resource

⁴ Capitalized terms not defined herein have the meaning contained in the CAISO Tariff.

Adequacy (“RA”) programs to make resources available to the CAISO subject to general requirements to bid into the CAISO Markets. If resources for local reliability were available under RA programs, the CAISO did not generally need the resource to be under an RMR Agreement.

In parallel, the CAISO developed an additional backstop procurement tool – the Capacity Procurement Mechanism (“CPM”). This is a tariff based mechanism under which the CAISO can backstop any RA shortfall or offer to a resource that the CAISO has exceptionally dispatched. There is also a risk of retirement CPM. However, CPM is not something the CAISO can impose on a resource owner. If a resource is needed for reliability and not procured under the RA program and CPM is not viable (either because it is not available under the specific circumstances or the resource owner has indicated that it would not accept a CPM offer, or has rejected a CPM offer), the RMR Agreement is the only tool to ensure the CAISO has the resources it needs to reliably operate the grid.

On November 2, 2017, Gilroy Energy Center, LLC (“Gilroy”) submitted, pursuant to Section 205 of the Federal Power Act,⁵ an unexecuted RMR Agreement and accompanying rate schedules for the Yuba City Energy Center (“Yuba City”) and Feather River Energy Center (“Feather River”). The filing was necessary because the CAISO Board of Governors designated Yuba City and Feather River as RMR Units for 2018 on March 15, 2017.⁶ In reaching that decision, the CAISO followed its procedures outlined within its Tariff which involved conducting studies to confirm

⁵ 16 U.S.C. §§ 824d and 824e.

⁶ See *Gilroy Energy Center, LLC*, Gilroy RMR Agreement Filing, Attachment F, Docket No. ER18-230-000 (filed November 2, 2017) (citing General Session Minutes, CAISO Board of Governors, March 15, 2017).

whether the absence of the Yuba City and Feather River units would create unacceptable reliability impacts. The CAISO found that Yuba City and Feather River are required for the reliable operation of the transmission system, and that the CAISO's reliability needs could not be addressed with other alternatives available for the 2018 calendar year.

After the designation of Yuba City and Feather River as RMR Units, the CAISO staff and Gilroy engaged in negotiations on the terms of the RMR Agreement pursuant to the CAISO Tariff. However, the CAISO did not and would not consider executing an RMR Agreement prior to the completion of the load serving entity's final RA showings and a demonstration that Yuba City and Feather River were not included in a supply plan, as discussed in further detail below. On October 31, 2017, RA plans were submitted to the CAISO, and Yuba City and Feather River were not included in any RA supply plans.

The CAISO and Gilroy were unable to reach agreement on all terms of the RMR Agreement, but the CAISO did not object to Gilroy's submission of its unexecuted RMR Agreement under Section 41.2 of the CAISO Tariff.

The Commission issued a Combined Notice of Filings setting November 24, 2017 as the deadline for interventions and comments in this proceeding.

III. PROTEST

The CAISO supports Gilroy's right to file the unexecuted RMR Agreement and supports some of the aspects of the filing while believing that others need additional scrutiny, which will be discussed in greater detail below. Because there has been some controversy about the RMR designation process for the Gilroy units,

the CAISO also believes that it is important to provide additional background on how it carries out its responsibility to ensure the reliable operation of the transmission grid.

The CAISO Tariff outlines the following programs: RA under Section 40, CPM under Section 43 and RMR under Section 41. RA is a planning and procurement process to ensure that sufficient capacity exists and is under contract so that load serving entities (“LSEs”) can serve their load and the CAISO can meet its operational needs and maintain reliability. The RA program establishes rules that govern, *inter alia*, the planning reserve margin, standardized load forecasts, rules for determining the amount of capacity that a resource can be used for to meet the requirements, and a review process for procurement showings. The RA program requires Scheduling Coordinators to submit a year-ahead forward showing and month-ahead showings of the resources that each LSE has procured to demonstrate that each LSE has acquired sufficient capacity to meet its requirements. This program relies on voluntary contracting between LSEs and generators. Gilroy advised the CAISO that, based on its preliminary investigations, it would not receive any offers for an RA contract, and that proved to be true.

CPM and RMR are other tools the CAISO has to maintain grid reliability and operations. The CPM is a program whereby the CAISO procures backstop capacity by compensating such capacity through a competitive solicitation practice. The program enables the CAISO to maintain grid reliability in instances where LSEs fail to meet RA requirements, where RA resources are insufficient to meet local reliability constraints, or when a significant event necessitates procurement. Participation in this process is voluntary; however, only non-RA capacity is eligible

to participate in the CPM program. Gilroy informed the CAISO that it was not willing to pursue CPM designation for the units because the program would not provide assurance that Gilroy would be able to recover its costs.⁷

Finally, RMR provides tariff authority to retain resources that are necessary to the reliability of the grid, and it is not voluntary. If the CAISO determines that a resource is needed to maintain reliability and designates it as an RMR Unit, the Unit is obligated to provide the service.⁸

While some have expressed concerns about the RMR designation process, there is no dispute as to the need for Yuba City and Feather River for reliability. Based on the CAISO's studies, Yuba City is required to meet local capacity requirements in the Pease sub-area. The sub-area local capacity requirement in the area was determined to be 100 MW and there are only 82 MW of other resources in the sub-area, resulting in a deficiency without the 47 MW Yuba City units. Removing Yuba City will result in a sub-area deficiency.⁹ Feather River is required to reduce local area voltages in the Bogue area. High voltages on the 115 kV system in the Bogue area have been observed and managed through the voltage dispatch of Feather River, and thus, Feather River is necessary for reliability in the area.¹⁰ Because Yuba City and Feather River are necessary for reliability and has appropriately been designated as RMR Units, the CAISO has engaged in negotiations with Gilroy

⁷ See Gilroy RMR Agreement Filing at 3.

⁸ CAISO Tariff, § 41.2.

⁹ See CAISO, Memorandum to ISO Board of Governors regarding Decision on Reliability Must-Run Designations for the Yuba City Energy Center and the Feather River Energy Center (March 8, 2017) available at <http://www.caiso.com/Documents/Decision-RequestforReliabilityMust-RunDesignations-Memo-Mar2017.pdf>.

¹⁰ *Id.*

regarding its proposed rates for the service from these Units as required by the Tariff.¹¹ The portions of Gilroy's filing that the CAISO agrees with are identified below; however, the CAISO protests the filing because Gilroy has not provided adequate support to establish that all of the rate schedules are just and reasonable. In particular, Gilroy has not provided sufficient support for certain aspects of its filing, including items related to major maintenance and elements included in the cost of service. Thus, the CAISO requests that the filing be set for hearing and settlement judge procedures.

A. The CAISO Supports Elements of Gilroy's Filing.

First, the CAISO supports Gilroy's request that the RMR Agreement be made effective January 1, 2018, subject to refund, so that reliability services can be made available to the CAISO without interruption.

Second, the CAISO supports Gilroy's changes to the body of the *pro forma* RMR Contract contained in Appendix G of the CAISO's Tariff. The CAISO supports the changes to the *pro forma* RMR Contract in Recital A, the definition of Force Majeure, and sections 2.1, 4.1(c), 5.3(d), and 9.4.¹²

With three exceptions, the CAISO is not able at this time to support the changes to the *pro forma* Schedules. The specific changes that the CAISO supports include the change to Schedule C that changed the CAISO scheduling coordinator charge from a fixed price of \$0.31/MWh to a combination of individual charge codes under the CAISO grid management charge that the resource is subject to under the CAISO Tariff. Additionally, the CAISO agrees in principle to the need for two other

¹¹ CAISO Tariff, § 41.2.

¹² Gilroy RMR Agreement Filing at 8.

changes to the *pro forma* Schedule C, but the implementation method sought by Gilroy in its filing may not adequately address these issues. The two changes to the *pro forma* Schedule C that fall within this category are: (1) the change to the gas index publication used to determine the Commodity Price for natural gas that is incorporated into Equation C1-8(Gas), which applies to gas-fired resources under the CAISO Tariff; and (2) the addition of a new Equation C1-18 which specifies how greenhouse gas emissions compliance costs are determined, a cost that gas-fired resources may now be subject to that did not exist at the time the *pro forma* RMR Agreement was developed.

The parties have agreed on the need for these changes to the *pro forma* agreement, and the CAISO supports these changes, but reserves the right to negotiate changes to the manner in which Gilroy implemented these changes in its unexecuted RMR Agreement. The CAISO's specific concerns with regard to the gas index publication used to determine the commodity price is that Gilroy did not specify that it would use the index price for the Real Time market under the CAISO Tariff Section 39.7.1.1.1.3(c), which the CAISO thinks is the appropriate index to use for settlement purposes in Schedule C; while the general reference to Section 39.7.1.1.1.3, maybe appropriate for bidding purposes in Schedule M. With regard to the greenhouse gas emissions compliance costs, the CAISO wants to clarify that these costs may only be recovered when actually incurred by Yuba City or Feather River. Again, the CAISO agrees in principle with the change to the *pro forma* Schedule but this issue should be set for settlement discussions to reach consensus on the appropriate way to implement the changes.

B. The CAISO Protests Gilroy's Filing Due to a Lack of Support and Justification for Certain Elements of Its Proposed Rates.

Several of the rate schedules that Gilroy filed have not been adequately supported, and others reflect what appear to be errors in implementation of applicable formulas. The parties have engaged in discussions and believe that engaging in additional negotiations with the help of a settlement judge will allow the parties to resolve the outstanding issues. The key specific elements of Gilroy's filing that have not been adequately supported are Schedules B, F and L-1, as well as any changes to the *pro forma* Schedules other than the three changes related to the scheduling coordinator charge, greenhouse gas emissions and gas price. There are also technical issues with the inputs to the other rate schedules as well, which the CAISO anticipates can be addressed through the exchange of information during settlement discussions and through further informal exchanges between the parties. Some of the issues include, but are not limited to, the following: on Schedule C, Tables C1-13, C1-16, C2-1, and C5-1 should be marked as "N/A" for clarity, and on Schedule M, equation M-1a, the units for greenhouse gas emissions rate and fuel price need to match. These are just examples of technical inputs that need to be addressed through the settlement process.

Throughout the entire RMR Agreement, Gilroy put the words "(Condition 2 RMR Agreement)" in the header. While the RMR Agreement allows Gilroy to elect Condition 2, this additional language is not part of the *pro forma* agreement and must be removed. The RMR Agreement is designed to operate under either condition, including the potential change of condition in future years.

In Schedule B, Gilroy has specified “1” for the Fixed Option Payment Factor in Table B-0 for both Yuba City and Feather River. However, Gilroy has elected that the Yuba City and Feather River facilities should operate as Condition 2 Units in 2018. Table B-0 is only applicable to Units under Condition 1, and therefore, this Table should have been designated “N/A”. Schedule B also contains a surcharge for capital items included on Schedule L-1 that the CAISO does not believe have been appropriately supported, as discussed further below. If Gilroy were to elect Condition 1 in the future, the fixed option payment factor would be less than 1 and would need to be negotiated, and would take into account all other revenues available to the resource, applying the “net of market” analysis developed in conjunction with the *pro forma* RMR Agreement.

Schedule F sets forth the Annual Fixed Revenue Requirements for Yuba City and Feather River using its cost-of-service data. At this time, the CAISO does not believe that Gilroy has demonstrated that all of these costs are adequately supported, and requests that FERC initiate settlement judge procedures to allow the parties to engage in discovery in order to examine this issue.

Finally, Schedule L-1 contains Capital Items that Gilroy proposes to include in its RMR rate for Yuba City and Feather River. The CAISO does not believe that the particular costs associated with capital investments have been shown to be just and reasonable, and the CAISO needs additional information to sufficiently understand whether the claimed costs are necessary and appropriate, and whether the timing of major maintenance (2018) is justified. Additionally, the depreciation period that Gilroy proposes to use for Large Capital Items has not been shown to be just and

reasonable and warrant further scrutiny to ensure that it is consistent with FERC depreciation policy.

There are other changes to Schedules A, B, C, D, E, I, J, K and M that Gilroy has proposed that may or may not be acceptable. Further discussions are necessary in order to determine that.

C. The CAISO Requests that a Settlement Judge Be Appointed.

Because the CAISO has concerns related to specific issues in Gilroy's filing and Gilroy has not met its burden to show that its proposed rates, terms and conditions are just and reasonable, the CAISO requests that the Commission suspend the rate schedules subject to settlement judge procedures and establish a refund date at the proposed effective date of January 1, 2018. The CAISO anticipates that there will be other interested parties acting in this docket, including PG&E, the Responsible Utility under the RMR Agreement, and perhaps the CPUC, and therefore requests that the Commission initiate settlement judge procedures in order to assist all the parties in reaching a resolution of the outstanding issues raised in this proceeding. The CAISO believes that the Commission's dispute resolution procedures are the appropriate avenue to take because it will allow the parties to continue their discussions of the issues in an economical and effective manner and because informal discussions to date among the parties have not produced a resolution of differences.

IV. CONCLUSION

For the foregoing reasons, the CAISO requests that the Commission accept this motion and grant the CAISO party status, and suspend the rate schedules subject to hearing or settlement judge procedures, establish a refund date equal to the

proposed effective date, January 1, 2018, and set the rate schedules for settlement judge procedures to assist the parties in resolving the outstanding issues in this proceeding.

Respectfully submitted,

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Dated: November 20, 2017

CERTIFICATE OF SERVICE

I hereby certify that I have this 20th day of November, 2017 caused to be served a copy of the foregoing Motion to Intervene and Limited Protest upon all parties listed on the official service list compiled by the Secretary of the Federal Energy Regulatory Commission in this proceeding.

/s/ Allison Hellreich

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