

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

Gilroy Energy Center, LLC ) Docket No. ER18-230-000

**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, 385.213, the California Independent System Operator Corporation (“CAISO”) moves for leave to answer, and submits its answer, to the protests of the California Public Utilities Commission (“CPUC”), Pacific Gas and Electric Company (“PG&E”), and the Department of Market Monitoring (“DMM”) of the CAISO regarding Gilroy Energy Center, LLC’s (“Gilroy”) November 2, 2017 filing of an unexecuted reliability must-run (“RMR”) agreement and accompanying rate schedules for the Yuba City Energy Center (“Yuba City”) and Feather River Energy Center (“Feather River”) pursuant to Section 205 of the Federal Power Act (“FPA”).<sup>1</sup>

**I. MOTION FOR LEAVE TO ANSWER**

Although Rule 213 of the Commission’s Rules of Practice and Procedure generally does not allow for answers to protests, the CAISO requests waiver of Rule 213(a)(2), 18 C.F.R. § 385.213(a)(2), to permit it to make an answer to the protests in this proceeding. Good cause for this waiver exists here because the answer will aid the Commission in understanding the issues in this proceeding, provide additional

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<sup>1</sup> 16 U.S.C. §§ 824d and 824e.

information to assist the Commission in the decision-making process, and help to ensure a complete and accurate record in this case.<sup>2</sup>

## II. ANSWER

At issue in this proceeding is whether the unexecuted RMR Agreement and accompanying rate schedules applicable to Yuba City and Feather River filed by Gilroy are just and reasonable under Section 205 of the FPA. The *pro forma* RMR Agreement is part of the CAISO Tariff and has been approved by FERC as being just and reasonable. Thus, the relevant inquiry in this proceeding is limited to whether Gilroy's specific rates and inputs into the *pro forma* contract are just and reasonable and whether any of the small number of deviations from the *pro forma* agreement are just and reasonable. Some of the claims asserted in the protests in this proceeding raise issues that are properly within the scope of Gilroy's filing. The protests, however, also raise a substantial number of issues that are outside the scope of this proceeding. These issues cannot be resolved in the context of this Section 205 proceeding, which relate to a single RMR owner's rate schedule filings.

Specifically, protestors raise numerous challenges related to the CAISO Tariff, the *pro forma* RMR Agreement, and the CAISO's processes for ensuring reliability of the electric grid. These are all issues that can best be resolved through a stakeholder process conducted by the CAISO. The CAISO acknowledges that the *pro forma* RMR Agreement and related tariff provisions are largely unchanged since FERC

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<sup>2</sup> See, e.g., *Equitrans, L.P.*, 134 FERC ¶ 61,250, P 6 (2011); *Cal. Indep. Sys. Operator Corp.*, 132 FERC ¶ 61,023, P 16 (2010); *Xcel Energy Services, Inc.*, 124 FERC ¶ 61,011, P 20 (2008).

accepted two RMR settlements nearly twenty years ago.<sup>3</sup> The CAISO recognizes that changes in the resource mix, in market structures and in regulatory requirements within California may warrant changes to the *pro forma* RMR Agreement and potentially to other mechanisms designed to ensure resource adequacy and grid reliability in the market. Thus, in January 2018, the CAISO will initiate a stakeholder process to examine the RMR Agreement and related tariff provisions and other market tools in light of current circumstances.<sup>4</sup>

As explained below, a CAISO-led stakeholder process is the appropriate vehicle to examine protesters' concerns that affect the market as a whole. On the other hand, settlement judge proceedings under Section 205 are appropriate for those issues that address the actual agreement and schedules submitted by Gilroy.<sup>5</sup>

**A. The Challenges to the FERC-Approved CAISO Tariff and *Pro Forma* RMR Agreement Are Outside the Scope of This Proceeding and Should Be Addressed Through the CAISO's Stakeholder Process.**

Many of the issues raised in this proceeding, while framed as objections to Gilroy's filing, are in fact challenges to the FERC-approved CAISO Tariff provisions, including the *pro forma* RMR Agreement.<sup>6</sup> Those objections highlight issues with the entire reliability scheme governing the California markets that have evolved over the past twenty years, including with respect to the CAISO's backstop procurement

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

<sup>4</sup> CAISO Vice President Keith Casey publicly stated at the November 2, 2017 Board of Governors meeting that the CAISO would shortly commence a stakeholder initiative on these topics.

<sup>5</sup> See, e.g., *Gilroy Energy Center, LLC*, Motion to Intervene and Limited Protest of the California Independent System Operator Corp., Docket No. ER18-240-000, at 10-12 (submitted Nov. 20, 2017).

<sup>6</sup> Appendix G to the CAISO Tariff, available at [http://www.caiso.com/Documents/AppendixG\\_ProFormaReliabilityMustRunContract\\_asof\\_Apr1\\_2017.pdf](http://www.caiso.com/Documents/AppendixG_ProFormaReliabilityMustRunContract_asof_Apr1_2017.pdf).

tool known as the Capacity Procurement Mechanism (“CPM”), as well as the RMR and the Resource Adequacy (“RA”) programs developed by the CPUC and other local regulatory authorities. The parties’ frustrations and concerns lie with the entire reliability scheme in California and their impacts on the competitive markets. They cannot be resolved through a Section 205 proceeding involving one generator’s rates for units that all seem to recognize are needed for local reliability in sub-areas of one load-serving entity’s service territory. A process-based, market-wide problem must have a solution that allows input from all interested stakeholders and must allow a holistic approach to ensure that the issues are resolved comprehensively. The CAISO stakeholder process is that solution.

Issues raised by protestors in this proceeding that are market-wide issues and attacks on the CAISO Tariff itself include arguments related to the limits on market participation by RMR Units under Condition 2,<sup>7</sup> the lack of a must-offer obligation for Units under both Conditions 1 and 2,<sup>8</sup> and the impacts of these perceived shortcomings on the competitive CAISO markets.<sup>9</sup> PG&E also raises arguments related to the need to modify the CAISO’s Transmission Planning Process (“TPP”) and the CAISO’s use of its CPM program.<sup>10</sup> All of these concerns relate to reliability procedures established by the CAISO Tariff, as they have been affected by the

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<sup>7</sup> See *Gilroy Energy Center, LLC*, Motion to Intervene and Protest of the Department of Market Monitoring of the California Independent System Operator Corp., Docket No. ER18-240-000, at 3 (submitted Nov. 22, 2017) (“DMM Protest”).

<sup>8</sup> See DMM Protest at 4.

<sup>9</sup> See DMM Protest at 5-7; *Gilroy Energy Center, LLC*, Protest of the Public Utilities Commission of the State of California, Docket No. ER18-240-000, at 15-24 (submitted Nov. 24, 2017) (“CPUC Protest”); *Gilroy Energy Center, LLC*, Motion to Intervene and Protest of Pacific Gas and Electric Co., Docket No. ER18-240-000, at 10-17 (submitted Nov. 22, 2017) (“PG&E Protest”).

<sup>10</sup> PG&E Protest at 7-8.

evolution of the market, the reliability schemes devised by other entities, including the CPUC, and other regulatory changes.

The CPUC-developed RA program, which works in tandem with the CAISO's own RA program, as well as CPM and RMR, are all designed in different ways to ensure adequate resources are available when and where the CAISO needs to call on them to maintain reliability. These tools each have impacts on the CAISO markets, and the interplay among them must be considered together. A holistic approach that can adequately take into account all of these overlapping mechanisms and that includes all the affected stakeholders, including non-FERC-jurisdictional entities and other governing bodies, is necessary to provide a complete solution to the concerns that the protesters are raising.<sup>11</sup> That cannot be accomplished in a FERC review of a single entity's RMR Agreement.

Addressing the market-wide issues raised in this Section 205 proceeding or through a Section 206 proceeding against Gilroy, the RMR owner, will not adequately address the concerns that affect the entire market, cannot provide the desired outcome of improving the functioning of the California power markets, and would be unfairly burdensome to the singled-out RMR owner. It would also be an inefficient use of the parties' and Commission's resources because no adequate solution would arise from an adjudication involving only one RMR owner. This Section 205 proceeding related to a single entity's rates is not the appropriate place to address these issues because they require a solution that would apply to all market participants. This solution can only be achieved through changes to the *pro forma*

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<sup>11</sup> The CAISO recognizes the complexities of a holistic approach, and it expects it will need to conduct this stakeholder initiative in phases.

RMR Agreement in the CAISO Tariff, which would entail the CAISO filing for an amendment under Section 205 to its own tariff.<sup>12</sup> The CAISO has already committed to undertake a stakeholder process to address these market-wide issues and to identify a just and reasonable remedy that can be accepted by all parties. At the end of the stakeholder process, the CAISO will submit proposed changes to FERC for its approval.

The CAISO's stakeholder process is also better able to address these issues than a Section 206 proceeding regarding the CAISO Tariff and the RMR provisions thereof because of the ability within the stakeholder process to also engage with non-FERC jurisdictional entities and to take into account the varying reliability schemes to which its stakeholders are subject. It is not possible to address the shortcomings of the RMR process without exploring and remedying the failures of the RA program as well because the two are intertwined.

**B. Issues Related to Gilroy's RMR Agreement and Schedules Should Be Subject to Settlement Judge Proceedings.**

There are some valid concerns raised in the protests that are appropriate to this Section 205 proceeding. Those concerns are aimed at ensuring that the resource-specific costs and attributes reflected in the filing are adequately justified and result in just and reasonable rates, terms and conditions. The CAISO believes that those

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<sup>12</sup> While the CAISO believes that the best (and only appropriate) avenue to examine these issues is under its own stakeholder process which the CAISO is committed to holding, if the Commission finds that a Section 206 proceeding is warranted, such a proceeding should be directed to the CAISO and its Tariff provisions related to RMR, not to Gilroy or the Metcalf Energy Center LLC whose rate schedules under the RMR Agreement are before the Commission in Docket No. ER18-240-000. Nonetheless, the CAISO believes, as discussed herein, that a stakeholder process is better suited to resolving these issues, and PG&E's request for the Commission to institute a Section 206 proceeding against the CAISO Tariff should be rejected.

concerns can best be addressed through settlement judge proceedings. The relevant issues include the lack of sufficient justification for capital additions and for other costs included in Schedule F, including depreciation.<sup>13</sup>

On the other hand, while the CAISO agrees that they are properly within the scope of the Section 205 proceeding, the CAISO disagrees with certain arguments raised by the CPUC and by PG&E. For example, the CPUC argues that the Commission should consider whether the *pro forma* RMR Agreement even applies to “new” agreements and whether such “new” agreements were contemplated when the settlement agreements were adopted.<sup>14</sup> The CPUC seems to object to the reliability standard the CAISO used in designating Yuba City and Feather River as RMR units. The CPUC and PG&E also raise objections to the method by which the CAISO designated the units as RMR. Finally, the CPUC objects to two small departures from the *pro forma* that are designed to align costs Yuba City and Feather River will incur with costs commonly incurred by other generation in the market, and also requests that the Commission require Gilroy to file two separate RMR Agreements.

The Commission should reject the CPUC’s suggestion that the *pro forma* RMR Agreement should not apply to Gilroy or any other “new” RMR Agreement. It appears that the CPUC uses “new” RMR Agreement to refer to any RMR Agreements not in existence at the time of the settlements twenty years ago. This argument is clearly undermined by the terms of the CAISO Tariff, which expressly gives the CAISO the authority to designate a generating unit as a reliability must-run

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<sup>13</sup> CPUC Protest at 3-11.

<sup>14</sup> CPUC Protest at 2.

unit at any time.<sup>15</sup> The CAISO has the authority to designate new units as RMR Units and properly did so in this case.

On the reliability standard used to designate Yuba City and Feather River, the CPUC asserts that these units were designated as an RMR Units based only on an N-1-1 contingency (which is a situation where there are one-in-ten-year heat wave conditions and the simultaneous loss of two transmission lines). The CPUC seems to suggest that it is only in this situation that Yuba City and Feather River would be dispatched,<sup>16</sup> and thus that it is possible Yuba City and Feather River might never be called upon to provide service under the RMR Agreement.<sup>17</sup> The CPUC is incorrectly conflating study criteria used in the CAISO's local capacity study for purposes of designating needed local capacity with the CAISO's dispatch rights under the RMR Agreement and CAISO Tariff.

The CAISO's analysis shows that Yuba City is needed to meet local capacity requirements in the Pease sub-area, and Feather River is required to reduce local area voltages in the Bogue area. The CAISO uses the N-1-1 parameter when making its reliability determinations. This standard is appropriate and necessary for the CAISO to fulfill its obligation to maintain the reliability of the electric grid. However, this does not mean that the units will only be called upon to run when an N-1-1 condition exists. Once a facility has been designated as an RMR Unit, the RMR Agreement allows the CAISO to dispatch the RMR resource for energy for *any* local reliability

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<sup>15</sup> CAISO Tariff, § 41.2 (“Designation of Generating Unit as Reliability Must-Run Unit”).

<sup>16</sup> CPUC Protest at 15-24.

<sup>17</sup> The CPUC also mischaracterizes reliability services as the service the resource provides only when the resource is generating electricity. The reliability service is being available. Being available is the core of reliability service, such as providing by operating reserve (spinning and non-spinning reserve).



need, including voltage support, and to mitigate non-competitive congestion. The CAISO also has the right to issue RMR dispatches for ancillary services.<sup>18</sup> Finally, whenever the CAISO issues an RMR dispatch, the RMR owner is required to bid its entire capacity in the market at cost-based bids for the duration of the RMR call. The CAISO anticipates that Yuba City and Feather River will be dispatched regularly to meet these important additional reliability and market power mitigation objectives.

The CPUC uses the argument that Yuba City and Feather River will not run very frequently to urge the Commission to reject Gilroy's proposed Condition 2 designation for the units. The CAISO opposes this request in the context of this proceeding because it is contrary to the terms of the *pro forma* RMR Agreement. Under the RMR Agreement, the RMR owner is allowed to choose whether it will operate as a Condition 1 or Condition 2 Unit,<sup>19</sup> and Gilroy properly made its choices in its filing. Moreover, rejecting Gilroy's choices under the CAISO Tariff will not remedy the issues that the CPUC has identified. This is an example of an issue that the CAISO would expect to address in a stakeholder process that considers comprehensively the reliability schemes in California, including RA, and their impacts on the markets.

PG&E raises a different concern with the CAISO's designation of Yuba City and Feather River as RMR Units. PG&E argues that the CAISO should have used its CPM authority first.<sup>20</sup> Importantly, PG&E does not dispute that Yuba City and Feather River are needed for local reliability.

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<sup>18</sup> CAISO Tariff, § 41.1.

<sup>19</sup> See CAISO Tariff, Appendix G § 3.1.

<sup>20</sup> PG&E Protest at 8-10.

The CAISO properly followed its FERC-approved Tariff in designating Yuba City and Feather River as RMR Units. Section 41.2 of the CAISO Tariff states that the CAISO has “the right at any time based upon CAISO Controlled Grid technical analyses and studies to designate a Generating Unit as a Reliability Must-Run Unit.”<sup>21</sup> The CAISO performed the requisite studies, and properly made its designation. PG&E is seeking to create additional prerequisites for designation, based on its preferences for how the reliability scheme in California should work. This represents yet another attempt to address market-wide concerns that do not belong in this FPA 205 proceeding. The CAISO’s designation of Yuba City and Feather River as RMR Units was appropriate under the Tariff, and the protests on this issue should be rejected.

The CPUC also argues that the proposed revisions to the *pro forma* RMR Agreement that would enable Gilroy to recover greenhouse gas emissions compliance costs and to use an updated gas index as the basis for its fuel cost charges should be rejected.<sup>22</sup> The CAISO supports these proposed changes to the *pro forma* agreement. Greenhouse gas emissions compliance costs are actually incurred by generators, and they are part of the costs that a generator competing in the CAISO market would factor into its market bid. Failure to allow Gilroy’s RMR rates to reflect this cost could distort the market by introducing a cost-based bid that is artificially priced lower than other market generators. Similarly, the update in the gas index is designed to put Yuba City and Feather River on the same footing as other gas generators in the

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<sup>21</sup> CAISO Tariff, § 41.2. PG&E acknowledges that the “RMR provisions in the tariff allow for the CAISO to make an RMR designation at any time . . . .” PG&E Protest at 9.

<sup>22</sup> CPUC Protest at 27-28.

market, avoiding market distortion and providing for use of a tool that has been accepted as an appropriate measurement of gas costs. These changes to the *pro forma* agreement are within the bounds of other changes that have routinely been accepted by the Commission;<sup>23</sup> the RMR owner has the right to propose changes under section under 205; and they are necessary to prevent further market distortions. The CAISO supports these changes to align variable costs of RMR owners with market costs reflected proxy bids used for non RMR resources.

The CAISO also urges the Commission to reject the CPUC's request that Gilroy file separate RMR Agreements for Yuba City and Feather River.<sup>24</sup> There is no justification for such action here. By way of background, the RMR Agreement in Appendix G of the CAISO Tariff defines "Facility" as "the electrical generating facility described in Schedule A" and "Unit" as "an individual electricity generating unit which has been designated a Reliability Must-Run Unit and is part of the Facility identified in Schedule A."<sup>25</sup> Schedule A asks for specific information about all units at a Facility, regardless of their must-run status.

In November 2016, Calpine, acting on behalf of its subsidiary, Gilroy, notified the CAISO that it would be retiring four peaker "units," effective January 1, 2018. Calpine asked the CAISO "to undertake the necessary reliability studies to confirm that the absence of these units will not create unacceptable reliability impacts."<sup>26</sup> The

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<sup>23</sup> *AES Huntington Beach, LLC*, 142 FERC ¶ 61017, 61,063 (2013) (finding that deviations from the *pro forma* agreement were just and reasonable).

<sup>24</sup> CPUC Protest at 25-26.

<sup>25</sup> CAISO Tariff, Appendix G (Definitions).

<sup>26</sup> *See Gilroy Energy Center, LLC*, Gilroy RMR Agreement Filing, Attachment E, Docket No. ER18-230-000 (filed November 2, 2017) ("Gilroy RMR Agreement Filing").

CAISO undertook the requisite reliability studies and concluded that two of the four units, the Feather River and Yuba City units, were needed for local reliability, while the other two were not. Accordingly, consistent with its Tariff, the CAISO designated the two needed units for RMR service, and it directed Gilroy to submit a “reliability must-run agreement” (singular) for execution.<sup>27</sup> Yuba City and Feather River were properly designated as RMR Units, and the CAISO followed its own Tariff, the *pro forma* RMR Agreement and the Board’s directives in requiring Gilroy, the corporate owner of both units, to file one RMR Agreement. Thus, Gilroy acted in accordance with the direction of the CAISO and the Tariff when it filed a single RMR Agreement covering the two units.

More fundamentally, it is difficult to understand the CPUC’s concern on this point. The FERC-approved RMR Agreement schedules require Gilroy to clearly specify, by unit, the operating characteristics and associated costs, and Gilroy has done so. Requiring Gilroy to re-file two separate RMR Agreements would not provide any additional information or increase the precision of the information Gilroy has submitted.

The CPUC suggests that the RMR need for Yuba City and Feather River may end at different times. That is true, but the fact that the two units are included under one RMR Agreement does not limit the flexibility of the CAISO to terminate either unit when it is no longer needed for local reliability. The RMR Agreement expressly

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<sup>27</sup> Gilroy RMR Agreement Filing, Attachment G (Letter from Steven Berberich, CAISO, to Mark Smith, Calpine Corp., March 24, 2017).

provides that the Agreement may be terminated “as to one or more Unit.”<sup>28</sup> Indeed, there is precedent for having different RMR units retire at different times under the same RMR Agreement.<sup>29</sup>

In short, the Gilroy filing is correct in its inclusion of the two units under a single RMR Agreement. There is no reason to reject the filings on this ground, and it would add inefficiency and waste the resources of the parties and the Commission to require Gilroy to resubmit in the form the CPUC requests. The Commission should reject this request.

### III. CONCLUSION

For the foregoing reasons, the CAISO requests that the Commission permit the CAISO to file this answer, to refrain from addressing certain issues related to the CAISO and California reliability scheme in order to allow a CAISO stakeholder proceeding to take place and properly address those identified issues, and to suspend the rate schedules submitted in this proceeding subject to settlement judge proceedings to help the parties resolve their issues related to the justification for the rates proposed by Gilroy.

Respectfully submitted,

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<sup>28</sup> CAISO Tariff, Appendix G, § 2.2.

<sup>29</sup> *AES Huntington Beach, LLC*, 142 FERC ¶ 61,017 (2013).

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Dated: December 5, 2017

## CERTIFICATE OF SERVICE

I hereby certify that I have this 5th day of December, 2017 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.

/s/Allison Hellreich

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