UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Delta Energy Center, LLC	)	Docket No. ER06-261-000
	)	
Los Esteros Critical Energy Facility, LLC	)	Docket No. ER06-268-000
	)	
Delta Energy Center, LLC	)	Docket No. ER03-510-000
	)	(**Not Consolidated**)

JOINT PROTEST, REQUEST FOR HEARING AND MAXIMUM SUSPENSION OF RATES AND MOTION TO CONSOLIDATE OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION, PACIFIC GAS AND ELECTRIC COMPANY, PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA, AND CALIFORNIA ELECTRICITY OVERSIGHT BOARD

Pursuant to Rules 211 and 212 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("Commission"), 18 C.F.R. §§ 385.211 and 385.212 (2005), the California Independent System Operator Corporation ("CAISO"), Pacific Gas and Electric Company ("PG&E"), the California Public Utilities Commission ("CPUC"), and the California Electricity Oversight Board ("EOB") (collectively, the "California Parties")[1/] submit this (1) Joint Protest of Delta Energy Center, LLC's ("DEC") and Los Esteros Critical Energy Facility, LLC's ("LECEF") Reliability Must Run ("RMR") Section 205 filings dated November 30, 2005[2/] and (2) Motion to Consolidate the three captioned dockets. Both DEC and LECEF are owned and operated by Calpine Corporation ("Calpine"). The California Parties respectfully request that the Commission consolidate the captioned proceedings and set the proposed rate

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1/ Each of the California Parties has filed separate Motions to Intervene in the captioned cases.

2/ Docket Nos. ER06-261-000 and ER06-268 (not consolidated).

schedules for an evidentiary hearing and suspend the proposed rates for five months. In support thereof, the California Parties state as follows:

I. STATEMENT OF ISSUES

1. The Commission should find that both DEC's and LECEF's proposed rates are unsupported, unjust and unreasonable as neither DEC nor LECEF has provided any support justifying the extraordinary rate increases they have proposed. 16 U.S.C. § 824d(a).

2. The Commission should deny DEC's and LECEF's request for waiver of the requirements of section 35.13 because the petitioners have not provided adequate cost support information to allow the Commission to determine that the proposed rates are just and reasonable. 18 C.F.R. §35.13 (2005).

3. The Commission should suspend, for the maximum five-month statutory period, DEC's and LECEF's proposed rates pursuant to the Commission's West Texas Utilities suspension policy. 18 FERC ¶ 61,189 (1982); 16 U.S.C. § 824d(e).

4. The Commission should order that, upon expiration of the suspension period, DEC's and LECEF's proposed rates will be effective, subject to refund, with the potential refund amount to be held in escrow. See Devon Power LLC, et al., 102 FERC ¶ 61,314 (2003).

5. The Commission should rule that LECEF has not justified, as just and reasonable, its unilateral filing to revise its RMR Agreement to allow it to transfer between Condition 1 and Condition 2 and, that neither DEC nor LECEF have justified their proposals to transfer from their existing AFRC formula rates to the alternative AFRR formula. 16 U.S.C. § 824d(a).

6. The Commission should reject, as unsupported, unjust and unreasonable, DEC's proposed changes to the values related to start-up costs. 16 U.S.C. § 824d(a).

7. The Commission should require LECEF to correct the ramp rates set forth in Schedule A, section 8 of its filing (Sheet No. 130) to match the ramp rates contained in CAISO's Master File. See, California Independent System Operator Corp., 105 FERC ¶ 61,091 at P 20 and 23 (2003), order on reh'g, 108 FERC ¶ 61,142 at P 13 (2004); 16 U.S.C. § 824d(a).

8. The Commission should consolidate these two proceedings and the existing DEC RMR rate case because the Commission's standards for consolidation are met: (1) there are common issues of law and fact and (2) consolidation will result in procedural efficiencies. See Southwestern Public Service Co., 109 FERC ¶ 61,373 at P 14 (2004); San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services, 103 FERC ¶ 61,359 at P 11 (2003); California Independent System Operator Corp., 109 FERC ¶ 61,391 at P 45 (2004).

II. DESCRIPTION OF THE PROCEEDINGS

A. Background

Calpine, through its subsidiaries and affiliates, is the owner and developer of several generation facilities in California, including DEC and LECEF. Both facilities are directly connected to the transmission system owned by PG&E, and the CAISO redesignated both as RMR units for Contract Year 2006.[3/]

B. Delta Energy Center, LLC; Docket No. ER06-261

On November 30, 2005, DEC submitted, pursuant to Section 205 of the Federal Power Act ("FPA"), revisions to certain of the rate schedules under its unexecuted RMR Agreement ("DEC RMR Agreement") between DEC and the CAISO for the Delta Energy Center Facility for Contract Year 2006 ("DEC 2006 RMR Filing"). The existing 2005 unexecuted DEC RMR Agreement included rates based on Annual Fixed Reliability Costs ("AFRC") rather than an Annual Fixed Revenue Requirement ("AFRR"). DEC now seeks to modify the RMR Agreement to derive rates based on an AFRR (in lieu of using an AFRC) coupled with a Fixed Option Payment Factor ("FOPF") as reflected in its proposed revised rate schedules.

Under the *pro forma* RMR Agreement, the rate an RMR unit owner is paid for RMR service is a percentage of an AFRR. The AFRR generally represents the Owner's total fixed costs associated with the RMR unit. The percentage of the AFRR that is paid to the Owner for RMR service is based on the FOPF[4/] which is the percentage of unit's fixed costs (AFRR)

[3/] RMR Agreements are specialized cost-based service agreements that the CAISO uses to enhance grid reliability, meet local reliability needs, and manage intra-zonal congestion. RMR Agreements are based on the *pro forma* RMR Agreement that was agreed to as part of a settlement agreement approved in California Independent System Operator Corporation, et al., 87 FERC ¶ 61,250 (1999) ("1999 Settlement").

[4/] As noted above, under the *pro forma* RMR Agreement, an RMR unit owner is paid a certain percentage of the unit's annual fixed costs referred to as the FOPF. Under the *pro forma*

that is incremental to the provision of RMR service. In lieu of applying an AFRR coupled with the FOPF to determine RMR rates, by agreement of the parties, particularly in the case of newer, more efficient units, rates instead can be based solely on the unit's AFRC. The AFRC represents the portion of the unit's fixed costs incurred in providing RMR service. The AFRR is established using the Schedule F formulae, whereas the AFRC is negotiated based on data and cost support information a unit Owner provides to the CAISO.

The DEC 2006 RMR Filing included an informational filing pursuant to Schedule F of the DEC RMR Agreement ("Schedule F Filing") as support for its proposed AFRR. DEC states in its filing that the proposed AFRR has been calculated by application of the formulae set forth in Schedule F. DEC requests a January 1, 2006 effective date for the revised schedules.

C. <u>Los Esteros Critical Energy Facility, LLC; Docket No. ER06-268</u>

On November 30, 2005, LECEF submitted, pursuant to Section 205 of the FPA, revisions to certain of the rate schedules under its bilateral RMR Agreement between LECEF and the CAISO for the Los Esteros Facility ("LECEF 2006 RMR Filing"). The existing LECEF RMR Agreement included rates based on an AFRC rather than an AFRR. LECEF now seeks to modify the RMR Agreement to derive rates based on an AFRR (in lieu of using an AFRC) coupled with a FOPF as reflected in its proposed revised rate schedules. In addition, LECEF

RMR Agreement, units are designated Condition 1 or Condition 2. Condition 1 units may participate in market transactions and the owner is permitted to retain all revenues from such market transactions. Thus, for RMR dispatch, units operating under Condition 1 are paid a certain percentage of their annual fixed costs as represented by the FOPF. The FOPF is intended to reflect the incremental fixed costs associated with providing RMR service.

Conversely, a Condition 2 unit may not participate in market transactions unless the CAISO issues a dispatch notice for the unit. When the CAISO does issue a dispatch notice for a Condition 2 unit, the owner must bid to participate in the next available Energy and Ancillary Services markets but may not retain the revenues from such market transactions. Because Condition 2 units cannot retain market revenue and operate only to provide RMR service, these units are paid 100 percent of the unit's fixed costs (assuming target availability). Therefore, the FOPF for Condition 2 Units is always 1.0 (100%).

now seeks to modify the terms of its RMR Agreement to add the option to transfer its units between Condition 1 and Condition 2. LECEF also submitted an informational filing pursuant to Schedule F of LECEF's RMR Agreement to support its proposed AFRR ("Schedule F Filing"). LECEF requests a January 1, 2006 effective date for the revised schedules.

The Commission issued a Combined Notice of Filings, setting December 21, 2005, as the date for protests in both proceedings.[5/]

III. PROTEST

As discussed herein, DEC's and LECEF's proposed revisions to their RMR Agreements pose a number of troubling issues, the most significant of which is that the Petitioners have proposed a dramatic increase over their current rates for RMR services. As discussed below, the proposed revisions would produce rates that far exceed levels that are just and reasonable, highlighting the potential for these RMR Generators to exercise location-specific market power.

A. LECEF's and DEC's Proposed Rates Are Unsupported, Unjust and Unreasonable.

1. DEC's Rates

The CAISO first designated DEC as an RMR unit for 2003 as a result of its analysis of its local reliability needs for that year.[6/] DEC's designation as an RMR Unit was contingent upon execution of an RMR Agreement with rates, terms and conditions acceptable to the CAISO. At that time, the CAISO and DEC were unable to agree to rates and terms for the DEC RMR Agreement. Accordingly, DEC filed an unexecuted RMR Agreement with the Commission initiating Docket No. ER03-510.[7/] After the filing, the Parties made further efforts

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[5/] Combined Notice of Filings # 1, (December 7, 2005).

[6/] Delta Energy Center, LLC, 102 FERC ¶ 61,352 at P 2 (2003).

[7/] Id.

to settle, but they were unable to reach agreement on just and reasonable rates and terms for DEC's RMR Agreement. Instead, the parties entered into a settlement agreement ("Settlement") in Docket No. ER03-510, which allowed DEC's proposed rate to be used until the termination of the Settlement, subject to refund.[8/] The interim rate was based on an AFRC of $14,740,960.[9/] The DEC Facility has continued to serve as an RMR unit from 2003 through 2005 under the interim rate.

By letter dated September 23, 2005, the CAISO gave DEC notice that it intended to extend the term of the DEC RMR Agreement for Contract Year 2006. By operation of its terms, the Settlement terminated on December 8, 2005. Thus, DEC was no longer required to use the interim rate, and on November 30, 2005, DEC filed, pursuant to Section 205 of the FPA, revised rates for Contract Year 2006. For 2006, DEC proposes to eliminate the $14.7 million AFRC and instead bases its rates on a $103.8 million AFRR, coupled with a .50 FOPF, which would result in an approximately 252 percent increase in rates from the still pending (not accepted or approved as lawful) $14.7 million level.[10/]

2. LECEF's Rates

LECEF was first designated by the CAISO as an RMR unit for the 2004 Contract Year.[11/] LECEF filed an executed RMR Agreement with the CAISO on January 28, 2004, and it

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[8/] Delta Energy Center, LLC, 104 FERC ¶ 61,247 (2003) (Order Approving Settlement). The CAISO never executed, nor did the Commission accept, the underlying DEC RMR Agreement.

[9/] Settlement, at section II.C.2.

[10/] This percentage is calculated by dividing the current AFRC ($14,740,960) by the proposed increase, which is the difference between (a) the proposed Condition 1 maximum Availability Payment (sometimes called the Fixed Option Payment) of $103,752,212 (AFRR – see DEC Third Revised Sheet No.132) multiplied by 0.50 (FOPF – see DEC Third Revised Sheet No.135) and (b) the current AFRC.

[11/] Gilroy Energy Center, LLC, et al., 106 FERC ¶ 61,270 (2004).

was accepted by the Commission by order dated March 24, 2004.[12/] In 2005, LECEF's RMR rates were based on a $1.1 million AFRC for the facility.[13/] By letter dated September 23, 2005, the CAISO gave LECEF notice that it intended to extend the term of the LECEF RMR Agreement for Contract Year 2006. The LECEF RMR Agreement requires LECEF to file with the Commission revised rate schedules for 2006 to update certain service characteristics and to reflect the impact of those changes in certain rates. LECEF's filing, however, went beyond those adjustments and included a huge proposed rate increase. For 2006, LECEF unilaterally proposed to eliminate the $1.1 million AFRC and instead would base its rates on a $44.4 million AFRR coupled with a .75 FOPF, resulting in an approximately 2,825 percent increase in rates.[14/]

3. The Enormous, Unsupported Increases in Rates at Issue Here Are Unjust and Unreasonable.

The California Parties object to LECEF's and DEC's proposed rates because they would result in an unsupported and unprecedented increase over both the current 2005 rates and the proposed rates Calpine bid into the CAISO's annual Local Area Reliability Service ("LARS") process.

a. The LARS Process

Absent an RMR Agreement, at times of local system constraints, unit owners have location-specific market power and could potentially charge an unjust and unreasonable

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12/ Id.

13/ LECEF's facility encompasses four peaker RMR units.

14/ This percentage is calculated by dividing the current AFRC ($1,140,000) by the proposed increase, which is the difference between (a) the proposed Condition 1 maximum Availability Payment (sometimes called the Fixed Option Payment) of $ 44,463,794 (AFRR – see LECEF First Revised Sheet No. 138) multiplied by 0.75 (FOPF – see LECEF First Revised Sheet No. 134) and (b) the current AFRC.

rate.[15] An RMR Agreement enables the CAISO to dispatch a unit to deliver energy in order to meet local reliability needs at a pre-determined rate regardless of market conditions. RMR Agreements are intended to prevent RMR unit owners from taking advantage of location-specific market power, but this only succeeds where a just and reasonable cost-based price for RMR service has been established. Where the CAISO has a specific locational reliability need, and where a specific generating unit could exercise market power, pursuant to the terms of its tariff, the CAISO will designate that unit for RMR status and enter into an RMR contract to ensure that the CAISO will have access to that generating unit's energy or Ancillary Services as needed. For that reason, the charges for RMR dispatch must be cost-based. The CAISO uses the LARS process to introduce competition and cost control into the RMR selection process to the extent feasible.

The LARS process is an annual competitive bid process that the CAISO uses to determine which resources should be designated as "Must-Run"[16] in order to ensure system reliability. The RMR Agreement acts as an insurance policy assuring that the CAISO has indisputable dispatch rights in order to (a) reliably serve load in a local area when transmission constraints require out-of-economic-merit dispatch, and (b) mitigate "local market power" that one or multiple units (with a very limited number of owners) have, because the area in which

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[15] Cities of Anaheim, et al. v. California Independent System Operator Corporation, 107 FERC ¶ 61,070 at n. 6 (2004), reh'g denied, 110 FERC ¶ 61,387, reh'g denied, 111 FERC ¶ 61,218 (2005); see also, California Independent System Operator Corp., 112 FERC ¶ 61,350 at P 16 and n. 20 (2005) (RMR agreements prevent RMR unit owners from taking advantage of location-specific market power).

[16] "Reliability Must-Run Generation" is defined in the Master Definitions Supplement of the CAISO tariff as "generation that the ISO determines is required to be on line to meet Applicable Reliability Criteria requirements." "Applicable Reliability Criteria" is the reliability standards established by NERC, WECC, and local reliability criteria as amended from time to time, including any requirements of the NRC.

they are located has transmission constraints that preclude other facilities from meeting the reliability need in a given locale.

Section 5.2. of the CAISO's tariff governs procurement of RMR generation by the CAISO. Section 5.2.3 provides:

> The ISO will, subject to any existing power purchase contracts of a Generating Unit, have the right at any time based upon ISO Controlled Grid technical analysis and studies to designate a Generating Unit as a Reliability Must Run Unit. *A Generation Unit so designated shall then be obligated to provide the ISO with its proposed rates for Reliability Must-Run Generation for negotiation with the ISO.* Such rates shall be authorized by FERC or the Local Regulatory Authority, whichever authority is applicable.

The CAISO implements this provision of the tariff through its annual LARS Request For Proposals ("RFP") process. The LARS RFP seeks proposals from generators capable of providing local area reliability service (which includes RMR dispatch but may alternatively involve transmission reinforcements or demand management service) in areas expected to have transmission constraints during the next calendar year. The CAISO evaluates each proposal based on *cost efficiency* and technical criteria such as availability, capability, and operating characteristics.[17/] A bid must include the unit's cost information including the total annual fixed costs for each unit itemized by: capital recovery, fixed operating and maintenance ("O&M"), fixed fuel, and auxiliary power. The bid price must also include the unit's variable cost, variable O&M rate, and start-up costs. Based on this bid information, the CAISO designates the RMR units.

17/ See 2006 LARS RFP at § 3.5 (evaluation criteria) (May 24, 2005), available at http://www.caiso.com/docs/2001/10/15/2001101510100413037.html. Although price is a key consideration, the ability to meet the particular reliability need is the most fundamental factor in selecting RMR units.

b. The DEC and LECEF 2006 Bids

In its 2006 bids for DEC and LECEF, Calpine offered to provide RMR dispatch at a specified AFRC amount and a stated Variable O&M rate. DEC and LECEF explicitly stated in their responses to the 2006 LARS RFP ("Bids"), that the rates stated in the bids were the rates for which they were "willing to provide the ISO with reliability must run ("RMR") services for 2006." DEC and LECEF now propose rates that are wildly in excess of their Bids.[18/]

The LARS RFP process is designed to solicit a bid which reflects a cost-based rate for the unit. Where, as here, the Owner submits a bid and affirmatively states that it is the price at which the Owner is willing and able to provide RMR service, the CAISO understandably treats the bid as the maximum possible price for the unit's service. This is especially true for existing RMR units under contracts that propose to use Schedule F, such LECEF, whose status the CAISO considers extending for another year.[19/] In such cases, the unit Owner is expected only to <u>update</u> its costs under Schedule F to reflect the prior year's (July through June) recorded data. Therefore, for a redesignated unit under an RMR contract that uses Schedule F, as most do, the CAISO expects with good reason that there will be continuity between an existing rate and the proposed rate for the coming year.

More fundamentally, there should not generally be any differential between the bid rate and the proposed rate. This is especially true because LARS bids are submitted in July

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[18/] The CAISO believes it is essential for the Commission to have access to the Bids DEC and LECEF submitted in the LARS process in order to have a full understanding of the basis for this Protest. Those Bids were submitted to the CAISO under a Confidentiality Agreement. If Calpine and the CAISO cannot reach agreement that the Confidentiality Agreement permits disclosure of the Bids to the Commission, the CAISO will file a motion seeking Commission authorization to file, subject to privileged treatment pursuant to Rule 388.112, DEC's and LECEF's Bids and a comparative analysis of the Bid rates and the rates proposed in DEC's and LECEF's 2006 RMR Filings.

[19/] As explained above, LECEF has just proposed to shift from using AFRC to AFRR. Because AFRC cannot be used in Schedule F's rate adjustment formula, this is the first time LECEF proposes to use Schedule F.

of the year prior to the RMR Contract Year and under Schedule F of the RMR Agreement, rates are calculated based on costs incurred during the twelve-month period ending on June 30 of the calendar year prior to the Contract Year. LECEF had all of the relevant cost data at the time it submitted its Bid on July 5, 2005.

As a matter of sound administration of an ISO's tariff, as well as sound regulatory policy, permitting RMR Unit Owners to ignore their bids and make section 205 filings seeking rates that grossly exceed the bid rate subverts the LARS process and fundamentally undermines the CAISO's ability to select the most cost efficient resource to meet a local reliability need, all of which is at the ratepayer's expense. Given the large, unsupported rate increase, the proposed rates are *per se* unjust and unreasonable and, whether or not they are intended to obtain monopoly rents through an exercise of market power in local area reliability services, the proposed rates' large multiples of the bid rates establish *per se* that the proposed rates will result in the transfer of monopoly rents from ratepayers to Calpine's affiliates DEC and LECEF.

4. DEC and LECEF Filed Inadequate Cost Support Information to Justify Large Rate Increases.

LECEF and DEC both include "Schedule F" information filings as support for their proposed rates. Schedule F of the *pro forma* RMR Agreement, adopted as part of the 1999 Settlement before either DEC or LECEF became operational, sets forth the procedures and methodology for determining the AFRR and Variable O&M Rates for RMR Facilities for purposes of calculating certain charges for service under the RMR Contract. Schedule F requires the Owner to provide an Information Package detailing and supporting all calculations involved in the determination of the AFRR and Variable O&M Rates. DEC and LECEF have submitted the Schedule F information package, but it does not include adequate supporting data to allow the California Parties to determine the accuracy and reasonableness of the underlying accounts used to determine the AFRR, Variable O&M Rate, and other cost components.

DEC and LECEF have requested a waiver of the section 35.13 cost support requirements.[20] The Commission should deny this request. DEC and LECEF filed Schedule F Informational Filings which includes a fraction of the cost support information required under section 35.13 of the Commission's regulations governing change in rate filings. The magnitude of the DEC's and LECEF's proposed rate increase necessitates a review of much of the supporting data typically required under section 35.13. The California Parties will seek the additional cost support information required to determine the reasonableness of the proposed rates through discovery as provided for in Schedule F. Absent such additional information, the California Parties and the Commission will be unable to determine the justness and reasonableness of the proposed rates. Accordingly, the California Parties respectfully request that the Commission deny DEC's and LECEF's request for waiver of section 35.13.

Moreover, LECEF and DEC have failed to justify their proposed Fixed Option Payment Factors as lawful. LECEF proposes a FOPF of 0.75 when operating under Condition 1. DEC proposes a FOPF of 0.5 under Condition 1. LECEF and DEC bear the burden of establishing that the proposed Condition 1 FOPF's result in just and reasonable rates; *i.e.*, yield a portion of an RMR Unit's fixed cost properly attributable to providing only RMR dispatch that also avoids subsidizing these market participants. Therefore, DEC and LECEF are obligated to submit adequate supporting data to permit the parties and the Commission to determine if the proposed FOPF's are just and reasonable and, if not, what the just and reasonable level is.

B. DEC and LECEF Have Failed To Justify Their Proposed Shift From ARFC To AFRR And FOPF.

As noted above, both DEC and LECEF propose unilaterally to change the basis for calculating the fixed cost-based rate under their RMR Agreements from AFRC, a single number intended to represent all fixed costs recoverable under this contract, to AFRR, an annual

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[20] See DEC 2006 RMR Filing at p. 4 and LECEF 2006 RMR Filing at p. 3.

statement of all fixed costs incurred in owning and operating a unit which is multiplied by the FOPF to yield a value equivalent to AFRC. Neither Owner has presented justification for this change. In fact, the LECEF filing does not even mention the fact that the current filed rate under its bilateral RMR Agreement uses AFRC; and the DEC filing does not even mention the proposed change from the use of AFRC, as filed in Docket No. ER03-510-000, to the use of AFRR. Both Owners' failure to offer any justification for these significant changes in rate design makes their filings incapable of meeting their burden of proof under FPA section 205 and thus renders these changes unjust and unreasonable.

C. LECEF Has Improperly Revised the RMR Agreement to Allow It to Change to Condition 2.

LECEF seeks to amend Section 3.2(b) of its RMR Agreement to permit LECEF to transfer its RMR units between Condition 1 and Condition 2. In 2004, when the CAISO negotiated the LECEF RMR Agreement, the CAISO and LECEF agreed not to include language in the RMR Agreement that would permit LECEF to transfer its units between Condition 1 and Condition 2. As explained above, shifting to Condition 2 results in 100 percent of the fixed cost of the unit supported by the RMR Agreement while limiting the extent to which the unit is allowed to enter into market transactions.[21/] Newer, efficient and environmentally sound generating facilities like LECEF, should be able to participate in market transactions and, therefore, not operate under Condition 2. Thus, the CAISO has generally negotiated RMR Agreements for such units that do not include an option to transfer to Condition 2.

LECEF now seeks to make a unilateral, material change to its bilateral RMR Agreement without any defensible justification. The change would give LECEF substantial additional benefits not contemplated when the CAISO executed the LECEF RMR Agreement in 2004. LECEF's sole justification for the change is that the "revision is consistent with CAISO's

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[21/] See discussion supra at n. 5.

pro forma RMR Agreement."[22/] LECEF has patently failed to make any showing that the existing term restricting LECEF to Condition 1 is unreasonable and that the proposed change to the terms of its RMR Agreement would be just and reasonable.

D. DEC's Changes to Start-Up Costs Are Unsupported, Unjust and Unreasonable

DEC proposes to revise the values set forth in Table D-1, Start-up Costs, which are used to determine the Start-up Fuel Costs and Start-up Power Costs pursuant to the formulae set forth in Schedule D of the DEC RMR Agreement. DEC has provided no information that would allow the California Parties to verify that these revised Start-up values are just and reasonable.

E. LECEF's Ramp Rates Must be Corrected

LECEF's filing incorrectly states the ramp rates in Schedule A, section 8 (LECEF Tariff Sheet No. 130). A RMR unit's ramp rates must match the ramp rate values on file with the CAISO in its Master File. The Master File is a data base containing information regarding generating units, included the operational limits of each unit such as ramp rates. An RMR unit must use a single ramp rate whether dispatched for RMR or market purposes.[23/] LECEF does not appear to seek to revise its ramp rates as the redline tariff sheets do not reflect that any change has been made to Schedule A, section 8, yet the stated ramp rates are inconsistent with the ramp rates contained in the Master File which reflects the following values:

[22/] LECEF 2006 RMR Filing, at p. 2.

[23/] See California Indep. Sys. Operator Corp., 105 FERC ¶ 61,091 at P 20 and 23 (2003), order on reh'g, 108 FERC ¶ 61,142 at P 13 (2004).

Unit	Ramp Rate Point Number	Output of Point Range (MW)	Minimum Ramp Rate (MW/Minute)	Maximum Ramp Rate (MW/Minute)
Facility	1	10	1	38.96
	2	194.8	1	38.96

LECEF should be required to file a revised tariff sheet reflecting the ramp rates contained in the CAISO's Master File.

IV. REQUEST FOR HEARING AND MAXIMUM SUSPENSION

The California Parties respectfully request that the Commission suspend DEC's and LECEF's 2006 RMR Filings for five months and set the matter for hearing. As discussed supra, DEC's and LECEF's filings raise multiple issues which require a evidentiary hearing and the benefit of discovery. Moreover, the magnitude of the rate increase proposed by DEC and LECEF mandates the maximum suspension under the Commission's West Texas suspension policy.

In West Texas Utilities Company, the Commission recited its well-established policy to grant requests for a one-day suspension only in those cases where the Commission's preliminary analysis indicates that no more than ten percent of the rate increase appears to be excessive.[24/] In that case, the Commission explained that, where its preliminary investigation indicates proposed rates may be unjust and unreasonable and may be "*substantially excessive,*" the Commission will generally impose a five-month suspension.[25/] The Commission went on to specify what constitutes "excessive revenues," warranting the full five month suspension

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[24/] 18 FERC ¶ 61,189, at p. 61,374-5 (1982).

[25/] RockGen Energy, LLC, 100 FERC ¶ 61,261 (2002) (citing West Texas Utilities, Co., 18 FERC ¶ 61,189 (1982).

afforded by the FPA: "Where more than ten percent of the proposed increase is found to be excessive, we shall suspend the rates for the full five month period for the reasons that we have previously stated."[26/]

As discussed above, the rate increases proposed in DEC's and LECEF's 2006 RMR Filing are extraordinarily large. The proposed 2006 rates increase by 252 percent, the costs for RMR dispatch beyond what DEC collects for 2005 RMR service. For LECEF, the percentage increase above current rates is an astounding 2,825 percent. Because DEC and LECEF have offered no justification for this rate increase, let alone explain any inadequacy in the current rates, there is a clear risk that "excessive revenues" will be recovered by DEC and LECEF under the West Texas Utilities methodology. The situation thus merits a five month suspension. In addition, it is imperative that the rates be subject to refund if they take effect after the five-month suspension.

Should DEC's and LECEF's proposed rates go into effect at any point in time during the pendancy of this case, given the magnitude of the rate differential at issue, PG&E's ratepayers will be exposed to a significant liability absent the Commission subjecting the rates to refund. A refund requirement is especially important in this case given Calpine's current status as a debtor in bankruptcy. On December 20, 2005, Calpine filed for bankruptcy with more than $22.5 billion in debt.[27/] Based on the size of the potential refund liability and Calpine's bankruptcy, the California Parties request that the Commission order Calpine to place all refund

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[26/] 18 FERC ¶ 61,189, at p. 61,374-5 (1982).

[27/] In re Calpine Corp., Bankruptcy Petition No. 05-60200-smb (Bankr. S.D.N.Y.) (filed Dec. 20, 2005).

amounts in an escrow account to ensure that ratepayers receive the full benefit of a Commission refund order.[28/]

Given the size of the filed rate increase and the potential refund liability once the suspension periods have run, it is critical for this matter to be resolved expeditiously. The California Parties made extensive attempts to reach a negotiated settlement with Calpine before DEC and LECEF made their November 30 filings, but the efforts were unsuccessful.[29/] As a result, the California Parties are not optimistic about the likelihood of success of further settlement negotiations. For that reason and because of their concern regarding any delay in resolving these proceedings, the California Parties request that the Commission immediately set these matters for hearing.[30/]

V. MOTION TO CONSOLIDATE

The California Parties request that the Commission consolidate these two captioned proceedings and the existing, unresolved RMR rate schedule proceeding regarding DEC (Docket No. ER03-510).[31/] It is the Commission's practice to consolidate proceedings that raise common issues of law and fact, particularly when doing so will not expand the scope of,

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28/ See Devon Power LLC et al., 102 FERC ¶ 61,314 at P 13 (2003) (Commission ordered the use of an escrow account in connection with amounts paid to a reliability generator to protect ratepayers should the generator seek bankruptcy protection).

29/ Los Esteros Critical Energy Facility, LLC, Motion for Extension of Time, Docket No. ER04-323-000 (filed October 31, 2005); Delta Energy Center, LLC, Motion for Extension of Time, Docket No. ER03-510-000 (filed October 31, 2005).

30/ Should the Commission nevertheless refer these matters for settlement judge proceedings, the settlement proceedings should be limited to thirty (30) days.

31/ On December 8, 2005, the CAISO and PG&E filed a Motion to Reinstitute Proceedings in Docket No. ER03-510, requesting that the Commission reinstitute the proceedings in that docket, set the matter for hearing and establish a procedural schedule.

nor serve to delay, the matters.[32] Consolidation in such circumstances promotes the development of a single solution to common issues raised in multiple proceedings. It avoids the creation of a duplicative record and affects a more expeditious resolution of the issues.[33]

The captioned proceedings present several common issues of fact and law. The petitioners are both wholly-owned subsidiaries of Calpine. All proceedings involve RMR Agreements that are modeled after the CAISO's *pro forma* RMR Agreement, under which DEC and LECEF provide the same services, within the same control area. The same parties, represented by the same counsel, have intervened in both proceedings. By this Joint Protest, the California Parties are raising several identical issues in both new proceedings. The existing DEC proceeding has the same fundamental rate issue: what is the just and reasonable amount of the fixed cost-based rate for DEC under its RMR Agreement? In light of the fact that there are common issues in these dockets, consolidation will result in savings of time and resources of the parties and of the Commission staff and, hence, is in the public interest. Thus, the Commission's standards for consolidation are all met here: (1) there are common issues of law and fact and (2) consolidation will gain procedural efficiencies.[34] Based on the foregoing, the California Parties respectfully move that the two above-captioned matters be consolidated with each other and with the existing DEC docket for purposes of hearing and decision.

VI. CONCLUSION

DEC and LECEF's proposed RMR rates and unilateral changes to the RMR Agreement are unsupported, unjust and unreasonable and would result in substantially excessive

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[32] See Southern California Edison Co. v. Enron Generating Facilities, 101 FERC ¶ 61,313 (2002); Phillips Petroleum Co., et al., 102 FERC ¶ 61,137 (2003).

[33] See Pacific Gas Transmission Co., 51 FERC ¶ 61,246 (1990).

[34] See Southwestern Public Service Co., 109 FERC ¶ 61,373 at P 14 (2004); San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services, 103 FERC ¶ 61,359 at P 11 (2003); California Independent System Operator Corp., 109 FERC ¶ 61,391 at P 45 (2004).

rates. In consideration of the California Parties' Joint Protest, the California Parties request that the Commission rule that the rate schedules set forth in DEC's and LECEF's 2006 RMR filings have not been shown to be just and reasonable, suspend the proposed rates for the maximum five month statutory period, consolidate these two proceedings and the existing DEC RMR rate case, and set the three dockets for hearing.

Dated: December 21, 2005

Respectfully submitted,

/s/ Mary Anne Sullivan

Mary Anne Sullivan
Karin L. Larson
Hogan & Hartson L.L.P
555 Thirteenth Street, N.W.
Washington, D.C. 20004

Counsel for California Independent System Operator Corporation

Laurence G. Chaset
Public Utilities Commission of the State of California
505 Van Ness Avenue, Room 5131
San Francisco, CA 94102

Attorney for the Public Utilities Commission of California

Stuart K. Gardiner
Arthur L. Haubenstock
Pacific Gas and Electric Company
Law Department, B30A
P.O. Box 7442
San Francisco, CA 94120

Counsel for Pacific Gas and Electric Company

Kris G. Chisholm
California Electricity Oversight Board
770 L Street, Suite 1250
Sacramento, CA 95814

Attorney for the California Electricity Oversight Board

CERTIFICATE OF SERVICE

I hereby certify that I have this 21st day of December, 2005 caused to be served a copy of the forgoing Join Protest, Request For Hearing and Maximum Suspension of Rates, and Motion to Consolidate upon all parties listed on the official service lists compiled by the Secretary of the Federal Energy Regulatory Commission in these proceedings.

/s/ Karin L. Larson
Karin L. Larson
Hogan & Hartson L.L.P.
555 13th Street, N.W.
Washington, D.C. 20004