# UNITED STATES OF AMERICA BEFORE THE FEDERAL ENERGY REGULATORY COMMISSION

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Delta Energy Center, LLC	)	ER03-510
	)	

#### MOTION TO REINSTITUTE PROCEEDINGS

Pursuant to Rule 212 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("Commission" or "FERC"), 18 C.F.R. § 385.212, the California Independent System Operator Corporation ("CAISO") and Pacific Gas and Electric Company ("PG&E") hereby move that the Commission reinstitute proceedings under a new sub-docket in the above-referenced docket, set this matter for hearing and establish a procedural schedule for further proceedings in accordance with the uncontested Offer of Settlement approved by the Secretary of the Commission, acting at the direction of Commission, on September 10, 2003, *Delta Energy Center, LLC,* 104 FERC ¶ 61,247 ("Settlement").

#### Statement of the Issue

Whether the Commission should, in accordance with the terms of the uncontested Settlement approved by the Commission in 2003, reinstitute proceedings in this docket, under a new sub-docket, and establish a procedural schedule for an evidentiary hearing.

#### Discussion

The Commission-approved Settlement was an interim settlement. It constituted an agreement by the Sponsoring Parties<sup>1</sup> to defer without prejudice further proceedings in this docket pending a final resolution of issues presented in another docket. Specifically, under Section IV.D.3 of the Settlement, proceedings before the Commission in this docket are to be

The Sponsoring Parties were Delta Energy Center, LLC ("Delta"), CAISO and PG&E.

reinstituted under a new sub-docket, upon request of any Sponsoring Party, if, after the Sponsoring Parties have elected to try to settle the proceeding following the so-called Reinstitution Date<sup>2</sup> and at least 90 days following the notice that the Reinstitution Date have past, the Sponsoring Parties have been unable to reach settlement.<sup>3</sup>

The Settlement further provided that the Sponsoring Parties could, by agreement, extend the time for giving notice of the reinstitution of proceedings. *See* Settlement, § II.D.5. The Sponsoring Parties twice exercised their right to extend the time to reinstitute proceedings so that they could continue their efforts to reach a further and final settlement in this proceeding. *See* Letters to the Commission dated September 20, 2005 and November 21, 2005.

Since shortly following the issuance of the final Commission Order on Rehearing in Docket No. ER98-495-000, the Sponsoring Parties have been meeting in an effort to reach a further and final settlement in this proceeding. Those discussions have not resulted in a settlement, and the Sponsoring Parties have concluded that further settlement discussions are not likely to be productive. Accordingly, CAISO and PG&E request that the Commission reinstitute proceedings and establish a procedural schedule for an evidentiary hearing in accordance with Section IV.D.3 of the Settlement. In view of the already extensive, but ultimately unsuccessful, efforts the Sponsoring Parties have made to settle their differences, CAISO and PG&E believe that commencing settlement judge procedures would not be useful at this time.

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<sup>&</sup>lt;sup>2</sup> The Reinstitution Date is defined in the Settlement as the earlier of (i) the date that the Commission issued an order on rehearing, or 30 days after an opinion if no rehearing was sought of a Commission decision addressing the initial decision in *Pacific Gas and Elec. Co.*, Docket ER98-495-000 *et al.*, or (ii) October 1, 2005. Based on the foregoing, the Reinstitution Date is June 3, 2005, when the Commission issued an Order on Rehearing in the referenced docket.

<sup>&</sup>lt;sup>3</sup> If no such notice had been given, the interim rates provided for by the Settlement would have become final. *See* Settlement, § II.D.1.

## Respectfully submitted,

/s/ Stuart K. Gardiner

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Dated: December 8, 2005

/s/ Mary Anne Sullivan
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### **CERTIFICATE OF SERVICE**

I hereby certify that I have this 8<sup>th</sup> day of December, 2005 caused to be served a copy of the forgoing Motion to Reinstitute Proceedings upon all parties listed on the official service list compiled by the Secretary of the Federal Energy Regulatory Commission in this proceeding.

/s/ Sidney M. Davies

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