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January 12, 2004

## **VIA ELECTRONIC FILING**

The Honorable Magalie R. Salas  
Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, D.C. 20426

**Re: Gilroy Energy Center, LLC  
Docket No. ER04-321-000**

Dear Secretary Salas:

Enclosed is the Joint Provisional Protest of the California Independent System Operator Corporation and Pacific Gas and Electric Company, submitted in the above-captioned proceeding. Please contact the undersigned if you have any questions regarding this filing.

Respectfully submitted,

*/s/ Bradley R. Miliauskas*

J. Phillip Jordan  
Bradley R. Miliauskas

Counsel for the California  
Independent System Operator  
Corporation

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

**Gilroy Energy Center, LLC**

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**Docket No. ER04-321-000**

**JOINT PROVISIONAL PROTEST  
OF THE  
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION  
AND PACIFIC GAS AND ELECTRIC COMPANY**

Pursuant to Rule 211 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”), 18 C.F.R. § 385.211 (2003), and the Commission’s December 31, 2003 Notice of Filing, the California Independent System Operator Corporation (“ISO”) and Pacific Gas and Electric Company (“PG&E”) (collectively the “Parties”)<sup>1</sup> submit this provisional protest in the captioned proceeding (“Provisional Protest”). In support thereof, the Parties state as follows:

**I. Description of the Proceeding**

On December 22, 2003, Gilroy Energy Center, LLC (“Gilroy”) filed an unexecuted Must-Run Service Agreement and accompanying schedules (“RMR Agreement”)<sup>2</sup> between Gilroy and the ISO setting forth the rates, terms, and conditions under which Gilroy proposes to provide reliability must-run services to the ISO.

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<sup>1</sup> Each of the Parties has concurrently filed a separate Motion to Intervene in this proceeding. The Parties are authorized to state that the California Public Utilities Commission and the California Electricity Oversight Board, which are intervening by separate filings, support this Provisional Protest.

<sup>2</sup> Because the facilities covered by the Must-Run Service Agreement and accompanying schedules must operate at certain times for the reliability of the transmission grid, they are referred to as “reliability must-run” or “RMR” units and the agreement and accompanying schedules covering them are referred to as “RMR agreements.” Other capitalized terms that are not defined in this filing have the same meaning set forth in the RMR Agreement or in the Master Definitions Supplement, Appendix A to the ISO Tariff.

## II. Provisional Protest

The Parties enter this Provisional Protest in this proceeding to identify terms and conditions included in the filed RMR Agreement but not agreed to between Gilroy and the Parties. While the Parties have been working with Gilroy to resolve the outstanding issues, the Parties also wish to preserve their respective rights to protest issues included in the filed RMR Agreement and protest the following issues listed below. The enumerated concerns are those the Parties have been able to identify to date. In addition to these concerns, the Parties reserve the right to address in the future any errors or concerns that are discovered after the filing of the Provisional Protest:

Based on their review of the RMR Agreement filing, the Parties have identified the following issues with the filed RMR Agreement:

1. Schedule A Operational Information.

Schedule A requires the following revisions:

(i) The Lambie Energy Center 1 “Load and Maximum MVA<sub>r</sub>” values should be lowered to be less than or equal to the Maximum Net Dependable Capability<sup>3</sup>;

(ii) the duplicative language regarding Reserved MW<sub>h</sub>s that is specified in Schedule P for Yuba City Energy Center 1 should be removed;

(iii) the Gilroy Energy Center 1&2 Minimum Load values should be lowered to 15 MW and the corresponding note revised accordingly; and

(iv) notes may need to be added to explain the relationship between the individual and combined values for Gilroy Energy Center 1&2.

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<sup>3</sup> The “Load at Maximum MVA<sub>r</sub> Lagging, MW” and “Load at Maximum MVA<sub>r</sub> Leading, MW” in Schedule A, Section 2 may not be higher than the level to which the ISO is permitted to dispatch the Unit and this is limited by the Maximum Net Dependable Capacity value.

2. Schedule B Average Other Outage Hours – The Average Other Outage Hour (“AOOH”) calculation for the Lambie Energy Center 1 Unit includes values that appear to be incorrect. As such, the values in Table B-1 through B-5 must be revised to incorporate the AOOH using the correct values for Lambie Energy Center 1.

3. Schedule D Coefficients and Note

Schedule D requires the following revisions

(i) Gilroy and the Parties agreed to revise the coefficients in Table D-1 for the Gilroy Energy Center 1&2 Units to reflect the Start-up of a single Unit rather than two Units but it appears these values were not updated as the Start-up Costs in Table D-0 were calculated using the single Unit coefficients. As such, these values need to be revised and a note added below the table to explain the relationship between the individual and combined Unit values; and

(ii) the filed version of Schedule D includes a note below Table D-1 regarding the Owner’s right to charge for additional labor costs related to non-peak Starts-ups; the note is unclear and the Parties’ believe it is superfluous. As such, the note regarding labor costs regarding non-peak Start-ups should be removed.

4. Schedule I Language – The Parties oppose the language regarding the insurance requirements Gilroy proposes in Schedule I because it varies from the language in the Pro-forma RMR Agreement adopted by the Commission and accepted by other parties to RMR agreements. The proposed language upsets the careful balance between the parties to the filed RMR Agreement. As such, the Parties request that the language be revised to conform to the language provided in the Pro-forma RMR Agreement.

5. Schedule J Clarification – The filed version of Schedule J includes the notation “[**TO BE REVIEWED AND REVISED**]” above the list of the Owner’s notice contacts. Due to the presence of this note, it is unclear whether or not the contacts listed are the ones Gilroy intended to be listed in Schedule J. As such, Gilroy should remove the notation and update the contact list with the intended contacts.

6. Schedule P Reserved MWh Language – The language in Schedule P that specifies the requirements for Reserved Energy for Air Emission Limitations does not accurately reflect the intent of the agreement reached between the Parties and Gilroy. As such, this language will need to be revised to reflect the intent of the parties’ agreement.

7. Section 4.11 Language – The language in Section 4.11, paragraph (a)(ii) incorrectly uses the term “capacity factor” instead of the intended term “service factor”. As such, the language in Section 4.11(a)(ii) should be revised to reflect the intent of the agreement.

### **III. Conclusion**

For the foregoing reasons, the Parties respectfully request that the Commission rule that:

(i) the rate schedules set forth in Gilroy’s filing have not been shown to be just and reasonable;

(ii) suspend the rate schedules subject to hearing and establish a refund date that is the same as the proposed effective date, January 1, 2004; and

(iii) defer action on the RMR Agreement filing until February 12, 2004, to give the Parties and Gilroy time to attempt to resolve outstanding issues associated with the filing.

Respectfully submitted

/s/ J. Phillip Jordan

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Dated: January 12, 2004

## CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list for the captioned proceeding, in accordance with Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated at Folsom, CA, on this 12<sup>th</sup> day of January, 2004.

/s/ Sidney L. Mannheim  
Sidney L. Mannheim