

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

Pacific Gas and Electric Company,)	
Complainant)	
)	
v.)	Docket No. EL06-53-000
)	
Delta Energy Center, LLC and)	
Los Esteros Critical Energy Facility, LLC,)	
Respondents)	
)	
)	
Delta Energy Center, LLC)	Docket Nos. ER03-510-006, ER06-261-000
Los Esteros Critical Energy Facility, LLC)	and ER06-268-000 (consolidated)
)	
)	(Not Consolidated)

**MOTION TO INTERVENE, MOTION TO CONSOLIDATE
AND COMMENTS OF THE
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION**

Pursuant to Rules 212 and 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”), 18 C.F.R. §§ 385.212 and 385.214 (2006), and the Commission’s March 1, 2006 Notice of Complaint, the California Independent System Operator Corporation (“CAISO”) submits this Motion to Intervene and Comments in the captioned proceeding relating to Pacific Gas and Electric Company’s (“PG&E”) February 28, 2006 Complaint against Delta Energy Center, LLC (“Delta”) and Los Esteros Critical Energy Facility, LLC (“LECEF”) (together, the “Generators”). In support thereof, the CAISO states as follows:

I. Statement of Issues

1. The Commission should grant the CAISO’s motion to intervene because it satisfies all of the requirements for intervention set forth in Section 308 of the Federal Power Act (16 U.S.C. § 825g(a)) and Rule 214, as the

Complainant's allegations question the Generators' behavior in the CAISO's Local Area Reliability Service ("LARS") process through which the CAISO designates reliability must-run ("RMR") resources. The CAISO has a direct and substantial interest in the integrity of its procurement process that cannot be adequately represented by any other party.

2. The Commission should consolidate this Section 206 Complaint proceeding and the pending Section 205 RMR rate cases in Docket Nos. ER03-510-006, ER06-261-000 and ER06-268-000 (consolidated) 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); Utah Power & Light Company, 23 FERC ¶ 61,287, at p. 61,597 (1983) (consolidation of Section 205 and 206 proceedings is appropriate to avoid redundancy and wasted resources).

II. Description of the CAISO and Communications

The CAISO is a non-profit public benefit corporation organized under the laws of the State of California with a principal place of business at 151 Blue Ravine Road, Folsom, CA 95630. The CAISO is the Control Area Operator responsible for the reliable operation of a grid comprised of the transmission systems of a number of public utilities including PG&E. As part of this responsibility, the CAISO procures RMR generation through its annual LARS RMR procurement process.

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

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III. Motion to Intervene

On February 28, 2006, PG&E filed a complaint alleging that Delta's and LECEF's responses to the CAISO's 2006 LARS request for proposals ("RFP") for RMR service contained false or misleading information in violation of Rule 3 of the Commission's Market Behavior Rules.¹ As the Control Area Operator responsible for maintaining reliability of the PG&E transmission system, in part through the procurement of RMR generation, and as the counter party to the Generators' RMR Agreements for Contract Year 2006, the CAISO has a unique interest in this complaint proceeding. Accordingly, the CAISO has a direct and substantial interest in this proceeding and requests that it be permitted to intervene with full rights of a party. Because no other party can adequately represent the CAISO's interests, the CAISO's intervention is in the public interest and should be granted.

¹ See Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations, 105 FERC ¶ 61,218, at P 106, order on reh'g, 107 FERC ¶ 61,175 (2004) (codified at 18 C.F.R. § 35.37(b)(2006)).

IV. Comments

PG&E's Complaint raises at least two important issues: (1) the extent to which the information provided in support of a bid during the LARS process (apart from the bid itself) must be factually accurate, and (2) the extent to which Calpine in this case met such a standard. The comments set forth herein address the first issue only. As explained by PG&E in its Complaint,² the CAISO procures RMR services to ensure local reliability. Section 30.6.1³ of the CAISO's tariff governing procurement of RMR generation requires the CAISO to determine annually which generating units it requires to continue to be RMR units and which generating units it requires to become the subject of an RMR contract to ensure local reliability in the coming year.⁴ The CAISO uses the LARS process to make this determination. Each year, the CAISO issues the LARS RFP requesting proposals from generators capable of providing local area reliability service for areas in need of such service as identified through the CAISO's LARS Technical Study.⁵

The LARS RFP process is an open process that enables the CAISO to identify and contract with only the most economic generation units that effectively meet all of the CAISO's RMR criteria.⁶ Specifically, through the LARS process, the CAISO solicits proposals for

² Complaint at p. 5-8.

³ As of March 1, 2006, the simplified and reorganized version of the ISO Tariff became effective. RMR procurement tariff language was moved to Section 30.

⁴ CAISO Tariff at § 5.2.5.

⁵ The Technical Study contains a detailed description and evaluation of the LARS areas, an estimate of resources (both quantity of resources and MW requirements) that are needed to satisfy the LARS criteria, and the set of assumptions applied in the evaluation.

⁶ See, CAISO's RMR Study Methodology dated February 24, 2004 available at <http://www.caiso.com/docs/2004/05/20/2004052010413523368.html>.

generating units, transmission projects and load management alternatives to meet local area reliability needs, which proposals the CAISO compares against the cost of maintaining existing RMR Contracts. Even though the LARS proposals are not binding on either the CAISO or the LARS participant, the CAISO, in evaluating the proposals and selecting RMR resources, places substantial reliance on the factual information provided by the generators in support of their proposals. Thus, the RMR designation process is compromised if a generator's LARS proposal does not provide factual information that accurately reflects the costs at which the generator can provide RMR service from its facilities because it serves to distort the resulting RMR designations, and thereby undermines the CAISO's ability to select the most cost efficient resource to meet the local reliability needs. Under the appropriate circumstances, the failure to provide such accurate factual information could constitute a violation of applicable rules on conduct.

Although the CAISO understands that changes in circumstances can affect the costs of providing RMR service between the time a LARS proposal is submitted and the time of a RMR rate filing with the Commission, the CAISO requests that the Commission confirm that information submitted in support of a LARS proposal be accurate.

V. Motion to Consolidate

The CAISO requests that the Commission consolidate this proceeding and the pending, already consolidated RMR rate proceedings regarding DEC and LECEF (Docket Nos. ER03-510, ER06-261 and ER06-268). It is the Commission's practice to consolidate proceedings that raise common issues of law and fact.⁷ The Commission has specifically

⁷ See Southern California Edison Co. v. Enron Generating Facilities, 101 FERC ¶ 61,313 (2002); Phillips Petroleum Co., et al., 102 FERC ¶ 61,137 (2003).

recognized that consolidation of Section 205 and Section 206 proceedings involving the same rates and same cost of service is appropriate where “a failure to consolidate the dockets would pose substantial risk of redundancy and wasted resources.”⁸ That is precisely the circumstance here. Both proceedings involve the same rates and the same issues concerning the sharp disparity between the cost information DEC and LECEF provided to the CAISO in the LARS process and the rates DEC and LECEF now propose in their Section 205 filing. Thus, consolidation will avoid the creation of a duplicative record and effect a more expeditious resolution of the issues.⁹

The remedies in the two proceedings may be different. That, however, is not a reason to deny consolidation. Remedy is a matter that should only be determined on the basis of a fully developed record,¹⁰ but the record necessary to decide what are just and reasonable rates and whether DEC’s and LECEF’s failure to accurately portray in its LARS bid the rates at which it was prepared to provide RMR service will be substantially, if not entirely, the same. Based on the foregoing, the CAISO respectfully moves that the Section 205 and 206 proceedings be consolidated for purposes of hearing and decision.

⁸ Utah Power & Light Co., 23 FERC ¶ 61,287, at p. 61,597 (1983). See also PJM Interconnection, L.L.C., 108 FERC ¶ 61,317, at P 36 (2004) (consolidating a Section 206 proceeding with an on-going Section 205 hearing in another docket).

⁹ See Pacific Gas Transmission Co., 51 FERC ¶ 61,246 (1990).

¹⁰ See American Electric Power Service Corporation, 103 FERC ¶ 61,345, at P 71 (2003) (ordering that unjust profits be disgorged and that “additional, appropriate non-monetary remedies” be considered following a “trial-type evidentiary proceeding” in which a staff report and the record from another docket were incorporated by reference); Pacific Gas and Electric Company, 96 FERC ¶ 61,102, at p. 61,405-06 (2001) (stating “that a more fully developed record” was necessary for the Commission to determine the outcome of the proceeding).

VI. Conclusion

For the foregoing reasons, the CAISO respectfully requests that the Commission grant the CAISO's motion to intervene in the above-captioned proceeding with full rights of a party, consolidate this proceeding with the pending proceedings in Docket Nos. ER03-510, ER06-261 and ER06-268, and consider the comments set forth above.

Respectfully submitted,

/s/ Mary Anne Sullivan

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Dated: March 20, 2006

CERTIFICATE OF SERVICE

I hereby certify that I have this 20th day of March, 2006 caused to be served a copy of the forgoing Motion to Intervene and Comments upon all parties listed on the official service list compiled by the Secretary of the Federal Energy Regulatory Commission in this proceeding.

/s/Karin L. Larson
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