

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

Geysers Power Company, LLC)

Docket No. ER02-407-000

**MOTION TO INTERVENE AND PROTEST OF THE
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION**

Pursuant to Rules 211 and 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”), 18 C.F.R. §§ 385.211 and 385.214, and the Commission’s November 29, 2001, Notice of Filing, the California Independent System Operator Corporation (“ISO”) hereby moves to intervene and submits a protest in the above-captioned proceeding. In support thereof, the ISO states as follows:

I. COMMUNICATIONS

Communications regarding this filing should be addressed to the following individuals, whose names should be entered on the official service list maintained by the Secretary for this proceeding.

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II. BACKGROUND

On November 26, 2001, Geysers Power Company, LLC, (“Geysers”) tendered for filing an updated rate schedule for calendar year 2002 for a Reliability Must-Run Service Agreement (“RMR Agreement”)¹ between Geysers and the ISO for Geysers Units 13 and 16 (designated as “First Revised Rate Schedule No. 4”). The filing was made pursuant to the terms of a settlement agreement approved by the Commission² under which each RMR Owner is required to file annual updates for Contract Service Limits, Hourly Availability Charges and Penalty Rates, Prepaid Start-up Costs, projected outage information, Annual Fixed Revenue Requirements

¹ Because the generating units covered by these agreements must operate at certain times for the reliability of the ISO Controlled Grid, they are referred to as “reliability must-run” or “RMR” units and the agreements covering them are referred to herein as “RMR Agreements.” Other capitalized terms that are not defined in this filing have the same meaning set forth in the Master Definitions Supplement, Appendix A to the ISO Tariff.

("AFRR"), and Variable Operation and Maintenance ("O&M") Rates. In its filing, Geysers states that it did not file annual updates for Units 13 and 16 for calendar year 2000 or 2001 because neither was designated as a RMR Unit in those years. Geysers further states that this filing is in response to the ISO's designation of Unit 16 as a RMR unit for calendar year 2002.

III. MOTION TO INTERVENE

The ISO is a non-profit public benefit corporation organized under the laws of the State of California and responsible for the reliable operation of a grid comprising the transmission systems of Pacific Gas and Electric Company ("PG&E"), San Diego Gas & Electric Company ("SDG&E"), and Southern California Edison Company ("SCE"), as well as for the coordination of the competitive Ancillary Services and real-time electricity markets in California. As the counter party to the Geysers RMR Agreement, the ISO has a unique interest in any Commission proceeding concerning proposed changes to that agreement. Accordingly, the ISO has a direct and substantial interest in the proposed rate changes and requests that it be permitted to intervene in this proceeding with full rights of a party.

IV. PROTEST

The ISO's protest is based on the fact that the June 1, 1999 Geysers-ISO RMR Agreement, which the filing purports to revise, has expired under the terms of the RMR Agreement and cannot now be

² *California Independent System Operator Corp.*, 87 FERC ¶ 61,250 (1999).

revised. Once an RMR Agreement has terminated as to one or more units, the ISO must specifically redesignate a unit as RMR and a new RMR Agreement must be negotiated before the designation can take effect. The Commission should therefore reject Geysers' filing since Geysers' 1999 RMR Agreement terminated and the ISO and Geysers have not negotiated a new RMR Agreement for Unit 16. Moreover, because the RMR Agreement had terminated, irrespective of whether Geysers took the appropriate steps to cancel them, the associated rates must similarly have been terminated as they were specifically associated with the Geysers' 1999 RMR Agreement. Nor can the rates automatically be transferred for use in association with another new agreement.

Section 2.1(a) of the pro forma RMR Agreement provides that a specific unit is designated as RMR for one Contract Year.³ Section 2.1(b) provides that the ISO may extend the term of the Agreement for an additional calendar year by notice given not later than October 1 of the expiring Contract Year. Although this provision permits the ISO to extend the term of an RMR Agreement, the ISO did not do so with respect to Geysers Unit 16. The June 1, 1999 Geysers-ISO RMR Agreement therefore terminated on December 31, 1999. Accordingly, the Geysers-ISO RMR Agreement as to Unit 16 is no longer in effect and cannot be revised.

³ A Contract Year is defined in the RMR Agreement as a calendar year; provided however that the initial Contract Year shall commence on the Effective Date of the Agreement and expire at the end of the calendar year in which the Effective Date occurred.

Geysers states that the revised RMR Agreement is being submitted in response to the ISO's designation of Geysers Unit 16 as a RMR Unit for calendar year 2002. Although it is accurate that the ISO has recommended that Geysers Unit 16 be designated for 2002, such a designation is contingent upon the execution of a new RMR Agreement with Geysers. At its September 20, 2001 meeting, the ISO Board of Governors acted to approve its management's recommendations for RMR designations for 2002. Geysers, however, misinterprets the intent of the ISO Board of Governors approval of RMR designations for calendar year 2002. Although the Board of Governors approved the recommendations for RMR designations, the approval was contingent upon the execution of an acceptable RMR contract. Specifically, the Board of Governors moved to:

- Approve Management's recommendation for Reliability Must-Run designations for 2002 . . . with designation for units not currently under an RMR Contract *contingent upon execution of an RMR contract with rates, terms and conditions acceptable to Management*; . . .
- Authorize Management to negotiate RMR Contracts with those units conditionally designated as RMR units. . .

General Session Minutes, California ISO Board of Governors Meeting, Sept. 20, 2001, at 3 (emphasis added). Because, as discussed above, the 1999 RMR Agreement with Geysers terminated at the end of calendar year 1999, the designation of Unit 16 is contingent upon the negotiation of a new contract acceptable to the ISO, including new rates, terms and conditions acceptable to Management. It is therefore

inappropriate for Geysers to file a revised rate schedule based on a terminated agreement and based on an ISO RMR designation that has not been made final.

In the alternative, if the Commission disagrees that the June 1, 1999 Geysers-ISO RMR Agreement and associated rate schedules terminated on December 31, 1999, the Commission should allow the joint parties to amend the 206 complaint filed with the Commission on November 2, 2001, in Docket EL02-15-000, retaining a refund effective date of January 1, 2002, to include Geysers as a respondent. The June 1, 1999 Geysers-ISO RMR Agreement and associated rates were not included in the complaint because, as described above, the RMR Agreement had terminated on its own terms. If the 1999 RMR Agreement is deemed to remain effective, it should be subject to the proceedings underway in docket EL02-15-000 for the reasons set forth in the November 2, 2001 complaint of the joint parties in that docket.

V. CONCLUSION

For the foregoing reasons, the ISO respectfully requests that the Commission permit the ISO to intervene, and that the ISO be accorded full party status in this proceeding. The ISO further requests that the Commission reject Geysers' filing so that the parties may negotiate an acceptable agreement.

Respectfully submitted,

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Counsel for the California Independent
System Operator Corporation

Dated: December 13, 2001

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, DC, on this 13th day of December, 2001.

Rebecca A. Blackmer
Swidler Berlin Shereff Friedman, LLP
3000 K Street, NW
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December 13, 2001

VIA MESSENGER

The Honorable Linwood A. Watson, Jr.
Acting Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Re: **Geysers Power Company, LLC**
Docket No. ER02-407-000

Dear Secretary Watson:

Enclosed for filing in the above-captioned proceeding are an original and fourteen copies of the Motion to Intervene and Protest of the California Independent System Operator Corporation. Two additional copies of the filing are also enclosed. I would appreciate your stamping the additional copies with the date filed and returning it to the messenger.

Respectfully submitted,

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