

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

Delta Energy Center, LLC

Docket No. ER03-510-000

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

Pursuant to 18 C.F.R. §385.211 and 18 C.F.R. §385.214, the California Independent System Operator Corporation (“CA ISO”), moves to intervene in the above captioned proceeding and protests the filing of Delta Energy Center, LLC (“Delta”). In support thereof, the CA ISO states as follows:

I. COMMUNICATIONS

Please address communications concerning this filing to the following persons:

<p>Jeanne M. Solé* Regulatory Counsel The California Independent System Operator Corporation 151 Blue Ravine Road Folsom, CA 95630 Tel: (916) 351-4400 Fax: (916) 608-7222</p>	<p>J. Phillip Jordan* Rebecca A. Blackmer Swidler Berlin Shereff Friedman, LLP 3000 K Street, N.W., Suite 300 Washington, DC 20007 Tel: (202) 424-7500 Fax: (202) 424-7643</p>
<p>Deborah A. Le Vine¹ Director of Contracts The California Independent System Operator Corporation 151 Blue Ravine Road Folsom, CA 95630 Tel: (916) 351-4400 Fax: (916) 608-7222</p>	

* Individuals designated for service pursuant to Rule 203(b)(3), 18 C.F.R. § 203(b)(3).

II. BACKGROUND

In summer 2002, the CA ISO conducted its annual Local Area Reliability Service (“LARS”) assessment to determine the resources required by the CA ISO to ensure that local areas meet Applicable Reliability Criteria, and undertook a solicitation of bids to meet the reliability requirements identified. On July 10, 2002, Delta submitted a bid to provide Reliability Must Run (“RMR”) service from the Delta Energy Center (“DEC”) in response to the solicitation. On September 19, 2002, the CA ISO Governing Board designated a series of units, including DEC, as RMR Units, contingent upon execution of an RMR agreement with rates, term and conditions acceptable to CA ISO Management. The Governing Board authorized CA ISO Management to negotiate RMR agreements with those units conditionally designated as RMR units.

¹ In addition to Ms. Solé and Mr. Jordan, the ISO respectfully requests that Ms. Le Vine be included in the Official Service List. Ms. Solé and Ms. Le Vine work in separate buildings, and it would be of significant assistance to the ISO if both were included on the list.

Following the Governing Board conditional designation of DEC, the CA ISO engaged in negotiations with Delta as to an RMR Agreement for DEC along with Pacific Gas and Electric Company (“PG&E”), the Responsible Utility in the case of DEC pursuant to the pro-forma RMR Agreement, the California Public Utilities Commission (“CPUC”) and the California Electricity Oversight Board (“EOB”). During the course of these negotiations, the CA ISO and Delta were able to agree on all terms and conditions, except the rates for RMR service from DEC. Because agreement on the rates was not obtained, and because DEC is needed to maintain reliability in the Greater Bay Area, the CA ISO encouraged Delta to file an unexecuted RMR Agreement with the Commission, setting forth the terms and conditions agreed to among the parties, as well as the rates proposed by Delta, in order to allow the Commission to determine the just and reasonable rates for RMR service from DEC, consistent with the CA ISO Tariff.

On February 7, 2003, Delta tendered for filing, pursuant to Section 205 of the Federal Power Act (“FPA”)², an unexecuted RMR Agreement setting forth the rates, terms and conditions under which Delta proposes to provide RMR services to the CA ISO from DEC. Delta requested waiver of the sixty-day prior notice requirement, an effective date for the RMR Agreement of February 10, 2003, and expedited consideration of the filing.

On February 11, 2003, the Commission issued a Notice of Filing setting February 28, 2003 as the comment date.

III. BASIS FOR MOTION TO INTERVENE

² 16 U.S.C. § 824d (1994).

The CA 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 a number of public utilities including PG&E, as well as for the coordination of the competitive Ancillary Services and real-time electricity markets in California. In this proceeding, Delta has filed an unexecuted RMR agreement with the CA ISO for the provision by Delta of RMR services to the CA ISO. As the proposed counter party to the unexecuted agreement, the CA ISO has a unique interest in this proceeding. Accordingly, the CA ISO has a direct and substantial interest in the proposed agreement and requests that it be permitted to intervene in this proceeding with full rights of a party.

IV. BASIS FOR THE PROTEST

The CA ISO's protest in this matter is limited to the rates proposed by Delta for provision of RMR services to the CA ISO; hence the CA ISO supports waiver of the sixty day notice period, and a prompt decision by the Commission placing the RMR Agreement with Delta into effect on February 10, subject to hearing and subject to refund. In accordance with the CA ISO Tariff, because the CA ISO and Delta were unable to agree on a fair price for RMR services, the Commission must determine and authorize just and reasonable rates. To prevent Delta from gaining an unfair advantage in the competitive market, these rates should be developed using the "net incremental cost" methodology adopted by Judge Young in docket ER98-495-000. The fact that Delta bid the prices it proposes in the unexecuted agreement into the LARS solicitation does not provide support for them; to the contrary, the results of the LARS process illustrate that the market for local area reliability services is not competitive and that a

fairly priced RMR Agreement is required with Delta to meet Local Reliability Criteria and reduce the ability of Delta to exercise local market power.

A. The Commission should promptly make the Delta RMR Agreement effective subject to hearing and subject to refund and should then proceed to determine just and reasonable rates for RMR services from DEC.

The CA ISO encouraged Delta to file an unexecuted RMR Agreement with the Commission because it has determined that DEC is needed to provide RMR services in the Greater Bay Area. Accordingly, as Delta represents, the CA ISO supports waiver of the sixty-day notice period, and a prompt decision by the Commission allowing the Agreement to go into effect as of February 10, 2003, but subject to hearings and subject to refund. In this manner, the Commission can determine the rates that are just and reasonable for RMR service from DEC.

CA ISO Tariff section 5.2.3 provides that “[t]he 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 analyses and studies to designate a Generating Unit as a Reliability Must-Run Unit. A Generating 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.”

In this case, as is described in more detail below, Delta bid rates into the CA ISO LARS process, which are not just and reasonable. Further, negotiations between the CA ISO and Delta have not resulted in an agreement on just and reasonable rates. Thus, in accordance with section 5.2.3 of the CA ISO Tariff, just and reasonable rates for RMR service from DEC must be determined and authorized by FERC.

The CA ISO worked with Delta to agree on a few modifications to the pro forma RMR Agreement and to fill in the Schedules accurately. Thus, the CA ISO's protest in this matter is directed only at the rates proposed by Delta.³

B. The rates for RMR services from DEC should be determined based on the net incremental cost methodology adopted by Judge Young.

The CA ISO considers that rates for Condition 1 RMR Units such as DEC, should be calculated based on the "net incremental cost" methodology adopted in Administrative Law Judge Young's June 7, 2000, initial decision in docket ER98-495-000 ("Judge Young Decision"). Based on the information it has received to date, the CA ISO believes that the rates proposed by Delta are substantially higher than rates that would result from the application of the "net incremental cost" methodology.

As described by Judge Young, the "net incremental cost" methodology reasonably accounts and fully compensates Owners for all costs related to an RMR Owner's RMR obligations. Judge Young Decision at 28. The methodology requires summing up RMR operations-related incremental costs and reasonably identifiable opportunity costs and subtracting from this figure reasonably identifiable opportunity benefits that are never set lower than incremental administrative costs. Judge Young

³ Section 14.4 and Schedule F of the unexecuted agreements provide that neither Delta nor the CA ISO will not seek relief under sections 205 and 206 of the Federal Power Act respectively as to the Annual Fixed Reliability Cost, the Hourly Availability Charge, the Owner's Repair Cost Obligation, or the Variable O&M Rate applicable in 2003. These provisions were drafted when a settlement as to rates was contemplated. Given that no settlement was reached, the provisions are no longer appropriate.

Decision at 28-29. RMR rates are designed to provide the RMR Owner the greater of the net incremental cost or the net going forward cost. Judge Young Decision at 29⁴.

While Delta provided to the CA ISO a variety of information and arguments for why its bid in the LARS process is just and reasonable, the CA ISO is persuaded based on the information that it has received to date, that a fair application of the “net incremental cost” methodology would yield a substantially lower rate than the rate proposed by Delta. DEC is a new power plant built with the best available technology for fuel efficiency and pollution control⁵, and its direct and opportunity costs of providing RMR services to the CA ISO are likely minimal, a small fraction of the rate bid by Delta in the LARS process and proposed by Delta in the unexecuted RMR Agreement.

The DEC situation illustrates many of the points made by Judge Young in adopting the “net incremental cost” methodology. Judge Young noted in adopting the methodology “RMR obligations are simply contractual mechanisms enabling generators enjoying unique—and therefore essential – locations in the interconnected transmission grid to participate in competitive markets for energy and ancillary services by mitigating those generators’ ability to exploit local market power in limited circumstances. It

⁴ Although Judge Young’s Decision has been pending before the Commission for over two and a half years, the Commission has failed to act on the exceptions that were filed. The CA ISO and other parties have repeatedly asked the Commission to rule on the matter. The failure by the Commission to rule promptly has resulted in payment by California ratepayers of rates, potentially in the hundreds of millions of dollars in excess of just and reasonable rates for RMR services from Condition 1 Units. Moreover, without a Commission decision setting forth definitively the appropriate methodology for calculating just and reasonable rates for RMR service from Condition 1 units, it is very difficult for RMR Owners, the CA ISO, Responsible Utilities and other interested parties to negotiate mutually acceptable rates. While filing of the unexecuted RMR Agreement by Delta in this matter establishes a basis for the provision of RMR service from DEC pending determination by the Commission of just and reasonable rates for the service, this approach exposes California ratepayers to additional unduly elevated RMR payments pending a Commission decision and refund order. The CA ISO once again urges the Commission to act promptly to affirm Judge Young’s Decision in docket ER98-495-000.

⁵ The latest technology design is highly fuel efficient, and this provides Delta with a greater net profit margin than its competitors for contribution to covering fixed costs. The best available pollution control technology allows the plant to operate without any limitations on its operating hours.

follows that RMR unit availability should be compensated in an economically 'transparent' manner: appropriate compensation should mitigate local market power, but neither unnecessarily advantage nor unnecessarily disadvantage RMR unit participation in competitive markets for energy and ancillary services." Judge Young Decision at 25.

DEC is new plant designed and constructed to compete effectively with other generation in California. Unless the "net incremental cost" methodology is adopted by the Commission for compensating Delta for RMR services, Delta would receive through the RMR Agreement an undue competitive advantage vis a vie other Generators via a large contribution towards its fixed costs. This result is unwarranted.

C. The results of the LARS process illustrate the need for a fairly priced RMR Agreement with Delta regarding RMR services from DEC.

The fact that the rates proposed by Delta were bid into the LARS process provides no additional justification for them. To the contrary, the results of the LARS process illustrate that the market for local area reliability services is not competitive and that a fairly priced RMR Agreement with Delta is required to maintain local area reliability in the Greater Bay Area and to reduce the ability of Delta to exercise market power.

The LARS process is intended to solicit and identify generation resources, transmission projects and demand based programs that can meet the CA ISO's reliability needs in addition to resources subject to existing RMR Agreements. In the case of the Greater Bay Area, the local reliability pocket to which DEC would provide RMR service, local reliability needs are such that for 2003, the CA ISO could not release any existing RMR Units from their RMR Agreement, and conditionally

designated every single Generating Unit that submitted a bid in the LARS process.⁶ One bid only in the Greater Bay Area was rejected, a 10-15 MW load based bid that was unduly expensive and did not eliminate the need for any other designation.

These results illustrate that the market for local reliability services in the Greater Bay Area is very far from competitive. In these circumstances there is no justification for automatically paying Generating Units the amount they bid in the LARS process. Instead, a fair price for RMR service from these Units must be determined, based on the appropriate methodology for pricing RMR service, which as explained above, for Condition 1 Units should be the “net incremental cost” methodology. This is why CA ISO RMR designation of Generating Units in the Greater Bay Area that do not already have an RMR Agreement with the CA ISO was contingent upon the negotiation of acceptable rates, terms and conditions.

Because Delta has market power as to local area reliability services in the Greater Bay Area, and the CA ISO and Delta were not able to arrive at mutually acceptable rates for local area reliability services, the Commission must determine and authorize just and reasonable rates.

⁶ Four Greater Bay Area Generating Units that were formerly RMR Units (Pittsburg 1-4) were not re-designated because their operations are so severely restricted due to air emission limitations that they cannot provide useful RMR service to the CA ISO.

V. CONCLUSION

For the foregoing reasons, the ISO respectfully requests that the Commission permit it to intervene, and that it be accorded full party status in this proceeding. Further, the CA ISO requests the Commission rule promptly to make the Delta RMR Agreement effective February 10, 2003, subject to hearing and subject to refund. Finally, the CA ISO urges the Commission to determine and authorize just and reasonable rates for RMR services from DEC based on the "net incremental cost" methodology adopted by Judge Young in docket ER98-495-000.

Respectfully submitted,

By: _____

Jeanne M. Solé
Counsel for the California Independent
System Operator Corporation
151 Blue Ravine Road
Folsom, California 95630
Phone: (916) 351-4400
Fax: (916) 608-7222

Date: February 28, 2003



February 28, 2003

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

Re: Delta Energy Center, LLC
Docket No. ER03-510-000

Dear Secretary Salas:

Enclosed please find an electronic filing in the above-captioned proceeding of the Motion to Intervene and Protest of the California Independent System Operator Corporation. Thank you for your attention to this filing.

Respectfully submitted,

Jeanne M. Solé
Counsel for the California Independent
System Operator Corporation

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 Folsom, CA, on this 28th day of February, 2003.

Jeanne M. Solé