

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

Dynergy Oakland, LLC)

Docket No. ER21-292-000

**MOTION TO INTERVENE AND PROTEST 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 (“FERC” or “Commission”), 18 C.F.R. §§ 385.212 and 385.214, the California Independent System Operator Corporation (“CAISO”) hereby submits a motion to intervene and protest in response to the October 30, 2020 filing by Dynergy Oakland, LLC (“Dynergy”) of a Reliability Must-Run Service Agreement for 2021 between Dynergy and the CAISO (“Agreement”). The CAISO requests the Commission accept the Agreement for filing, permit it to become effective on January 1, 2021, the date requested by Dynergy, subject to refund, and set the filing for hearing and settlement procedures.

I. MOTION TO INTERVENE

The CAISO is a non-profit public benefit corporation organized under the laws of the State of California. The CAISO is the balancing authority responsible for the reliable operation of the electric grid comprising the transmission systems of a number of utilities. As part of its mandate to operate the electric grid, the CAISO’s Tariff contains provisions that give it the authority to designate units as necessary for reliability purposes and enter into reliability must-run agreements. Therefore, because the CAISO has an interest in this proceeding that cannot be represented

adequately by any other party, the CAISO requests that the Commission permit it to intervene in this proceeding.

The CAISO requests that communications and notices concerning this motion and these proceedings be provided to:¹

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II. BACKGROUND AND DESCRIPTION OF PROCEEDING

The CAISO is responsible for the reliability of the CAISO controlled grid. One tool the CAISO has to ensure reliability is reliability must-run agreements (“RMR Agreements”). The Dynegy Oakland Power Plant is a 165 MW jet fuel-fired, multi-unit combustion turbine peaker, located in Oakland, California (the “Facility”) that has been operating since approximately 1978. It has been operating under an RMR Agreement with the CAISO that has been extended repeatedly for more than a decade and a half, through multiple changes of ownership of the Facility.² One unit

¹ These individuals are designated to receive service pursuant to Rule 203(b)(3) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.203(b)(3).

² The Facility was originally part of the Pacific Gas & Electric Co. (PG&E”) generation fleet. PG&E sold the Facility to Duke Energy Oakland LLC in the late 1990’s, which in turn sold it to LS Power Group in 2006. Dynegy acquired the LS Power Group assets, including the Dynegy Oakland Facility, in 2007. Dynegy merged with Vistra in 2018.

will cease operations at the end of 2020, and the other two units are expected to cease operation at the end of 2022 unless they are designated for continued reliability must-run service.

On October 30, 2020, Dynegy submitted, pursuant to Section 205 of the Federal Power Act,³ an unexecuted RMR Agreement to cover 2021 operations, with a request that it be made effective January 1, 2021. In its filing, Dynegy proposes amendments to the RMR Agreement and rates that it asserts reflect anticipated end-of-service-life costs that would not otherwise be recovered under the terms of its long-standing RMR Agreement. The CAISO and Dynegy have been engaged in discussions about the costs Dynegy proposes to include in its 2021 rates, but the parties have been unable to reach agreement on final terms. More time is needed to conclude those discussions, which the CAISO hopes will result in a settlement.

III. PROTEST

The CAISO's local reliability studies continue to demonstrate that the continued operation of Units 1 and 3 of the Facility is required to meet reliability requirements in the Oakland area where the Facility is located until at least the end of 2022. Thus, in accordance with its rights under the currently effective RMR agreement, the CAISO has extended the term of the agreement through 2022. In response to this extension, Dynegy has made its annual filing proposing changes to the existing agreement. However, because the parties could not agree on all cost and rate elements proposed by Dynegy, in particular the end-of-service-life and demolition costs Dynegy seeks to recover, the CAISO is filing this limited protest.

³ 16 U.S.C. 824d.

Accordingly, the CAISO requests the Commission set Dynegy's filing for hearing and establish settlement procedures so the parties can attempt to reach a final resolution on just and reasonable terms for the provision of RMR service.

There are three areas on which there is not agreement between the parties and that therefore require further discussion: i) the absence of a reduction in costs and the necessary change in RMR operations for Oakland given the retirement of one of the three Oakland units; ii) any costs that may be appropriate for recovery in connection with the anticipated end-of-service-life of the remaining two units; and iii) the treatment of demolition costs when RMR service is concluded.

The filing made by Dynegy does not appear to account for the fact that Unit 2 will cease operations in 2021. The CAISO anticipated that Unit 2 retirement would result in a reduction in overall rates, as reported by Oakland on Schedule A and Schedule F, Part C, 1(L) of the RMR Agreement. However, no reduction in rates is reflected, nor has Dynegy provided an adequate explanation for the absence of a reduction in costs. CAISO and Dynegy have not yet had sufficient time to discuss this issue, but the CAISO is hopeful that, with further discussion, the parties can reach a mutual understanding of the appropriate costs for the scaled-down RMR operations in 2021.

In addition, the retirement of Unit 2 has changed the operational configuration of Oakland, and CAISO is evaluating and discussing with Dynegy the expected operational use of the remaining Units 1 and 3 to meet CAISO's reliability needs.

With respect to end-of-service-life costs, the CAISO supports the right of Dynegy to recover in rates the prudent and reasonable costs of providing service

under the RMR Agreement. To the extent Dynegy will incur costs in providing RMR service in 2021 that would not be recovered under the terms of Dynegy's existing RMR Agreement before the RMR service of the Facility is concluded, the CAISO is prepared to support the recovery of those costs. However, the Dynegy request extends beyond those kinds of costs and includes costs that are not associated with providing RMR service. The CAISO does not understand the theory that Dynegy believes may support recovery of such costs.

Specifically, among the costs that Dynegy is characterizing as end-of-service-life costs for which it seeks recovery are costs for decommissioning and demolition. The Facility had almost two decades of service as a utility-owned generating plant and additional years as a Duke Power-owned independent power provider. The costs of decommissioning and demolition that will be incurred at the end of the life of the plant would have been incurred had the Facility never become an RMR unit, and thus those costs do not relate to providing RMR service. Indeed, PG&E may well have imposed on ratepayers charges in anticipation that decommissioning and demolition costs would be incurred at some point in the future.

Additionally, the need to pay for decommissioning and demolition of an aging plant was certainly understood each time the Oakland facility changed hands, and it should have been reflected in the price paid for the Facility. Finally, the terms of the RMR Agreement to which the Facility has been subject through multiple changes in ownership make specific provision for post-termination recovery of costs incurred to provide RMR service under the conditions specified in the RMR Agreement. Specifically, Section 2.5 of the RMR Agreement provides that costs for capital

additions needed to provide RMR service that are not recovered during the term of RMR service can be recovered thereafter provided the unit is retired at the end of its RMR service. However, the RMR Agreement makes no provision for recovery of decommissioning and demolition costs. Thus, Vistra, the current owner of the Dynegy Facility was on notice when it acquired the plant, that there was no provision for recovery of such costs. To attempt to shift those costs to California ratepayers at the end of the service life of the Facility would be unjust and unreasonable.

The parties did not have sufficient opportunity to discuss the costs Dynegy seeks to recover as end-of-service life costs, or the treatment of decommissioning and demolition costs, before Dynegy made its filing. Those conversations are ongoing. The CAISO is hopeful that Dynegy can provide more detailed explanation of the specific costs Dynegy seeks as end-of-service life costs, and that the parties can come to agreement about the costs legitimately recoverable under the RMR Agreement in the course of settlement discussions.

IV. CONCLUSION

For the foregoing reasons, the CAISO requests that the Commission accept this motion and grant the CAISO party status, and accept the Agreement for filing, effective January 1, 2021, subject to refund, and set the matter for hearing and settlement procedures.

Respectfully submitted,

/s/ Mary Anne Sullivan

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Dated: November 20, 2020

CERTIFICATE OF SERVICE

I hereby certify that I have this 20th day of November 2020, caused to be served a copy of the forgoing Motion to Intervene and Protest upon all parties listed on the official service list compiled by the Secretary of the Federal Energy Regulatory Commission in this proceeding.

/s/John R. Lilyestrom
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