

169 FERC ¶ 61,097
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick and Bernard L. McNamee.

Russell City Energy Company, LLC

Docket No. ER19-2800-000

ORDER ACCEPTING AND SUSPENDING BLACK START AGREEMENT,
SUBJECT TO REFUND, AND ESTABLISHING HEARING AND SETTLEMENT
JUDGE PROCEDURES

(Issued November 6, 2019)

1. On September 12, 2019, pursuant to section 205 of the Federal Power Act (FPA),¹ Russell City Energy Company, LLC (Russell City)² filed an executed agreement for Black Start Service³ between Russell City and the California Independent System Operator Corporation (CAISO) (Agreement).⁴ In this order, we accept the Agreement, suspend it for a nominal period, to become effective November 6, 2019, as requested, subject to refund, and establish hearing and settlement judge procedures.

I. Background

2. In Order No. 749, the Commission approved North American Electric Reliability Corporation (NERC) standards that require each Transmission Operator to develop and

¹ 16 U.S.C. § 824d (2018).

² Russell City is owned by Calpine Russell City (75 percent) and Aircraft Services Corporation (25 percent).

³ Russell City will provide black start capability, which “refers to the ability of capability of a generating unit or station to begin operating and delivering electric power without external assistance from the electric system.” *See Cal. Indep. Sys. Operator Corp.*, 161 FERC ¶ 61,116 at P 2 (2017) (CAISO 2017 Black Start Order).

⁴ The Agreement is designated as Russell City’s Rate Schedule No. 1.

implement a restoration plan approved by its Reliability Coordinator.⁵ These reliability standards require CAISO to have a system restoration plan that provides black start capability.⁶ Subsequently, in 2016, CAISO conducted a review of its system restoration plan and determined that it needed additional system black start capability to ensure adequate service restoration time in the Greater San Francisco Bay Area. CAISO also convened a stakeholder process to examine appropriate methods for allocating the costs of incremental black start capability and to establish processes for black start capability procurement.

3. In 2017, CAISO filed and the Commission accepted tariff revisions to, among other things, establish provisions for technical requirements and performance testing for black start capability and designate the cost of procured black start capability as reliability services costs and to allocate the cost to the participating transmission owner in whose service area the black start generators are located.⁷ CAISO is authorized to contract annually for black start services.

4. In May 2017, CAISO developed technical requirements and selection criteria for its competitive solicitation process and conducted a stakeholder meeting finalizing these requirements.⁸ Thereafter, CAISO issued a request for proposal in a market notice on June 15, 2017, and received proposals from four prospective black start providers by the deadline of July 31, 2017. CAISO then analyzed each proposal to determine whether the technical requirements were satisfied and performed a comparative analysis of the merits of each proposal with regards to the other selection criteria.⁹

II. Russell City's Filing

5. Russell City explains that through CAISO's competitive solicitation process, CAISO selected Russell City's battery storage technology as the best-suited for providing

⁵ *System Restoration Reliability Standards*, Order No. 749, 134 FERC ¶ 61,215, at P 1 (2011).

⁶ The current reliability standards for System Restoration from Blackstart Resources are described in NERC standard EOB-005-3, at: <https://www.nerc.com/pa/Stand/Reliability%20Standards/EOP-005-3.pdf>

⁷ CAISO 2017 Black Start Order, 161 FERC ¶ 61,116.

⁸ See CAISO *Greater San Francisco Bay Area Black Start Resources Selection Report*, December 1, 2017 at 5, 11 (Selection Report).

⁹ *Id.* at 1.

black start capability based upon a number of criteria, including environmental and project scheduling considerations.¹⁰ After being selected, Russell City states that it engaged in extensive negotiations throughout 2018-2019 with CAISO and, during this time, shared technical information and cost data. Russell City notes that Pacific Gas and Electric Company (PG&E), the participating transmission owner in whose service area the black start generator will be located participated in the negotiations.¹¹ On September 10, 2019, the parties finalized the Agreement, resulting in the instant filing.¹²

6. Under the Agreement, Russell City will provide service to PG&E and CAISO using a newly constructed battery energy storage system to be installed at the Russell City Energy Center (Energy Center) generating plant.¹³ Russell City explains that the battery energy storage system will be used to restart either of the combustion turbine generators now located at its Energy Center, enabling energization of a dead 230 kV bus on the CAISO grid. Russell City states that the battery energy storage system will only be utilized to add the provision of black start capability from the Energy Center, and will not be used as a resource in the energy or reliability services markets or otherwise to enhance the capabilities of the existing combustion turbine for energy markets or to provide other reliability services.

7. The Agreement requires Russell City to demonstrate black start capability by completing a performance test under Schedule 2 and by completing performance tests when requested by CAISO as needed to comply with NERC requirements, and to demonstrate that it is maintaining the capability to provide black start service.¹⁴ The Agreement also provides that the parties shall each operate and maintain a 24-hour

¹⁰ Transmittal at 2, 17. Russell City states that the eight technical requirements for providing Black Start Service and the 10 selection criteria set out in the Request for Proposal were well-specified and were developed through an open stakeholder process. *Id.* at 17 (citing Selection Report at 5-6).

¹¹ *Id.* at 2. Russell City explains that the Agreement originally was intended to be a three-party agreement, but that the intervening PG&E bankruptcy and CAISO's need for a timely execution of an agreement and installation of black start capability required CAISO and Russell City to enter into a bilateral Agreement. Transmittal at 8.

¹² *Id.* at 2, 16.

¹³ Russell City owns and operates a 615 MW natural gas-fired generation facility in Hayward, California that is connected to the CAISO grid in the San Francisco Bay Area through its direct interconnection with PG&E's transmission facilities.

¹⁴ Agreement at Article 4.

seven days a week control center with real-time scheduling and control functions.¹⁵ The non-rate terms of service included in Schedule 3 of the Agreement provide that Russell City must meet specified performance requirements throughout the five-year term of the Agreement.

8. Russell City states that the Agreement contains the negotiated rates, charges, terms, and conditions under which Russell City will provide black start service for a five-year term. The Agreement includes a total fixed capital investment of approximately \$21.8 million.¹⁶ To recover the investment, plus a return thereon, Russell City proposes to collect \$7.388 million annually for five years.¹⁷ The Agreement allows for termination by either party with one-year notice, and allows Russell City to terminate if permitting or regulatory milestones are not met. Once effective, the Agreement will remain in effect for five years and may be extended by CAISO for up to an additional five years.¹⁸

9. Russell City proposes to recover both the variable cost of providing black start service, as well as the fixed cost of constructing the battery energy storage system. Schedule 4 of the Agreement contains the formula under which CAISO will pay Russell City for its variable costs incurred in providing this service.¹⁹ Each component of the variable cost, which will be determined by the sum of a Start-Up Charge, a Fired-Hours Charge,²⁰ GHG Reimbursement, CAISO Charge Reimbursement, a Performance Test Field Support Charge, and a Power Plant Outage Cost Reimbursement, is outlined in

¹⁵ *Id.* at Article 5.5.

¹⁶ Transmittal at 9 (citing Agreement, Schedule 5, Black Start Generating Unit Fixed Black Start Service Costs for Provision of Black Start Service).

¹⁷ Agreement at Schedule 5, Black Start Generating Unit Fixed Black Start Costs for Provision of Black Start Service.

¹⁸ *Id.* at Article 2.

¹⁹ *Id.* at Article 3.2.

²⁰ *Id.* at Schedule 4, Black Start Generating Unit Variable Cost Payment for Provision of Black Start Service. Number of Fired Hours is the total number of hours during the month (i) of all Performance Tests, in the case of Performance Tests, or (ii) in which the Black Start Generating Unit was providing Black Start Service following a Black Start. The proposed hourly operating rate is \$734.11/hour for 2019, escalated at 2.5 percent per year.

Schedule 4.²¹ The Agreement also provides for Russell City to recover a “Market Revenue Shortfall” if the revenues received during Energy Delivery Operation are less than provided for by Schedule 4.²² Schedule 5 of the Agreement includes a stated, fixed monthly amount for black start service costs, consisting of capital investment costs and fixed operating and maintenance (O&M) costs.²³ Russell City explains that the cost of the battery energy storage system and depreciation are to be recovered over the five-year term at an after-tax rate of return of nine percent.²⁴ Further, the Agreement allows for Russell City to file with the Commission to revise the monthly payments for the Fixed Black Start Services Costs should capital costs or fixed O&M costs increase beyond the costs set forth in Schedule 5.²⁵ Russell City must also provide an invoice and supporting documentation for compensation of variable costs incurred during performance testing or costs incurred in connection with outages of the power plant.²⁶

10. Russell City asserts that CAISO’s competitive solicitation process, through which it was selected can be relied upon by the Commission to find its rates, terms, and conditions for black start service are just and reasonable. Russell City asserts that it has supported the terms and conditions of service and the Fixed Black Start Service Costs, as specified in Schedule 5 of the Agreement, by sharing documentation and information during negotiations. Russell City asserts that the cost recovery and compensation provisions of the Agreement are a package and reflect extensive negotiations. Russell City argues that these provisions are appropriate in light of the obligations imposed on

²¹ *Id.* at Article 3.2.2 and Schedule 4, Black Start Generating Unit Variable Cost Payment for Provision of Black Start Service.

²² *Id.* at Article 3.3.

²³ *Id.* at Article 6.2.1.

²⁴ Transmittal at 9-12. Article 3.2 of the Agreement specifies that the Black Start Generator will be compensated for services and costs as described in Schedules 4 and 5. Russell City does not specify the proposed nine percent return in Schedule 5, but shows the proposed annual revenue requirement to recover the capital investment plus a return to be amortized over 60 months. The depreciation methodology described in the Affidavit of Mr. Jeffrey Koshkin, Attachment B, proposes using the same accounting methodology for determining depreciation expense that is applied across all of Calpine’s generating facilities.

²⁵ Agreement at Article 3.2.1(b) and 3.2.4(b)

²⁶ *Id.* at Article 5.3, 6.2, 6.3.

the Black Start Generating Unit with respect to its required readiness and performance of black start capability.²⁷

11. Russell City states that an independent evaluator selected by CAISO determined that the scope and amount of costs included in Schedule 5 are in the reasonable range of costs for a project of this type and complexity.²⁸ Russell City also explains that the preponderance of the estimated costs used in determining the costs within Schedule 5 are based on contractual commitments made by third-party contractors. According to Russell City, the specified rates under Schedule 5 are not subject to revision, other than for increases in the verifiable actual incremental fixed costs relative to the estimated amounts in Schedule 5, subject to approval by the Commission.²⁹ Also in support of its filing, Russell City submitted an affidavit in support of its proposed depreciation expense explaining that the useful life of the battery energy storage system is five years.³⁰ Additionally, Russell City states that the negotiated nine percent after-tax return on capital is similar to the weighted average cost of capital for a combustion turbine, assuming a 55 percent/45 percent debt/equity ratio.³¹

12. Russell City requests waiver of the Commission's prior notice requirements to allow an effective date for its proposal by November 6, 2019, explaining that it is operating under tight construction timing constraints, which include the requirement that it must issue a notice to proceed with construction no later than December 9, 2019. Russell City states that it expects that missing this notice deadline would cause an increase in the capital investment costs included in the agreement.

III. Notice, Interventions, and Responsive Pleadings

13. Notice of the filing submitted on September 12, 2019 was published in the *Federal Register*, 84 Fed. Reg. 49,291, with interventions and protests due on or before October 3, 2019. A notice of intervention and comments were filed by the California Public Utilities Commission (CPUC). Timely motions to intervene and comments were submitted by PG&E and CAISO. On October 10, 2019, Russell City and CAISO filed answers to

²⁷ Transmittal at 17.

²⁸ *Id.* at 16, 18.

²⁹ *Id.* at 18.

³⁰ Affidavit of Mr. Jeffrey Koshkin, Attachment B.

³¹ Transmittal at 21.

CPUC's comments, and on October 11, 2019, PG&E filed an answer to CPUC's comments.

A. Comments

14. PG&E and CAISO filed comments in support of the Agreement, commenting that additional black start capacity will significantly improve system restoration capabilities in Northern California and particularly in the San Francisco Bay Area.³² CAISO explains that currently restoration times in the San Francisco Bay Area are approximately twice as long as in the Los Angeles and San Diego areas and that the current system restoration plan relies on PG&E's remote hydroelectric system. According to CAISO, securing black start capability closer to other resources and loads within the San Francisco Bay Area will enhance system restoration times for this region, thereby mitigating the potential for catastrophic economic disruption to the region in the event of a system-wide power outage.³³ CAISO asserts that the terms and conditions of the Agreement are based on both its tariff requirements and NERC mandatory reliability standards.³⁴

15. Both PG&E and CAISO assert that the project costs are reasonable for a project of this type and complexity and argue that the service costs included in Schedule 5 of the Agreement are consistent with cost-of-service principles.³⁵ CAISO explains that its consultant conducted a "bottoms-up" cost estimate to assess project costs and determined that the overall project cost is in the upper end of the cost range he developed. CAISO adds that given the complexity of the project and that it is custom-designed, the CAISO consultant determined that the capital and development costs were within a reasonable range.³⁶ PG&E emphasizes that significant constraints affect the time of construction and readiness of the project to provide reliability services to CAISO, and argues that any delays in ordering equipment and commencing construction could create substantial delays in providing black start service to CAISO.³⁷

³² PG&E Comments at 3; CAISO Comments at 1, 5.

³³ CAISO Comments at 1, 5-6.

³⁴ *Id.* at 8-9 (citing NERC Reliability Standard EOP-005-3).

³⁵ PG&E Comments at 3; CAISO Comments at 8-9.

³⁶ CAISO Comments at 8-9.

³⁷ PG&E Comments at 3-4.

16. CPUC comments that while it recognizes the need for, and development of, black start capability in the San Francisco Bay Area and supports cost-of service rates for essential reliability services, it asserts that Russell City has not provided underlying cost information to support its filing. For this reason, CPUC requests that the Commission require Russell City to refile with cost information underlying this cost-of-service contract. Alternatively, CPUC requests that the Commission determine that the Agreement is just and reasonable, but also determine that it does not set any precedent.³⁸

17. CPUC explains that CAISO's 2017 tariff filing discussed above included a statement that CAISO would contract for black start capability on a cost-of-service basis: "Under [s]ection 205 of the FPA, the black start generator will need to submit any agreement to the Commission that includes its costs to provide black start capability to the CAISO system."³⁹ CPUC notes that in this same filing, CAISO explained that the black start, similar to reliability must-run agreements, will reflect cost-of-service rates.⁴⁰ CPUC asserts that it cannot determine whether the Agreement reflects cost-of-service rates because it lacks cost support. CPUC asserts that Russell City does not explain why it is reasonable that the capital structure includes nine percent after tax, with 100 percent equity, in view of Russell City being owned by a parent corporation that is subject to corporate finance rules. CPUC also argues that Russell City does not indicate whether contingencies are included, the magnitude of these contingencies, whether these contingencies are capitalized and, if so, why they should be capitalized at nine percent return on equity, with a gross up for taxes that remain unspecified. Further, CPUC asserts that the filing does not indicate what development costs are included, the magnitude of these developments, why they are reasonable, and why they should be capitalized at nine percent return on equity with a gross up for taxes that remain unspecified. CPUC also argues that the filing does not indicate what tax rates are assumed and why they are appropriate with an all-equity structure. CPUC asserts that the filing does not include information on a depreciation schedule and whether straight line or accelerated depreciation is used and why, whether there is any residual value, and why five years was assumed for a project and whether contract life is appropriate for depreciation. CPUC comments that the filing does not include information about the magnitude or reasonableness of O&M or administrative and general overhead costs.⁴¹

³⁸ CPUC Comments at 3.

³⁹ *Id.* at 4 (citing CAISO Transmittal, Docket No. ER17-2237-000 at 4).

⁴⁰ *Id.* at 5 (citing CAISO Transmittal, Docket No. ER17-2237-000 at 9).

⁴¹ *Id.* at 6-7.

18. Further, CPUC asserts that while the Agreement includes a provision to reopen the contract if the capital investment costs or fixed O&M costs are higher than the costs set forth in Schedule 5, there is no symmetric provision to reopen the contract if costs are lower. CPUC asserts that since no cost data is provided in this filing, it would be difficult for parties and the Commission to determine if additional costs incurred are reasonable. Finally, CPUC argues that it is not clear if contingencies (and return on contingencies) are included and, if they are, whether the capital investment costs or fixed O&M costs would need to be incremental to the contingencies (and the return thereon).⁴²

B. Answers

19. Russell City refutes CPUC's argument that rates for providing black start service under the CAISO Tariff are cost-of-service rates. Rather, Russell City asserts that the CAISO Tariff and the representations CAISO made to the Commission in its 2017 black start tariff filing support the execution and filing of its negotiated contract with fixed rates based upon cost-of-service principles. Accordingly, Russell City asserts that its filing is complete and fully consistent with the CAISO Tariff.⁴³

20. Russell City argues that unlike the CAISO Tariff provisions for black start service, for services that are intended to be subject to Commission-accepted cost-of-service rates (such as reliability-must-run service), the CAISO Tariff provides a *pro forma* cost-of-service agreement, including formulas for recovering capital investment costs and requirements for submitting cost information to support Commission-acceptance of filed cost-of-service rates.⁴⁴ Russell City argues that the absence of such formulas or filing requirements for black start service strongly supports the position that Section 5.2 of the CAISO Tariff authorizes Russell City and CAISO to execute a black start agreement with negotiated, fixed rates for recovery of capital costs.⁴⁵ Russell City also argues that when CAISO originally submitted its proposed black start tariff provisions, it explained in its transmittal letter that the black start service provider "will need to file any [executed]

⁴² *Id.* at 7-8.

⁴³ Russell City Answer at 2-3.

⁴⁴ *Id.* at 5 (citing CAISO Tariff Section 43A and Appendix G).

⁴⁵ *Id.* at 4-5.

agreement reflecting cost-of-service rates under FPA section 205.”⁴⁶ Russell City asserts that the Agreement “reflects the application of cost-of-service principles.”⁴⁷

21. Russell City also asserts that the negotiation process leading to the execution of the Agreement provided for extensive and detailed disclosure to CAISO, PG&E, and CPUC of the capital costs for this project, and was the subject of robust and transparent data and information sharing between these parties. Further, Russell City argues that even though this shared data and information has not been filed with the Commission, the Commission should not be precluded from relying on the transparency of CAISO’s solicitation process and the agreement negotiation process documented in this filing to conclude that the Agreement is just and reasonable.⁴⁸

22. Russell City contends that the Agreement’s provisions allowing it to seek Commission authorization to revise its rates through a future filing pursuant to FPA section 205 is a just and reasonable reservation of filing rights. Russell City asserts that CPUC mistakenly analogizes this to an asymmetric reopening of a cost-of-service rate. In response to CPUC’s concern it would not be able to compare proposed costs to the costs under the Agreement if Russell City proposed a rate revision in such a later section 205 filing, Russell City asserts that it has provided the CPUC with itemization of its base-line contingency cost estimates, including total capital investments.⁴⁹ Russell City explains that it negotiated the Agreement with the expectation that the CAISO Tariff authorized the filing of negotiated rates and argues that by its unique nature the Agreement should not be precedent-setting. Instead, Russell City asserts that to the extent the Commission may request clarification of the Agreement, such directions should only apply prospectively.⁵⁰ Russell City reiterates that adhering to its notice and construction schedule is critical to complying with its obligations under the Agreement and enabling CAISO to achieve its system restoration objectives.⁵¹

23. CAISO and PG&E also request that the Commission accept the Agreement as filed, with the condition that it does not set any precedent. They assert that there is an

⁴⁶ *Id.* at 5-6 (quoting CAISO Transmittal, Docket No. ER17-2237-000 at 9).

⁴⁷ *Id.* at 6.

⁴⁸ *Id.* at 3, 9-10.

⁴⁹ *Id.* at 11-12.

⁵⁰ *Id.* at 3, 13.

⁵¹ *Id.* at 4, 12-13.

undisputed need to create black start capability in the San Francisco Bay Area, which will benefit both the San Francisco Bay Area and Northern California as a whole.⁵²

24. Further, CAISO argues that the Agreement is based on a cost-of-service model, which reflects a revenue requirement over its term. CAISO asserts that the cost elements of the proposed revenue requirement follow the categories CAISO developed and shared with stakeholders during its competitive solicitation process. Further, CAISO explains that it reviewed these costs with an independent consultant and concluded that the costs are reasonable. CAISO explains that it discussed the cost components of the project with its stakeholders, and that CPUC had access to the data underlying the costs before Russell City made its filing. CAISO argues that the rate under the Agreement will apply only to the black start service provided by Russell City and therefore CPUC's concern about the Agreement being precedential is misplaced.⁵³ CAISO also asserts that contrary to CPUC's concerns about the Agreement being an asymmetrical contract, the provisions regarding a subsequent rate filing pursuant to section 205 of the FPA merely document a process for Russell City to make such a filing and provides CAISO time and opportunity to review and verify any such cost increases in advance of the filing being made.⁵⁴

25. CAISO asserts that CPUC had ample opportunity to review the costs of the Agreement, representing that in June 2019 it provided CPUC with a draft agreement, an overview of the cost and scope of the capital expenditures, and O&M expenses, including line items for each cost component. CAISO explains that in July 2019 it provided CPUC with a copy of its consultant's report assessing the costs of the Agreement, and in August 2019 CAISO provided CPUC with revised capital costs.⁵⁵

26. In response to CPUC's concern about the reasonableness of the capital structure, CAISO explains that the after-tax return of nine percent will compensate Russell City for committing its own capital to develop and then operate the battery storage energy system. CAISO explains that Russell City will not use the battery system for any other purpose to generate revenue, and that Russell City is not issuing debt or socializing the risk of the project to others.⁵⁶ Second, in response to CPUC's concern about contingences and why they should be capitalized at nine percent return on equity, with a gross up for taxes that

⁵² CAISO Answer at 14; PG&E Answer at 3 (citing CAISO Comments at 5-6).

⁵³ CAISO Answer at 2-4.

⁵⁴ *Id.* at 4-5.

⁵⁵ *Id.* at 6-7.

⁵⁶ *Id.* at 8-9.

remain unspecified, CAISO responds that the fixed capital investment costs under the Agreement includes an overall contingency of \$1.5 million, which include a range of possible increased costs. CAISO explains that these cost are classified as fixed capital investment costs, subject to a rate of return.⁵⁷ In response to CPUC's concerns about development costs, CAISO explains that the fixed capital investment costs include approximately \$3.3 million to address engineering, permitting, construction field management, third party consultant fees, legal, and construction insurance. CAISO notes that additional engineering work, administrative support, and insurance will also contribute to these costs.⁵⁸ In response to CPUC's concerns about the tax rate used, CAISO states that the revenue requirement under the Agreement reflects a federal tax rate of 21 percent and a state tax rate of approximately nine percent.⁵⁹

27. Addressing CPUC's concerns regarding depreciation rates, CAISO explains that Russell City's filing explains the calculation of depreciation for the useful life of the battery system.⁶⁰ In response to CPUC's concern that the filing does not include any information about O&M or administrative and general overhead costs, CAISO states that the fixed O&M costs under the Agreement consist of annual costs between \$680,000 and \$755,000 over the five-year term. CAISO explains that the filing describes the costs these payment will address. CAISO states that these costs reflect cost estimates to maintain the battery system in a state of readiness, testing costs, and O&M costs, as well as training and compliance costs.⁶¹

28. Finally, CAISO asserts that the Commission should reject CPUC's assertions that Russell City has not justified the costs under the Agreement because CPUC has had the cost information for months. Alternatively, CAISO requests that the Commission clarify that the Agreement does not set any precedent because it is based on a cost-of-service model reflecting specific details of the infrastructure at the Energy Center that Russell City will deploy to provide black start service.⁶²

⁵⁷ *Id.* at 9.

⁵⁸ *Id.* at 10.

⁵⁹ *Id.* at 10-11.

⁶⁰ *Id.* at 11.

⁶¹ *Id.* at 12.

⁶² *Id.* at 14.

IV. Discussion

A. Procedural Matters

29. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2019), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

30. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2019), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept the answers filed in this proceeding because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

31. CAISO does not have negotiated rate authority for agreements to provide black start service. As a result, such agreements must be submitted to the Commission under section 205 of the FPA.⁶³ As with any filing submitted under FPA section 205, the Commission will review and determine whether the proposal is just and reasonable and not unduly discriminatory or preferential based on the record before it.

32. Our preliminary analysis indicates that the proposed Agreement has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Specifically, Russell City has not provided required cost support underlying the proposed rates. Moreover, although Russell City, CAISO, and PG&E represent that they exchanged information with CPUC about cost allocations during their negotiations of the Agreement, that information has not been submitted into the record of this proceeding and therefore is not available for this Commission to evaluate in determining whether the proposed rates are just and reasonable under section 205 of the FPA. Hence, we find that the filing raises issues of material fact that cannot be resolved based on the record before us and that are more appropriately addressed in the hearing and settlement judge procedures ordered below. Therefore, we will accept the proposed Agreement for filing, suspend it for a nominal period, to become effective on November 6, 2019, as requested, subject to refund, and set it for hearing and settlement judge procedures.

⁶³ See 16 U.S.C. § 824d; see also CAISO Transmittal, Docket No. ER17-2237-000 at 9. That the CAISO Tariff does not include a *pro forma* version of a black start agreement (unlike in the context of reliability-must-run agreements) does not change the Commission's responsibilities in this regard.

33. While we are setting this matter for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures commence. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.⁶⁴ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding. The Chief Judge, however, may not be able to designate the requested settlement judge based on workload requirements which determine judges' availability.⁶⁵ The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of the appointment of the settlement judge, concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) The proposed Agreement is hereby accepted for filing and suspended for a nominal period, to become effective November 6, 2019, as requested, subject to refund, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and the FPA, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the FPA (18 C.F.R. Chapter I), a public hearing shall be held concerning the justness and reasonableness of the proposed Agreement, as discussed in the body of this order. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (C) and (D) below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2019), the Chief Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates

⁶⁴ 18 C.F.R. § 385.603 (2019).

⁶⁵ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five (5) days of this order. The Commission's website contains a list of Commission judges available for settlement proceedings and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(D) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(E) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates, and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.