

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

**Geysers Power Company, LLC )**

**Docket No. ER01-812-002**

**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 July 17, 2002, 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**

Please address communications concerning this filing to the following persons:

Jeanne M. Solé\*  
Deborah A. Le Vine  
Regulatory Counsel  
California Independent System Operator  
Corporation  
151 Blue Ravine Road  
Folsom, CA 95630

J. Phillip Jordan\*  
Rebecca Blackmer  
Swidler Berlin Shereff Friedman, LLP  
3000 K Street, N.W.  
Washington, D.C. 20007-5116

\* Individuals designated for service pursuant to Rule 203(b)(3), 18 C.F.R. § 385.203(b)(3).<sup>1</sup>

## **II. BACKGROUND**

On July 11, 2002, Geysers Power Company, LLC ("Geysers") filed a refund report associated with an Offer of Final Settlement filed on March 25, 2002 in dockets ER01-812-000 and ER01-812-001. The Offer of Final Settlement established Geysers Powers' rates under the Reliability Must Run ("RMR") Agreement for the Geysers Main Units for calendar year 2001. The Offer of Final Settlement was approved by the Commission by letter order on June 12, 2002. The letter order required that Geysers (1) make refunds consistent with the settlement to the ISO; and (2) file a compliance refund report with the Commission within thirty days of making the refund. See June 12, 2002 Letter Order, 99 FERC ¶ 61,299. On June 27, 2002, Geysers informed the ISO that, because it offset against refund amounts, amounts owing to Geysers from 2001, it would not be distributing any separate refund amounts to the ISO. On July 11, 2002, Geysers filed its refund report with the Commission which 1) documented the adjustments that result from the rates set forth in the Offer of Final Settlement and 2) indicated that Geysers would not be distributing any refund amounts to the ISO because it offset against refund amounts, amounts outstanding from the CA ISO to Geysers.

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<sup>1</sup> In addition to Ms. Solé and Mr. Jordan, the ISO respectfully requests that Ms. Le Vine be included on 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.

### **III. BASIS FOR 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 that includes the transmission system of Pacific Gas and Electric Company ("PG&E"), as well as for the coordination of the competitive Ancillary Services and realtime electricity markets in California. As the counter party in the RMR Agreement governing Geysers provision of RMR services, the ISO has a unique interest in any Commission proceeding concerning payments and refunds for changes related to the RMR Agreement. Accordingly, the ISO has a direct and substantial interest in the refund at issue herein and requests that it be permitted to intervene in this proceeding with full rights of a party.

### **IV. PROTEST**

The ISO's protest relates to two items: (1) Geysers inappropriately offset against the refund amounts, unpaid amounts for invoices in February, March and part of April, 2001, and (2) there is a minor error in the appropriate adjustment amount reported by Geysers for March 2001.

a. Geysers inappropriately offset against refund amounts, unpaid amounts for invoices in February, March and part of April 2001.

Geysers deducted from the refund amounts, unpaid amounts from invoices in February, March and part of April 2001. Exhibit A to the Geysers refund report sets forth the summary of RMR Adjusted Invoices submitted by Geysers to reflect the settlement. Except with regards to a small error in the amount reported for March 2001 (discussed below), the CA ISO agrees that

these amounts accurately reflect the changes that result from implementation of the settlement. The summary indicates that Geysers has not been paid for February, March and part of April 2001.

Geysers contends that the Commission "permits a company owing refunds pursuant to a Commission order to offset customer liabilities related to the same rate schedules and time period in calculating the amount of refund and interest due." July 11, 2002, Geysers refund report transmittal letter at 2. Geysers' analysis ignores the particular provisions of the RMR Agreement and the special circumstances surrounding non-payment by the ISO for amounts in February, March and part of April 2001.

The RMR Agreement provides regarding payment default that "[i]f the amounts ISO has not paid have been invoiced by the ISO to the Responsible Utility and the Responsible Utility has not paid such amounts to ISO, Owner shall cause execution to issue against, and shall collect solely from the Collateral or the Responsible Utility, and not the ISO . . . ." RMR Agreement Section 9.4(b). Section 9.4(b) goes on to list a number of conditions for application of the section, which have been met with regards to the amounts outstanding for February, March and April 2001. The ISO has invoiced PG&E, the relevant Responsible Utility, for the full February, March and April amounts. However, PG&E has not paid the invoices for February, March and a portion of April 2001. Thus, under the RMR Agreement, Geysers can seek to collect the outstanding amounts for February, March and a portion of April 2001 solely from PG&E and not from the ISO. Nonetheless, by deducting from the refund amounts, amounts

outstanding from February, March and a portion of April, Geysers would be collecting amounts outstanding from that period from the ISO rather than from PG&E. This result is contrary to the RMR Agreement.

The ISO notes moreover that the amounts outstanding from February, March and a portion of April 2001, are PG&E pre-bankruptcy debts that are subject to the on-going PG&E bankruptcy proceeding. The ISO has submitted claims for these amounts in that proceeding, and understands from PG&E that Geysers has submitted a claim for these amounts as well. The extent to which either the ISO or Geysers will collect from PG&E for these pre-bankruptcy debts will be determined in the bankruptcy proceeding. Until the bankruptcy proceeding has run its course, it will not be clear whether and to what extent, PG&E will be required to compensate either the ISO or Geysers for the preexisting debts, and hence to determine how payment would flow through to Geysers under the RMR Agreement. At a minimum, the offset is premature, until it is clear whether and to what the ISO will receive the pre-bankruptcy amounts from PG&E, since as explained above, under the RMR Agreement Geysers cannot collect from the ISO amounts that have not been paid to the ISO by PG&E.

Exhibit A to this motion and protest sets forth the amounts originally paid to Geysers, and the adjusted amounts that should be paid consistent with the rates set forth in the Offer of Final Settlement. Exhibit A sets forth amounts invoiced in April in two batches, the pre-bankruptcy amounts and the post-bankruptcy amounts that have been paid. Geysers should be required to refund

adjustment amounts for the months in which it got paid, including a portion of April 2001, or \$4,166,205.07. While Geysers need not provide a refund for amounts that it was not paid in February, March and a portion of April, in accordance with the RMR Agreement, Geysers cannot offset these outstanding amounts from the refund.

In sum, the offset attempted by Geysers is contrary to the RMR Agreement which only allows Geysers to collect for the outstanding amounts from February, March and a portion of April 2001 from PG&E. Because these debts existed prior to the date on which PG&E filed for bankruptcy, they are appropriately addressed through the bankruptcy process.

b. There is a minor mistake in the amount reported outstanding for March 2001.

The ISO's records reflect a slightly higher outstanding amount for March 2001 than that reflected in the Geysers' refund report. The ISO's records show that this amount should be \$3,845,281.99 rather than the \$3,839,228.40 set forth in Geysers' refund report.

## 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. The ISO further requests that the Commission order Geysers to refund \$4,166,205.07 to the ISO consistent with the RMR Agreement and the Offer of Final Settlement.

Respectfully submitted,

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Jeanne M. Solé  
The California Independent  
System Operator Corporation  
151 Blue Ravine Road  
Folsom, CA 95630  
Tel: (916) 608-7144  
Fax: (916) 608-7222

Counsel for the California Independent  
System Operator Corporation

Date: August 1, 2002

Exhibit A

Refund Report Summary Submitted by Calpine

Month	Estimated	Adjusted	Amount Due
Jan-01	5,077,651.08	4,430,528.47	(647,122.61)
Feb-01	2,324,927.60	2,046,322.85	2,046,322.85
Mar-01	4,029,014.80	3,845,281.99	3,845,281.99
Apr-01 Pre	566,428.81	542,278.67	542,278.67
Apr-01 Post	2,642,771.36	2,277,687.06	(365,084.30)
May-01	4,143,707.00	3,666,735.84	(476,971.16)
Jun-01	4,713,430.07	4,046,580.26	(666,849.81)
Jul-01	4,837,026.48	4,294,138.98	(542,887.50)
Aug-01	5,013,136.51	4,480,352.63	(532,783.88)
Sep-01	4,888,893.47	4,356,727.33	(532,166.14)
Oct-01	5,106,537.82	4,553,337.54	(553,200.28)
Nov-01	4,328,055.12	4,402,374.19	74,319.07
Dec-01	4,489,659.56	4,566,201.10	76,541.54
	<u>52,161,239.68</u>	<u>47,508,546.91</u>	<u>2,267,678.44</u>

ISO Summary of Refund Amounts Due

Month	Amounts Paid	Refunds Due	Amounts Due in Bankruptcy
Jan-01	\$ 5,077,651.08	\$ (647,122.61)	\$ -
Feb-01	\$ -	\$ -	\$2,046,322.85
Mar-01	\$ -	\$ -	\$3,845,281.99
Apr-01 Pre	\$ -	\$ -	\$ 542,278.67
Apr-01 Post	\$ 2,642,771.36	\$ (365,084.30)	\$ -
May-01	\$ 4,143,707.00	\$ (476,971.16)	\$ -
Jun-01	\$ 4,713,430.07	\$ (666,849.81)	\$ -
Jul-01	\$ 4,837,026.48	\$ (542,887.50)	\$ -
Aug-01	\$ 5,013,136.51	\$ (532,783.88)	\$ -
Sep-01	\$ 4,888,893.47	\$ (532,166.14)	\$ -
Oct-01	\$ 5,106,537.82	\$ (553,200.28)	\$ -
Nov-01	\$ 4,328,055.12	\$ 74,319.07	\$ -
Dec-01	\$ 4,489,659.56	\$ 76,541.54	\$ -
	<u>\$45,240,868.47</u>	<u>\$(4,166,205.07)</u>	<u>\$6,433,883.51</u>

## 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, California this 1st day of August, 2002.

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Jeanne M. Solé  
The California Independent  
System Operator Corporation  
151 Blue Ravine Road  
Folsom, CA 95630



August 1, 2002

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

Re: Geysers Power Company, LLC  
Docket No. ER01-812-002

Dear Secretary Salas:

Enclosed for electronic filing in the above-captioned proceeding is the Motion to Intervene and Protest of the California Independent System Operator Corporation .

Thank you for your attention to this matter.

Respectfully submitted,

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