

SWIDLER BERLIN SHEREFF FRIEDMAN, LLP

THE WASHINGTON HARBOUR
3000 K STREET, NW, SUITE 300
WASHINGTON, DC 20007-5116
TELEPHONE (202) 424-7500
FACSIMILE (202) 424-7647
WWW.SWIDLAW.COM

BRADLEY R. MILIAUSKAS
DIRECT DIAL: (202) 295-8431
FAX: (202) 424-7643
BRMILIAUSKAS@SWIDLAW.COM

NEW YORK OFFICE
THE CHRYSLER BUILDING
405 LEXINGTON AVENUE
NEW YORK, NY 10174
TEL. (212) 973-0111
FAX (212) 991-9598

January 12, 2004

VIA ELECTRONIC FILING

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

**Re: Los Esteros Critical Energy Facility, LLC
Docket No. ER04-323-000**

Dear Secretary Salas:

Enclosed is the Joint Provisional Protest of the California Independent System Operator Corporation and Pacific Gas and Electric Company, submitted in the above-captioned proceeding. Please contact the undersigned if you have any questions regarding this filing.

Respectfully submitted,

/s/ Bradley R. Miliauskas

J. Phillip Jordan
Bradley R. Miliauskas

Counsel for the California
Independent System Operator
Corporation

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

**Los Esteros Critical
Energy Facility, LLC**

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Docket No. ER04-323-000

**JOINT PROVISIONAL PROTEST
OF THE
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
AND PACIFIC GAS AND ELECTRIC COMPANY**

Pursuant to Rule 211 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("Commission"), 18 C.F.R. § 385.211 (2003), and the Commission's December 31, 2003 Notice of Filing, the California Independent System Operator Corporation ("ISO") and Pacific Gas and Electric Company ("PG&E") (collectively the "Parties")¹ submit this provisional protest in the captioned proceeding ("Provisional Protest"). In support thereof, the Parties state as follows:

I. Description of the Proceeding

On December 22, 2003, Los Esteros Critical Energy Facility, LLC ("Los Esteros") filed an unexecuted Must-Run Service Agreement and accompanying schedules ("RMR Agreement")² between Los Esteros and the ISO setting forth the rates, terms, and conditions under which Los Esteros proposes to provide reliability must-run services to the ISO.

¹ Each of the Parties has concurrently filed a separate Motion to Intervene in this proceeding. The Parties are authorized to state that the California Public Utilities Commission and the California Electricity Oversight Board, which are intervening by separate filings, support this Provisional Protest.

² Because the facilities covered by the Must-Run Service Agreement and accompanying schedules must operate at certain times for the reliability of the transmission grid, they are referred to as "reliability must-run" or "RMR" units and the agreement and accompanying schedules covering them are referred to as "RMR agreements." Other capitalized terms that are not defined in this filing have the same meaning set forth in the RMR Agreement or in the Master Definitions Supplement, Appendix A to the ISO Tariff.

II. Provisional Protest

The Parties enter this Provisional Protest to identify terms and conditions included in the filed RMR Agreement but not agreed to between Los Esteros and the Parties. While the Parties have been working with Los Esteros to resolve outstanding issues, the Parties also wish to preserve their respective rights to protest issues included in the filed RMR Agreement and protest the issues listed below. The enumerated concerns are those the Parties have been able to identify to date. In addition to these concerns, the Parties reserve the right to address in the future any errors or concerns that are discovered after the filing of the Provisional Protest.

Based on their review of the RMR Agreement filing, the Parties have identified the following issue with the filed RMR Agreement:

1. Schedule A Operational Information – Schedule A requires the following revisions: (i) notes may need to be added to explain the relationship between individual and combined values for Los Esteros Critical Energy Facility Units 1-4.

2. Schedule I Language – The Parties oppose the language regarding the insurance requirements Los Esteros proposes in Schedule I because it varies from the language in the Pro-forma RMR Agreement adopted by the Commission and accepted by other parties to RMR agreements. The proposed language upsets the careful balance between the parties to the filed RMR Agreement. As such, the Parties request that the language be revised to conform to the language provided in the Pro-forma RMR Agreement.

III. Conclusion

For the foregoing reasons, the Parties respectfully request the Commission:

- (i) rule that the rate schedules set forth in Los Esteros's filed RMR Agreement have not been shown to be just and reasonable;
- (ii) suspend the rate schedules subject to hearing and establish a refund date that is the same as the proposed effective date, January 1, 2004; and
- (iii) defer action on the filed RMR Agreement until February 12, 2004, to give the Parties and Los Esteros time to attempt to resolve outstanding issues associated with the filed RMR Agreement.

Respectfully submitted

/s/ J. Phillip Jordan
J. Phillip Jordan
Bradley R. Miliauskas
Swidler Berlin Shereff Friedman, LLP
3000 K Street, NW, Suite 300
Washington, DC 20007

Counsel for
California Independent System
Operator Corporation

Shiran Kochavi
Pacific Gas and Electric Company
Law Department, Mail Code B30A
P.O. Box 7442
San Francisco, CA 94120

Attorney for Pacific Gas
and Electric Company

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list for the captioned proceeding, in accordance with Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated at Folsom, CA, on this 12th day of January, 2004.

/s/ Sidney L. Mannheim
Sidney L. Mannheim