

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

LSP Oakland, LLC

)

Docket No. ER07-103-000

**MOTIONS TO INTERVENE OF THE
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION AND
PACIFIC GAS AND ELECTRIC COMPANY
AND
JOINT PROTEST OF THE
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION,
PACIFIC GAS AND ELECTRIC COMPANY,
PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA, AND
CALIFORNIA ELECTRICITY OVERSIGHT BOARD**

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 (2006), the California Independent System Operator (“CAISO”) and Pacific Gas and Electric Company (“PG&E”) hereby submit their respective Motions to Intervene, in addition, the CAISO, PG&E, the California Public Utilities Commission (“CPUC”), and the California Electricity Oversight Board (“EOB”) (collectively, the “California Parties”) also submit this Joint Protest in the captioned proceeding. 1/ In support thereof, the California Parties state as follows:

I. Description of the Proceeding

On October 31, 2006, LSP Oakland, LLC (“Oakland”) submitted, pursuant to Section 205 of the Federal Power Act (“FPA”), its annual update filing proposing revised rate schedule sheets to its Reliability Must-Run Agreement (“RMR Agreement”) 2/ with the CAISO for Contract Year 2007. In addition, Oakland filed revised tariff sheets seeking to include two additional cost items: (i) applicable taxes and fees and (ii) unplanned repair costs. Pursuant to a

1/ The CPUC and EOB have filed separate motions to intervene in this proceeding.

2/ Because the generation units covered by a RMR agreement must operate at certain times for the reliability of the transmission grid, they are referred to as “reliability must-run” or “RMR” units. Other capitalized terms that are not defined in this filing have the same meaning set forth in the RMR Agreement.

Commission-approved settlement, [3/](#) Oakland did not submit an annual informational filing (often referred to as the “Schedule F Filing”) to support its Annual Fixed Revenue Requirements (“AFRR”) because its AFRR is fixed by the settlement at \$4,274,000 for Contract Year 2007.

The Commission issued a Combined Notice of Filings, setting November 21, 2006 as the comment date for interventions and protests in this proceeding.

II. Motion to Intervene of the CAISO and PG&E

A. Description of the CAISO and Communications

The CAISO is a non-profit public benefit corporation organized under the laws of the State of California with a principal place of business at 151 Blue Ravine Road, Folsom, CA 95630. The CAISO is the Control Area Operator responsible for the reliable operation of a grid comprising of the transmission systems of a number of public utilities including PG&E, as well as the coordination of the ancillary services and real-time electricity markets in California.

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

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[3/](#) Duke Energy Oakland, LLC, 114 FERC ¶ 61,063 (2006) (order approving November 30, 2005 Offer of Settlement as filed in Docket No. ER05-115). On May 4, 2006, LS Power Generation, LLC acquired the ownership interests in Duke Energy Oakland, LLC. On June 2, 2006, as amended on July 11, 2006, LSP Oakland filed a notice of succession and revised RMR Agreement, to reflect the name change from Duke Energy Oakland, LLC to LSP Oakland, LLC.

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B. Description of PG&E and Communications

PG&E is a California utility, organized and existing under the laws of the State of California, with its principal place of business at 77 Beale Street, San Francisco, California, 94105. PG&E is a FERC-jurisdictional public utility that transmits electric energy in interstate commerce. Pursuant to Section 30.6.1.2 of the CAISO tariff, the costs payable by the CAISO under the RMR Agreement with Oakland are passed through to PG&E.

PG&E requests that all communications and notices concerning this motion and these proceedings be provided to:

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C. Interest in the Proceeding

Oakland's RMR Units are located within PG&E's transmission system and are needed to maintain the reliability of such system. As the Control Area Operator responsible for maintaining reliability of the PG&E transmission system and, as the counterparty to the Oakland RMR Agreement, the CAISO has a unique interest in any Commission proceeding concerning proposed changes to the RMR Agreement. Accordingly, the CAISO has a direct and substantial

interest in this proceeding and requests that it be permitted to intervene with full rights of a party. Because no other party can adequately represent the CAISO's interests, the CAISO's intervention is in the public interest and should be granted.

Pursuant to Section 30.6.1.2 of the CAISO tariff, the costs payable by the CAISO under an RMR Agreement are passed through to the transmission owner in whose territory the plant subject to the RMR Agreement is located. The Oakland generating units at issue in the instant proceeding are located in PG&E's service territory, and the rates charged under its RMR Agreement affect PG&E because PG&E ultimately pays the rates in question. PG&E is also the owner of generating facilities providing RMR service to the CAISO. For these reasons, PG&E has a direct and substantial interest in, and may be affected by, the instant proceeding. No other party can adequately represent PG&E's interest in this proceeding. Accordingly, PG&E respectfully requests that the Commission grant PG&E permission to intervene in this proceeding, with all the rights attendant to such status.

III. Joint Protest of the CAISO, PG&E, CPUC and EOB

Based on their review of Oakland's 2007 RMR filing, the California Parties object to Oakland's proposed inclusion of past sales taxes associated with its fuel oil purchases. Specifically, Oakland seeks to include as a component of its Variable Cost Payment under Schedule C of its RMR Agreement, the sales taxes it was assessed on distillate or jet fuel purchases for the twelve month period that ended June 30, 2006, a total of \$557,468. ^{4/} Oakland seeks to recover these past fuel tax payments by including the amount as a component in Equation C1-10, which calculates the "ISO Monthly Other Fuel Related Cost."

The California Parties object to Oakland's attempt to recover past period costs through Schedule C. Oakland's current Schedule C does not allow for the reimbursement of past

^{4/} Oakland Transmittal Letter, at p. 3, Docket No. ER07-103 (filed Oct. 31, 2006).

expenses. Unlike an RMR unit's AFRR, which is calculated using cost components from a "test year," which is the prior twelve month period ending on June 30, Schedule C is intended to calculate a monthly variable cost payment for each RMR unit for the *current* Billing Month. Billing Month is defined for invoicing purposes in the RMR Agreement to mean the immediately preceding calendar month. Thus, under Schedule C, a unit owner may recover in its monthly invoice its actual expenses from the preceding month, the Billing Month. For example, if the unit owner incurs a cost that is recoverable under Schedule C in January 2007, the owner could bill the CAISO for that amount in the February 2007 invoice. Accordingly, Oakland cannot recover Schedule C expenses from a past year (July 2005 through June 2006 expenses) in the 2007 Contract Year.

Moreover, Equation C1-10 of Schedule C of Oakland's RMR agreement excludes "applicable taxes and fees" from the calculus for determining the "ISO Monthly Other Fuel Related Costs," unless such taxes and fees are specifically identified in the schedule. Thus, going forward, Oakland cannot recover any fuel-related sales taxes that it may incur under Equation C1-10 unless the equation is modified. The CAISO supports revising Equation C1-10 to permit Oakland to recover any actual fuel-related sales taxes it incurs in Contract Year 2007. To that end, the California Parties and Oakland currently are engaged in discussions regarding the appropriate revisions to Equation C1-10 to allow Oakland to recover its fuel-related sales taxes on a going-forward basis only.

Based on the foregoing, Oakland has not shown that its proposed rates are just and reasonable. Accordingly, the California Parties request that the Commission suspend the rate schedules subject to hearing and establish a refund date equal to the proposed effective date, January 1, 2007. The California Parties and Oakland have been engaged in productive discussions regarding this fuel tax issue and hope to be able to resolve the issue in the near future. In light of the parties' discussions, the California Parties request that the Commission

provide the parties with a reasonable opportunity, until January 31, 2007, to resolve this issue before initiating either a hearing or settlement judge procedures.

IV. Conclusion

For the foregoing reasons, the California Parties respectfully request that the Commission (i) grant the CAISO's and PG&E's motions to intervene in the above-captioned proceeding giving both the CAISO and PG&E full rights of a party and, (ii) in consideration of the California Parties' Joint Protest, rule that the rate schedules set forth in Oakland's filing have not been shown to be just and reasonable; suspend the rate schedules subject to hearing, establish a refund date equal to the proposed effective date, January 1, 2007, and hold in abeyance all hearing or settlement judge procedures until January 31, 2007 to give the parties an opportunity to resolve the single outstanding issue.

Dated: November 21, 2006

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this 21st day of November, 2006 caused to be served a copy of the forgoing Motions to Intervene and Joint Protest upon all parties listed on the official service list compiled by the Secretary of the Federal Energy Regulatory Commission in this proceeding.

/s/ Geo. F. Hobday
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