

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

Oakland Power Company LLC)

Docket No. ER23-574-000

**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 December 7, 2022 filing by Oakland Power Company LLC (“Oakland”) of an amendment to the Reliability Must-Run Service Agreement between Oakland and the CAISO (“Agreement”). Oakland’s proposed amendment would add to the Agreement a new mechanism for the recovery of certain costs associated with purchasing carbon dioxide (“CO₂”) emissions allowances to facilitate compliance with CO₂ emissions limits set by the California Air Resources Board (“CARB”). Because Oakland has failed to demonstrate that the costs it seeks to recover through the newly proposed mechanism are not already recovered through the existing Agreement rate structure, it has failed to meet its burden under Section 205 of the Federal Power Act¹ to demonstrate that its rate proposal is just and reasonable. As such, the CAISO requests the Commission reject Oakland’s proposed amendment.

¹ 16 U.S.C. §824d (2018).

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. This gives the CAISO an interest in this proceeding that cannot be represented adequately by any other party. Thus, 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:²

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II. BACKGROUND

The CAISO is responsible for the reliability of the CAISO controlled grid. One tool the CAISO has to ensure reliability is authorization under its FERC-approved

² 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).

tariff to enter into reliability must-run agreements (“RMR Agreements”). The Oakland Power Plant is a 110 MW jet fuel-fired, multi-unit combustion turbine peaker, located in Oakland, California (the “Facility”) that has been operating since approximately 1978.³ Of particular relevance here, the Facility has been operating under an RMR Agreement with the CAISO that has been extended for more than 20 years, through multiple changes of ownership of the Facility.⁴ Unit 2 ceased operations at the end of 2020. At a CAISO Board of Governors meeting on August 31, 2022, the Board approved CAISO Management’s request to extend the Agreement for Units 1 and 3, which extends the Agreement to meet local reliability needs in the Oakland area through 2023.

III. PROTEST

Oakland states that it has filed the proposed amendment to recover CARB compliance costs it has incurred as a result of higher-than-normal dispatches of the Facility in 2022. In support of its proposal, Oakland argues that “there currently is not a mechanism under the RMR Agreement to allow Oakland to recover the costs of CARB compliance.”⁵ This is not accurate. Schedule G to the Agreement specifically provides a mechanism to compensate Oakland for “excess service,” i.e., for annual service hours, start-ups or production of energy in excess of levels established by prior operation of the Facility. Schedule G provides that Oakland is paid a 50 percent premium -- over and above the 100 percent cost recovery for the monthly variable

³ The capacity was reduced from 165 MW to 110 MW when Unit 2 was shutdown to facilitate completion of the Oakland Clean Energy Project, a battery storage project.

⁴ 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 1990s, which in turn sold it to LS Power Group in 2006. Oakland acquired the LS Power Group assets, including the Oakland Facility, in 2007. Oakland merged with Vistra in 2018.

⁵ Transmittal letter, at 1.

cost payment specified in Schedule C -- for all MWh produced after the annual MWh production or service hour limit is met, and is paid double the start-up payment under Equation D-1 in Schedule D for additional start-ups.⁶

In 2022, Oakland has received almost \$7 million in payments for such excess service (over and above full variable cost recovery). This excess service payment compensates Oakland for incremental costs it incurs as a result of being required to run at higher levels than anticipated, including any incremental costs associated with emissions compliance resulting from operating in excess of anticipated levels. In its filing, Oakland never mentions the premium payments it receives for excess service nor explains how it is unable to recover the costs of CARB compliance through such payments.

As the party providing service under a jurisdictional rate schedule, Oakland bears the burden under Section 205 to demonstrate that its proposed rate increase is just and reasonable and not unduly discriminatory.⁷ Oakland's proposed amendment increases rates under the Agreement to add a new charge intended to recover one subset of incremental costs associated with running the Facility above historical levels. That rate increase cannot be found just and reasonable when Oakland is already receiving compensation under Schedule G for providing service above historical levels.

⁶ Pursuant to Section 4.11 to the Agreement, when the Agreement term is extended, the service hour and production levels are determined by calculating the average service hours and MWh produced for the 60-month period ending June 30 of the expiring contract year, and the start-up level is determined by considering the number of starts in a 12-month period selected by the CAISO.

⁷ *Ala. Power Co. v. FERC*, 993 F.2d 1557, 1571 (D.C. Cir. 1993) (“the party filing a rate adjustment with the Commission under § 205 bears the burden of proving the adjustment is lawful”); *Nw. Corp. v. FERC*, 884 F.3d 1176, 1180 (D.C. Cir. 2018) (Section 205 of the Federal Power Act “places the burden on the utility to show that its proposed revised rate is just and reasonable”).

IV. CONCLUSION

For the foregoing reasons, the CAISO requests that the Commission accept this motion and grant the CAISO party status, and reject Oakland's proposed amendment.

Respectfully submitted,

/s/ Mary Anne Sullivan
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December 28, 2022

CERTIFICATE OF SERVICE

I hereby certify that I have this 28th day of December 2022, 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.

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