ORDER ACCEPTING AND SUSPENDING RELIABILITY MUST-RUN AGREEMENT, AND ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued December 29, 2017)

1. On November 2, 2017, pursuant to section 205 of the Federal Power Act (FPA)\(^1\) and Part 35 of the Commission’s regulations,\(^2\) Gilroy Energy Center, LLC (Gilroy) filed an unexecuted Reliability Must-Run Service Agreement and accompanying cost of service schedules (RMR Agreement)\(^3\) between it and the California Independent System Operator Corporation (CAISO). In this order, we accept for filing the RMR Agreement and suspend it for a nominal period, to become effective January 1, 2018, as requested, subject to refund. We also establish hearing and settlement judge procedures.

\(^1\) 16 U.S.C. §§ 824d and 824e.


\(^3\) RMR Agreements provide the rates, terms, and conditions by which Gilroy and other power plant owners in California provide RMR service to CAISO. An RMR unit is generally a generator that a transmission provider can call upon when necessary to provide energy and ancillary services essential to the reliability of the transmission network. That is, some generating units "must run" at certain times to protect the transmission system from voltage collapse, instability, and thermal overloading. *See Cabrillo Power I LLC*, 106 FERC ¶ 61,120, at n.1 and P 2 (2004).
I. Background

2. Gilroy owns and operates the Yuba City and Feather River generating facilities; two 47 MW gas-fired combustion turbine facilities located in Yuba City, California, connected to the CAISO-controlled grid through direct interconnections with Pacific Gas and Electric Company (PG&E). Gilroy states that Yuba City and Feather River are located on different sites, are electrically independent, and are operated as separate facilities. Gilroy states that both generators commenced commercial operation in 2002, and that since 2010, their outputs have been committed to PG&E under long-term agreements that expire at the end of 2017. Gilroy states that, at the direction of CAISO, Gilroy is filing a single RMR Agreement covering both facilities, which have separately calculated unit specific RMR charges under the cost-of-service schedules.

3. Gilroy states that it is an exempt wholesale generator with market-based rate authority. Gilroy also states that all of its membership interests are owned by GEC Holdings, LLC, which is owned by Calpine GEC Holdings, Inc., which is owned by Calpine Development Holdings, Inc., a wholly owned subsidiary of Calpine Power Company, a direct, wholly owned subsidiary of Calpine Corporation (Calpine).

4. Gilroy states that on November 28, 2016, it notified CAISO that Yuba City and Feather River would come off of contract at the end of 2017 and would no longer be economic to operate commencing January 1, 2018, due to their lack of any contractual capacity compensation. Gilroy states that Calpine was also concerned that historic and

4 Gilroy Transmittal Letter at 7.

5 Id. at n.4.

6 Id. at 7 and n.23 (citing Gilroy Energy Ctr., LLC, 104 FERC ¶ 62,019 (2003) (granting EWG status); Gilroy Energy Center, LLC, 97 FERC ¶ 61,325 (2001) (granting market-based rate authority)).

7 Id. at 7.

8 Id. at 3.
expected energy margins and resource adequacy compensation\(^9\) would be insufficient
to secure ongoing operations, and that it planned to remove these units from service January 1, 2018.\(^{10}\) Gilroy explains that Calpine indicated that it would not pursue a
designation under the Capacity Procurement Mechanism (CPM)\(^{11}\) because the CPM process did not allow a sufficient planning period or assurance of compensation to support continued operations.\(^{12}\)

5. Gilroy explains that CAISO subsequently conducted the necessary studies to
confirm whether the absence of Yuba City and Feather River would create unacceptable
reliability impacts and determined that the units are needed to meet local reliability
needs beginning January 1, 2018 and for the entirety of the calendar year.\(^{13}\) CAISO subsequently designated Yuba City and Feather River as RMR units based on the results of these studies and pursuant to the RMR provisions in section 41 of the CAISO tariff.\(^{14}\)

\(^9\) CAISO and the California Public Utilities Commission (CPUC) jointly administer the resource adequacy program. The resource adequacy program requires that load serving entities procure capacity to meet their forecasted load plus a reserve margin, local area capacity needs, and flexible resource adequacy requirements. Capacity procured under the resource adequacy program carries an obligation to bid into the CAISO markets (i.e., a must-offer obligation). Resources are compensated for their participation and availability in this program. See Cal. Indep. Sys. Operator Corp., 153 FERC ¶ 61,002 (2015). See also CAISO Tariff Section 40.

\(^{10}\) Gilroy states that despite diligent efforts to market all of Calpine’s uncommitted capacity, Yuba City and Feather River did not receive bids for resource adequacy contracts sufficient to secure operations for calendar year 2018. Gilroy Transmittal Letter at 5.

\(^{11}\) Under the CPM, CAISO can procure capacity either to fill resource adequacy capacity deficiencies or to meet specified reliability needs. CPM uses a competitive solicitation process through which CAISO pays designated capacity its bid price in the competitive solicitation.

\(^{12}\) Gilroy Transmittal Letter at 3.

\(^{13}\) Id. at 3.

\(^{14}\) Id. at 1, 3.
6. Gilroy indicates that pursuant to the CAISO tariff, it has negotiated extensively with CAISO regarding the input of unit-specific data and calculations that are the basis for Gilroy’s cost-of-service rates that inform the schedules in CAISO’s pro forma RMR Agreement in Appendix G of CAISO’s tariff. However, despite good faith negotiations, CAISO and Gilroy have been unable to reach agreement with respect to those inputs.\textsuperscript{15} Gilroy explains that negotiations were complicated by the lack of recent CAISO precedent regarding the designation and negotiation of a new (as opposed to a renewed) RMR Agreement for a conventional generating facility and the lack of CAISO precedent regarding the treatment of planned, cyclical, capital maintenance projects required during the contract year.\textsuperscript{16} Gilroy also states that the timing of the negotiations was further complicated by concurrent and overlapping negotiations for another Calpine facility which has been designated as RMR unit for 2018 – the Metcalf Energy Center (Metcalf).\textsuperscript{17} Gilroy states that it ultimately proved infeasible for the parties to complete negotiations and to execute the RMR Agreement and accompanying cost-of-service schedules in advance of the November 2 Filing, and that in accordance with the RMR provisions in Section 41.2 of CAISO’s tariff, Gilroy filed the RMR Agreement unexecuted.\textsuperscript{18}

7. Gilroy states that it proposes some non-conforming changes to the body of the pro forma RMR Agreement to clarify or update provisions and have no consequential impact on the rights and obligations of the parties.\textsuperscript{19} According to Gilroy, it modified the pro forma cost of service schedules only to the extent necessary to address gaps in the pro forma schedules and the particular circumstances of the Yuba City and Feather River Facilities and that the changes reflect discussions with CAISO.\textsuperscript{20} For example, Gilroy proposes some changes to Schedule A – Unit Characteristics, Limitations, and Commitments to note that Gilroy is calculating separate Annual Fixed Revenue

\textsuperscript{15} Id. at 1, 5.

\textsuperscript{16} Id. at 5.

\textsuperscript{17} Id. at 5. On November 2, 2018, in Docket No. ER18-240-000, Metcalf filed an unexecuted RMR Agreement with CAISO.

\textsuperscript{18} Id. at 5-6.

\textsuperscript{19} Id. at 8-9.

\textsuperscript{20} Id. at 2, 10.
Requirements (AFRRs) for each Facility. Gilroy notes that Table B-0 specifies a Fixed Option Payment Factor of 1.00, reflecting Gilroy’s designation in Table B-1 that each facility will operate as a Condition 2 Unit.\(^{21}\)

8. Gilroy proposes changes to Schedule C – Variable Cost Payment to incorporate the most recent gas index provisions from CAISO’s tariff for calculating fuel costs, incorporate greenhouse gas emissions costs that were not in effect at the time the \textit{pro forma} RMR Contract and Schedule C were developed, and to incorporate the relevant CAISO grid management charges.\(^{22}\) Next, Gilroy explains that it has developed each facility’s AFRR set forth in Schedule F using costs based upon its books and records, explaining that it has provided work papers that map its costs to the Commission’s Uniform System of Accounts because Gilroy does not maintain its accounts using the Uniform System of Accounts.\(^{23}\) Gilroy states that it uses a pre-tax return of 12.25 percent, which is specified in the \textit{pro forma} RMR Agreement. Gilroy also states that it determined each facility’s fuel costs by modeling the costs reflecting the natural gas local distribution charge invoices and a proxy commodity cost based on PG&E Citygate published indices.\(^{24}\)

9. Gilroy then explains that section 7.4 of the \textit{pro forma} RMR Agreement, which allows the RMR owner to recover the costs of approved new incremental capital expenditures, contemplates that proposed capital items would be approved in a review process conducted during the year prior to the Contract Year. Gilroy asserts that this process plainly was intended to apply to units that were already subject to an RMR agreement, and that the \textit{pro forma} RMR Agreement does not specify a process for an owner of a newly designated RMR facility to obtain approval for a capital item expected

\(^{21}\) Id. at 10. Gilroy also includes the words “Condition 2 RMR Agreement” in the header of each page of the agreement. Under Condition 2, the RMR Agreement provides full cost-of-service recovery, and the RMR owner is not receiving fixed cost contribution from any other source. Under Condition 1, the resource operates as a market resource and the fixed costs paid under the RMR Agreement are net of anticipated market revenues.

\(^{22}\) Id. at 12.

\(^{23}\) Id. at 13-14, n.42. The proposed AFRRs in Schedule F are $4,430,295 for Feather River and $4,463,326 for Yuba City.

\(^{24}\) Id. at 14.
to be needed in the first year in which that facility would be providing RMR service.\textsuperscript{25} Gilroy proposes a monthly surcharge in Schedule B for the planned capital items that each facility will need to undertake during 2018 in order to maintain safe and reliable operation in accordance with Gilroy’s established cyclical maintenance program, and lists these capital items in Schedule L-1.\textsuperscript{26}

10. Gilroy also proposes to amortize its capital item costs over a five or 10 year period, varying with the size of the project, and has calculated its proposed annual capital item cost using an after-tax rate of return on investment of 8.1 percent. Gilroy states that this return represents the Commission’s recently approved weighted average cost of capital used in determining the total cost of new entry for independent power producers in ISO New England for purposes of its capacity market.\textsuperscript{27}

11. Gilroy requests waiver of the Commission’s prior notice requirement to allow the RMR Agreement to become effective January 1, 2018. Gilroy also requests waiver of Part 35 of the Commission’s filings requirements, on the basis that the Commission has previously granted such waivers for RMR Agreements filed under CAISO’s tariff.\textsuperscript{28} Gilroy asks that the rates be accepted without suspension, but to the extent the rates are suspended, Gilroy requests a nominal suspension period, subject to refund. Gilroy also notes that it is willing to participate in negotiations with parties through hearing and settlement judge proceedings and asks that any hearing be held in abeyance to allow for settlement judge procedures to commence.\textsuperscript{29}

II. Notice of Filing and Responsive Pleadings

12. Notice of Gilroy’s filing was published in the \textit{Federal Register}, 82 Fed. Reg. 51,823 (2017), with interventions and protests due on or before November 24, 2017. On November 17, 2017, CPUC filed a timely notice of intervention, and subsequently filed a protest. On November 20, 2017, Gilroy filed an answer in opposition to CPUC’s request. Timely motions to intervene were filed by NRG Power Marketing LLC and

\textsuperscript{25} \textit{Id.} at 15-16.

\textsuperscript{26} \textit{Id.} at 16.

\textsuperscript{27} \textit{Id.} at 17 and n.58 (citing \textit{ISO New England Inc.}, 161 FERC ¶ 61,035 (2017)).

\textsuperscript{28} \textit{Id.} at 21.

\textsuperscript{29} \textit{Id.} at 6-7, 21-22.
GenOn Energy Management, LLC, the Cities of Anaheim, Azusa, Banning, Colton, Pasadena and Riverside, California, and Southern California Edison Company. On November 28, 2017, the Northern California Power Agency (NCPA) filed a motion to intervene out of time. Timely motions to intervene and protests were filed by CAISO, PG&E, and CAISO’s Department of Market Monitoring (DMM). On December 5, 2017, CAISO and Gilroy filed answers. On December 7, 2017, California Department of Water Resources State Water Project (SWP) filed a motion to intervene out of time.

A. Protests

13. CAISO states that while some parties have expressed concerns about the RMR designation process, there is no dispute as to the need for Yuba City and Feather River for reliability, noting that Yuba City is required to meet local capacity requirements in the Pease sub-area, and Feather River is required to reduce local area voltages in the Bogue area.30 However, CAISO protests a number of the changes Gilroy proposes to the schedules, arguing that they are unsupported or reflect errors in implementation of applicable formulas.31 For example, CAISO states that while it agrees to the need to make changes to Schedule C to change the gas index price and how greenhouse gas emissions compliance costs are determined, this issue should be set for settlement discussions to reach consensus on the appropriate way to implement the changes. CAISO also notes that Gilroy put the words “Condition 2 RMR Agreement” in the header throughout the RMR Agreement, and argues that, although the RMR Agreement allows Gilroy to elect Condition 2, this additional language is not part of the pro forma agreement and must be removed.

14. CAISO contends that Gilroy has not supported certain costs included in the AFRRs in Schedule F and that further discovery is needed. CAISO also argues that certain costs associated with capital investments in Schedule L-1 have not been shown to be just and reasonable, including whether the timing of major maintenance for 2018 is justified and whether the depreciation period that Gilroy proposes to use for large capital items is consistent with the Commission’s depreciation policy.32 CAISO adds that there are other changes to Schedules that may or may not be acceptable, and that further discussions are therefore necessary. CAISO requests that the Commission suspend

30 CAISO Protest at 7.

31 Id. at 8-12.

32 Id. at 11-12.
Gilroy’s RMR Agreement and cost of service schedules effective January 1, 2018, subject to refund, and establish settlement judge procedures.

15. DMM argues that Gilroy’s selection of Condition 2 status for its RMR Agreement will likely result in significant inefficiencies and price distortions in CAISO’s energy market and will result in unjust and unreasonable rates for consumers.\(^{33}\) DMM asserts that this case highlights flaws in CAISO’s process for meeting local capacity needs and mitigating local market power of suppliers who are pivotal in terms of the supply of capacity needed to meet local capacity requirements.\(^{34}\) Specifically, DMM claims that the timeline of the resource adequacy program and the CPM process must be moved back to accommodate the timeline needed to make decisions about resource retirements and potential alternatives for meeting local needs. Also, DMM indicates that yet another flaw is that the CPM is voluntary and can be declined by suppliers with local market power. Finally, DMM reiterates that CAISO’s ultimate mechanism for back stop procurement, the RMR designation, does not include a must-offer requirement and even prohibits capacity under Condition 2 from being offered in CAISO’s energy market under most conditions. DMM states that while CAISO has indicated it will initiate another stakeholder process in 2018 to begin to address these issues, prior experience with similar CAISO initiatives indicates such a process may take significant time to complete.\(^{35}\)

16. CPUC states that it has identified a number of problems in Gilroy’s filing and thus the Commission should set it for hearing. For example, CPUC raises various concerns with the proposed amounts of the return on investment, depreciation expense, recovery of sunk costs, allocation of administrative and general costs, capital additions and the overall level of fixed operation and maintenance expenses, among other things.\(^{36}\) CPUC also questions whether an RMR Agreement for Yuba City is the most cost-effective solution to address the deficiency in the Pease sub-area and contends that Gilroy should have filed separate RMR Agreements for Yuba City and Feather River.\(^{37}\)

\(^{33}\) DMM Protest at 3.

\(^{34}\) Id. at 7-8.

\(^{35}\) Id. at 9.

\(^{36}\) CPUC Protest at 4-12.

\(^{37}\) Id. at 12-14, 25.
17. CPUC argues that Gilroy’s designation of its facilities as Condition 2 units is unjust and unreasonable, contending that Condition 2 was designed for generating units that are uneconomic or not competitive in the market. CPUC contends that as a consequence of these units operating as Condition 2, they will not participate in the market, which could increase prices, harm ratepayers, indirectly benefit Gilroy’s affiliate companies, and contribute to market power.

18. Finally, CPUC states that Gilroy has proposed a number of revisions to the pro forma RMR Agreement and schedules, such as proposed modifications to the gas index price and calculation of greenhouse gas emission compliance costs in Schedule C, which should be rejected as inconsistent with the pro forma RMR Agreement and CAISO’s tariff. CPUC states that, alternatively, the Commission should allow additional revisions to CAISO’s pro forma RMR agreements and schedules to the CAISO tariff to address changed circumstances that have arisen in the last two decades.

19. PG&E raises concerns about both the Gilroy filing in particular and the RMR program in general, and thus requests the Commission accept and suspend the RMR Agreement subject to refund, and initiate hearing and settlement judge procedures. PG&E further requests that the Commission initiate a proceeding under section 206 of the FPA examining the RMR program in CAISO’s tariff.

20. As to the Gilroy filing, PG&E argues that the filing contains insufficient information for the Commission to determine whether the RMR Agreement is just and reasonable. PG&E argues that the need for the Gilroy facilities is unclear and it had insufficient time to assess the reliability needs and propose solutions. PG&E states that a modified CAISO transmission planning process should plan for potential RMR designations and develop alternatives.

21. With respect to the RMR program, PG&E contends that, although the tariff does not specify the interaction between CPM and RMR authority, CAISO has improperly ceded the ability to choose between these methods, disrupting the bilateral market.

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38 Id. at 15-19, 21-24.

39 Id. at 27-28.

40 PG&E Protest at 3-4.

41 Id. at 5-8.
process. PG&E further states that CAISO prematurely accepted the RMR Agreement instead of allowing the resource adequacy process to play out, and argues that Gilroy’s statement it would have refused a CPM designation is insufficiently explained. PG&E also claims the cost of an RMR designation is higher than CPM designations and these costs will be passed on to PG&E’s customers. PG&E further states that these units will be removed from the bilateral resource adequacy market and suggests the timing of the RMR designation could lead to over-procurement. PG&E also contends that Gilroy’s election of Condition 2 could detrimentally impact CAISO’s energy markets by creating upward pressure on prices and creating market power concerns. Finally, PG&E argues that the CAISO tariff and pro forma RMR agreement need to be updated.

B. Answers

22. Gilroy argues that none of the protests challenge CAISO’s authority to designate Feather River and Yuba City as RMR units. Therefore, Gilroy contends that the Commission should accept the RMR Agreement for filing effective January 1, 2018, and if the Commission sets the matter for hearing, any suspension should be for a nominal period with the hearing held in abeyance pending settlement judge procedures. However, Gilroy argues the Commission should narrow the scope of the hearing by eliminating issues it contends are collateral attacks beyond the scope of the section 205 proceeding.

23. Gilroy claims that the protests relating to the nature of the RMR Agreement are outside the scope of the proceeding. Gilroy first argues that CAISO has legal authority to make the RMR designations and argues that questions about CAISO’s local reliability analyses or the reliability criteria therein are collateral attacks on CAISO’s tariff authority. Gilroy next claims that there is no tariff requirement to use or favor the CPM over RMR designations. Gilroy contends it has a unilateral option to elect Condition 2 under the RMR Agreement and that arguments related to the economics or

42 *Id.* at 8-18.

43 Gilroy Answer at 2.

44 *Id.* at 3-4.

45 *Id.* at 5-10.
market impacts of the Condition 2 designation are outside the scope of the proceeding. Finally, Gilroy argues that protests that Section 41 of the CAISO tariff and the pro forma RMR Agreement should be updated are also outside the scope of the proceeding.

24. Gilroy requests that the Commission reject a number of objections to the contents of the RMR Agreement and the cost-of-service formula contained therein. Gilroy contends the Commission should reject suggestions that Gilroy is barred from “new” RMR Agreements or ineligible to use Section F of the pro forma RMR agreement for setting rates. Next, Gilroy argues that recovery is not limited to going-forward costs. Gilroy further contends the 12.25 percent rate of return is prescribed in the pro forma RMR agreement with no provision for its challenge or adjustment, as such, these challenges are outside the scope of the proceeding. Gilroy argues that a new RMR agreement should include recovery of capital additions under Schedule L of the pro forma agreement. Next, Gilroy argues it should not be required to revise and re-file schedule F to reflect different estimates of its costs or run hours or charges for excess service for Schedule G. In addition, Gilroy argues its use of a single RMR agreement for both facilities was done in accommodation of a CAISO request and conforms to the pro forma RMR agreement.

25. Finally, Gilroy states its position concerning PG&E’s request that the Commission initiate a section 206 proceeding on the CAISO tariff’s RMR provisions. Gilroy first argues that PG&E’s request is outside the scope of this proceeding. However, Gilroy does not disagree that there is an urgent need for change in California capacity procurement mechanisms and states that an FPA section 206 proceeding focused on RMR provisions would be too narrow. Gilroy states that the renewed reliance on RMR designations indicates a continuing systemic failure of California’s competitive wholesale electricity markets to retain generation resources needed for local and system reliability. Gilroy points to recent comments by PG&E and other investor-owned utilities to the CPUC calling for a review of California policies affecting the retention of conventional resources needed for reliability. Gilroy supports Commission review of California’s capacity procurement if the review is comprehensive. Gilroy states a technical conference would be preferable to a narrow proceeding.

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46 Id. at 11-16.

47 Id. at 17-19.
26. CAISO argues many of the protests in this proceeding are outside the scope of this proceeding.\textsuperscript{48} CAISO states that challenges relating to its tariff, the \textit{pro forma} RMR agreements, and CAISO’s processes for ensuring reliability are best left to the stakeholder process, which CAISO will initiate in January 2018. CAISO states that these issues include lack of a must-offer obligation for RMR units, modifications to its transmission planning process, and use of the CPM program. CAISO contends a holistic approach is necessary to deal with these problems and it would be inefficient to consider these market-wide issues in a section 205 proceeding or a section 206 proceeding against Gilroy.

27. CAISO contends settlement judge proceedings under section 205 are appropriate for the issues that affect Gilroy’s agreement.\textsuperscript{49} However, while CAISO agrees that certain issues are properly within the section 205 proceeding, it disagrees with the protestors’ arguments.\textsuperscript{50} These issues include application of the \textit{pro forma} RMR agreement to “new” agreements, reliability standards, RMR dispatch, Gilroy’s Condition 2 designation, designation of Feather River and Yuba City as RMR units, use of CPM authority, use of CAISO’s RMR designation authority, greenhouse gas emissions compliance costs, and Gilroy’s use of one agreement for both Yuba City and Feather River.

III. \textbf{Discussion}

\textbf{A. Procedural Matters}

28. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2017), the timely, unopposed motions to intervene and notice of intervention serve to make the parties that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2017), we will grant NCPA’s and SWP’s late-filed motions to intervene given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

\textsuperscript{48} CAISO Answer at 2-6.

\textsuperscript{49} \textit{Id.} at 3.

\textsuperscript{50} \textit{Id.} at 6-13.
29. Rule 213 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2017), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Gilroy’s and CAISO’s answers because they provided information that assisted us in our decision-making process.

B. Substantive Matters

30. Our preliminary analysis indicates that Gilroy’s proposed RMR Agreement has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. We find that Gilroy’s filing raises issues of material fact that are more appropriately addressed through hearing and settlement judge procedures. Therefore, we accept Gilroy’s proposed RMR Agreement for filing, suspend it for a nominal period, to become effective January 1, 2018, as requested, subject to refund, and establish hearing and settlement judge procedures.

31. Although we are setting the rates, terms, and conditions of Gilroy’s RMR Agreement itself for hearing and settlement judge procedures, we decline to initiate a proceeding to revise CAISO’s tariff, including the *pro forma* RMR agreement, at this time. Such requests are beyond the scope of this proceeding, which involves the filing of the RMR Agreement by Gilroy under section 205 of the FPA. Nevertheless, Gilroy, DMM, and others raise concerns that suggest a review of the current *pro forma* RMR agreement and capacity procurement procedures in CAISO is warranted. We understand that some of these issues may be addressed in an upcoming stakeholder process that CAISO states it intends to initiate in 2018, and we encourage interested stakeholders to participate in that process.

32. While we are setting the RMR Agreement for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures are commenced. 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.\(^{51}\) 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

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based on workload requirements which determine judges’ availability. 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) Gilroy’s proposed RMR Agreement is hereby accepted for filing and suspended for a nominal period, to become effective January 1, 2018, 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 by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission’s Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R., Chapter I), a public hearing shall be held in Docket No. ER18-230-000 concerning the justness and reasonableness of Gilroy’s proposed RMR Agreements, 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 (2017), the Chief Administrative Law 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 a 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 settlement discussions. Based on this report, the Chief Judge shall provide the parties

52 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 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)
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 )

Nathaniel J. Davis, Sr.,
Deputy Secretary.