

172 FERC ¶ 61,111  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;  
Richard Glick, Bernard L. McNamee,  
and James P. Danly.

Greenleaf Energy Unit 2, LLC

Docket No. ER20-1947-000

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

(Issued July 31, 2020)

1. On June 1, 2020, pursuant to section 205 of the Federal Power Act (FPA)<sup>1</sup> and Part 35 of the Commission’s regulations,<sup>2</sup> Greenleaf Energy Unit 2, LLC (Greenleaf Energy) filed an unexecuted Reliability Must-Run Service Agreement (RMR Agreement)<sup>3</sup> with the California Independent System Operator Corporation (CAISO). As discussed below, we accept for filing the RMR Agreement, suspend it for a nominal period, to become effective June 2, 2020, as requested, subject to refund, and establish hearing and settlement judge procedures.

**I. Background**

2. Greenleaf Energy owns a 49.5 MW natural gas-fired cogeneration facility in Sutter County, California (Facility). Greenleaf Energy explains that the developers of the

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<sup>1</sup> 16 U.S.C. §§ 824d and 824e (2018).

<sup>2</sup> 18 C.F.R. pt. 35 (2019).

<sup>3</sup> RMR Agreements provide the rates, terms, and conditions by which power plant owners in California provide reliability must-run (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).

Facility executed a long-term energy and capacity power purchase agreement (PPA) with Pacific Gas and Electric Company (PG&E) in 1984. Greenleaf Energy states that the Facility began generating electricity in 1989 and for 30 years sold power to PG&E under the PPA. Greenleaf Energy states that Natgas Greenleaf Holdings, LLC acquired the Facility in June 2016, and notes that at the time of the transaction, the Facility was a qualifying facility pursuant to the Public Utility Regulatory Policies Act<sup>4</sup> with its output fully committed to PG&E under the terms of the PPA. Therefore, Greenleaf Energy states that the Facility did not participate in the CAISO markets.<sup>5</sup>

3. Greenleaf Energy states that, on September 30, 2019, it submitted notice to CAISO of its intent to retire the Facility, effective December 9, 2019 upon the expiration of the term of the PPA. According to Greenleaf Energy, shortly thereafter, CAISO advised Greenleaf Energy that the Facility had been designated as an RMR unit required for reliable operation of the local transmission system and needed for CAISO to maintain local reliability in 2020.<sup>6</sup> Specifically, CAISO found that the Facility is required to meet the 2020 local capacity requirement in the Drum-Rio Oso sub-area of the Sierra local area, and that reliability needs cannot be addressed with other alternatives during the June 2020 to December 31, 2020 time period.<sup>7</sup>

4. Greenleaf Energy states that, as of September 2019 when it provided notice to CAISO, and through May 2020, the Facility has not been subject to CAISO's mandatory designation as an RMR unit. Greenleaf Energy indicates that, in conjunction with the instant filing, Greenleaf Energy is executing the requisite agreements necessary for participation in the CAISO market and thereby voluntarily submitting to CAISO's jurisdiction.<sup>8</sup> In addition, Greenleaf Energy notes that the Facility has not previously provided Commission-jurisdictional service and has not made sales at prices regulated by the Commission.<sup>9</sup>

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<sup>4</sup> 16 U.S.C. § 824a-3 (2018).

<sup>5</sup> Transmittal at 5.

<sup>6</sup> *Id.* at 3, 6.

<sup>7</sup> See Memorandum to ISO Board of Governors, *Re: Decision on reliability must-run designations for Greenleaf II Cogen, Channel Islands Power and E.F. Oxnard Incorporated*, at 1 (March 18, 2020).

<sup>8</sup> Transmittal at 5.

<sup>9</sup> *Id.* at 14.

## II. Proposed RMR Agreement

5. In support of its proposed RMR Agreement, Greenleaf Energy explains that the facts and background surrounding its designation as an RMR unit are different from the circumstances of typical RMR designees that are actively operating within CAISO markets at the time CAISO designates the unit for RMR service. Therefore, Greenleaf Energy states that some cost-of-service components differ from the typical RMR unit. Greenleaf Energy explains that such differences include recovering costs incurred prior to the effective date of the RMR Agreement in order to maintain the Facility's capability to return to service and recouping a return that is commensurate with additional risks it has assumed. As a result, Greenleaf Energy states that it has negotiated with CAISO regarding the input of unit-specific data and calculations that serve as the basis for the proposed cost-of-service rates.<sup>10</sup>

6. Greenleaf Energy states that the proposed RMR Agreement is substantially similar to the *pro forma* RMR contract contained in Appendix G of the CAISO Tariff, but that certain changes were necessary to address the unique circumstances of the Facility agreeing to return to operations, accepting the responsibilities of being a generator operating in the CAISO markets, and committing to provide RMR services. Greenleaf Energy states that, rather than providing a full calendar year contract year as is the case in the *pro forma* RMR contract, the proposed RMR Agreement becomes effective June 2, 2020 through the remaining calendar year 2020. Accordingly, Greenleaf Energy requests an effective date of June 2, 2020 for the proposed RMR Agreement.

7. In addition, Greenleaf Energy proposes a new termination right in section 2.2(b)(vi), which authorizes Greenleaf Energy to terminate the RMR Agreement during calendar year 2020 in the event that the Commission issues an order accepting for filing or approving the RMR Agreement subject to refund, if Greenleaf Energy determines that it would be uneconomical, impractical, or illegal for the Facility to continue operation. Greenleaf Energy states that this termination right is similar to other provisions of the *pro forma* RMR agreement that permit an owner to terminate the agreement if operating circumstances make it uneconomical, impractical, or illegal to continue operation.<sup>11</sup> Greenleaf Energy notes that this provision is necessary to permit termination of the RMR Agreement in the event of a prolonged challenge to the proposed rates that would create

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<sup>10</sup> *Id.* at 1-2.

<sup>11</sup> *Id.* at 7 (citing CAISO Tariff, app. G, article II, § 2.2(b)(v); CAISO Tariff, app. G, article VII, § 7.4(f); CAISO Tariff, app. G, article VII, § 7.5(i); CAISO Tariff, app. G, article VII, § 7.6(h)).

an unacceptable risk that Greenleaf Energy would not be able to recover its actual costs of providing service in rates.<sup>12</sup>

8. Greenleaf Energy further states that the cost-of-service schedules accompanying the proposed RMR Agreement are substantially in the form of the schedules within the *pro forma* RMR contract, with certain deviations, and that the schedules reflect discussions, negotiations, and information exchanges between Greenleaf Energy and CAISO. According to Greenleaf Energy, Schedule B provides the Daily RMR Capacity Payment for the Facility calculated using the formulas and specifications which are unchanged from the *pro forma* Schedule B. Greenleaf Energy notes, however, that the calculation of its Annual Fixed Revenue Requirement in Schedule B has been modified to account for the fact that Greenleaf Energy will only recover less than seven-twelfths of its Annual Fixed Revenue Requirement because the proposed RMR Agreement has a term of less than seven months.<sup>13</sup>

9. Greenleaf Energy states that Table B-2 within Schedule B also includes transition costs, which are one-time Facility expenses necessarily incurred from January through May 2020 during the period when the unit was shut down to preserve its ability to provide RMR services to CAISO. Greenleaf Energy states that, had the Facility not been designated as an RMR unit by CAISO, or had it declined CAISO's request to provide RMR services, the Facility would have been decommissioned and the preparatory costs would not have been incurred. Greenleaf Energy states that, as the Facility was not a participating generator in the CAISO markets, it had the option to decline CAISO's request to provide RMR services, but instead decided to positively respond to the request to support the reliability needs of California.<sup>14</sup>

10. Greenleaf Energy states that Schedule F sets forth the calculation of the Annual Fixed Revenue Requirement using the cost-of-service formulas outlined in the *pro forma* Schedule F and is based on costs incurred by the Facility during the 12-month cost year commencing July 2018 through June 2019. Greenleaf Energy indicates that depreciation expense and depreciation reserve are based on the June 2016 acquisition cost of the Facility, and that plant depreciation and net plant investment within Schedule F are calculated based on an assumed service life of five years and seven months (from the

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<sup>12</sup> *Id.* at 6-7.

<sup>13</sup> *Id.* at 8.

<sup>14</sup> *Id.* at 8-10. Greenleaf Energy states that CAISO advised it to include the one-time costs as transition costs reflected in Schedule B. *See id.* at 9 n.24.

June 2016 acquisition through December 2021).<sup>15</sup> Greenleaf Energy further explains that the PPA component of the acquisition cost is amortized over a three year and seven month period (from the June 2016 acquisition through December 2019). According to Greenleaf Energy, Schedule F of the *pro forma* RMR contract permits the use of costs associated with an acquisition where the owner “ha[s] obtained approval from the [Commission] to include under the Formula...such costs for ratemaking purposes under the FPA.”<sup>16</sup> Greenleaf Energy indicates that it is requesting such approval because: (1) original cost data for the Facility is not available due to ownership changes and the passage of over 30 years, (2) the Facility is an electric generator that has never been subject to cost-of-service rate regulation, and (3) the Facility was acquired from an unaffiliated seller pursuant to a competitive auction process, which yielded an impartial fair market value.<sup>17</sup>

11. Greenleaf Energy proposes a pre-tax rate of return of 11.75%, which it explains reflects considerable market and regulatory risks associated with bringing the Facility out of retirement, foregoing the economic value of using its parts in different sites, accepting all responsibilities of a generator participating in CAISO markets, and agreeing to provide reliability services pursuant to the proposed RMR Agreement. Further, Greenleaf Energy states that it is exposed to the regulatory risk of whether the Commission will approve rates which will allow it to recover its actual costs, including incremental transition costs, which is a risk Greenleaf Energy could have avoided by retiring the Facility as originally planned. Greenleaf Energy explains that its 11.75% rate of return figure is 0.50% lower than the 12.25% pre-tax rate of return that CAISO historically included in its *pro forma* RMR contract. Greenleaf Energy also states that the rate of return reflected in the proposed RMR Agreement is materially lower than the pre-tax rate of return of a comparable asset.<sup>18</sup>

### **III. Notice of Filing and Responsive Pleadings**

12. Notice of Greenleaf Energy’s filing was published in the *Federal Register*, 85 Fed. Reg. 34,614 (June 5, 2020), with interventions, comments, and protests due on or before June 22, 2020. The California Public Utilities Commission (CPUC) filed a timely notice

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<sup>15</sup> *Id.* at 12. Greenleaf Energy states that the service life is based on the assumption that the Facility will continue to provide RMR services to CAISO through 2021 because CAISO has determined that the current capacity deficiency in the Drum-Rio Oso sub-area will not be alleviated until mid-2022.

<sup>16</sup> *Id.* (citing CAISO Tariff, app. G, schedule F, article II, part C, § 1(C)).

<sup>17</sup> *Id.* at 12-13.

<sup>18</sup> *Id.* at 17-19.

of intervention and protest. PG&E filed a timely motion to intervene and protest. CAISO and the Department of Market Monitoring (DMM) for CAISO filed timely motions to intervene and comment. On July 2, 2020, CAISO filed an answer to the protests. On July 6, 2020, Greenleaf Energy filed an answer to protests.

**A. Protests and Comments**

13. CPUC, PG&E, and CAISO all request that the filing be set for hearing and settlement judge procedures. CPUC and PG&E object to the proposed provision that would allow Greenleaf Energy to terminate the RMR Agreement during calendar year 2020. CPUC argues that this provision is inconsistent with the mandatory nature of RMR designations and materially changes the long-standing and careful balance of rights and responsibilities under CAISO's RMR tariff provisions.<sup>19</sup> CPUC further asserts that CAISO should not sign away rights it has to obligate facilities to continue to operate if needed for reliability purposes because a facility or its owner disagree with a Commission determination.<sup>20</sup> PG&E similarly questions the right of an RMR resource to unilaterally terminate an agreement should it be unsatisfied with the outcome of a Commission proceeding, and argues that Greenleaf Energy has not satisfied its burden to demonstrate that the termination provision is just and reasonable.<sup>21</sup> PG&E also argues that Greenleaf Energy's self-described voluntary acceptance of its RMR designation is problematic, as its claim leads to inconsistent treatment of other RMR resources and unbalanced negotiating leverage. PG&E explains that, while Greenleaf Energy views its continued participation in the RMR process as voluntary, once the RMR designation is accepted, participation is mandatory under the CAISO tariff.<sup>22</sup>

14. CPUC asserts that full cost compensation is appropriate only if designations are mandatory, and that compensation for voluntary designations only provides for going-forward fixed costs. Therefore, CPUC comments that if Greenleaf Energy proposes to change RMR designations from mandatory to voluntary, then appropriate cost compensation should only include going-forward costs, consistent with Commission precedent.<sup>23</sup> PG&E argues that Greenleaf has failed to adequately demonstrate that all other deviations from the *pro forma* RMR contract are just and reasonable, especially

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<sup>19</sup> CPUC Protest at 5.

<sup>20</sup> *Id.* at 7.

<sup>21</sup> PG&E Protest at 10.

<sup>22</sup> *Id.* at 8.

<sup>23</sup> CPUC Protest at 8-9 (citing *Cal. Indep. Sys. Operator Corp.* 168 FERC ¶ 61,199, at P 84 (2019)).

those that are made based on Greenleaf Energy's voluntary acceptance of the RMR designation. PG&E explains that RMR compensation must be at full cost-of-service because RMR procurement is mandatory, and therefore, the RMR framework does not provide for negotiated, case-by-case revisions in order to convince a resource owner to accept the terms.<sup>24</sup>

15. CPUC and PG&E contest Greenleaf Energy's recovery of transition costs it incurred before the effectiveness of the RMR agreement to maintain its capability to return to service. According to CPUC, Greenleaf Energy made the decision to mothball its facility in September 2019, and this decision was unrelated to CAISO's RMR designation. CPUC argues that because Greenleaf Energy had already made the decision to mothball the facility, it does not have a basis to seek recovery now from ratepayers for the costs of mothballing.<sup>25</sup> PG&E argues that, as a mothballed unit under CAISO's Business Practice Manual, Greenleaf Energy was required to maintain the unit in case it was required to resume service, and that it also had the right not to mothball and to reject the RMR designation if it had to incur significant transition costs to become operational.<sup>26</sup> PG&E argues that Greenleaf Energy has not provided sufficient information to demonstrate that the transition costs are just and reasonable and as such the parties to the proceeding cannot confirm that these costs were necessary and appropriate.<sup>27</sup>

16. CPUC and PG&E both assert that Greenleaf Energy has not demonstrated that its proposed depreciation and rate of return are just and reasonable. CPUC and PG&E contend that ratepayers have already paid for the Facility through a 30-year standard offer agreement for deliveries that took place between 1989 and 2019, and they assert that the unit is fully depreciated.<sup>28</sup> CPUC and PG&E also claim that Greenleaf Energy has not supported its allowable pre-tax return of 11.75% through traditional justification

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<sup>24</sup> PG&E Protest at 11 (citing *New York Indep. Sys. Operator, Inc.*, 150 FERC ¶ 61,116, at P 17 (2015); *Midcontinent Indep. Sys. Operator, Inc.*, 148 FERC ¶ 61,057, at P 84 (2014)).

<sup>25</sup> CPUC Protest at 10-11.

<sup>26</sup> PG&E Protest at 9-10 (citing CAISO *Business Practice Manual for Generator Management*, version 27, p. 75, [https://bpmcm.caiso.com/BPM%20Document%20Library/Generator%20Management/BPM\\_for\\_GeneratorManagement\\_V27\\_clean.docx](https://bpmcm.caiso.com/BPM%20Document%20Library/Generator%20Management/BPM_for_GeneratorManagement_V27_clean.docx)).

<sup>27</sup> *Id.* at 12-13.

<sup>28</sup> CPUC Protest at 11-12; PG&E Protest at 15.

methods.<sup>29</sup> In addition, CPUC contests Greenleaf Energy's proposed depreciation schedule and depreciation expenses.<sup>30</sup>

17. CPUC asserts that Greenleaf Energy has not provided sufficient explanation or documentation to determine whether the proposed operations and maintenance expenses and administrative and general expenses are just and reasonable, and contends that these proposed expenses appear unjust and unreasonable when compared with similar costs for RMR facilities.<sup>31</sup> PG&E protests that Greenleaf Energy failed to provide cost support necessary to allow parties to understand the cost components and establish that the proposed rates and RMR contract terms are just and reasonable. PG&E also recommends that the Commission commence an investigation under section 206 of the FPA to examine whether the RMR program in the CAISO Tariff is unjust and unreasonable with respect to RMR designation of resources that are not participating in the CAISO market prior to such designation and, therefore, are not required to accept RMR designations.<sup>32</sup>

18. CAISO states that it generally supports the RMR Agreement, but notes that the parties could not agree on all cost and rate elements. In general, CAISO states that it supports Greenleaf Energy's right to recover prudent and reasonable costs, including the recovery of transition costs of the types identified in Schedule B from January 1 to May 31, 2020. CAISO further states that it does not oppose Greenleaf Energy's proposed depreciation expense and believes the proposed departures from the *pro forma* RMR contract are reasonable and reflect the particular unique circumstances of the Facility.<sup>33</sup>

19. CAISO explains that Greenleaf Energy has not been subject to the CAISO Tariff and that the Facility had no obligation to notify CAISO of the retirement or to provide RMR service. CAISO states that Greenleaf Energy should be able to recover costs associated with the service and be adequately incentivized to forego its planned use of facility components in other projects. With respect to the proposed pre-tax rate of return of 11.75%, CAISO explains that the Commission previously accepted CAISO's proposal to eliminate the default rate of return that had been incorporated into the *pro forma* RMR contract for 20 years.<sup>34</sup> CAISO argues that Greenleaf Energy must independently justify

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<sup>29</sup> CPUC Protest at 16-17; PG&E Protest at 13.

<sup>30</sup> CPUC Protest at 14-16.

<sup>31</sup> *Id.* at 17-18.

<sup>32</sup> PG&E Protest at 5, 18.

<sup>33</sup> CAISO Comments at 4.

<sup>34</sup> *Id.* at 6-7 (citing *Cal. Indep. Sys. Operator Corp.*, 168 FERC ¶ 61,199 at P 85).

the proposed rate of return based on the current economic and business conditions, consistent with established Commission policy, and that it is hopeful this issue can be resolved in settlement discussions.<sup>35</sup>

20. DMM states that several components of the cost filing for the Facility warrant further explanation, review, and supporting information. According to DMM, the proposed annual fixed operation and maintenance costs appear to be much higher than may be expected for a plant of its size. DMM also explains that the amortization of the PPA is included in the RMR Agreement's Schedule F calculations even though the PPA appears to have been fully amortized by the time the RMR Agreement begins in June 2020.<sup>36</sup>

## **B. Answers**

21. In response to CPUC's and PG&E's protests concerning the voluntary nature of the RMR Agreement, CAISO notes that Greenleaf Energy did not seek the designation as an RMR unit but that CAISO reached out to Greenleaf Energy to negotiate and obtain agreement on terms of service because of the immediate reliability need.<sup>37</sup> CAISO states that Greenleaf Energy was not required to provide any retirement notice, and that Greenleaf Energy made clear its intent to permanently retire and dismantle the Facility.<sup>38</sup> Further, CAISO states that it agreed to support for one-time only, a termination provision that incentivizes acceptance of the RMR designation and will have no future applicability once Greenleaf Energy accepts the RMR designation.<sup>39</sup> CAISO states that if the Commission concludes that this facility is not entitled to full cost-of-service, including a reasonable return, similar resources would likely be unwilling to enter into an RMR contract, and that such an outcome could jeopardize grid reliability.<sup>40</sup>

22. In its answer, Greenleaf Energy argues that the limited modifications to the RMR Agreement that differ from the *pro forma* RMR contract in CAISO's Tariff are just and reasonable based on the reality of its commercial transaction with CAISO. Greenleaf Energy notes that it was not obligated to provide RMR services and it would not have

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<sup>35</sup> *Id.* at 7.

<sup>36</sup> DMM Comments at 2-4.

<sup>37</sup> CAISO Answer at 2-3.

<sup>38</sup> *Id.* at 3.

<sup>39</sup> *Id.* at 5-6.

<sup>40</sup> *Id.* at 6-7.

entered into the proposed RMR Agreement without such negotiated accommodations.<sup>41</sup> Greenleaf Energy argues that without the negotiated terms in the RMR Agreement, CAISO would not have been able to dispatch the Facility to support grid reliability, which CAISO has already done more than 20 times.<sup>42</sup> Greenleaf Energy contends that the termination provision does not usurp the Commission's regulatory authority, as it functions as a "regulatory out" clause that is routinely included in many commercial contracts that require regulatory approval.<sup>43</sup> Greenleaf Energy asserts that CPUC's argument that providing voluntary RMR services should limit Greenleaf Energy's recovery of costs to only "going forward costs" is unsupported, because among other things, the proposed RMR Agreement imposes an absolute mandatory performance obligation on the Facility, which is the same performance obligation the *pro forma* RMR contract imposes on every other RMR service provider.<sup>44</sup>

23. Regarding recovery of transition costs, Greenleaf Energy argues that it is uniquely situated from other traditional RMR resources that do not incur such costs because they are actively participating in CAISO markets and did not cease operations. According to Greenleaf Energy, CAISO represented that it would be entitled to recover costs incurred to be ready to provide RMR services.<sup>45</sup> In addition, Greenleaf Energy argues that (1) no party offers any substantive challenge to the use of an acquisition adjustment for the purposes of calculating depreciation expenses and return on net investment,<sup>46</sup> (2) its proposed depreciation expenses are appropriate as it has never before provided services on a cost-of-service basis, and therefore customers have never paid a return on the Facility's capital costs,<sup>47</sup> (3) its pre-tax return must be higher than a traditional utility because, without a long-term revenue stream, Greenleaf Energy's risks are substantially

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<sup>41</sup> Greenleaf Energy Answer at 5-6.

<sup>42</sup> *Id.* at 8-9.

<sup>43</sup> *Id.* at 10-11.

<sup>44</sup> *Id.* at 11-12.

<sup>45</sup> *Id.* at 15-16.

<sup>46</sup> *Id.* at 17-20.

<sup>47</sup> *Id.* at 20-24.

greater<sup>48</sup> and (4) protests comparing the Facility to modern efficient peaker facilities are irrelevant and invalid.<sup>49</sup>

#### **IV. Discussion**

##### **A. Procedural Matters**

24. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2019), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

25. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2019), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept the CAISO's answer because it has provided information that assisted us in our decision-making process.

##### **B. Substantive Matters**

26. As an initial matter, we note that CAISO designated the Facility as an RMR unit under its Tariff provisions governing RMR service because CAISO's reliability studies demonstrated a need for the Facility to meet the 2020 local capacity requirement in the Drum-Rio Oso sub-area of the Sierra local area, and because no alternatives are available from June 2020 through the end of this year.<sup>50</sup> No party objects to this designation and we find no basis on the record to challenge that determination.

27. Our preliminary analysis indicates that the 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 the filing raises issues of material fact that cannot be resolved based on the record before us, and that are more appropriately addressed in the hearing and settlement judge procedures ordered below. Therefore, we accept the proposed RMR Agreement for filing, suspend it for a nominal period, to be effective June 2, 2020, as requested, subject to refund, and establish hearing and settlement judge procedures.

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<sup>48</sup> *Id.* at 26-28.

<sup>49</sup> *Id.* at 29-32.

<sup>50</sup> *See supra* P 3.

28. We decline PG&E's request to initiate an investigation under FPA section 206 to examine the RMR provisions in CAISO's Tariff and address the designation of resources that are not participating in the CAISO market prior to such designation. PG&E has not persuaded us here that it is necessary to commence such a proceeding. While PG&E states that resources that had not previously participated in the CAISO market may continue to be designated as RMR resources in the future, and that therefore an investigation is warranted to ensure that CAISO's RMR provisions remain just and reasonable, we do not find that contention supports the institution of a section 206 proceeding. The matters at dispute here are limited to the unique circumstances of this proceeding. We conclude that PG&E has not presented evidence that RMR agreements with non-jurisdictional resources raise broader issues that justify a section 206 investigation of CAISO's RMR tariff provisions.

29. While we are setting this matter for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures commence. 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.<sup>51</sup> 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 based on workload requirements which determine judges' availability.<sup>52</sup> The settlement judge shall report to the Chief Judge and the Commission within 60 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) The proposed RMR Agreement is hereby accepted for filing, suspended for a nominal period, to become effective June 2, 2020, as requested, subject to refund, as discussed in the body of this order.

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<sup>51</sup> 18 C.F.R. § 385.603.

<sup>52</sup> 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 (<https://www.ferc.gov/about/offices/office-administrative-law-judges-oalj>).

(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 the FPA, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the FPA (18 C.F.R. Chapter I), a public hearing shall be held concerning the justness and reasonableness of the proposed RMR Agreement, 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 (2019), the Chief Judge is hereby directed to appoint a settlement judge in this proceeding within 45 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 the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five days of the date of this order.

(D) Within 60 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 the settlement discussions. Based on this report, the Chief Judge shall provide the parties 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 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 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, or telephonically, as appropriate. 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.

(F) Given that the circumstances caused by the COVID-19 pandemic may disrupt, complicate, or otherwise change the ability of participants to engage in normal hearing procedures, the Chief Judge is hereby authorized to set or change the dates for the commencement of the hearing and the issuance of the initial decision as may be appropriate.

By the Commission. Commissioner Danly is concurring with a separate statement attached.

( S E A L )

Kimberly D. Bose,  
Secretary.

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Greenleaf Energy Unit 2, LLC

Docket No. ER20-1947-000

(Issued July 31, 2020)

DANLY, Commissioner, *concurring*:

1. I concur with the decision to accept, suspend, and set for hearing and settlement judge procedures the unexecuted Reliability Must-Run Service Agreement (RMR Agreement) between Greenleaf Energy Unit 2, LLC (Greenleaf Energy) and the California Independent System Operator Corporation (CAISO). I write to express my general concerns about the effect of RMR agreements on the organized markets and my specific concern that CAISO's tariff fails to require sufficient justification of an underlying reliability need in support of CAISO's RMR designations.

2. RMR agreements are a product of market failure, and they themselves cause markets to fail. This further failure arises as RMR agreements obscure the market signals that would create incentives for the very development that the markets are intended to deliver. I therefore agree with Commission precedent that RMR agreements should be a measure of last resort.<sup>1</sup> Given the scant reliability analysis provided by CAISO in support of its reliability need determination, I am not wholly confident that this RMR Agreement truly was a last resort.

3. This is the second RMR agreement out of CAISO in a month.<sup>2</sup> A third is pending.<sup>3</sup> CAISO provided a document briefly describing the reliability need for all three resources.<sup>4</sup>

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<sup>1</sup> See, e.g., *N.Y. Indep. Sys. Operator, Inc.*, 150 FERC ¶ 61,116, at P 16 (2015), *order on compliance and reh'g*, 155 FERC ¶ 61,076 (2016), *order on compliance and reh'g*, 161 FERC ¶ 61,189 (2017), *order on clarification and reh'g*, 163 FERC ¶ 61,047 (2018); *Midwest Indep. Transmission Sys. Operator, Inc.*, 140 FERC ¶ 61,237, at P 10 (2012).

<sup>2</sup> See *Cal. State Univ.-Channel Islands Site Auth.*, 171 FERC ¶ 61,260 (2020).

<sup>3</sup> See EF Oxnard LLC, Filing, Docket No. ER20-1917-000 (filed May 28, 2020).

<sup>4</sup> See *Cal. Indep. Sys. Operator Corp.*, Informational Report for Proposed New RMR Designations, Docket No. ER19-1641-001 (filed Mar. 30, 2020).

4. While minimal, these brief justifications are all that CAISO's tariff requires. The Commission approved new CAISO RMR rules last year.<sup>5</sup> Commissioner Glick dissented in part in that case, expressing concerns that the Commission was granting CAISO unacceptably "broad authority to perform an end-run around the Commission-approved market structures in order to retain particular resources" without being "required to justify its decision to enter an RMR agreement in a filing before the Commission . . . ."<sup>6</sup>

5. I agree with Commissioner Glick that greater support for RMR designations is called for to ensure that only truly critical units are designated, thereby guarding against yet further market failures. I would not have supported the RMR rules approved by the Commission last year but in this case, as in the last one, CAISO satisfied the requirements of its Commission-approved tariff and the RMR Agreement must be accepted.

For these reasons, I respectfully concur.

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James P. Danly  
Commissioner

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<sup>5</sup> *Cal. Indep. Sys. Operator Corp.*, 168 FERC ¶ 61,199 (2019).

<sup>6</sup> *Id.* (Glick, Comm'r, dissenting in part at P 3).