

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION
104 FERC ¶ 63,026

Geysers Power Company, LLC

Docket Nos. ER03-184-000
ER03-184-001

CERTIFICATION OF UNCONTESTED SETTLEMENT

(Issued August 1, 2003)

TO THE COMMISSION:

I. INTRODUCTION

1. The Settlement Agreement (“Settlement”) between Geysers Power Company, LLC (“Geysers”), the California Independent System Operator Corporation (“CAISO”), and the Pacific Gas & Electric Company (“PG&E”) resolves all issues in this proceeding.

II. PROCEDURAL HISTORY

2. On November 14, 2002, Geysers filed with the Commission updated rate schedules for the year 2003 Reliability Must Run Agreements¹ (“RMR Agreement”) between it and the CAISO.² These updated rate schedules included

¹ According to Commission Trial Staff (“Staff”), Reliability Must Run Agreements are specialized service agreements used by the CAISO to enhance grid reliability, meet local reliability needs, and manage intra-zonal congestion, and follow a standard format. *California Independent System Operator Corporation, et al.*, 87 FERC ¶ 61,250 (1999). “Staff’s Initial Comments Supporting Uncontested Settlement,” filed on June 23, 2003, at p. 1, n. 1.

² The Commission approved a *pro forma* RMR Agreement governing the terms and conditions under which each owner of an RMR unit provides RMR services to the ISO. *California Independent System Operator Corp.*, 87 FERC ¶ 61,250 (1999); ISO Tariff, Section 5.2.6 and Appendix G. Geysers provides services under two rate schedules (based on the *pro forma* RMR Agreement) which incorporate rates specific to each RMR Unit. Geysers’ main RMR Agreement is Geysers Rate Schedule FERC No. 5. The Geysers Units 13 and 16 RMR Agreement is Geysers First Revised

changes to the main Geysers Reliability Must Run Agreement as well as changes to Geysers' units 13 and 16 Reliability Must Run Agreements. The rate schedules were filed in response to the CAISO's designation of these units as Reliability Must Run units for 2003, and updated the RMR Agreement provisions that are required to be filed annually pursuant to 18 C.F.R. § 35.13 (2003). The updated filing included two new proposed charges: for a facility modification which increased the combined Maximum Net Dependable Capacity ("MNDC") at Geysers Units 11 and 17 by 5 MW ("MNDC Improvement Project") and a corresponding increase in MNDC to be applied to these units' operating characteristics.

3. PG&E, the CAISO, and the California Electricity Oversight Board ("EOB") jointly filed a protest to these rate schedules on December 5, 2002.³ In their joint protest they contended that Geysers (1) miscalculated the Condition 1 Hourly Capital Item Charge for the Unit 17 Steam Piping Capital Item Project, (2) failed to classify Unit 12 as a Reliability Must Run unit, and (3) improperly included in the rates Hourly Capital Item Charges and Hourly Penalty Rates for the MNDC Improvement Project.

4. On December 31, 2002, Geysers responded to the joint protest, agreeing with the criticisms over issues (1) and (2) above and filing substitute revised rate schedule sheets to reflect the resolution of these issues. For the remaining issue, Geysers asked the Commission for time to resolve the issue informally.

5. The Commission, on February 27, 2003, issued an order conditionally accepting the substitute revised rate schedules (subject to refund). The rates were suspended for a nominal period, to become effective January 1, 2003. Additionally, the Commission established a hearing concerning the justness and reasonableness of the proposed revisions to the RMR Agreements. The hearing was held in abeyance pending settlement negotiations. *Geysers Power Company, LLC*, 102 FERC ¶ 61,224 (2003).

6. The Chief Administrative Law Judge appointed a Settlement Judge on March 5, 2003.⁴ A settlement conference was held on March 24, 2003. Status

Rate Schedule FERC No. 4 (collectively, Geysers RMR Agreements).

³ "Joint Protest of Pacific Gas and Electric Company, The California Independent System Operator Corporation, and The California Electricity Oversight Board," filed on December 5, 2002.

⁴ Order of Chief Judge Appointing Settlement Judge and Scheduling Settlement Conference, March 5, 2003.

reports recommending continuation of the settlement process were issued on April 30 and July 30, 2003. Southern California Edison Company, on March 7, 2003, filed a motion to intervene out of time, which was granted by the Chief Judge on March 26, 2003.⁵ After negotiations, the parties agreed to a settlement.

III. THE SETTLEMENT AGREEMENT

A. Section I.

7. This section provides the procedural history of this proceeding which was set forth above.

B. Section II.

8. This section describes the substantive terms of the settlement. Paragraph II. A. establishes the effective date of the settlement as the date when the Commission approves the settlement without modification, or when all parties accept a Commission Order modifying or conditioning the settlement.

9. The Maximum Net Dependable Capacity Improvement Project question is addressed by Paragraph II. B. 1. This paragraph states that Geysers will recover the MNDC Improvement Project costs through Hourly Capital Item Charges for Geysers units 11 and 17 under the Geysers main RMR agreement.

10. Paragraph II. B. 2 states the applicable charges for units 11 and 17. The applicable charges are for contract years 2003 through 2012 in which Unit 11 or 17 are designated as a RMR unit. The Hourly Capital Charge for unit 11 will be \$8.37, and the Hourly Surcharge Penalty Rate for unit 11 will be \$25.11. The Hourly Capital Charge for unit 17 will be \$12.53, and the Hourly Surcharge Penalty Rate for unit 17 will be \$37.58.

11. According to Paragraph II. B. 3, the effective date for the Hourly Capital Item Charges and Hourly Surcharge Penalty Rates set by the settlement for the 2003 contract year is January 1, 2003.

12. Under Paragraph II. B. 4, Geysers agrees to include an identified Annual Capital Item Cost for the MNDC Improvement Project of \$475, 975 for unit 11 and \$713,962 for unit 17 in Schedule B of the Geysers main RMR agreement. This paragraph also states that for purposes of this settlement, there is no Fixed

⁵ Order of Chief Judge Granting Motion for Leave to Intervene Out of Time, March 26, 2003.

Docket Nos. ER03-184-000
and ER03-184-001

4

Option Payment Factor or Surcharge Payment Factor for the MNDC Improvement Project, which is an exception to the requirements of the *pro forma* RMR Agreement.

C. Section III.

13. This section implements the settlement, addressing filing rate sheets in Paragraph III. A and providing refunds in Paragraph III. B. The latter Paragraph states that, upon the Effective Date, Geysers rates for the 2003 calendar year under Geysers RMR agreements will no longer be subject to refund and Geysers will not have a refund obligation with respect to 2003 rates under the RMR Agreements.

14. Further, Geysers will refund, with interest, the difference between (a) the sum of the units 11 and 17 Hourly Capital Item Charges for the MNDC Improvement Project actually paid by the CAISO as of the Effective Date, and (b) the sum of the units 11 and 17 Hourly Capital Item Charges arising out of the settlement. The refunds will be reflected as credits, and Geysers will compute and set forth the difference between (a) the amounts payable by the CAISO to Geysers in accordance with the rates in effect prior to the approval date of the settlement, and (b) the amounts payable by the CAISO to Geysers in accordance with the rates resulting from the settlement, with interest.

D. Section IV.

15. This section provides certain reservations. The parties agreed to a moratorium on filings by the parties to this settlement for 2003, under Sections 205 and 206 of the FPA, but place no restrictions on the Commission's right to investigate Geysers rates on its own motion. Additionally, the settlement is not intended to affect the outcome of the complaint in Docket No. EL02-15-000, or to limit or affect the rights of the parties with respect to any other dispute not resolved by the settlement. Finally, the settlement is not intended to limit or affect the rights of the parties with respect to any dispute under the RMR Agreement whose resolution does not require any modification of the rates, terms, and conditions under the RMR Agreement.

16. This section also provides that the settlement is intended as a "black box" settlement, the approval or acceptance of which is not intended to constitute the approval of, or precedent regarding, any principle or issue in the proceeding.

E. Section V.

17. This section states that the settlement will not be effective unless the Commission enters an Order approving it without condition or modification.

However, to the extent the Commission conditions or modifies the settlement, it may become effective if all of the sponsoring parties expressly accept the modification or condition in writing within thirty days of the date of the Commission's Order.

F. Section VI.

18. This section provides miscellaneous provisions. Paragraph VI. A. provides that the headings and titles in the settlement are for reference purposes only and not for interpreting the settlement. Paragraph VI. B. states that the rights imposed on any party by the settlement will inure to the benefit of that party's successors in interest or assignees. Paragraph VI. C. provides that the Settlement may be executed in counterparts.

IV. INITIAL COMMENTS

19. Staff filed comments supporting the Settlement on June 23, 2003. In their comments, Staff urged the Settlement Judge and the Commission to accept the Settlement as a fair, reasonable, and in the public interest resolution of the issues in this proceeding.⁶ The resolution of the issues in this case, Staff avers, will provide rate certainty for both Geysers and the parties involved. According to Staff, the underlying issues do not raise any policy implications, no other pending cases are affected by the Settlement and the Settlement does not involve issues of first impression.⁷ No other comments were received.⁸

V. DISCUSSION AND CONCLUSION

20. The uncontested settlement provides a reasonable resolution of all the issues set for hearing by the Commission. The settlement resolves issues related to the rates, terms and conditions dealing with Geysers' provision of service to the ISO based on two RMR Agreements. As Staff points out, the Settlement provides

⁶ "Staff's Initial Comments Supporting Uncontested Settlement," filed on June 23, 2003, at p. 7.

⁷ *Id.* at pp. 7-8.

⁸ The settling parties stated that they were authorized to represent that the California Electricity Oversight Board did not oppose the settlement. Additionally, these parties state that they are authorized to represent that the California Public Utilities Commission (which did not intervene in the case but actively participated in the settlement discussions) does not oppose the settlement.

Docket Nos. ER03-184-000
and ER03-184-001

6

rate certainty for both Geysers and the other parties involved in this proceeding. Approval of the settlement terminates docket Nos. ER03-184-000 and ER03-184-001, avoids costly litigation, promotes administrative efficiency and benefits consumers. Accordingly, the public interest will be served by the approval of the settlement.

21. According to Staff, there are no policy implications in this Settlement. The Settlement will not affect any other cases pending before the Commission and does not involve any issues of first impression. For these reasons, it is recommended that the settlement be approved by the Commission.

VI. CERTIFICATION

22. Pursuant to 18 C.F.R. § 385.602(g)(1), the following are certified for the Commission's consideration:

- (a) The Offer of Settlement, filed by Geysers Power Company, LLC, the California Independent System Operator Corporation and Pacific Gas and Electric Company on June 3, 2003;
- (b) An Explanatory Statement, Exhibit A to Offer of Settlement, Exhibit B, a Form of Notice suitable for publication in the *Federal Register*, and a Draft Letter Order filed on June 3, 2003, by Geysers Power Company, LLC, the California Independent System Operator Corporation and Pacific Gas and Electric Company;
- (c) Staff's Initial Comments Supporting Uncontested Settlement, filed on June 23, 2003; and
- (d) All pleadings, orders, and other documents of record in this proceeding.
- (e) Attached Draft Letter Order.

Carmen Cintron
Settlement Judge

DRAFT

**FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426**

In Reply Refer To:
Docket Nos. ER03-184-000
and ER03-184-001

Davis Wright Tremaine, LLP
Attn: Lindsey How-Downing
Attorney for Geysers Power Company, LLC
One Embarcadero Center, Suite 600
San Francisco, CA 94111-3611

Dear Ms. How-Downing:

1. On June 3, 2003, you filed an uncontested settlement between Geysers Power Company, LLC (“Geysers Power”), the California Independent System Operator Corporation (“ISO”), and Pacific Gas and Electric Company (“PG&E”). On June 23, 2003, Commission Trial Staff submitted comments in support of the settlement. No other comments were filed. On August 1, 2003, the settlement judge certified the settlement as an uncontested settlement.
2. The settlement is in the public interest and is hereby approved. The Commission's approval of this settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding. The Commission retains the right to investigate the rates, terms, and conditions under the just and reasonable and not unduly discriminatory or preferential standard of § 206 of the Federal Power Act, 16 U.S.C. § 824e (2000).
3. Geysers Power is directed to make refunds, consistent with the settlement, to the ISO. Within fifteen (15) days after making such refunds, Geysers Power shall file with this Commission a compliance refund report. Geysers Power shall furnish copies of the report to each party to the settlement.
4. The rate schedule sheets submitted as part of the settlement are properly designated and are accepted for filing and made effective as set forth in the settlement.

Docket Nos. ER03-184-000
and ER03-184-001

2

5. This letter order terminates Docket Nos. ER03-184-000 and ER03-184-001. New subdockets will be assigned upon receipt of the required compliance filings.

By direction of the Commission.

Secretary

cc: All parties

Commissioner
California Public Utilities Commissioner
505 Van Ness Avenue
San Francisco, CA 94102-3298

Commissioner
California Public Utilities Commissioner
320 West 4th Street, Suite 500
Los Angeles, CA 90013