

97 FERC - 61, 284
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, Linda Breathitt,
and Nora Mead Brownell.

Mirant Delta, LLC and Mirant Potrero, LLC

Docket
No.
ER02-
198-0
00

ORDER CONDITIONALLY ACCEPTING FOR FILING AND SUSPENDING PROPOSED
REVISIONS TO RELIABILITY MUST-RUN AGREEMENTS

(Issued December 19, 2001)

In this order, we accept and nominally suspend certain
revisions to two Reliability Must-Run Agreements (RMR Agreements)
between Mirant Delta, LLC and Mirant Potrero, LLC (collectively,

1

the Mirant Parties), respectively, and the California
Independent System Operator Corporation (ISO), as discussed
herein, subject to refund and the outcome of the proceedings
pending in Docket No. ER02-64-000, effective January 1, 2002.

This order is in the public interest because it will permit
the continued operation of RMR units to meet local reliability
needs or manage intra-zonal congestion, while, at the same time,
affording the parties time to resolve potential issues regarding
this matter.

Background

In accordance with the provisions of the governing RMR
Contract, on October 31, 2001, the Mirant Parties filed to revise
specific cost information under Schedules A, B, C, D, and J to
update: (1) contract service limits, (2) hourly availability
charges and penalty rates, (3) projected outage information, (4)
prepaid start-up costs, (5) certain personnel notice information,
(6) the Annual Fixed Revenue Requirement (AFRR) and Variable O&M
(VOM) rates, and (7) the Maximum Net Dependable Capabilities
(MNDC) for the calendar year beginning January 1, 2002. In

1

Mirant Delta, LLC (formerly, Southern Energy Delta, L.L.C.)
operates RMR Units 4-7 at the Contra Costa Plant and RMR Units 1,
2, 5-7 at the Pittsburg Power Plant. Mirant Potrero, LLC
(formerly, Southern Energy Potrero, L.L.C.) operates RMR Units 3-
6 at the Potrero Power Plant.

Docket No. ER02-198-000 -2-

addition, the Mirant Parties' proposal reflects the ISO termination of RMR obligations to Pittsburg Power Plant Units 3 and 4, effective midnight, December 31, 2001; new air emissions limitations imposed on the RMR Units by the Bay Area Air Quality Management District, effective January 1, 2002; and clarifies Schedule C, Part I (Variable Cost Payments for Thermal Units), of Mirant Potrero's RMR Agreement.

Notice, Interventions, and Responsive Pleadings

Notice of the filing was published in the Federal Register, 66 Fed. Reg. 56552 (2001), with comments, protests, and interventions due on or before November 21, 2001.

A notice of intervention was filed by the Public Utilities Commission of the State of California (CPUC) requesting that the appropriateness of the AFRR and VOM rates be severed from the instant docket and considered in a pending proceeding, i.e.,

2

Mirant Parties, Docket No. ER00-64-000. In the alternative, CPUC protests the justness and reasonableness of these rates and incorporates by reference the protest it filed in the above docket.

PG&E, the ISO, the Oversight Board and the CPUC support the proposed changes to: (1) modify or delete references to Pittsburg Units 3 and 4 to reflect the ISO's decision not to designate them as RMR Units for Contract Year 2002, (2) update notice information in Schedule J, and (3) update contract service limits in Schedule A, hourly outage data in Schedule B and start-up costs in Schedule D. However, the intervenors object to changes made to: (1) MNDC values, (2) the proposed AFRR in Schedule B and its associated rates, and (3) the Mirant Parties failure to include certain other revisions (e.g., to the Owner's Repair Cost Obligation) or provide sufficient explanation to show how the proposed revisions will be implemented. Accordingly, the intervenors request the Commission summarily reject the disputed changes.

Pacific Gas and Electric Company (PG&E) and the ISO filed a joint motion to intervene and protest on November 21, 2001. The State of California Electricity Oversight Board (Oversight Board) filed a motion to intervene which incorporates by reference the protested issues raised by PG&E and the ISO in their joint submittal. The City and County of San Francisco, California filed a motion to intervene.

2

In Docket No. ER02-64-000, the Mirant Parties filed an Informational filing, pursuant to Schedule F of the RMR Agreement, which requires RMR Owners to adjust certain rates annually.

Docket No. ER02-198-000 -3-

On December 13, 2001, Mirant filed an answer. Mirant stated that it inadvertently failed to make the required adjustment to the Owner's Repair Cost Obligation, and will file amended rate schedule sheets with the Commission in the near future to reflect the correct figure.

Mirant next addressed the intervenors argument that Mirant's proposed updates to its MNDC levels are barred by the April 2,

3

1999 Settlement Order. Mirant stated that the Commission has previously allowed changes to unit MNDC levels in the face of the same arguments by the same parties. Finally, Mirant acknowledged that its proposed changes to its AFRRs and VOM Rates were submitted subject to the outcome of Docket No. ER02-64-000.

On December 13, 2001, the ISO filed a Motion to Establish a January 1, 2001 Refund Date.

Discussion

Pursuant to Rule 214 of the Commission's Rules of Practice

4

and Procedure, the timely, unopposed motions to intervene of PG&E, the ISO, the Oversight Board and the notice of intervention of the CPUC serve to make them parties to this proceeding. Rule 213)a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. 385.213(a)(2)(2000), prohibits the filing of an answer to a protest unless otherwise permitted by the decisional authority. We find that good cause exists in this proceeding to allow Duke's answer because it aids us in our understanding and resolution of the issues raised in this proceeding.

We find that the proposed revisions to the RMR Agreements have not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. The intervenors' concerns, identified above, raise factual questions that we cannot summarily decide.

Revisions to AFRR and VOM

Schedules B and C under the RMR Agreements have been amended to update the AFRR and VOM rates for the calendar year beginning January 1, 2002. The AFRR and

VOM rates are the subject of a pending filing in Docket No. ER02-64-000, pursuant to

3

See California Independent System Operator Corporation, 87 FERC - 61,250 (1999)(April 2, 1999 Settlement Order).

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18 C.F.R. 385.214 (2000).

Docket No. ER02-198-000 -4-

a process approved by the Commission under Schedule F of the

5

governing RMR Contract. In accordance with Schedule K of the RMR Agreement, this process establishes ADR procedures, in the event that protests challenging arithmetic calculations or conformity to the existing rate formula remain unresolved after discovery requests have been made and responses rendered. With respect to the AFRR and VOM, the allegations raised by certain intervenors in the instant docket were also raised in Docket No. ER02-64-000. Therefore, we will accept and nominally suspend the AFRR and VOM rates, subject to refund and the outcome of the ongoing proceedings in Docket No. ER02-64-000.

Revisions to MNDC, Clarification and Missing Information

Certain intervenors object to changes made to the MNDC, which indicates the energy output capability for each unit. The intervenors also protest the lack of information submitted.

We realize that the initial threshold issue of whether or not a change may be made to the MNDC must be reached first. However, we believe that this issue, along with the other disputed issues, may best be resolved through good faith negotiations between the parties. Therefore, we will accept and nominally suspend the RMR Agreements, subject to the outcome of the ongoing proceedings in Docket No. ER02-64-000.

The Commission orders:

(A) The revisions to the Mirant Parties' RMR Agreements are hereby conditionally accepted for filing and nominally suspended, subject to refund and the outcome of the ongoing proceedings in Docket No. ER02-64-000, effective January 1, 2002.

(B) The Mirant Parties rate schedule designations are accepted as filed.

(C) Mirant is directed to file amended rate schedule sheets to reflect the correct Owner's Required Repair Cost Obligation, within fifteen days of the date of this Order.

By the Commission.

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5

See April 2, 1999 Settlement Order.

Linwood A. Watson, Jr.,
Acting Secretary.

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