

97 FERC - 61, 299  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Geysers Power Company, LLC  
ER01-812-000

Docket Nos.  
and ER01-812-001

ORDER ACCEPTING FOR FILING AND SUSPENDING PROPOSED  
REVISIONS TO RELIABILITY MUST-RUN AGREEMENT  
AND ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued December 19, 2001)

On December 27, 2000, as amended on October 30, 2001,  
Geysers Power Company, LLC (Geysers Power) filed revisions to its  
Reliability Must-Run Agreements (RMR Agreements) with the  
California Independent System Operator Corporation (California

<sup>1</sup>  
ISO). We accept Geysers Power's revisions to its RMR  
Agreements, suspend them for a nominal period, make them  
effective January 1, 2001, subject to refund, and set them for  
hearing. We also provide for settlement/alternative dispute  
resolution (ADR) procedures and hold the hearing in abeyance  
pending settlement judge procedures. The public interest will be  
served by our providing parties a vehicle to address the  
reasonableness of the RMR Agreements.

Background

Geysers Power, and other power plant owners in California,  
provide RMR service to the California ISO by dispatching  
designated units at certain power plants at the direction of the  
California ISO. This dispatch is provided under individual RMR  
Agreements that follows a generic, standard-form RMR agreement  
that was agreed to as  
part of a settlement approved in California Independent System  
Operator Corporation, et al., 87 FERC - 61,250 (1999). The RMR  
agreements provide the rates, terms and conditions for RMR  
service. Furthermore, under the terms of the settlement, each  
RMR owner files annual updates to the RMR Agreements.

<sup>1</sup>  
On October 30, 2001, Geysers Power filed an amendment in  
response to a  
February 17, 2001, Commission staff deficiency letter.

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On December 27, 2000, as amended on October 30, 2001, Geysers Power filed its proposed annual update to its RMR Agreements. These proposed revisions reflect, among other things: (1) updated contract service limits; (2) revised monthly option payments; (3) revised start-up costs; and (4) the addition of certain capital cost item surcharges. Geysers Power requests that these revisions be accepted for filing effective January 1, 2001.

#### Notice and Pleadings

Notice of Geysers Power's December 27, 2000 filing was published in the Federal Register, 66 Fed. Reg. 2428 (2001), with protests or interventions due on or before January 18, 2001. Timely, unopposed motions to intervene with protests were filed by Pacific Gas and Electric Company (PG&E) and the California ISO. A timely motion to intervene was filed by California Electricity Oversight Board.

Notice of Geysers Power's October 30, 2001 filing was published in the Federal Register, 66 Fed. Reg. 56,551 (2001), with protests or interventions due on or before November 20, 2001. A timely joint motion to intervene and protest was filed by PG&E and the California ISO.

Protestors state that although Geysers Power's October 30, 2001 amendment corrects many of the original deficiencies, the filing is incorrect and incomplete in several respects. PG&E and the California ISO continue to protest certain capital cost

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item surcharges, and make the following arguments:

#### Costs Exceed Approved Amounts

Protestors state that if the final costs of the completed capital cost items exceed the estimated costs, as approved by the California ISO, the RMR Agreements permit Geysers Power to

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A capital cost item is defined as "an addition or modification to, change in or repair, replacement or renewal of plant, equipment or facilities used by Owner to fulfill Owner's obligation under this Agreement." RMR Agreement, p. 7. Geysers Power must submit a final report to the California ISO by August 11 showing its proposed capital cost items for the next contract year. Within 60 days, the California ISO must notify Geysers Power of the proposed capital cost items that are approved. RMR Agreement, p. 7.

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recover its actual costs. However, the RMR Agreements also 4 allow the California ISO to challenge these costs through ADR. Protestors argue that because they were not informed that Geysers Power would be seeking to recover these additional costs until Geysers Power's October 30, 2001 filing, the California ISO has not had the opportunity to pursue ADR.

#### Capital Cost Items Not Yet Operational

Protestors state that, although the RMR Agreements require Geysers Power to file to include capital cost items only after such items are operational, Geysers included capital cost items not yet installed. Additionally, Protestors state that since the final costs of some of these projects are not known, establishing surcharge payments based on projected costs will likely result in rates that prove to be incorrect.

#### Filing is Not Complete

Protestors argue that Geysers Power's filing is not complete in several respects. First, they state that Geysers Power's filing does not show "the amount recoverable by Owner under this

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Agreement in a contract year for each capital item." Instead, the filing shows only the cost of each capital item, not the amount recoverable by Geysers Power. Second, Protestors argue that Geysers Power did not include revisions to the Hourly Surcharge Penalty Rate. They state that a factor necessary for calculation of this rate has been revised in the instant filing and therefore, the Hourly Surcharge Penalty Rate must also be revised. Third, they state that the October 30, 2001 amendment does not contain revised rate schedule sheets reflecting the proposed revisions to the RMR Agreements. Therefore, Protestors argue it is not possible to determine how Geysers Power intends to implement the proposed changes to the RMR Agreements.

#### Request for Relief

Protestors request that the Commission either: (1) reject the rates outright, (2) accept the rates only to the extent that they reflect those costs approved by the California ISO, or (3)

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Section 7.4(c) of the RMR Agreement permits Geysers to recover its actual costs for approved capital items. RMR Agreement, p. 36.

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RMR Agreement, p. 149.

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RMR Agreement, p. 87

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accept the rates, suspend them and make them effective subject to refund and subject to the outcome of ADR.

Geysers filed an answer to the joint protests on December 5, 2001.

#### Discussion

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. 385.214 (2001), the timely, unopposed motions to intervene of PG&E, the California ISO, and the California Electricity Oversight Board 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) (2001), generally prohibits an answer to a protest. We are not persuaded to allow the proposed answer, and accordingly will reject it.

PG&E's and the California ISO's concerns, identified above, raise factual questions that we cannot summarily decide based on the record before us. They are best addressed in the hearing and settlement judge procedures we order below.

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. Therefore, we will accept and suspend the revisions to the RMR Agreements for a nominal period, and set the revisions to the RMR Agreements for hearing. We will grant waiver of the 60-day prior notice requirement to permit an effective date of  
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January 1, 2001, as requested.

In order to assist the parties in resolving this matter, we will hold the hearing in abeyance and direct settlement judge procedures, pursuant to Rule 603 of the Commission's Rules of  
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Practice and Procedure. If the parties desire, they may, by mutual agreement, request a specific judge as a settlement judge in this proceeding; otherwise, the Chief Administrative Law Judge  
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will select a judge for this purpose. The settlement judge

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See Central Hudson Gas & Electric Corporation, et al., 60  
FERC - 61,106, reh'g denied, 61 FERC - 61,089 (1992).

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18 C.F.R. 385.603 (2001).

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If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at 202-291-2500 within five days of the date of this order. The Commission's website contains a listing of the Commission's judges and a summary of their background and experience  
(continued...)

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shall report to the Chief Judge and the Commission within 60 days of the date of this order 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) Geysers Power's revisions to the RMR Agreements with the California ISO are hereby accepted for filing and suspended for a nominal period, to become effective January 1, 2001, subject to refund.

(B) Geysers Power's request for waiver of the Commission's 60-day prior notice requirement is hereby granted.

(C) 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 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 concerning the justness and reasonableness of the proposed revisions to the RMR Agreements. As discussed in the body of this order, we will hold the hearing in abeyance to provide time for settlement judge procedures.

(D) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. 385.603 (2001), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge within 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 the settlement judge.

(E) Within 60 days of the date of this order, the settlement judge shall file a report with the Chief Judge and the Commission 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

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(www.ferc.fed.us - click on Office of Administrative Law Judges).

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least every 30 days thereafter, informing the Chief Judge and the Commission of the parties' progress toward settlement.

(F) If the 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 convene a conference in this proceeding to be held within approximately 15 days of the date the Chief Judge designates the presiding judge, in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, N.E. Washington, D.C. 20426. Such 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.

(G) Geysers Power is hereby notified of the following rate schedule designations: First Revised Sheet Nos. 82, 86, 88, 88A, 90, 111, 148, 148A, under FERC Electric Rate Schedule No. 5.

By the Commission.

( S E A L )

Linwood  
A. Watson,  
Jr.,

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tary.