UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Southern California Edison Company	**)**	**Docket Nos.**	**ER98-441-000**
California Independent System	**)**	**and**	**ER98-2550-000**
Operator Corp.	**)**		
El Segundo Power, LLC	**)**		
	)		
Pacific Gas and Electric Company	**)**	**Docket Nos.**	**ER98-495-000,**
Duke Energy Moss Landing LLC	**)**		**ER98-1614-000,**
Duke Energy Oakland LLC	**)**		**ER98-2145-000,**
	)		**ER98-2668-000,**
	)		**ER98-2669-000,**
	)		**ER98-4296-000**
	)	**and**	**ER98-4300-000**
	)		
San Diego Gas and Electric Company	**)**	**Docket Nos.**	**ER98-496-000**
	)	**and**	**ER98-2160-000**
	)		
Southern California Edison Company	**)**	**Docket Nos.**	**ER98-441-001,**
Pacific Gas and Electric Company	**)**		**ER98-495-001,**
San Diego Gas & Electric Company	**)**		**ER98-496-001,**
Duke Energy Moss Landing LLC	**)**		**ER98-4300-001,**
Duke Energy Oakland LLC	**)**		**ER98-2668-001,**
	)		**ER98-2669-001**
	)	**and**	**ER98-4296-001**
	)		
Duke Energy Moss Landing LLC	**)**	**Docket Nos.**	**ER98-2668-000,**
Duke Energy Oakland LLC	**)**		**ER98-2669-000,**
	)		**ER99-1127-000,**
	)		**ER99-1128-000,**
	)		**ER98-4296-000**
	)	**and**	**ER98-4300-000**

STIPULATION AND AGREEMENT

(April 2, 1999)

Pursuant to Rule 602 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("FERC" or "Commission"), 18 C.F.R. § 385.602 (1998), El Segundo

Power, LLC ("El Segundo"), Pacific Gas and Electric Company ("PG&E"), Duke Energy Moss Landing LLC ("DEML"), Duke Energy Oakland LLC ("DEO"), Duke Energy South Bay, LLC ("Duke South Bay"), San Diego Gas & Electric Company ("SDG&E"), Williams Energy Marketing & Trading Company ("Williams"), Reliant Energy Etiwanda, L.L.C. ("Reliant Etiwanda"), Reliant Energy Mandalay, L.L.C. ("Reliant Mandalay"), Southern Energy Delta, L.L.C. ("Southern Delta"), Southern Energy Potrero, L.L.C. ("Southern Potrero"), Cabrillo Power I LLC ("Cabrillo I"), Cabrillo Power II LLC ("Cabrillo II"), Geysers Power Company, LLC ("Geysers Power") and the California Independent System Operator Corporation ("ISO"), all of whom are Sponsoring Parties, hereby submit this Stipulation and Agreement ("Stipulation"). With the exception of the ISO, these companies own, lease or have contracted for the right to dispatch and market Energy, capacity and Ancillary Services with respect to generating stations that have units which have been designated as reliability must-run ("RMR" or "Must-Run") units ("RMR Units") and these companies will be referred to hereinafter collectively as the "RMR Owners" and individually as an "RMR Owner."

This Stipulation constitutes a partial settlement of the issues related to the terms, conditions and rates under which RMR services have been and will be provided to the ISO under the individual RMR rate schedules of the RMR Owners and matters affecting the provision of Ancillary Services, as well as related operations under the ISO Tariff. Issues not encompassed by the Settlement and that will be the subject of continuing settlement discussions or litigation are enumerated in Articles X and XIII.D. of this Stipulation. Unless otherwise defined herein, terms used in this Stipulation shall have the same meaning as those terms defined in Article I of the "RMR Contract" (a uniform set of terms and conditions for RMR service, attached as Appendix A hereto) and the definitions set forth in the Master Definitions Supplement, Appendix

A of the ISO Tariff. The various service agreements under which the RMR Owners are providing RMR service to the ISO on the date this Stipulation is filed shall be referred to hereinafter as the "Currently Effective RMR Rate Schedules."

Joining this Stipulation as additional Sponsoring Parties are the California Electricity Oversight Board ("California EOB"), Southern California Edison Company ("SCE") (SCE was an RMR Owner for a part of the period covered by this Stipulation) and Enron Power Marketing, Inc. ("EPMI"). Subject Parties, as hereinafter defined in Article XI, shall also be bound by this Settlement. The Sponsoring Parties and the Subject Parties may be referred to hereinafter collectively as the "Parties" and individually as a "Party."

Pursuant to this Stipulation, and as a part of the Offer of Settlement, submitted herewith are the RMR Contract, certain ISO Tariff changes, settled revenue requirements and interim fixed option percentages for each RMR Owner and a formula rate. Also as a part of the Offer of Settlement, each RMR Owner will submit on or before April 9, 1999, revised RMR rate schedules in conformity with this Stipulation and its appendices and the ISO will submit prior to such date the ISO Tariff amendments contained in Appendix D hereto. (This Stipulation, its appendices, the ISO Tariff filing and the Revised RMR Rate Schedules are, collectively, the "Settlement").

Approval of the Settlement would place in effect fundamental changes to the RMR rate schedules that would improve the efficiency of California electricity markets. Furthermore, approval of the Settlement would avoid unnecessary and costly litigation, avoid regulatory uncertainty and, by resolving most issues in these long-running proceedings that have occupied Commission resources for over a year, promote administrative efficiency.

PROCEDURAL HISTORY OF RELIABILITY MUST-RUN CASES

A. As part of the process of restructuring the California electricity market, the ISO proposed in a March 31, 1997 filing to the Commission (as amended August 15, 1997) a Master Must-Run Agreement, also referred to as the *pro forma* Must-Run Agreement, that was intended to provide rates, terms and conditions for the RMR services required by the ISO. In its October 30, 1997 Order, the Commission accepted the ISO *pro forma* Must-Run Agreement on a provisional basis, subject to modification and with changes required to be filed by October 31, 1998. *Pacific Gas and Electric Co.*, 81 FERC ¶ 61,122, at 61,557 (1997).

B. On October 31, 1997, in Docket Nos. ER98-441-000, ER98-495-000 and ER98-496-000, SCE, PG&E and SDG&E (collectively, the "Companies"), respectively, filed unexecuted, facility-specific Must-Run agreements establishing rates, terms and conditions for the provision of RMR services to the ISO. On December 17, 1997, the Commission accepted the Companies' proposed RMR agreements for filing, suspended them for a nominal period and set them for hearing. In that Order, the Commission deemed the ISO's version of a *pro forma* Must-Run Agreement to have been superseded by the Companies' Must-Run agreements, finding that only the Companies' proposed Must-Run agreements, which were accepted for filing, could serve as the filed rates for Must-Run service to the ISO. *Pacific Gas and Electric Co.*, 81 FERC ¶ 61,322, at 62,487 (1997).

C. El Segundo, on December 4, 1997, Reliant Etiwanda and Reliant Mandalay, on December 4, 1997, and AES Huntington Beach, L.L.C., AES Alamitos, L.L.C. and AES Redondo Beach, L.L.C. (collectively, the "AES Companies"), on December 9, 1997, filed amendments to SCE's RMR rate schedules to reflect the planned acquisition by these companies of the individual generating facilities subject to the respective SCE rate schedules. These

amendments allowed the acquirors to succeed to the relevant SCE rate schedules, and were accepted by the Commission in a letter order issued on January 26, 1998. *California Independent System Operator Corporation*, Docket Nos. ER98-941-000, *et al.* (Jan. 26, 1998). On August 12, 1998, the Commission approved the assignment of the AES Companies' RMR rate schedules to Williams. *AES Alamitos, L.L.C. et al.*, 84 FERC ¶ 62,130 (1998). Together with Williams, the companies that succeeded to the SCE RMR rate schedules will be referred to collectively hereinafter as the "New SCE Owners."

D. On January 29, 1998, PG&E filed amendments to fourteen of its Must-Run agreements in Docket No. ER98-1614-000 to add Black Start service to the agreements; clarify billing and payment terms; revise the rate, primarily to reflect PG&E's decreased gas prices; and revise unit performance data. PG&E made an errata filing on March 6, 1998 in Docket No. ER98-2145-000. On March 30, 1998, the Commission accepted, suspended, set for hearing and consolidated the filings with Docket No. ER98-495-000. *Pacific Gas and Electric Co.*, 82 FERC ¶ 61,326 (1998).

E. On February 10, 1998, the Chief Administrative Law Judge ("Chief ALJ") severed the rate issues from the non-rate terms and conditions in Docket Nos. ER98-441-000, ER98-495-000 and ER98-496-000. Rate issues were to be decided in Docket Nos. ER98-441-000, ER98-495-000 and ER98-496-000 (the "Rate Proceedings"). Non-rate terms and conditions were to be decided in consolidated Docket Nos. ER98-441-001, ER98-495-001 and ER98-496-001 (the "Terms and Conditions Proceedings"). *Southern California Edison Co.*, 82 FERC ¶ 63,011 (1998).

F. On March 11, 1998, SDG&E filed amendments in Docket No. ER98-2160-000 to its master Must-Run agreement with the ISO to add Black Start service from some units to the

Ancillary Services already provided by SDG&E under its RMR agreements; modify billing, settlement and payment procedures to conform to current ISO practices; and update and correct unit performance data. On May 1, 1998, the Commission accepted, suspended, set for hearing and consolidated the matter with Docket Nos. ER98-496-000 et al. *San Diego Gas & Electric Co.*, 83 FERC ¶ 61,173 (1998).

G. On April 15, 1998, El Segundo filed in Docket No. ER98-2550-000 seeking Commission approval to make sales of Ancillary Services at cost-based rates from the generating station it purchased from SCE. El Segundo requested that its cost-based rates be based on the rates for Ancillary Services contained in El Segundo's Must-Run agreement with the ISO, which had been set for hearing in Commission Docket No. ER98-441-000. These rates were to be applicable when the El Segundo facility was not being utilized by the ISO for RMR services. On June 10, 1998, the Commission accepted, suspended, set for hearing and made the filing effective subject to refund. *Long Beach Generation, LLC*, 83 FERC ¶ 61,277 (1998). The Commission also consolidated the filing with Docket No. ER98-441-000 for purposes of hearing and decision. *Id.*

H. On April 24, 1998, DEML and DEO, which anticipated acquiring the Moss Landing and Oakland Must-Run units from PG&E, filed forms of RMR Service Agreements in Docket Nos. ER98-2668-000 and ER98-2669-000, respectively, under which they would provide RMR services to the ISO. On June 25, 1998, the Commission accepted those filings, permitted those forms of Service Agreement to become effective, suspended their effectiveness, set rates, terms and conditions for hearing, and consolidated the non-rate terms and conditions of those filings with the Terms and Conditions Proceedings, and the rate related terms of those filings were consolidated with the Rate Proceedings in Docket No. ER98-495-000. *Duke Energy Moss*

Landing LLC, 83 FERC ¶ 61,318 (1998). On August 20, 1998, DEO and DEML filed in Docket Nos. ER98-4296-000 and ER98-4300-000, respectively, revisions to their RMR rate schedules to reflect certain technical corrections to their earlier filings. On October 14, 1998, the Commission accepted, suspended and set these technical corrections filings for hearing. *Duke Energy Oakland LLC*, 85 FERC ¶ 61,047 (1998). The Commission also consolidated the rates in these latter two proceedings with each other and with the Rate Proceedings. *Id.* The non-rate terms and conditions in these two proceedings were consolidated with each other and with the Terms and Conditions Proceedings. *Id.* On December 2, 1998, the Chief ALJ severed the consolidated DEML and DEO rate proceedings from Docket No. ER98-495-000. On February 25, 1999, the Commission consolidated *Duke Energy Moss Landing LLC*, Docket No. ER99-1127-000 and *Duke Energy Oakland LLC*, Docket No. ER99-1128-000 with one another for hearings, a portion of which was to be presented directly to the Commission on the basis of written submissions ("Paper Hearings") and a portion of which was to be the subject of evidentiary hearings ("Evidentiary Hearings"). In light of the similarity of issues to be litigated and potential remedies, on March 15, 1999, the Commission's Chief ALJ granted a joint request of affected parties to consolidate the Evidentiary Hearings with proceedings in Docket Nos. ER98-2668-000, ER98-4300-000, ER98-2669-000 and ER98-4296-000 so that the matters encompassed by a reservation for hearing or future settlement described in paragraph 5 of the February 12, 1999 agreement included in Appendix B hereto would be included. On March 18, 1999, the Commission granted a joint motion filed by DEML, DEO, the ISO, PG&E, the CPUC and the California EOB to hold the Paper Hearings in abeyance until June 8, 1999, in light of the imminent submission of the Settlement. *Duke Energy Moss Landing LLC*, 86 FERC ¶ 61,296 (1999).

I. On January 12, 1999, as supplemented on February 5, 1999, SDG&E, Cabrillo I and Cabrillo II, applied in Docket No. EC99-26-000 for authorization under Section 203 of the FPA to assign SDG&E's interest in the Must-Run agreement for SDG&E's Encina generating station to Cabrillo I, and to assign SDG&E's interest in the Must-Run agreement for SDG&E combustion turbines to Cabrillo II. Cabrillo I and II are special purpose limited liability companies owned in equal shares by wholly-owned subsidiaries of Dynegy Power Corp. and NRG Energy, Inc. The Commission issued an order authorizing the assignment to Cabrillo I and II on February 26, 1999. *San Diego Gas & Electric Co.*, 86 FERC ¶ 62,170 (1999). On February 5, 1999, in Docket No. EC99-30-000, SDG&E and Duke South Bay applied for authorization under Section 203 to assign SDG&E's interest in the Must-Run agreement for SDG&E's South Bay station to Duke South Bay. On March 30, 1999, the Commission authorized the assignment. *San Diego Gas & Electric Co.*, 86 FERC ¶ 62,251 (1999). On February 10, 1999, Duke South Bay petitioned the Commission for approval of Duke South Bay's Rate Schedule No. 1 for the sale of Energy, capacity and Ancillary Services at market-based rates. This matter is pending in Docket No. ER99-1785-000. On March 16, 1999, Duke South Bay filed amendments to SDG&E's must-run rate schedule for the South Bay Facility. Attached to Duke South Bay's filing was SDG&E's certificate of concurrence. This matter is pending in Docket No. ER99-2170-000.

J. On February 17, 1999, Southern Delta and Southern Potrero filed amendments to certain of PG&E's rate schedules to reflect the planned acquisition of the Contra Costa, Pittsburg and Potrero Plants from PG&E, together with applications for Commission authorization to make sales of Energy, capacity and Ancillary Services at market rates. Attached to this filing was a certificate of concurrence by PG&E. These matters are pending before the Commission in

Docket Nos. ER99-1856-000, ER99- 1857-000, ER99-1833-000, ER99-1841-000 and ER99-1842-000. On February 18, 1999, Southern Delta and Southern Potrero, together with PG&E, filed a joint application for authorization to transfer jurisdictional assets, including the relevant Must-Run agreements, pursuant to Section 203 of the FPA. On March 29, 1999, the Commission, by letter order issued pursuant to delegated authority, approved the joint application. *Pacific Gas and Electric Co.*, 86 FERC ¶ 62, 248 (1999).

K. On March 1, 1999, Geysers Power, an indirect wholly-owned subsidiary of Calpine Corporation, filed amendments to certain of PG&E's rate schedules to reflect the planned acquisition of the Geysers (Main) and Geysers (Units 13 and 16) geothermal generating units from PG&E. Attached to Geysers Power's filing was a certificate of concurrence by PG&E. This matter is pending before the Commission in Docket No. ER99-1993-000. Also on March 1, 1999, Geysers Power petitioned the Commission for acceptance of Geysers Power FERC Rate Schedule No. 1, for the sales of Energy, capacity, Replacement Reserves and certain Ancillary Services at market-based rates. This matter is pending before the Commission in Docket No. ER99-1983-0000.

L. The New SCE Owners, DEML, DEO, the ISO, PG&E, SDG&E, SCE, the Staff, the CPUC, the California EOB, and numerous other parties have engaged in extensive settlement discussions over a period of one year, joined in the last several months by Southern Delta, Southern Potrero, Geysers Power, Duke South Bay, Cabrillo I and Cabrillo II, companies which recently have entered into contracts to purchase RMR facilities from SDG&E and PG&E, to resolve the matters arising in the captioned proceedings. Since August of 1998, the Chief ALJ has served first as a mediator and then as a formal Settlement Judge to assist the parties in reaching an accord. The Settlement is the result of this process.

ARTICLE I
REVISED RMR RATE SCHEDULES -- TERMS AND CONDITIONS

A. Except as provided in Article XIV, each RMR Owner shall submit as an element of the Settlement no later than April 9, 1999, revised RMR Rate Schedules which conform with this Stipulation and the uniform terms and conditions set forth in the RMR Contract, attached hereto as Appendix A. These revised RMR Rate Schedules, including the uniform terms and conditions of the RMR Contract, are referred to herein as the "Revised RMR Rate Schedules."

B. Effectiveness of Revised RMR Rate Schedules

If the Settlement becomes effective:

1. The Revised RMR Rate Schedules shall become effective on June 1, 1999, or on the first day of the month following the effectiveness of the Settlement, whichever shall happen later;

2. Upon its effectiveness, each Revised RMR Rate Schedule shall supersede and revise in its entirety each of the Currently Effective RMR Rate Schedules of the respective RMR Owners except as provided in Article XIV; and

3. These proceedings shall continue as necessary to effectuate Article X hereof.

C. Conditions Affecting the Revised RMR Rate Schedules

1. The time from the first day of the month following the effectiveness of the Settlement, through December 31, 2001, is referred to herein as the "Rate Freeze Period." During the Rate Freeze Period, the settled revenue requirements of each RMR Owner shall not change, except as set forth in the applicable Revised RMR Rate Schedule(s). The time commencing January 1, 2002 is referred to herein as the "Post Rate Freeze Period."

2. The rights of each RMR Owner to file to change its Revised RMR Rate Schedule(s), either under contract or pursuant to Section 205 of the FPA, shall be suspended, commencing with the effectiveness of the Settlement and continuing such that changes shall not become effective until after the end of the Rate Freeze Period, except as expressly provided in Section C.4. of this Article, in Sections B.3.(b), (c) and (d) of Article II, in Section B of Article III and in Section C.3. of Article VI hereof.

3. Except as provided in Article III, the rights of each Sponsoring Party and Subject Party to file to change the Revised RMR Rate Schedules pursuant to Section 206 of the FPA shall be suspended, commencing with the effectiveness of the Settlement and continuing such that changes shall not become effective until after the end of the Rate Freeze Period.

4. (a) If the ISO enters into or operates under a Non-Conforming RMR Contract, then, notwithstanding the suspension of RMR Owners' Section 205 rights described in Section C.2. of this Article, each RMR Owner shall be permitted to file an application for Commission approval of an amendment to any of its Revised RMR Rate Schedules, limited to adoption of all non-unit-specific terms. Such non-unit-specific terms may include terms that may alter the basis for compensation or that may affect the calculation of rates appearing in such Non-Conforming RMR Contract. The RMR Owner's application shall set forth the basis for its contention that this subsection C.4, is applicable. As used herein, the term "Non-Conforming RMR Contract" means a contract to receive RMR service (or service by

another name) which: (i) provides the ISO with reliability service that is substantially equivalent in scope, purpose and content to those services provided under the RMR Contract, and (ii) contains terms and conditions that differ in any material manner from the terms and conditions included in the RMR Contract. A contract shall not be considered to be a "Non-Conforming RMR Contract" to the extent it reflects terms and conditions of the RMR Contract which have been revised solely pursuant to Section C.5. of this Article.

(b) The parties stipulate that the Commission should presume on a rebuttable basis that an amendment to a Revised RMR Rate Schedule, as described in subsection 4(a), should become effective if the Commission previously has permitted the Non-Conforming Contract to become effective and that such effectiveness shall be subject to the same conditions as the Commission made applicable to the Non-Conforming Contract. In all other circumstances, the parties stipulate that the Commission should presume that an amendment to a Revised RMR Rate Schedule, as described in subsection 4(a), should be approved, unless the protests of the parties demonstrate that the amendments to the Revised RMR Rate Schedule are unjust and unreasonable.

(c) In order to secure Commission approval of the changes described in subsection 4(a), an RMR Owner shall not be required to demonstrate that the terms and conditions of the Revised RMR Rate Schedule that it seeks to amend are inconsistent with the public interest.

(d) The parties agree that within the time provided for protests by the Commission's notice of such filing, the ISO and any other person desiring to do so shall specify any and all reasons why the subject Revised RMR Rate Schedules should not be amended as proposed by the RMR Owner, and such protest shall constitute the entirety of the argument against the positions advanced in the RMR Owner's application. Within ten (10) days thereafter, the RMR Owner shall be permitted to file a response to such comments and such response, along with the filing, shall constitute the entirety of the argument favoring the proposal. Parties consent to the waiver of otherwise applicable Commission rules proscribing the filing of such answers and Commission approval of the Settlement shall also constitute approval of such waiver.

(e) In formulating their arguments, the parties agree that the issues to be presented for Commission consideration shall be restricted to: (i) whether the RMR Owner's filing properly implemented the changes described in subsection 4(a); and (ii) whether the proposed changes are just and reasonable.

(f) In resolving any disagreement of fact which may arise under this subsection, the Sponsoring Parties and the Subject Parties expressly waive their rights to an Initial Decision, and agree that all disagreements of fact shall be resolved by the Commission based on the pleadings and supporting documents described in subsection 4(d) of this Section submitted by the Parties. If, notwithstanding the presumptions established

by this subsection, the Commission finds that it is unable to determine the issues presented without additional information, the Parties stipulate that each of them shall use its best efforts to respond to any data request the Commission may present on an expedited basis.

(g) Any Commission proceeding to resolve the controversies described herein shall be expedited to the maximum extent possible.

(h) The amendments to the Revised RMR Rate Schedules shall not become effective earlier than the Non-Conforming Contract and they shall become effective prospectively only.

(i) The provisions of Subsection 4(a) through (h) are not intended to apply to the contracts described in Article XIV.

5. (a) Nothing in this Stipulation shall preclude a Local Publicly Owned Electric Utility or a Governmental RMR Agency from doing the acts described in Sections C.5(c) and C.5(d) of this Article and such acts shall be permitted by this Stipulation.

(b) As used herein, the term:

(i) "Local Publicly Owned Electric Utility" has the meaning accorded such term in the ISO Tariff and which owns or operates an RMR facility.

(ii) "Governmental RMR Agency" means an agency of a state government or the federal government which owns or operates an RMR facility.

(c) A Local Publicly Owned Electric Utility shall be permitted to enter into an RMR Contract which conforms to the RMR Contract included in Appendix A hereto but which has been revised to the extent necessary to conform to: (i) the requirements of governing statute, municipal charter, applicable regulations or other obligations imposed by a local regulatory authority, or (ii) applicable regulations of the Internal Revenue Service.

(d) A Governmental RMR Agency shall be permitted to enter into an RMR Contract which conforms to the RMR Contract included in Appendix A hereto but which has been revised to the extent necessary to conform to applicable statutes and regulations.

(e) Within 30 days of its execution, the ISO shall serve on a confidential basis on each RMR Owner and the Responsible Utility a copy of the RMR Contracts executed by the ISO and the Local Publicly Owned Electric Utility or the Governmental RMR Agency, as the same may have been revised, as permitted by sections C.5(c) or C.5(d)

6. Notwithstanding any provision extending rights, duties or benefits into the Post Rate Freeze Period, if the RMR Owner has adopted Post Rate Freeze Formula Rates pursuant to Article IV hereof, the procedures specified in Section C.4 of this Article shall not be applied during the Post Rate Freeze Period. Rather, during the Post Rate Freeze Period, if the ISO enters into an agreement with another party for RMR services (or service by another name) which: (i) provides the ISO with reliability service that is substantially equivalent in scope, purpose and content to those services provided under the RMR Contract, and (ii) contains

terms and conditions that vary in any material manner from the terms and conditions of the RMR Contract included in Appendix A (including such amendments as may be implemented under Section C.4. of this Article but not including amendments that may be required under Section C.5. of this Article), each RMR Owner shall be permitted to make an abbreviated filing under Section 205 of the FPA for Commission authorization of an amendment to any of its Revised RMR Rate Schedules to include such revised provisions in its Revised RMR Rate Schedules and making such a filing shall not be inconsistent with an RMR Owner's agreement to continue the suspension of its Section 205 rights, as described in Article IV.

D. Conflicts

During the effectiveness of the Settlement, it is the intention of the Parties that the Revised RMR Rate Schedules be read in accordance with this Stipulation.

ARTICLE II
RATES, FIXED OPTION PAYMENT LEVELS, RATE FREEZE

A. Settlement Rates and Refunds

If the Settlement becomes effective, the rates for service provided under the Revised RMR Rate Schedules by each of the RMR Owners and their respective obligations for refunds shall be governed by the provisions of this Article.

B. Settlement Revenue Requirements, Rates, Refunds and Affected Periods

1. Revenue Requirements Settlements: Each of the RMR Owners has entered into a separate revenue requirements settlement with the ISO and other affected participants that establishes the revenue requirements for its RMR operations,

including allocations between fixed and variable costs, allocations of costs among units at each facility, the determination of fuel costs to be used upon the effectiveness of its rates, and refund obligations ("Revenue Requirements Settlement"). Those Revenue Requirements Settlements are included in Appendix B hereto.

2. **(a)** Refunds and Surcharges: Except as provided in: (i) the February 12, 1999 Revenue Requirements Settlement of DEML and DEO ("DEML/DEO Revenue Requirements Settlement") included in Appendix B hereto; (ii) the PG&E Revenue Requirement Settlement included in Appendix B hereto; and (iii) and except as otherwise provided in this subsection 2, none of the RMR Owners shall owe refunds for the revenues they collected for their RMR operations under the rates which were permitted to become effective in any of the proceedings identified in the caption of this Stipulation for the period through August 31, 1998. To the extent refunds are due from such RMR Owners, they shall apply to the period commencing September 1, 1998 and extending to the effectiveness of the Rate Freeze Settlement Rates. The DEML/DEO Revenue Requirements Settlement shall govern refunds which DEML and DEO shall owe for their RMR operations under the rates which were permitted to become effective in their respective proceedings identified in the caption of this Stipulation. The PG&E Revenue Requirements Settlement shall not apply to rates or revenue requirements, or any resulting refunds, for PG&E's RMR services from the Moss Landing and Oakland RMR Units for the

time from March 31, 1998 through June 30, 1998, in Docket No. ER98-495-000.

(b) Except if parties to a Revenue Requirements Settlement otherwise have specified, nothing in this subsection 2 shall limit the Parties' rights or remedies with respect to reserved issues set forth in Article X or matters referred to in Section D of Article XIII.

(c) No Sponsoring Party or Subject Party shall contend for or claim any amount of refund, repayment or recompense from any RMR Owner of amounts greater than or in addition to the refunds specified in this Stipulation, including the appendices, for the issues settled herein.

(d) Except as expressly otherwise provided in the DEML/DEO Revenue Requirements Settlement, for revenues collected in excess of the revenues which would have been provided by an RMR Owner's Rate Freeze Settlement Rates after September 1, 1998 (or earlier, if the RMR Owner's Revenue Requirements Settlement so provides), an RMR Owner shall, commencing in the first month following the effective date of the Settlement, provide Settlement Refunds to the ISO. Settlement Refunds shall be the total difference between the revenues which would have been collected under the Rate Freeze Settlement Rates and the total revenues actually collected for services rendered during the time between September 1, 1998, and the effectiveness of the Rate Freeze Settlement Rates, together with interest calculated thereon pursuant to Section 35.19a of the Commission's Regulations, 18 C.F.R. Section 35.19a (1998).

Thirty (30) days after completing the Settlement Refunds, the RMR Owner shall file with the Commission a report showing the calculation of the Settlement Refunds.

(e) Except as otherwise provided in this Stipulation or in the RMR Contract, any surcharge collectible by an RMR Owner pursuant to this Stipulation shall be collected as a lump-sum surcharge to the first invoice for RMR services issued by that RMR Owner after the surcharge right arises, and any refund due from an RMR Owner pursuant to this Stipulation shall be paid as a credit against the charges on the first invoice for RMR services issued by that RMR Owner after the refund obligation arises. In the event that the refund obligation exceeds the charges on such RMR invoice, the charges on such RMR invoice shall be reduced to zero and the remaining refund obligation shall be credited in the same manner against the charges on each subsequent RMR invoice until the refund obligation is extinguished. Such credit shall be applied in each month after all relevant penalties arising from the Revised RMR Rate Schedules have been subtracted and after the credits specified in Article 9.1 of the Revised RMR Rate Schedules have been subtracted from the payment due to the RMR Owner, provided that, if the Settlement Refunds have not been completed within seven months of the effectiveness of the Settlement, then any remaining Settlement Refund amounts shall be immediately due and payable in full as an RMR refund on the invoice for RMR services. Furthermore, if the Revised RMR Rate Schedule terminates with a credit

balance, the credit balance shall then become immediately due and payable in full as an RMR refund on the invoice for RMR services. Interest will continue to accrue on all outstanding refund and surcharge amounts until paid.

3. Rate Freeze Settlement Rates

(a) The rates set forth in the Revised RMR Rate Schedules are referred to herein as the Rate Freeze Settlement Rates. Those rates will reflect the rate information in Appendices B and C hereto and shall include the level of Fixed Option Payment ("Fixed Option Payment" is a payment representing all or a specified portion of the fixed costs of an RMR Unit, in amounts varying from RMR Owner to RMR Owner) and variable costs for each RMR Unit, shall become effective on the date that the Revised RMR Rate Schedules become effective and shall remain in effect through the end of the Rate Freeze Period, subject to specified exceptions described in Sections B.3.(b), (c), (d) and (e) of this Article.

(b) The Fixed Option Payment percentage for Condition 1 under each Revised RMR Rate Schedule, as set forth in Appendix C hereto, shall be subject to adjustment to reflect the outcome of litigation or settlement regarding: (i) the appropriate level of the Fixed Option Payment under Condition 1; or (ii) any Reserved Issues as specified in Section C of Article X hereof, to the extent the disposition of any such Reserved Issues requires a change in the level of the Fixed Option Payment. Such adjustment may result in an increase or a decrease in the Fixed Option

Payment to be effective commencing the same date as the effectiveness of the Revised RMR Rate Schedules and the same may be implemented by surcharge or by refund, as appropriate, and in either event, with interest computed pursuant to Section 35.19a of the Commission's Regulations, 18 C.F.R. § 35.19a (1998). In addition, to the extent the level of the Fixed Option Payment for Condition 1 and the resulting Availability Payment and Surcharge Payment which are in effect pending resolution of the litigation provided for in Section C.1. of Article X herein affect the level of the Non-Performance Penalty, the Non-Performance Penalty will be adjusted to reflect the Fixed Option Payment resulting from resolution of such litigation. This adjustment will be implemented by surcharge or by refund, as appropriate, with interest computed pursuant to Section 35.19a of the Commission's Regulations, 18 C.F.R. § 35.19a (1998). For purposes of this subsection 3(b), the respective obligations of affected Parties to pay refunds or surcharges shall arise by the terms of this Stipulation and shall not be limited by the provisions of the FPA.

(c) In the event the ISO seeks to modify the ISO Tariff to provide for dispatch of RMR Energy at any time prior to the ISO's establishment of Final Schedules for the Day-Ahead Market operated by the California Power Exchange Corporation ("PX"), as described in Section C of Article VI, then an RMR Owner shall be permitted to file to increase the level of the Fixed Option Payment, solely to reflect the effect of the ISO filing, notwithstanding the otherwise applicable Rate Freeze Period and without

terminating the suspension of rights described in Sections C.2. and C.3. of Article I hereof. All Parties shall retain the right to support or oppose the RMR Owner's filing to increase its Fixed Option Payment.

(d) In addition to the other express exceptions specified herein, each RMR Owner's Rate Freeze Settlement Rates and its Revised RMR Rate Schedules, as applicable, shall be adjusted as permitted by the RMR Contract to account for, among other things:

(1) changes in operational characteristics due to: (i) Capital Items, Repairs or Upgrades approved by the ISO or through ADR, (ii) disapproval of Capital Items or Repairs and derating of an RMR Unit by the ISO or through ADR or (iii) heat rate tests;

(2) Surcharge Payments for specified Capital Items and the ISO's Repair Share payments for Unplanned Repairs, through procedures specified in the RMR Contract;

(3) fuel imbalance charges above the level specified in the RMR Contract;

(4) new or revised local government taxes or fees on an RMR Owner's fuel use;

(5) annual updates of Contract Service Limits;

(6) annual updates of Schedule B to the RMR Contract;

(7) Monthly Reserved MWhs for units subject to emissions limitations as set forth in Schedule A to the RMR Contract;

(8) updates of the pre-paid start-up fee under Schedule D to the RMR Contract for any Contract Year; and

(9) additions or deletions of unit(s) at a Facility as Units under a Revised RMR Rate Schedule to set forth the operational characteristics, including adjustments to terms and conditions associated with air emissions limitations applicable to added units, and Fixed Option Payment of such unit(s) and other changes for such unit(s), to provide all unit-specific data required under the Revised RMR Rate Schedule and make adjustments for those unit(s) permitted under this subsection (d).

In connection with these adjustments, the RMR Owner shall within a reasonable period of time make the appropriate Section 205 filing limited to tracking the adjustments, in their entirety, by a corresponding increase or decrease, as applicable, notwithstanding the otherwise applicable Rate Freeze Period and without terminating the suspension of rights described in Sections C.2. and C.3. of Article I hereof.

(e) Rate Freeze Settlement Rates may be adjusted to conform to the outcome of litigation (or settlement) of issues reserved in Section C. of Article X. The foregoing is not intended to permit adjustment of any matters resolved by the various Revenue Requirements Settlements.

C. Improvement of Invoices

1. An RMR Invoice Task Force, which consists of a representative of each RMR Owner, each Responsible Utility, and the ISO, shall:

(a) develop a uniform RMR Invoice template that is consistent with the principles set forth in Schedule O of the RMR Contract;

(b) simplify the RMR invoices so that they are easier to process and less burdensome to prepare; and

(c) constitute a forum for discussion and evaluation of conflicts that have been identified between the RMR Contract and the RMR Invoice template;

2. The RMR Invoice Task Force shall meet at least monthly to consider the matters described in subsection C.1. hereof, until the RMR Invoice template has been completed. The RMR Invoice template shall be deemed completed upon agreement by and among the ISO, each RMR Owner and each Responsible Utility that the RMR Invoice template is satisfactory and conflicts have been resolved. The RMR Invoice Task Force will develop an RMR Invoice template prior to July 1, 1999. Such invoice template will be used by the RMR Owners for RMR services provided in June 1999 pursuant to the RMR Contract. Thereafter, the RMR Invoice Task Force shall meet every six months to evaluate whether the template requires revision.

3. All RMR invoices used shall conform to the relevant requirements set forth in Schedule O to the RMR Contract.

4. The RMR Invoice template shall not establish rights, duties or obligations of the parties, but shall reflect the rights, duties and obligations of the parties contained in the Revised RMR Rate Schedules. In the event of conflict between the RMR

Invoice template and the Revised RMR Rate Schedules, the Revised RMR Rate Schedules shall prevail.

ARTICLE III
RIGHTS UNDER SECTIONS 205 AND 206 OF THE FPA

A. Notwithstanding the suspension of the rights of Sponsoring Parties and Subject Parties to file under Section 206 of the FPA a challenge to the Revised RMR Rate Schedules during the Rate Freeze Period, the following shall be expressly permitted but solely under the circumstances described:

1. If unforeseen market distortions are demonstrated by the Market Surveillance Committee ("MSC") to have actually occurred resulting from the Settlement (not including any settlement with respect to revenue requirements), then a Party may make a Section 206 filing based upon such demonstration, provided, however, that if the ISO intends to make such a filing, it will first conduct a "stakeholder" process.

2. The California EOB reserves the right to seek from the Commission structural relief regarding the Energy and Ancillary Services market design upon a California EOB finding, but only after notice and an opportunity to be heard in a formal public proceeding, that a feature of the market design, including but not limited to the RMR bidding and dispatch rules, has caused significant harm affecting the public interest of the citizens of the State of California.

B. Notwithstanding the suspension of the RMR Owners' Section 205 rights for the duration of the Rate Freeze Period, in the event any Section 206 proceeding is filed under the circumstances described in subsections A.1. or A.2. of this Article, any RMR Owner may make

a filing in response thereto under Section 205, to be effective contemporaneously with the relief requested in the subject Section 206 filing.

C. The Sponsoring Parties and Subject Parties recognize that any filings made pursuant to the exceptions specified in subsections A.1. and A.2. of this Article should be considered jointly, and therefore agree to request that the Commission consolidate any Section 206 proceeding initiated as a result of an MSC report or California EOB filing with any Section 205 filing(s) made in response thereto.

D. Nothing in this Stipulation shall preclude an RMR Owner from filing to change the rates or the terms and conditions of its respective Revised RMR Rate Schedule(s) to be effective upon the conclusion of the Rate Freeze Period or to be effective upon the conclusion of any Contract Year during the Post Rate Freeze Period. An RMR Owner may seek an acquisition adjustment as part of such a Section 205 filing; all Parties retain their rights to support or oppose such a Section 205 filing.

ARTICLE IV
POST RATE FREEZE FORMULA RATES

A. If this Stipulation shall become effective, then commencing with the termination of the Rate Freeze Period, and in each calendar year in the Post Rate Freeze Period until the Commission has permitted to become effective a Section 205 filing modifying the Rate Freeze Settlement Rates or the Post Rate Freeze Formula Rates (other than a limited Section 205 filing permitted under Article II hereof), each RMR Owner shall adjust its rates using the formula detailed in Schedule F to the RMR Contract, which is referred to hereinafter as the "Rate Formula." That adjustment (referred to herein as the "Post Rate Freeze Formula Rates") shall constitute the RMR Owner's agreement to continue the suspension of the rights described in Section C.2. of Article I for the first year following the Rate Freeze Period or each calendar year

thereafter for which the Post Rate Freeze Formula Rates are in effect and have not been opposed, as described in Section C of this Article.

B. The use by an RMR Owner of the Post Rate Freeze Formula Rates may be terminated by the RMR Owner if the Commission, acting on a complaint of another person or on its own motion, establishes a proceeding under Section 206 of the FPA to investigate such RMR Owner's rates or the terms and conditions under the Revised RMR Rate Schedules. As of the date of any such Commission Order initiating a Section 206 proceeding, the affected RMR Owner shall no longer be restricted in the exercise of its rights under the RMR Contract or under Section 205 of the FPA.

C. A filing which implements the Post Rate Freeze Formula Rates shall change base rates for the next calendar year in the Post Rate Freeze Period using the Rate Formula included in Schedule F to the RMR Contract, subject to the following procedures:

1. as provided in the Rate Formula, the RMR Owner shall file with the Commission an informational filing;
2. rates resulting from such filings shall be subject to corrections only for challenges to arithmetic calculations and for conformity to the Rate Formula, with disagreements resolved by the ADR procedures set forth in the RMR Contract, and such challenges will not cause termination of the suspension of rights described in Section B of this Article; and
3. except as provided in Section B of this Article, rates during each calendar year in the Post Rate Freeze Period shall not be subject to refund, except in the event that a party challenges the arithmetic calculations or conformity to the Rate Formula and as to any such challenges, the amount of refunds shall restore the parties to

the positions they would have occupied had the erroneous calculations or non-conforming formula element not been used, with interest calculated pursuant to Section 35.19a of the Commission's regulations, 18 C.F.R. § 35.19a (1998).

4. An RMR Owner may include an acquisition adjustment in its Post Rate Freeze Formula Rates only if the Commission has approved such adjustment as specified in Schedule F to the RMR Contract.

All Parties retain their rights to support or oppose the inclusion of such an acquisition adjustment.

D. Parties shall meet during the first quarter of 2001 to review the Rate Formula procedures to facilitate implementation of the Post Rate Freeze Formula Rates.

E. Except as provided in Article XIV, on the later of June 30, 1999, or thirty (30) days after the effectiveness of the Settlement, each RMR Owner shall file with the Commission in Docket No. ER98-441-000 *et al.* Exhibit C to the Rate Formula contained in Schedule F of each Revised RMR Rate Schedule submitted by such RMR Owner. The filing shall contain the following information for each unit at each RMR facility, for the period ending December 31, 1998:

1. Name of the facility and the unit;

2. Gross Plant in Service, *i.e.*, the original cost plus plant additions minus retirements, by major plant function (*i.e.*, production, transmission, distribution and general);

3. Net Plant In Service, *i.e.*, gross plant minus depreciation reserve, by major plant function; and

4. Rate Base, *i.e.*, net plant and other components of Net Investment as defined in Schedule F of the RMR Contract, such as working capital and Accumulated Deferred Income Taxes.

ARTICLE V
ISO TARIFF FILINGS

The ISO shall file amendments to its Tariff, which are included in Appendix D hereto, to be effective on the same date as the Revised RMR Rate Schedules.

ARTICLE VI
DISPATCH

A. Prior to October 1, 1999, the ISO shall not file to change the "market first" mandate of the presently effective ISO Tariff, reflecting the commitment to dispatch RMR Units after the ISO establishes Final Schedules for the PX Day-Ahead Market, nor shall it change its operating procedures or operating practices that implement such provisions of the ISO Tariff including any change to Sections 2.5.1, 2.5.5, 2.5.8 and 2.5.12(e) of the ISO Tariff. The foregoing shall not preclude the ISO from increasing the minimum quantities for Ancillary Services stated in ISO Tariff Sections 2.5.3.1, 2.5.3.2 and 2.5.3.3, but the ISO shall not decrease such quantities during the Rate Freeze Period, unless such decrease reflects a change in the Western Systems Coordinating Council's Minimum Operating Reliability Criteria.

B. Nothing herein shall preclude the ISO from procuring Ancillary Services under long-term contracts through a competitive process with a negotiated rate.

C. Subject to the procedures set forth below, the ISO shall not be precluded by this Stipulation from seeking, on or after October 1, 1999, to modify its Tariff to provide for dispatch of RMR Energy at any time prior to the ISO's establishment of Final Schedules for the PX Day-Ahead Market, with an option by the seller of RMR Energy to accept payment under the RMR

Contract or through the market, and a requirement that the Energy for which the RMR Owner elects the contract payment be treated as "must-take" in the PX Day-Ahead Market. Such a filing is recognized as an exception to the precedence of the Revised RMR Rate Schedules over the ISO Tariff. In connection with any such contemplated filing, the ISO shall:

1. first conduct a stakeholder process;
2. serve each RMR Owner with a copy of the ISO's proposed filing ten (10) business days in advance of its filing under Section 205 of the FPA to seek Commission approval for such a change; and
3. include in its filing an express recognition that the proposed change alters the basis upon which certain RMR Owners agreed to the level of the Fixed Option Payment and that, as a result, one or more of such RMR Owners may file under Section 205 to increase their Fixed Option Payment, in which event such filings should, to the extent practicable, be consolidated with or resolved concurrently with the ISO's proposed Tariff change. All Parties shall retain the right to support or oppose the RMR Owner's filing to increase its Fixed Option Payment.

ARTICLE VII
CAPITAL IMPROVEMENTS AND REPAIRS

A. The RMR Contract sets forth the provisions for Capital Items and Repairs. During the Rate Freeze Period, approved costs for certain Capital Items may be recovered by an RMR Owner through surcharges determined by the procedures specified in the RMR Contract. If the Capital Item has been properly approved under such procedures, the filing of a surcharge shall not be contested by any Sponsoring or Subject Party, and approval of this Stipulation will constitute authorization to a filing RMR Owner to represent that all such Parties consent to the effectiveness of the surcharge without condition, modification, suspension, or refund, *provided,*

however that the California Agency may challenge the surcharge if the California Agency has formally protested the RMR Owner's proposed Capital Item during the approval process specified in the RMR Contract. During the Rate Freeze Period, surcharges for Capital Items will be calculated using a 17.45 percent carrying charge based on a ten-year depreciable life.

B. During the Rate Freeze Period, there will be a $500,000 deductible for Capital Items for each RMR Facility. Only after satisfaction of this deductible may a surcharge for a Capital Item be sought by the RMR Owner. At the time an RMR Owner requests approval for a Capital Item, the ISO may review projects which are the basis for satisfaction of the deductible. Any Capital Item that is required by an RMR Owner's failure to comply with Good Industry Practice or by wrongful acts or omissions will not count toward the satisfaction of the deductible.

C. During the Rate Freeze Period, each RMR Owner may charge the ISO for the cost during any year of Unplanned Repairs in accordance with the provisions of the RMR Contract; provided that, if such Unplanned Repairs are not the result of a disaster or other emergency event as declared by the appropriate Federal or State Authority (the "CEMA Standard"), the RMR Owner's collection of such costs shall be subject to refund, based on the outcome of litigation provided for in Article X, Section C.5. regarding the application of the CEMA Standard as the basis for collection of expenses for Unplanned Repairs.

D. On an interim basis, subject to a resolution of this issue as provided for in Section C.2. of Article X, the Termination Fee specified in Section 2.5 of the RMR Contract shall be calculated using a 12.5 percent discount factor.

ARTICLE VIII
SCHEDULE H (OIL BURNING CAPABILITY)

Pending resolution of the issue described in Section C.8. of Article X, the RMR Owners agree to maintain any oil burning capability at RMR Units in the condition that such capability

exists as of the date the Settlement is filed, which condition shall be set forth for each RMR Unit in Schedule H to each RMR Owner's Revised RMR Rate Schedules, unless the ISO determines that it is unnecessary for the RMR Owner to do so.

ARTICLE IX
REPORTING REQUIREMENTS

A. The ISO shall provide a non-binding annual informational report for all RMR Units within forty-five (45) calendar days after the end of each calendar year which will include, but not be limited to the following information for the prior calendar year: (i) total hours each RMR Unit was operated; (ii) total Energy each RMR Unit produced; (iii) total Energy each RMR Unit sold in Market Transactions; (iv) total hours each RMR Unit was dispatched as an RMR Unit and the RMR Variable Cost Payment; (v) total number of start-ups required due to Dispatch Notices; (vi) total penalty payments made by, or paid to, each RMR Unit; (vii) the heat rate coefficients for each RMR Unit (as stated in the RMR Contract); and (viii) the information specified in Section B of this Article for the previous calendar year. The ISO agrees to post this report on the home page of the ISO's Internet Web site.

B. The ISO shall provide on a confidential basis to the Commission pursuant to Section 388.112 of the Commission's Regulations, 18 C.F.R. §388.112 (1998), and to the California Agency and the affected Responsible Utility pursuant to the applicable Non-Disclosure and Confidentiality Agreement in the RMR Contract (either Schedule N-1 or Schedule N-2 of the RMR Contract): (i) information regarding any notice from an RMR Unit requesting a change of Condition; (ii) the date the chosen Condition will begin; and (iii) if the change is from Condition 2, the applicable level of the Fixed Option Payment. Such information will be provided within ten (10) business days of the receipt of such notice by the ISO. The ISO shall provide a copy of all information provided to the Commission to the RMR Owner.

C. Nothing in the Settlement shall limit the provisions of the Market Monitoring and Information Protocol contained in the ISO Tariff, as the same may be in effect from time to time.

D. These provisions are not intended to limit the information that the Commission may require from the ISO or RMR Owners in the future. Information provided to the Commission under this Article may be filed with a request for confidentiality pursuant to 18 C.F.R. § 388.112 (1998).

ARTICLE X
RESERVED AND UNRESOLVED ISSUES

A. Issues Regarding Currently Effective RMR Rate Schedules

The following are issues that are not covered by the Settlement and that one or more Parties have reserved for resolution in these proceedings. Neither the particular articulation of an issue nor its inclusion in this Article constitutes the agreement of any Party to these proceedings as to the propriety of inclusion or consideration of the issue in these proceedings.

1. The issues set for hearing in Docket No. ER98-2550-000.

2. Whether the absence of a provision in certain Currently Effective RMR Rate Schedules requiring the RMR Owner to credit any amounts paid by the ISO to RMR Owner's Scheduling Coordinator for Ancillary Services provided in the pre-Rate Freeze Period is just and reasonable and not unduly discriminatory or preferential?

3. What payments should be made by the ISO to an RMR Owner which has succeeded to an SCE-filed rate schedule for Ancillary Services capacity in the pre-Rate Freeze Period if the RMR Owner is required to credit amounts paid by the ISO to the RMR Owner's Scheduling Coordinator for Ancillary Services capacity?

4. Whether the calculation of Target Available Hours used for the calculation of Availability Payments under condition of Must-Run Agreement B is just and reasonable?

5. Whether there should be a fuel use cap based on an amount or percentage above the usage calculated from the heat rate equation in certain Currently Effective RMR Rate Schedules that lack such a cap?

Except for these reserved issues**,** the matters identified in Sections B, D and E of this Article and the issues set forth in Section D of Article XIII, all issues relating to the Currently Effective RMR Rate Schedules from their inception are resolved.

B. DEML/DEO Issues

The following items, which relate to the existing DEML or DEO rate schedules, are not resolved by the Settlement. The parties to these disputes shall meet sixty (60) days after the effectiveness of the Settlement to determine if any parties to these disputes believes they require Commission resolution:

1. Whether an RMR Owner may terminate its rate schedule following sale to an unaffiliated buyer who files an RMR rate schedule, even if the new rate schedule has completely dissimilar rates, terms and conditions?

2. Whether an RMR Owner may terminate its rate schedule as to a Unit upon sale of that Unit, when the Facility is not sold?

3. Whether service hours and MWh count against service limits when running pursuant to an RMR Owner-requested Dispatch Notice for emissions testing, unlike a notice issued to test Availability or heat rate?

4. Whether an RMR Owner has the right to withhold reliability services without FERC authorization if ISO payments are past due?

5. Whether the ISO is obligated to obtain a $75 million letter of credit?

6. Whether an RMR Owner is obligated to repair a Unit if the cost exceeds the Maximum Cost Responsibility, unless the breakdown was the RMR Owner's fault?

7. Whether an RMR Owner gets a Reliability Payment in addition to an Availability Payment when Energy is Delivered during an extreme situation, *i.e.*, exceeds service limits?

8. The following issue is not excluded from consideration under paragraph 5 of the DEML/DEO Revenue Requirements Settlement: Whether the absence of an express requirement in DEML's and DEO's Currently Effective RMR Rate Schedules requiring the RMR Owner to credit any amounts paid by the ISO to the RMR Owner's Scheduling Coordinator for Ancillary Services provided in the pre-Rate Freeze Period under the Currently Effective RMR Rate Schedule is just and reasonable.

C. Issues For Resolution Under the Revised RMR Rate Schedules

The following items were not resolved with respect to the Revised RMR Rate Schedules and it is agreed that these issues will be resolved in these proceedings and in accordance with the procedures specified herein. Settlement or litigation of these issues may result in refunds or surcharges, as appropriate, effective upon the effectiveness of the Settlement, with interest computed pursuant to Section 35.19a of the Commission's Regulations, 18 C.F.R. § 35.19a (1998).

1. What is the appropriate level of the Fixed Option Payment under each Revised RMR Rate Schedule?
2. What is the appropriate discount rate for the Termination Fee?
3. What shall be the means of determining the percentage applied to the approved cost of a Capital Item to yield the Surcharge Payment for that item?
4. What shall be the means of determining the percentage applied to the approved cost of a Repair to yield the ISO's Repair Share for that Repair?
5. Whether the CEMA Standard, as set forth in Section 454.9 of the State of California Public Utilities Code (Catastrophic Emergency Memorandum Account, used by California utilities subject to CPUC regulation), should be used to determine whether expenses qualify for recovery as an Unplanned Repair during the Rate Freeze Period?
6. Whether the ISO should be required to continue to carry $150 million in insurance coverage following the Rate Freeze Period or provide alternate assurance to each RMR Owner?
7. What are the appropriate standards and practices for measuring and recording gas used by an RMR Unit?
8. Whether the ISO can require an RMR Owner to restore or maintain existing oil burning capability and, if so, under what terms and conditions?
9. The parties agree that the following question shall be presented to the Commission for decision:

Whether the provisions in the Revised RMR Rate Schedules providing for recovery of Termination Fees for Capital Items in the event of contract termination should be changed?

The Parties stipulate that: (a) there are no material facts in dispute with respect to such issue; (b) they waive their rights to an Initial Decision respecting such issue; and (c) such issue shall be submitted to the Commission based on written submissions, which shall include such argument and affidavits as Parties care to submit. The Parties further agree that only EPMI shall be permitted to advocate the change identified in this issue, and that no Sponsoring Party shall support such change in any written submission. EPMI's initial written submission supporting change shall be filed twenty (20) days after certification of the Settlement; answers to EPMI's submission shall be due twenty (20) days thereafter; and EPMI's reply thereto, limited to addressing points made in answers, shall be filed fifteen (15) days thereafter. On rehearing and review, Parties shall be restricted to maintaining the positions to which they are bound by this provision. The Commission Order deciding this issue shall not constitute a condition, modification or change to the Settlement.

10. Whether the ISO should be able to reserve Energy to satisfy potential emissions limitations and, if so, whether there should be any payments (including for opportunity costs for emissions reserved but not used by the ISO) for such Energy and how will such payments be calculated?

11. Should RMR Owners be required to credit to the Responsible Utility any amounts paid by the ISO to the RMR Owner's Scheduling Coordinator for Ancillary Services provided pursuant to an ISO instruction to the RMR Owner?

12. Should there be a payment to the RMR Owner for Ancillary Services capacity provided pursuant to an ISO instruction to the RMR Owner, and, if so, how should that payment be calculated?

13. For what day should gas price indices be consulted in order to determine the fuel price associated with Energy delivered in compliance with a Dispatch Notice by the ISO?

14. Should "availability weighting factors" be applied to adjust Availability Payments for on-peak/off-peak hours and/or different seasons?

15. If availability weighting factors are a feature of the RMR Contract, should the amounts recoverable by an RMR Owner through the sum of Monthly Availability Payments and Monthly Surcharge Payments with respect to an RMR Unit for a Contract Year be allowed to exceed the sum of Monthly Availability Payments and Monthly Surcharge Payments for such RMR Unit for the Contract Year calculated as if the Unit were available for the Target Available Hours shown in Schedule B for that RMR Unit?

16. Whether delivery of services under Schedule G shall be included in the rolling average calculation for future year contract service limits in Schedule A?

17. How should the RMR Contract be modified to adjust the credits not carried forward provided under Section 9.1(f) and the refunds provided under Section 9.1(g) to reflect the agreed upon principle that, in calculating such credits not

carried forward and such refunds, all credits, refunds, surcharges and other adjustments received or given during the Contract Year or future years shall be reallocated to the invoice relating to the period of service which gave rise to the surcharge, credit, refund or other adjustment, subject to the application of the following requirements to the recalculated invoices required to implement the reallocation under the principle above: (1) with respect to Condition 1, credits provided under Section 9.1(f) in a given Month of a Contract Year may not reduce the amount due to an RMR Owner for such Month below zero, and an RMR Owner shall not be required to carry forward any unused credits at the end of a Contract Year into a later Contract Year or to refund such unused credits to the ISO, and (2) with respect to Condition 2, the total credit due the ISO for a Contract Year shall never exceed the total amount due the RMR Owner pursuant to Section 8.2 as recalculated, for the Contract Year?

D. DEML/DEO Revenue Requirements Settlement

The following issues are reserved for decision in the proceedings affecting DEML and DEO, by operation of the DEML/DEO Revenue Requirements Settlement. They are not intended to be the only issues reserved for decision in that agreement. Their inclusion in this Section is intended only to identify them, and neither the language articulating them nor their presence in this Section, shall be construed to alter the meaning or the content of the DEML/DEO Revenue Requirements Settlement:

1. Whether it is just and reasonable to use actual revenue under Direct Contracts when computing Sales Margin, instead of using the PX Market Clearing Price in

the Sales Margin calculation. Whether Ancillary Services revenues should be included in the Sales Margin calculation?

2. The permissibility of a reservation of right by DEML to collect any disallowed amount of acquisition premium through an acquisition premium adjustment to the Sales Margin calculation.

E. Issues Regarding Certain PG&E Rates and Refunds

The level of just and reasonable rates for PG&E's RMR services from the Moss Landing and Oakland RMR Units from March 31, 1998, though June 30, 1998, and the level of any associated refunds (referred to herein as "the PG&E rate issues") are not determined by the Settlement and such matters are expressly reserved for Commission decision by the Settlement, subject to the following procedures and conditions:

1. DEML, DEO, PG&E, CPUC, ISO and Commission Staff agree to negotiate in good faith, during at least the four-month period following the effective date of the Settlement, to settle the issues reserved in paragraph 5 of the DEML/DEO Revenue Requirements Settlement, those issues set for evidentiary hearings in Docket Nos. ER99-1127-000 and ER99-1128-000, and the PG&E rate issues. A settlement of the PG&E rate issues may be submitted at any time DEML, DEO, PG&E, ISO, CPUC and Commission Staff all agree.

2. No settlement of the PG&E rate issues to which DEML and DEO have not agreed may be submitted at any time prior to four months after the effective date of the Settlement, and for any settlement submitted after such time, the rates and revenue requirements that may be included in such settlement shall not be less than the following:

(a) Moss Landing annual fixed costs in total: $80,663,224; Moss Landing Unit 6 annual fixed costs: $40,305,807

Moss Landing Unit 7 annual fixed costs: $40,357,417

(b) Moss Landing Agreement A rates (per MWh)

Moss Landing Unit 6: $12.66

Moss Landing Unit 7: $10.07

(c) Moss Landing Variable O&M Rate (per MWh)

Moss Landing Unit 6: $0.65

Moss Landing Unit 7: $0.65

(d) Oakland annual fixed costs in total: $4,545,656

Oakland Unit 1 annual fixed costs: $1,519,581

Oakland Unit 2 annual fixed costs: $1,515,219

Oakland Unit 3 annual fixed costs: $1,510,857

(e) Oakland Agreement A rates (per MWh)

Oakland Unit 1: $1,688.42

Oakland Unit 2: $1,683.58

Oakland Unit 3: $1,678.73

(f) Oakland Variable O&M Rate (per MWh)

Unit 1: $0.00; Unit 2: $0.00; Unit 3: $0.00

3. (a) The parties agree that, absent a finding of good cause by the presiding officer, they shall be prepared to commence evidentiary hearings on the PG&E rate issues six months after the effective date of the Settlement; and, absent a finding of good cause by the presiding officer, such hearings

shall commence on the first Tuesday thereafter. In the determination of the PG&E rate issues, the Settlement shall not preclude any party from arguing its position respecting revenue requirements, costs, depreciation rates, cost allocations between and among plants, facilities and units, including units and facilities other than Moss Landing and Oakland, rate determination factors, as well as any and all other factors underlying or supposed to underlie the PG&E Revenue Requirements Settlement.

(b) The parties agree that, absent a finding of good cause by the presiding officer, they shall be prepared on the later of (i) eight months after the effective date of the Settlement or (ii) two months after the commencement of the hearings described in subsection E.3(a) hereof, to commence evidentiary hearings on the issues reserved for determination in Paragraph 5 of the DEML/DEO Revenue Requirements Settlement and the issues which the Chief ALJ consolidated therewith in his order of March 15, 1999. Absent a finding of good cause by the presiding officer, such hearings shall commence on the first Tuesday after the later of the foregoing two dates.

ARTICLE XI
CONTESTING PARTY ELECTION

A. Any Party that files initial comments and/or reply comments on the Settlement, regardless of whether it characterizes its comments as being in support of or in opposition to approval of the Settlement, shall be a "Contesting Party" if it requests any modification or condition to the terms set forth herein or to the Revised RMR Rate Schedules.

B. The Sponsoring Parties and Subject Parties hereby waive any and all rights to seek rehearing or judicial review of the Commission orders approving the Settlement, and shall be bound by and entitled to the benefits of the provisions of the Stipulation; *provided, however*, that if the Commission approves this Stipulation or the Revised RMR Rate Schedules with modifications or conditions and the RMR Owners agree to implement the Settlement, as modified or conditioned, pursuant to Article XII, a Sponsoring Party, or Subject Party, may seek rehearing or judicial review of the Commission's orders approving the Settlement solely to challenge the Commission's imposition of modifications or conditions in order to preserve the terms and conditions of this Stipulation as filed. Sponsoring Parties are those Parties identified as such in the introduction to this Stipulation. A Subject Party is any Party or participant who files Initial Comments supporting the Settlement without modification or condition or who elects not to file comments as permitted under the Commission's Rules of Practice and Procedure.

C. Unless a Contesting Party elects or is deemed to have elected to be bound by the Settlement in accordance with this Article, such Contesting Party shall be entitled to pursue any and all claims and rights with respect to the issues resolved by the Settlement, if such Settlement becomes effective in accordance with Articles XII and XVI. The Settlement shall not apply to Contesting Parties in any respect, and Contesting Parties shall not be entitled to any of the benefits, or subject to the burdens, of the Settlement.

ARTICLE XII

MODIFICATION, REJECTION OR DELAY OF SETTLEMENT

A. The Sponsoring Parties believe that implementation of the Settlement prior to the summer peak period is important to the interests of all participants in the California market and is, therefore, vital to the public interest. Accordingly, the parties urge expedited consideration of

this Stipulation and the Revised RMR Rate Schedules, and urge their acceptance in sufficient time to permit the Revised RMR Rate Schedules and the associated rates, terms and conditions to be made effective no later than June 1, 1999.

B. In the event the Commission modifies any element of the Settlement in any way, any Party adversely affected by such modification shall have fifteen (15) days after a Commission order to provide written notification to the Commission that such Party rejects the Settlement as modified. Failure to so notify the Commission shall be deemed agreement to the Settlement as modified. In the event a Party provides such notification, such Party shall be free of all rights, duties and obligations established hereunder, but shall meet within fifteen (15) days of notification of the Commission with other affected Parties to determine whether the benefits of the Settlement which were adversely affected by the modification can be restored in a permissible manner. If the Parties are able to do so, then they shall promptly seek Commission approval of the modified Stipulation. If the Commission issues an Order rejecting the modified Stipulation, all Parties shall be free of all rights, duties and obligations established hereunder, but shall meet within thirty (30) days of the date of issuance of such Order to determine if they are able to achieve a settlement which may be submitted for Commission consideration. If the Parties are unable to agree upon a modified Stipulation, then the Settlement as modified by the Commission shall be effective as to those Parties agreeing to be bound by it, notwithstanding its rejection by other Parties. The Parties agreeing to such modified Settlement shall indicate their willingness to be bound by such modified Settlement by notifying the Commission in writing promptly after so concluding. Such Parties shall specify at such time the effective date of the modified Settlement.

C. In recognition of the adverse economic consequences to all Parties if the Settlement is not effective on or before September 15, 1999, it is agreed that, in the event the Commission has not entered an Order approving the Settlement by September 15, 1999, any Party may withdraw from the Settlement and such Party shall not be bound by the Settlement.

ARTICLE XIII
RESERVATIONS

A. Agreement to or acquiescence in the Settlement shall not be deemed in any respect to constitute an admission by any Party hereto that any allegation or contention made by any other Party in these proceedings is true or valid. In reaching the Settlement, the Parties specifically agreed that the Settlement represents a negotiated agreement for the sole purpose of settling certain issues, as described herein, in the captioned dockets. No signatory, participant or affiliate of any of the Parties shall be deemed to have approved, accepted, agreed to, or consented to any fact, concept, theory, rate methodology, principle or method relating to jurisdiction, prudence, reasonable cost of service, cost classification, cost allocation, rate design, tariff provisions, or other matters underlying or purported to underlie any of the resolution of the issues provided herein. The Commission's approval of the Settlement shall not constitute approval of, or precedent regarding, any principle or issue in this proceeding.

B. The Parties agree that the resolution of any matter in the Settlement shall not be deemed to be a "settled practice" as that term was interpreted and applied in *Public Service Commission of the State of New York v. FERC*, 642 F.2d 1335 (D.C. Cir. 1980).

C. The discussions among the Parties that have produced the Settlement have been conducted on the explicit understanding that they were undertaken subject to Rule 602(e) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.602(e) (1998), and the rights of the parties with respect thereto shall not be impaired by the Settlement.

D. Notwithstanding any provision of the Settlement, nothing herein is intended to limit or affect the rights and remedies of the Parties with respect to any claim that the amounts invoiced under a Currently Effective RMR Rate Schedule do not comply with the applicable Currently Effective RMR Rate Schedule.

E. The titles and headings of the various Articles and Sections in this Stipulation are for reference purposes only. They are not to be construed or taken into account in interpreting this Stipulation, and do not qualify, modify, or explain the effects of this Stipulation.

ARTICLE XIV
TRANSITION MATTERS

Notwithstanding any other provision in this Stipulation, the Currently Effective RMR Rate Schedules applicable to DEML Unit 7, El Segundo Units 1 and 2 and AES Redondo Beach, L.L.C. Units 7 and 8 shall continue in effect until the effectiveness of any notice of termination provided prior to June 1, 1999 by the ISO, which notice shall be effective as specified in the notice issued by the ISO. Any notice of termination given by the ISO prior to June 1, 1999, under the Currently Effective RMR Rate Schedule applicable to Geysers Power Units 13 and 16 shall become effective as specified in the notice issued by the ISO with respect to such units notwithstanding the filing by PG&E and its adoption by Geysers Power of Revised RMR Rate Schedules applicable to such units.

ARTICLE XV
SUCCESSORS AND ASSIGNS

The rights conferred and obligations imposed on any Party by this Stipulation shall inure to the benefit of or be binding on that Party's successors in interest or assignees as if such successor or assignee was itself a Party hereto.

ARTICLE XVI
EFFECTIVENESS

The effectiveness of the Settlement is predicated upon and the Settlement shall be effective at such time as the Commission shall have issued:

A. an Order approving the Settlement without modification or condition or, if modified or conditioned, upon its acceptance pursuant to Article XII hereof; and

B. an Order accepting or approving without modification or qualification the ISO Tariff changes described in Article V hereof, or, if modified or qualified, upon the acceptance of the ISO Tariff changes pursuant to Article XII hereof.

APPENDIX A

APPENDIX B

REVENUE REQUIREMENT SETTLEMENTS

APPENDIX C

FIXED OPTION PAYMENT

APPENDIX D

ISO TARIFF AMENDMENTS