

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

**Cabrillo Power I LLC**

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**Docket No. ER06-426-000**

**CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION'S  
ANSWER IN OPPOSITION TO MOTION TO INTERVENE OF  
MMC ENERGY NORTH AMERICA, LLC, AND  
MOTION FOR SUMMARY REJECTION OF PROTEST**

Pursuant to Rules 212, 213, and 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("Commission"), 18 C.F.R. §§ 385.212, 385.213 and 385.214, the California Independent System Operator Corporation ("CAISO") submits this answer in opposition to the motion to intervene of MMC Energy North America, LLC ("MMC"), and, in the alternative, motion for summary rejection of MMC's protest.

**I. Background**

On December 29, 2005, Cabrillo Power I LLC ("Cabrillo I") submitted pursuant to Section 205 of the Federal Power Act ("FPA"), revisions to certain of the rate schedules under its Reliability Must-Run ("RMR") Agreement ("RMR Agreement") between Cabrillo I and the CAISO to reflect the designation of Encina Unit 4 and changes to certain elements of the previously approved rates for Encina Unit 5, including a change in the Fixed Option Payment Factor ("FOPF") for Contract Year 2006 ("December 29 RMR Filing"). Cabrillo I is the owner of the Encina generating station ("Encina"), which includes five steam units (Units 1-5) and a small combustion turbine unit. Encina is located in Carlsbad, California, and is located within the CAISO's San Diego reliability area. For the past several years, Cabrillo I's Encina Units 1-5 have provided RMR service to the CAISO under terms and conditions of the Cabrillo I RMR

Agreement which is based on the *pro forma* RMR agreement approved by the Commission 1/ and rates fixed by a Commission-approved settlement agreement between the CAISO and Cabrillo I. 2/

The CAISO relies in part on its Local Area Reliability Service (“LARS”) Request for Proposals (“RFP”) process, an annual competitive bid process, to determine which resources should be designated as RMR in order to ensure system reliability for the upcoming calendar year. As a result of its analysis of the proposals it received in response to its RFP for the 2006 Contract Year, in September 2005, the CAISO notified Cabrillo I that it was extending its RMR Agreements for Contract Year 2006 for Encina Units 1-3, 5 and the combustion turbine unit. Consistent with that notice, on November 10, 2005, Cabrillo I submitted a limited Section 205 filing to the Commission filing its annual revisions to the rates under its RMR Agreement for the selected units. The Commission accepted the revisions to the RMR Agreement effective January 1, 2006.3/

As part of its ongoing efforts to ensure local reliability needs will be met in 2006 at a reasonable cost to ratepayers, on December 22, 2005, the CAISO also entered into a Letter Agreement with Cabrillo extending the RMR Agreement for Encina Unit 4 for Contract Year 2006. Accordingly, on December 29, 2005, Cabrillo I initiated this proceeding, filing annual revisions to the rates under the RMR Agreements for Unit 4 and certain updates to Unit 5 to reflect the terms of the Letter Agreement. The only issue properly before the Commission in this

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1/ California Independent System Operator Corp., 87 FERC ¶ 61,250 (1999).

2/ Cabrillo Power I LLC and Cabrillo Power II LLC, 110 FERC ¶ 61,143 (2005) (order on uncontested settlement).

3/ Cabrillo Power I, LLC and Cabrillo II, LLC, Letter Order issued in Docket No. ER06-197-000 (issued December 14, 2005).

proceeding is the justness and reasonableness of the proposed RMR rates for Encina Units 4 and 5.

On January 17, 2006, the CAISO, as a party to the bilateral Cabrillo I RMR Agreement, filed a motion to intervene in this proceeding, which raised no substantive issues. On January 19, 2006, San Diego Gas & Electric Company (“SDG&E”), the Responsible Utility under the RMR Contract, filed a motion to intervene out of time, which also raised no substantive issues. MMC filed a Motion to Intervene and Protest on the same day. <sup>4/</sup> The CAISO now submits this Answer in Opposition and Motion to Summarily Reject in response to MMC’s Motion to Intervene and Protest, requesting that the Commission deny MMC’s Motion to Intervene or, alternatively, reject MMC’s Protest, without prejudice to MMC pursuing the issues raised in its Protest through the dispute resolution procedures specified in the CAISO tariff or through a complaint proceeding before the Commission.

## II. Statement of Issues

1. The Commission should deny MMC’s Motion to Intervene because MMC does not have a direct interest in this proceeding sufficient to justify its intervention. See 18 C.F.R. § 385.214; Virginia Elec. & Power Co., 27 FERC ¶ 61,093 (1984); El Paso Natural Gas Co., 48 FERC ¶ 61,027 (1989); Amoco Production Co. et al. v. Natural Gas Pipeline Company of America, 78 FERC ¶ 61,311 (1997); Kansas-Nebraska Natural Gas Company, Inc., 21 FERC ¶ 61,285 (1982); Southern Company Services, Inc., 22 FERC ¶ 61,047, modified, 22 FERC ¶ 61,340 (1983).
2. The Commission should summarily reject MMC’s Protest because it does not raise any issues germane to this Section 205 proceeding or for which remedy could be provided in this proceeding. Midwest Independent Transmission System Operator, Inc., 113 FERC ¶ 61,083 (2005); Entergy Services, Inc., 100 FERC ¶ 61,250 (2002); Sithe Edgar LLC, 95 FERC ¶ 61,230 (2001); See Duke Power, 113 FERC ¶ 61,288 (2005); Midwest Independent Transmission System Operator, Inc., 111 FERC ¶ 61,637 (2005). Rather, to the extent it raises issues that warrant adjudication in any forum, MMC may pursue them through the CAISO tariff

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<sup>4/</sup> Cabrillo Power I LLC, Motion to Intervene and Protest of MMC Energy North America, LLC, Docket No. ER06-426-000 (filed January 17, 2006) (hereinafter “MMC Protest”).

dispute resolution procedures, or by way of a complaint with the Commission, as may be permitted under the FPA.

### **III. Answer in Opposition to MMC's Motion to Intervene**

The Commission should deny MMC's motion to intervene in this proceeding because it does not have a direct interest in Cabrillo I's limited Section 205 proceeding. Section 308(a) of the FPA provides that, in any proceeding before it, the Commission has the discretion to admit as a party "any person whose participation may be in the public interest."<sup>5/</sup> Rule 214 of the Commission's Rules and Regulations implements its authority under FPA § 308(a) and governs motions to intervene.<sup>6/</sup> Such motions must demonstrate that the movant has or represents an interest that may be directly affected by the outcome of the proceeding.<sup>7/</sup> This can include interests as a consumer, customer, competitor, or security holder of a party, or some other interest that is in the public interest.<sup>8/</sup> However, the specific reference to competitors in Rule 214 "does not provide automatic intervenor status on the mere allegation of a competitive interest in the proceedings."<sup>9/</sup> A moving party "still must prove that it has a present and direct interest in the proceedings."<sup>10/</sup>

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<sup>5/</sup> 16 U.S.C. § 825g(a).

<sup>6/</sup> 18 C.F.R. § 385.214.

<sup>7/</sup> Id.

<sup>8/</sup> Id.; see also Virginia Elec. & Power Co., 27 FERC ¶ 61,093, at p. 61,182 (1984) (denying a motion to intervene because the movant would not be directly affected and finding that the requested intervention was not in the public interest).

<sup>9/</sup> El Paso Natural Gas Co., 48 FERC ¶ 61,027, at p. 61,131 (1989); see also Amoco Production Co. et al. v. Natural Gas Pipeline Company of America, 78 FERC ¶ 61,311, at p. 62,334 (1997) (granting competitors' motions to intervene because objecting party did not give any reason for its objection to the interventions).

<sup>10/</sup> El Paso Natural Gas Co., 48 FERC at p. 61,131.

MMC has failed to meet the Commission’s standard for intervention. MMC’s conclusory statement that it is a competitor of Cabrillo I’s Encina Unit 4 and, therefore, “has an interest that may be directly affected by the outcome of the proceeding” <sup>11/</sup> is wholly inadequate to support a determination that it has an actual present and direct interest in this proceeding. The Commission has long held that a “general allegation by a petitioner that it may be bound by any determination the Commission might make is not a present and direct interest warranting its intervention.” <sup>12/</sup>

Specifically, the Commission has exercised its discretion to deny motions to intervene where the movant has available other “appropriate procedures and standards.” <sup>13/</sup> Where such other mechanisms exist for a movant to pursue its claims, the Commission may determine that the facts alleged in the motion to intervene are not germane to the proceeding. <sup>14/</sup> This is especially true where a motion to intervene fails to clearly articulate any direct adverse

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<sup>11/</sup> MMC Protest at p. 5.

<sup>12/</sup> Kansas-Nebraska Natural Gas Company, Inc., 21 FERC ¶ 61,285, at p. 61,781-82 (1982) (denying a timely motion to intervene because the alleged interest in the outcome of the case “too speculative”).

<sup>13/</sup> See Southern Company Services, Inc., 22 FERC ¶ 61,047, at p. 61,083 (hereinafter “Southern Company I”) (denying motion to intervene of the City of Lafayette, La., in a proceeding seeking approval of interchange and power sales agreement where Lafayette sought to have the agreements conditioned upon the provision of wheeling services to utilities not party to the agreements), modified 22 FERC ¶ 61,340 (1983) (hereinafter “Southern Company II”) (stating that the initial motion to intervene was “defective,” but permitting “new grounds for intervention in an application for rehearing”).

<sup>14/</sup> Southern Company I, 22 FERC at p. 61,083 (stating that the FPA, including Sections 211 and 212, provided appropriate procedures through which the movant could pursue its request); see also Virginia Elec. & Power Co., 27 FERC ¶ 61,093, at p. 61,182 (1984) (“There are other procedural options [other than intervention] by which it can make its positions known or seek a company-specific ruling.”).

affect from the outcome of the proceeding. [15/](#) In such a case, intervention would be “unnecessary and may unduly delay” the proceeding. [16/](#)

MMC’s intervention and protest is a pretextual and unsupported attempt to unreasonably delay approval of updated RMR rates under a bilateral contract between Cabrillo I and the CAISO that neither the CAISO nor the Responsible Utility have protested. As a competitor, MMC has no direct interest in that issue; indeed, it does not even assert one. Rather, MMC’s motivation for its Intervention is spelled out in its Protest: MMC objects to the CAISO’s ultimate determination that designating Encina Unit 4 as an RMR unit would result in a lower-cost, more assured source of capacity to meet local reliability needs than MMC’s currently shut down Chula Vista and Escondido generating stations could provide. However, MMC’s disappointment that the CAISO did not enter into a contract with MMC for 2006 — because, as discussed below, MMC’s costs rose sharply above its LARS proposal, while the available capacity fell below what MMC proposed, and MMC’s proposed date of deliverability was pushed well beyond January 1, 2006, the beginning of the RMR Contract Year — has no bearing on or relation to the justness and reasonableness of Cabrillo I’s RMR rate schedules. On that ground alone, the Motion to Intervene should be denied. [17/](#)

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[15/](#) Southern Company I, 22 FERC at p. 61,083-84 (noting that the motion to intervene lacked any assertion that the movant could suffer any adverse affect based upon the outcome of the proceeding).

[16/](#) See id. The Commission permitted the would-be intervenors to remedy a “defective motion to intervene” on rehearing, but noted that potential intervenors in any future proceeding are now on notice that failure to provide the reasons the outcome of a proceeding could have a direct affect on the movant would be at the movant’s “peril.” Southern Company II, 22 FERC at p. 61,585.

[17/](#) Florida Gas Transmission Co., 38 FERC ¶ 61,018, at p. 61,064 (1987) (denying request that the Commission order Florida Gas to sell natural gas to an intervenor in a proceeding related to an offer of settlement filed by Florida Gas).

In addition, however, MMC has other procedural avenues for pursuing its claims. MMC should not be permitted to delay resolution of and divert attention from the real, but narrow issues in this otherwise uncontested rate proceeding. Indeed, the CAISO's 2006 LARS RFP clearly informed participants, including MMC, that the "ISO Alternative Dispute Resolution Procedures apply to any dispute arising hereunder in accordance with Article 13 of the ISO Tariff." <sup>18/</sup> In addition, the CAISO's Dispute Resolution Procedures do not limit the rights of any party to file a complaint with the Commission under the relevant provisions of the FPA. <sup>19/</sup> Thus, if MMC genuinely believes it has a valid claim against the CAISO, it has legitimate procedural options for pursuing them, but this limited Section 205 rate proceeding is not one of them. <sup>20/</sup> Indeed, the relief MMC appears to desire – an RMR contract with the CAISO – is plainly not a remedy that is available in this proceeding.

#### **IV. Motion for Summary Rejection of MMC's Protest**

As described above, the purpose of this proceeding is to evaluate the justness and reasonableness of Cabrillo I's proposed RMR rates for 2006, an issue that is especially limited in scope given that most of the rate components are fixed by a Commission-approved settlement and neither the CAISO nor the Responsible Utility have raised any substantive issues. <sup>21/</sup> MMC

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<sup>18/</sup> 2006 LARS RFP at Cover Page (May 24, 2005), available at <http://www.aiso.com/docs/2001/10/15/2001101510100413037.html>.

<sup>19/</sup> See ISO Tariff at § 13.1.1.

<sup>20/</sup> If the Commission were to conclude, in response to a properly filed complaint, that the CAISO exercised its discretion in the RMR process in an unduly discriminatory fashion – a finding that CAISO is confident the facts do not support – the remedy would not be to direct the CAISO to contract with MMC, but rather to direct the CAISO to re-evaluate its selection of RMR resources in a non-discriminatory fashion. However, that relief cannot be granted in a proceeding where the issue is whether Cabrillo's filed rates are just and reasonable.

<sup>21/</sup> Cabrillo Power I LLC and Cabrillo Power II LLC, 110 FERC ¶ 61,143 (2005) (order on uncontested settlement).

presents no complaint, question or comment regarding Cabrillo I's rates. To the contrary, MMC's Protest is directed at the CAISO's decision not to enter into a contract with MMC. More specifically, MMC complains that the CAISO acted imprudently and discriminated against MMC when it selected Cabrillo I's Encina Unit 4 as an RMR resource and declined to contract with MMC's Escondido and Chula Vista plants ("MMC Units"). <sup>22/</sup> These prudence and discrimination allegations are baseless. Even if there were merit to MMC's claims, however, they have no bearing on the issues before the Commission in this limited Section 205 proceeding.

The Commission will summarily deny protests that raise issues outside the scope of proceedings at hand. <sup>23/</sup> The Commission also has determined that any claims of discrimination or improper action by a utility should not be brought in a rate proceeding, but rather through a complaint. <sup>24/</sup> Because the imprudence and discrimination claims MMC raises are plainly outside the scope of this proceeding, the Commission should summarily reject MMC's Protest.

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<sup>22/</sup> See MMC Protest at p. 2.

<sup>23/</sup> Midwest Independent Transmission System Operator, Inc., 113 FERC ¶ 61,083, at P 51 (2005) (finding that a request that the Commission order a revision to a business practices manual for the energy market was outside the scope of the proceeding even though the manuals implicated the Commission's jurisdiction because the terms discussed in the protest did "not significantly affect the rates, terms, and conditions for service" and did not need to be included in the tariff at issue); Entergy Services, Inc., 100 FERC ¶ 61,250, at PP 11-12 (2002) (denying protest requesting interpretation of an interconnection agreement as beyond the scope of the proceeding because the proceeding concerned a transmission agreement and an operating agreement and there was no claim either was unjust and unreasonable); Sithe Edgar LLC, 95 FERC ¶ 61,230, at p. 61,795 (2001) (denying a request for rehearing and upholding Commission's decision to summarily reject a "protest on the grounds that the protest was not related to the change in status that [was] the subject of [the] proceeding").

<sup>24/</sup> See Duke Power, 113 FERC ¶ 61,288, at PP 20, 23 (2005) (rejecting claims that an FPA Section 205 tariff revision "proposal should be rejected outright" because "[a]ny party that believes preferential treatment was given . . . can file a complaint with this Commission under Section 206"); Midwest Independent Transmission System Operator, Inc., 111 FERC ¶ 61,637, at P 32 (2005) (dismissing comments without prejudice in an FPA Section 205 proceeding and stating that should any transmission customer "believe that the Midwest ISO is applying the [tariff] in an unduly discriminatory manner, it may file a complaint with the Commission").



## A. The LARS Process

The CAISO necessarily has broad discretion in carrying out its RMR procurement process to ensure that it can fulfill its mandate of maintaining local reliability. As described supra at page 2, the CAISO procures RMR generation in part through its annual LARS RFP process. However, in conducting the procurement process, the CAISO clearly reserved the right to seek and contract with RMR resources outside of the LARS RFP process.

The LARS RFP seeks proposals annually from generators capable of providing local area reliability service, including RMR dispatch, in areas expected to have transmission constraints during the next calendar year. 25/ The CAISO evaluates proposals based on a broad range of criteria set forth in the LARS RFP. 26/ Included among those criteria are not only cost, but also such things as a unit's capability to commence providing RMR service on the Availability Date, the unit's operating characteristics, the ability to meet a particular reliability need and impacts on the market.

Because of the broad range of factors relevant to the CAISO's selection of RMR units, when it conditionally designates a unit as RMR in response to proposals it receives in the LARS process, no contract arises and no firm commitment is made. The conditional designation merely initiates a negotiation process over the cost and terms of RMR service. The CAISO emphasized this point throughout its 2006 LARS RFP and related documents. Specifically, the RFP provided:

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25/ In the 2006 LARS RFP, the CAISO put bidders on notice that it expected to secure most of its RMR requirements from generation subject to existing RMR Agreements. See 2006 LARS RFP at p. 2. MMC had no existing RMR Agreement.

26/ See 2006 LARS RFP at § 3.5 (evaluation criteria). Although price is a key consideration, the ability to meet the particular reliability need is the most fundamental factor in selecting RMR units.

No rights shall be vested in any party, individual or entity by virtue of its preparation to participate in, or its participation in, such process. . . . *No binding commitment shall arise between the ISO and a winning respondent under this Request for Proposals until and unless the parties sign documents of agreement that become effective in accordance with their terms.* [27/](#)

The ISO reserves to itself the selection of winning respondents, if any, in the exercise of its sole discretion. [28/](#)

The ISO assumes no obligation under this RFP, and is not bound to procure the service from any respondent to this RFP. The ISO assumes no obligation to provide a reason for rejection of a respondent's proposal. The ISO reserves the right to amend or withdraw this RFP at any time. Respondents assume the risk that the ISO may reject proposals for any reason, may reject all proposals, may make no award, and may withdraw the RFP without incurring any liability. *The ISO reserves the right to accept the proposals that in its sole judgment best serves its interests.* [29/](#)

As the CAISO further makes clear in its annual Memorandum to the ISO Board of Governors, [30/](#) it retains the discretion to seek, outside of the LARS RFP process, lower-cost or otherwise preferable RMR alternatives throughout the RMR Contracting process:

Based on the proposals received, Management makes its recommendations for RMR Contract extensions and terminations, and . . . additional RMR Contracts . . . . *Management's recommendation for each new RMR Contract . . . constitutes a conditional designation contingent upon execution of an RMR Contract or other contract with rates, terms and conditions acceptable to Management.* Designation is conditional because there are generally insufficient resources within a local area to create effective competition among entities submitting proposals in the LARS process. Thus, it is incumbent upon the ISO, working

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[27/](#) [Id.](#) at Cover Page (emphasis added).

[28/](#) [Id.](#) at p. 4.

[29/](#) [Id.](#) at pp. 8-9 (emphasis added).

[30/](#) This annual Board memorandum is a public document available on the CAISO's website at: <http://www.caiso.com/docs/2005/09/02/200509021450326849.html>.

with the Responsible Utilities . . . and state agencies . . . to negotiate acceptable rates, terms and conditions for any new RMR Contracts . . . . *Where it is not possible to reach agreement with the resources that are designated conditionally, Management recommends that it be given the authority to seek for and negotiate with an alternative resource that will meet the identified reliability requirement whether or not the resource participated in the LARS process.* [31/](#)

Following the CAISO management’s conditional designations, on September 8, 2005, the CAISO Board approved the designation of MMC’s units as RMR units for 2006 “contingent upon execution of an RMR Contract with rates, terms and conditions acceptable to Management” and further authorized Management to “[s]eek and, in its discretion, contract with alternative resources under rates, terms and conditions acceptable to Management that will meet local reliability needs if an acceptable RMR Contract cannot be obtained with the designated RMR resources.” [32/](#) The CAISO followed this mandate with respect to MMC and Cabrillo.

MMC was fully aware of the conditional nature of its designation and the need to reach agreement with the CAISO on rates, terms and conditions. MMC was also aware that the CAISO had reserved the discretion to contract with alternative RMR resources in lieu of the MMC Units. Its Protest does not contend otherwise. Given its fundamental responsibility to assure reliability in its control area, the CAISO necessarily exercises very broad discretion to determine which resources can best meet its RMR needs. The CAISO need not justify to a unit owner the procurement decisions it makes in carrying out that responsibility. [33/](#) Moreover, the CAISO clearly reserved the right to contract with an alternative resource at any point in the

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[31/](#) Memorandum to ISO Board of Governors regarding Approval of RMR Designations for 2006, at p. 3 (Sept. 2, 2005) (emphasis added).

[32/](#) See Board Documents, Motion: Approval of the RMR Designations for 2006, <http://www.caiso.com/docs/2005/09/02/200509021450326849.html>.

[33/](#) The RFP explicitly provides that the CAISO “assumes no obligation to provide a reason for rejection of a respondent’s proposal.” 2006 LARS RFP at § 3.4.

procurement process that the CAISO determines it cannot reach an acceptable contract with a designated unit. When the CAISO reached that conclusion with respect to the MMC Units, it promptly advised MMC.

## **B. CAISO/MMC Negotiations**

Following the CAISO's conditional designation of the MMC Units as RMR, CAISO management commenced negotiations with MMC seeking to enter into an RMR Contract with acceptable rates, terms and conditions. In the negotiations, however, MMC advised the CAISO that its fixed costs would be nearly three times the level that it submitted in its LARS proposal, that the capacity of units would be lower than MMC had proposed, and that the units would not be available until well beyond the beginning of the 2006 RMR Contract Year. <sup>34/</sup> The CAISO nevertheless continued its negotiations with MMC in an effort to understand what MMC could offer, when, and at what cost — all in a good faith effort to determine if acceptable contract terms might be reached. However, consistent with the instructions it had received from its Board, the CAISO also began considering alternative resources to meet the reliability need for which the MMC units had been targeted. <sup>35/</sup>

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<sup>34/</sup> MMC's RFP response indicated that the likely combined capacity for the MMC units would be 84 MW, just barely the minimum capacity the CAISO had concluded it needed to meet the particular reliability need in the San Diego area. MMC subsequently informed the CAISO that the combined maximum capacity for the MMC Units might be lower, thus bringing it below the level of the reliability need the CAISO had identified. Throughout the negotiations with MMC, there remained some uncertainty about the level of capacity that would be available.

<sup>35/</sup> MMC suggests in its Protest that "MMC's cost structure was known to CAISO from the start and throughout the life of this discussion." MMC Protest at 3. The implication seems to be that there was a single "cost structure" at issue. In fact, MMC proposed one cost in its LARS proposal, a cost that was three times the originally proposed cost at the outset of the negotiations, and a cost that was somewhat lower, but still almost two and one-half times its LARS proposal amount, at the conclusion of the negotiation.

### C. Cabrillo I Proposal

Contemporaneously with the MMC discussions, Cabrillo I advised the CAISO that, without an RMR contract, it would shut down Encina Unit 4, which would have represented a loss of 299 MW of generating capacity in California. As an alternative, however, Cabrillo I made an offer to the CAISO that made Unit 4 a clear, low-cost alternative to MMC with ensured capacity availability to meet the CAISO's reliability needs – what Cabrillo I referred to as the “two-for-one” option.

Specifically, Cabrillo I offered to make Unit 4 available for RMR service together with Unit 5 (already designated as an RMR unit for 2006) at the same cost it was providing RMR service from Unit 5 alone. [36/](#) To achieve this result, Cabrillo I proposed to use the previously agreed upon and Commission-approved Annual Fixed Revenue Requirements (“AFRR’s”) for both Units 4 and 5 (\$14.8 million and \$17.3 million respectively), but to operate both units as Condition 1 units at an FOPF of 0.542. The result was a total cost for both Units 4 and 5 that is roughly equal to the rate the CAISO had already contracted to pay for Unit 5 for RMR service alone, but with an additional 299 MW of capacity. [37/](#) Simply put, the marginal cost of designating Encina Unit 4 was nearly nothing making it the clear low-cost alternative to any other RMR resource, including MMC.

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[36/](#) In RMR Contract Year 2005 Cabrillo I's Units 1-5 operated under Condition 2, at a 1.0 FOPF. Cabrillo intended to continue to operate Units 1-3, and 5 under Condition 2 for Contract Year 2006, which meant that its RMR rate for Unit 5 would be the product of its settlement AFRR, \$17.3million, multiplied by a 1.0 FOPF to equal a \$17.3 million rate.

[37/](#) A 0.542 FOPF multiplied by Unit 4's AFRR of \$14.8 million yields \$8.02 million, and the same FOPF multiplied by Unit 5's AFRR of \$17.3 million yields \$9.37 million, making the total “rate” for Units 4 and 5 operating under Condition 1 at a 0.542 FOPF equal to \$17.3 million.

This is so because, under the *pro forma* RMR Agreement, the rate an RMR unit owner is paid for RMR service is a percentage of an AFRR. <sup>38/</sup> The AFRR generally represents the Owner's total fixed costs associated with the RMR unit. The percentage of the AFRR that is paid to the Owner for RMR service is based on the FOPF, which is the percentage of unit's fixed costs that is incremental to the provision of RMR service. The true RMR cost or rate is the product of a unit's AFRR and FOPF.

The FOPF is a critical determinant of cost when an RMR unit is operating under "Condition 1." Condition 1 units may participate in market transactions and the owner is permitted to retain all revenues from such market transactions, but they then receive under the RMR Agreement only a portion of their fixed costs, as determined by the FOPF. Thus, RMR units operating under Condition 1 are paid a certain percentage (something less than 100%) of their annual fixed costs as represented by the FOPF.

By contrast, a Condition 2 unit may not participate in market transactions unless the CAISO issues a dispatch notice for the unit. When the CAISO does issue a dispatch notice for a Condition 2 unit, the owner must bid to participate in the next available Energy and Ancillary Services markets but may not retain the revenues from such market transactions. Because Condition 2 units cannot retain market revenue and operate only to provide RMR service, these units are paid 100 percent of the unit's fixed costs (assuming target availability). Therefore, the FOPF for Condition 2 Units is always 1.0 (100%). <sup>39/</sup> By committing to operate both Encina Units 4 and 5 under Condition 1, Cabrillo I was agreeing that a significant portion of their fixed costs would not be recoverable under the RMR Agreement.

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<sup>38/</sup> MMC mistakenly focuses solely on the AFRR value. See MMC Protest at p. 8.

<sup>39/</sup> Prior to 2006, both Encina Units 4 and 5 had been operating under Condition 2 since January 1, 2005.

There were two other cost effects that the CAISO weighed. If Encina Unit 4 had shut down, the CAISO would have nevertheless been obligated to pay Cabrillo I for capital additions it had previously made in order to provide RMR service. This benefited Encina Unit 4 in the CAISO's economic analysis. There was also an increased Scheduling Coordinator credit of an uncertain amount that benefited MMC in the CAISO's economic analysis. These were partially off-setting, and they did not change the fundamental calculus that, by accepting the "two-for-one" offer, the CAISO was able to add a 299 MW Unit for RMR at virtually no additional cost.

MMC can only argue that the CAISO's decision was imprudent and discriminatory by ignoring the "two-for-one" aspect of the Cabrillo I arrangement, which included as a critical element Cabrillo I's commitment to operate two previously Condition 2 units as Condition 1 units that would have to rely on market transactions to recover nearly half of their respective fixed costs. Indeed, although it was advised of all the relevant facts before it filed its Protest, [40/](#) MMC bases its imprudence and discrimination claims on an irrelevant comparison of Cabrillo I's \$14.8 million AFRR for Encina Unit 4 to its "hypothetical" \$6 million AFRR for the MMC units without considering the FOPF and Cabrillo I's commitment to switch both Encina Units 4 and 5 to Condition 1. [41/](#) Because those were critical elements of Cabrillo I's proposal and of the CAISO's ultimate judgment to designate Encina 4, MMC's contention that the CAISO did not choose the most economic unit is entirely unfounded. [42/](#)

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[40/](#) After the CAISO concluded its negotiations with MMC and Cabrillo I, Cabrillo I authorized the CAISO to disclose otherwise confidential information to MMC so that MMC could understand the CAISO's decision. It has further authorized the CAISO to discuss those facts in this submission to the Commission.

[41/](#) See MMC Protest at p. 10.

[42/](#) *Id.* at pp. 10-12.

In addition to lower cost, the CAISO determined that Encina Unit 4 was the preferred RMR resource to satisfy the remaining RMR need in the San Diego area for several other reasons, among them: [43/](#)

- Encina Unit 4 had a demonstrated capability to provide the needed reliability service on the Availability Date, while it was clear that MMC's units, which are currently shut-down and needed to be returned to commercial operation, would not be available for service on January 1, 2006, the Availability Date;
- There was also considerable doubt about the whether the MMC Units could provide the full 84 MW of capacity MMC had bid, which would leave the CAISO with less RMR capacity than it had determined it required, while Encina Unit 4 is a 299 MW facility that more than adequately meets the CAISO's minimum reliability need;
- Encina Unit 4 has a lower heat rate, as much as 20 percent lower under certain operating conditions, which made it more operationally economic than MMC's Plants;
- Because Cabrillo I committed to operate both Encina Units 4 and 5 under Condition 1, the combination provides the market with 628 MW of fully dispatchable capacity that would not otherwise have been available. (If only Encina Unit 5 had been under an RMR Agreement, it would have operated under Condition 2, and its 329 MWs of capacity would not been fully dispatchable, while Encina Unit 4 would have shut down completely.)

In short, a wide range of factors pointed to the "two-for-one" deal as the far better option both for RMR purposes and for the California market as a whole. The CAISO thus plainly operated well within its discretion in selecting Encina Unit 4 and terminating its

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[43/](#) See Kott Declaration at ¶¶ 4-5, Attachment A.



negotiations with MMC. Indeed, the CAISO was not only squarely within its rights, but exercising its critical reliability responsibility when it terminated contract negotiations with MMC. The sole basis for MMC's Protest – its lack of a contract – reflects its failure to reach an agreement with the CAISO. The fact that Cabrillo I is plainly a better resource alternative to MMC – given the ultimate terms MMC offered – just serves to underscore that the prudence of the CAISO's decision to contract with Cabrillo I. More fundamentally, however, MMC should not be permitted to second-guess the CAISO's judgment on such a matter.

**D. Confidentiality**

MMC's suggestion that the CAISO may have shared MMC's confidential bid information with Cabrillo I is flatly unsupported. [44/](#) The CAISO takes seriously its obligations to preserve the confidentiality of LARS responses and to preserve the integrity of the LARS process as attested to by Mr. Kott and Mr. Grotta. [45/](#) Commission action on Cabrillo I's otherwise uncontested RMR rate schedule revisions should not be delayed by such unsubstantiated accusations made by a disappointed would-be RMR Owner.

**E. There Has Been No Discrimination or Imprudent Action for the Commission to Remedy in This Proceeding.**

In seeking summary rejection of the MMC Protest, the CAISO has comprehensively addressed the facts in order to demonstrate that there is no basis for any claim that Cabrillo I's rates are unjust or unreasonable. But, of course, MMC does not even argue that they are. More fundamentally, even if the Commission could somehow find that the rates before them in this limited Section 205 proceeding were unjust or unreasonable, that would not redress MMC's disappointment. MMC wants an RMR contract.

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[44/](#) MMC Protest at p. 14.

[45/](#) See Kott Declaration at ¶ 6 attached hereto as Attachment A and Grotta Declaration at ¶ 4 attached hereto as Attachment B.

Had MMC stood by the terms it originally proposed to the CAISO in response to the RFP, it would have such a contract. However, because MMC determined it could not or did not wish to provide RMR service on the terms it originally proposed, the CAISO properly exercised its discretion to select an alternate resource. As discussed above, if MMC wishes to pursue its claim that the CAISO was not permitted to terminate contract negotiations with MMC, MMC has a remedy under the CAISO tariff. Alternatively, it may file a complaint with the Commission. There is no justification, however, to delay and divert this otherwise uncontested rate proceeding to address MMC's entitlement – or lack thereof – to an RMR contract.

Based on the foregoing, the CAISO respectfully requests that the Commission deny MMC's Protest, without prejudice, and to expedite its approval of Cabrillo I's limited Section 205 filing.

#### **V. Conclusion**

**WHEREFORE**, for the foregoing reasons, CAISO respectfully requests that the Commission deny MMC's Motion to Intervene or, alternatively, deny MMC's Protest and accept the revised RMR Agreement between Cabrillo I and the CAISO effective January 1, 2006.

Dated: January 30, 2006

Respectfully submitted,

/s/ Mary Anne Sullivan  
Mary Anne Sullivan  
Karin L. Larson  
Hogan & Hartson L.L.P.  
555 13<sup>th</sup> Street, NW  
Washington, DC 20004

Counsel for the California Independent  
System Operator Corporation

## CERTIFICATE OF SERVICE

I hereby certify that I have this 30<sup>th</sup> day of January, 2006 caused to be served a copy of the forgoing Answer in Opposition to Motion to Intervene and Motion to Reject Protest upon all parties listed on the official service list compiled by the Secretary of the Federal Energy Regulatory Commission in this proceeding.

/s/ Karin L. Larson

Karin L. Larson  
Hogan & Hartson L.L.P.  
555 13<sup>th</sup> Street, NW  
Washington, DC 20004

# **ATTACHMENT A**

## **Declaration of Robert C. Kott**

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

Cabrillo Power I LLC

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Docket No. ER06-426-000

**DECLARATION OF ROBERT C. KOTT IN SUPPORT OF  
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION'S  
ANSWER IN OPPOSITION TO MOTION TO INTERVENE AND  
MOTION FOR SUMMARY REJECTION OF PROTEST**

I, Robert C. Kott, declare under penalty of perjury that the following is true and correct:

1. I am the Manager of Model & Contract Implementation for the California Independent System Operator Corporation ("CAISO"). My business address is 151 Blue Ravine Road, Folsom, CA 95630. I am submitting this Declaration in support of the CAISO's Answer in Opposition to the Motion to Intervene of MMC Energy North America, LLC ("MMC") and Motion for Summary Rejection of MMC's Protest ("CAISO Answer") in the above-referenced proceeding concerning Cabrillo Power I LLC's ("Cabrillo I") proposed revisions to its RMR Agreement for Contract Year 2006.

2. I oversee all business and technical aspects of the CAISO's procurement of Reliability Must-Run ("RMR") service. As part of my responsibilities, I oversee the Local Area Reliability Service ("LARS") Request for Proposals ("RFP") process. In that role, I served as the LARS Technical Coordinator for the 2006 LARS RFP process and, with the assistance of others, I evaluated all responses to the 2006 LARS RFP, recommended to the CAISO Board of Governors units to be designated for RMR contract extensions and units to be conditionally designated for new RMR contracts, negotiated RMR contracts with designated RMR units and, when it proved necessary, sought alternative RMR resources when it developed that an acceptable RMR contract could not be negotiated with a designated RMR unit.

3. In this Declaration, I address two factual matters: (i) the CAISO's determination that, under the terms offered by the respective Owners, Cabrillo I's Encina Unit 4 is a preferable alternative to MMC's Chula Vista and Escondido Plants ("MMC Units") to meet the CAISO's local reliability needs in

the San Diego area, and (ii) the CAISO's protection of the confidentiality of MMC's RFP response and related bid information.

4. Based upon my analysis of the accounting, engineering, financial and other data provided by MMC and Cabrillo I, Cabrillo I's Encina Unit 4 is a lower-cost preferred alternative to the MMC Units. In reaching this conclusion, I considered many factors, including the following:

- MMC advised us in the course of our negotiations concerning a possible RMR Agreement that it would be unable to provide RMR service at anywhere near the cost, or at the capacity level, or on the Availability Date that it had specified in its proposal in response to the 2006 LARS RFP. This made the terms and conditions under which the CAISO could contract with MMC far less desirable than I had assumed when I recommended to the CAISO Board of Governors that the CAISO conditionally designate the MMC Units for RMR service for 2006.
- In response to the CAISO's initial determination that Encina Unit 4 would not be continued as an RMR unit for 2006, Cabrillo I made a proposal under which it would provide two units, Encina Units 4 and 5, for approximately the same cost it had previously proposed to provide RMR service from the Encina 5 Unit alone, which had been designated for RMR service for 2006. As a central element of this proposal, Cabrillo I agreed to operate both Encina Units 4 and 5 under Condition 1 of the RMR Agreement, with a Fixed Option Payment Factor of .542. These Units operated under Condition 2 during 2005, which meant that all of their fixed costs were reimbursed under the RMR Agreement, and they could only be dispatched to meet RMR needs.
- As a further result of Cabrillo I's commitment to operate both Encina Units 4 and 5 under Condition 1, 628 MWs of additional capacity that was fully dispatchable became available to the California market. By contrast, Cabrillo I advised the CAISO that, absent RMR designation, Encina Unit 4 would be shut down, thereby depriving the market of 299 MWs of capacity under any terms.
- Encina Unit 4 has a demonstrated capability to provide the needed reliability service on the Availability Date. By comparison, the MMC's Units are currently shutdown. They must be returned to commercial operation before they could be available for RMR service, and thus they do not provide the same assurance of availability as Encina Unit 4.
- Encina Unit 4 has preferred operating characteristics compared to the MMC Units: it is a 299 MW generating capacity with a lower heat rate (higher efficiency) than the MMC Units.
- The CAISO's negotiations with MMC left me with considerable doubt about whether the MMC Units could provide the full 84 MW of capacity required to serve the RMR need once they became operational. In addition, the MMC units have a heat rate that is as much as 20 percent higher (less efficient) than Encina Unit 4 under certain operating conditions.

5. I reached the conclusion that Encina Unit 4 was a preferable RMR resource by comparison with the MMC Units only after extensive good faith negotiations with MMC. In reaching that conclusion, I exercised the discretion granted by the CAISO's Tariff Section 5.2 and the CAISO 2006 LARS RFP. I also acted in accordance with the Resolution adopted on September 8, 2005, by the CAISO Board of Governors directing me to seek and contract with alternative resources if an acceptable RMR contract could not be reached with any conditionally designated RMR Unit Owner.

6. Gilbert J. Grotta, a CAISO Senior Contracts Engineer, and I were the two CAISO employees principally involved in the negotiations with both MMC and Cabrillo I. I did not disclose to Cabrillo I any information that is deemed confidential pursuant to the Confidentiality Agreement set forth on page 4 of the 2006 LARS RFP. Likewise, to the best of my knowledge, neither Mr. Grotta nor any other employee of the CAISO disclosed any information to Cabrillo I that is deemed confidential pursuant to the Confidentiality Agreement set forth on page 4 of the 2006 LARS RFP.

7. If called as a witness, I would testify to the veracity of the matters set forth herein.

Dated this 26th day of January, 2006

  
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Robert C. Kott  
Manager of Model & Contract Implementation

**ATTACHMENT B**

**Declaration of Gilbert J. Grotta**



**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

Cabrillo Power I LLC

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Docket No. ER06-426-000

**DECLARATION OF GILBERT J. GROTTA IN SUPPORT OF  
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION'S  
ANSWER IN OPPOSITION TO MOTION TO INTERVENE AND  
MOTION FOR SUMMARY REJECTION OF PROTEST**

I, Gilbert J. Grotta, hereby declare under penalty of perjury that the following is true and correct:

1. I am a Senior Contracts Engineer for the California Independent System Operator Corporation ("CAISO"). My business address is 151 Blue Ravine Road, Folsom, CA 95630. I am submitting this Affidavit in support of the CAISO's Answer in Opposition to the Motion to Intervene of MMC Energy North America, LLC ("MMC") and Motion for Summary Rejection of MMC's Protest ("CAISO Answer") in the above-referenced proceeding concerning Cabrillo Power I LLC's ("Cabrillo I") proposed revisions to its RMR Agreement for Contract Year 2006.

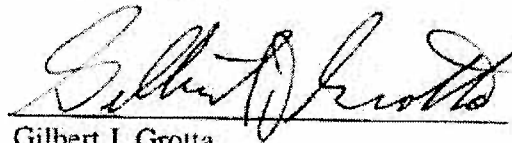
2. As part of my responsibilities as Senior Contracts Engineer, I served as part of the technical analyst team for the 2006 Local Area Reliability Service ("LARS") Request for Proposals ("RFP") process and was charged with evaluating accounting, engineering and financial data of potential Reliability Must-Run ("RMR") resources for the San Diego reliability area. In that role, I was involved in the RMR contract negotiations with both MMC and Cabrillo I.

3. Through this Declaration, I attest to one factual issue addressed in the CAISO Answer; that the CAISO did not breach the confidentiality of MMC's RFP response and related bid information.

4. Robert C. Kott, Manager of Model & Contract Implementation, and I were the two CAISO employees principally involved in the negotiations with both MMC and Cabrillo I. I did not disclose any information to Cabrillo I that is deemed confidential pursuant to the Confidentiality Agreement set forth on page 4 of the 2006 LARS RFP. Likewise, to the best of my knowledge, Mr.

Kott did not disclose any information to Cabrillo I that is deemed confidential pursuant to the Confidentiality Agreement set forth on page 4 of the 2006 LARS RFP.

Executed on this 27th day of January, 2006.

A handwritten signature in black ink, appearing to read "Gilbert J. Grotta", written over a horizontal line.

Gilbert J. Grotta  
Senior Contracts Engineer