

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

El Segundo Power, LLC) Docket No. ER05-363-000

**JOINT PROTEST OF
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORP., SOUTHERN
CALIFORNIA EDISON COMPANY, CALIFORNIA ELECTRICITY
OVERSIGHT BOARD, AND CALIFORNIA PUBLIC UTILITIES
COMMISSION**

Pursuant to Rule 211 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission” or “FERC”), 18 C.F.R. § 385.211 (2004), the California Independent System Operator Corporation (“ISO”), Southern California Edison Company (“SCE”), the California Electricity Oversight Board (“EOB”), and the California Public Utilities Commission (“CPUC”) (collectively the “Parties”) submit this Protest. 1/ In support of this Protest, the Parties state as follows:

I. Background and Introduction

On December 21, 2004, El Segundo Power, LLC (“El Segundo”) filed, pursuant to Section 205 of the Federal Power Act (“FPA”), its Rate Schedule FERC No. 2, Reliability Must-Run Service Agreement (“RMR Agreement”) between El Segundo and the ISO, and a letter agreement dated December 20, 2004 between El Segundo and the ISO setting forth additional terms and conditions that affect the RMR Agreement. El Segundo’s filing contains the Reliability Must-Run Rate Schedules for Contract Year 2005 for El Segundo’s Units 3 and 4 (the “RMR

1/ Each of the Parties has filed a separate Motion to Intervene.

Units”). 2/ El Segundo requested an effective date of January 1, 2005, subject to refund. On December 28, 2004, the Commission issued a “Notice of Filing” setting January 11, 2005, as the date for interventions, comments and protests.

This is the first year since 1999 that El Segundo Units 3 and 4 have been designated as RMR Units. As part of the 2005 Local Area Reliability Service process, the ISO identified these two units as RMR Units to meet operational reliability needs for the South of Lugo transmission path during Calendar Year 2005. The South of Lugo transmission path is composed of the three 500 kV lines serving the LA Basin area. 3/ This transmission path is limited by voltage collapse and post-transient voltage deviations which can be mitigated by voltage support from El Segundo Units 3 and 4. In addition, El Segundo Units 3 and 4 provide inertia for total imports into Southern California, as well as mitigation of transmission constraints into Southern California.

Prior to and since El Segundo’s December 21, 2004 filing, representatives for El Segundo, SCE, EOB, CPUC, and the ISO have been engaged in discussions seeking to eliminate or narrow disagreements regarding application of the pro forma RMR Agreement to El Segundo. While some issues have been resolved, a number of important differences remain. In particular, the filing by El

2/ Because the generation units covered by these agreements must operate at certain times for the local reliability of the transmission grid, they are referred to as “reliability must-run” or RMR Units and the agreements covering them are referred to as “RMR Agreements.” Other capitalized terms that are not defined in this filing have the same meaning set forth in the RMR Agreements or in the Master Definitions Supplement, Appendix A to the ISO Tariff.

3/ The three lines include the Lugo-Serrano 500 kV line, the Lugo-Mira Loma #2 500 kV line, and the Lugo-Mira Loma #3 500 kV line.

Segundo contains certain costs that may not be recovered under the RMR Agreements. Further, the filing contains inadequate support to justify the projected costs in certain other categories. There are also several computational errors in the determination of Hourly Availability Charges, as described below in more detail. As a result, certain of the values contained in the various Schedules of El Segundo's RMR filing underlying El Segundo's proposed rates are in error. Accordingly, the Parties respectfully request that the Commission find that the rates proposed by El Segundo are unjust and unreasonable.

El Segundo has also failed to provide the full information required by Schedule F of the RMR Agreement, and has improperly designated as confidential certain portions of Schedule F and supporting data. Schedule F data is a requirement of the ISO's RMR Agreements and a fundamental necessity to allow the ISO and other entities to examine and understand the derivation of costs.

The Parties intend to continue to attempt to resolve outstanding issues with El Segundo pursuant to the procedure set forth under Schedule F of the RMR Agreements. Therefore, the Parties request that the Commission accept the proposed RMR Agreement and its Schedules effective January 1, 2005, subject to refund, and set the proposed rates for hearing, but hold the hearing in abeyance to permit the Parties and El Segundo to continue their settlement negotiations. The Parties further urge the Commission to issue a deficiency letter requiring El Segundo to file within fifteen (15) days the full supporting information required by Schedule F of the RMR Agreements on a non-confidential basis so that the Parties can more fully evaluate the cost components of El Segundo's proposed rates.

II. Protest

Based on their initial review of El Segundo's 2005 RMR filing, the Parties have identified the following items of concern:

1. Failure to Provide Schedule F Data

El Segundo has failed to provide the full information required for Schedule F of the RMR Agreements. Specifically, Schedule F of the RMR Agreements provides that the filed Information Package must include: (1) detailed workpapers showing the derivation of costs under the Formula for determining Annual Revenue Requirements; 4/ (2) a clear identification of the depreciation rates reflected in the claimed costs for the Cost Year; (3) a comparison of the major components of the resulting revenue requirements for the relevant Cost Year with the corresponding components of the revenue requirements that result from application of the Formula using costs relating to the preceding calendar year; and (4) such additional documentation as to specific items of costs required by the Formula. El Segundo's filing fails to provide this Schedule F information in varying degrees with respect to several of these information requirements as further detailed below. 5/ El Segundo has also improperly marked certain Schedule F and supporting data confidential. Schedule F plainly provides that "the ISO shall post

4/ Schedule F, Article II.

5/ Without the detail required by Schedule F, the Parties cannot be certain that they have identified all of the problems in El Segundo's filing, and they reserve the right, upon being provided with the full Schedule F information, to revise and supplement this protest to include additional issues presented in that information.

the Information Package on its web site.” ^{6/} Thus, confidential treatment is inappropriate. ^{7/}

2. Annual Fixed Revenue Requirement

El Segundo has included in its filed RMR Agreement an Annual Fixed Revenue Requirement (“AFRR”) of \$39,863,240. El Segundo also has used an Administrative and General (“A&G”) component of AFRR of \$8,071,647 for its units. And El Segundo has adopted a non-fuel Steam Production O&M component of \$16,727,322. The Parties are concerned that El Segundo has not provided any data that could be used to analyze the appropriateness of these amounts. El Segundo last had an RMR Agreement in 1999. The Parties realize that the latest information they received in connection with an RMR filing for these units is therefore dated and of little value for purposes of comparison with the current data. El Segundo should be directed to provide back-up data for its AFRR calculations, so that an analysis of the reasonableness of the filed AFRR value and its respective components can be undertaken.

3. Non-Fuel Steam Production O&M Expense Components

El Segundo also has failed to provide sufficient supporting information required to validate the cost components of its filed non-fuel Steam Production O&M expense. Specifically, additional information is required to validate the submitted values for the following cost components: (i) Ad Valorem Taxes (Account

^{6/} Schedule F, Part B.

^{7/} See *Williams Power Company, Inc.*, 106 FERC ¶ 61,188 at ¶ 15 (2004) (denying Williams’ request for confidential treatment of Schedule F).

408.1) expense of \$1,686,472; (ii) Major Maintenance Expense (Account 551) of \$4,436,962; (iii) Outside Sources Employed (Account 923) expense of \$3,574,909; (iv) Legal, Regulatory (Account 928) expense of \$644,299; and (v) Insurance (Account 924) expense of \$3,789,319. Additional supporting information pertaining to these expenses is needed to determine if these expenses are legitimate elements of the RMR rates.

4. Calculation of Average Other Outage Hours

El Segundo has incorrectly calculated Average Other Outage Hours (“AOOH”). 8/ The RMR Agreement expressly provides that prior year Long Term Planned Outage Hours (“LTPOH”) are not to be included in the calculation of AOOH. 9/ El Segundo has included LTPOH for certain periods in its calculation of AOOH. This produces low Target Available Hours (“TAH”) values and unjustly inflated values for the Hourly Availability Charges (Schedule B, Table B-1) because this value is inversely proportional to TAH. On the other hand, the filing also may inappropriately exclude outage hours from the calculation of AOOH, which El Segundo may have erroneously identified as LTPOH. The effect of this omission would be unjustly low Hourly Availability Charges. The AOOH calculations need to be corrected to ensure the resulting rate is just and reasonable.

8/ Schedule B, Table B-5.

9/ Article 1 of the RMR Agreement defines “Other Outage” as “any reduction in the Availability of a Unit as reflected in an ISO Availability Notice or Owner’s Availability Notice (whether characterized by the North American Electric Reliability Council (“NERC”) as a ‘forced outage’, ‘planned outage’ or ‘maintenance outage’) other than a Long-term Planned Outage.” (emphasis added).

5. Pre-Paid Start-Up Cost Calculation

El Segundo has failed to provide supporting data for the Pre-paid Start-up Cost calculation in Table D-0. El Segundo's determination of Pre-paid Start-up Costs does not adhere to the requirements of Schedule D, Section 1, paragraph b of the RMR Agreements. That provision specifies a particular method for calculating Energy Costs where the facility concerned has the capability to use Energy from other units at the same Facility to effect Start-ups. El Segundo has the capability to use Energy from other units at the same Facility and thus should be required to use the method for calculating Energy Costs specified for the circumstance.

6. Heat Input Coefficient Values

El Segundo's RMR filing contains Heat Input Coefficient values in Schedule C Table C1-7a that differ from those contained in its 1999 RMR Agreement. El Segundo has provided no justification for the differing heat rates, and consequently the Parties have no means of determining whether the coefficients used in the instant filing result in heat input characteristics that are reasonable. El Segundo should be required to provide supporting data demonstrating the reasonableness of its proposed coefficients.

7. Emissions Expenses

El Segundo has not adequately explained the NO_x-related expenses that are included in its AFRR. El Segundo's filing includes values in Schedule C, Tables C1-13 and C1-14, for both Units 3 and 4. These values are used to determine the variable cost payable under the RMR Agreement for NO_x emissions.

El Segundo's Depreciation and Allowance for Deferred Income Tax work papers included in the filing also identify \$10,868,173 in Selective Catalytic Reduction ("SCR") capital expenses for Unit 3. Without further explanation, the Parties are concerned that El Segundo may, in effect, be seeking recovery for the same emissions expense twice, resulting in rates that are unjust and unreasonable. The Parties also note that El Segundo's filing includes no corresponding SCR capital expense identified as a Unit 4 SCR project, even though it is the Parties' understanding that this unit also has been retrofitted with an SCR. Additional information and clarification is required to determine the appropriateness of including these NOx-related expenses in El Segundo's filed AFRR.

8. Depreciation Rate

El Segundo has failed to provide supporting data for the depreciation rates listed in Exhibit B of Schedule F. Based on the information provided, the Parties cannot determine whether the depreciation rates are justified, and thus El Segundo must be ordered to provide supporting data to justify the proposed rates.

III. Conclusion

For the foregoing reasons, the Parties respectfully request that the Commission: (i) issue an initial order accepting the proposed RMR Agreement and its Schedules to be effective January 1, 2005, subject to refund, and setting the proposed issues identified above for hearing; (ii) issue a deficiency letter requiring El Segundo to file within fifteen (15) days the full supporting information required by Schedule F on a non-confidential basis; and (iii) issue an order holding

the hearing in abeyance for 60 days to permit the Parties and El Segundo to continue their settlement negotiations.

Dated: January 11, 2005

Respectfully submitted

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CERTIFICATE OF SERVICE

I hereby certify that I have this 11th day of January, 2005 caused to be served a copy of the forgoing Joint Protest upon all parties listed on the official service list compiled by the Secretary of the Federal Energy Regulatory Commission in these proceedings.

/s/ Geo. F. Hobday, Jr
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