

**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 & 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 & Electric Company	)	Docket Nos.	ER98-496-000
	)	and	ER98-2160-000
)		
Southern California Edison Company	)	Docket Nos.	ER98-441-001,
Pacific Gas & Electric Company	)		ER98-495-001
San Diego Gas & Electric Company	)		ER98-496-001
Duke Energy Moss Landing LLC	)		ER98-2668-001,
Duke Energy Oakland LLC	)		ER98-2669-001,
	)		ER99-1127-000,
	)		ER99-1128-000,
	)		ER98-4296-001
	)	and	ER98-4300-000

**EXPLANATORY STATEMENT
CONCERNING OFFER OF SETTLEMENT**

(April 2, 1999)

As required by Rule 602 (c) of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”), 18 C.F.R. Section 385.602(c), the sponsoring parties submitting and supporting the attached Offer of Settlement submit this statement explaining the basis for and significance of the Settlement (the attached Stipulation

and Agreement, its appendices, an ISO Tariff amendment filing and the revised RMR rate schedules are, collectively, the (“Settlement”). The Settlement resolves virtually all of the issues set for hearing in these consolidated proceedings and constitutes an integrated and non-separable resolution that carefully balances the interests of the multiple parties to these long-running proceedings. In addition, the Settlement provides for fundamental changes to RMR rate schedules, which the parties expect to improve efficiency in the California electricity markets. Approval of the Settlement would avoid unnecessary litigation expenses and regulatory uncertainty and would promote administrative efficiency. This Explanatory Statement is not intended to alter any of the specific provisions of the Stipulation and Agreement (“Stipulation”)¹, its appendices or the revised RMR rate schedules to be filed shortly and is provided solely in accordance with the Commission’s Rules. It is not an interpretive tool. The Settlement’s basic terms and conditions can be summarized as follows:

Revised RMR Rate Schedules -- Terms and Conditions

Except as provided in Article XIV of the Stipulation, each RMR Owner (each signatory company that owns, leases or has 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”) units is referred to herein and in the Stipulation as an “RMR Owner” and, collectively these companies are referred to as the (“RMR Owners”) will submit as an element of the Settlement revised RMR rate

¹ Unless otherwise defined herein, all terms in this Explanatory Statement shall have the same meaning as the terms defined in Article I of the RMR Contract, which is Appendix A to the Stipulation, the definitions set forth in the Master Definitions Supplement,

schedules which conform with the Stipulation and with the uniform terms and conditions for RMR service set forth in Appendix A to the Stipulation (“Revised RMR Rates Schedules”).

These 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, and shall supersede and revise in its entirety each currently effective RMR rate schedule of each RMR Owner.

The Stipulation establishes a period referred to as the “Rate Freeze Period,” which is the time from the first day of the month following the effectiveness of the Settlement through December 31, 2001. 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 rights of each RMR Owner to seek changes to any of its Revised RMR Rate Schedules and the rights of each sponsoring party and subject party to seek changes to the Revised RMR Rate Schedules shall be suspended, commencing with the effectiveness of the Settlement and continuing through the end of the Rate Freeze Period, except as expressly provided in the Stipulation.

If the California Independent System Operator Corporation (“ISO”) enters into or operates under a contract to receive RMR service comparable in scope, purpose and content to the services provided under the RMR Contract and under terms and conditions that differ in any material manner from the terms and conditions included in the RMR Contract then, notwithstanding the suspension of RMR Owners’ rights described in Article I, each

Appendix A to the ISO Tariff, or the terms defined in the Stipulation.

RMR Owner shall be permitted to file for Commission approval of an amendment to any of its Revised RMR Rate Schedules to adopt all non-unit specific terms appearing in such a non-conforming RMR Contract. An exception to this ability of RMR Owners to adopt all non-unit specific terms appearing in a non-conforming RMR Contract is a filing by a Local Publicly Owned Electric Utility or a Governmental RMR Agency of an RMR Contract which conforms to the RMR Contract contained in Appendix A to the Stipulation but which has been revised to the extent necessary to conform to certain statutory and regulatory requirements or other obligations imposed on or by a local regulatory authority or by applicable regulations of the Internal Revenue Service.

The Stipulation refers to the time period commencing January 1, 2002 as the “Post Rate Freeze Period.” Notwithstanding any provision extending rights, duties or benefits into the Post Rate Freeze Period, if an RMR Owner has adopted Post Rate Freeze Formula Rates pursuant to Article IV of the Stipulation and if during the Post Rate Freeze Period the ISO enters into an agreement with another party for RMR services comparable in scope, purpose and content to the services provided under the RMR Contract, under terms and conditions that vary in any material manner from the RMR Contract, the RMR Owner shall be permitted to make a limited filing for Commission authorization of an amendment to its Revised RMR Rate Schedule(s) to include such changed provisions in its Revised RMR Rate Schedule(s).

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

Rates, Fixed Option Payment Levels and Rate Freeze

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 Article II of the Stipulation. Each RMR Owner 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 an appendix to the Stipulation.

Except as provided in the Revenue Requirements Settlements of Duke Energy Moss Landing LLC (“DEML”), Duke Energy Oakland LLC (“DEO”) (collectively, the “DEML/DEO Revenue Requirements Settlement”) and Pacific Gas and Electric Company (“PG&E”), and except for the unresolved and reserved issues identified in the Stipulation, 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 Explanatory Statement 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 Explanatory Statement. The PG&E Revenue Requirements Settlement shall not apply to rates, revenue requirements or refunds for PG&E's RMR operations at the Moss Landing and Oakland facilities for the period from March 31, 1998 through June 30, 1998.

Except as expressly provided otherwise 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, an RMR Owner shall 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.

The rates set forth in the Revised RMR Rate Schedules are referred to as the Rate Freeze Settlement Rates, and those rates, which will reflect the rate information contained in Appendices B and C to the Stipulation, 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 Article II of the Stipulation.

Absent agreement to other terms, the Fixed Option Payment percentage under each Revised RMR Rate Schedule, as set forth in Appendix C to the Stipulation, shall be subject to adjustment to reflect the outcome of litigation or settlement regarding the

appropriate level of the Fixed Option Payment under Condition 1 or any Reserved Issues as specified in Section C. of Article X, 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 decrease in the Fixed Option Payment to be effective commencing with the effectiveness of the Revised RMR Rate Schedules and the same may be implemented by surcharge or refund, as appropriate. To the extent the level of the Fixed Option Payment and the resulting Availability Payment or Surcharge Payment in effect pending the resolution of litigation provided for in Section C. of Article X affect the level of the Non-Performance Penalty under the RMR Contract, the Non-Performance Penalty will be adjusted to reflect the final Fixed Option Payment resulting from the litigation. Article X further provides that resolution of issues reserved for litigation or subsequent settlement also may result in refunds or surcharges, as appropriate.

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 conducted by the California Power Exchange Corporation ("PX"), 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 Article I.

An RMR Invoice Task Force, composed of a representative of each RMR Owner, each Responsible Utility and the ISO, shall develop a uniform invoice template that is consistent with the principles set forth in Schedule O to the RMR Contract and shall meet

at least monthly until the RMR invoice template is deemed completed, by agreement by and among the ISO, each RMR Owner and each Responsible Utility. In the event of a conflict between the RMR invoice template and the Revised RMR Rate Schedules, the Revised RMR Rate Schedules shall govern.

Rights under Sections 205 and 206 of the Federal Power Act

There are two express exceptions to the suspension of the rights of sponsoring parties and subject parties to file a challenge to the Revised RMR Rate Schedules during the Rate Freeze Period. They are: (i) 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 filing under Section 206 of the Federal Power Act (“FPA”) based upon such demonstration; and (ii) the California Electricity Oversight Board (“EOB”) reserves the right to seek from the Commission structural relief regarding the Energy and Ancillary Services market design upon an 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.

If such a Section 206 proceeding is initiated, any RMR Owner may make a filing in response thereto under Section 205 of the FPA, to be effective contemporaneously with the relief requested in the subject Section 206 filing. The sponsoring parties and subject parties agree to request that the Commission consolidate any Section 206 proceeding initiated as a result of an MSC report or EOB filing with any Section 205 filing(s) made in response thereto.

Nothing in the 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 filing; all parties retain their rights to support or oppose such a filing.

Post Rate Freeze Formula Rates

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 the limited Section 205 filings permitted by Article II) each RMR Owner shall adjust its rates using the formula detailed in Schedule F to the RMR Contract, which is referred to as the “Rate Formula.” If an RMR Owner adjusts its rates in accordance with the Rate Formula, that adjustment (referred to as the “Post Rate Freeze Formula Rates”) shall constitute the RMR Owner’s agreement to continue the suspension of

the rights described in 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.

The use of the Post Rate Freeze Formula Rates may be terminated by the RMR Owner if the Commission 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.

A filing of 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 the RMR Contract, subject to certain procedures, including an informational filing with the Commission. Rates resulting from such filings shall be subject to corrections only for challenges to arithmetic calculations and for conformity to the Rate Formula.

Parties shall meet during the first quarter of 2001 to review the Rate Formula and the procedures for filing, to facilitate implementation of the Post Rate Freeze Formula Rates. On the later of June 30, 1999, or thirty days after the effectiveness of the Settlement, each RMR Owner shall file with the Commission Exhibit C to the Rate Formula, with certain information for each unit at each RMR facility, for the period ending December 31, 1998.

ISO Tariff Filings

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

Dispatch

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's establishment of Final Schedules for the Day-Ahead Market, nor shall it change its operating procedures or operating practices that implement such provisions of the ISO Tariff. This will not preclude the ISO from increasing the minimum quantities for Ancillary Services stated in certain sections of the ISO Tariff, 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.

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

Subject to the procedures set forth in the Stipulation, the ISO shall not be precluded by the Stipulation from seeking, on or after October 1, 1999, to modify the ISO Tariff to provide for dispatch of RMR Energy at any time prior to the close of the PX’s Day-Ahead market. Such a filing is recognized as an exception to the precedence of the Revised RMR Rate Schedules over the ISO Tariff.

Capital Improvements And Repairs

The RMR Contract sets forth provisions for Capital Items and Repairs. During the Rate Freeze Period, approved costs for certain Capital Items may be recovered through a surcharge to be filed by the RMR Owner. If the Capital Item has been properly approved

under the procedures specified in the RMR Contract, the filing of a surcharge for the approved capital addition cost shall not be contested by any sponsoring or subject party, and approval of the Settlement 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, there will be a \$500,000 deductible for Capital Items at each RMR facility. Also during the Rate Freeze Period, an RMR Owner may charge the ISO for the cost during any year of Unplanned Repairs, as specified in the RMR Contract, subject to refund based on the outcome of litigation provided for in Section C. of Article X regarding the CEMA Standard.

Oil Burning Capability

Pending resolution of the issue as described in Section C. 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, unless the ISO determines that it is unnecessary for the RMR Owner to do so.

Reporting Requirements

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 for the prior calendar year which will include specified information regarding the hours each RMR unit

was operated and hours it was dispatched as an RMR unit, the total Energy each RMR unit produced and sold in market transactions, the total number of start-ups required due to dispatch notices, the penalty payments made by, or paid to, each RMR Unit and the heat rate coefficients for each RMR Unit. The ISO will post this report on the home page of its Internet Web site.

The ISO shall provide on a confidential basis to the Commission, and to the EOB and the California Public Utilities Commission and the affected responsible utility pursuant to the applicable Non-Disclosure and Confidentiality Agreement in the RMR Contract, information regarding any notice from an RMR unit requesting a change of Condition, the date the chosen Condition will begin, and if the change is from Condition 2, the applicable Fixed Option Payment.

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).

Reserved and Unresolved Issues

Certain issues, as specified in Article X of the Stipulation, are not covered by the Settlement and one or more Parties have reserved the issues for resolution in these proceedings. These issues are categorized as issues regarding Currently Effective RMR Rate Schedules, issues regarding DEML and DEO, issues for resolution under the Revised RMR

Rate Schedules, issues reserved under the DEML/DEO Revenue Requirements Settlement and issues regarding certain PG&E rates and refunds.

Contesting Party Election

Any party that files initial comments and/or reply comments on the Offer of Settlement shall be a “Contesting Party” if it requests any modification or condition to the terms set forth in the Stipulation or to the Revised RMR Rate Schedules. The sponsoring parties and subject parties have waived any and all rights to seek rehearing or judicial review of the Commission orders approving the Stipulation, and shall be bound by and entitled to the benefits of the provisions of the Stipulation; *provided, however*, that if the Commission approves the Stipulation or the Revised RMR Rate Schedules with modifications or conditions and the RMR Owners agree to implement the Settlement, as modified or conditioned, 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 carry out the terms and conditions of the Stipulation.

Unless a Contesting Party elects or is deemed to have elected to be bound by the Settlement in accordance with Article XI of the Stipulation, 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. 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.

Modification, Rejection or Delay of the Settlement

The parties urge expedited consideration of the Offer of Settlement and urge its 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.

In the event the Commission modifies any element of the Settlement in any way, any party adversely affected by the modification shall have fifteen (15) days after a Commission order to provide written notification to the Commission that the party rejects the Settlement as modified. In the event of such notification, the notifying party shall be free of all rights, duties and obligations established in the Stipulation, 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 to a modified Stipulation, then the Settlement as modified by the Commission shall be effective as to those Parties agreeing to be bound by it. The Parties agreeing to such modified Settlement shall indicate their willingness to be bound by such modified Settlement by notifying the Commission and shall specify the effective date of the modified Settlement.

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.

Reservations

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. The Commission's approval of the Settlement shall not constitute approval of, or precedent regarding, any principle or issue in this proceeding. 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).

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 of the Commission's Rules of Practice and Procedure.

Nothing in the Settlement is intended to limit or affect the rights and remedies of the parties with respect to a particular enumerated dispute.

Transition Matters

The Parties have provided for limited treatment of certain matters pertaining to the transition from Currently Effective RMR Rate Schedules to the Revised RMR Rate Schedules.

Successors and Assigns

The rights conferred and obligations imposed on any party by the 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 thereto.

Effectiveness

The Settlement sets forth provisions for its effectiveness.