

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

Southern California Edison Company	)	Docket Nos.	ER98-441-021
California Independent System Operator Corporation	)	and	ER98-2550-004
El Segundo Power, LLC)		
)		
Pacific Gas and Electric Company	)	Docket Nos.	ER98-495-017,
Duke Energy Moss Landing LLC	)		ER98-1614-007,
Duke Energy Oakland LLC	)		ER98-2145-007,
	)		ER98-2668-010,
	)		ER98-2669-009,
	)		ER98-4296-007,
	)	and	ER98-4300-007
)		
San Diego Gas & Electric Company	)	Docket Nos.	ER98-496-010
	)	and	ER98-2160-008
)		
Southern California Edison Company	)	Docket Nos.	ER98-441-021,
Pacific Gas and Electric Company	)		ER98-495-017,
San Diego Gas & Electric Company	)		ER98-496-010,
Duke Energy Moss Landing LLC	)		ER98-4300-007,
Duke Energy Oakland LLC	)		ER98-2668-010,
	)		ER98-2669-009,
	)	and	ER98-4296-007
)		
Duke Energy Moss Landing LLC	)	Docket Nos.	ER98-2668-010,
Duke Energy Oakland LLC	)		ER98-2669-009,
	)		ER99-1127-008,
	)		ER99-1128-008,
	)		ER98-4296-007,
	)	and	ER98-4300-007

EXPLANATORY STATEMENT

As required by Rule 602(c) of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”), 18 C.F.R. § 385.602(c) (1999), the sponsoring parties (the “Parties”) submitting and supporting the attached Offer of Settlement (“Settlement”) submit this Explanatory Statement that explains the basis for and significance of the Settlement. The Settlement consists of a Stipulation and Agreement (“Second Stipulation”) and its appendices, including ISO Tariff amendments. This Explanatory Statement is not intended to alter any of the specific provisions of the Second Stipulation, and is provided solely in accordance with the Commission’s Rules.

The Second Stipulation is one of a series of Offers of Settlement filed in the cases concerning Reliability Must-Run (“RMR”) services in California. On April 2, 1999, the Parties filed a Stipulation and Agreement (“First Stipulation”), which resolved all issues in these proceedings with the exception of those specifically enumerated in Articles X and XIII.D of the First Stipulation. The Commission approved this First Stipulation on May 28, 1999. Pacific Gas & Electric Co., 87 FERC ¶ 61,250 (1999). The Parties have continued to work toward the resolution of the remaining issues and have filed a number of settlements. On July 1, 1999, Geysers Power Company, LLC (“Geysers”), Pacific Gas and Electric Company (“PG&E”), the California Independent System Operator (the “ISO”) and the California Electricity Oversight Board (the “EOB”) filed an Offer of Settlement as to specific issues related to RMR charges from generation units owned by Geysers. The Commission approved the Settlement on January 31, 2000. Southern California Edison Co., 90 FERC ¶ 61,096 (2000). On August 31, 1999, Williams Energy Marketing & Trading Company (“Williams”) (with respect to Alamos Generating

Station, Huntington Beach Generating Station, and Redondo Beach Generating Station), Southern California Edison Company (“SCE”), the ISO, and the EOB filed an Offer of Settlement as to specific issues relating to Williams’ RMR Rate Schedules. The Commission approved the Settlement on January 31, 2000. Southern California Edison Co., 90 FERC ¶ 61,091 (2000). On September 8, 1999, Reliant Energy Etiwanda, L.L.C. and Reliant Energy Mandalay, L.L.C. (collectively, “Reliant”), SCE, the ISO, and the EOB filed an Offer of Settlement as to specific issues relating to Reliant’s RMR Rate Schedules. The Commission approved the Settlement on January 31, 2000. Southern California Edison Co., 90 FERC ¶ 61,091 (2000). On November 3, 1999, PG&E, the ISO, and the EOB filed an Offer of Settlement as to specific issues relating to RMR charges from generation units that continue to be owned and operated by PG&E. The Commission approved the Settlement on January 13, 2000. Pacific Gas & Electric Co., 90 FERC ¶ 61,023 (2000). On November 5, 1999, El Segundo Power, LLC (“El Segundo”), the ISO, SCE, and the EOB filed an Offer of Settlement as to specific issues related to El Segundo’s RMR Rate Schedules. The Commission approved the Settlement on August 1, 2000. Southern California Edison, 92 FERC ¶ 61,154 (2000). On November 16, 1999, Duke Energy Moss Landing LLC (“DEML”), Duke Energy Oakland LLC (“DEO”), PG&E, the ISO and the EOB filed an Offer of Settlement as to specific issues related to DEML’s and DEO’s RMR Rate Schedules. The Commission approved the Settlement on January 28, 2000. Duke Energy Moss Landing, 90 FERC ¶ 61,073 (2000). On March 31, 2000, Duke Energy South Bay, LLC (“Duke South Bay”), San Diego Gas & Electric Company (“SDG&E”), the ISO, and the EOB filed an Offer of Settlement as to specific issues related to Duke South Bay. The Commission approved

the Settlement on August 1, 2000. San Diego Gas & Electric Co., 92 FERC ¶ 61,155 (2000). Finally, on May 8, 2000, Cabrillo Power I LLC and Cabrillo Power II LLC (together, “Cabrillo”), SDG&E, the ISO, and the EOB filed an Offer of Settlement resolving issues specific to Cabrillo’s RMR Rate Schedules. The Commission approved the settlement on July 31, 2000. San Diego Gas & Electric Co., 92 FERC ¶ 61,116 (2000).

This Second Stipulation settles, among the Parties¹ twelve of the seventeen issues enumerated under Article X of the First Stipulation. Specifically, the Second Stipulation resolves sections C.2, C.5, C.6, C.7, C.10, C.11, C.12, C.13, C.14, C.15, C.16, and C.17 of Article X. These issues are as follows:

- C.2 What is the appropriate discount rate for the Termination Fee?
- C.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?
- C.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?
- C.7 What are the appropriate standards and practices for measuring and recording gas used by an RMR Unit?
- C.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?

¹ Geysers, which has already settled all issues relating to Geysers with the exception of the Article 9 issues under section C.17, is not joining the Second Stipulation as a Sponsoring Party.

- C.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?
- C.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?
- C.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?
- C.14 Should "availability weighting factors" be applied to adjust Availability Payments for on-peak/off-peak hours and/or different seasons?
- C.15 If availability weighting factors are a feature of the RMR Contract, should the amount 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?
- C.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?
- C.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?

Of the five remaining issues, three (C.1, C.3, and C.4) have been settled with respect to some RMR Owners and are being litigated with respect to others; a fourth issue (C.8) is being resolved as to some RMR Owners by this Second Stipulation and deferred for subsequent settlement or litigation as to others; and the fifth (C.9) has been submitted to the Commission for decision as provided in the First Stipulation.

The Second Stipulation's basic terms and conditions can be summarized as follows:

Discount Rate for Termination Fee (X.C.2)

The Second Stipulation provides that the formula for the calculation of the Termination Fee set forth in Section 2.5(c) of the Revised RMR Rate Schedules will be modified to provide that the annual discount rate is equal to the interest rate used by the Commission for the calculation of refunds (as set forth in 18 C.F.R. § 35.19a (1999)) in effect on the date that the owner of generation provides notice to the ISO pursuant to Section 2.5(a) of the Revised RMR Rate Schedules.

Unplanned Repairs (X.C.5)

The Second Stipulation provides that the only repair costs that may be considered in determining whether, and to what extent, an owner of RMR generation has exceeded its Owner's Repair Cost Obligation during the Rate Freeze Period are costs that (1) are the result of a Force Majeure Event, (2) are not the result of ordinary wear and tear, and (3) cannot be capitalized under the Commission's Uniform System of Accounts.

Insurance (X.C.6)

The Parties agreed in the Second Stipulation that the provisions of Section 12.1(a) of the Revised RMR Rate Schedules concerning insurance would not be modified in these proceedings.

Gas Measurement Standards (X.C.7)

The Second Stipulation revises standards for the measurement of gas set forth in Schedule C of the RMR Agreement.

Oil Burning Capability (X.C.8)

The Second Stipulation provides that all RMR Units capable of dual fuel operations (hereinafter, collectively “Released RMR Units”) other than Humboldt Bay Unit Nos. 1 and 2, Potrero Unit No. 3, Encina Unit Nos. 1 through 5, Encina CT, South Bay Unit Nos. 1 through 4, and South Bay CT (hereinafter, collectively “Reserved RMR Units”), are under no obligation to restore or maintain existing oil burning capability at such Units. The ISO Governing Board, at its August 26, 1999 meeting, adopted a resolution that recommended that oil burning capability be retained only at the Reserved RMR Units. The Second Stipulation does not resolve any of the issues set forth in X.C.8 of the First Stipulation (the “Dual Fuel Issues”) with respect to the Reserved RMR Units. Accordingly, in order to provide the appropriate Parties an opportunity to resolve the Dual Fuel Issues through negotiation, the Parties agree to defer further proceedings concerning the Dual Fuel Issues with respect to the Reserved RMR Units for a period of ninety (90) days commencing on the date that the Second Stipulation is filed with the Commission. If issues concerning dual fuel capability with respect to the Reserved RMR

Units remain unresolved at the end of the ninety (90) day period, the Parties will propose to the Chief ALJ procedures to govern resolution of those unresolved issues.

Emissions Limitations (X.C.10)

The Parties agreed not to modify in the Second Stipulation the provisions of Section 4.8 and Schedule P of the RMR Agreement concerning emissions limitations.

Scheduling Coordinator Ancillary Services Credits (X.C.11)

Article 9.1 of the RMR Agreement has been revised to provide a credit mechanism for RMR Owners to credit to the Responsible Utility any amounts paid by the ISO to the RMR Owner's Scheduling Coordinator for Ancillary Services.

Ancillary Services Capacity Payments (X.C.12)

The Second Stipulation provides that the RMR Agreement will not specify a separate payment to the RMR Owner for Ancillary Services Capacity that the RMR Owner provides pursuant to an instruction from the ISO.

Gas Price Indices (X.C.13)

The Second Stipulation revises how certain gas price indices are to be used for each Settlement Period of each day of the week. Subsequent to these revisions, the ISO filed tariff revisions ("Amendment No. 26") with the Commission seeking to modify the ISO Tariff to provide for dispatch of RMR Units at any time prior to the ISO's establishment of Final Schedules for the Day-Ahead Market operated by the California Power Exchange Corporation, as described in Article VI, Section C of the First Stipulation. The Commission accepted Amendment No. 26 on an interim basis. As a result, any RMR Owner may make a filing pursuant to Section 205 of the Federal Power Act ("FPA"), and any other Party may make a filing pursuant to Section 206 of the FPA,

seeking to modify the methodology set forth in the Second Stipulation for the use of such gas indices to reflect the changes in the timing of such dispatch. All Parties retain the right to support or oppose any such filings, provided that all parties agree to request that, whatever outcome is adopted as to the use of such indices, it be consistent for all Revised RMR Rate Schedules.

Availability Weighting Factors (X.C.14 and X.C.15)

The Second Stipulation provides that availability weighting factors will not be applied to adjust Availability Payments for on-peak/off-peak hours or different seasons.

Future Year Contract Service Limits (X.C.16)

The Second Stipulation provides that delivery of services pursuant to Schedule G of the Revised RMR Rate Schedules shall be included in the calculation of future year Contract Service Limits pursuant to Section 4.11 and Schedule A of the RMR Agreement.

Contract Year Credits and Refunds (X.C.17)

Article 9.1 of the RMR Agreement has been revised to incorporate the following substantive changes: Section 9.1(b) specifies that each RMR Owner has the ability to submit four RMR invoices to the ISO each month. In addition, 9.1(b) outlines the requirements for each invoice and the calendar for submittal of each invoice. Former Section 9.1(e), now 9.1(d), requires that the template used for each RMR Invoice be posted on the ISO Home Page in accordance with Schedule O. Sections 9.1(g), 9.1(h), 9.1(i), and 9.1(j) specify procedures for identifying Prior Period Changes (corrections, surcharges, credits, refunds or other adjustments pertaining to a billing month discovered after the Revised Adjusted RMR Invoice for that billing month has been issued),

preparing and submitting Prior Period change Worksheets, and submitting any payments required or refunds due as a result of the calculations on the Prior Period Change Worksheets. Section 9.1(k) requires that any time an RMR unit switches between Condition 1 and Condition 2 during a Contract Year, the provisions of Section 9.1(e) apply to the months when the unit was on Condition 1 and the provisions of Section 9.1(f) apply to the months when the unit was on Condition 2. Section 9.1(l) specifies that the ISO will post on the ISO Home Page examples (“Prior Period Change Examples”) and guidelines (“Prior Period Change Guidelines”) developed and agreed to by the RMR Invoice Task Force created under Schedule O. These documents are intended to facilitate interpretation and dispute resolution involving Sections 9.1(e), 9.1(f), 9.1(g) and 9.1(j). Section 9.3 is revised to eliminate the carry forward of credits on RMR invoices, other than the Carryforward Credit specifically identified in Sections 9.1(e) and 9.1(f). Instead, RMR Owners must provide refunds to the ISO. Section 9.4 is revised to include remedies for an RMR Owner’s failure to provide a refund due the ISO. These revisions necessitated corresponding revisions to Sections 5.2.7 and 13.5.2 of the ISO Tariff and Annex 1 of the Settlements and Billing Protocol. The resulting revisions are discussed in the attached Stipulation and Agreement.

Refunds

The Second Stipulation provides that, upon its effectiveness, all charges under the Revised RMR Rate Schedules affected by the terms of the Second Stipulation shall be recalculated as though such terms were in place and effective on June 1, 1999. Any differences between the charges resulting from such recalculation and the charges previously paid for the period commencing June 1, 1999, shall result in a refund or

surcharge, as appropriate, with interest, and shall be paid in accordance with Article II, Section B.2.(e) of the First Stipulation.

Rights under Sections 205 and 206 of the Federal Power Act

Except as provided in the Second Stipulation, the Parties' rights to pursue, and seek remedies with regard to, the issues resolved by the Second Stipulation shall be subject to the limitations set forth in the First Stipulation, including limitations on rights under Sections 205 and 206 of the FPA.

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.

Successors and Assigns

The rights conferred and obligations imposed on any Party by this Second 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.

Effectiveness

The Settlement sets forth provisions for its effectiveness.