

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

Southern California Edison Company)	Docket Nos. ER98-441-021
California Independent System)	and ER98-2550-004
Operator Corporation)	
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

SECOND STIPULATION AND AGREEMENT

(August 14, 2000)

Pursuant to Rule 602 of the Federal Energy Regulatory Commission's (the "Commission") Rules of Practice and Procedure, 18 C.F.R. § 385.602 (1999), the California Independent System Operator Corporation ("ISO"), Cabrillo Power I LLC ("Cabrillo I"), Cabrillo Power II LLC ("Cabrillo II"), Duke Energy Moss Landing LLC ("DEML"), Duke Energy Oakland LLC ("DEO"), Duke Energy South Bay LLC ("Duke South Bay"), El Segundo Power, LLC ("El Segundo"), Pacific Gas and Electric Company ("PG&E"), Reliant Energy Etiwanda, LLC ("Reliant Etiwanda"), Reliant Energy Mandalay, LLC ("Reliant Mandalay"), Southern Energy Delta, L.L.C. ("Southern Delta"), Southern Energy Potrero, L.L.C. ("Southern Potrero"), and Williams Energy Marketing and Trading Company ("Williams") (with respect to Alamitos Generating Station, Huntington Beach Generating Station, and Redondo Beach Generating Station), all of whom are Sponsoring Parties, hereby submit this Stipulation and Agreement ("Second Stipulation").¹ With the exception of the ISO, these companies own, lease or

¹ Geysers Power Company, LLC ("Geysers"), a party to these proceedings is not joining the Second Stipulation as a Sponsoring Party. All issues specific to Geysers, with the exception of the issue identified under Section C.17 and related changes to Article 9, were resolved in a settlement filed with the Commission on July 1, 1999. The Commission approved the settlement on January 31, 2000. Southern California Edison Co., 90 FERC ¶ 61,096 (2000). With respect to the Section C.17 issue, the Commission noted in its order approving the settlement that Article I.I.2 of Geysers' settlement provides that the resolution of the C.17 issue shall be the same as the resolution of the issue in settlement(s) with one or more remaining RMR owners. Upon Commission approval of any such settlement, Geysers is required to file, within thirty (30) days, revised rate sheets reflecting the rates, terms and conditions of that settlement, as applicable.

have contracted for the right to dispatch and market Energy, capacity and Ancillary Services with respect to generating stations that have units which have been designated as Reliability Must-Run (“RMR”) Units (“RMR Units”), and will be referred to hereinafter collectively as the “RMR Owners” and individually as a “RMR Owner” or “Owner.”

Joining this Stipulation, as additional Sponsoring Parties, are San Diego Gas & Electric Company (“SDG&E”), the California Electricity Oversight Board (“EOB”) and Southern California Edison Company (“SCE”).² The Sponsoring Parties may be referred to collectively as the “Parties” and individually as a “Party.”

On April 2, 1999, a partial Offer of Settlement was filed with the Commission in the above-captioned proceedings (“First Settlement”). The First Settlement consisted of, among other things: (1) a Stipulation and Agreement (“First Stipulation”), (2) a Pro Forma Must-Run Service Agreement (“RMR Agreement”) setting forth the agreed upon terms and conditions for RMR service, and (3) individual Revised RMR Rate Schedules for each RMR generating station that incorporated the terms and conditions of the RMR Agreement. By letter order dated May 28, 1999, the Commission approved the First Settlement. Pacific Gas and Electric Co., 87 FERC ¶ 61,250 (1999). The Revised RMR Rate Schedules became effective on June 1, 1999. A detailed procedural history of these proceedings is set forth in the First Stipulation.

The First Settlement resolved all issues in these proceedings with the exception of those specifically enumerated in Article X and Article XIII, Section D of the First

² SCE and SDG&E were RMR Owners for a part of the period covered by the First Stipulation.

Stipulation. The Parties have continued to work toward settlement of these remaining issues, both informally and as part of formal settlement proceedings before the Chief Administrative Law Judge (the “Chief ALJ”). As a result of those continuing efforts, the Parties have reached settlement on many of the remaining issues.

This Second Stipulation resolves twelve of the seventeen issues enumerated under Article X, Section C (“X.C”) of the First Stipulation that are issues under the Revised RMR Rate Schedules that were unresolved by the First Stipulation. Of the five remaining issues under X.C, three have been settled with respect to some RMR Owners and are being litigated with respect to others;³ a fourth issue is being resolved as to some RMR Owners by this Second Stipulation and deferred for subsequent settlement or litigation as to others;⁴ and the fifth has been submitted to the Commission for decision as provided in the First Stipulation.⁵

To the extent the agreements reached in this Second Stipulation require changes to the RMR Agreement, those changes are reflected in Appendix A hereto (a clean version of the revised RMR Agreement) and Appendix B hereto (a redline version of the

³ Issues X.C.1 (fixed option payment), X.C.3 (capital additions), and X.C.4 (unplanned repairs) have been settled with all Owners except Southern Energy Delta and Southern Energy Potrero, who are litigating these issues. See Southern California Edison Co., 90 FERC ¶ 61,096 (2000) (Geysers Power); Southern California Edison Co., 90 FERC ¶ 61,091 (2000) (Williams); Southern California Edison Co., 90 FERC ¶ 61,091 (2000) (Reliant Etiwanda and Reliant Mandalay); Duke Energy Moss Landing, 90 FERC ¶ 61,073 (2000) (DEML and DEO); Pacific Gas & Electric Co., 90 FERC ¶ 61,023 (2000) (PG&E); San Diego Gas & Electric Co., 92 FERC ¶ 61,116 (2000) (Cabrillo); San Diego Gas & Electric Co., 92 FERC ¶ 61,155 (2000) (Duke South Bay); and Southern California Edison, 92 FERC ¶ 61,154 (2000) (El Segundo).

⁴ Issue X.C.8 (oil burning capability).

⁵ Issue X.C.9 (termination fees).

RMR Agreement that was Appendix A to the First Stipulation). To the extent the agreements reached in this Second Stipulation require changes to the RMR Owners' individual Revised RMR Rate Schedules, each RMR Owner will file individual revised rate schedules consistent with these changes within thirty (30) days of the date the Settlement is approved by the Commission.⁶ To the extent the agreements reached in this Second Stipulation require changes to the ISO Tariff, those changes are reflected in Appendix C hereto in both a clean version and redline version.⁷ To the extent the agreements in this Second Stipulation require changes to Annex 1 of the Settlement and Billing Protocol, such changes are reflected in Appendix D hereto in both a clean version and redline version. Also attached hereto as Appendix E is the RMR Invoice Guideline for informational purposes.

Since the RMR Agreement went into effect on June 1, 1999, various Parties have raised new issues (not Reserved Issues under the First Stipulation) related to the RMR Agreement in light of experience gained from operating under it, and have suggested amendments to the RMR Agreement to address these new issues. The Parties have discussed these issues at a working level and have prepared a "White Paper" dated August 8, 2000, that sets out the non-binding positions of various Parties' unofficial representatives with respect to each issue. These issues consist of:

⁶ Notwithstanding any other provision of this Second Stipulation, the rate schedules filed by Reliant Energy Etiwanda, LLC and Reliant Energy Mandalay, LLC in connection with the First Stipulation and effective June 1, 1999 through December 31, 1999 are deemed consistent with all terms and conditions of this Second Stipulation.

⁷ Although Schedule J ("Notices") of the ISO Tariff is not affected by the Second Stipulation, it is included to reflect a change in ISO personnel designated to receive notice of changes to RMR Owners' representatives.

- (1) Reliability Must-Run Conflict Resolution Procedure;
- (2) Dispatch Notice Changes;
- (3) Article 8.3 - Billable MWh, Hybrid MWh and Ramping Energy Calculations;
- (4) Article 5.5 – Reporting Contract Service Limits;
- (5) Article 8.5(b)(i) - Calculation of the Availability Deficiency Factor (ADF);
- (6) Article 5.1(c) – Variable Cost Payment for Substituted Units;
- (7) Application of GMMa;
- (8) Article 9.1(f) - Scheduling Coordinator’s Energy Crediting;
- (9) Article 8.5(b)(ii) - Non-Performance Penalty Period;
- (10) Schedule E - Ancillary Services Motoring Charge, Energy Price Calculation;
- (11) Schedule C, Part 1, Section A.8 - Commodity Price for Distillate Fuel Oil;
- (12) Article 8.6 - Long-term Planned Outage Adjustment; and
- (13) Article 3.1(ii) - Condition 2 Revenue Refund Calculation.

The Parties will attempt to resolve these issues through negotiation, and to agree on the effective dates of any resulting changes to the RMR Agreement for a period of ninety (90) days commencing on the date that the Second Stipulation is filed with the Commission. The Parties request that these dockets be kept open so that any proposed changes to the RMR Agreement or other necessary filings that might result from these negotiations may be filed herein. If any issue identified remains unresolved at the end of the 90-day period, any Party may propose to the Chief ALJ procedures to facilitate further negotiations on the remaining issue(s), consistent with the terms of the First Stipulation, including the general waiver of section 205 and 206 rights, and any other Party may comment to the Chief ALJ on the proposed procedures within the time allowed by the

Chief ALJ. Nothing in this Second Stipulation will be construed as an agreement that any issue not a Reserved Issue under the First Stipulation has been or can be set for hearing or other dispute resolution in Docket Nos. ER98-441-000, *et al.* Finally, notwithstanding the waiver of section 205 rights in the First Stipulation, the Parties agree that the RMR Rate Schedules may be amended to reflect the resolution of one or more of these issues by mutual agreement of the Parties.

Terms of Second Stipulation

Preliminary Matters:

1. Definitions. Unless otherwise defined herein, terms used in this Second Stipulation shall have the meaning given such terms in the First Stipulation, in Article I of the RMR Contract and in the definitions set forth in the Master Definition Supplement, Appendix A to the ISO Tariff.
2. Resolved Issues. Upon the effectiveness of this Second Stipulation, the issues identified in the First Stipulation at Article X, 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 shall be resolved and no longer subject to litigation in these proceedings. The issues set forth in X.C.8 are being resolved as to some RMR Owners by this Second Stipulation and deferred for subsequent settlement or litigation as to others. The issues set forth in X.C.9 have been submitted to the Commission for separate resolution in accordance with the provisions of the First Stipulation.

Except as provided herein, the Parties' rights to seek remedies with regard to the issues resolved herein shall be subject to the limitations set

forth in the First Stipulation, including limitations on rights under Sections 205 and 206 of the Federal Power Act (“FPA”).

3. Effective Date. This Second Stipulation shall be effective on the date it is approved by the Commission. In the event the Commission modifies or places any conditions on its approval of any element of this Second Stipulation, any Party adversely affected by such modification or condition shall have fifteen days after such Commission order to notify the Commission in writing that such Party withdraws from this Second Stipulation. Any Party so withdrawing from this Second Stipulation shall be subject to none of the obligations and entitled to none of the benefits of this Second Stipulation. In such event, this Second Stipulation as modified or conditioned shall be effective as to those Parties agreeing to be bound by it, notwithstanding its rejection by other Parties.
4. Refunds and Surcharges. In the First Stipulation, the parties agreed that the resolution of the issues set forth in X.C may result in refunds or surcharges, as appropriate, effective upon the date the First Settlement became effective (June 1, 1999), with interest computed pursuant to Section 35.19a of the Commission’s Regulations, 18 C.F.R. § 35.19a. Upon the effectiveness of this Second Stipulation, all charges under the Revised RMR Rate Schedules affected by the terms hereof 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.

Resolution of Specific Issues:

5. Discount Rate For Termination Fee (X.C.2). The formula for the calculation of the Termination Fee set forth in Section 2.5(c) of the Revised RMR Rate Schedules shall 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) in effect on the date that Owner provides notice to the ISO pursuant to Section 2.5(a) of the Revised RMR Rate Schedules.
6. Unplanned Repairs (X.C.5). Section 7.5(k)(i) of the Revised RMR Rate Schedules shall be revised to provide that the only repair costs that may be considered in determining whether, and to what extent, a RMR Owner has exceeded its Owner's Repair Cost Obligation during the Rate Freeze Period are costs that (a) are the result of a Force Majeure Event, (b) are not the result of ordinary wear and tear, and (c) cannot be capitalized under the Commission's Uniform System of Accounts.
7. Insurance (X.C.6). The provisions of Section 12.1(a) of the Revised RMR Rate Schedules shall not be modified in these proceedings.
8. Gas Measurement Standards (X.C.7). The Parties have agreed to modify Equation C1-2 of Schedule C to the Revised RMR Rate Schedules as shown in Appendices A and B hereto.

9. Oil Burning Capability (X.C.8). RMR dual fuel Units (hereinafter, “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, “Reserved RMR Units”) are under no obligation to restore or maintain existing oil burning capability. The ISO Governing Board, at its August 26, 1999 meeting, voted to notify the owners of Released RMR Units that they are under no such obligation.

During the same meeting, the ISO Governing Board adopted a resolution that recommended that oil burning capability be retained only at the Reserved RMR Units. This 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.

10. Emissions Limitations (X.C.10). The provisions of Section 4.8 and Schedule P of the Revised RMR Rate Schedules are not modified by this Second Stipulation.
11. 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.
12. Ancillary Services Capacity Payments (X.C.12). The Revised RMR Rate Schedules will not specify a separate payment to the RMR Owner for Ancillary Services Capacity provided pursuant to an ISO instruction to the RMR Owner.
13. Gas Price Indices (X.C.13). Table C1-8 of the Revised RMR Rate Schedules shall be revised to read as follows:

The indices to be used for each Settlement Period in a given day are shown in Table C1-8. Where more than one day's index is shown for a Trading Day, the average of the two daily indices should be used. If an applicable index for a day, which is used to compute the index's average for a Trading Day, is not published, then that index will not be used to compute the Commodity Price for that trading day. If no index for a day is published, then the average of applicable indices on the Index Publication Date preceding and the Index Publication Date following such day will be substituted for the Index Publication Date index for that day in Table C1-8. In the event that an index ceases to be published, Parties shall agree on a replacement index.

**Table C1-8
Natural Gas Price Indices**

<i>Index Publication Date*</i>			
<i>Trading Day</i>	<i>Gas Daily **</i>	<i>Btu Daily ** Gas Wire</i>	<i>NGI Daily Price Index</i>
Tuesday	Tuesday/Wednesday	Monday/Tuesday	Tuesday/Wednesday
Wednesday	Wednesday/Thursday	Tuesday/Wednesday	Wednesday/Thursday
Thursday	Thursday/Friday	Wednesday/Thursday	Thursday/Friday
Friday	Friday/Monday	Thursday/Friday	Friday/Monday
Saturday	Monday/Tuesday	Friday/Monday	Monday/Tuesday
Sunday	Monday/Tuesday	Friday/Monday	Monday/Tuesday
Monday	Monday/Tuesday	Friday/Monday	Monday/Tuesday

* *The Index Publication Date is the date of the publication, which contains the prices for the applicable Trading Day.*

** *Where more than one day's index is shown for a Trading Day, the average of the two daily indices should be used.*

Gas Daily: The "Flow Date(s)" column should match the Trading Day.

Btu Daily: The Index Publication Date should be the day prior to the Trading Date in the Table above, except for Sunday and Monday, where Friday should be used as the Index Publication Date

NGI Daily: The Index Publication Date should be the same as the Trading Date in the tables above, except for Saturday and Sunday, where Monday should be used as the Index Publication Date.

Notwithstanding the foregoing, the ISO filed tariff revisions ("Amendment No. 26") with the Commission on January 28, 2000, 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, on March 31, 2000. California Independent System Operator Corp., 90 FERC ¶ 61,345. As a result, any RMR Owner may make a filing under Section 205 of the FPA and any other Party may make a filing under Section 206 of the FPA seeking to modify Table C1-8 to reflect the changes in the timing of such dispatch, to be made effective contemporaneously with the change in dispatch rules for RMR Units. All Parties shall retain the right to support or oppose any such filings, provided that all Parties agree to request that, whatever outcome is adopted for Table C1-8, it be consistent for all Revised RMR Rate Schedules.

14. Availability Weighting Factors (X.C.14 and X.C.15). Availability weighting factors shall not be applied to adjust Availability Payments for on-peak/off-peak hours or different seasons.
15. Future Year Contract Service Limits (X.C.16). 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 Revised RMR Rate Schedules.
16. 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 for 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 a 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 a 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 to Article 9 are reflected in Appendices A and B hereto. The revisions to the ISO Tariff and Annex 1 of the Settlements and Billing Protocol are reflected in Appendix C and D, respectively. The Parties reached agreement on the Prior Period Change Examples and Prior Period Change Guidelines in March, 1999. These documents will be posted on the ISO Home Page no later than the date on which this Second Stipulation becomes effective. The Prior Period Change Guidelines are reflected in Appendix E hereto.

The Parties agree that, until this Second Stipulation becomes effective, each Owner waives its right under Section 9.1(e) of its Revised RMR Rate Schedule(s) to extinguish credits at the end of a Contract Year, and will carry forward any applicable credit into a later Contract Year or pay any such credit to the ISO in the later Contract Year.

17. Reservations. (a) Agreement to or acquiescence in this Second Stipulation shall not be deemed in any respect to constitute an admission by any Party hereto that any allegation or contention made by any other Party in these proceedings is true or valid. In negotiating the Second Stipulation, the Parties specifically agreed that the Second Stipulation represents a negotiated agreement for the sole purpose of settling certain issues, as described herein, in the captioned dockets. Except as expressly provided in this Second Stipulation, no signatory, participant or affiliate of any of

the Parties shall be deemed to have approved, accepted, agreed to, or consented to any fact, concept, theory, rate methodology, principle or method relating to jurisdiction, prudence, reasonable cost of service, cost classification, cost allocation, rate design, tariff provisions, or other matters underlying or purported to underlie any of the resolution of the issues provided herein. The Commission's approval of the Second Stipulation shall not constitute approval of, or precedent regarding, any principle or issue in these proceedings.

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

(c) The discussions among the Parties that have produced the Second Stipulation have been conducted on the explicit understanding that they were undertaken subject to Rule 602(e) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.602(e) (1999), and the rights of the Parties with respect thereto shall not be impaired by the Second Stipulation.

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

18. 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.
19. Execution in Counterparts. This Second Stipulation may be executed in counterparts by each Party, each of which shall be deemed to be an original, but which together shall constitute one and the same instrument.

Respectfully submitted,

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Signed and Dated this 11th day of August, 2000

Enclosures