

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

**Cabrillo Power I LLC and
Cabrillo Power II LLC**

Docket No. ER02-1264-000

CERTIFICATION OF UNCONTESTED OFFER OF SETTLEMENT

(Issued March 17, 2003)

TO THE COMMISSION:

Background

1. An executed Settlement Agreement was filed with the Commission on December 31, 2002, by Cabrillo Power I LLC and Cabrillo Power II LLC (jointly, "Cabrillo") on behalf of itself, the California Independent System Operator Corporation (the "ISO"), and San Diego Gas & Electric Company ("SDG&E"). The December 31, 2002, filing represents a partial settlement package resolving all outstanding issues in Docket No. ER02-1264-000 regarding the Cabrillo Reliability Must-Run Contracts ("RMR Contracts"), except for the issue relating to the values for fuel transportation charges to be used in the determination of Prepaid Start Up charges in Schedule D of the RMR Contracts. Cabrillo requested that the Commission accept the partial Settlement Agreement in order to ensure that the Commission and the California ISO have a rate on record for contract year 2003. On January 15, 2003, Cabrillo filed a complete settlement package, including all required documentation. The January 15, 2003 settlement package includes an Addendum to the Settlement Agreement reflecting resolution of the outstanding issue. The December 31, 2002, settlement and the January 15, 2003 settlement package constitute a complete Offer of Settlement.
2. Cabrillo I and Cabrillo II provide reliability must-run service to the California ISO pursuant to their RMR agreements. RMR agreements are used by the ISO to enhance grid reliability, meet local reliability needs, and manage intra-zonal congestion.
3. On March 5, 2002, Cabrillo I and Cabrillo II submitted a filing containing revisions to their RMR agreements with the California ISO. The filing was intended to reflect an agreed-upon, one-year extension of the term of the RMR agreements from January 1, 2002 through December 31, 2002.

4. Notice of Cabrillo I and Cabrillo II filing was published in the Federal Register, 67 Fed. Reg. 12,556 (2002), with interventions or protests due on or before March 26, 2002. On March 26, 2002, SDG&E and the California ISO filed a joint motion to intervene and protest, and on April 2, 2002, the Public Utilities Commission of the State of California (“CPUC”) filed a motion to intervene and protested the filing. The California Energy Oversight Board (“EOB”) also filed a notice of intervention.

5. On April 26, 2002, 99 FERC ¶ 61,113, the Commission accepted for filing and suspended Cabrillo I and Cabrillo II’s filing and set the agreement for hearing. The Commission held the hearing in abeyance to provide time for the parties to resolve the outstanding issues, and directed the parties to report to the Chief Judge on the status of their settlement negotiations within 60 days. The Chief Judge, for good cause shown, issued several orders continuing the suspension of the hearing proceeding in order to allow the parties to continue the settlement negotiations. The April 26, 2002, order also granted the CPUC’s, SDG&E’s, the California ISO’s and the EOB’s motions to intervene.

6. The parties held numerous settlement discussions and conducted informal discovery, which lead to the filing of the instant settlement on December 19, 2002, and on January 15, 2003.

The Offer of Settlement

7. The proposed settlement addresses concerns that the California ISO, SDG&E, the EOB and CPUC had regarding the revised costs and related terms in Cabrillo’s revision to the RMR Contracts. The principal terms of the Settlement Agreement are summarized as follows:

A. Adjustments to AFRR

i. Cabrillo agrees to revise portions of Schedules A and B of the RMR Contracts for Cabrillo I and Cabrillo II to incorporate revised AFRR numbers. The settlement covers the calendar years 2002 and 2003 for the Cabrillo I and Cabrillo II RMR Contracts. The dollar values and calendar periods of the settlement include the following:

1. For calendar years 2002 and 2003, the Cabrillo I rates will be calculated using agreed to amount of \$41,763,266 for AFRR.

2. For the first ten months of calendar year 2002, the Cabrillo II rates will be calculated using the agreed to amount of \$6,869,035 for AFRR, and service of four CTs located on property owned by the U.S. Navy will terminate on October 31, 2002.
 3. For the last two months of calendar year 2002, the Cabrillo II rate sheets will be revised to reflect the termination of service provided from the U.S. Navy CTs, and the sum of the AFRR values of the remaining units after removal of the U.S. Navy CTs will be equal to the agreed to amount of \$5,131,596. The Cabrillo II RMR contract is terminated as to the four U.S. Navy CTs effective November 1, 2002.
 4. For calendar year 2003, the Cabrillo II rates will be calculated using the agreed to amount of \$5,400,000 for AFRR.
- ii. The parties agree not to propose, pursuant to Sections 205 or Section 206 of the Federal Power Act, any changes to the rates, terms or conditions expressly covered by the Settlement, with an effective date earlier than January 1, 2004; provided, however, that in the event that the Commission grants, in whole or in part, the relief sought by the complaints pending before it in Docket Nos. EL02-15-000 and EL03-22-000, any party shall have the right to seek prospective modification.
 - iii. Within 30 days of the Commission's approval, without material condition, of the terms of the Offer of Settlement, all charges under the RMR Contracts affected by the terms of the Offer of Settlement shall be recalculated as though such terms were in place and effective on the date specified in the Settlement, and any resulting differences from the charges actually invoiced shall be subject to refund with interest.

B. Termination of the RMR Contract as to the U.S. Navy CTs

- i. The parties agree that the RMR Contract for Cabrillo II is terminated as to the four U.S. Navy CTs effective November 1, 2002.

C. Fuel Oil Capability

- i. The parties agree that Cabrillo will use the best efforts to maintain a minimum useable fuel-oil inventory for Encina of 100,000 barrels, beyond “heel” inventory, for local reliability purposes unless the ISO requests or directs Cabrillo in writing to acquire additional volumes.
- ii. Cabrillo shall not, in filings to take effect after December 31, 2003, include the costs relating to an inventory of more than 150,000 barrels of useable fuel-oil at Encina unless the ISO requests or directs Cabrillo to acquire such additional volumes.
- iii. If the entire fuel-oil inventory (useable and “heel”) must be removed from a tank, Cabrillo may include 30% of the costs associated with replacing the “heel” inventory in the ISO invoice for the month during which the replacement occurred.

D. Revised Rate Sheets

- i. The parties agree that the changes to the effective terms, conditions, and charges set forth in the revised tariff sheets for the Cabrillo I and Cabrillo II RMR Contracts submitted as Attachment 3 through 12 of the Offer of Settlement, accurately reflect the terms of the Settlement for calendar years 2002 and 2003, and that the revised rate sheets should be made effective on January 1, 2002 for changes regarding calendar year 2002, November 1, 2002 for changes resulting from the closure of the Navy CTs in Cabrillo II, and January 1, 2003 for changes regarding calendar year 2003 as shown in the Attachments 3 through 12 of the Offer of Settlement.

E. Reservations

- i. The Offer of Settlement states that the Commission’s approval of the Settlement shall not constitute approval of, or precedent regarding any principle or issue in this proceeding; that the Settlement resolves all issues set for hearing in the instant docket; that 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 1334 (D.C. Cir 1980); that nothing in the Settlement is intended to affect the

rights and remedies of the Parties with respect to any particular dispute not discussed in the Settlement Agreement, including the proceedings in Docket Nos. EL02-15-000 and EL03-22-000; and that the Settlement is contingent upon Commission approval, including the revised tariff sheets for the RMR Contract, without material modification.

Settlement Comments

8. Initial Comments on the Offer of Settlement were due on February 4, 2003, and reply comments were due on February 14, 2003. No comments were filed.

Discussion

9. The instant Offer of Settlement represents a fair and reasonable agreement that is based on good faith and fairness to all affected parties. The Offer of Settlement is the product of considerable effort by the participants, it is the result of extensive negotiations, and it represents a reasonable resolution of competing interests in this proceeding. Approval of the Offer of Settlement will serve the public interest by resolving the issues in dispute while avoiding the substantial cost, delay, uncertainty, and disruption of further litigation that would otherwise be necessary to resolve the issues herein.

10. The instant Settlement resolves issues regarding the Cabrillo Reliability Must-Run Contracts. The Chief Judge does not believe that the Settlement creates major implications or raise policy issues or that the Settlement Agreement presents any issues that would require the Commission to change existing policy or procedures.

11. The Chief Judge does not believe that any existing pending dockets, either before this Commission or on appeals to any court that would be affected by the settlement of these issues.

12. The chief Judge does not believe that this Offer of Settlement raises any issues of first impression.

Certification

13. The Chief Judge finds that the Offer of Settlement resolves all of the issues in this proceeding, is fair and reasonable and in the public interest. Accordingly, it is appropriate to certify the Offer of Settlement to the Commission as an uncontested Offer of Settlement.

14. Pursuant to 18 C.F.R. § 385.602(g), the Chief Judge hereby certifies to the Commission the uncontested Settlement Agreement filed on December 31, 2002 and the supplemental Offer of Settlement filed on January 15, 2003, which together constitute a settlement of all issues in this proceeding.

Curtis L. Wagner, Jr.
Chief Administrative Law Judge

DRAFT

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

In Reply Refer To:
Docket No. ER02-1264-000

Skadden, Arps, Slate, Meagher & Flom LLP
Attn: William R. Hollaway
Attorney for Cabrillo Power I LLC and
Cabrillo Power II LLC
1440 New York Avenue, NW
Washington, DC 20005-2111

Dear Mr. Hollaway:

1. On December 31, 2002, as supplemented on January 15, 2003, on behalf of Cabrillo Power I LLC and Cabrillo Power II LLC (jointly "Cabrillo"), the California Independent System Operator Corporation (the "ISO"), San Diego Gas & Electric Company ("SDG&E"), the California Electricity Oversight Board (the "EOB") and the California Public Utilities Commission (the "CPUC"), you filed an offer of settlement and settlement agreement in the above-referenced docket. No comments were filed. On March 17, 2003, the Chief Judge certified the Offer of Settlement to the Commission as uncontested.
2. The subject settlement is in the public interest and is hereby approved. The Commission's acceptance of this settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding. The Commission retains the right to investigate the rates, terms and conditions under the just and reasonable and not unduly discriminatory or preferential standard of section 206 of the Federal Power Act, 16 U.S.C. § 824e (1994).
3. The revisions to the Reliability Must-Run Contracts ("RMR Contracts") for Cabrillo Power I LLC and Cabrillo Power II LLC between Cabrillo and the ISO submitted as part of the settlement agreement as designated by Cabrillo are properly designated and are accepted for filing and made effective on the dates requested by the parties.
4. Within thirty (30) days from the date of this letter, all charges under the RMR Contracts affected by the terms of the Offer of Settlement shall be recalculated as though

such terms were in place and effective on the date specified in the Settlement, and shall be refunded together with interest computed under 18 C.F.R. § 35.19a of the Commission's Regulations. Within fifteen (15) days after making such refunds, Cabrillo shall file with this Commission a compliance report showing monthly billing determinants, revenue receipt dates, revenues under the prior, present, and settlement rates, the monthly revenue refund, and the monthly interest computed, together with a summary of such information for the total refund period.

5. This letter terminates Docket No. ER02-1264-000. A new subdocket will be assigned upon receipt of the required compliance refund report.

By direction of the Commission.

Secretary

cc: All Parties

Secretary
California Public Utilities Commission
505 Van Ness Avenue
San Francisco , CA 94102-3214