



Agreements associated with certain capital additions. The effect of these revisions is substantially to increase the charges payable by the ISO to Cabrillo under the RMR Agreements.

**I. COMMUNICATIONS**

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**II. BASIS FOR SDG&E'S MOTION TO INTERVENE <sup>2/</sup>**

SDG&E is a California corporation with its principal place of business at 8330 Century Park Court, San Diego, California, 92123. SDG&E is a public utility regulated by this Commission and the California Public Utilities Commission, providing wholesale transmission and retail transmission and distribution services to customers in San Diego and southern Orange Counties. Under Section 5.2.8 of the ISO's tariff, certain costs incurred by the ISO under the RMR Agreements may be passed through to the "Responsible Utility," in this case SDG&E. As

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<sup>2</sup> The ISO has concurrently filed a Motion to Intervene under separate cover.

the entity that is ultimately responsible for the costs incurred under the RMR Agreements, SDG&E has a significant interest in the outcome of this proceeding.

### **III. PROTEST**

Prior to Cabrillo's December 17, 2003 filing, Cabrillo, SDG&E, and the ISO engaged in discussions to eliminate or at least narrow disagreements as to the filing. While some issues have been resolved, a number of important differences remain. In particular, the filing by Cabrillo contains certain costs that should not be recovered under the RMR Agreements. In addition, the filing contains inadequate support to justify the projected costs in certain other categories and contains several computational errors as to the determination of Hourly Availability Charges and Hourly Capital Item Charges, as described in more detail below. Accordingly, SDG&E and the ISO respectfully request that the Commission find that Cabrillo's proposed revisions to its RMR Agreements have not been shown to be just and reasonable.

Notwithstanding this protest, SDG&E and the ISO intend to continue to attempt to resolve outstanding issues with Cabrillo pursuant to the procedure set forth under Schedule F of the RMR Agreements. Therefore, SDG&E and the ISO urge the Commission to accept the proposed revisions to the RMR Agreements to be effective January 1, 2004, suspend the revisions, subject to refund, and set the proposed revisions for hearing, but hold the hearing in abeyance to permit the parties to continue their settlement negotiations.

A fundamental difficulty with the filings for Cabrillo I and II is that they fail to contain the information required by Schedule F. Specifically, Schedule F of the RMR Agreements provides that the Informational Package must include: (1) detailed workpapers showing the derivation of costs under the Formula; (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. The filings for Cabrillo I and II fall short in all of these respects.<sup>3</sup> In addition, SDG&E and the ISO have the following specific concerns, among others, with Cabrillo's filing:<sup>4</sup>

A. Cabrillo I

1. The Annual Fixed Revenue Requirement ("AFRR") for Cabrillo I, calculated pursuant to Schedule F of the Agreement, is \$45,365,782, an increase of 8.6 percent over the comparable figure for Contract Years 2002 and 2003, as approved in Cabrillo's last annual update proceeding in Docket No. ER02-1264. The Administrative and General ("A&G") component of AFRR for Cabrillo I is \$18,374,296.<sup>5</sup> That represents a seven-fold increase over the 2002/2003 A&G figure of \$2,625,370 that Cabrillo filed for in 2002/2003. The largest elements of A&G are Account 923, outside services employed (\$11.4 million vs. \$1.6 million in the prior filing); Account 924, insurance (\$5.6 million vs. \$846,000); and Account 928, legal, regulatory (\$1.4 million vs. 0). These dramatic increases have not been adequately supported or explained.

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<sup>3</sup> A similar lack of detail in the 2002 Schedule F Informational Filing in Docket No. ER02-1264 by Cabrillo may explain why it took the parties more than eight months of discussion to come to a settlement.

<sup>4</sup> Without the detail required by Schedule F, SDG&E and the ISO cannot be certain that they have identified all of the problems in the Cabrillo filings.

<sup>5</sup> Schedule B, page 4 of 6, line 33.

2. Cabrillo claims a Fuel Stock cost of \$10.8 million.<sup>6</sup> That amount appears excessive in light of the settlement in Docket No. ER02 -1264, which limited costs relating to a fuel oil inventory to no more than 150,000 barrels of useable fuel-oil at Cabrillo I.<sup>7</sup> A Fuel Stock cost of approximately \$10.8 million representing 150,000 barrels of fuel oil equates to approximately \$72 per barrel. Current prices for crude oil in futures markets (i.e. NYMEX) indicate the commodity is trading in the low thirty dollar per barrel range. This would indicate the Fuel Stock cost should be approximately one-half of the amount claimed in the Cabrillo I filing. Additional supporting data will be required to support this claimed expense.

3. Cabrillo claims a fixed O&M cost of \$33,282,413.<sup>8</sup> That amount represents an increase of 62 percent over the comparable figure of \$20,517,202 filed in Docket No. ER02-1264. The increase is not adequately explained and is particularly troubling since the test year output for Cabrillo I in the instant docket, about 2.4 million MWh,<sup>9</sup> is sharply down—roughly 55 percent of the test year output of 4.3 million MWh in Docket No. ER02-1264.

4. Section 7.4 of the RMR Agreement provides a specific procedure for the submission and approval of proposed capital additions that may appropriately be reflected in the surcharge payments under Article 8. Cabrillo claims costs for

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<sup>6</sup> Schedule B, page 5 of 6, line 94.

<sup>7</sup> Settlement Agreement, Docket No. ER02-1264, at 11-12 (December 31, 2002).

<sup>8</sup> Docket No. ER04-308, Attachment F, Tab 1, Schedule B, page 6 of 6, line 124.

<sup>9</sup> Docket No. ER04-308, Attachment F, Tab 1, Schedule B, page 4 of 6, line 9.

approximately \$22 million in capital additions that were never submitted for review pursuant to those procedures, and costs for another \$17.7 million in capital additions that have not been approved under those procedures.<sup>10</sup> At a minimum, these costs need to undergo careful review to ensure Cabrillo is in no better position than it would have been in had it followed the review process required under the RMR Agreements.

5. Cabrillo has included prior year Long Term Planned Outage Hours (“LTPOH”) in the calculation of Average Other Outage Hours (“AOOH”)<sup>11</sup>. The RMR Agreement expressly excludes LTPOH from the calculation of Other Outage Hours<sup>12</sup>. Inclusion of LTPOH in the calculation of Target Available Hours (“TAH”) results in inflated values for the Hourly Capital Item Charges (Schedule B, Table B-2) and the Hourly Availability Charges (Schedule B, Table B-1), both of which are dependent on TAH. This results in unjust and unreasonable Hourly Capital Item Charges and Hourly Availability Charges for Encina Units 1 – 5.

6. The filed AFRR fails to reflect that the annual Non-Fuel Start-up Costs of \$33,928 is an offset against AFRR, which results in an overstated AFRR.

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<sup>10</sup> Docket No. ER04-308, Attachment F, Tab 4, Capital Surcharge Calculation for 2004, pages 3 - 5.

<sup>11</sup> Schedule B, Table B-5.

<sup>12</sup> 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)

B. Cabrillo II

1. The filing claims an AFRR of \$6,557,641 for Cabrillo II, an unexplained increase of more than 21 percent over the \$5,401,000 approved in Docket No. ER02-1264. That increase is particularly startling in light of the fact that one of the units covered by the AFRR in Docket No. ER02-1264, the Division Street Combustion Turbine (CT), is no longer in service.

2. Cabrillo II has failed to provide notice of termination for the Division Street CT in accordance with Sections 2.2 and 7.4(f), 7.5(i) or 7.6(h), which require it to demonstrate that continued operation of the Unit would be uneconomical, impractical or illegal. . While Cabrillo II did propose a Capital Item to remedy an impairment of the Unit's capability, the ISO rejected the proposal because it did not comply with the cost recovery provisions of the RMR Agreement. Cabrillo II has not provided justification to demonstrate that a Capital Item proposal which complies with the cost recovery provisions of the RMR Agreement is uneconomical or impractical. Cabrillo II should be required to provide the required notice and justification before terminating the Unit's RMR status.

3. A&G expenses, Account Nos. 921, 923, 924, and 928, increase more than seven-fold in the current filing in relation to the filing in Docket No. ER02-1264. The total of those accounts is \$3,109,369, compared to \$454,936 in the last filing. Without explanation, Cabrillo claims \$1.3 million for outside services, Account 923 (compared to \$302,000); \$1.6 million for insurance, Account 924 (compared to \$122,000); and \$195,000 for legal, regulatory, Account 928 (compared to 0).

4. Similarly, the fixed O&M for Cabrillo II, \$5,588,349, represents an unexplained 50 percent increase over the \$3,804,337 claimed for the same units in the prior proceeding.

5. Cabrillo has failed to align its Section 205 rate information with its metering of RMR Units, thus making it difficult or impossible to assure that the invoicing for Units dispatched pursuant to the RMR Agreements is just and reasonable. Specifically, Cabrillo II RMR Kearny Units 2A, 2B, 2C and 2D are jointly metered; Kearny Units 3A, 3B, 3C and 3D are jointly metered; and Miramar Units 1A and 1B are jointly metered. However, the rates and values set forth in Cabrillo II's proposed rate sheets, including the Hourly Availability Charges (Table B-1), Hourly Capital Item Charges (Table B-2), Penalty Rates (Table B-3), Hourly Surcharge Penalty Rates (Table B-4), Target Available Hours (Table B-5) and AFRR (Table B-6), are provided on an individual unit level. Because these rate schedules are not consistent with the level of physical metering for the units, they provide no assurance that the rates and values used for dispatch and invoicing, which are based on physical metering, are based on the approved rates. As a result, Cabrillo II's proposed rate sheets, with regard to the rates and values for Kearny Units 2A, 2B, 2C and 2D; Kearny Units 3A, 3B, 3C and 3D; and Miramar Units 1A and 1B, are unjust and unreasonable.<sup>13</sup>

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<sup>13</sup> In the past, the ISO and Cabrillo II have had agreements for "translating" the rates approved by the Commission into the rates used for invoicing. This arrangement is unsatisfactory on a continuing basis. The rates approved by the Commission should be the same as those used for invoicing without the need for "translation" agreements, so that the ISO can verify that the rates used for invoicing are consistent with the rates approved by the Commission (continued...)

#### IV. CONCLUSION

In light of the foregoing, Cabrillo's revisions to the RMR Agreements have not been shown to be just and reasonable. The filing should be suspended, set for hearing, and allowed to go into effect subject to refund. As in the prior proceeding, SDG&E and the ISO propose that any hearing be held in abeyance for a period of 60 days to allow the parties to engage in discovery and to seek to eliminate, or at least narrow, their differences. Absent the resolution of those differences, the case should be set down for hearing.<sup>14</sup>

Respectfully submitted,

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as just and reasonable.

<sup>14</sup> We are authorized to state that the California Public Utilities Commission and the California Electricity Oversight Board, which are intervening by separate filings, support the instant protest.

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January 7, 2004

**CERTIFICATE OF SERVICE**

I hereby certify that I have this 7th day of January 2004, served by first class mail, postage prepaid, a copy of the foregoing upon all parties listed on the service list compiled in this proceeding.

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Nicholas W. Fels

Submission Contents

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