

98 FERC ¶ 61,031
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, Linda Breathitt,
and Nora Mead Brownell.

Geysers Power Company, LLC

Docket No. ER02-407-000

ORDER CONDITIONALLY ACCEPTING
AND SUSPENDING REVISED TARIFF SHEETS

(Issued January 16, 2002)

In this order, the Commission conditionally accepts and nominally suspends Geysers Power Company, LLC's (Geysers Power) revised tariff sheets, subject to the outcome of the proceeding in Docket No. ER02-188-000 and subject to refund.

This order benefits customers by allowing Geysers Power to continue providing must-run generation to the California Independent System Operator Corporation (California ISO) and, at the same time, affords the parties time to resolve potential issues regarding this matter.

Background

On November 26, 2001, Geysers Power filed an updated rate schedule for a Reliability Must-Run Agreement (RMR Agreement),¹ for the year 2002, between Geysers Power and California ISO for Geysers Units 13 and 16.² The filing was made pursuant to

¹An RMR Agreement is a specialized service agreement that California ISO uses to enhance grid reliability, meet local reliability needs, and manage intra-zonal congestion. RMR Agreements follow a generic, standard-form that was agreed to as part of a settlement agreement approved in California Independent System Operator Corporation, *et al.*, 87 FERC ¶ 61,250 (1999) (Settlement Agreement).

²The RMR Agreement designated as Rate Schedule FERC No.4 (1999 RMR Agreement) became effective on June 1, 1999. The 1999 RMR Agreement governs the

the terms of the Settlement Agreement under which each RMR owner is required to file annual updates to RMR Agreements for contract service limits, hourly availability charges and penalty rates, prepaid start-up costs, projected outage information, annual fixed revenue requirements (AFRR), and variable operation and maintenance rates. In its filing, Geysers Power states that it did not file annual updates for units 13 and 16 for 2000 and 2001, because neither unit was designated as an RMR unit for those years. According to Geysers Power, the 1999 RMR Agreement has not been terminated, and therefore this filing is being made in response to California ISO's designation of Geysers Unit 16 as an RMR unit for 2002.

Geysers Power's filing provides updates to those provisions of the 1999 RMR Agreement rate schedules that are required to be made annually, incorporates new rates that reflect revisions to the AFRR (in accordance with Schedule F of the RMR Agreement), and incorporates the terms of a settlement agreement approved in Duke Energy Moss Landing LLC, et al., 87 FERC ¶ 61,250 (1999). According to Geysers Power, because those revisions are pursuant to a contractual arrangement between Geysers Power and California ISO, Geysers Power has submitted only the information required in 18 C.F.R. § 35.13(b) (2001). Furthermore, Geysers Power states that on October 30, 2001, it submitted an informational package to the Commission in Docket No. ER02-188-000, which sets forth the formula for establishing revisions to rates and charges; therefore, Geysers Power requests waiver of the Commission's regulations set forth in 18 C.F.R. § 35.13(a)(2), (c), (d), (e), and (h) (2001). In addition, Geysers Power requests waiver of the Commission's 60-day prior notice requirement so that the amended rate sheets are effective as of January 1, 2001. According to Geysers Power, good cause has been shown for granting this request for waiver, because there is a contractual commitment as to the effective date in the 1999 RMR Agreement that the Commission has previously accepted (i.e., the January 1 annual update date is required under the 1999 RMR Agreement).

Notice of Filing, Protests, and Comments

rates, terms, and conditions for the provision of RMR services from Geysers Units 13 and 16 to California ISO.

Notice of Geysers Power's revised rate sheets was published in the Federal Register, 66 Fed. Reg. 63,384 (2001), with interventions, comments, and protests due on or before December 13, 2001.

On December 13, 2001, California ISO filed a protest, stating that the 1999 RMR Agreement that Geysers Power's filing attempts to revise has terminated under the terms of that agreement and, therefore, cannot now be revised. According to California ISO, once an RMR Agreement has terminated as to one or more units, California ISO must specifically redesignate a unit as an RMR unit and a new RMR Agreement must be negotiated before the designation can take effect. Therefore, California ISO states that the Commission should reject Geysers Power's filing, because Geysers Power's 1999 RMR Agreement terminated and California ISO and Geysers Power have not negotiated a new RMR Agreement for Unit 16. Moreover, California ISO states that because the 1999 RMR Agreement is terminated, the associated rates are also terminated.

California ISO claims that section 2.1(a) of the RMR Agreement provides that a specific unit is designated as an RMR for one contract year and section 2.1(b) provides that California ISO may extend the term of the agreement for an additional year by notice given not later than October 1 of the expiring contract year. California ISO states that it did not do so with respect to Geysers Unit 16; therefore, the 1999 RMR Agreement, as it relates to Geysers Unit 16, terminated on December 31, 1999.

In the alternative, California ISO states that if the Commission decides that the 1999 RMR Agreement and associated rate schedules did not terminate on December 31, 1999, the Commission should allow it to amend a joint complaint (of which it was one of the parties) that was filed with the Commission in Docket No. EL02-15-000,³ on November 2, 2001. According to California ISO, the 1999 RMR Agreement and associated rates were not included in the complaint, because that agreement had terminated on its own terms.

³The complainants in Docket No. EL02-15-000 request that the Commission institute proceedings to investigate the fixed option payments, which are payable by California ISO under the RMR Agreements between California ISO and the individual respondents listed in that matter. The complainants in that docket allege that because the fixed option payments exceed just and reasonable levels and the issue of how to properly calculate fixed option payments under RMR contracts is pending before the Commission in Docket Nos. ER98-495-000, *et al.*, the Commission should set a refund effective date of January 1, 2002.

On December 28, 2001, Geysers Power filed an answer to California ISO's motion to intervene and protest. Geysers Power states that California ISO is barred by the Mobile-Sierra Doctrine from seeking to renegotiate the 1999 RMR Agreement. In addition, Geysers Power claims that the 1999 RMR Agreement has not terminated, because the rate schedule is still on file with the Commission. Furthermore, Geysers Power maintains that California ISO cannot rescind its designation of Geysers Unit 16 as an RMR unit to avoid the provisions of the 1999 RMR Agreement.

Discussion

A. Procedural Matters

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2001), the timely, unopposed motion to intervene serves to make the entity that filed it a party to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2001), generally prohibits an answer to a protest. We are not persuaded to allow the proposed answer and, accordingly, will reject the answer.

B. Docket No. ER02-407-000

The revised tariff sheets filed by Geysers Power in Docket No. ER02-407-000 represent revised rates, which are based on the proceeding in Docket No. ER02-188-000.⁴ We find that the proposed tariff revisions have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, the Commission conditionally accepts and nominally suspends the revised tariff sheets, effective January 1, 2001,⁵ as requested, subject to the outcome

⁴In Docket No. ER02-188-000, the comment period expires January 15, 2002, and the case is currently under review.

⁵See Central Hudson Gas & Electric Corporation, et al., 60 FERC ¶ 61,106, reh'g denied, 61 FERC ¶ 61,089 (1992).

of the proceeding in Docket No. ER02-188-000 and subject to refund. We will also conditionally grant the requested waivers of the Commission's regulations set forth in 18 C.F.R. § 35.13(a)(2), (c), (d), (e), and (h) (2001), subject to the outcome of the proceeding in Docket No. ER02-188-000.

We disagree with California ISO that the 1999 RMR Agreement and associated rate schedules have terminated under the terms of that agreement and therefore cannot now be revised. Section 2.2(a) of the RMR Agreement provides, in part, that "[s]ubject to any necessary authorization from FERC, this Agreement may be terminated as to one or more Unit in accordance with this Section 2.2. . . ." See also Section 2.3. California ISO has not sought, nor has the Commission provided, authorization for the termination of the 1999 RMR Agreement. Thus, contrary to California ISO's arguments, the 1999 RMR Agreement and associated rate schedules did not terminate on December 31, 1999 and remain in effect.

We reject California ISO's request that it be allowed to amend the joint complaint that was filed in Docket No. EL02-15-000. A review of the complaint in that proceeding indicates that it already includes the RMR Agreement at issue in this proceeding.

The Commission orders:

(A) The Commission hereby conditionally accepts and nominally suspends the revised tariff sheets, subject to the outcome of the proceeding in Docket No. ER02-188-000 and subject to refund, effective January 1, 2002, as discussed in the body of this order.

(B) The Commission hereby rejects California ISO's request that it be allowed to amend the joint complaint that was filed in Docket No. EL02-15-000, as discussed in the body of this order.

(C) Geysers Power's request for waiver of the Commission's regulations set forth in 18 C.F.R. § 35.13(a)(2), (c), (d), (e), and (h) (2001) is hereby conditionally granted, subject to the outcome of the proceeding in Docket No. ER02-188-000, as discussed in the body of this order.

By the Commission.

(S E A L)

Linwood A. Watson, Jr.,
Acting Secretary.