

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

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| California Independent System Operator Corporation, et al. |) | |
| v. |) | Docket No. EL02-15-___ |
| Cabrillo Power I LLC, et al. |) | |
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| California Independent System Operator Corporation, et al. |) | |
| v. |) | Docket No. EL03-22-___ |
| Cabrillo Power I LLC, et al. |) | |

**MOTION TO DEFER ACTION
ON COMMISSION PROCEEDINGS ON REMAND
AND
MOTION TO DISMISS LSP SOUTH BAY, LLC**

Pursuant to Rule 212 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission), 18 C.F.R. § 385.212 (2006), the California Independent System Operator Corporation (CAISO), Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), San Diego Gas & Electric Company (SDG&E), and the California Electricity Oversight Board (CEOB) (together, the “Complainants”),¹ hereby move the Commission to (i) dismiss LSP South Bay, LLC and (ii) defer action in the captioned proceedings to permit the parties an opportunity to engage in settlement discussions.²

¹ The California Public Utilities Commission (CPUC) is also a complainant in this proceeding, however, due to vacation schedules, the movants were unable to reach the appropriate representative at the CPUC regarding this motion. Therefore, the CPUC is not included as a signatory to this motion, but the movants have no cause to believe that the CPUC would not support it.

² LSP South Bay is the successor-in-interest to respondent Duke Energy South Bay LLC as a result of a change in corporate name. *See Answer of LSP South Bay, LLC to Complainants’ Motion Proposing Procedures for Commission Proceedings on Remand*, at n. 1, *California Independent System Operator Corp., et al., v. Cabrillo Power I LLC, et al.*, Docket Nos. EL02-15 and EL03-22 (July 25, 2006).

I. Procedural Background

Complainants initiated this proceeding on November 2, 2001, requesting an investigation into the justness and reasonableness of a rate under the Respondents' respective reliability must run (RMR) agreements with the CAISO.³ The rate at issue is the Fixed Option Payment (FOP), intended to compensate the generator for being available to dispatch its plant when needed for local reliability. The FOP is a function of the RMR plant's annual fixed cost of service and a multiplier between zero and one, the Fixed Option Payment Factor (FOPF). The Complaint alleges that the FOPs for RMR units operating under Condition 1 were unjust and unreasonable because of the level of the FOPFs and requested that the Commission order that the FOPFs be based on a net incremental cost rate methodology. By Order dated June 3, 2005,⁴ the Commission dismissed the Complaint.

The Complainants appealed the Commission's June 3 Order to the United States Court of Appeals for the District of Columbia Circuit.⁵ On May 18, 2006, the Commission sought voluntary remand of the case to allow it to more fully analyze the issues raised by the Complainants on appeal. The Court granted the Commission's request remanding the Complaint proceeding to the Commission for further consideration.⁶

³ There are three remaining respondents: Cabrillo Power I LLC and Cabrillo Power II LLC (Cabrillo), Geysers Power Company LLC (Geysers), and LSP South Bay. In 2002, the Complainants reached a settlement with respondent Williams Energy Marketing & Trading Company (Williams). As a result of the settlement, the Commission granted Williams' and the Complainants' Joint Motion to Dismiss Williams from the Complaint proceedings. *Williams Energy Marketing & Trading Co.*, 105 FERC ¶ 61,165 (2003) (order approving uncontested settlement and dismissing Williams from complaint proceeding in Docket No. EL02-15-000).

⁴ *California Independent System Operator Corporation v. Cabrillo Power I, LLC*, 111 FERC ¶ 61,358, *reh'g*, 112 FERC ¶ 61,157 (2005).

⁵ *Pacific Gas and Electric Co., et al. v. FERC*, No. 05-1374 (filed Sept. 23, 2005).

⁶ Order Granting Motion for Voluntary Remand, *Pacific Gas and Electric Co., et al. v. FERC*, No. 05-1374 (issued June 19, 2006).

On July 10, 2006, Complainants filed with the Commission a Motion Proposing Procedures for Commission Proceedings on Remand (Motion Proposing Procedures) requesting that the Commission promptly institute hearing procedures to investigate the Complaint. Each of the Respondents filed an Answer to Complainants' Motion Proposing Procedures. The Commission has not yet taken any action on remand.

II. Motion to Dismiss LSP South Bay, LLC

Complainants stated in their July 10 Motion Proposing Procedures that “no settlement between Complainants and the Respondents has mooted or otherwise resolved the issues raised in the Complaint.”⁷ LSP South Bay's Answer noted that the Complaint is in fact moot with respect to LSP South Bay because the South Bay RMR units operated under Condition 2 status during 2003, the only period of time during the refund period⁸ that the Condition 1 FOPF issue had not been resolved by settlement.⁹ Because the South Bay RMR units operated under Condition 2 status for all of 2003 and the Complaint only challenges the FOPF rate component when RMR units operate under Condition 1 status, the Complaint is moot as to LSP South Bay for the entirety of 2003. Complainants, therefore, agree with LSP South Bay's request that the Commission dismiss, with prejudice, the Complaint as to LSP South Bay and the South Bay RMR units.

⁷ Motion Proposing Procedures at pp. 2-5.

⁸ The Commission has not formally established a refund period, but by statute, the refund period is a fifteen month period between January 1, 2002 and August 30, 2003.

⁹ LSP South Bay, CAISO and SDG&E are parties to a letter agreement dated June 29, 2005 that settled all claims and disputes arising out of this Complaint for the period July 1, 1998 through December 31, 2002. *See* Complainants' Motion Proposing Procedures at p. 5.

III. Motion to Defer Commission Action

Complainants request that the Commission defer action in this docket for forty-five days to allow the parties to engage in settlement discussions. If the Commission grants the Motion to Dismiss LSP South Bay, there will be two Respondents remaining in this Complaint proceeding: Geysers and Cabrillo. Over the last several months, there have been active settlement discussions with Geysers' parent company, Calpine Corporation, in Docket Nos. ER06-261, ER06-268 and ER03-510 regarding various outstanding RMR issues, including the FOPF issue pending in this Complaint. Calpine, PG&E and the CAISO recently reported to the Chief Judge in a status report filed in Docket Nos. ER06-261, ER06-268 and ER03-510, that as a result of those discussions, there is a "tentative proposal for resolving all outstanding issues in [Docket Nos. ER06-261, ER06-268 and ER03-510], as well as other matters."¹⁰ The settlement in principle resolves all outstanding issues in the Complaint with respect to Geysers. Calpine, PG&E and the CAISO anticipate drafting the settlement agreement during the next thirty days.¹¹ Once Calpine, PG&E and the CAISO finalize and file a settlement agreement, the Complainants and Geysers would file a joint motion to dismiss Geysers from the Complaint conditioned on the Commission approving the settlement agreement.

Complainants also wish to actively explore settlement with the other Respondent, Cabrillo and, to that end, SDG&E has been in communications with Cabrillo regarding the possibility of engaging in settlement negotiations. Accordingly, based on the status of settlement

¹⁰ *Status Report on Settlement Negotiations and Request for Continued Deferral of the Appointment of a Settlement Judge*, Los Esteros Critical Energy Facility, LLC and Delta Energy Center, LLC, Docket Nos. ER06-261, ER06-268 and ER03-510 (filed August 17, 2006).

¹¹ The Chief Judge granted the parties' request and ordered the parties to file either settlement or a further status report by September 18, 2006. *See Order of Chief Judge Continuing Deferral of Appointment of Settlement Judge*, Los Esteros Critical Energy Facility, LLC and Delta Energy Center, LLC, Docket Nos. ER06-261, ER06-268 and ER03-510 (issued August 21, 2006).

negotiations with Calpine, and the Complainants' interest in engaging in settlement discussions with Cabrillo, Complainants request that the Commission defer action in this proceeding for forty-five days. Complainants would advise the Commission of the status of the settlement negotiations at the end of the forty-five day period.

Permitting the parties an opportunity to settle this Complaint is consistent with the Commission's policy favoring settlement and would result in adjudicative economy. A deferral would also eliminate the potential inefficient use of the parties' own resources by allowing them to focus on settlement. Moreover, granting this motion will not prejudice the interest of any party to these proceedings. For these reasons, a forty-five day deferral of action is in the public interest and should be granted.

IV. Request for Shortened Notice Period

The Complainants have been authorized to state that LSP South Bay and Geysers support this motion as to each of them, respectively. Complainants respectfully request a shortened seven (7) day answer period for responses to this Motion to allow for an order granting this Motion to be issued as soon as possible.

V. Conclusion

For the reasons described above, Complainants respectfully request that the Commission grant this Motion and (i) dismiss, with prejudice, LSP South Bay, LLC from the Complaint proceeding and (ii) hold any further action or proceedings in abeyance for forty-five days.

Dated: August 25, 2006

Respectfully submitted,

/s/ Stuart K. Gardiner

Stuart K. Gardiner
Alyssa T. Koo
Pacific Gas and Electric Company
Law Department, B30A
P.O. Box 7442
San Francisco, CA 94120-7442
(415) 973-2040
Counsel for Pacific Gas and Electric
Company

/s/ Mary Anne Sullivan

Mary Anne Sullivan
Karin L. Larson
HOGAN & HARTSON L.L.P.
555 Thirteenth Street, N.W.
Washington, D.C. 20004
(202) 637-5600
Counsel for California Independent System
Operator Corp.

/s/ James F. Walsh, III

James F. Walsh, III
Sempra Energy
101 Ash Street, HQ13
Law Department
San Diego, CA 92101-3017
(619) 699-5022
Counsel for San Diego Gas and Electric
Company

/s/ Kris G. Chisholm

Erik N. Saltmarsh, Chief Counsel
Kris G. Chisholm, Staff Counsel
California Electricity Oversight Board
770 L Street
Suite 1250
Sacramento, CA 95814
(916) 322-8633
Counsel for California Electricity Oversight
Board

/s/ Richard L. Roberts

Richard L. Roberts
STEPTOE & JOHNSON
1330 Connecticut Avenue, NW
Washington, DC 20036-1795
(202) 429-6756
Counsel for Southern California Edison
Company

CERTIFICATE OF SERVICE

I hereby certify that I have this 25th day of August, 2006, caused to be served a copy of the forgoing Motion to Defer Action and Motion to Dismiss LSP South Bay, LLC upon all parties listed on the official service lists compiled by the Secretary of the Federal Energy Regulatory Commission in these proceedings.

/s/ Karin L. Larson
Karin L. Larson
Hogan & Hartson L.L.P.
555 13th Street, N.W.
Washington, D.C. 20004