

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

Cabrillo Power I LLC) Docket No. ER07-290-000
Cabrillo Power II LLC) Docket No. ER07-291-000

**MOTION TO INTERVENE AND PROTEST OF THE CALIFORNIA
INDEPENDENT SYSTEM OPERATOR CORPORATION**

Pursuant to Rules 211 and 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”), 18 C.F.R. §§ 385.211 and 385.214 (2006), the California Independent System Operator Corporation (“CAISO”) submits this Motion to Intervene and Protest (“Motion”) in the captioned proceedings. In support thereof, CAISO states as follows:

I. Background and Description of the Proceeding

On December 1, 2006, Cabrillo Power I LLC (“Cabrillo I”) and Cabrillo Power II LLC (“Cabrillo II”) 1/ submitted, pursuant to Section 205 of the Federal Power Act (“FPA”), a filing proposing revised rate schedule sheets to their respective Reliability Must-Run Agreements (“RMR Agreements”) 2/ with the CAISO for Contract Year 2007. 3/

Cabrillo I and Cabrillo II have provided RMR services to the CAISO pursuant to the CAISO *pro forma* RMR Agreement since 1999. 4/ Cabrillo I and Cabrillo II have

1/ Cabrillo I and Cabrillo II are wholly-owned subsidiaries of West Coast Power LLC, which is itself a wholly-owned subsidiary of NRG Energy, Inc. (“NRG”).

2/ Because the generation units covered by an RMR agreement must operate at certain times for the reliability of the transmission grid, they are referred to as “reliability must-run” or “RMR” units. Other capitalized terms that are not defined in this filing have the same meaning set forth in the RMR Agreement.

3/ The Commission assigned Docket No. ER07-290-000 to the Cabrillo I filing and Docket No. ER07-291-000 to the Cabrillo II filing.

provided RMR services pursuant to service agreements produced in two separate joint settlements reached with the CAISO and other concerned California entities, one covering calendar years 2002 to 2003 ^{5/} and another covering calendar years 2004 to 2006. ^{6/} The most recent settlement, covering calendar years 2004 to 2006, established the Annual Fixed Revenue Requirement (“AFRR”) for Cabrillo I and Cabrillo II for the three years covered by the settlement. That settlement has now expired.

On September 29, 2006, the CAISO extended the term of the RMR Agreements with Cabrillo I and Cabrillo II by one year, thereby establishing an RMR service obligation for Calendar Year 2007, and an obligation on the part of Cabrillo I and Cabrillo II to update their RMR Agreements for Calendar Year 2007. As part of pre-filing discussions, Cabrillo I and Cabrillo II, through their indirect owner, NRG, informed the CAISO that they were in negotiations with a California load serving entity to enter into a power purchase agreement regarding the output of the Cabrillo units. As part of those discussions, the CAISO agreed to support Cabrillo I and Cabrillo II’s proposal to continue in effect in Calendar Year 2007 rates the 2006 AFRR values for those units provided they were subject to the final power purchase agreement with a California load serving entity. ^{7/}

The revised RMR Agreements submitted by Cabrillo I and Cabrillo II on December 1, 2006 revised Schedule B to provide for the continued applicability of the

^{4/} The Commission originally approved the *pro forma* RMR Agreement in *California Independent System Operator Corp.*, 87 FERC ¶ 61,250 (1999).

^{5/} *Cabrillo Power I, LLC, et al.*, 103 FERC ¶ 61,054 (2003).

^{6/} *Cabrillo Power I, LLC et al.*, 110 FERC ¶ 61,143 (2005).

^{7/} See December 1, 2006 transmittal letter in these proceedings at n. 4 (explicitly tying continuation of 2006 rates to 2007 RMR Agreements on finalizing a power purchase agreement with a California load serving entity).

2004-2006 settlement-established 2006 AFRR values for Calendar Year 2007. ^{8/} Further, Cabrillo I and Cabrillo II submitted no Schedule F (the annual informational filing to establish the revenue requirement) for either entity on the grounds that, for RMR Units that were subject to an agreement to meet the California Public Utility Commission's Resource Adequacy requirements, the contingent settlement could be used in lieu of the filing of Schedule F and could provide for the continuation of the 2006 AFRR values agreed to in the prior settlement. ^{9/}

On December 15, 2006, Cabrillo I entered into a power purchase agreement with a load serving entity (the "RA Contract"). The RA Contract as negotiated, however, does not include Cabrillo II's RMR Units. This result is contrary to the CAISO's expectations regarding the commitment of Cabrillo II's output and eliminates the proffered justification for Cabrillo II's failure to file a Schedule F to support a 2007 AFRR.

II. Motion to Intervene

A. Description of CAISO and Communications

The CAISO is a non-profit public benefit corporation organized under the laws of the State of California with a principal place of business at 151 Blue Ravine Road, Folsom, CA 95630. The CAISO is the Control Area Operator responsible for the reliable operation of a grid comprising of the transmission systems of a number of public utilities, as well as the coordination of the ancillary services and real-time electricity markets in California.

The CAISO requests that all communications and notices concerning this motion and these proceedings be provided to:

^{8/} *Id.* at p. 5.

^{9/} *Id.* at p. 6.

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B. Interest in the Proceeding

Cabrillo I and Cabrillo II are located on the southern California transmission system and are needed to maintain the reliability of such system. As the Control Area Operator responsible for maintaining reliability of the transmission system and, as counterparty to the Cabrillo I and Cabrillo II RMR Agreements, the CAISO has a unique interest in any Commission proceeding concerning proposed changes to the RMR Agreement. Accordingly, the CAISO has a direct and substantial interest in this proceeding and requests that it be permitted to intervene with full rights of a party. Because no other party can adequately represent the CAISO's interests, the CAISO's intervention is in the public interest and should be granted.

III. Protest

The CAISO supports the Cabrillo I filing and protests the Cabrillo II filing. The difference in the CAISO's position with respect to the two filings arises out of the commitment of the output of the respective units under the December 15, 2006 RA

Contract with the load serving entity: Cabrillo I's output is subject to the RA Contract whereas Cabrillo II's output is not.

The CAISO does not object to the absence of a Schedule F and continuation of the 2006 AFRR values established in the 2004-2006 settlement agreement in 2007 for Cabrillo I because its RMR Units are subject to the RA Contract. The operation of Cabrillo I under that agreement for load serving purposes will greatly diminish the need for the RMR rates to be employed, and thus, continuation of the existing 2006 rates for RMR service without updated cost support, although procedurally irregular, is acceptable under the circumstances because there will be a minimal impact on ratepayers.

On the other hand, the CAISO cannot support continuation of a stale AFRR rate for Cabrillo II during any period in which Cabrillo II's output is not subject to an RA Contract since 100 percent of the RMR rates will be charged to users of the transmission system. The CAISO originally had expected that Cabrillo II's RMR Units would be subject to an RA Contract, and on that basis had supported continuation of the Calendar Year 2006 AFRR rates for Cabrillo II. However, Cabrillo II did not reach agreement on a bilateral contract for Cabrillo II with a California load serving entity. Absent such an agreement, the CAISO cannot support continuation of the existing AFRR without adequate cost support.

Specifically, the CAISO protests Cabrillo II's failure to provide an updated Schedule F informational filing supporting its 2007 AFRR values and an update to the Cabrillo II 2007 rate filing consistent with these values and the terms of the RMR Agreement. Absent inclusion of the underlying revenue requirement data, the CAISO can have no confidence in the justness and reasonableness of Cabrillo II's RMR rates.

Schedule F provides for calculation for each Calendar Year using cost components from a “test year,” which is the prior twelve month period ending on June 30. By carrying forward the AFRR for 2006 that was the product of a settlement agreement reached in 2004, Cabrillo II is basing its costs on stale data. Until Cabrillo II files a 2007 Schedule F reflecting a new updated “test year” of costs, there is no basis for the CAISO, or this Commission, to determine whether the existing 2006 AFRR which Cabrillo II proposes to continue is an accurate representation of Cabrillo II’s costs.

Based on the foregoing, Cabrillo II has not shown that its proposed rates are just and reasonable. Accordingly, the CAISO requests that the Commission suspend the Cabrillo II rate schedules subject to hearing and establish a refund effective date equal to the proposed effective date, January 1, 2007. In addition, Cabrillo II should be directed to file a new Schedule F containing accurate information from the most recent test year available as well as appropriate revisions to the RMR rates to reflect the AFRR reflected in the Schedule F filing. Prior to taking such action, however, the CAISO requests that the Commission afford Cabrillo II, the CAISO and other interested parties an opportunity to reach a settlement resolving the appropriate 2007 AFRR for Cabrillo II. The CAISO and Cabrillo II are actively engaged in settlement discussions, the successful resolution of which would obviate the need for Commission action.

V. Conclusion

For the foregoing reasons, the CAISO respectfully requests that the Commission (i) grant the CAISO’s motion to intervene in the above-captioned proceeding giving it full rights of a party and, (ii) in consideration of the CAISO protest, rule that the rate schedules set forth in Cabrillo II’s filing have not been shown to be just and reasonable;

suspend the rate schedules subject to hearing, establish a refund effective date equal to the proposed effective date, January 1, 2007, and, in the absence of a settlement between the parties prior to January 31, 2007, direct Cabrillo II to supplement its filing with a Schedule F informational filing and updated rate values consistent with the terms of the RMR Agreement.

Dated: December 22, 2006

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this 22nd day of December, 2006 caused to be served a copy of the foregoing Motion to Intervene and Protest upon all parties listed on the official service list compiled by the Secretary of the Federal Energy Regulatory Commission in this proceeding.

/s/ Geo. F. Hobday, Jr.
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