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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners:

CalPeak Power, LLC

Docket Nos. ER04-517-000
ER04-517-001

ORDER CONDITIONALLY ACCEPTING FOR FILING RELIABILITY
MUST-RUN AGREEMENT

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1. In this order, the Commission conditionally accepts for filing CalPeak Power, LLC's (CalPeak) proposed Reliability Must-Run Agreement (RMR Agreement)¹ with the California Independent System Operator Corporation (CAISO) for the El Cajon power plant, as discussed herein. This order benefits customers because it allows CalPeak to provide must-run generation to the CAISO.

I. Background

2. RMR Agreements provide the rates, terms, and conditions by which CalPeak and other power plant owners in California provide RMR service to the CAISO by dispatching designated units at certain power plants at the direction of the CAISO.

3. On January 30, 2004, as amended on February 20, 2004, CalPeak submitted, pursuant to section 205 of the Federal Power Act,² its unexecuted RMR Agreement. The RMR Agreement arises out of a bid to provide RMR services that CalPeak submitted to CAISO during CAISO's 2004 Local Area Reliability Service process.³ The CAISO accepted CalPeak's bid for RMR service for the 2004 calendar year (Year 2004). The RMR agreement reflects the bid price, as well as other terms and conditions agreed upon

¹ CalPeak's RMR Agreement follows a generic, standard form that was agreed to as part of a settlement approved by the Commission in a letter order issued on May 28, 1999. See *California System Operator Corporation, et al.*, 87 FERC ¶ 61,250 (1999).

² 16 U.S.C. § 824d (2000).

³ CAISO conducts the Local Area Reliability Service analysis on an annual basis to determine which resources CAISO requires to ensure that local areas meet their reliability criteria.

by CalPeak and CAISO. In addition, CalPeak requests waiver of the Commission's 60-day prior notice requirement to permit an effective date of February 1, 2004 in order to commence providing RMR services as soon as possible.

II. Notice of Filing and Responsive Pleadings

4. Notices of CalPeak's filing and amended filing were published in the Federal Register, 69 Fed. Reg. 6963 (2004) and 69 Fed. Reg. 10,023 (2004), respectively, with interventions and protests due on or before March 12, 2004. The Public Utilities Commission of the State of California (CPUC) filed a timely notice of intervention. The State of California Electricity Oversight Board filed a timely motion to intervene. San Diego Gas and Electric Company (SDG&E), the California Energy Resources Scheduling Division of the California Department of Water Resources (CDWR) and the CAISO filed timely motions to intervene and comments. CalPeak and CAISO filed answers to the protests.

5. SDG&E and CDWR (collectively, Protestors) generally state that the dispatch protocols in Article 4 (Dispatch of Units) of the unexecuted RMR Agreement could conflict with contractual rights of other parties and increase costs associated with these contracts. For example, Protestors state that the Amended and Restated Power Purchase Agreement (Amended PPA) between CDWR and CalPeak dedicates output from the El Cajon power plant to the CDWR for 2500 hours annually, which preserves CDWR's right to dispatch units in real time. Under the RMR Agreement, the CAISO would have the right to dispatch the CalPeak unit up to 1786 hours annually. CDWR and SDG&E contend that since both the CDWR's Amended PPA and the RMR Agreement contain real-time dispatch rights, the RMR Agreement could allow CalPeak to sell capacity or energy that is already dedicated to CDWR. Protestors request that any payments for rights already sold to CDWR be dedicated to CDWR, rather than to CalPeak, in order to ensure that the ratepayers are kept whole.

6. In its answer, CalPeak states that neither CDWR nor CDWR's agent SDG&E, will lose any rights due to a dispatch of the unit for RMR purposes because the CAISO's tariff does not contemplate real-time dispatch for scheduling energy into the market. CalPeak and the CAISO contend that the RMR Agreement specifically states that the CAISO cannot require CalPeak to provide service from a unit if doing so would cause a breach of an existing contractual limitation. In addition, they state that CalPeak would not be receiving any payment for energy that would duplicate what the ratepayers are already paying for and that the CAISO will pay CalPeak's variable costs for each MWh of energy dispatched under the RMR Agreement, but only to the extent that the unit is not receiving compensation from a third party, such as CDWR.

III. Discussion

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2003), the notice of intervention and the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2003), prohibits answers to protests unless otherwise ordered by the decisional authority. We will accept CalPeak's and CAISO's answers because they have provided information that assisted us in our decision-making process.

8. Our review of CalPeak's RMR Agreement indicates that it appears to be just and reasonable, and has not been shown to be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. In addition, we will grant CalPeak's request for waiver of the Commission's 60-day prior notice requirement.⁴ Accordingly, we accept CalPeak's proposed RMR Agreement as conditioned below to be effective February 1, 2004, as requested.

9. For the reasons set forth below, we find that neither CDWR nor SDG&E, acting as operating agent for CDWR, will lose any rights due to a dispatch of the unit for RMR purposes. First, Section 4.6 (viii) of the RMR Agreement (Limitations on CAISO's Right to Dispatch) provides that the CAISO's Dispatch Notice may not request the unit owner to provide service from a unit if doing so would cause a breach of the contract. In addition, we note that Schedule A – Section 14 (Existing Contractual Limitations and Other Contract Restrictions on Market Transactions) of the RMR Agreement states that the Amended PPA provides the CDWR a contractual right to schedule up to the annually tested rated capacity for energy from the unit for a total of 2,500 hours annually. Finally, we note that Article II – Section 2.01 (Purchase and Sale of Contract Capacity and Energy) of the Amended PPA states that CalPeak may provide electric capacity and energy from the Facility to third parties, provided, however, that such sales shall not limit the availability of Dedicated Hours for any reason, including emissions. We find that the sections cited above in the RMR Agreement and the Amended PPA address CDWR's and SDG&E's concerns.

10. We note that the page numbers for the titles in the Table of Contents in CalPeak's proposed RMR Agreement do not correspond to the page numbers of the titles throughout the proposed RMR Agreement. We direct CalPeak to refile its proposed RMR Agreement to reflect the correct page numbers of the titles in the Table of Contents within 15 days of the date of this order.

The Commission orders:

(A) CalPeak's proposed unexecuted RMR Agreement is hereby accepted for

⁴ See 18 C.F.R. § 35.11 (2003); see also Central Hudson Gas & Electric Corp., et al., 60 FERC ¶ 61,106 at 61,338-39, reh'g denied, 61 FERC ¶ 61,089 (1992).

filing to become effective February 1, 2004, as requested, as discussed in the body of this order.

(B) CalPeak is hereby directed to make a compliance filing within 15 days of the date of this order, as discussed in the body of this order.

By the Commission.

Secretary