

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

CalPeak Power – El Cajon, LLC) Docket No. ER05-1231-000

**JOINT COMMENTS OF THE
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORP.,
SAN DIEGO GAS AND ELECTRIC COMPANY AND
CALIFORNIA ELECTRICITY OVERSIGHT BOARD**

Pursuant to Rule 211 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission” or “FERC”), 18 C.F.R. § 385.211 (2004), the California Independent System Operator Corporation (“CAISO”), San Diego Gas and Electric Company (“SDG&E”), and the California Electricity Oversight Board (“EOB”) (collectively the “Parties”) submit these Joint Comments in support of CalPeak Power – El Cajon, LLC’s (“CalPeak”) July 21, 2005 Section 205 filing. 1/ In support of these Comments, the Parties state as follows:

I. Background

On October 27, 2004, CalPeak submitted, pursuant to Section 205 of the Federal Power Act (“FPA”) its annual filing providing updated rates and associated data for its Reliability Must Run Agreement (“RMR Agreement”) with the CAISO for Contract Year 2005 (the “2005 RMR Filing”). 2/ Both the CAISO and EOB intervened in the proceeding. No party protested the filing. The Commission

1/ The California Public Utilities Commission has authorized the Joint Parties to state that it supports their position as stated herein and the request for relief.

2/ CalPeak Power-El Cajon, LLC, Docket No. ER05-83-000.

accepted the filing by Letter Order dated December 14, 2005 with a January 1, 2005 effective date.

Prior to submitting its 2005 RMR Filing, CalPeak gave the CAISO an opportunity to review the proposed revised rate schedules. At that time, the CAISO noted and informed CalPeak that the prepaid start-up costs and corresponding prepaid start-up charge in Table D-0 did not accurately reflect CalPeak's related calculations; *i.e.*, CalPeak had made a purely mathematical error. It recently came to the CAISO's and CalPeak's attention that CalPeak inadvertently failed to correct this error in the 2005 RMR Filing. Accordingly, on July 21, 2005, CalPeak submitted, pursuant to Section 205 of the FPA, a limited correction to Table D-0 of its rate schedule sheets for its RMR Agreement with the CAISO. CalPeak requests a January 1, 2005 effective date for the corrected rate schedule.

II. Comments in Support of CalPeak's Filing

The Parties appreciate and support CalPeak's prompt action to correct its inadvertent mathematical error. The corrected pre-paid start up charge is \$126,700 less than the previously filed erroneous prepaid start-up charge for Contract Year 2005. Accordingly, the Commission should grant CalPeak's request for a waiver of the sixty-day prior notice requirement to permit the corrected rate schedule to be deemed effective as of January 1, 2005.

The requested waiver is consistent with the Commission's policy set forth in Central Hudson Gas & Electric Corp., 60 FERC ¶ 61,106, order on reh'g, 61 FERC ¶ 61,089 (1992) ("Central Hudson"). In Central Hudson, the Commission affirmed that, pursuant section 205 of the FPA, 16 U.S.C. § 824(d), it has the

discretion to grant waiver of the sixty-day prior notice requirement for good cause shown. The Commission also stated that, in cases where the “filing has no rate impact or reduces the rate,” that waiver of the notice requirement is appropriate. This is such a case. The effect of the requested correction is to reduce rates. ^{3/} Accordingly, CalPeak should be permitted to correct a mistake to the benefit of its customers.

III. Conclusion

For the foregoing reasons, the Parties respectfully request that the Commission consider these Joint Comments and (i) grant CalPeak’s request for waiver of the prior notice requirement and (ii) accept CalPeak’s revised Schedule D of the RMR Agreement effective January 1, 2005.

Dated: August 11, 2005

Respectfully submitted

/s/ Mary Anne Sullivan

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^{3/} In its submission, CalPeak noted that the erroneous rate would not cause any changes to “the past accounting for services.” This is true because CalPeak has not yet submitted invoices for the RMR services it has provided pursuant to the erroneous tariff sheet. CalPeak has, however, rendered services for which the CAISO would have to pay a higher price if it were invoiced under the erroneous tariff sheet. CalPeak has authorized the Joint Parties to state that it agrees with the foregoing description of the impact of the error.

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CERTIFICATE OF SERVICE

I hereby certify that I have this 11th day of August, 2005 caused to be served a copy of the forgoing Joint Comments upon all parties listed on the official service list compiled by the Secretary of the Federal Energy Regulatory Commission in this proceeding.

/s/ Sidney M. Davies
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