UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

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FEDERAL ENERGY
REGULATORY COMMISSION

ORIGINAL

California Independent System Operator Corporation,	)	
California Electricity Oversight Board,	)	
Public Utilities Commission of the State of California, and	)	
San Diego Gas & Electric Company,	)	
Complainants,	)	
v.	)	**Docket No. EL03- 22 -000**
Cabrillo Power I LLC,	)	
Respondent.	)	

JOINT COMPLAINT

By this complaint, filed pursuant to Section 206 of the Federal Power Act, 16 U.S.C. § 824e, and to Rule 206 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.206, the California Independent System Operator Corporation (the "ISO"), the California Electricity Oversight Board (the "EOB"), the Public Utilities Commission of the State of California (the "CPUC"), and San Diego Gas & Electric Company ("SDG&E"), (jointly, the "Complainants") request that the Commission institute proceedings to investigate certain rates -- the "Fixed Option Payment" -- payable by the ISO under the "reliability must-run" ("RMR")

contract between the ISO and the respondent Cabrillo Power I LLC with respect to Unit 4 of the Encina generating plant at Carlsbad, California.[1]

In their complaint filed in November 2001 in Docket No. EL02-15-000, the Complainants, together with Southern California Edison Company ("Edison") and Pacific Gas and Electric Company ("PG&E") sought modification of the Fixed Option Payments payable by the ISO with respect to a number of generating units at plants throughout California that had been designated as "must-run" units for 2002. Encina 4 was not among those units. Encina 4 is now identified as needed for local area reliability and eligible to be designated as a "must-run" unit for 2003, and Complainants accordingly here seek the same relief with respect to that unit. Because, as described in the Docket No EL02-15-000 complaint, the issue of how properly to calculate the Fixed Option Payment under the RMR contracts remains pending before the Commission on exceptions in Docket Nos. ER98-495-000, et al., the Commission need not take any action on the merits of this complaint at this time. It need only set a refund effective date of January 1, 2003 and defer further action herein until it has ruled on the exceptions in those dockets.

I. NOTICES AND COMMUNICATIONS

The following persons are designated to receive service pursuant to 18 C.F.R. §385.2010:

For The California Independent System Operator Corporation:

Jeanne M. Solé*
Regulatory Counsel
California Independent System Operator Corporation
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Folsom, CA 95630

J. Phillip Jordan*
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3000 K Street, N.W.
Washington, D.C. 20007-5116

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[1] A draft notice of this filing, suitable for publication in the Federal Register, is attached as Attachment B hereto. An electronic copy is provided on the enclosed diskette.

Deborah A. Le Vine[2]
Director of Contracts
California Independent System Operator
Corporation
151 Blue Ravine Road
Folsom, CA 95630

* Individuals designated for service pursuant to Rule 203(b)(3), 18 C.F.R. § 203(b)(3).

For the California Electricity Oversight Board:

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For the California Public Utilities Commission:

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For San Diego Gas & Electric Company:

Theodore E. Roberts
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San Diego, CA 92101-3017

II. INFORMATION REQUIRED BY SECTION 385.206(b)(9)

Complainants have not initiated formal or informal dispute resolution procedures with regard to the rates the Commission is requested to investigate in this complaint. Complainants believe that, until the Commission rules on the pending exceptions in Docket No. ER98-495-000, the current rate uncertainty will make it unlikely that dispute resolution

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[2] In addition to Ms. Solé and Mr. Jordan, the ISO respectfully requests that Ms. Le Vine be included in the Official Service List. Ms. Solé and Ms. Le Vine work in separate buildings, and it would be of significant assistance to the ISO if both were included on the list.

procedures would successfully resolve the rates in dispute. Complainants are, however, willing to engage in such discussions once the Commission has established a refund effective date in this proceeding and ruled on exceptions in Docket Nos. ER98-495-000, et al.

III. PARTIES

a. Complainants

The ISO is a not-for-profit public benefit corporation organized under the laws of the State of California with its principal place of business at 151 Blue Ravine Road, Folsom, California. Under California law, as well as the orders of this Commission, the ISO is responsible for the reliable operation of the transmission system it controls (the "ISO Controlled Grid"), which includes the transmission facilities owned by PG&E, SDG&E, Edison and the City of Vernon, California, respectively, as well as for the coordination of the competitive Ancillary Services and real-time electricity markets in California. The ISO is also the Control Area Operator for the ISO Controlled Grid and other areas of California that constitute the ISO Control Area. In order to operate the ISO Controlled Grid reliably and to satisfy its obligations as Control Area Operator, the ISO uses RMR contracts to meet local reliability needs or manage intra-zonal congestion. The ISO is party to one or more RMR contracts with each of the respondents in this docket and in EL02-15-000 with respect to the RMR units owned (or operated) by that respondent.

The EOB was created as part of California's comprehensive electricity restructuring legislation. The Board's statutory responsibilities include the oversight of the ISO, including the energy and ancillary services markets operated by the ISO, the reliability of the ISO-controlled grid and the investigation of California's energy markets to ensure protection of California citizens and consumers. Its principal offices are at 770 L Street, Suite 1250, Sacramento, California.

The CPUC is an agency established by the Constitution of the State of California and charged with the responsibility for regulating electric corporations within the State of California. It has a statutory mandate to represent the interests of electric consumers throughout California in proceedings before FERC. Its principal offices are at 505 Van Ness Avenue, San Francisco, California.

SDG&E is a California corporation with its principal place of business at 8330 Century Park Court, San Diego, California. Under Section 5.2.8 of the ISO tariff, the charges payable by the ISO under the RMR contract with respondent Cabrillo Power I LLC ("Cabrillo I") are billed to SDG&E as the "Responsible Utility" with respect to the units covered by such contracts.

b. Respondents

Cabrillo I is a Delaware limited liability company, with its principal place of business at 1000 Louisiana Street, Houston, Texas. Cabrillo I owns and operates Units 1-5, and a combustion turbine, at the Encina power plant at Carlsbad, California, all of which have been designated by the ISO as RMR units for 2003. During 2002, all Encina units except Unit 4 were designated as RMR units. The identification of Unit 4 as a unit needed for local area reliability and eligible for designation as an RMR unit for the year 2003 necessitated the filing of the instant complaint.

IV. BACKGROUND

The RMR contract between the ISO and Cabrillo I is one of several such contracts that were initially approved by the Commission in conjunction with the restructuring of the California electricity market as a means of mitigating the localized market power that would otherwise accrue to the owners or others who control the dispatch of certain generating plants. Those plants, because of their location and the configuration of the transmission system, must run at certain times to maintain the reliability of the transmission grid controlled by the ISO.

Broadly speaking, the contracts require that the owners or operators of such plants, such as Cabrillo I, generate energy (or provide ancillary services) at those times, and in such amounts, as the ISO may designate in order to preserve local reliability or to manage intra-zonal congestion. The terms of the contracts currently in effect, other than certain rates and operating characteristics that are unit-specific, are substantially the same for all RMR units, and were adopted in a multiparty settlement filed in April 1999 and approved by the Commission the following month.[3] That settlement left open how to determine the Fixed Option Payment, a rate that varies with unit availability rather than with actual output and that is stated as a percentage of the unit's Annual Fixed Revenue Requirements ("AFRR").[4]

In a series of further, owner-specific settlements approved by the Commission in the second half of 1999 and the first half of 2000, the affected parties agreed upon the level of Fixed Option Payments for the period beginning June 1999 for all RMR units except those owned by Southern (now Mirant) Energy Delta, LLC and Southern (Mirant) Energy Potrero, LLC. The parties to the settlements retained their rights under Sections 205 or 206, as applicable, to seek adjustment of the Fixed Option Payments effective on or after January 1, 2002.

In an initial decision issued in June 2000 in Docket Nos. ER98-495-000, et al., the Presiding Judge adopted the "net incremental cost" method to calculate the Fixed Option

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3 California Independent System Operator Corp., 87 FERC ¶ 61,250 (1999).

4 The term "Fixed Option Payment" does not appear in the body of the RMR contracts themselves, but rather in Article II.B.3 of the April 1999 settlement adopting those contracts. The applicable contract term is "Fixed Option Payment Factor," which is simply a percentage representing all or a specific portion of a given generating unit's Annual Fixed Revenue Requirement. The Fixed Option Payment Factor times the Annual Fixed Revenue Requirement yields the Fixed Option Payment.

Payment for Southern's units.[5] In general terms, that method would calculate the Fixed Option Payment to make the owner (or operator) whole for the costs, including opportunity costs, imposed upon the owner as a result of its obligations under the RMR contract. The initial decision rejected competing theories proposed by Southern and adopted, as reasonable, the calculations by PG&E implementing the net incremental cost method. The initial decision is pending before the Commission on exceptions.

In their complaint in Docket No. EL02-15-000, filed November 2, 2001, Complainants (joined by Edison and PG&E) requested that the Commission modify the Fixed Option Payment with respect to those units that had been designated as RMR units for 2002 to implement the net incremental cost method. The complaint requested that the Commission establish a refund effective date of January 1, 2002, but further requested that the Commission hold that proceeding in abeyance pending its decision on exceptions in Docket Nos. ER98-495-000, et al. That complaint is now pending before the Commission.

The ISO has undertaken analysis of its reliability needs for 2003. On the basis of that analysis, the ISO has identified Encina Unit 4 as needed to meet local area reliability and eligible for designation as an RMR unit for that year, if an acceptable agreement can be reached with respondent. The ISO and the other complainants are currently in settlement discussions with respondent relating to the AFRR for the Encina facility, including Encina Unit 4, in Docket No. ER02-1264-000. With the AFRR and related issues subject to negotiations in Docket No. ER02-1264-000 resolved, most of the aspects of an acceptable agreement as to Encina Unit 4

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[5] Pacific Gas and Electric Co., 91 FERC ¶ 63,008 (2000).

would be addressed; however the FOPF applicable to Encina 4 remains a disputed issue, as it is for the other Encina units.

V. COMPLAINT

The purpose of the instant complaint is to assure that the relief granted in Docket No. EL02-15-000 will apply with respect to Encina Unit 4 at the time of its designation as an RMR unit. The allegations, facts, and relief requested in this proceeding are substantially the same as those requested in Docket No. EL02-15-000, and the complaint in that proceeding, including its appendices, is incorporated herein by reference. The complaint minus appendices is attached hereto as Attachment A. On the grounds set forth in Docket No. EL02-15-000, Complainants challenge the lawfulness and reasonableness of the costs paid to Cabrillo I under the existing RMR contract, as they relate to Unit 4, and request that a refund effective date of January 1, 2003 be established for Unit 4.

VI. MOTION FOR CONSOLIDATION

Because the instant complaint incorporates the same theories, underlying facts and requested relief as the complaint in Docket No. EL02-15-000, and since the parties in this proceeding are also parties in EL02-15-000, the Complainants hereby move that the Commission consolidate this Docket with Docket No. EL02-15-000. Granting the motion will promote judicial economy and serve the interests of the public and the parties by allowing resolution of common issues in a single proceeding. No party should be prejudiced thereby.

VII. CONCLUSION

For the reasons described above, the Commission should institute a proceeding under Section 206 of the Federal Power Act to investigate the Fixed Option Payments to be charged in 2003 and potentially thereafter by the respondent under its RMR contract with the ISO with respect to Encina Unit 4. The Commission should establish a refund effective date of January 1,

2003, for Encina Unit 4, consolidate this complaint with the complaint in Docket No. EL02-15-000, and defer further action on the consolidated complaints until it has ruled on the pending exceptions in Docket Nos. ER98-495-000, et al.

Respectfully submitted,

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October 30, 2002

Certificate of Service

I hereby certify that I have this day served the foregoing document upon the following persons:

Joel D. Newton
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Washington, DC 20005-1274

Betsy R. Carr
Sr. Director and Reg. Counsel
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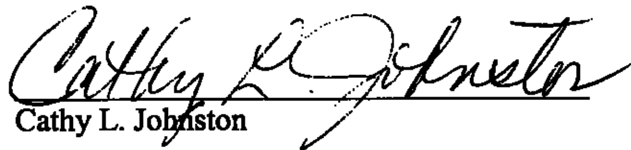
and upon each person designated on the official service list compiled by the Secretary in proceeding No. EL02-15.

Dated at San Diego, California, this 30th day of October, 2002.



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ATTACHMENT A

ORIGINAL

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

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FEDERAL ENERGY
REGULATORY COMMISSION

California Independent System Operator Corporation, California Electricity Oversight Board, Public Utilities Commission of the State of California, Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company,

Complainants,

v.

Cabrillo Power I LLC, Cabrillo Power II LLC, Duke Energy South Bay, LLC, Geysers Power Company, LLC, and Williams Energy Marketing and Trading Company,

Respondents.

Docket No. EL02-15-000

JOINT COMPLAINT

By this complaint, filed pursuant to Section 206 of the Federal Power Act, 16 U.S.C. § 824e, and to Rule 206 of the Commission's Rules of Practice and Procedure, 18 C.F.R.§ 385.206, the California Independent System Operator Corporation (the "ISO"), the California Electricity Oversight Board (the "EOB"), the Public Utilities Commission of the State of California (the "CPUC"), Pacific Gas and Electric Company ("PG&E"), San Diego Gas & Electric Company ("SDG&E"), and Southern California Edison Company ("Edison") jointly request that the Commission institute proceedings to investigate certain rates -- the "Fixed Option Payments" -- payable by the ISO under the respective "reliability must-run" ("RMR")

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contracts between the ISO and each of the individual respondents listed in the caption above. As described more fully below, those rates, although differing from contract to contract, exceed just and reasonable levels. Because the issue of how properly to calculate the Fixed Option Payment under the RMR contracts is currently pending before the Commission on exceptions in Docket Nos. ER98-495-000, et al., the Commission should set a refund effective date of January 1, 2002 and defer further action herein until it has ruled on the exceptions in those dockets.[1]

I. NOTICES AND COMMUNICATIONS

The persons designated to receive service under 18 C.F.R. § 385.2010 are listed in Appendix B, as is certain information required by 18 C.F.R. § 385.206(b).

II. INTRODUCTION AND SUMMARY

The RMR contracts were initially approved by the Commission in conjunction with the restructuring of the California electricity market as a means of mitigating the localized market power that would otherwise accrue to the owners or others who control the dispatch of certain generating plants. Those plants, because of their location and the configuration of the transmission system, must run at certain times to maintain the reliability of the transmission grid controlled by the ISO. Broadly speaking, the contracts require that the owners or operators of such plants, the respondents in this proceeding, generate energy (or provide ancillary services) at those times, and in such amounts, as the ISO may designate in order to preserve local reliability or to manage intra-zonal congestion. The terms of the contracts currently in effect, other than certain rates and operating characteristics that are unit-specific, are substantially the same for all RMR units, and were adopted in a multiparty settlement filed in April 1999 and approved by the

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[1] A draft notice of this filing, suitable for publication in the Federal Register, is attached as Appendix A hereto.

Commission the following month.[2] That settlement left open how to determine the Fixed Option Payment, a rate that varies with unit availability rather than with actual output and that is stated as a percentage of the unit's Annual Fixed Revenue Requirements ("AFRR").[3]

In a series of further, owner-specific settlements approved by the Commission in the second half of 1999 and the first half of 2000, the affected parties agreed upon the level of Fixed Option Payments for the period beginning June 1999 for all RMR units except those owned by Southern (now Mirant) Energy Delta, LLC and Southern (Mirant) Energy Potrero, LLC. The parties to the settlements retained their rights under Sections 205 or 206, as applicable, to seek adjustment of the Fixed Option Payments effective on or after January 1, 2002.

In an initial decision issued in June 2000 in Docket No. ER98-495-000, et al., the Presiding Judge adopted the "net incremental cost" method to calculate the Fixed Option Payment for Southern's units.[4] In general terms, that method would calculate the Fixed Option Payment to make the owner (or operator) whole for the costs, including opportunity costs, imposed upon the owner as a result of its obligations under the RMR contract. The initial decision rejected competing theories proposed by Southern and adopted, as reasonable, the calculations by PG&E implementing the net incremental cost method. The initial decision is pending before the Commission on exceptions.

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[2] California Independent System Operator Corp., 87 FERC ¶ 61,250 (1999).

[3] The term "Fixed Option Payment" does not appear in the body of the RMR contracts themselves, but rather in Article II.B.3 of the April 1999 settlement adopting those contracts. The applicable contract term is "Fixed Option Payment Factor," which is simply a percentage representing all or a specific portion of a given generating unit's Annual Fixed Revenue Requirement. The Fixed Option Payment Factor times the Annual Fixed Revenue Requirement yields the Fixed Option Payment.

[4] Pacific Gas and Electric Co., 91 FERC ¶ 63,008 (2000).

The Fixed Option Payments currently in effect under the owner-specific settlements described above exceed the levels allowable under the net incremental cost method. To that extent, i.e., to the extent that they actually place the owner of the RMR unit in a better position than it would be in if it lacked localized market power and were not subject to an RMR contract, those rates are manifestly unjust and unreasonable. The Commission should, therefore, institute a proceeding to investigate those rates pursuant to Section 206 and, in order to assure maximum protection to affected customers, establish a refund effective date of January 1, 2002. For purposes of administrative efficiency, however, the Commission should hold this proceeding in abeyance pending its decision in Docket Nos. ER98-495-000, et al., so that its decision there can provide guidance for the parties and the designated administrative law judges in adjusting the Fixed Option Payment.[5]

III. PARTIES

A. Complainants

The ISO is a not-for-profit public benefit corporation organized under the laws of the State of California with its principal place of business at 151 Blue Ravine Road, Folsom, California. Under California law, as well as the orders of this Commission, the ISO is responsible for the reliable operation of the transmission system it controls (the "ISO Controlled Grid"), which includes the transmission facilities owned by PG&E, SDG&E, Edison and the City of Vernon, California, respectively. The ISO is also the Control Area Operator for the ISO Controlled Grid and other areas of California that constitute the ISO Control Area. In order to operate the ISO Controlled Grid reliably and to satisfy its obligations as Control Area Operator,

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[5] As described below, PG&E is itself the owner of certain RMR units. If the net incremental cost method is adopted by the Commission in Docket No. ER98-495-000 and in this proceeding, PG&E will apply that same methodology to its own RMR units.

the ISO uses RMR contracts to meet local reliability needs or manage intra-zonal congestion. The ISO is party to one or more RMR contracts with each of the respondents with respect to the RMR units owned (or operated) by that respondent.

The EOB was created as part of California's comprehensive electricity restructuring legislation. The Board's statutory responsibilities include the oversight of the ISO, the energy and ancillary services markets operated by the ISO, and the reliability of the ISO-controlled grid. Its principal offices are at 770 L Street, Sacramento, California.

The CPUC is an agency established by the Constitution of the State of California and charged with the responsibility for regulating electric corporations within the State of California. It has a statutory mandate to represent the interests of electric consumers throughout California in proceedings before FERC. Its principal offices are at 505 Van Ness Avenue, San Francisco, California.

PG&E is a California corporation with its principal place of business at 77 Beale Street, San Francisco, California. Under Section 5.2.8 of the ISO tariffs, the charges payable by the ISO under the RMR contracts with respondent Geysers Power Company, LLC ("Geysers Power"), as well as the RMR contracts with Mirant Energy Delta, LLC and Mirant Energy Potrero, LLC, are billed to PG&E as the "Responsible Utility" with respect to the units covered by such contracts.

SDG&E is a California corporation with its principal place of business at 8330 Century Park Court, San Diego, California. Under Section 5.2.8 of the ISO tariff, the charges payable by the ISO under the RMR contracts with respondents Duke Energy South Bay, LLC ("Duke"), Cabrillo Power I LLC ("Cabrillo I"), and Cabrillo Power II LLC ("Cabrillo II") are

billed to SDG&E as the "Responsible Utility" with respect to the units covered by such contracts.

Edison is a California corporation with its principal place of business at 2244 Walnut Grove Avenue, Rosemead, California. Under Section 5.2.8 of the ISO tariff, the charges payable by the ISO under the RMR contract with respondent Williams Energy Marketing and Trading Company ("Williams EM&T") are billed to Edison as the "Responsible Utility" with respect to the units covered by such contracts.

B. Respondents

Cabrillo I and Cabrillo II are Delaware limited liability companies, with their principal place of business at 1000 Louisiana Street, Houston, Texas. Cabrillo I owns and operates units 1, 2, 3, and 5, and a combustion turbine, at the Encina Power Plant at Encina, California, all of which have been designated by the ISO as RMR units for 2002. Cabrillo II owns and operates 17 combustion turbines in the San Diego area that have been designated by the ISO as RMR units for 2002.

Duke is a Delaware limited liability corporation with its principal place of business at 1290 Embarcadero Road, Morro Bay, California. Duke leases and operates units 1, 2, and 3, and a combustion turbine, at the South Bay power plant at Chula Vista, California, all of which have been designated by the ISO as RMR units for 2002.

Geysers Power is a Delaware limited liability company with its principal place of business at 10350 Socrates Mine Road, Middletown, California. Geysers owns and operates units 5, 6, 7, 8, 11, 14 and 17 at Geysers Main geothermal plant at Healdsburg, California, all of which have been designated by the ISO as RMR units for 2002. Additionally, the ISO has

designated unit 16 at the Geysers facility, which is covered by a separate RMR contract, as an RMR unit for 2002.[6]

Williams EM&T, a wholly-owned subsidiary of The Williams Companies, Inc., is a Delaware corporation with its principal place of business located at Tulsa, Oklahoma. Williams provides RMR service to the ISO for units 3 and 4 at the Alamitos Generating Station in Alamitos, California, which have been designated by the ISO as RMR units for 2002. Additionally, Williams EM&T provides RMR service to the ISO for units 1 and 2 at the Huntington Beach Generating Station in Huntington Beach, California, which have been designated by the ISO as RMR units for 2002.

IV. BACKGROUND

A. Origins of the RMR Contracts and the April 1999 Settlement

Since the beginning of the restructuring process in California, it has been recognized that certain generating units, because of their location and the configuration of the transmission system, are needed to provide energy or ancillary services during certain hours to assure the reliable operation of the ISO controlled grid. It has also been recognized that the same units will be able to exercise locational market power during those hours. The underlying purpose of the RMR contract is to assure that the ISO will be able to call upon these units when it needs them for reliability purposes or to manage intra-zonal congestion and that their owners will not be able to exercise market power by withholding the units' output. Accordingly, in

[6] In selling the Geysers facility to Geysers Power, PG&E established two separate contracts, one for Geysers Main and the other covering units 13 and 16. All of those units were designated as RMR units in 1998. For 2001, only Geysers Main was so designated, but for 2002 the ISO has again designated unit 16 as RMR. Accordingly, Geysers Power's recent filing of updated costs pursuant to Schedule F of the RMR contract in Docket No. ER02-188-000 included the costs of unit 16.

seeking authorization from FERC, in accordance with the CPUC's restructuring orders, to make sales at market-based rates from what were then their own generating units, SDG&E, PG&E, and Edison proposed that those units that could otherwise exercise locational market power be made subject to must-run contracts with the ISO. By order issued October 30, 1997, the Commission approved the companies' market-power mitigation measures, including the RMR contracts.[7] On October 31, 1997, the companies tendered for filing in Docket Nos. ER98-441 (Edison), ER98-495 (PG&E), and ER98-496 (SDG&E) unexecuted must-run contracts for the units that had been designated by the ISO as RMR units. The terms of those contracts were substantially uniform, but each contract reflected the individual costs and operating characteristics of the units it covered.[8] On December 17, 1997, the Commission accepted the contracts for filing, set them for hearing and allowed them to go into effect, subject to refund, with the commencement of ISO operations on March 31, 1998.[9]

Thereafter, in 1998 and 1999, the three utilities divested themselves of the RMR units, other than certain units owned by PG&E.[10] In each instance, the new owner (or other entity entitled to dispatch the RMR units), in acquiring those units, assumed the rights and obligations of the divesting utility under the RMR contract.[11] Under Sections 5.2.7 and 5.2.8 of

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7 Pacific Gas and Electric Co., 81 FERC ¶ 61,122 (1997).

8 The ISO had filed a pro forma version of the contract in March 1997 and amended that version in August 1997. Id. at 61,557.

9 Pacific Gas and Electric Co., 81 FERC ¶ 61,322 (1997).

10 These retained units designated as RMR units for 2002 are located at PG&E's Humboldt Bay, Hunters Point, and Helms, generation facilities, and the San Joaquin Watershed generating facilities respectively.

11 See, e.g., Duke Energy South Bay, LLC, 86 FERC ¶ 62,251 (1999). SDG&E sold its South Bay plant to the Unified Port District of San Diego. The Port District simultaneously leased the plant to Duke Energy South Bay, which assumed the RMR contract for the plant. Similarly, Williams dispatches, and is entitled to the output of, the RMR units at Alamitos and

its tariff, the ISO bills the "Responsible Utility" for the costs paid by the ISO under the RMR contract for a given unit. The Responsible Utility is the utility in whose service area the unit is located. Ultimately, these costs become the responsibility of the end-use customers in that utility's service area.

In April 1999, parties representing a broad cross section of affected interests, including all of the complainants and respondents listed above, reached a partial settlement on the terms of a wholly new pro forma RMR agreement to supersede the contracts then in effect, and on the unit-specific rates and terms that would apply under that contract for each of the units then designated as RMR. That settlement (the "April 1999 settlement") reserved for litigation a number of issues relating to the new contract, as well as certain issues relating to the old ones. Among the unresolved issues was the level of the Fixed Option Payment. The Commission approved the settlement on May 28, 1999, and the new contracts took effect on June 1 of that year.

In August 2000, the parties reached further consensus regarding 12 of the 17 issues outstanding from the April 1999 settlement (the "August 2000 settlement").[12] Of the five remaining issues, three (including the level of the Fixed Option Payment) were settled on an owner-specific basis with respect to some RMR owners and were litigated with respect to others

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Huntington Beach that are owned by AES Alamitos, LLC and AES Huntington Beach, LLC, respectively.

[12] See Southern California Edison Co., 93 FERC ¶ 63,003 (2000), certifying the August 2000 settlement to the full Commission. The settlement was approved in Swidler Berlin Shereff Friedman, 93 FERC ¶ 61,089 (2000).

as discussed below;[13] a fourth issue (oil burning capability) is still being addressed by the relevant parties; and the fifth issue (termination fees) was submitted to the Commission for decision. The August 2000 settlement required further amendments to the RMR contract, and it is the amended version of the RMR contract that is in effect today.

B. Terms of the RMR Contract

The pro forma version of the RMR contract approved by the Commission in the August 2000 settlement is Appendix A to the Stipulation and Agreement filed in Docket Nos. ER98-441-021, et al., on August 14, 2000.[14] The contract requires the owner of the RMR unit to provide energy and ancillary services when called upon to do so by the ISO in order to meet local reliability needs or to manage intrazonal congestion.[15] In return, the owner is entitled to receive the payments specified in Section 8 of the contract. There are also separate provisions providing compensation in the event that the owner is required by the ISO, or by its obligations under the contract, to make certain repairs or capital additions.

Owners may choose to operate under "Condition 1" or "Condition 2," but may not, absent the ISO's consent, transfer between conditions, at intervals of fewer than 12 months. Condition 2 assures the owner the recovery of its stipulated Annual Fixed Revenue Requirement, which includes both "sunk" and "going-forward" fixed costs provided that it meets certain availability standards; however, Condition 2 substantially restricts the unit from participation in

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13 The issues other than the Fixed Option Payment thus settled (or litigated) were (1) what share of the costs of capital additions to RMR units should be borne by the ISO, (2) and what share of the costs of certain repairs to RMR units should be borne by the ISO.

14 For brevity, the contract is not submitted herewith, but rather is incorporated by reference. Similarly, the testimony and exhibits cited in the declarations attached hereto are, to avoid undue bulk, incorporated by reference. Appendix D hereto lists these items.

15 See Section 4.1(b) and (c) of the contract.

market transactions.[16] Condition 1 does not assure the owner the recovery of all of its fixed costs, but allows the owner to participate in the market, and to retain all of the revenues that it earns by virtue of doing so.

The RMR contract is in effect from year to year and renewable at the option of the ISO. The Annual Fixed Revenue Requirement is adjusted annually, beginning January 1, 2002, under a formula rate set forth in Schedule F of the contract. This formula reflects actual costs for each unit in the 12 months ending the previous June 30.

Under Section 8.1(a) of the contract, an owner operating under Condition 1 is paid a Monthly Availability Payment, a sum that will vary with the availability of the unit, but that is not to exceed, over the course of the year, the Annual Fixed Revenue Requirement for the unit. The Fixed Option Payment, the subject of this complaint, is the annualized form of the Monthly Availability Payment. Section 8.1(a) also provides for a Monthly Surcharge Payment to cover the ISO's share, if any, of the costs of certain capital additions and repairs.

Additionally, the owner receives under Section 8.1(b) a Variable Cost Payment to compensate it for variable costs, such as fuel and variable O&M, incurred in providing each megawatt-hour of energy delivered under the contract. The owner also receives a separate prepaid start-up payment to compensate it for the start-ups necessary to respond to ISO dispatch notices. To the extent that the ISO calls upon a unit during any year for service hours, energy, or start-ups that exceed certain historical norms, the ISO is required under Section 8.1(f) and (g) to make additional payments specified in Schedule G of the contract. If compliance with the ISO's instructions to provide ancillary services or energy requires the owner to decrease the unit's

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[16] The RMR units owned by Duke Energy Oakland, LLC and PG&E's units at Hunters Point are the only units currently under Condition 2.

output of either market energy or ancillary services the owner receives, under Schedule E of the contract, a "Pre-empted Dispatch Payment" that is intended to make the owner whole in relation to the original market transaction.

Section 8.5 of the RMR contract provides for certain non-performance penalties. Those penalties cannot exceed the sum of the Monthly Availability Payment and Monthly Surcharge Payment that the owner would otherwise receive absent the penalties for the month in which the non-performance occurred. The penalty rate is a function of the Monthly Availability Payment.

C. Fixed Option Payment Settlements

By a series of settlements entered into in late 1999 and early 2000, the affected parties agreed to the Fixed Option Payments that would apply to the RMR units owned or operated by specific firms for the period beginning June 1, 1999.[17] As provided in the April 1999 settlement, these rates were to remain in effect until superseded under Section 205 or 206 of the Federal Power Act, with any superseding rates to be effective no sooner than January 1, 2002.[18] The only units as to which the parties did not reach settlement were those owned by what are now Mirant Energy Delta, LLC and Mirant Energy Potrero, LLC.[19]

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[17] See, e.g., Geysers Power Co., LLC, 90 FERC ¶ 61,096 (2000); Southern California Edison Co., 90 FERC 61,091 (2000); Pacific Gas and Electric Co., 90 FERC ¶ 61,023 (2000); Pacific Gas and Electric Co., 90 FERC ¶ 61,049 (2000); Duke Energy Moss Landing, LLC, 90 FERC ¶ 61,073 (2000); Cabrillo Power I LLC and Cabrillo Power II LLC, 92 FERC ¶ 61,116 (2000); and Duke Energy South Bay LLC, 92 FERC ¶ 61,155 (2000).

[18] See Article I.C of the Stipulation and Agreement filed April 2, 1999 in Docket Nos. ER98-441, et. al.

[19] At the time of the litigation, subsidiaries of Southern Company owned these generating facilities. Therefore the Initial Decision and Commission decision will reference the subsidiaries of Southern rather than Mirant.

The individual settlements varied by period and by unit, but generally provided for Fixed Option Payments in the neighborhood of 30 percent of Annual Fixed Revenue Requirement. The currently effective payments stated as a percentage of Annual Fixed Revenue Requirement (i.e., the Fixed Option Payment Factors), for those units that were covered by such settlements, and that have been designated by the ISO as RMR units for 2002,[20] are shown in Appendix C.

D. Docket No. ER98-495-000

At the hearing in Docket No. ER98-495-000, conducted in March 2000, the ISO, PG&E, SDG&E, Edison, the CPUC, and the EOB, supported by the Commission trial staff, advocated the "net incremental cost" method for determining the Fixed Option Payment applicable to Southern's RMR units at Potrero and Contra Costa; the same parties had advocated the same method in separate proceedings concerning Duke's South Bay plant, Cabrillo I's Encina plant, and Cabrillo II's combustion turbines before those proceedings were settled. Under the net incremental cost method, the Fixed Option Payment is calculated in a manner designed to put the owner into the same position as it would have been but for the RMR contract, taking into account administrative and other out-of-pocket costs, opportunity costs, and certain benefits to the owner created by the contract. PG&E, in whose service territory the units at issue are located, presented testimony applying that method to Southern's units. Southern, arguing that the RMR contract is akin to a traditional contract for the purchase of energy and capacity, advocated a method whereby the Fixed Option Payment for a given unit would be determined,

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[20] Under Section 5.2.5 of its tariff, the ISO annually identifies units, that, because of their location and the characteristics of the transmission system, it will need during the coming year for local reliability purposes.

broadly speaking, by the percentage of total hours in which the ISO called upon that unit to run.[21]

In his initial decision, the presiding Administrative Law Judge emphatically rejected Southern's position and adopted the net incremental cost method:

> RMR obligations are simply contractual mechanisms enabling generators enjoying unique -- and therefore essential -- locations in the interconnected transmission grid to participate in competitive markets for energy and ancillary services by mitigating those generators' ability to exploit local market power in limited circumstances. It follows that RMR unit availability should be compensated in an economically "transparent" manner: appropriate compensation should mitigate local market power, but neither unnecessarily advantage nor unnecessarily disadvantage RMR unit participation in competitive markets for energy and ancillary services. Net incremental cost compensation achieves these objectives.[22]

The Presiding Judge also found that the compensation of an RMR facility at a rate that exceeds the facility's net incremental cost would be inequitable to consumers and lead to a distortion of the competitive market for energy and ancillary services by subsidizing RMR units' operations, giving those units a competitive advantage over generating facilities that are not parties to an RMR contract.[23]

Briefs on exceptions to the initial decision and reply briefs were filed in the summer of 2000, and the case is currently awaiting decision by the Commission.[24]

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[21] See 91 FERC at 65,107.

[22] 91 FERC at 65,113 (footnote omitted).

[23] Id.

[24] In a letter dated September 14, 2001, the ISO, PG&E, SDG&E, and Edison requested that the Commission act promptly to decide the case, noting that it had been pending on exceptions for more than a year, and that the currently effective rates have a significant impact on PG&E's customers.

V. THE CURRENTLY EFFECTIVE FIXED OPTION PAYMENTS ARE UNJUST AND UNREASONABLE.

A. Fixed Option Payments Exceeding Net Incremental Costs Are Unjust and Unreasonable.

As stated above, and as found by the Presiding Judge in Docket No. ER98-495-000,[25] the distinguishing characteristic of must-run units is that, because they are needed at certain times to maintain local area reliability, they may, by the threat of withholding, exercise locational market power. The fundamental purpose of the RMR contract is to mitigate that market power, enabling the owner to participate in the market on the same basis as other generators that have been granted authority to charge market-based, rather than cost-based rates.

In light of that purpose, the Fixed Option Payment cannot lawfully exceed the sum of the costs (other than the opportunity costs of not being able to exact monopoly rents) that are imposed on the owner by virtue of operating under the RMR contract. To put it another way, there is no legitimate reason why the RMR contract should put the owner in a better position than the position it would be in if it did not have locational market power and were not subject to the requirements of the RMR contract. That is precisely what the Presiding Judge concluded in Docket No. ER98-495-000: "appropriate compensation should mitigate local market power, but neither unnecessarily advantage nor unnecessarily disadvantage RMR unit participation in competitive markets for energy and ancillary services."[26] To the extent that the Fixed Option Payment puts the owner in a better position than the one it would occupy without locational

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25 The same holds true for an analysis of the RMR obligations' fundamental purpose. That purpose indisputably is to mitigate the potential for RMR owners to exercise local market power at times when the units are essential to transmission grid reliability.

91 FERC at 65,111.

26 Id. at 65,113.

market power and absent the burdens (and benefits) of operating under the RMR contract -- i.e., to the extent that the payment exceeds the net incremental costs imposed by the contract -- that payment is manifestly unjust and unreasonable.

B. The Existing Payments Exceed Net Incremental Costs.

1. Categories of Costs and Benefits

In its testimony in Docket No. ER98-495-000, PG&E identified, and quantified, four types of incremental costs to RMR owners arising out of the RMR contract: administrative costs, certain costs of keeping a unit operational for short periods, the net costs of operating and maintaining certain units that would otherwise shut down, and certain opportunity costs of having to run when dispatched by the ISO.[27] PG&E also described and calculated certain offsetting benefits of running at the ISO's expense in low-load hours.[28] Those costs and benefits provided the basis for the calculation of net incremental costs presented by PG&E. The Presiding Judge found the resulting payment fully compensatory for the RMR unit:

> I find that this methodology fully compensates Southern Parties for all costs--including fixed costs, variable costs, and reasonably calculated opportunity costs--associated with their RMR obligations, and therefore adopt it for purposes of this proceeding.[29]

Indeed, the Judge found the logic and calculation so compelling that he rejected, as an unnecessary "fudge factor," the proposal by the parties advocating the net incremental cost

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[27] See the testimony of Joe D. Pace, Exhibit No. PGE-1 at 15-16; see also Exhibit Nos. PG&E 3 (at 19-24, 27-30), 5, 6, 9-11, 13 (at 5-9, 11-13), 15, and 16.

[28] See Exhibit Nos. PGE 3 (at 24-27), 7, and 8.

[29] 91 FERC at 65,115.

method that the Fixed Option Payment be set at 110 percent, rather than 100 percent, of net incremental costs calculated in the manner described above.[30]

2. Incremental Costs

To estimate the net incremental costs for the RMR units at issue in this proceeding, each of the three utilities analyzed the incremental costs for the RMR units in its service territory, having in mind certain changes in the market structure that have occurred since the hearings in Docket No. ER98-495-000. These calculations are explained and set forth in the declarations of Laura Douglass for PG&E, Ali Yari for SDG&E, and Robert Lugo for Edison, attached hereto as Appendices E, F, and G, respectively.

As explained in those declarations, the first type of incremental costs includes the out-of-pocket costs imposed by the contract, which are the costs of having to administer the contract, to issue invoices, to process settlements, and the like. Absent the contract, the owner would have to administer some other measure to mitigate its local market power, but, to err on the side of caution, it is assumed in the declarations that such administrative costs are incremental. The calculations of those costs are set forth in the respective appendices. In each instance, those costs were derived on the basis of the estimated amount of employee time needed to administer the RMR contracts, with additions as appropriate for overhead.

The second type of incremental cost identified in the declarations is the cost of keeping a unit operational for short periods of relatively low demand when, absent the RMR contract, the unit would otherwise have been temporarily shut down. The declarations of

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30 Id.

Ms. Douglass, Mr. Yari, and Mr. Lugo conclude that such a short-term shutdown strategy would be unlikely to be profitable for the respective units they consider.

The third type of incremental cost that may, at least in theory, be imposed by the RMR contract is the fixed cost of operating and maintaining a unit that, absent the RMR obligation, would simply be shut down permanently because it was not profitable. As explained by Ms. Douglass, Mr. Yari, and Mr. Lugo, there are, in all likelihood, no such units. Each of the RMR units may be expected to earn more in net revenues than it costs the owner in fixed operation and maintenance outlays to keep it running. If it were otherwise, the owners would have opted for full cost of service treatment under Condition 2 prior to the time that the currently effective Fixed Option Payments were set.

The fourth type of incremental cost is the opportunity cost imposed upon the RMR owner by the contract's must-run obligation. PG&E's testimony in Docket No. ER98-495-000 identified one such potential cost: for certain hours, an owner may have committed to make a sale of energy only to find, as the hour approaches, that the price of energy in the ISO's real-time market is likely to be lower than its own variable cost of generating. Absent the RMR contract, the owner could, if it accurately foresaw the circumstance and adjusted its operations in time, not run its own unit but instead purchase the necessary energy in the real-time market to satisfy its bilateral contractual obligation; the RMR contract denies the owner that option in hours when the ISO provides a dispatch notice for the owner's unit.

As explained by Ms. Douglass, Mr. Yari, and Mr. Lugo, that cost has been substantially eliminated by subsequent changes in the market rules. Most notably, the ISO's tariff has been amended specifically to make uninstructed negative deviations from scheduled generation more costly. Taking into account the relatively small size of the benefit as calculated

by Mr. Weingart in Docket No. ER98-495-000 and by SDG&E's witness Anderson in Docket Nos. ER98-496-000 and ER98-496-006 prior to the rule changes, Ms. Douglass, Mr. Yari, and Mr. Lugo conclude that such opportunity costs are unlikely to be significant under current market rules.

On the basis of their assessment of the four types of incremental costs described above, Ms. Douglass, Mr. Yari, and Mr. Lugo conclude that those costs for the units under consideration are likely well below the level of the respective Fixed Option Payments currently in effect for those units.

3. Incremental Benefits

As explained by PG&E's testimony in Docket No. ER98-495-000, there are certain hours during periods of relatively low demand in which the ISO pays the owner to operate an RMR unit at minimum load, or to start the unit up, even though, given the prices likely available in the market, the owner would not otherwise do so (or, under the "must-bid" obligation imposed in Docket No. EL00-95-000, would do so without compensation). Because it is running at the ISO's expense, the unit is then in a position to make sales into the market in succeeding hours when market prices exceed its variable costs, even though, absent the RMR dispatch, it would not have been able to do so.[31]

RMR benefits are logically offsets against both the out-of-pocket and opportunity costs described above in calculating net incremental costs. Because, without any netting of such benefits, those costs are already well below the currently effective level of Fixed Option Payments, they have not been quantified here. It should be noted, however, that those benefits

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31 See Exhibit Nos. PGE 3 (at 24-27), 7, and 8.

actually exceeded incremental opportunity costs for several of the units at issue in the prior round of litigation.[32]

The analyses presented by Ms. Douglass, Mr. Yari, and Mr. Lugo, are, to be sure, based on estimates and, to some extent, on inference from cost figures from prior periods They are, however, more than sufficient to demonstrate that the currently-effective Fixed Option Payments are significantly higher than could be justified under the net incremental cost method and thus are plainly unjust and unreasonable. The precise level at which those payments should be set by the Commission under Section 206 can be determined on the basis of more complete and current data available through discovery, or by other means, after the institution of a Section 206 investigation.

VI. THE COMMISSION SHOULD ESTABLISH A REFUND EFFECTIVE DATE OF JANUARY 1, 2002, BUT DEFER FURTHER PROCEEDINGS HEREIN PENDING ITS DECISION ON EXCEPTIONS IN DOCKET NO. ER98-495-000.

Under Section 206 (b), the Commission is required, upon the institution of an investigation into the justness and reasonableness of currently effective rates, to establish a refund effective date, which can be no earlier than 60 days after the filing of the complaint that precipitated the investigation.[33] To assure consumers the maximum relief from rates that are

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[32] As described by Mr. Yari, the testimony of Robert B. Anderson in relation to Duke's units calculated opportunity costs at $674,057 and offsetting benefits at $2,893,519. See Appendix F hereto at 4, 5.

[33] Whenever the Commission institutes a proceeding under this section, it shall establish a refund effective date. In the case of a proceeding instituted on complaint, the refund effective date should be no earlier than the date 60 days after the filing of such complaint nor later than 5 months after the expiration of such 60-day period.

16 U.S.C. § 824e(b).

ultimately found to be unjust and unreasonable, the Commission can and should establish January 1, 2002, as the refund effective date in this proceeding.

At the same time, the undersigned parties recognize that Docket No. ER98-495-000 presents issues closely similar, if not identical, to those presented here as to how the Fixed Option Payment is properly determined under the just-and-reasonable standard. The Commission's decision on exceptions in Docket No. ER98-495-000 will provide relevant precedent in the resolution of the issues raised by the instant complaint. Setting this case for hearing and resolution by one or more administrative law judges while Docket No. ER98-495-000 is still pending on exceptions would waste the resources of the parties and the Commission. The more efficient course, we believe, would be for the Commission, having set a refund effective date, to defer further action on this case until it has ruled in Docket No. ER98-495-000.[34] At that point, this case can proceed to adjudication on those issues that remain, issues that are likely to involve the implementation of the method endorsed by the Commission, rather than an ab initio determination of which method to apply.[35]

CONCLUSION

For the reasons described above, the Commission should institute a proceeding under Section 206 of the Federal Power Act to investigate the Fixed Option Payments currently being charged by the respondents under their respective RMR contracts with the ISO. The

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[34] The Commission followed a similar procedure in Pacific Gas and Electric Co., 90 FERC ¶ 61,010 (2000). It there accepted a tariff filing and suspended that filing subject to refund, then deferred the hearing pending the decision on exceptions in another case. Id. at 61,023.

[35] In proposing deferral of this proceeding, the complainants in no way wish to suggest that the Commission should likewise defer action in Docket No. ER98-495-000. To the contrary, as noted above, the complainants have recently urged the Commission to act promptly in that docket in light of the level of current payments being borne by PG&E and its customers under the currently effective Fixed Option Payment for the RMR units at issue.

Commission should establish a refund effective date of January 1, 2002, and defer further action herein until it has ruled on the pending exceptions in Docket No. ER98-495-000.

Respectfully submitted,

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November 2, 2001

ATTACHMENT B

ATTACHMENT B

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

California Independent System Operator Corporation, California Electricity Oversight Board, Public Utilities Commission of the State of California, and San Diego Gas & Electric Company, Complainants, v. Cabrillo Power I LLC, Respondent.	)	Docket No. EL03-____-000

NOTICE OF COMPLAINT

(____________ __, 2002)

Take notice that on October 30, 2002, the California Independent System Operator Corporation (the "ISO"), the California Electricity Oversight Board, the Public Utilities Commission of the State of California and San Diego Gas & Electric Company submitted a complaint pursuant to Section 206 of the Federal Power Act, 16 U.S.C. § 824e, against Cabrillo Power I LLC alleging that certain rates, referred to as the Fixed Option Payments, in the respective reliability must run ("RMR") contracts between the ISO and respondent are unjust and unreasonable.

Complainants state that the allegations, facts, and relief requested in this proceeding are identical to those in Docket No. EL02-15-000, except that the complaint filed in that Docket did not include Encina unit number 4, which the ISO had not designated as an RMR unit for 2002. The ISO has indicated that unit number 4 will be designated as an RMR unit for the year 2003. Complainants ask that the Commission set a refund date of January 1, 2003, consolidate this proceeding with Docket No. EL02-15-000, and defer further action pending its decision on exceptions in Docket No. ER98-495-000.

Copies of the complaint were served on respondent and on other interested parties.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR §§ 385.211 and 385.214). All such motions or protests must be filed on or before __________, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Answers to this complaint shall be due on or before ___________, 2002. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may also be viewed on the Internet at http://www.ferc.gov using the "FERRIS" link, select "Docket Sheets" and follow the instructions (call 202-208-2222 for assistance). Comments and protests may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas
Secretary