



March 8, 2004

BY ELECTRONIC TRANSMISSION

The Honorable Magalie Roman Salas
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426

Re: CalPeak Power – El Cajon, LLC, Docket No. ER04-517-000

Dear Secretary Salas:

Enclosed please find an electronic filing of the Answer of the California Independent System Operator Corporation. Thank you for your attention to this filing.

Very truly yours,

/s/ Sidney L. Mannheim

Sidney L. Mannheim

Counsel for the California Independent
System Operator Corporation

Enclosures

cc: All parties of record

CalPeak Power- El Cajon, LLC) **Docket No. ER04-517-000**

Pursuant to Rule 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission), 18 C.F.R. § 385.213, the California Independent System Operator Corporation (ISO)¹ hereby answers the comments filed by the California Energy Resources Scheduling (CERS) Division of the California Department of Water Resources (CDWR) and San Diego Gas & Electric Company (SDG&E).²

On January 30, 2004, CalPeak Power LLC, on behalf of CalPeak Power—El Cajon, LLC (CalPeak) filed an unexecuted Must-Run Service Agreement and accompanying schedules (RMR Agreement) between the CalPeak and the ISO setting forth the rates, terms and conditions under which CalPeak proposes to provide reliability must-run services to the ISO for the 2004 Contract Year.³ On February 20, 2004, the same day specified in the Commission’s February 4, 2004 Notice of Filing, CalPeak filed substitute rate schedule sheets setting forth revisions to the RMR Agreement and the ISO filed a motion to intervene and comments indicating that the RMR Agreement, as revised by the substitute rate schedule sheets filed that day, addressed the ISO’s concerns. The

² The ISO's answer also responds to the Notice of Intervention filed by the California Public Utilities Commission (CPUC) in which the CPUC "associates itself with and supports" SDG&E's comments.

ISO also requested that the Commission accept CalPeak's filing, as revised, effective February 1, 2004.⁴

On February 20, and 25, 2004, respectively, SDG&E and CERS filed motions to intervene and comments raising concerns that the RMR Agreement, and the ISO's dispatch rights under the RMR Agreement, might conflict with the Amended Power Purchase Agreement (PPA) between CERS and CalPeak and CERS' dispatch rights as specified in a separate Dispatch Agreement.⁵ In addition, SDG&E and CERS suggest that payments made under the RMR Agreement may be duplicative to payments made by CERS under the Amended PPA. As discussed in detail below, the dispatch provisions of the RMR Agreement do not infringe upon the Amended PPA and the costs paid by the ISO are incremental to the costs paid by CERS.

II. DISCUSSION

As summarized in CERS' comments, the Amended PPA provides that CalPeak "shall provide and make available to [CERS] . . . Contract Capacity, and, if requested by [CERS] Energy from the Facility at the Delivery Point, and [CERS] shall pay [CalPeak] the Purchase price." Amended PPA, Section 2.01. Under the Amended PPA, CERS has rights to the output of the CalPeak generating unit for 1200 Peak Period Hours and 1300 Other Period Hours, for a total of 2500 hours annually. Amended PPA, Appendix B. The Amended PPA allows CalPeak to make third party sales "provided, however, that such sales shall not limit the availability of Dedicated Hours for any reason" Amended PPA, Section 2.01. CERS makes annual fixed cost payments totaling

³ The CalPeak Power El Cajon Facility was designated to receive a 2004 RMR Agreement during the 2003 Local Area Reliability Study conducted by the ISO.

⁴ The ISO has not yet executed the RMR Agreement, but intends to do so in the near future.

⁵ The two agreements are available on CERS' website at <http://www.cers.water.ca.gov/newContracts.html>.

\$5,880,000 and is responsible for paying CalPeak's variable costs for each MWh of energy dispatched under the Amended PPA. Amended PPA, Article II and Appendix C.

Under the RMR Agreement, on the other hand, the ISO has the right to dispatch the CalPeak facility up to 1,786⁶ hours at any time during calendar year 2004 for system reliability and will make an annual payment of approximately \$510,000 for such rights. The ISO will pay CalPeak's variable costs for each MWh of energy dispatched by the ISO under the RMR Agreement, but only to the extent the unit is not receiving compensation from a third party, such as CERS.

As these comparisons indicate, the RMR Agreement is incremental to the CERS PPA both on an hours and costs basis: the hours added together total 4,286, slightly less than half the total number of hours in a year; the payment under the RMR Agreement covers incremental costs associated with managing and complying with the RMR Agreement; and the variable cost payment is approximately same as the variable cost payment calculated under the CERS' PPA.

Moreover, the ISO will dispatch CalPeak in real-time only after CERS' last opportunity to dispatch the unit has expired. As set forth in the ISO's draft Operating Procedure G-203M: "During CDWR Contract time periods, the ISO Generation Dispatchers shall only issue real-time RMR dispatches after the CDWR Call Option has expired." Even under the Dispatch Agreement,⁷ the very latest time frame specified for

⁶ The RMR Agreement allows the ISO to dispatch energy in excess of the contemplated 1,786 hours, but requires the ISO to compensate CalPeak at a higher rate pursuant to Schedule G.

⁷ By its terms, the Dispatch Agreement terminates if CERS "assigns the Amended PPA, or assigns its rights or obligations under the Amended PPA, to a Qualified Electric Corporation," e.g. SDG&E. Dispatch Agreement, Recital C. In its comments at 2, SDG&E indicates that it would be acting as an agent for CERS in dispatching the CalPeak unit under the Amended PPA. As such, it would appear that CERS has assigned certain of its rights and obligations under the Amended PPA to SDG&E thereby possibly terminating the Dispatch Agreement. In that case, the dispatch rights under the Amended PPA would control.

CERS' dispatch of energy in the ISO's Real-Time market requires CERS to notify CalPeak no later than two hours "in advance of the Cal ISO or other auction bid deadline for Energy bid into the real-time Ancillary Services market." Dispatch Agreement, Section 3(c)(ii). Section 5.13.2.1 of the ISO Tariff, "Real Time Market" provides that energy bids submitted to the Real Time Market be submitted not less sixty minutes before the Operating Hour. Accordingly, CERS' right to instruct CalPeak to submit bids into the Real-Time Market expires three hours in advance of the Operating Hour. Further, Sections 3(a)(ii) and 3(b)(ii) set the outer limits for "Dispatch for Energy" and "Dispatch for Reservation" as the earlier of 30 minutes before the time required to schedule gas purchases or market power sales. Even if intra-day gas purchases are allowed, CERS will have to notify CalPeak within 30 minutes of the time required to schedule market power sales. Under the ISO's Tariff, the last opportunity to schedule market power sales would be at least 135 minutes prior to the Settlement Period as set forth in Section 2.2.13, "Timing of Hour Ahead Scheduling." Thus, CERS' right to instruct CalPeak to schedule energy expires 2 hours and 45 minutes in advance of the operating hour. By dispatching CalPeak under the RMR Agreement only after CERS' dispatch rights have expired, CERS' rights under the Amended PPA cannot be infringed.

More importantly, if there ever were a conflict between CERS' dispatch rights under the Amended PPA and an ISO dispatch under the RMR Agreement, CERS' dispatch rights would prevail and CERS would be entitled to the energy. The RMR Agreement is for the purpose of ensuring that the generating facilities that are needed for reliability purposes will run and that such facilities cannot exercise market power by exacting an uncompetitive price when called upon to run for reliability purposes. The

ISO's RMR needs can be met when a generator is generating power for a third party. The RMR Agreement simply allows the ISO to ensure that reliability needs can be met when the generating facility is not generating power for a third party. Because, the ISO's RMR needs will not always coincide with CERS' need for peaking capacity—the ISO has reliability needs in both low demand and high demand hours whereas peaking capacity is primarily reserved for high demand hours—and because the Amended PPA is limited to 2500 hours per year, the RMR Agreement is necessary.

Finally, CalPeak will not be paid twice for capacity and will only receive one comparable variable cost payment per dispatch. CalPeak provided cost information to the ISO, SDG&E and to the State agencies representing ratepayer interests, the CPUC and the California Electricity Oversight Board (CEOB),⁸ and these parties negotiated the annual fixed reliability payment premised on the understanding that it would include only the incremental costs that CalPeak would incur as a result of managing and performing under the RMR Agreement. The variable cost payment under the RMR Agreement is very close to the variable cost payment under the Amended PPA, with the exception of two additional charges that the RMR Agreement allows the Owner to recover. These are the ISO Scheduling Coordinator Charge (reimbursement for scheduling coordinator fees) and the ISO ACA Charge (ISO administrative fee reimbursement). The sum of these two charges total \$0.35 per MWh.

⁸ The CPUC and CEOB were active parties in the proceedings before the Commission in the RMR proceedings in Docket No. ER98-441 *et al.* and participate in prefiling negotiations of RMR Agreements pursuant to the Settlement Agreements filed in the RMR proceedings.

III. CONCLUSION

For the foregoing reasons, the ISO respectfully requests that the Commission accept CalPeak's January 30, 2004 submission, as amended by the revisions submitted in its February 19, 2004 filing, effective as of February 1, 2004.

March 8, 2004

Respectfully submitted,

/s/ Sidney L. Mannheim

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CERTIFICATE OF SERVICE

I hereby certify that I have on this 8th day of March 2004, served copies of the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

/s/ Sidney L. Mannheim

Sidney L. Mannheim