



March 23, 2006

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

**Re: MMC Energy North America, LLC v. California Independent System  
Operator Corporation  
Docket No. EL06-56**

Dear Secretary Salas:

Enclosed for electronic filing please find an Answer of the California Independent System Operator Corporation to the Complaint of MMC Energy North America, LLC and Motion to Dismiss in the above captioned docket.

Thank you for your assistance in this matter.

Respectfully submitted,

**/s/ Beth Ann Burns**

Beth Ann Burns

Counsel for The California Independent  
System Operator Corporation

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

<b>MMC Energy North America LLC,</b>	)	
<b>Complainant</b>	)	
	)	
<b>v.</b>	)	<b>Docket No EL06-56</b>
	)	
<b>California Independent System Operator</b>	)	
<b>Corporation,</b>	)	
<b>Respondent.</b>	)	

**ANSWER OF THE  
CALIFORNIA INDEPENDENT OPERATOR CORPORATION  
TO THE COMPLAINT OF MMC ENERGY NORTH AMERICA LLC,  
AND MOTION TO DISMISS**

In accordance with the Commission’s Rules of Practice and Procedure, 18 C.F.R. §§385.206(f). 385.212 and 385.213, the California Independent System Operator Corporation (“CAISO”) respectfully submits this Answer to the Complaint of MMC Energy North America LLC (“MMC”) in the above-captioned matter and moves for dismissal of the Complaint.

**I. STATEMENT OF ISSUES**

1. MMC has failed to show that the CAISO’s decision not to enter into a Reliability Must Run (“RMR”) Agreement with MMC was imprudent or discriminatory. The CAISO acted well within its discretion, and its decision should not be second-guessed. Milford Power Co., LLC, 110 FERC ¶ 61,299 at PP 42-43, *reh’g denied*, 112 FERC ¶ 61,154 (2005).
2. There is no authority for the remedy MMC seeks, which is termination of the CAISO’s RMR Agreement with Cabrillo Power LLC for Encina Unit 4 and execution with MMC of a Commission-ordered RMR contract. Id.
3. MMC’s Complaint is premature. It asks the Commission to set a refund effective date and then hold this proceeding in abeyance pending arbitration under the CAISO Tariff, but MMC has not initiated that dispute

process in accordance with the requirements of Tariff Section 13.2.1. MMC failed to engage in the good faith negotiations with the ISO that are required by Section 13.2.1 as a necessary precondition to initiating a dispute under Section 13.2.2.

## **II. DESCRIPTION OF THE 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 comprised of the transmission systems of a number of Participating Transmission Owners. As part of this responsibility, the CAISO procures RMR generation through its annual LARS RMR procurement process.

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

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## **III. ADMISSIONS AND DENIALS**

The CAISO does not specifically respond herein to the allegations contained in the Background, and Statement of Issues of MMC's Complaint. Those sections speak

for themselves and do not call for admissions or denials by the CAISO. However, to the extent those sections contain allegations not otherwise addressed below, those allegations should be deemed denied. Insofar as any of those sections summarize allegations made in the body of the Complaint, those allegations are addressed below.

In addition, as MMC admits,<sup>1</sup> MMC makes the same allegations in its Complaint as it raised in its protests in Cabrillo Power I LLC.<sup>2</sup> The CAISO fully responded to MMC's allegations<sup>3</sup> in that proceeding. To avoid unnecessary repetition, the CAISO similarly relies on and incorporates by reference herein its Answers filed in response to the MMC protests. Copies of the CAISO's Answers are attached hereto as Appendix A and Appendix B.<sup>4</sup>

**A. Answer to MMC's Claim Regarding Prudence of CAISO's Selection of Encina 4**

**1. Prudence of Incurring RMR Costs Associated with Encina 4**

The CAISO denies MMC's allegations that the CAISO acted imprudently in deciding to terminate contract negotiations with MMC and enter into an RMR contract

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<sup>1</sup> Complaint at 4-5.

<sup>2</sup> Docket No. ER06-426 initiated by Cabrillo Power I LLC ("Cabrillo") filing, pursuant to Section 205 of the Federal Power Act, revisions to the RMR rate schedule for Encina 4. The Commission issued an order in this proceeding approving Cabrillo's revised RMR rate schedule. Cabrillo Power I LLC, 114 FERC ¶ 61,160 (2006).

<sup>3</sup> Motion to Intervene and Protest of MMC Energy North America, LLC, Cabrillo Power I LLC; Docket No. ER06-426 (filed Jan. 17, 2006) ("MMC Protest") and Reply in Support of Motion to Intervene and Protest of MMC Energy North America, LLC, Cabrillo Power I LLC; Docket No. ER06-426 (filed Feb. 8, 2006) ("MMC Reply Protest") (together, the "Protests").

<sup>4</sup> California Independent System Operator Corporation's Answer in Opposition to Motion to Intervene of MMC Energy North America, LLC and Motion for Summary Rejection of Protest, Cabrillo Power I LLC; Docket No. ER06-426 (filed Jan. 30, 2006) ("CAISO Answer") (Appendix A hereto) and Motion for Leave to Answer and Answer of the California Independent System Operator Corporation, Cabrillo Power I LLC; Docket No. ER06-426 (filed Feb. 10, 2006) ("CAISO Reply Answer") (Appendix B hereto) (together, the "Answers").

with Cabrillo Power I LLC for Encina Unit 4 (“Encina 4”)<sup>5</sup> as an alternative RMR resource.<sup>6</sup> MMC’s prudence claim rests entirely on MMC’s erroneous assertion that MMC’s Chula Vista and Escondido units (“MMC units”) represented a lower cost alternative to CAISO’s contract with Encina 4. MMC offers no evidence to support this assertion. By contrast, the CAISO has detailed its analysis supporting its determination that Encina 4 was a preferable and more economic alternative than MMC.<sup>7</sup>

Moreover, as the Commission has elsewhere recognized, an independent grid operator has the fundamental responsibility to assure reliability in its control area, and the judgments it makes in the exercise of its necessarily broad discretion on such matters should not be second-guessed.<sup>8</sup> MMC is complaining here about the judgment the CAISO made as to how best to meet the local reliability needs of the San Diego area for 2006. The CAISO made a fully considered decision, based on all of the relevant facts. That decision should stand.

## **2. The CAISO Offered a Detailed Cost Comparison**

The CAISO denies MMC’s allegation that it has “offered no overall cost comparison detailing the relative fixed and variable costs of the MMC units versus the Encina unit.”<sup>9</sup> While the CAISO is under no obligation to provide competing RMR unit

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<sup>5</sup> Cabrillo also owns and operates under RMR Agreements Encina Units 1-3 and 5.

<sup>6</sup> MMC also asserts, without any support or explanation, that the CAISO’s selection of Encina 4 “violated tariff provisions governing the choice of RMR resources.” Complaint at 4 and 6. MMC fails to cite what tariff provision the CAISO supposedly violated. This claim is a baseless allegation that should be rejected out of hand.

<sup>7</sup> See CAISO Answer at 12-17; Declaration of Robert C. Kott at P 4 (Appendix A), and CAISO Reply Answer at 5-10 (Appendix B).

<sup>8</sup> Milford Power Co., LLC, 110 FERC ¶ 61,299 at PP 42-43, reh’g denied, 112 FERC ¶ 61,154 (2005).

<sup>9</sup> Complaint at 7.

owners cost comparisons, given the high level of MMC's concerns, in January 2006, the CAISO took the unprecedented step of obtaining a confidentiality waiver from Cabrillo to permit the CAISO to share with MMC a detailed comparison of the costs and terms offered by MMC in December 2005 and the costs and terms under which Cabrillo I offered Encina 4.<sup>10</sup> The CAISO has summarized this comparative analysis in its Answers to MMC's Protests.<sup>11</sup> Having carefully evaluated all of the relevant cost considerations, the CAISO determined that Cabrillo was the lower cost RMR option for the local reliability need in question.<sup>12</sup>

### **3. The CAISO Has Broad Discretion to Contract with Alternative RMR Resources.**

The CAISO admits that the September 2 Memorandum to the Board of Governors<sup>13</sup> states that "[i]f the ISO does not extend the RMR Contract by October 1<sup>st</sup> of the expiring Contract Year, it may not be re-designated for the entire subsequent Contract Year except in very limited circumstances."<sup>14</sup> The CAISO's actions with respect to its re-designation of Encina 4 were entirely consistent with that direction.

The September 2 Memorandum that MMC cites in its Complaint is intended to broadly describe for the CAISO Board of Governors the CAISO's RMR selection process. It is not part of the CAISO's Tariff. Immediately following the language cited

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<sup>10</sup>The CAISO is prohibited by the terms of a confidentiality provision in the LARS RFP from disclosing price terms of competing RMR offers.

<sup>11</sup> See CAISO Answer at 13-17 (Appendix A) and CAISO Reply Answer at 5-8 (Appendix B).

<sup>12</sup> *Id.*

<sup>13</sup> See September 2, 2005 Memorandum for CAISO Management to the CAISO Board ("September 2 Memorandum") and accompanying Appendix A, attached to the MMC Complaint as Exhibit No. MMC-1.

<sup>14</sup> Complaint at 7.

by MMC, the September 2 Memorandum further explains that with respect to potential contracts with new RMR owners, such as MMC:

Management's recommendation for each new RMR Contract . . . constitutes a conditional designation contingent upon execution of an RMR Contract . . . with rates, terms and conditions acceptable to Management. Designation is conditional because there are generally insufficient resources within a local area to create effective competition among entities submitting proposals in the LARS process. Thus, it is incumbent upon the ISO . . . to negotiate acceptable rates, terms and conditions for any new RMR Contracts. . . . *Where it is not possible to reach agreement with the resources that are designated conditionally, Management recommends that it be given the authority to seek and negotiate with an alternative resource that will meet the identified reliability requirement whether or not the resource participated in the LARS process.*<sup>15</sup>

The CAISO Board gave its management the requested authorization to contract with alternative resources.<sup>16</sup> In contracting with Cabrillo, CAISO management acted entirely in accordance with the foregoing procedures and the authorization granted by the Board.

Specifically, during the course of the negotiations for an RMR contract, MMC advised the CAISO that its fixed costs would be nearly three times the level that it had originally bid in the LARS process, that the capacity of the units would be lower than MMC had bid, and that the units would not be available until well beyond the beginning of the 2006 RMR Contract Year. Based on these considerations—and only after detailed discussions with MMC, the CAISO determined that it could not reach an acceptable contract with MMC. Consistent with the instruction it had received from its Board, the CAISO then considered and ultimately contracted with an alternative

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<sup>15</sup> September 2 Memorandum at 3 (emphasis added).

<sup>16</sup> See Board Documents, Motion: Approval of the RMR Designations for 2006, <http://www.caiso.com/docs/2005/09/02/200509021450326849.html>.

resource to meet the reliability need for which the MMC units had been targeted. That alternative resource was Encina 4. Based on the circumstances, the CAISO deemed it appropriate to “re-designate” Encina 4 for the 2006 contract year.

#### **4. Effect of Designation of MMC**

The CAISO admits that it conditionally designated the MMC units for 2006 reliability service, but it does not accept MMC’s characterization that “Board approval signified the viability of the MMC units for 2006 reliability service.”<sup>17</sup> When the CAISO conditionally designates a unit as RMR in response to proposals its received in the LARS process, no contract arises and no firm commitment is made. A unit is “designated” if it is determined by the CAISO to be eligible to meet a specific RMR need, but it does not become an RMR Unit unless, as noted above, an agreement is reached on “acceptable rates, terms and conditions for any new RMR Contracts.”

Based on the information MMC provided in its response to the CAISO May 24, 2005 LARS RFP regarding its cost, availability and operations, the CAISO designated the MMC units. Subsequent to that designation, as described above, MMC advised the CAISO that the cost of the units would be higher, the capacity would be lower and the availability date would be later than indicated in the MMC LARS bid. Further, based on its discussions with MMC, the CAISO became concerned about MMC’s ability to return the units, which have not operated for several years, to service.<sup>18</sup> None of this information was available to the CAISO when it made its recommendation to the Board conditionally designating the units for RMR service. Thus, the Board action could in no

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<sup>17</sup> Complaint at 7.

<sup>18</sup> See CAISO Reply Answer at 9-10.



way “signif[y] the viability of the MMC units for 2006 reliability service” based on the actual facts about the units. It was the facts that emerged only in the RMR contract negotiations that led the CAISO to conclude that the units were not a desirable RMR option.

##### **5. Effect on Ratepayers of Costs and Foregone Market Revenues**

The CAISO denies the allegation by MMC that the CAISO did not consider the effect on ratepayers of “foregone market revenues.”<sup>19</sup> MMC's assertions regarding the impact on ratepayers of an RMR unit operating under “Condition 1” versus “Condition 2” reflects MMC’s fundamental misunderstanding of the RMR contract.<sup>20</sup> In asserting that all market transaction revenue that a Condition 1 unit receives should “offset costs paid by ratepayers for RMR service,”<sup>21</sup> MMC ignores that, by virtue of the fact that Encina 4 and 5 will operate under Condition 1, the costs to the CAISO, and ultimately the ratepayers, for RMR go down, without any loss in grid reliability.<sup>22</sup>

An RMR unit operating under Condition 1 is allowed to enter into, and keep revenues earned from, market transactions. In exchange for the opportunity to earn profits through market transactions, a Condition 1 unit foregoes the guarantee of

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<sup>19</sup> Complaint at 7-8.

<sup>20</sup> RMR units operate as either “Condition 1” or “Condition 2” units. Condition 1 units may participate in market transactions and the owner is permitted to retain all revenues from such market transactions. Because Condition 1 units have an opportunity to recover a portion of their fixed costs through market transactions, under the RMR contract, these units are paid only a portion of their fixed costs that reflects the incremental fixed costs associated with providing RMR service. Conversely, a Condition 2 unit may not participate in market transactions unless the CAISO issues a dispatch notice for the unit. When the CAISO does issue a dispatch notice for a Condition 2 unit, the owner must bid to participate in the next available Energy and Ancillary Services markets but may not retain the revenues from such market transactions. Because Condition 2 units cannot retain market revenue and operate only to provide RMR service, these units are paid 100 percent of the unit’s fixed costs (assuming target availability).

<sup>21</sup> Complaint at 8.

<sup>22</sup> See CAISO Reply Answer at 8 (Appendix A).

recovering 100 percent of its fixed costs under the RMR Contract. A Condition 2 Unit may not enter into market transactions except when dispatched by the CAISO, and it must credit back to the CAISO all revenues it receives in market transactions, recovering only its RMR Contract fixed and variable costs.

For a Condition 2 Unit, the Responsible Utility either pays or receives a credit for the difference between the market clearing price and the RMR Contract variable costs. However, for a Unit operating under Condition 1, the RMR Owner may elect to deliver MWhs under an RMR dispatch notice as a market transaction, in which case it receives only the market clearing price for the energy delivered and there is no RMR Contract variable cost payment. Alternatively, the RMR Owner may choose to receive the RMR Contract variable cost for the RMR energy. In that case, the RMR variable cost payment is reduced by the amount the RMR Owner receives from the market. In either case, the RMR Owner receives the RMR fixed cost payment. In projecting RMR costs, the CAISO assumes RMR Unit Owners would only select the market transaction option when such revenue would exceed their operating cost and contribute to their fixed costs.

The CAISO took this into account in comparing the costs of Encina 4 and the MMC units. Moreover, the CAISO shared its analysis with MMC in the confidential cost comparison it provided to MMC in January 2006. As the CAISO has previously described, it concluded that this increased cost would be offset by other cost reductions making the issue moot in the ultimate cost comparison.<sup>23</sup>

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<sup>23</sup> See CAISO Answer at 15 (Appendix A) (explaining that the Scheduling Coordinator credit that Encina may earn in 2006 is off-set by the termination fee that would have been due to Encina 4 if it was not an RMR unit in 2006.)

## **6. Variable Cost Comparison**

The CAISO denies that “as to variable costs” MMC’s units are a substantially more economical alternative. MMC asserted, and the CAISO fully responded to this claim in the Cabrillo Power I LLC proceeding.<sup>24</sup> The fact that the heat rate for the MMC units is as much as 40 percent higher than the Encina 4 unit means the RMR Contract variable cost payment for the MMC units will be higher than the Encina 4 pass through for any given delivered MWhs.

MMC’s assertions that its units’ quick start capability and savings of ramping energy makes MMC meaningfully less expensive are unsupported and incorrect. MMC’s claims are based on the false assumption that no dispatch is required off-peak and that the market will not cover the cost of the ramping energy. Further, the quick start capability is of little value in the cost analysis because the CAISO issues the majority of its RMR Dispatch Notices by 5:00 a.m. on the day prior to the operating day, allowing ample time for an RMR unit to ramp to the necessary level. Additionally, the value of the MMC quick start capability is much less than the value of the energy the much larger Encina 4 is capable of providing to the system during the morning ramp.

## **7. Encina 4 Outage Record**

The CAISO denies MMC’s allegations that operation of Encina 4 as an RMR unit for Contract Year 2006 could result in high repair and replacement power costs and that Encina Unit 4’s outage record would be a “costly factor.”<sup>25</sup> As the CAISO has previously explained, MMC’s speculations that, as a 50+ year old unit, Encina 4 presents cost risks

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<sup>24</sup> See CAISO Reply Answer at 6-8 (Appendix B).

<sup>25</sup> Complaint at 8-9.

associated with forced outages, is both unsupported and erroneous.<sup>26</sup> The CAISO has a significant RMR operating history with Encina 4, and over the last five years, Encina 4 has an excellent availability factor, especially during the critical summer peak delivery months.

By contrast, MMC units have been mothballed for more than three years and have never operated under an RMR contract.<sup>27</sup> The CAISO, therefore, has no RMR operating experience with the MMC plants, or with MMC as an operator. Moreover, the operating history that the CAISO does have with the MMC units when they operated under Summer Reliability Agreements (SRA) was that these units were not reliable.

**8. Encina 4 Is the Least-Cost, Operationally Preferable Alternative to MMC**

The CAISO denies MMC's allegation that MMC's units were the lower cost alternative for reliability service. The CAISO carefully evaluated a complex array of factors in making the judgment to terminate negotiations with MMC and electing to contract with an alternative resource that the CAISO determined would best ensure the reliability of the grid on the most favorable terms available.

Based on the cost and terms provided to the CAISO by MMC and Cabrillo in December 2005, Encina 4 was the clearly preferable RMR resource. In a letter to MMC dated December 30, 2005, the CAISO outlined the reasons it terminated the faltering contract negotiations with MMC and selected an alternative RMR unit, Encina 4. The CAISO has reiterated the reason for its decision to MMC and in its filings with the

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<sup>26</sup> See CAISO Reply Answer at 7-8 (Appendix B).

<sup>27</sup> Between 2001-2003, the plants now owned by MMC were owned and operated as Summer Reliability Agreement (SRA) units by Pacific Gas and Electric Company's National Energy Group. Under this agreement, the units were only required to be available during the five summer months.

Commission.<sup>28</sup> As the CAISO informed MMC in January 2006, and as it has repeatedly explained, Encina 4 represents a more economical option that can meet the 2006 reliability need in the San Diego area with greater certainty than the MMC units, based on the information MMC provided to the CAISO in the RMR contract negotiations.

**B. MMC Is Not Entitled to the Remedy It Seeks.**

MMC asserts that “Relief for MMC will call for the Commission to sever CAISO’s agreement with Cabrillo and to enter into a new agreement with MMC.”<sup>29</sup> Even if the Commission were to conclude that the CAISO had imprudently failed to consider a factor relevant to the determination of whether MMC should be selected as a 2006 RMR Unit, a conclusion that the CAISO strongly believes the record does not support, directing the CAISO to sever its contract with Cabrillo and to contract with MMC is not the appropriate remedy.

The Commission has recognized that the selection of RMR Units is not simply a function of cost; also relevant are unit characteristics, capacity and reliability characteristics.<sup>30</sup> The CAISO Tariff imposes the responsibility on the CAISO to select RMR Units based on that full range of considerations and relying on its expertise to evaluate what can best meet the local reliability needs in question. The Commission has further recognized that it should not second-guess the reliability determinations of independent grid operators that bear the responsibility for ensuring reliability.<sup>31</sup> Both of

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<sup>28</sup> See Declaration of Robert C. Kott; CAISO Answer at 12-17 (Appendix A); and CAISO Reply Answer at 5-8 (Appendix B).

<sup>29</sup> Complaint at 9.

<sup>30</sup> Milford Power Co., LLC, 112 FERC ¶ 61,154 P17, *reh’g denied*, 114 FERC ¶ 61,265 (2005).

<sup>31</sup> Id. P14.

these considerations weigh strongly against the Commission directing the CAISO to enter into any particular contract. It is important that the Commission follow these principles in the circumstances at issue here.

When the CAISO was negotiating with MMC, the units MMC was offering for RMR were not operable. They had been shut down for several years, and MMC was proposing to refurbish them. MMC advised the CAISO that the units would not be available for RMR dispatch until some months into the future. There were also uncertainties about the units' capacity. (These were among the considerations that led the CAISO to conclude Encina 4 was a preferable option.) The CAISO has no current information about when the MMC units will actually be ready for RMR dispatch or how much capacity they can deliver. If the Commission concludes, contrary to the record as it stands today, that the CAISO erroneously failed to weigh some relevant factor in its determination concerning how best to meet the local reliability requirement in the San Diego area, then the CAISO should be directed to re-evaluate that determination based on all relevant factors. The CAISO can find no authority that would support a direct exercise by the Commission of this fundamental responsibility of the CAISO.

#### **IV. AFFIRMATIVE DEFENSES**

The CAISO relies on the following affirmative defenses:

1. The MMC Complaint is unsupported by evidence. This is fully demonstrated in the foregoing discussion and in Appendix A and Appendix B.
2. MMC has failed to make a good faith effort to quantify the financial impact burden allegedly created by the CAISO's failure to sign RMR contracts with MMC. This is required by Commission rules and precedent.<sup>32</sup>

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<sup>32</sup> See 18 C.F.R. § 385.206 (2006); *Chevron Products Co. v. SFPP, L.P.*, 99 FERC ¶ 61,196 at P 26 (2002) (complaint dismissed for complainant's failure to provide adequate support as required by Rule

## V. MMC'S COMPLAINT IS PREMATURE AND SHOULD BE DISMISSED

MMC has initiated this proceeding to serve as a placeholder through which the Commission can effectuate the relief MMC anticipates as a result of initiating Alternative Dispute Resolution (“ADR”) with the CAISO over the failure of MMC to obtain an RMR Agreement for its generating units for 2006. Specifically, MMC in its Complaint asks the Commission “to hold further procedures on this complaint in abeyance, pending resolution of arbitration that MMC initiated upon service of Statement of Claim upon CAISO with respect to this matter”.<sup>33</sup> One of the section headings in the Complaint similarly states that:

The Commission should Establish an Effective Date for this Complaint 60 days Hence, and Hold Further Proceedings in Abeyance Pending Arbitration, as a Vehicle For Granting MMC Relief Upon Resolution Of Arbitration With CAISO.<sup>34</sup>

This language leaves no question that MMC has predicated the Complaint upon the Statement of Claim it has submitted against the CAISO and that MMC intends the outcome of the Complaint proceeding to be derivative of the arbitrator’s decision. That underlying arbitration, however, was not properly initiated by MMC. The Statement of Claim MMC submitted to request ADR with the CAISO does not conform to the requirements of the CAISO Tariff for initiating dispute resolution and is not accepted by the CAISO.

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206, specifically to include documents that support the facts in the complaint, and to make a good faith effort to quantify the financial impact or burden arising from the respondent’s actions).

<sup>33</sup> Complaint at 1.

<sup>34</sup> Id. at 9.

CAISO Tariff Section 13 contains detailed provisions that govern the initiation and conduct of dispute resolution with the CAISO. Section 13.2.1, "Negotiation", requires that the parties undertake good faith negotiations of a dispute prior to initiating arbitration or mediation under Section 13.2.2, "Statement of Claim." Specifically, Section 13.2.1 provides that:

The ISO and Market Participants (party or parties) shall make good faith efforts to negotiate and resolve any dispute between them arising under ISO Documents prior to invoking the ISO ADR Procedures outlined herein. Each party shall designate an individual with authority to negotiate the matter in dispute to participate in such negotiations (emphasis added).

Section 13.2.2, allows for a statement of claim to be submitted only after good faith negotiations have occurred and have not resolved the dispute. This provision, in pertinent part, provides that:

In the event a dispute is not resolved through such good-faith negotiations, any one of the parties may submit a statement of claim, in writing, to each other disputing party, the ISO ADR Committee, and the ISO Governing Board, which submission shall commence the ISO ADR Procedures. . . (emphasis added).

While MMC and the CAISO engaged in *contract negotiations*, including discussions and written communications after the CAISO terminated those negotiations in December 2005, the parties have not undertaken formal *good faith negotiations* of the dispute as required by Section 13.2.1. The CAISO requires that all Market Participants process disputes in accordance with Section 13 and it would be unfair to treat MMC differently and allow it to bypass the good faith negotiation process and head directly to an arbitration proceeding. The CAISO has advised the American Arbitration Association, which administers CAISO ADR matters, that MMC's submission of its



Statement of Claim is premature and not in conformance with the requirements of Section 13.2.1 and 13.2.2, and that the matter should be closed.

Although the CAISO believes, as set forth above, that it acted entirely appropriately in its dealings with MMC, the CAISO stands willing to participate in a good faith negotiations and any follow-on ADR that may be appropriate. However, absent an active ADR matter underlying MMC's Complaint, the Complaint before the Commission is without basis and should be dismissed as premature.

## **VI. CONCLUSION**

For all the foregoing reasons, MMC's Complaint should be denied or dismissed as premature.

Respectfully submitted,

**/s/ Beth Ann Burns**  
Beth Ann Burns

## Appendix A

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

**Cabrillo Power I LLC**

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**Docket No. ER06-426-000**

**CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION'S  
ANSWER IN OPPOSITION TO MOTION TO INTERVENE OF  
MMC ENERGY NORTH AMERICA, LLC, AND  
MOTION FOR SUMMARY REJECTION OF PROTEST**

Pursuant to Rules 212, 213, and 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("Commission"), 18 C.F.R. §§ 385.212, 385.213 and 385.214, the California Independent System Operator Corporation ("CAISO") submits this answer in opposition to the motion to intervene of MMC Energy North America, LLC ("MMC"), and, in the alternative, motion for summary rejection of MMC's protest.

**I. Background**

On December 29, 2005, Cabrillo Power I LLC ("Cabrillo I") submitted pursuant to Section 205 of the Federal Power Act ("FPA"), revisions to certain of the rate schedules under its Reliability Must-Run ("RMR") Agreement ("RMR Agreement") between Cabrillo I and the CAISO to reflect the designation of Encina Unit 4 and changes to certain elements of the previously approved rates for Encina Unit 5, including a change in the Fixed Option Payment Factor ("FOPF") for Contract Year 2006 ("December 29 RMR Filing"). Cabrillo I is the owner of the Encina generating station ("Encina"), which includes five steam units (Units 1-5) and a small combustion turbine unit. Encina is located in Carlsbad, California, and is located within the CAISO's San Diego reliability area. For the past several years, Cabrillo I's Encina Units 1-5 have provided RMR service to the CAISO under terms and conditions of the Cabrillo I RMR

Agreement which is based on the *pro forma* RMR agreement approved by the Commission <sup>1/</sup> and rates fixed by a Commission-approved settlement agreement between the CAISO and Cabrillo I. <sup>2/</sup>

The CAISO relies in part on its Local Area Reliability Service (“LARS”) Request for Proposals (“RFP”) process, an annual competitive bid process, to determine which resources should be designated as RMR in order to ensure system reliability for the upcoming calendar year. As a result of its analysis of the proposals it received in response to its RFP for the 2006 Contract Year, in September 2005, the CAISO notified Cabrillo I that it was extending its RMR Agreements for Contract Year 2006 for Encina Units 1-3, 5 and the combustion turbine unit. Consistent with that notice, on November 10, 2005, Cabrillo I submitted a limited Section 205 filing to the Commission filing its annual revisions to the rates under its RMR Agreement for the selected units. The Commission accepted the revisions to the RMR Agreement effective January 1, 2006.<sup>3/</sup>

As part of its ongoing efforts to ensure local reliability needs will be met in 2006 at a reasonable cost to ratepayers, on December 22, 2005, the CAISO also entered into a Letter Agreement with Cabrillo extending the RMR Agreement for Encina Unit 4 for Contract Year 2006. Accordingly, on December 29, 2005, Cabrillo I initiated this proceeding, filing annual revisions to the rates under the RMR Agreements for Unit 4 and certain updates to Unit 5 to reflect the terms of the Letter Agreement. The only issue properly before the Commission in this

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<sup>1/</sup> California Independent System Operator Corp., 87 FERC ¶ 61,250 (1999).

<sup>2/</sup> Cabrillo Power I LLC and Cabrillo Power II LLC, 110 FERC ¶ 61,143 (2005) (order on uncontested settlement).

<sup>3/</sup> Cabrillo Power I, LLC and Cabrillo II, LLC, Letter Order issued in Docket No. ER06-197-000 (issued December 14, 2005).

proceeding is the justness and reasonableness of the proposed RMR rates for Encina Units 4 and 5.

On January 17, 2006, the CAISO, as a party to the bilateral Cabrillo I RMR Agreement, filed a motion to intervene in this proceeding, which raised no substantive issues. On January 19, 2006, San Diego Gas & Electric Company (“SDG&E”), the Responsible Utility under the RMR Contract, filed a motion to intervene out of time, which also raised no substantive issues. MMC filed a Motion to Intervene and Protest on the same day. <sup>4/</sup> The CAISO now submits this Answer in Opposition and Motion to Summarily Reject in response to MMC’s Motion to Intervene and Protest, requesting that the Commission deny MMC’s Motion to Intervene or, alternatively, reject MMC’s Protest, without prejudice to MMC pursuing the issues raised in its Protest through the dispute resolution procedures specified in the CAISO tariff or through a complaint proceeding before the Commission.

## **II. Statement of Issues**

1. The Commission should deny MMC’s Motion to Intervene because MMC does not have a direct interest in this proceeding sufficient to justify its intervention. See 18 C.F.R. § 385.214; Virginia Elec. & Power Co., 27 FERC ¶ 61,093 (1984); El Paso Natural Gas Co., 48 FERC ¶ 61,027 (1989); Amoco Production Co. et al. v. Natural Gas Pipeline Company of America, 78 FERC ¶ 61,311 (1997); Kansas-Nebraska Natural Gas Company, Inc., 21 FERC ¶ 61,285 (1982); Southern Company Services, Inc., 22 FERC ¶ 61,047, modified, 22 FERC ¶ 61,340 (1983).
2. The Commission should summarily reject MMC’s Protest because it does not raise any issues germane to this Section 205 proceeding or for which remedy could be provided in this proceeding. Midwest Independent Transmission System Operator, Inc., 113 FERC ¶ 61,083 (2005); Entergy Services, Inc., 100 FERC ¶ 61,250 (2002); Sithe Edgar LLC, 95 FERC ¶ 61,230 (2001); See Duke Power, 113 FERC ¶ 61,288 (2005); Midwest Independent Transmission System Operator, Inc., 111 FERC ¶ 61,637 (2005). Rather, to the extent it raises issues that warrant adjudication in any forum, MMC may pursue them through the CAISO tariff

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<sup>4/</sup> Cabrillo Power I LLC, Motion to Intervene and Protest of MMC Energy North America, LLC, Docket No. ER06-426-000 (filed January 17, 2006) (hereinafter “MMC Protest”).

dispute resolution procedures, or by way of a complaint with the Commission, as may be permitted under the FPA.

### **III. Answer in Opposition to MMC's Motion to Intervene**

The Commission should deny MMC's motion to intervene in this proceeding because it does not have a direct interest in Cabrillo I's limited Section 205 proceeding. Section 308(a) of the FPA provides that, in any proceeding before it, the Commission has the discretion to admit as a party "any person whose participation may be in the public interest."<sup>5/</sup> Rule 214 of the Commission's Rules and Regulations implements its authority under FPA § 308(a) and governs motions to intervene.<sup>6/</sup> Such motions must demonstrate that the movant has or represents an interest that may be directly affected by the outcome of the proceeding.<sup>7/</sup> This can include interests as a consumer, customer, competitor, or security holder of a party, or some other interest that is in the public interest.<sup>8/</sup> However, the specific reference to competitors in Rule 214 "does not provide automatic intervenor status on the mere allegation of a competitive interest in the proceedings."<sup>9/</sup> A moving party "still must prove that it has a present and direct interest in the proceedings."<sup>10/</sup>

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<sup>5/</sup> 16 U.S.C. § 825g(a).

<sup>6/</sup> 18 C.F.R. § 385.214.

<sup>7/</sup> Id.

<sup>8/</sup> Id.; see also Virginia Elec. & Power Co., 27 FERC ¶ 61,093, at p. 61,182 (1984) (denying a motion to intervene because the movant would not be directly affected and finding that the requested intervention was not in the public interest).

<sup>9/</sup> El Paso Natural Gas Co., 48 FERC ¶ 61,027, at p. 61,131 (1989); see also Amoco Production Co. et al. v. Natural Gas Pipeline Company of America, 78 FERC ¶ 61,311, at p. 62,334 (1997) (granting competitors' motions to intervene because objecting party did not give any reason for its objection to the interventions).

<sup>10/</sup> El Paso Natural Gas Co., 48 FERC at p. 61,131.

MMC has failed to meet the Commission’s standard for intervention. MMC’s conclusory statement that it is a competitor of Cabrillo I’s Encina Unit 4 and, therefore, “has an interest that may be directly affected by the outcome of the proceeding” [11/](#) is wholly inadequate to support a determination that it has an actual present and direct interest in this proceeding. The Commission has long held that a “general allegation by a petitioner that it may be bound by any determination the Commission might make is not a present and direct interest warranting its intervention.” [12/](#)

Specifically, the Commission has exercised its discretion to deny motions to intervene where the movant has available other “appropriate procedures and standards.” [13/](#) Where such other mechanisms exist for a movant to pursue its claims, the Commission may determine that the facts alleged in the motion to intervene are not germane to the proceeding. [14/](#) This is especially true where a motion to intervene fails to clearly articulate any direct adverse

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[11/](#) MMC Protest at p. 5.

[12/](#) Kansas-Nebraska Natural Gas Company, Inc., 21 FERC ¶ 61,285, at p. 61,781-82 (1982) (denying a timely motion to intervene because the alleged interest in the outcome of the case “too speculative”).

[13/](#) See Southern Company Services, Inc., 22 FERC ¶ 61,047, at p. 61,083 (hereinafter “Southern Company I”) (denying motion to intervene of the City of Lafayette, La., in a proceeding seeking approval of interchange and power sales agreement where Lafayette sought to have the agreements conditioned upon the provision of wheeling services to utilities not party to the agreements), modified 22 FERC ¶ 61,340 (1983) (hereinafter “Southern Company II”) (stating that the initial motion to intervene was “defective,” but permitting “new grounds for intervention in an application for rehearing”).

[14/](#) Southern Company I, 22 FERC at p. 61,083 (stating that the FPA, including Sections 211 and 212, provided appropriate procedures through which the movant could pursue its request); see also Virginia Elec. & Power Co., 27 FERC ¶ 61,093, at p. 61,182 (1984) (“There are other procedural options [other than intervention] by which it can make its positions known or seek a company-specific ruling.”).

affect from the outcome of the proceeding. [15/](#) In such a case, intervention would be “unnecessary and may unduly delay” the proceeding. [16/](#)

MMC’s intervention and protest is a pretextual and unsupported attempt to unreasonably delay approval of updated RMR rates under a bilateral contract between Cabrillo I and the CAISO that neither the CAISO nor the Responsible Utility have protested. As a competitor, MMC has no direct interest in that issue; indeed, it does not even assert one. Rather, MMC’s motivation for its Intervention is spelled out in its Protest: MMC objects to the CAISO’s ultimate determination that designating Encina Unit 4 as an RMR unit would result in a lower-cost, more assured source of capacity to meet local reliability needs than MMC’s currently shut down Chula Vista and Escondido generating stations could provide. However, MMC’s disappointment that the CAISO did not enter into a contract with MMC for 2006 — because, as discussed below, MMC’s costs rose sharply above its LARS proposal, while the available capacity fell below what MMC proposed, and MMC’s proposed date of deliverability was pushed well beyond January 1, 2006, the beginning of the RMR Contract Year — has no bearing on or relation to the justness and reasonableness of Cabrillo I’s RMR rate schedules. On that ground alone, the Motion to Intervene should be denied. [17/](#)

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[15/](#) Southern Company I, 22 FERC at p. 61,083-84 (noting that the motion to intervene lacked any assertion that the movant could suffer any adverse affect based upon the outcome of the proceeding).

[16/](#) See id. The Commission permitted the would-be intervenors to remedy a “defective motion to intervene” on rehearing, but noted that potential intervenors in any future proceeding are now on notice that failure to provide the reasons the outcome of a proceeding could have a direct affect on the movant would be at the movant’s “peril.” Southern Company II, 22 FERC at p. 61,585.

[17/](#) Florida Gas Transmission Co., 38 FERC ¶ 61,018, at p. 61,064 (1987) (denying request that the Commission order Florida Gas to sell natural gas to an intervenor in a proceeding related to an offer of settlement filed by Florida Gas).



In addition, however, MMC has other procedural avenues for pursuing its claims. MMC should not be permitted to delay resolution of and divert attention from the real, but narrow issues in this otherwise uncontested rate proceeding. Indeed, the CAISO's 2006 LARS RFP clearly informed participants, including MMC, that the "ISO Alternative Dispute Resolution Procedures apply to any dispute arising hereunder in accordance with Article 13 of the ISO Tariff." <sup>18/</sup> In addition, the CAISO's Dispute Resolution Procedures do not limit the rights of any party to file a complaint with the Commission under the relevant provisions of the FPA. <sup>19/</sup> Thus, if MMC genuinely believes it has a valid claim against the CAISO, it has legitimate procedural options for pursuing them, but this limited Section 205 rate proceeding is not one of them. <sup>20/</sup> Indeed, the relief MMC appears to desire – an RMR contract with the CAISO – is plainly not a remedy that is available in this proceeding.

#### **IV. Motion for Summary Rejection of MMC's Protest**

As described above, the purpose of this proceeding is to evaluate the justness and reasonableness of Cabrillo I's proposed RMR rates for 2006, an issue that is especially limited in scope given that most of the rate components are fixed by a Commission-approved settlement and neither the CAISO nor the Responsible Utility have raised any substantive issues. <sup>21/</sup> MMC

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<sup>18/</sup> 2006 LARS RFP at Cover Page (May 24, 2005), available at <http://www.caiso.com/docs/2001/10/15/2001101510100413037.html>.

<sup>19/</sup> See ISO Tariff at § 13.1.1.

<sup>20/</sup> If the Commission were to conclude, in response to a properly filed complaint, that the CAISO exercised its discretion in the RMR process in an unduly discriminatory fashion – a finding that CAISO is confident the facts do not support – the remedy would not be to direct the CAISO to contract with MMC, but rather to direct the CAISO to re-evaluate its selection of RMR resources in a non-discriminatory fashion. However, that relief cannot be granted in a proceeding where the issue is whether Cabrillo's filed rates are just and reasonable.

<sup>21/</sup> Cabrillo Power I LLC and Cabrillo Power II LLC, 110 FERC ¶ 61,143 (2005) (order on uncontested settlement).

presents no complaint, question or comment regarding Cabrillo I's rates. To the contrary, MMC's Protest is directed at the CAISO's decision not to enter into a contract with MMC. More specifically, MMC complains that the CAISO acted imprudently and discriminated against MMC when it selected Cabrillo I's Encina Unit 4 as an RMR resource and declined to contract with MMC's Escondido and Chula Vista plants ("MMC Units"). <sup>22/</sup> These prudence and discrimination allegations are baseless. Even if there were merit to MMC's claims, however, they have no bearing on the issues before the Commission in this limited Section 205 proceeding.

The Commission will summarily deny protests that raise issues outside the scope of proceedings at hand. <sup>23/</sup> The Commission also has determined that any claims of discrimination or improper action by a utility should not be brought in a rate proceeding, but rather through a complaint. <sup>24/</sup> Because the imprudence and discrimination claims MMC raises are plainly outside the scope of this proceeding, the Commission should summarily reject MMC's Protest.

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<sup>22/</sup> See MMC Protest at p. 2.

<sup>23/</sup> Midwest Independent Transmission System Operator, Inc., 113 FERC ¶ 61,083, at P 51 (2005) (finding that a request that the Commission order a revision to a business practices manual for the energy market was outside the scope of the proceeding even though the manuals implicated the Commission's jurisdiction because the terms discussed in the protest did "not significantly affect the rates, terms, and conditions for service" and did not need to be included in the tariff at issue); Entergy Services, Inc., 100 FERC ¶ 61,250, at PP 11-12 (2002) (denying protest requesting interpretation of an interconnection agreement as beyond the scope of the proceeding because the proceeding concerned a transmission agreement and an operating agreement and there was no claim either was unjust and unreasonable); Sithe Edgar LLC, 95 FERC ¶ 61,230, at p. 61,795 (2001) (denying a request for rehearing and upholding Commission's decision to summarily reject a "protest on the grounds that the protest was not related to the change in status that [was] the subject of [the] proceeding").

<sup>24/</sup> See Duke Power, 113 FERC ¶ 61,288, at PP 20, 23 (2005) (rejecting claims that an FPA Section 205 tariff revision "proposal should be rejected outright" because "[a]ny party that believes preferential treatment was given . . . can file a complaint with this Commission under Section 206"); Midwest Independent Transmission System Operator, Inc., 111 FERC ¶ 61,637, at P 32 (2005) (dismissing comments without prejudice in an FPA Section 205 proceeding and stating that should any transmission customer "believe that the Midwest ISO is applying the [tariff] in an unduly discriminatory manner, it may file a complaint with the Commission").

## A. The LARS Process

The CAISO necessarily has broad discretion in carrying out its RMR procurement process to ensure that it can fulfill its mandate of maintaining local reliability. As described supra at page 2, the CAISO procures RMR generation in part through its annual LARS RFP process. However, in conducting the procurement process, the CAISO clearly reserved the right to seek and contract with RMR resources outside of the LARS RFP process.

The LARS RFP seeks proposals annually from generators capable of providing local area reliability service, including RMR dispatch, in areas expected to have transmission constraints during the next calendar year. 25/ The CAISO evaluates proposals based on a broad range of criteria set forth in the LARS RFP. 26/ Included among those criteria are not only cost, but also such things as a unit's capability to commence providing RMR service on the Availability Date, the unit's operating characteristics, the ability to meet a particular reliability need and impacts on the market.

Because of the broad range of factors relevant to the CAISO's selection of RMR units, when it conditionally designates a unit as RMR in response to proposals it receives in the LARS process, no contract arises and no firm commitment is made. The conditional designation merely initiates a negotiation process over the cost and terms of RMR service. The CAISO emphasized this point throughout its 2006 LARS RFP and related documents. Specifically, the RFP provided:

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25/ In the 2006 LARS RFP, the CAISO put bidders on notice that it expected to secure most of its RMR requirements from generation subject to existing RMR Agreements. See 2006 LARS RFP at p. 2. MMC had no existing RMR Agreement.

26/ See 2006 LARS RFP at § 3.5 (evaluation criteria). Although price is a key consideration, the ability to meet the particular reliability need is the most fundamental factor in selecting RMR units.

No rights shall be vested in any party, individual or entity by virtue of its preparation to participate in, or its participation in, such process. . . . *No binding commitment shall arise between the ISO and a winning respondent under this Request for Proposals until and unless the parties sign documents of agreement that become effective in accordance with their terms.* [27/](#)

The ISO reserves to itself the selection of winning respondents, if any, in the exercise of its sole discretion. [28/](#)

The ISO assumes no obligation under this RFP, and is not bound to procure the service from any respondent to this RFP. The ISO assumes no obligation to provide a reason for rejection of a respondent's proposal. The ISO reserves the right to amend or withdraw this RFP at any time. Respondents assume the risk that the ISO may reject proposals for any reason, may reject all proposals, may make no award, and may withdraw the RFP without incurring any liability. *The ISO reserves the right to accept the proposals that in its sole judgment best serves its interests.* [29/](#)

As the CAISO further makes clear in its annual Memorandum to the ISO Board of Governors, [30/](#) it retains the discretion to seek, outside of the LARS RFP process, lower-cost or otherwise preferable RMR alternatives throughout the RMR Contracting process:

Based on the proposals received, Management makes its recommendations for RMR Contract extensions and terminations, and . . . additional RMR Contracts . . . . *Management's recommendation for each new RMR Contract . . . constitutes a conditional designation contingent upon execution of an RMR Contract or other contract with rates, terms and conditions acceptable to Management.* Designation is conditional because there are generally insufficient resources within a local area to create effective competition among entities submitting proposals in the LARS process. Thus, it is incumbent upon the ISO, working

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[27/](#) [Id.](#) at Cover Page (emphasis added).

[28/](#) [Id.](#) at p. 4.

[29/](#) [Id.](#) at pp. 8-9 (emphasis added).

[30/](#) This annual Board memorandum is a public document available on the CAISO's website at: <http://www.caiso.com/docs/2005/09/02/200509021450326849.html>.

with the Responsible Utilities . . . and state agencies . . . to negotiate acceptable rates, terms and conditions for any new RMR Contracts . . . . *Where it is not possible to reach agreement with the resources that are designated conditionally, Management recommends that it be given the authority to seek for and negotiate with an alternative resource that will meet the identified reliability requirement whether or not the resource participated in the LARS process.* [31/](#)

Following the CAISO management’s conditional designations, on September 8, 2005, the CAISO Board approved the designation of MMC’s units as RMR units for 2006 “contingent upon execution of an RMR Contract with rates, terms and conditions acceptable to Management” and further authorized Management to “[s]eek and, in its discretion, contract with alternative resources under rates, terms and conditions acceptable to Management that will meet local reliability needs if an acceptable RMR Contract cannot be obtained with the designated RMR resources.” [32/](#) The CAISO followed this mandate with respect to MMC and Cabrillo.

MMC was fully aware of the conditional nature of its designation and the need to reach agreement with the CAISO on rates, terms and conditions. MMC was also aware that the CAISO had reserved the discretion to contract with alternative RMR resources in lieu of the MMC Units. Its Protest does not contend otherwise. Given its fundamental responsibility to assure reliability in its control area, the CAISO necessarily exercises very broad discretion to determine which resources can best meet its RMR needs. The CAISO need not justify to a unit owner the procurement decisions it makes in carrying out that responsibility. [33/](#) Moreover, the CAISO clearly reserved the right to contract with an alternative resource at any point in the

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[31/](#) Memorandum to ISO Board of Governors regarding Approval of RMR Designations for 2006, at p. 3 (Sept. 2, 2005) (emphasis added).

[32/](#) See Board Documents, Motion: Approval of the RMR Designations for 2006, <http://www.caiso.com/docs/2005/09/02/200509021450326849.html>.

[33/](#) The RFP explicitly provides that the CAISO “assumes no obligation to provide a reason for rejection of a respondent’s proposal.” 2006 LARS RFP at § 3.4.

procurement process that the CAISO determines it cannot reach an acceptable contract with a designated unit. When the CAISO reached that conclusion with respect to the MMC Units, it promptly advised MMC.

## **B. CAISO/MMC Negotiations**

Following the CAISO's conditional designation of the MMC Units as RMR, CAISO management commenced negotiations with MMC seeking to enter into an RMR Contract with acceptable rates, terms and conditions. In the negotiations, however, MMC advised the CAISO that its fixed costs would be nearly three times the level that it submitted in its LARS proposal, that the capacity of units would be lower than MMC had proposed, and that the units would not be available until well beyond the beginning of the 2006 RMR Contract Year. <sup>34/</sup> The CAISO nevertheless continued its negotiations with MMC in an effort to understand what MMC could offer, when, and at what cost — all in a good faith effort to determine if acceptable contract terms might be reached. However, consistent with the instructions it had received from its Board, the CAISO also began considering alternative resources to meet the reliability need for which the MMC units had been targeted. <sup>35/</sup>

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<sup>34/</sup> MMC's RFP response indicated that the likely combined capacity for the MMC units would be 84 MW, just barely the minimum capacity the CAISO had concluded it needed to meet the particular reliability need in the San Diego area. MMC subsequently informed the CAISO that the combined maximum capacity for the MMC Units might be lower, thus bringing it below the level of the reliability need the CAISO had identified. Throughout the negotiations with MMC, there remained some uncertainty about the level of capacity that would be available.

<sup>35/</sup> MMC suggests in its Protest that "MMC's cost structure was known to CAISO from the start and throughout the life of this discussion." MMC Protest at 3. The implication seems to be that there was a single "cost structure" at issue. In fact, MMC proposed one cost in its LARS proposal, a cost that was three times the originally proposed cost at the outset of the negotiations, and a cost that was somewhat lower, but still almost two and one-half times its LARS proposal amount, at the conclusion of the negotiation.

### C. Cabrillo I Proposal

Contemporaneously with the MMC discussions, Cabrillo I advised the CAISO that, without an RMR contract, it would shut down Encina Unit 4, which would have represented a loss of 299 MW of generating capacity in California. As an alternative, however, Cabrillo I made an offer to the CAISO that made Unit 4 a clear, low-cost alternative to MMC with ensured capacity availability to meet the CAISO's reliability needs – what Cabrillo I referred to as the “two-for-one” option.

Specifically, Cabrillo I offered to make Unit 4 available for RMR service together with Unit 5 (already designated as an RMR unit for 2006) at the same cost it was providing RMR service from Unit 5 alone. [36/](#) To achieve this result, Cabrillo I proposed to use the previously agreed upon and Commission-approved Annual Fixed Revenue Requirements (“AFRR’s”) for both Units 4 and 5 (\$14.8 million and \$17.3 million respectively), but to operate both units as Condition 1 units at an FOPF of 0.542. The result was a total cost for both Units 4 and 5 that is roughly equal to the rate the CAISO had already contracted to pay for Unit 5 for RMR service alone, but with an additional 299 MW of capacity. [37/](#) Simply put, the marginal cost of designating Encina Unit 4 was nearly nothing making it the clear low-cost alternative to any other RMR resource, including MMC.

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[36/](#) In RMR Contract Year 2005 Cabrillo I's Units 1-5 operated under Condition 2, at a 1.0 FOPF. Cabrillo intended to continue to operate Units 1-3, and 5 under Condition 2 for Contract Year 2006, which meant that its RMR rate for Unit 5 would be the product of its settlement AFRR, \$17.3million, multiplied by a 1.0 FOPF to equal a \$17.3 million rate.

[37/](#) A 0.542 FOPF multiplied by Unit 4's AFRR of \$14.8 million yields \$8.02 million, and the same FOPF multiplied by Unit 5's AFRR of \$17.3 million yields \$9.37 million, making the total “rate” for Units 4 and 5 operating under Condition 1 at a 0.542 FOPF equal to \$17.3 million.

This is so because, under the *pro forma* RMR Agreement, the rate an RMR unit owner is paid for RMR service is a percentage of an AFRR. <sup>38/</sup> The AFRR generally represents the Owner's total fixed costs associated with the RMR unit. The percentage of the AFRR that is paid to the Owner for RMR service is based on the FOPF, which is the percentage of unit's fixed costs that is incremental to the provision of RMR service. The true RMR cost or rate is the product of a unit's AFRR and FOPF.

The FOPF is a critical determinant of cost when an RMR unit is operating under "Condition 1." Condition 1 units may participate in market transactions and the owner is permitted to retain all revenues from such market transactions, but they then receive under the RMR Agreement only a portion of their fixed costs, as determined by the FOPF. Thus, RMR units operating under Condition 1 are paid a certain percentage (something less than 100%) of their annual fixed costs as represented by the FOPF.

By contrast, a Condition 2 unit may not participate in market transactions unless the CAISO issues a dispatch notice for the unit. When the CAISO does issue a dispatch notice for a Condition 2 unit, the owner must bid to participate in the next available Energy and Ancillary Services markets but may not retain the revenues from such market transactions. Because Condition 2 units cannot retain market revenue and operate only to provide RMR service, these units are paid 100 percent of the unit's fixed costs (assuming target availability). Therefore, the FOPF for Condition 2 Units is always 1.0 (100%). <sup>39/</sup> By committing to operate both Encina Units 4 and 5 under Condition 1, Cabrillo I was agreeing that a significant portion of their fixed costs would not be recoverable under the RMR Agreement.

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<sup>38/</sup> MMC mistakenly focuses solely on the AFRR value. See MMC Protest at p. 8.

<sup>39/</sup> Prior to 2006, both Encina Units 4 and 5 had been operating under Condition 2 since January 1, 2005.



There were two other cost effects that the CAISO weighed. If Encina Unit 4 had shut down, the CAISO would have nevertheless been obligated to pay Cabrillo I for capital additions it had previously made in order to provide RMR service. This benefited Encina Unit 4 in the CAISO's economic analysis. There was also an increased Scheduling Coordinator credit of an uncertain amount that benefited MMC in the CAISO's economic analysis. These were partially off-setting, and they did not change the fundamental calculus that, by accepting the "two-for-one" offer, the CAISO was able to add a 299 MW Unit for RMR at virtually no additional cost.

MMC can only argue that the CAISO's decision was imprudent and discriminatory by ignoring the "two-for-one" aspect of the Cabrillo I arrangement, which included as a critical element Cabrillo I's commitment to operate two previously Condition 2 units as Condition 1 units that would have to rely on market transactions to recover nearly half of their respective fixed costs. Indeed, although it was advised of all the relevant facts before it filed its Protest, [40/](#) MMC bases its imprudence and discrimination claims on an irrelevant comparison of Cabrillo I's \$14.8 million AFRR for Encina Unit 4 to its "hypothetical" \$6 million AFRR for the MMC units without considering the FOPF and Cabrillo I's commitment to switch both Encina Units 4 and 5 to Condition 1. [41/](#) Because those were critical elements of Cabrillo I's proposal and of the CAISO's ultimate judgment to designate Encina 4, MMC's contention that the CAISO did not choose the most economic unit is entirely unfounded. [42/](#)

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[40/](#) After the CAISO concluded its negotiations with MMC and Cabrillo I, Cabrillo I authorized the CAISO to disclose otherwise confidential information to MMC so that MMC could understand the CAISO's decision. It has further authorized the CAISO to discuss those facts in this submission to the Commission.

[41/](#) See MMC Protest at p. 10.

[42/](#) *Id.* at pp. 10-12.

In addition to lower cost, the CAISO determined that Encina Unit 4 was the preferred RMR resource to satisfy the remaining RMR need in the San Diego area for several other reasons, among them: [43/](#)

- Encina Unit 4 had a demonstrated capability to provide the needed reliability service on the Availability Date, while it was clear that MMC's units, which are currently shut-down and needed to be returned to commercial operation, would not be available for service on January 1, 2006, the Availability Date;
- There was also considerable doubt about the whether the MMC Units could provide the full 84 MW of capacity MMC had bid, which would leave the CAISO with less RMR capacity than it had determined it required, while Encina Unit 4 is a 299 MW facility that more than adequately meets the CAISO's minimum reliability need;
- Encina Unit 4 has a lower heat rate, as much as 20 percent lower under certain operating conditions, which made it more operationally economic than MMC's Plants;
- Because Cabrillo I committed to operate both Encina Units 4 and 5 under Condition 1, the combination provides the market with 628 MW of fully dispatchable capacity that would not otherwise have been available. (If only Encina Unit 5 had been under an RMR Agreement, it would have operated under Condition 2, and its 329 MWs of capacity would not been fully dispatchable, while Encina Unit 4 would have shut down completely.)

In short, a wide range of factors pointed to the "two-for-one" deal as the far better option both for RMR purposes and for the California market as a whole. The CAISO thus plainly operated well within its discretion in selecting Encina Unit 4 and terminating its

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[43/](#) See Kott Declaration at ¶¶ 4-5, Attachment A.

negotiations with MMC. Indeed, the CAISO was not only squarely within its rights, but exercising its critical reliability responsibility when it terminated contract negotiations with MMC. The sole basis for MMC's Protest – its lack of a contract – reflects its failure to reach an agreement with the CAISO. The fact that Cabrillo I is plainly a better resource alternative to MMC – given the ultimate terms MMC offered – just serves to underscore that the prudence of the CAISO's decision to contract with Cabrillo I. More fundamentally, however, MMC should not be permitted to second-guess the CAISO's judgment on such a matter.

**D. Confidentiality**

MMC's suggestion that the CAISO may have shared MMC's confidential bid information with Cabrillo I is flatly unsupported. [44/](#) The CAISO takes seriously its obligations to preserve the confidentiality of LARS responses and to preserve the integrity of the LARS process as attested to by Mr. Kott and Mr. Grotta. [45/](#) Commission action on Cabrillo I's otherwise uncontested RMR rate schedule revisions should not be delayed by such unsubstantiated accusations made by a disappointed would-be RMR Owner.

**E. There Has Been No Discrimination or Imprudent Action for the Commission to Remedy in This Proceeding.**

In seeking summary rejection of the MMC Protest, the CAISO has comprehensively addressed the facts in order to demonstrate that there is no basis for any claim that Cabrillo I's rates are unjust or unreasonable. But, of course, MMC does not even argue that they are. More fundamentally, even if the Commission could somehow find that the rates before them in this limited Section 205 proceeding were unjust or unreasonable, that would not redress MMC's disappointment. MMC wants an RMR contract.

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[44/](#) MMC Protest at p. 14.

[45/](#) See Kott Declaration at ¶ 6 attached hereto as Attachment A and Grotta Declaration at ¶ 4 attached hereto as Attachment B.

Had MMC stood by the terms it originally proposed to the CAISO in response to the RFP, it would have such a contract. However, because MMC determined it could not or did not wish to provide RMR service on the terms it originally proposed, the CAISO properly exercised its discretion to select an alternate resource. As discussed above, if MMC wishes to pursue its claim that the CAISO was not permitted to terminate contract negotiations with MMC, MMC has a remedy under the CAISO tariff. Alternatively, it may file a complaint with the Commission. There is no justification, however, to delay and divert this otherwise uncontested rate proceeding to address MMC's entitlement – or lack thereof – to an RMR contract.

Based on the foregoing, the CAISO respectfully requests that the Commission deny MMC's Protest, without prejudice, and to expedite its approval of Cabrillo I's limited Section 205 filing.

**V. Conclusion**

**WHEREFORE**, for the foregoing reasons, CAISO respectfully requests that the Commission deny MMC's Motion to Intervene or, alternatively, deny MMC's Protest and accept the revised RMR Agreement between Cabrillo I and the CAISO effective January 1, 2006.

Dated: January 30, 2006

Respectfully submitted,

/s/ Mary Anne Sullivan  
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System Operator Corporation

**CERTIFICATE OF SERVICE**

I hereby certify that I have this 30<sup>th</sup> day of January, 2006 caused to be served a copy of the forgoing Answer in Opposition to Motion to Intervene and Motion to Reject Protest upon all parties listed on the official service list compiled by the Secretary of the Federal Energy Regulatory Commission in this proceeding.

/s/ Karin L. Larson

Karin L. Larson  
Hogan & Hartson L.L.P.  
555 13<sup>th</sup> Street, NW  
Washington, DC 20004

**ATTACHMENT A**

**Declaration of Robert C. Kott**

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

Cabrillo Power I LLC

)

Docket No. ER06-426-000

**DECLARATION OF ROBERT C. KOTT IN SUPPORT OF  
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION'S  
ANSWER IN OPPOSITION TO MOTION TO INTERVENE AND  
MOTION FOR SUMMARY REJECTION OF PROTEST**

I, Robert C. Kott, declare under penalty of perjury that the following is true and correct:

1. I am the Manager of Model & Contract Implementation for the California Independent System Operator Corporation ("CAISO"). My business address is 151 Blue Ravine Road, Folsom, CA 95630. I am submitting this Declaration in support of the CAISO's Answer in Opposition to the Motion to Intervene of MMC Energy North America, LLC ("MMC") and Motion for Summary Rejection of MMC's Protest ("CAISO Answer") in the above-referenced proceeding concerning Cabrillo Power I LLC's ("Cabrillo I") proposed revisions to its RMR Agreement for Contract Year 2006.

2. I oversee all business and technical aspects of the CAISO's procurement of Reliability Must-Run ("RMR") service. As part of my responsibilities, I oversee the Local Area Reliability Service ("LARS") Request for Proposals ("RFP") process. In that role, I served as the LARS Technical Coordinator for the 2006 LARS RFP process and, with the assistance of others, I evaluated all responses to the 2006 LARS RFP, recommended to the CAISO Board of Governors units to be designated for RMR contract extensions and units to be conditionally designated for new RMR contracts, negotiated RMR contracts with designated RMR units and, when it proved necessary, sought alternative RMR resources when it developed that an acceptable RMR contract could not be negotiated with a designated RMR unit.

3. In this Declaration, I address two factual matters: (i) the CAISO's determination that, under the terms offered by the respective Owners, Cabrillo I's Encina Unit 4 is a preferable alternative to MMC's Chula Vista and Escondido Plants ("MMC Units") to meet the CAISO's local reliability needs in

the San Diego area, and (ii) the CAISO's protection of the confidentiality of MMC's RFP response and related bid information.

4. Based upon my analysis of the accounting, engineering, financial and other data provided by MMC and Cabrillo I, Cabrillo I's Encina Unit 4 is a lower-cost preferred alternative to the MMC Units. In reaching this conclusion, I considered many factors, including the following:

- MMC advised us in the course of our negotiations concerning a possible RMR Agreement that it would be unable to provide RMR service at anywhere near the cost, or at the capacity level, or on the Availability Date that it had specified in its proposal in response to the 2006 LARS RFP. This made the terms and conditions under which the CAISO could contract with MMC far less desirable than I had assumed when I recommended to the CAISO Board of Governors that the CAISO conditionally designate the MMC Units for RMR service for 2006.
- In response to the CAISO's initial determination that Encina Unit 4 would not be continued as an RMR unit for 2006, Cabrillo I made a proposal under which it would provide two units, Encina Units 4 and 5, for approximately the same cost it had previously proposed to provide RMR service from the Encina 5 Unit alone, which had been designated for RMR service for 2006. As a central element of this proposal, Cabrillo I agreed to operate both Encina Units 4 and 5 under Condition 1 of the RMR Agreement, with a Fixed Option Payment Factor of .542. These Units operated under Condition 2 during 2005, which meant that all of their fixed costs were reimbursed under the RMR Agreement, and they could only be dispatched to meet RMR needs.
- As a further result of Cabrillo I's commitment to operate both Encina Units 4 and 5 under Condition 1, 628 MWs of additional capacity that was fully dispatchable became available to the California market. By contrast, Cabrillo I advised the CAISO that, absent RMR designation, Encina Unit 4 would be shut down, thereby depriving the market of 299 MWs of capacity under any terms.
- Encina Unit 4 has a demonstrated capability to provide the needed reliability service on the Availability Date. By comparison, the MMC's Units are currently shutdown. They must be returned to commercial operation before they could be available for RMR service, and thus they do not provide the same assurance of availability as Encina Unit 4.
- Encina Unit 4 has preferred operating characteristics compared to the MMC Units: it is a 299 MW generating capacity with a lower heat rate (higher efficiency) than the MMC Units.
- The CAISO's negotiations with MMC left me with considerable doubt about whether the MMC Units could provide the full 84 MW of capacity required to serve the RMR need once they became operational. In addition, the MMC units have a heat rate that is as much as 20 percent higher (less efficient) than Encina Unit 4 under certain operating conditions.



5. I reached the conclusion that Encina Unit 4 was a preferable RMR resource by comparison with the MMC Units only after extensive good faith negotiations with MMC. In reaching that conclusion, I exercised the discretion granted by the CAISO's Tariff Section 5.2 and the CAISO 2006 LARS RFP. I also acted in accordance with the Resolution adopted on September 8, 2005, by the CAISO Board of Governors directing me to seek and contract with alternative resources if an acceptable RMR contract could not be reached with any conditionally designated RMR Unit Owner.

6. Gilbert J. Grotta, a CAISO Senior Contracts Engineer, and I were the two CAISO employees principally involved in the negotiations with both MMC and Cabrillo I. I did not disclose to Cabrillo I any information that is deemed confidential pursuant to the Confidentiality Agreement set forth on page 4 of the 2006 LARS RFP. Likewise, to the best of my knowledge, neither Mr. Grotta nor any other employee of the CAISO disclosed any information to Cabrillo I that is deemed confidential pursuant to the Confidentiality Agreement set forth on page 4 of the 2006 LARS RFP.

7. If called as a witness, I would testify to the veracity of the matters set forth herein.

Dated this 26th day of January, 2006

  
\_\_\_\_\_  
Robert C. Kott  
Manager of Model & Contract Implementation

**ATTACHMENT B**

**Declaration of Gilbert J. Grotta**

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

Cabrillo Power I LLC

)

Docket No. ER06-426-000

**DECLARATION OF GILBERT J. GROTTA IN SUPPORT OF  
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION'S  
ANSWER IN OPPOSITION TO MOTION TO INTERVENE AND  
MOTION FOR SUMMARY REJECTION OF PROTEST**

I, Gilbert J. Grotta, hereby declare under penalty of perjury that the following is true and correct:

1. I am a Senior Contracts Engineer for the California Independent System Operator Corporation ("CAISO"). My business address is 151 Blue Ravine Road, Folsom, CA 95630. I am submitting this Affidavit in support of the CAISO's Answer in Opposition to the Motion to Intervene of MMC Energy North America, LLC ("MMC") and Motion for Summary Rejection of MMC's Protest ("CAISO Answer") in the above-referenced proceeding concerning Cabrillo Power I LLC's ("Cabrillo I") proposed revisions to its RMR Agreement for Contract Year 2006.

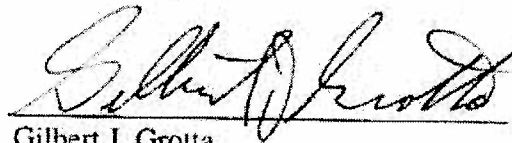
2. As part of my responsibilities as Senior Contracts Engineer, I served as part of the technical analyst team for the 2006 Local Area Reliability Service ("LARS") Request for Proposals ("RFP") process and was charged with evaluating accounting, engineering and financial data of potential Reliability Must-Run ("RMR") resources for the San Diego reliability area. In that role, I was involved in the RMR contract negotiations with both MMC and Cabrillo I.

3. Through this Declaration, I attest to one factual issue addressed in the CAISO Answer; that the CAISO did not breach the confidentiality of MMC's RFP response and related bid information.

4. Robert C. Kott, Manager of Model & Contract Implementation, and I were the two CAISO employees principally involved in the negotiations with both MMC and Cabrillo I. I did not disclose any information to Cabrillo I that is deemed confidential pursuant to the Confidentiality Agreement set forth on page 4 of the 2006 LARS RFP. Likewise, to the best of my knowledge, Mr.

Kott did not disclose any information to Cabrillo I that is deemed confidential pursuant to the Confidentiality Agreement set forth on page 4 of the 2006 LARS RFP.

Executed on this 27th day of January, 2006.

A handwritten signature in black ink, appearing to read "Gilbert J. Grotta", written over a horizontal line.

Gilbert J. Grotta  
Senior Contracts Engineer

## Appendix B

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

**Cabrillo Power I LLC**

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**Docket No. ER06-426-000**

**MOTION FOR LEAVE TO ANSWER AND ANSWER  
OF THE  
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION**

Pursuant to Rules 212 and 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“FERC” or “Commission”) 18 C.F.R. §§ 385.212 and 385.213 (2005), the California Independent System Operator Corporation (“CAISO”) hereby requests leave to submit a limited answer to correct factual errors in MMC Energy North America, LLC’s (“MMC”) “Reply in Support of Motion to Intervene and Protest” filed on February 8, 2006 (hereinafter “MMC Reply”).

In December 2005, the CAISO entered into a Reliability Must-Run Agreement with Carbillo Power I LLC (“Cabrillo I”) for one of its generating units, Encina Unit 4, for Contract Year 2006. As required by section 205 of the Federal Power Act (“FPA”), on December 29, 2005, Cabrillo I initiated this proceeding by filing revisions to certain of its RMR rate schedules to reflect the designation of Encina Unit 4 for Contract Year 2006 (“December 29 RMR Filing”). MMC has sought to intervene in this otherwise uncontested rate proceeding to request that the Commission condition acceptance of the Cabrillo I December 29 RMR Filing on

the outcome of an arbitration that MMC “anticipates” filing on the entirely different question whether the CAISO’s should have entered into an RMR contract with MMC for 2006.<sup>1</sup>

On January 30, 2006, the CAISO filed an Answer in Opposition to Motion to Intervene of MMC and Motion for Summary Rejection of MMC Protest (“CAISO Opposition and Motion”), arguing that the Commission should either deny MMC’s intervention or summarily reject MMC’s Protest because MMC has not raised any issue germane to Cabrillo I’s section 205 proceeding and that its allegations of discrimination and imprudence by the CAISO are properly raised in a section 206 complaint against the CAISO, if at all.

On February 9, 2006, MMC filed an Answer arguing that it should be granted the relief it seeks here because a section 206 complaint is not likely to provide it with an effective remedy for the current year. The prospective nature of section 206 relief has not caused the Commission to conclude it is an inadequate remedy.<sup>2</sup> More fundamentally, however, as is shown below, the assertions on which MMC’s Protest and Answer rest are unfounded.

In making this filing to correct the record, the CAISO does not seek to draw into this proceeding issues that are fundamentally irrelevant to the matters properly before the Commission. Nor does the CAISO believe that the judgments it made are subject to second-guessing by MMC or even the Commission. Rather, the CAISO seeks to make clear that it

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<sup>1</sup> Cabrillo Power I LLC, Motion to Intervene and Protest of MMC Energy North America, LLC, Docket No. ER06-426-000 (filed January 17, 2006) (hereinafter “MMC Protest”).

<sup>2</sup> See City of Anaheim, California, Opinion No. 483, 113 FERC ¶ 61,091, at P 132 (2005) (concluding that even if the CAISO had been unduly discriminatory in its practices, FPA section 206(a) "requires that, when the Commission finds a rate or practice is unduly discriminatory, it determine[] the just and reasonable rate or practice to be observed thereafter, that is, in the future").

carefully evaluated a complex array of facts in making the judgment to terminate negotiations with MMC, and the MMC Reply presents a serious risk that the Commission could be misled about the nature of the CAISO's decision-making or the considerations that the CAISO ultimately concluded were controlling. We seek to set the record straight on those matters and to make it clear that the CAISO sought to select the resources that would best ensure the reliability of the grid, and thus the availability of electricity to California ratepayers, on the most favorable terms available. The selection of the MMC resources that ultimately proved to present significant questions about cost, availability and efficiency would not have served those purposes.

## **I. STATEMENT OF ISSUES**

The Commission should accept and consider the CAISO's limited answer because good cause exists to permit a response. Specifically, the MMC Reply contains factual errors and unfounded assertions that the CAISO is compelled to correct in order to clarify the record. The Commission routinely permits answers, like the CAISO's, that serve to correct and clarify the record in a proceeding. 18 C.F.R. § 385.213(a)(2); 18 C.F.R. § 385.101(e); see *ISO New England, Inc. v. New England Power Pool*, 106 FERC ¶ 61,280 (2004); *Entergy Services, Inc.*, 105 FERC ¶ 61,318 (2003); *FirstEnergy Solutions Corp. v. PJM Interconnection, L.L.C. et al.*, 103 FERC ¶ 61,119 (2003); *Northern Natural Gas Co.*, 105 FERC ¶ 61,172 (2003); *Old Dominion Electric Cooperative v. PJM Interconnection L.L.C.*, 92 FERC ¶ 61,278 (2000); *American Electric Power Company*, 85 FERC ¶ 61,201 (1998).



## II. MOTION FOR LEAVE TO FILE LIMITED ANSWER

The Commission should permit the CAISO to file this limited answer to correct erroneous factual statements and unfounded suppositions in order to clarify the record in this proceeding. While the Commission's procedural rules do not provide for answers to protests, answers or similar filings as a matter of course, the Commission may, for good cause, permit such an answer.<sup>3</sup> Good cause exists to permit the CAISO to respond to the MMC Reply because this answer will correct the misapprehensions and mischaracterizations reflected in the MMC Reply.<sup>4</sup> This limited answer, therefore, will materially aid in the efficient disposition of these proceedings and should be permitted.<sup>5</sup>

## III. ANSWER

The CAISO addresses in this answer only MMC's most fundamental errors of fact and relies for its legal position on the arguments presented in its January 30 Opposition and Motion.

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<sup>3</sup> 18 C.F.R. §§ 385.213(a)(2) and 385.101(e).

<sup>4</sup> See Northern Natural Gas Co., 105 FERC ¶ 61,172, at P 6 (2003) (accepting rebuttal comments correcting factual errors since the information will assist the Commission in resolving issues in the proceeding); FirstEnergy Solutions Corp. v. PJM Interconnection, L.L.C. et al., 103 FERC ¶ 61,119, at P 33 (2003) (accepting answer to an answer "because it provides additional factual information that will assist us in ruling"); Old Dominion Electric Cooperative v. PJM Interconnection L.L.C., 92 FERC ¶ 61,278, at p. 61,937 (2000) (granting a request for waiver of Rule 213(a)(2) to answer an answer "because the pleading clarifies the arguments and enhances our understanding of the facts").

<sup>5</sup> ISO New England, Inc. v. New England Power Pool, 106 FERC ¶ 61,280 at P 19 (2004) ("We will accept the answers to protests and answers to answers noted above, given the complex nature of this proceeding and because these answers aided in clarifying certain issues . . ."); Entergy Services, Inc., 105 FERC ¶ 61,318 at P15 (2003) (finding good cause to accept answers, including an answer to an answer, because the answers provided the Commission "information that assisted [in the] decision-making process").

**A. Cabrillo I's FOPF Does Not Increase Rates**

MMC's claim that Cabrillo I's increase in the Condition 1 Fixed Option Payment Factor (FOPF) will increase rates<sup>6</sup> is fundamentally incorrect. First, the FOPF is not a cost as MMC suggests. Rather, the FOPF represents the percentage of an RMR unit's fixed costs that will be recovered through the RMR formula rate. Encina Units 4 and 5 have been operating as Condition 2 units. That means that they have had, by definition, an FOPF of 100 percent.<sup>7</sup> Unit 5 was scheduled to continue operating under Condition 2 in 2006.<sup>8</sup> As a central element of the Cabrillo I "two-for-one" proposal that the CAISO accepted, Units 4 and 5 are committed to operating under Condition 1 in 2006, at an FOPF of 0.542 or 54%. In effect, the applicable FOPF *decreased* from 100% to 54%. The decrease in the applicable FOPF causes a dramatic decrease in the fixed costs, including capital costs, for Encina Units 4 and 5 charged to ratepayers through the RMR Agreement and, similarly decreases the charges and rates set for in Tables B-1 through B-4 of the Cabrillo Rate Schedule.<sup>9</sup>

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<sup>6</sup> MMC Reply at pp. 10-11.

<sup>7</sup> All RMR units have a 1.0 FOPF for Condition 2 and a FOPF equal to something less than 1.0 for Condition 1.

<sup>8</sup> While the Cabrillo I's 2004 Settlement included a Condition 1 FOPF of .30, it was effectively irrelevant because the units operated under Condition 2, with an FOPF of 1. See Cabrillo I LLC, Offer of Settlement, Docket No. ER04-308 (filed December 14, 2004), which expressly addressed a number of issues that had been in contention, but made no express mention of the FOPF; Cabrillo Power I, LLC and Cabrillo II, LLC, Letter Order issued in Docket No. ER06-197-000 (issued December 14, 2005) (accepting RMR rate schedules for Cabrillo I Units 1-3 and 5 for Contract Year 2006).

<sup>9</sup> The CAISO has already amply addressed MMC's claim that Encina Unit 4 has higher fixed costs than the MMC units. Briefly, the CAISO was already committed to the AFRR of \$17.9 million of Encina 5, operating on Condition 2. The "two-for-one" deal gave the CAISO an additional 299 MW unit for *no* additional AFRR. See CAISO Opposition and Motion at 13-15.

## **B. Variable Costs Do Not Favor the MMC Units**

Without apparent basis, MMC claims that ancillary services and variable charges, will result in higher costs to ratepayers will be higher for Encina Unit 4 than for MMC. The CAISO considered these costs in its evaluation. In recent years, the CAISO has rarely had occasion to use RMR dispatch for ancillary services. Thus, ancillary services proved to be immaterial to the CAISO's analysis. Other variable charges, particularly related to heat rate, are significant and favor Encina Unit 4.

MMC attempts to portray the difference in heat rate between its units and Encina Unit 4 as "moderate" and of no significance when considered in light of Encina Unit 4's slower ramp rate. The facts speak for themselves. The heat rate for the MMC units is approximately 40 percent higher than the heat rate for Encina Unit 4. That translates into substantially higher fuel costs for the MMC units.

MMC notes that its units have black-start and automatic-start capabilities that Encina Units 4 and 5 do not have. In theory, that could result in higher start-up charges for the Cabrillo units than for the MMC units.<sup>10</sup> However, because Cabrillo's proposal included operating both units on Condition 1, the CAISO made the judgment that, in all likelihood, it would not have to pay for many start-ups for either unit because the units would likely already be in the market at times when they were needed for local reliability, and thus the CAISO would not pay for the start-ups at all. In other words, by virtue of the Condition 1 and "two-for-one" terms

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<sup>10</sup> The quick-start capability is generally irrelevant because the CAISO has ample quick-start capacity in the area served by these units and because RMR dispatch notices are issued at 5 a.m. of the day before the operating day.

of the deal Cabrillo I offered, the CAISO had the prospect of little or no start-up cost for Unit 4 *and* an unexpected savings in start-up costs on Unit 5, which was already committed to RMR service for 2006 on the assumption it would be a Condition 2 unit. Additionally, the CAISO would not have to pay pre-paid start-up costs for either unit, saving approximately \$1 million.

To be sure, this analysis called for the CAISO to exercise its expert judgment about the California market and the specific units in question, but that is precisely the kind of judgment the CAISO is charged with making. Plainly, as the Commission has acknowledged, neither MMC nor the Commission is better positioned than the CAISO to make such a judgment.<sup>11</sup>

In a further effort to support its hypothesis that variable costs for Encina Unit 4 would be higher than for the MMC units, MMC speculates that, as a 50+ year old unit, Encina Unit 4 presents cost risks associated with forced outages and the need to acquire replacement power. In fact, the CAISO had a solid track record of performance to consider in deciding whether Encina Unit 4 was able to provide the needed reliability service. As the outage hours data included in the revised tariff sheets no. 118 and 124 show, over the last five years, Encina Unit 4 had an excellent availability factor of 93 percent.<sup>12</sup> By contrast, the CAISO learned only after the MMC units had been tentatively designated RMR that there had not yet even been an

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<sup>11</sup> It is precisely because such judgments are required in selecting RMR units that the Commission has held it will not second guess the judgments of an ISO. Milford Power Co. LLC, 110 FERC ¶ 61,299, reh'g denied, 112 FERC ¶ 61,154 (2005).

<sup>12</sup> This does not include long-term planned outage hours.

engineering study to evaluate what would be necessary for recommissioning. Again, MMC's unfounded and self-serving speculation cannot justify subjecting the CAISO's informed judgment to second-guessing.

Perhaps the most inexplicable of MMC's contentions is that one of the "costs to the ISO from the conversion of the Encina Unit 5 to Condition 1 will be an inability to call on energy from the unit, or on generation-related ancillary services, which translates to a substantial loss of sales revenue from such energy sales." MMC Reply at 10. The "two-for-one" deal Cabrillo proposed in fact assures that both Encina Units 4 and 5, totaling more than 628 MWs, are fully dispatchable, that is, *always* available to provide the energy and ancillary services the market needs. When the units are doing that in market transactions, they meet the local reliability needs just as surely as when they are dispatched as RMR units. Grid stability depends on the sources and amounts of energy and ancillary services available to the grid, not on whether they bear a "market" or "RMR" label. Moreover, the CAISO's RMR dispatch rights for Condition 1 and Condition 2 units are identical.<sup>14</sup> By virtue of the fact that the Encina Units are operating under Condition 1, however, the costs to the CAISO for RMR go down, without any loss – indeed they achieve a gain – in grid reliability.<sup>15</sup>

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<sup>14</sup> See RMR Agreement, Article 4.

<sup>15</sup> MMC's claim that the "two-for-one" deal makes no economic sense from Cabrillo I's perspective and suggests some undisclosed deal (MMC Reply at 12-13) inexplicably overlooks that Cabrillo I will now have two units, totaling 628 MW, that can earn revenues from market transactions, along with the RMR Condition I revenues.

### C. The CAISO Properly Considered MMC's Capacity and Availability Date

MMC argues that it began discussing RMR status for the MMC units in the Spring of 2005, implying that: i) the CAISO fully understood all along the issues about their availability; ii) the Board was concerned only with availability as of May 1, 2006; and iii) the capacity of the units was never in doubt. The facts are quite different.

Although the Request for Proposals for 2006 RMR service clearly stated that the CAISO sought to conclude agreements with new RMR owners by November 1, 2005,<sup>16</sup> nothing in MMC's bid alerted the CAISO that the units would not be available until some months later.

MMC further contends that the CAISO Board gave the CAISO authority to seek RMR alternatives "only if the May 2006 Required Date could not be met."<sup>17</sup> The Board's resolution plainly refutes that: It authorized the CAISO management to "[s]eek and, in its` discretion, contract with alternative resources under rate, terms and conditions acceptable to Management that will meet local reliability needs *if an acceptable RMR Contract cannot be obtained with the designated RMR resources* in Attachment 1 to the Memorandum."<sup>18</sup> Thus, the CAISO acted well within its authority in terminating contract negotiations with MMC based on the multitude of reasons described in CAISO's Opposition and Motion, including availability of the unit.<sup>19</sup>

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<sup>16</sup> LARS RFP at 4 available at <http://www.caiso.com/docs/2001/10/15/2001101510100413037.html>.

<sup>17</sup> MMC Reply at p. 7.

<sup>18</sup> See Board Documents, Motion: Approval of the RMR Designations for 2006 (emphasis added), at <http://www.caiso.com/docs/2005/09/02/200509021450326849.html>.

<sup>19</sup> CAISO Motion for Summary Rejection at p. 14-16.

The record is also clear the CAISO put all bidders on notice that it was seeking resources *for the 2006 calendar year* and that Availability Date was a directly relevant criterion in the CAISO's evaluation of resources.<sup>20</sup> The assured availability of an RMR unit is one of several clearly articulated criteria the CAISO takes into consideration in selecting an RMR unit. Not only are MMC's units not currently operational, but they have never operated as RMR units, and MMC has never operated the units. In comparison, Encina Unit 4 had a January 1, 2006 Availability Date and a long record of reliable service as an RMR unit. Thus, on the issue of availability, Unit 4 was a demonstrably preferable choice.

**D. MMC Placed the Capacity of Its Units in Doubt**

MMC disputes that the CAISO ever had reason to doubt that MMC could make 84 MW of capacity available to meet the reliability need in San Diego for which it had been conditionally designated. In fact, after bidding 84 MWs in the LARS process, MMC sought to contract for less than that and, as noted above, disclosed that the engineering studies for recommissioning had not yet been undertaken. Taken together with the CAISO's knowledge of the past operating history of the units, those facts gave the CAISO considerable pause about whether the MMC units would provide the capacity the CAISO needed to meet its responsibility to maintain the reliability of the grid. As the Commission has recognized, that was the CAISO's judgment to make, and it should not be second-guessed,<sup>21</sup> particularly in the context of this section 205 proceeding concerning the rates for an alternate RMR resource.

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<sup>20</sup> LARS RFP at cover page and pp. 1-3. Indeed, two of the RMR unit selection criteria expressly mention Availability Date. *Id.* at 9.

<sup>21</sup> See Milford Power, *supra* at PP 42-43.

#### IV. CONCLUSION

WHEREFORE, the CAISO respectfully requests that the Commission grant this motion for leave to answer, accept this answer, and deny MMC's Motion to Intervene or, alternatively, deny MMC's Protest and accept the revised RMR Agreement between Cabrillo I and the CAISO effective January 1, 2006.

Dated: February 10, 2006

Respectfully submitted,

/s/ Mary Anne Sullivan  
Mary Anne Sullivan  
Karin L. Larson  
Hogan & Hartson L.L.P.  
555 13<sup>th</sup> Street, NW  
Washington, DC 20004

Counsel for the California Independent  
System Operator Corporation



**CERTIFICATE OF SERVICE**

I hereby certify that I have this 10<sup>th</sup> day of February, 2006 caused to be served a copy of the forgoing Motion for Leave to Answer and Answer upon all parties listed on the official service list compiled by the Secretary of the Federal Energy Regulatory Commission in this proceeding.

/s/ Karin L. Larson  
Karin L. Larson  
Hogan & Hartson L.L.P.  
555 13<sup>th</sup> Street, NW  
Washington, DC 20004

## **CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in the above-captioned dockets.

Dated at Folsom, California, on this 23rd day of March, 2006.

**/s/ Beth Ann Burns**  
Beth Ann Burns