

UNITED STATES OF AMERICA 93 FERC ¶ 63,003  
FEDERAL ENERGY REGULATORY COMMISSION

Southern California Edison Co., Docket Nos. ER98-441-022, ER98-2550-005  
California Independent System Operator  
Corp., and El Segundo Power, LLC

Pacific Gas and Electric Co., Docket Nos. ER98-495-018, ER98-1614-008  
Duke Energy Moss Landing LLC, ER98-2145-008, ER98-2668-011  
and Duke Energy Oakland LLC ER98-2669-010, ER98-4296-008  
ER98-4300-008

San Diego Gas & Electric Co. Docket Nos. ER98-496-011, ER98-2160-009

Duke Energy Moss Landing LLC and Docket Nos. ER99-1127-009, ER99-1128-009  
Duke Energy Oakland LLC

**CHIEF JUDGE'S CERTIFICATION OF  
UNCONTESTED OFFER OF PARTIAL SETTLEMENT**

(Issued October 5, 2000)

**TO THE COMMISSION:**

**I. Background**

On August 14, 2000, the California Independent System Operator Corporation (California ISO), Cabrillo Power I LLC (Cabrillo I), Cabrillo Power II LLC (Cabrillo II), Duke Energy Moss Landing LLC (DEML), Duke Energy Oakland LLC (DEO), Duke Energy South Bay LLC (Duke South Bay), El Segundo Power, LLC (El Segundo), Geysers Power Company, LLC<sup>1</sup> (Geysers), Pacific Gas and Electric Company (PG&E),

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<sup>1</sup>Geysers joins the Second Stipulation as to the resolution of Section C.17 issues and related changes to Article 9 only. All other issues specific to Geysers were resolved in a settlement filed with the Commission on July 1, 1999. The Commission approved the settlement on January 31, 2000. *Southern California Edison Co.*, 90 FERC ¶ 61,096 (2000). With respect to Section C.17 issues, the Commission directed Geysers to file revised rate sheets reflecting resolution of that issue within thirty days of Commission approval of any other such settlement. The Commission accepted Geysers' compliance filing by letter order dated March 16, 2000, in Docket No. ER98-495-013.

Reliant Energy Etiwanda, LLC (Reliant Etiwanda), Reliant Energy Mandalay, LLC (Reliant Mandalay), Southern Energy Delta, L.L.C. (Southern Delta), Southern Energy Potrero, L.L.C) (Southern Potrero), and Williams Energy Marketing and Trading Company (Williams) (with respect to Alamitos Generating Station, Huntington Beach Generating Station, and Redondo Beach Generating Station), submitted an Offer of Settlement in the above referenced proceedings (Second Settlement). San Diego Gas & Electric Company (SDG&E), the California Electricity Oversight Board (EOB), and Southern California Edison Company (SDG&E) joint this Second Settlement as additional sponsoring parties. The transmittal letter states that the Public Utilities Commission of the State of California fully supports the Second Settlement. This Offer of Settlement is a follow up to an earlier partial settlement filed in these proceedings concerning Reliability Must-Run (RMR) services in California.

The Second Settlement resolves many of the remaining issues in these proceedings and is uncontested. Specifically, the Second Settlement concerns issues reserved in Article X, Sections C.2 and C.5 through C.17 of the April 2, 1999, Offer of Settlement concerning the terms and conditions of providing RMR service to the California ISO.

Starting with orders issued on December 17, 1997, the Commission accepted for filing, suspended for a nominal period, and set for hearing proposed agreements under which RMR services are provided as required by the California ISO. *Pacific Gas & Electric Co.*, 81 FERC ¶ 61,322 (1997). On April 2, 1999, the parties filed an Offer of Settlement (First Settlement) that resolved most of the issues relating to the Must-Run Agreements which provide the rates, terms, and conditions for RMR services. The Commission approved this First Settlement on May 28, 1999. *California Independent System Operator Corp.*, 87 FERC ¶ 61,250 (1999). Following the approval of the First Settlement the participants continued discussions on the remaining issues outlined in Article X of the First Settlement and have filed several other settlements addressing the other reserved issues. On July 1, 1999, Geysers, PG&E, the California ISO, and the EOB filed an Offer of Settlement as to specific issues related to RMR charges from generation units owned by Geysers. The Commission approved the settlement on January 31, 2000. *Southern California Edison Co.*, 90 FERC ¶ 61,096 (2000). On August 31, 1999, Williams (with respect to Alamitos Generating Company Station, Huntington Beach Generating Station, and Redondo Beach Generating Station), SCE, the California ISO, and the EOB filed an Offer of Settlement as to specific issues relating to Williams' RMR Rate Schedules. The Commission approved the Settlement on January 31, 2000. *Southern California Edison Co.*, 90 FERC ¶ 61,091 (2000). On September 8, 1999, Reliant Etiwanda and Reliant Mandalay, SCE, the California ISO, and the EOB filed an Offer of Settlement as to specific issues relating to Reliant Etiwanda's and Reliant Mandalay's RMR rate Schedules. The Commission approved the Settlement on January 31, 2000. *Southern California Edison Co.*, 90 FERC ¶ 61,091 (2000). On November

3, 1999, PG&E, the California ISO, and the EOB filed an Offer of Settlement as to specific issues relating to RMR charges from generation units that continue to be owned and operated by PG&E. The Commission approved the Settlement on January 13, 2000. *Pacific Gas & Electric Co.*, 90 FERC ¶ 61,023 (2000). On November 5, 1999, El Segundo, the California ISO, SCE, and the EOB filed an Offer of Settlement as to specific issues related to El Segundo's RMR Rate Schedules. The Commission approved the Settlement on August 1, 2000. *Southern California Edison Company*, DEML, DEO, PG&E, the ISO, and the EOB filed an Offer of Settlement as to specific issues related to DEML's and DEO's RMR Rate Schedules. The Commission approved the Settlement on January 28, 2000. *Duke Energy Moss Landing*, 90 FERC ¶ 61,073 (2000). On March 31, 2000, Duke South Bay, SDG&E, the ISO, and the EOB filed an Offer of Settlement as to specific issues related to Duke South Bay. The Commission approved the Settlement on August 1, 2000. *San Diego Gas & Electric Co.*, 92 FERC ¶ 61,155 (2000). On May 8, 2000, Cabrillo I and Cabrillo II, SDG&E, the ISO, and the EOB filed an Offer of Settlement resolving issues specific to Cabrillo I and Cabrillo II RMR Rate Schedules. The Commission approved the settlement on July 31, 2000, *San Diego Gas & Electric Co.*, 92 FERC ¶ 61,116 (2000). One Initial Decision is pending before the Commission concerning the rates to be paid by the California ISO under the RMR Agreement for service provided by Southern Energy Delta and Southern Energy Potrero. 91 FERC ¶ 63,008 (2000).

## II. The Second Settlement

The Second Settlement resolves 12 of the 17 issues enumerated under Article X of the First Settlement. The Second Settlement resolves Sections C.2, C.5, C.6, C.7, C.10, C.11, C.12, C.13, C.14, C.15, C.16, and C.17 of Article X. The principal provisions of the settlement are described below:

- Issue C.2 - Provides that the annual discount rate to be used in the formula for the calculation of the Termination Fee will be equal to the interest rate used by the Commission for calculating refunds, 18 C.F.R. § 35.19a.
  
- Issue C.8 - Concerns certain RMR units that have dual fuel operations—units that can operate using gas or oil. On August 26, 1999, the California ISO Board determined only the following RMR units were obligated to restore or maintain existing oil burning capability: Humboldt Bay Units 1 and 2, Potrero Unit 3, Encina Units 1-5, Encina CT, South Bay Units 1-4, and South Bay CT. Upon approval of the Second Settlement, the parties have 90 days to resolve among themselves the issue of terms and conditions for maintaining dual fuel capability. If

any the issue is not resolved in that time period, any party may propose to the Chief Judge procedures to facilitate further negotiations on the remaining issue(s).

Issue C.13 - Provides the method for how certain gas price indices are used. However, with the Commission's approval of Amendment 26 (*California Independent System Operator, Corp.*, 90 FERC 61,345 (2000)) to the California ISO tariff, the parties are free to make filings under Sections 205 and 206 of the Federal Power Act to modify this provision of the Second Settlement to reflect the timing of dispatch.

Issue C.17 - Addresses revisions to Article 9.1 of the RMR Agreement concerning the requirements of submitting invoices to the California ISO, when those invoices can be submitted, and procedures for making changes in prior invoices. These revisions also required changes to the California ISO tariff, which are delineated in Appendix C. The procedures for the billing and settlements are set out in Appendix D. Appendix E contains the guidelines for changing prior invoices. The ability to carry forward credits on ISO invoices was eliminated, except for the Carryforward Credit in Sections 9.1(e) and 9.1(f). Owners of RMR units must make refunds to the California ISO.

### **III. Comments on the Second Settlement**

Initial comments in support of the Second Settlement were filed on September 5, 2000, by the Public Utilities Commission of the State of California (California Commission) and by the Staff of the Federal Energy Regulatory Commission (Commission Staff). The California Commission states in its comments that while it does not contest the Second Settlement, it is not taking a position on the White Paper<sup>2</sup> issues on pages 5-6 of the Settlement. On September 5, 2000, Geysers filed initial comments to the Second Settlement. While not opposing the provisions of the Second Settlement, Geysers takes issue with certain provisions included in the Settlement.

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<sup>2</sup>The White Paper issues are questions that have arisen from experience gained under the conditions of the RMR contract. The parties agreed to a 90-day period for resolution of the issues, and that further procedures could be agreed upon if there is no resolution, but the Second Settlement does neither mandate an outcome nor further procedures.

The Chief Judge, on September 11, 2000, extended the time for the filing of reply comments in these proceedings to September 20, 2000, to allow the parties time to address Geysers's concerns. On September 19, 2000, the signatories to the Second Stipulation filed amended pages to the Second Stipulation which resolve Geysers's concerns by removing from the Settlement one of the White Paper issues. The letter states that Geysers is withdrawing that portion of its comments taking issue with the Second Stipulation and now fully supports the Offer of Settlement.

On September 20, 2000, the Commission Staff filed reply comments pointing out the issues raised by Geysers had been resolved, that the California Commission was not contesting any of the provisions of the Second Settlement, and urging certification of the Second Settlement to the Commission.

#### **IV. Discussion and Certification**

The Second Settlement constitutes resolution of many complex and contentious issues. Those issues, described in detail in the Second Stipulation are: Discount Rate Termination Fee, Unplanned Repairs, Insurance, Gas Measurement Standards, Oil Burning Capability, Emissions Limitations, Scheduling Coordinator Ancillary Services Credits, Ancillary Services Capacity Payments, Gas Price Indices, Availability Weighting Factors, Future Year Contract Service Limits, and Contract Year Credits and Refunds. The Second Settlement is the product of lengthy and intense settlement negotiations among the parties and represents a reasonable compromise among the various competing interests. The instant settlement also results in an expeditious resolution of these proceedings and obviates the need for additional expenditure of time and resources by the participants and the Commission herein.

As amended by the filing made on September 19, 2000, the Second Stipulation is uncontested by the parties. The Chief Judge finds that the proposed settlement is fair, reasonable, and in the public interest, and it should be approved by the Commission.

Accordingly, pursuant to 18 C.F.R. § 385.602(g)(1), the Chief Judge hereby certifies to the Commission:

- The Uncontested Offer of Settlement filed on August 14, 2000 and the amended pages to the offer of settlement filed on September 19, 2000.
- The initial comments filed on September 1, 2000, by the California Commission and on September 5, 2000, by Geysers and by the Commission Staff.

- Reply comments filed on September 20, 2000, by the Commission Staff.
- The attached draft letter order of the Commission.

Curtis L. Wagner, Jr.  
Chief Administrative Law Judge

**D R A F T**

FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

In Reply Refer To:

Docket Nos. ER98-441-022, ER98-2550-005,  
ER98-495-018, ER98-1614-008,  
ER98-2145-008, ER98-2668-011,  
ER98-2669-010, ER98-4296-008,  
ER98-4300-008, ER98-496-011,  
ER98-2160-009, ER99-1127-009,  
and ER99-1128-009

Swidler Berlin Shereff Friedman, LLP  
Attn: Edward Berlin, Esquire  
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System Operator Corporation  
3000 K Street, N.W. Suite 300  
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Dear Mr. Berlin:

On August 14, 2000, you filed a settlement agreement among the California Independent System Operator Corporation (ISO), Cabrillo Power I LLC, Cabrillo Power II LLC (collectively, Cabrillo), Duke Energy Moss Landing LLC, Duke Energy Oakland LLC, Duke Energy South Bay LLC (collectively, Duke Energy), El Segundo Power, LLC (El Segundo), Pacific Gas and Electric Company (PG&E), Reliant Energy Etiwanda, LLC, Reliant Energy Mandalay, LLC (collectively, Reliant), Southern Energy Delta, L.L.C., Southern Energy Potrero, L.L.C. (collectively, Southern Energy), and Williams Energy Marketing and Trading Company (Williams) in the above-referenced dockets. San Diego Gas & Electric Company (SDG&E), the California Electricity Oversight Board (EOB) and Southern California Edison Company (SCE) joined the settlement as additional sponsoring parties. Geysers Power Company, LLC (Geysers) joined the settlement as to the resolution of Section C.17 issues only (all other issues specific to Geysers were resolved in a settlement filed with the Commission on July 1, 1999). Initial comments were filed on September 5, 2000, by Geysers Power Company (Geysers), the

Public Utilities Commission of the State of California (California Commission), and by the Staff of the Federal Energy Regulatory Commission (Commission Staff). The Commission Staff filed reply comments on September 20, 2000. On October 5, 2000, the Chief Judge certified the settlement to the Commission.

The subject settlement is in the public interest and is hereby approved. The Commission's approval of this settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding. The Commission retains the right to investigate the rates, terms and conditions under the just and reasonable and not unduly discriminatory or preferential standard of Section 206 of the Federal Power Act, 16 U.S.C. § 824e (1994).

Within thirty (30) days from the date of this letter, each affected RMR owner must file individual revised rate schedules consistent with the terms of this settlement. All filings must be in compliance with Order No. 614, 90 FERC ¶ 61,352 (2000). Specifically, Order No. 614 requires that all rate schedule sheets (*i.e.*, tariff sheets, rate schedules, and service agreements) submitted to the Commission after June 1, 2000, be designated.

Any amounts collected in excess of the settlement rates shall be refunded together with interest computed under section 35.19a of the Commission's Regulations, 18 C.F.R. § 35.19a (2000), in accordance with the terms of the settlement. Within thirty (30) days after making such refunds, the Reliability Must-Run (RMR) owners shall file with this Commission a compliance report showing monthly billing determinants, revenue receipt dates, revenues under the prior, present, and settlement rates, the monthly revenue refund, and the monthly interest computed, together with a summary of such information for the total refund period. The RMR owners shall furnish copies of the report to the ISO, and as applicable, PG&E, SCE, and SDG&E (collectively, IOUs) and to each state commission within whose jurisdiction the IOUs distribute and sell electric energy at retail.

This letter terminates Docket Nos. ER98-441-022, ER98-2550-005, ER98-495-018, ER98-1614-008, ER98-2145-008, ER98-2668-011, ER98-2669-010, ER98-4296-008, ER98-4300-008, ER98-496-011, ER98-2160-009, ER99-1127-009, and ER99-1128-009.

By direction of the Commission.

Secretary

cc: All Parties

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