

142 FERC ¶ 61,017
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony T. Clark.

AES Huntington Beach, L.L.C. and
California Independent System Operator Corporation

Docket No. ER13-351-000

ORDER ON RELIABILITY MUST-RUN AGREEMENT

(Issued January 4, 2013)

1. On November 9, 2012, pursuant to section 205 of the Federal Power Act (FPA),¹ and Part 35 of the Commission's regulations,² AES Huntington Beach, LLC (AESHB) and the California Independent System Operator Corporation (CAISO) (collectively, the Applicants) filed an executed, non-conforming reliability must-run agreement (RMR Agreement). The RMR Agreement provides for AESHB to collect negotiated cost-of-service rates in exchange for operating two synchronous condensers to produce reactive power to provide voltage support in the Los Angeles Basin and the San Diego/Imperial Valley local capacity areas. In this order, we conditionally accept the RMR Agreement to be effective January 9, 2013, as discussed below.

I. Background

2. On an annual basis, CAISO develops a local capacity technical study to determine the minimum amount of local capacity area resources needed to address local reliability needs. CAISO completed its 2013 local capacity technical study in April 2012.³ In January 2012, Southern California Edison Company (SoCal Edison) took San Onofre Nuclear Generating Station (SONGS) Units 2 and 3 out of service to address maintenance issues. On August 20, 2012, CAISO published an addendum to the 2013 local capacity technical study that updated its results to account for the continued outage

¹ 16 U.S.C. § 824e (2006).

² 18 C.F.R. Part 35 (2012).

³ CAISO 2013 Local Capacity Technical Analysis, *available at*:
http://www.caiso.com/Documents/Final2013LocalCapacityTechnicalStudyReportApr30_2012.pdf.

of SONGS Units 2 and 3.⁴ The addendum identified the need for additional voltage support in the San Diego sub-area near the SONGS units in the Los Angeles Basin.⁵

3. AESHB currently operates the Huntington Beach Generating Station, which consists of Units 1, 2, 3, and 4,⁶ and owns Huntington Beach Units 1 and 2. The output of Units 1 and 2 is subject to a Capacity Sale and Tolling Agreement (Tolling Agreement) between AESHB⁷ and BE CA, LLC, a wholly-owned subsidiary of J.P. Morgan Chase & Co.,⁸ under which the units' output is marketed.⁹

4. On April 15, 2011, the Commission approved a sale and leaseback arrangement between AESHB and Edison Mission Huntington Beach (Edison HB) for Huntington Beach Units 3 and 4, under which AESHB transferred ownership of portions of these units to Edison HB (i.e., principally the boilers, steam turbines, emission controls, and related equipment). AESHB retained ownership of the land, generating foundations, and certain facilities.¹⁰ Under the lease agreement with Edison HB, AESHB leased back the facilities and continued operation of the units until an agreed-upon shutdown date of October 31, 2012. Upon that date, the arrangement explains that Edison HB will use the emissions allowances acquired in the sale and leaseback agreement that are associated with Huntington Beach Units 3 and 4 for the development of a new 500 MW Walnut Creek generating facility. The Applicants explain that, without the emissions allowances, operating Huntington Beach Units 3 and 4 as natural gas generating units will violate applicable air emissions regulations.

⁴ SONGS is located in San Clemente, California, and is jointly-owned by SoCal Edison, San Diego Gas & Electric Company (SDG&E), and the City of Riverside, California. SONGS Units 2 and 3 have a generating capacity of 2,200 MW.

⁵ Applicants November 9, 2012 Filing, Attachment C at 4 (November 9 Filing).

⁶ The Huntington Beach Generating Station is a four-unit, natural gas-fired facility with a total generating capacity of 904 MW.

⁷ AESHB entered into to the Tolling Agreement jointly with AES Alamitos, L.L.C. and AES Redondo Beach, L.L.C. (collectively AES Subsidiaries).

⁸ The Tolling Agreement was originally entered into in May 1998 between the AES Subsidiaries and Williams Energy Market & Trading Company (Williams). In 2007, Williams assigned the Tolling Agreement to BE CA, LLC.

⁹ JPMorgan Chase & Co. acquired BE CA, LLC as a result of a merger with The Bear Stearns Companies that the Commission approved on April 28, 2008. *JPMorgan Chase & Co.*, 123 FERC ¶ 61,088 (2008).

¹⁰ *AES Huntington Beach, LLC*, 135 FERC ¶ 62,049 (2011).

5. In order to address the voltage support deficiency identified in the 2013 local capacity technical study and addendum, the Applicants comment that CAISO identified the conversion of Huntington Beach Units 3 and 4 into synchronous condensers and installation of shunt capacitors at three separate substations as the only reasonably feasible solution.¹¹ The Applicants assert that the use of the Huntington Beach Units 3 and 4's existing site and equipment, in addition to its proximity to the SONGS switchyard, will allow AESHB to bring the synchronous condensers into service much more quickly than would otherwise be possible. Without this mixture of dynamic and static voltage support provided by both projects, the Applicants assert that Southern California may face unprecedented load shedding, beginning this summer.¹²

6. During a meeting, CAISO's Board of Governors authorized CAISO to issue RMR designations for AESHB's Huntington Beach Units 3 and 4, pursuant to section 41.2 of its tariff.¹³

II. November 9 Filing

7. In the November 9 Filing, the Applicants state that the RMR Agreement substantially follows the *pro forma* RMR agreement in Appendix G of CAISO's tariff.¹⁴ The Applicants state that the agreement deviates from the *pro forma* to address the particular circumstances of this RMR designation, primarily to reflect that Units 3 and 4 will only produce reactive power to provide voltage support, not energy or other ancillary services, and will not participate in any market transactions. The initial term of the RMR Agreement is for one year and can be extended for annual periods up to 2017, and beyond 2017 by the mutual consent of CAISO and AESHB.¹⁵

8. The Applicants state that SoCal Edison and SDG&E will be the entities responsible for the recovery of costs associated with the conversion of Units 3 and 4 to synchronous condensers, with obligations of cost responsibility of 80 percent and 20 percent to SoCal Edison and SDG&E, respectively. The RMR Agreement provides

¹¹ November 9 Filing at 7.

¹² *Id.*

¹³ Section 41.2 of CAISO's tariff states that, "CAISO will, subject to any existing power purchase contracts of a generating unit, have the right at any time based upon CAISO Controlled Grid technical analyses and studies to designate a Generating Unit as a Reliability Must-Run Unit."

¹⁴ The Commission accepted the *pro forma* RMR Agreement in a letter order. (*Cal. Indep. Sys. Operator Corp.*, 87 FERC ¶ 61,250 (1999)).

¹⁵ November 9 Filing at 11-14.

for CAISO to make fixed payments to AESHB for RMR service based on the annual fixed revenue requirement.¹⁶ The Applicants explain that the cost of service rates, proposed in Schedule B, Table B-6 of the RMR Agreement, are the product of negotiation between themselves, SoCal Edison, and SDG&E, which were agreed to on October 15, 2012.¹⁷

9. The Applicants note that the RMR Agreement is contingent upon AESHB receiving certain consents and confirmations. In order for the RMR Agreement to become effective, AESHB must, among other things, receive approval from the Commission on or before June 1, 2013, in a final, non-appealable order; approval from the California Energy Commission (CEC) of the amendments to its licenses for Huntington Beach Units 3 and 4; and consent, confirmation, or other acknowledgement as may be required by BE CA, LLC under the existing agreements between AESHB and BE CA, LLC.¹⁸

10. The Applicants request waiver of the Commission's 60-day prior notice requirement to permit an effective date of January 1, 2013, for the RMR Agreement. The Applicants explain that this effective date will allow AESHB to proceed expeditiously with work on the synchronous condenser conversion project so as to ensure that the project is available by the beginning of the summer 2013 season.

III. Notice of Filing and Responsive Pleadings

11. Notice of the filing was published in the *Federal Register*, 77 Fed. Reg. 69,618 (2012) with protests or interventions due on or before November 28, 2012.

12. The California Public Utilities Commission (CPUC) filed a notice of intervention and comments. Timely motions to intervene and comments were filed by San Diego Gas & Electric Company (SDG&E) and Southern California Edison Company (SoCal Edison). J.P. Morgan Ventures Energy Corporation and BE CA, LLC (collectively, JP Morgan) filed a timely motion to intervene and protest. The California Department of Water Resources State Water Project (SWP) and The Cities of Anaheim, Azusa,

¹⁶ *Id.* at 14.

¹⁷ *Id.* Attachment G.

¹⁸ Specifically, section 2.1(a) of the RMR Agreement states that the following action from BE CA, LLC will satisfy the RMR Agreement's conditions: agreement that it will not claim that AESHB's participation in the RMR Agreement constitutes a breach or violation of existing agreements; confirmation that its consent or waiver is not required; or consent for AESHB to participate in the RMR Agreement.

Banning, Colton, Pasadena, and Riverside, California (Six Cities) filed motions to intervene out of time.

13. On December 4, 2012, CAISO filed an answer to JP Morgan's protest.

IV. Comments and Protests

14. The CPUC, SDG&E, and SoCal Edison all filed comments in support of the RMR Agreement, and urge the Commission to accept it. The CPUC, SDG&E, and SoCal Edison request that the Commission grant waiver of the 60-day prior notice requirement and accept the RMR Agreement as filed.

15. JP Morgan requests that the Commission reject the RMR Agreement, arguing that CAISO violated its tariff and engaged in undue discrimination by designating Huntington Beach Units 3 and 4 as RMR units. In particular, JP Morgan asserts that CAISO has not explained how it has satisfied section 41.4 of its tariff, which JP Morgan describes as a requirement that CAISO procure RMR generation from the cheapest available sources. JP Morgan also argues that CAISO has not shown that the synchronous condenser project is the cheapest option or that less costly alternatives were considered. Further, JP Morgan contends that CAISO's approach unduly discriminates against preferable alternatives.¹⁹ Further, JP Morgan notes that the RMR Agreement contains an express precondition regarding its consent for AESHB to enter into the agreement, which JP Morgan notes is the subject of a separate proceeding.²⁰ Therefore, JP Morgan requests that the Commission reject the RMR Agreement or, in the alternative, suspend the RMR Agreement for the maximum five-month period, set it for a formal evidentiary hearing, and deny waiver of its request for waiver of the 60-day notice requirement.²¹

16. In its answer, CAISO asserts that JP Morgan's analysis of section 41.4 of its tariff is incorrect. CAISO explains that it is section 41.3 of its tariff that describes how it will select RMR units, a process that is based on its annual local capacity technical study and additional reliability studies. CAISO explains that tariff section 41.4 instead describes

¹⁹ JP Morgan Protest at 4 (citing *Dynegy Midwest Generation, Inc. v. FERC*, 663 F.3d 1122, 1127 (D.C. Cir. 2011) (finding that a compensation scheme that creates arbitrary differences in the competitive positions of generators is unduly discriminatory) (*Dynegy*)).

²⁰ All contractual issues regarding JP Morgan's consent rights with regard to Huntington Beach Units 3 and 4 are addressed in an order issued concurrently in the Docket No. EL13-21-000 proceeding, which involves a petition for declaratory order filed by CAISO. *Cal. Indep. Sys. Operator Corp.*, 142 FERC ¶ 61,016 (2013).

²¹ JP Morgan Protest at 4.

the contract conditions affecting the operations of facilities that have already been designated as RMR units. CAISO adds that JP Morgan omits from its argument the requirement in tariff section 41.4 that CAISO procure RMR generation “to maintain system reliability” in combination with securing it from the cheapest source. In addition, CAISO opposes JP Morgan’s undue discrimination argument, explaining that *Dynegy* is inapposite under the factual circumstances presented here.²² CAISO asserts that the discrimination standards applied to zonal differences in generator compensation plans, as discussed in the *Dynegy* proceeding, do not apply to deviations from *pro forma* agreements, as presented by the instant filing.

V. Discussion

A. Procedural Matters

17. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2012), the Commission will grant SWP and Six Cities’ late-filed motions to intervene given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

18. Rule 213(a)(2) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2012), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept CAISO’s answer as it has provided information that assisted us in our decision-making process.

B. Commission Determination

19. As discussed further below, we accept the rates, terms, and conditions of the non-conforming RMR Agreement, as we find that the Applicants have shown that the RMR Agreement is just and reasonable and not unduly discriminatory or preferential. We reject both JP Morgan’s protest and the Applicants’ request for waiver of the Commission’s 60-day prior notice requirement, and accept the RMR Agreement to be effective January 9, 2013, subject to a compliance filing. We find that the Applicants have not demonstrated good cause for waiver, as section 2.1(a) of the RMR Agreement, which describes the confirmations and consents required for the RMR Agreement to become effective, requires final Commission approval of the RMR Agreement on or before June 1, 2013. Thus, we are not persuaded that an effective date prior to January 9, 2013, is necessary.

²² CAISO Answer at 4.

20. We find that the non-conforming provisions of the RMR Agreement are just and reasonable and, therefore, we accept them. As discussed above, due to the transfer of air emissions allowances, Huntington Beach Units 3 and 4 are no longer able to operate as natural gas generating units without violating air emissions regulations. Due to these unique circumstances, the Applicants filed an agreement that does not conform with the *pro forma* RMR agreement in Appendix G of CAISO's tariff. The non-conforming provisions clarify that Huntington Beach Units 3 and 4, as synchronous condensers, will only produce reactive power to provide voltage support, not energy or other ancillary services, and will not participate in market transactions. Further, we accept the negotiated cost-of-service rates included in the RMR Agreement as just and reasonable and not unduly discriminatory or preferential. We note that not only are these rates uncontested, but SoCal Edison and SDG&E, the parties responsible for recovering AESHB's costs, and the CPUC, whose statutory mandate is to represent the interests of California's retail electric customers, submitted comments in support of the RMR Agreement.

21. We also find that JP Morgan's protest is based upon an incorrect reading of tariff section 41.4. Section 41.4 of CAISO's tariff identifies the contract conditions affecting the operation of the facilities that have already been designated as RMR units, not the process by which CAISO will designate and enter into agreements for RMR service to meet its reliability needs. The only tariff-based prerequisite to an RMR designation is set forth in section 41.3 of CAISO's tariff, which requires only that CAISO perform a local capacity technical study to ensure compliance with reliability criteria.²³ As discussed below, CAISO has performed the required study, which indicates a reliability need. We also clarify that the purpose of section 41.4 of CAISO's tariff is to explain how CAISO will choose among previously-designated RMR resources when dispatching a RMR resource to maintain reliability.

22. As explained by the Applicants, CAISO's 2013 local capacity technical study and addendum indicate that the SONGS outage creates a 1708 MW deficiency in the Los Angeles Basin and San Diego-Imperial Valley areas. In order to provide voltage support for power transfers to address this deficiency, CAISO identified a need for static and dynamic reactive power. In particular, CAISO identified the conversion of Huntington Beach Units 3 and 4 to synchronous condensers, in combination with the installation of shunt capacitors at three of SoCal Edison's substations, as the "best-suited [option] to provide the dynamic voltage support service necessary to avoid load shedding due to its proximity to the SONGS switchyard."²⁴ Specifically, the addendum explains that the mixture of dynamic and static reactive support, which can be provided by the shunt capacitors and synchronous condensers, is required to satisfy fast voltage recovery needs

²³ CAISO Tariff, section 41.3.

²⁴ November 9 Filing at 7.

at the SONGS 230 kV switchyard without causing further operational concerns. As described in the November 9 Filing, not only are Huntington Beach Units 3 and 4 close in proximity to SONGS, but the use of the units' existing facilities will allow AESHB to provide the RMR service by summer 2013 when demand is typically highest. Based on this demonstration, as detailed above, we find that CAISO has fulfilled the requirements of section 41.3 of its tariff.

23. We also reject JP Morgan's argument that the RMR Agreement results in undue discrimination. Unlike the circumstances presented in *Dynegy*, the instant filing does not involve different compensation schemes for different generators. This case presents us with the narrow issue of whether the rates, terms, and conditions of a single RMR Agreement are just, reasonable and not unduly discriminatory. We find the proposed RMR Agreement to be just and reasonable, and we find that JP Morgan has failed to show that it is being treated differently without justification than other similarly-situated generators.

24. We note that, under section 41.4 of CAISO's tariff, "CAISO shall give notice to terminate Reliability Must-Run contracts that are no longer necessary or can be replaced by less expensive and/or more competitive sources for maintaining reliability." In order to ensure that the designation of Huntington Beach Units 3 and 4 as RMR units continues to comply with this tariff provision, we direct CAISO, upon the completion of the project, to submit informational reports every 90 days on the hours of operation of the synchronous condensers until it is no longer deemed necessary due to changed circumstances, such as the return of SONGS or other generation changes.²⁵

25. In submitting the RMR Agreement as a tariff record in eTariff, the Applicants used a Whole Document Format and submitted the tariff record as a PDF. When submitting a tariff record in PDF, the *Implementation Guide* requires that a title page be included that contains the following information: a) Tariff Submitter; b) FERC Tariff Program name; c) Tariff Title; d) Tariff Record Proposed Effective Date; e) Tariff Record Title; f) Option Code, and g) Other information as the FERC may require by notice or order.²⁶ In addition, the record title of the RMR Agreement must be revised. Instead of, "Must-Run SA, AES Rate Schedule FERC No. 2," the Applicants should list the RMR Agreement as, "Rate Schedule No. 2, Must-Run Service Agreement with California ISO." Therefore, we direct the Applicants to submit a compliance filing to

²⁵ We note that these reports are for informational purposes only and will not be noticed, nor will they require Commission action.

²⁶ See *Implementation Guide for Electronic Filing of Parts 35, 154, 284, 300, and 341 Tariff Filings* (April 18, 2011) (*Implementation Guide*) pages 7 and 8, available at <http://www.ferc.gov/docs-filing/etariff/implementation-guide.pdf>.

include the necessary title page information with the tariff record and to revise the title of the tariff record within 15 days of the date of this order.

The Commission orders:

- (A) Waiver of the 60-day prior notice requirement is hereby denied.
- (B) AESHB and CAISO's RMR Agreement is hereby conditionally accepted, to become effective January 9, 2013, as discussed in the body of this order.
- (C) AESHB and CAISO are hereby directed to submit a compliance filing within 15 days of the date of this order, as discussed in the body of the order.
- (D) CAISO is hereby directed to submit informational reports every 90 days following completion of the project on the hours of operation of the synchronous condensers, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.