

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeem G. Kelly.

El Segundo Power, LLC

Docket No. ER05-363-000

ORDER ACCEPTING AND SUSPENDING FILING, ESTABLISHING HEARING
AND SETTLEMENT JUDGE PROCEDURES, DENYING CONFIDENTIAL
TREATMENT OF CERTAIN ATTACHMENTS AND NOTIFYING COMPANY OF
RELEASE OF DOCUMENTS

(Issued February 11, 2005)

1. In this order, we accept for filing the proposed Reliability Must-Run Service Agreement (RMR Agreement) between El Segundo Power, LLC (El Segundo) and the California Independent System Operator Corporation (CAISO)¹ and a letter agreement dated December 20, 2004 between El Segundo and the CAISO (Letter Agreement) setting forth additional terms and conditions affecting the RMR Agreement, suspend them for a nominal period, make them effective January 1, 2005, as requested, subject to refund, and set them for hearing and settlement judge procedures. The Commission also denies El Segundo's request that certain attachments to the filing be treated as confidential. This order benefits customers by providing the parties with a forum in which to resolve their concerns.

Background

2. RMR Agreements provide the rates, terms and conditions by which power plant owners in California provide RMR service to the CAISO. The CAISO has designated El Segundo Units 3 and 4 as RMR units for the contract year 2005.²

¹ El Segundo has filed the proposed RMR Agreement as Rate Schedule FERC No. 2.

² El Segundo Filing at 4.

3. On December 21, 2004, El Segundo filed, pursuant to section 205 of the Federal Power Act (FPA), 16 U.S.C. § 824d (2000), its proposed RMR Agreement with the CAISO for El Segundo Units 3 and 4 for 2005 and the Letter Agreement setting forth additional terms and conditions affecting the RMR Agreement. It also filed worksheets supporting variable cost payments, annual revenue requirements and other operational parameters in the RMR Agreement (Rates and Support Worksheets) and providing information on the derivation of El Segundo's annual revenue requirement and its annual fixed revenue requirement (Schedule F Worksheets).

4. El Segundo requests waiver of the Commission's 60-day prior notice requirement to permit an effective date of January 1, 2005. El Segundo states that good cause for waiver exists because the CAISO designated El Segundo Units 3 and 4 as RMR resources on December 9, 2004 for the calendar year beginning January 1, 2005 and the RMR Agreement conforms to the *pro forma* agreement that has already been approved by the Commission.

Notice of Filing and Responsive Pleadings

5. Notice of El Segundo's filing was published in the *Federal Register*, 70 Fed. Reg. 805 (2005), with protests and interventions due on or before January 11, 2005. The California Public Utilities Commission (California commission) filed a notice of intervention. The California Electricity Oversight Board (CEOB), the CAISO and Southern California Edison Company (SoCal Edison) filed timely motions to intervene. SoCal Edison also filed comments.

6. The CAISO, SoCal Edison, the CEOB and the California commission also filed a joint protest. The protest addresses: (1) the failure to provide schedule F data and the designation of certain schedule F and supporting data as confidential; (2) lack of support for the annual fixed revenue requirement; (3) insufficient support to validate the cost components of the filed non-fuel steam production operation and maintenance expense; (4) the incorrect calculation of the average other outage hours; (5) lack of support for the pre-paid start-up cost calculation; (6) lack of support for the heat input coefficient values; (7) the insufficient explanation of the NOx-related expenses included in the annual fixed revenue requirement; and (8) lack of support for the depreciation rates listed in exhibit B of schedule F. The protestors request that the Commission set the identified issues for hearing and settlement judge procedures and issue a deficiency letter that directs El Segundo to file the supporting information in schedule F on a non-confidential basis.

7. El Segundo filed an answer.

Discussion

A. Procedural Matters

8. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

9. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2004), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept El Segundo's answer and will, therefore, reject it.

B. Confidential Treatment

10. El Segundo requests confidential and privileged treatment for portions of the Rates and Support Worksheets and the Schedule F Worksheets provided in Attachments D and E of its filing. El Segundo states that dissemination of this information to the general public, including potential buyers of El Segundo's power in competitive power markets or other competitive suppliers, would result in parties gaining significant contracting and tactical advantages and cause considerable economic harm to El Segundo.

11. Protestors argue that the confidential treatment of this information is contrary to the plain language of schedule F which states that "the ISO shall post the Information Package on its web site."³

12. We deny El Segundo's request for confidential treatment. El Segundo makes no claim of special vulnerability, cites no special circumstances uniquely applicable to them, nor is it apparent that schedule F provides for the confidential treatment requested. The Commission has held that the longstanding benefits of public access to filings generally outweigh the potential competitive disadvantage of public disclosure.⁴ Section 205(c) of the FPA requires that every public utility file with the Commission and "keep open . . . for public inspection schedules showing all rates and charges for any transmission or sale subject to the jurisdiction of the Commission, and the classifications, practices, and regulations affecting such rates and charges, together with all contracts which in any

³ Protest at 5 (*citing* Schedule F, Part B).

⁴ See *Southern Company Services, Inc.*, 100 FERC ¶ 61,328 (2002); Order No. 2001, FERC Stats. & Regs. ¶ 31,127 (2002).

manner affect or relate to such rates, charges, classifications, and services."⁵ A fundamental purpose of this requirement is to provide the Commission and the public with the ability to ensure against undue discrimination in a public utility's contracting practices with respect to jurisdictional services.

13. The Commission gives notice pursuant to section 388.112(e) of the Commission's regulations that it will make the confidential attachments public five days after the issuance of this order.⁶

C. Hearing Procedures

14. Notwithstanding our determination on the request for confidential treatment, El Segundo's filing otherwise raises issues of material fact that cannot be resolved based on the record before us and are more appropriately addressed in the hearing and settlement judge procedures ordered below.

15. Our preliminary analysis indicates that El Segundo's filing has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful. Therefore, we will accept the RMR Agreement and Letter Agreement for filing, suspend them for a nominal period, make them effective on January 1, 2005,⁷ as requested, subject to refund, and set them for hearing and settlement judge procedures. (However, we note that the issue of confidential treatment is not to be addressed in the hearing procedures ordered below.)

16. While we are setting this matter for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.⁸ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding;

⁵ 16 U.S.C. § 824d (2000).

⁶ This order constitutes notification before release as required by section 388.112(e) of the Commission's regulations. 18 C.F.R. § 388.112(e) (2004).

⁷ See *Central Hudson Gas & Electric Corp.*, 60 FERC ¶ 61,106 at 61,338, *reh'g denied*, 61 FERC ¶ 61,089 (1992).

⁸ 18 C.F.R. § 385.603 (2004).

otherwise, the Chief Judge will select a judge for this purpose.⁹ The settlement judge shall report to the Chief Judge and the Commission within 60 days of the date of this order concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) The RMR Agreement and Letter Agreement are hereby accepted for filing and suspended for a nominal period, to become effective on January 1, 2005, subject to refund, as discussed in the body of this order.

(B) El Segundo's request for confidential treatment is hereby denied, as discussed in the body of this order.

(C) El Segundo is hereby on notice that the Commission intends to release the documents for which privileged treatment was sought five days from the issuance of this order.

(D) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by section 402(a) of the Department of Energy Organization Act and by the FPA, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the FPA (18 C.F.R. Chapter I), a public hearing shall be held concerning the justness and reasonableness of El Segundo's filing. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in paragraphs (E) and (F) below.

(E) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2004), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603

⁹ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of Commission judges and a summary of their background and experience (www.ferc.gov – click on Office of Administrative Law Judges).

and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge by telephone within five (5) days of the date of this order.

(F) Within sixty (60) days of the date of this order, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(G) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall within fifteen (15) days of the date of the presiding judge's designation, convene a conference in these proceedings, in a hearing room of the Commission, 888 First Street, N.E., Washington, D.C. 20426. Such conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss), as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.