UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Cabrillo Power I LLC Docket No. ER06-426-000

ORDER ON PROPOSED REVISIONS TO RELIABILITY
MUST-RUN AGREEMENT

(Issued February 14, 2006)

1. On December 29, 2005, Cabrillo Power I LLC (Cabrillo I)[1] filed revisions to the Reliability Must-Run Service Agreement (RMR Agreement) between Cabrillo I and the California Independent System Operator Corporation (CAISO). In this order, we accept the revised RMR Agreement, effective January 1, 2006.

Background

2. Cabrillo I has provided RMR services to the CAISO pursuant to individual RMR Agreements that conform to a *pro forma* RMR Agreement that was agreed to as part of a settlement in April 1999.[2] Pursuant to the Commission's May 28 Order, each RMR Agreement took effect on June 1, 1999.

3. RMR rates for Cabrillo I Units 1, 2, 3, and 5, were recently extended through Contract Year 2006.[3] In prior years, including 2005, the CAISO designated Cabrillo I Unit 4 as an RMR unit. In Docket No. ER06-197-000, Cabrillo I noted that Unit 4 had not been designated as an RMR unit for 2006. However, the CAISO, with the agreement

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[1] Cabrillo I is a wholly-owned subsidiary of West Coast Power LLC which in turn is 100 percent owned by WCP Generation Holdings LLC. WCP Generation Holdings is 50 percent owned by Dynegy Power Corp, and NRG West Coast Inc., a wholly-owned subsidiary of NRG Energy, Inc.

[2] The settlement was accepted by letter order on May 28, 1999, *California Independent System Operator Corp.*, 87 FERC ¶ 61,250 (1999) (May 28 Order).

[3] The rates were extended pursuant to: (a) a settlement approved by the Commission, *Cabrillo Power I LLC*, 110 FERC ¶ 61,143 (2005); (b) a letter order issued May 5, 2005, *Cabrillo Power I LLC, et. al*, Docket No. ER05-708-000 (2005) (unpublished letter order); and (c) a letter order issued December 14, 2005, *Cabrillo Power I LLC, et. al*, Docket No. ER06-197-000 (2005) (unpublished letter order).

of Cabrillo I, subsequently designated Unit 4 as an RMR unit for contract year 2006. As with Cabrillo I's other units, the Commission approved Unit 4 rates for 2006 in Docket No. ER04-308-000. However, those rates were not to become effective unless the CAISO selected Unit 4 as an RMR unit for 2006 and a Federal Power Act (FPA) section 205[4] filing made.

Proposed Filing

4. Cabrillo I states that the purpose of its filing is to effectuate the intent of Cabrillo I and the CAISO to designate Cabrillo I Unit 4 as an RMR unit for 2006 and to amend the Fixed Option Payment Factor (FOPF) and associated Surcharge Payment Factor (SPF) for Units 4 and 5 for 2006. Therefore, Cabrillo I proposes revisions to its RMR Agreement with the CAISO to reflect: (1) Unit 4's designation as an RMR unit; and (2) an increase of the FOPF/SPF for Units 4 and 5 for contract year 2006.[5]

5. Cabrillo I requests that the Commission grant all waivers of our rules and regulations necessary to accept its filing and make revisions to the RMR Agreement schedules effective as of January 1, 2006. Cabrillo I notes that its request is appropriate since the Commission has determined that the Commission will grant waivers when there is a contractual commitment for an effective date in an agreement that the Commission already has accepted. Here, the RMR Agreements the Commission approved in the May 28 Order[6] and the approved Settlement Agreement in Docket No. ER98-496-006, *et. al*., require a January 1, 2006 effective date.[7] According to Cabrillo I, the requested revisions must be in place by January 1, 2006, in order to put updated rates in place for contract year 2006 under the RMR Agreement.

Notice and Responsive Filings

6. Notice of Cabrillo I's filing was published in the *Federal Register*, 71 Fed. Reg. 2213 (2006), with motions to intervene and protests due on or before January 17, 2006. The CAISO filed a motion to intervene. The California Electricity Oversight Board

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[4] 16 U.S.C. § 824d (2000).

[5] The FOPF and SPF are used to compute rates when an RMR unit is operating under Condition 1 of the RMR Agreement. Cabrillo I proposes to increase the FOPF and SPF from 30 percent to 54.2 percent for contract year 2006.

[6] *See* May 28 Order, 87 FERC ¶ 61,250.

[7] *Cabrillo Power I LLC*, 92 FERC ¶ 61,116 (2000).

(CEOB) and San Diego Gas & Electric Company (SDG&E) each filed a motion to intervene out-of-time. MMC Energy North America, LLC (MMC) filed a motion to intervene and protest. The CAISO and Cabrillo I filed answers to MMC's protest.

7. MMC states that it meets all the requirements for intervention under Rule 214, and that Rule 214(b)(2)(ii)(C) recognizes MMC's status as a competitive supplier as a proper ground for intervention.[8]

8. MMC, a competitor of Cabrillo I, states that MMC had worked with the CAISO to have MMC's Escondido and Chula Vista plants designated as RMR units for 2006.[9] MMC states that it thought that both of its plants had been designated as RMR units since Cabrillo I's Unit 4 was terminated as an RMR unit. However, MMC states that, in December 2005, the CAISO reversed itself by removing MMC's Escondido and Chula Vista plants from 2006 RMR designation, and replacing them with Cabrillo I's Unit 4.

9. MMC argues that the CAISO acted imprudently by substituting Cabrillo I's Unit 4 for MMC's Escondido and Chula Vista plants. MMC states that the information provided in the Cabrillo I filing demonstrates that Cabrillo I Unit 4 was substantially more expensive in meeting the CAISO's 84 MW need than MMC's plants. Specifically, MMC argues that the proposed $14.8 million annual fixed revenue requirement (AFRR) for Cabrillo I Unit 4 produces a considerably higher per MW cost for the needed RMR capacity in the San Diego area than would be the case if the MMC plants had been selected. In addition to the higher AFRR cost, the CAISO also agreed to a change of the FOPF from 30 percent to 54.2 percent for Cabrillo I Units 4 and 5 which would result in increased charges to customers in the San Diego area. Accordingly, MMC requests that the Commission investigate the prudence of the CAISO's decision to deselect MMC's units and select Cabrillo I Unit 4 as the final RMR unit for the San Diego area.

10. Finally, MMC notes that it is currently discussing these matters with the CAISO. Absent settlement, MMC states that the RMR process requires that disputes be resolved

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[8] 18 C.F.R. § 385.214(b)(2)(ii)(C) (2005).

[9] MMC recently completed purchase of the Escondido and Chula Vista plants. A wholly-owned subsidiary of PG&E Corporation built them in 2001, and the plants operated under RMR contracts with the CAISO from 2001 through 2003 at which time they were idled as a result of PG&E's bankruptcy. MMC committed to re-commission the plants and re-connect them to the grid well before the 2006 RMR capacity would be needed.

by arbitration. Accordingly, MMC requests that the Commission suspend the filing, and accept it only conditionally, subject to the outcome of arbitration as to whether MMC's plants should have been chosen as RMR units instead of Cabrillo I Unit 4.

11. In its answer, the CAISO states that the Commission should reject MMC's motion to intervene because MMC does not have a direct interest in this proceeding sufficient to justify its intervention.[10] The CAISO states that section 308(a) of the FPA gives the Commission discretion to admit as a party "any person whose participation may be in the public interest."[11] According to the CAISO, a movant must demonstrate that it has or represents an interest that may be directly affected by the outcome of the proceeding.[12] The CAISO asserts that Rule 214 does not automatically give intervenor status to competitors, instead moving parties must show a present and direct interest.[13] The CAISO states that MMC has not met the Commission's standard of review for intervention. The CAISO further states that the Commission has denied motions to intervene when a movant has other means to pursue its claims.

12. The CAISO states that MMC objects to the CAISO's final decision that designating the Encina Unit 4 as an RMR unit would result in lower costs and a more assured source of capacity to meet local reliability needs than MMC's currently shut down Chula Vista and Escondido generating stations could provide. The CAISO notes that MMC's disappointment that the CAISO did not enter into a contract with MMC for 2006 has no bearing on or relation to the justness and reasonableness of Cabrillo's RMR

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[10] The CAISO cites 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), to support its assertion.

[11] 16 U.S.C. § 825g(a) (2000).

[12] The CAISO cites *Virginia Elec. & Power Co.*, 27 FERC ¶ 61,093, at 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).

[13] The CAISO further cites *El Paso Natural Gas Co.*, 48 FERC ¶ 61,027 at 61,131 (1989).

rate schedules. Therefore, MMC's motion to intervene should be denied.[14] The CAISO further states that MMC has other means to pursue its claims such as the CAISO's dispute resolution procedures and/or filing a complaint with the Commission.

13. The CAISO states that the purpose of this proceeding is for the Commission to address the justness and reasonableness of Cabrillo I's proposed RMR rates for 2006. The CAISO notes that MMC provides no complaint, question, or comment regarding Cabrillo I's rates. Instead, the CAISO states, MMC is protesting that the CAISO acted imprudently and discriminated against MMC when it selected Cabrillo I's Encina Unit 4 as an RMR resource and failed to contract with MMC's Enscondido and Chula Vista plants. The CAISO states that these assertions are baseless and, even if they had any merit, they have no bearing on the current FPA section 205 proceeding. The CAISO asserts that MMC's protest is outside the scope of these proceedings and therefore the Commission should summarily reject it.[15]

14. Cabrillo I states in its answer that the MMC units were not available as of January 1, 2006 to provide RMR service and are currently still not available. Additionally, Cabrillo I argues that MMC is not a competitor because MMC's units

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[14] *See 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).

[15] The CAISO cites *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 P 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").

provide only 84 MW of capacity which is insufficient to displace Unit 4's 299 MW. Accordingly, Cabrillo I concludes that MMC does not qualify as a competitor and that the Commission has already rejected a similar contention.[16]

Discussion

Procedural Matters

15. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,[17] the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. We will accept CEOB and SDG&E's motions to intervene out-of-time because it will not disrupt the proceeding or place additional burdens on the other parties.

16. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure[18] prohibits an answer or an answer to a protest unless otherwise ordered by the decisional authority. We will accept the CAISO and Cabrillo I's answers filed in this proceeding because they have provided information that assisted us in our decision-making process.

Commission Determination

MMC Motion to Intervene and Protest

17. The Commission finds that MMC has met its burden under Rule 214 to demonstrate that, as a competitor of Cabrillo I, it has a direct interest in the outcome of this proceeding sufficient to justify intervention.[19] Therefore, we will accept MMC's motion to intervene. However, we agree with the CAISO that the purpose of this proceeding is to determine whether Cabrillo I's proposed RMR rates for 2006 are just and reasonable. We note that MMC does not complain about, question, or comment on Cabrillo I's proposed rates. Instead, MMC protests that the CAISO failed to act prudently and discriminated against MMC when the CAISO selected Cabrillo I's Encina Unit 4 as an RMR resource and did not contract with MMC's Enscondido and Chula Vista plants. We agree with the CAISO that MMC's assertions have no bearing on the

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[16] *See Milford Power Co. LLC*, 110 FERC ¶ 61,299 at P 23, *reh'g denied*, 112 FERC ¶ 61,154 (2005).

[17] 18 C.F.R. § 385.214 (2005).

[18] 18 C.F.R. § 385.213(a)(2) (2005).

[19] 18 C.F.R. § 385.214.

current FPA section 205 proceeding. We note that if MMC has concerns regarding the CAISO's failure to contract with MMC regarding MMC's Enscondido and Chula Vista plants, then MMC has the CAISO's dispute resolution procedures available to it. Additionally, MMC can file a complaint regarding this issue with the Commission. Therefore, we deny MMC's protest.

Cabrillo I Filing

18. Our review indicates that Cabrillo I's proposed revisions to its RMR Agreement with the CAISO appear to be just and reasonable and have not been shown to be unjust, unreasonable, unduly discriminatory, preferential, or otherwise unlawful. Accordingly, we accept Cabrillo I's proposed revisions to its RMR Agreement for filing, effective January 1, 2006.

Waiver

19. We grant waiver of the Commission's 60-day prior notice requirement and accept Cabrillo I's proposed revisions to become effective on January 1, 2006, as requested.[20]

The Commission orders:

(A) The Commission hereby approves Cabrillo I's proposed revisions to the RMR Agreement, as discussed in the body of this order, effective January 1, 2006.

(B) The Commission hereby denies MMC's protest, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

[20] *Central Hudson Gas and Electric Co.*, 60 FERC ¶ 61,106 at 61,338, *reh'g denied*, 61 FERC ¶ 61,089 (1992) (Commission will grant prior notice requirement when there is a contractual commitment as to the effective date which the Commission has already accepted).