

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Cabrillo Power I LLC
Cabrillo Power II LLC

Docket No. ER04-308-000

ORDER ACCEPTING AND SUSPENDING PROPOSED REVISIONS TO
RELIABILITY MUST-RUN AGREEMENTS AND ESTABLISHING
HEARING AND SETTLEMENT PROCEDURES

(Issued February 12, 2004)

1. In this order, the Commission accepts for filing and suspends for a nominal period proposed revisions by Cabrillo Power I LLC (Cabrillo I) and Cabrillo Power II LLC (Cabrillo II) (collectively, Cabrillo) to their Reliability Must-Run Agreements (RMR Agreements)¹ with the California Independent System Operator Corporation (CAISO) for the Cabrillo I and Cabrillo II units.² The order also sets this matter for hearing but holds the hearing in abeyance so that the parties may continue their settlement negotiations. This order benefits customers because it allows Cabrillo to continue providing must-run generation to the CAISO while encouraging the parties to resolve their outstanding issues through direct settlement negotiations.

¹ Cabrillo's RMR Agreements conform to a standard form that was agreed to as part of an uncontested settlement. See *California System Operator Corporation, et al.*, 87 FERC ¶ 61,250 (1999) (order approving settlement). An RMR unit is generally a generator that a transmission provider can call upon when necessary to provide energy and ancillary services essential to the reliability of the transmission network. That is, some generating units "must run" at certain times to protect the transmission system from voltage collapse, instability, and thermal overloading. The owner is paid pursuant to a formula based on the availability of the facility for service.

² The units of the following facilities will be subject to RMR Agreements during the calendar year 2004: the Cabrillo I units EA1, EA2, EA3, EA4, EA5, and EACT; and the Cabrillo II units El Cajon, Kearny 1, Kearny 2A, Kearny 2B, Kearny 2C, Kearny 2D, Kearny 3A, Kearny 3B, Kearny 3C, Kearny 3D, Mirimar 1A, and Mirimar 1B.

I. Background

2. RMR Agreements provide the rates, terms, and conditions by which Cabrillo and other power plant owners in California provide RMR service to the CAISO by dispatching designated units at certain power plants at the direction of the CAISO. These agreements require that, whenever the CAISO extends the terms of an RMR Agreement for an additional calendar year, the owner of the unit must file with the Commission (in an informational filing and a rate filing) updates to certain rates and terms of service under the RMR Agreement.

3. The CAISO designated Cabrillo's facilities for RMR service for the 2004 calendar year (Year 2004). As a result of that designation, on December 17, 2003, Cabrillo submitted, in the same docket: (1) its informational filing, which provides the Annual Fixed Revenue Requirement (AFRR) and Variable Operation and Maintenance (O&M) Rates for its units under the RMR Agreements; and (2) its rate filing, pursuant to section 205 of the Federal Power Act, which reflects the various annual updates to the rates of its units subject to the RMR Agreements. Specifically, Cabrillo's rate filing proposes a number of revisions to the schedules in the RMR Agreements for Cabrillo I and Cabrillo II for the Year 2004, including: (1) Schedule A of the RMR Agreements to reflect the Contract Service Limits; (2) Schedule B to revise the values in Tables B-1 through B-6, which are used to determine the Monthly Option Payment for the RMR units; and (3) Schedule D to update the Prepaid Start-up Costs and the Prepaid Start-up Charges. In addition, because pollution control limitations are no longer applicable to the Cabrillo I units, Cabrillo has revised the Cabrillo I RMR Agreement to delete the provisions of Schedule P regarding air emission limitations on operation of the units for a given year. Cabrillo has also removed the Division Street unit from the Cabrillo II RMR Agreement. Cabrillo requests waiver of the Commission's 60-day prior notice requirement³ to allow a January 1, 2004 effective date for its filing.

II. Notice of Filing and Responsive Pleadings

4. Notice of Cabrillo's filing was published in the Federal Register, 68 Fed. Reg. 1,583 (2004), with interventions and protests due on or before January 7, 2004. The Public Utility Commission of the State of California (CPUC) filed a notice of intervention, and the CAISO, San Diego Gas & Electric Company (SDG&E), and the California Electricity Oversight Board (EOB) filed motions to intervene. SDG&E and the CAISO filed a joint protest (the Protestors) and the EOB filed a protest. In addition, Cabrillo filed an answer.

³ 18 C.F.R. § 35.11 (2003).

III. The Joint Protests

5. The Protestors claim that Cabrillo's filing includes certain costs that should not be recovered under the RMR Agreements, provides inadequate support to justify the projected costs, and contains several computational errors. In particular, the Protestors allege that Cabrillo's filing fails to provide the information required by Schedule F of the RMR Agreements, including: (1) detailed workpapers showing the derivation for the costs; (2) a clear identification of the depreciation rates reflected in the claimed costs for the Year 2004; and (3) a comparison of the major components of the resulting revenue requirements for the Year 2004 with the costs relating to the preceding calendar year.

6. With regard to the Cabrillo I RMR Agreement, the Protestors state that Cabrillo: (1) has not adequately explained the increases in the AFRR values, the Fuel Stock cost, the fixed O&M cost, and the costs for capital additions for the units; (2) includes prior year Long Term Planned Outage Hours (LTPOH) in the calculation of Average Other Outage Hours, although the RMR Agreement expressly excludes LTPOH from that calculation, resulting in unjust and unreasonable Hourly Capital Item Charges and Hourly Availability Charges for the Encina Units 1-5; and (3) overstates the AFRR values because it fails to account for the annual Non-Fuel Start-up Costs.

7. As for the Cabrillo II RMR Agreement, the Protestors claim that Cabrillo: (1) has not adequately explained or supported the AFRR values, the Administrative and General expenses, and the fixed O&M costs; (2) has failed to provide a proper notice of termination for Division Street in accordance with various sections of the RMR Agreement; and (3) has failed to align its filing information with its metering of the RMR units and thus makes it difficult or impossible to assure that the invoicing for these units dispatched is just and reasonable.

8. The Protestors state that they plan to continue to attempt to resolve their outstanding issues with Cabrillo. However, because Cabrillo's revisions to the RMR Agreements have not been shown to be just and reasonable, they urge the Commission to accept the proposed revisions to the RMR Agreements to be effective January 1, 2004, suspend the revisions, subject to refund, and set the proposed revisions for hearing, but hold the hearing in abeyance to permit the parties to continue their settlement negotiations.

IV. Discussion

A. Procedural Matters

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2003), the notice of intervention and the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Rule

213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 384.213(a)(2)(2003), generally prohibits an answer to a protest, unless otherwise permitted by the decisional authority. We are not persuaded to allow Cabrillo's answer; accordingly, we reject it.

B. The Commission's Response

10. The Protestors' concerns, which are identified above, raise factual questions concerning Cabrillo's filing that we cannot summarily decide on the record before us. These concerns are best addressed in the hearing and settlement judge procedures that we order herein. In addition, based on our review of Cabrillo's filing, we find that its proposed revisions to its RMR Agreements have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, we accept the proposed revisions to Cabrillo's RMR Agreements for filing, suspend them for a nominal period, and set them for hearing, to become effective, subject to refund, on the date requested by Cabrillo. In this regard, we find good cause to grant Cabrillo's request for waiver of the Commission's prior notice requirement to permit an effective date of January 1, 2004 for its filing,⁴ which is the effective date set forth in Cabrillo's RMR Agreements for their annual renewal.

11. While we are setting this proceeding for a trial-type, evidentiary hearing, we will hold the hearing in abeyance and direct settlement judge procedures, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, in order to assist the parties in resolving this matter. If the parties desire, they may, by mutual agreement, request a specific judge as a settlement judge in this proceeding; otherwise, the Chief Administrative Law Judge will select a judge for this purpose. 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 the 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.

⁴ See Central Hudson Gas & Electric Corp., 60 FERC ¶ 61,106, reh'g denied, 61 FERC ¶ 61,089 (1992); see also Florida Power Corp., 76 FERC ¶ 61,070 at 61,436 (1996) (stating that "the Commission generally will grant waiver for filings that increase rates if the rate change and effective date are prescribed by contract, such as annual rate revisions required by contract to become effective on a date specified in the contract"); accord, Florida Power and Light Co., 74 FERC ¶ 61,038 at 61,092-93 (1996); Consolidated Edison Company, 68 FERC ¶ 61,230 at 62,090 (1994).

The Commission orders:

(A) Cabrillo's filing is hereby accepted for filing and suspended for a nominal period, to become effective January 1, 2004, subject to refund, as discussed in the body of this order.

(B) Cabrillo's request for waiver of the Commission's prior notice requirement is hereby granted.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Section 402(a) of the Department of Energy Organization Act and the Federal Power Act, particularly Sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held concerning the justness and reasonableness of the proposed revisions to the RMR Agreements. As discussed in the body of this order, the hearing shall be held in abeyance to provide time for the parties to resolve the outstanding issues through settlement judge procedures.

(D) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2003), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge within 15 days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge.

(E) Within 60 days of the date of this order, the settlement judge shall file a report with the Chief Judge and the Commission on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their efforts, or if appropriate, provide for a formal hearing by assigning the case to a presiding judge. If the parties are given additional time to continue their efforts, they shall file a report at least every 30 days thereafter informing the Commission and the Chief Judge of their progress toward resolving the outstanding issues.

(F) If the discussions between the parties fail, and a formal hearing is to be held, a presiding judge to be designated by the Chief Judge shall convene a conference in this proceeding to be held within approximately 15 days of the date the Chief Judge designates the presiding judge, in a hearing room of the Federal Energy Regulatory 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.

(G) The rate schedule designations are shown in the Enclosure.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

Cabrillo Power I LLC and Cabrillo Power II LLC
Docket No. ER04-308-000
Rate Schedule Designations
Effective Date: January 1, 2004

| <u>Designation</u> | <u>Description</u> |
|---|---|
| (1) Original Sheet Nos. 122B, 122C, 123B, and 123C; First Revised Sheet Nos. 209 and 210; Second Revised Sheet Nos. 113, 122A, and 123A; Fifth Revised Sheet Nos. 114, 118, 120, 123, 124, and 150; Third Revised Sheet Nos. 122 under First Revised Rate Schedule No. 2. | Year 2004 annual updates to Cabrillo Power I LLC's Reliability Must Run Agreement with the CAISO for EA1, EA2, EA3, EA4, EA5 and EACT Units. |
| (2) Second Revised Sheet Nos. 111-113, 115-117, 121, 135, 145, 156, and 182; Fifth Revised Sheet Nos. 127 and 153; Sixth Revised Sheet Nos. 118, 122, 124, and 126 under First Revised Rate Schedule No. 2. | Year 2004 annual updates to Cabrillo Power II LLC's Reliability Must Run Agreement with the CAISO for the El Cajon, Kearny (1, 2A, 2B, 2C, 2D, 3A, 3B, 3C, 3D) and the Mirimar (1A and 1B) Units. |