110 FERC ¶61,018

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Reliant Energy Etiwanda, Inc. Docket Nos. ER05-138-000,
ER05-138-001
and ER05-138-002

ORDER ACCEPTING AND SUSPENDING REVISED RELIABILITY MUST-RUN AGREEMENT AND ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued January 12, 2005)

1. In this order, we accept for filing and suspend for a nominal period, to become effective January 1, 2005, subject to refund, Reliant Energy Etiwanda, Inc.'s (Reliant Etiwanda) proposed revised Reliability Must-Run Agreement (RMR Agreement) with the California Independent System Operator Corporation (CAISO). We also establish hearing and settlement judge procedures. This order benefits customers because it allows Reliant Etiwanda to continue providing must-run generation to the CAISO while providing the parties a forum in which to resolve their disputes.

I. Background

2. RMR Agreements provide the rates, terms, and conditions by which Reliant Etiwanda 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.[1] These RMR Agreements generally follow a generic, standard form that was agreed to as part of a settlement approved by the Commission in a letter order issued on May 28, 1999

[1] As specified in the RMR Agreements, units operate under one or two conditions: Condition 1, which allows the RMR units to participate in energy and ancillary-service markets and bilateral contracts, with the unit's owner retaining any profits from such non-CAISO dispatched participation; or Condition 2, which does not allow RMR units to enter into bilateral contracts or to participate in energy and ancillary service markets unless dispatched by the CAISO, with the unit's owner not retaining any revenues from such participation. Market revenues received by a Condition 2 unit are credited back to the CAISO.

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(CAISO Pro Forma RMR Agreement)[2] Those agreements require that, whenever the CAISO extends the terms of an RMR Agreement for an additional calendar year, the owner of the designated RMR unit must file updates to the rates and terms of service under its RMR Agreement with the Commission.[3]

3. The CAISO designated Reliant Etiwanda's facilities for RMR service for the 2005 calendar year (Year 2005).[4] As a result, on November 1, 2004, and amended on November 19, 2004, Reliant Etiwanda submitted, pursuant to section 205 of the Federal Power Act, its updates to certain rates and terms of service in its RMR Agreement (section 205 Filing). On November 18, 2004, Reliant Etiwanda submitted its Informational Package.

4. Reliant Etiwanda proposes a number of changes to its RMR Agreement, including updated Annual Fixed Revenue Requirements and Variable Operation and Maintenance Rates contained in the Informational Package. Specifically, Reliant Etiwanda's section 205 Filing proposes: (1) to update contract service limits and owners repair cost obligations in Schedule A, (2) to update hourly availability charges, hourly penalty rates, and target availability hours in Schedule B, (3) to incorporate the Year 2005 Annual Fixed Revenue Requirements in Table B-6, and (4) to update prepaid start-up costs in Schedule D. Reliant Etiwanda requests a January 1, 2005, effective date.

5. Reliant Etiwanda proposes other changes in its section 205 Filing that it argues are necessary to bring the rates in its RMR Agreement into conformity with the rate design

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[2] *California System Operator Corporation*, 87 FERC ¶ 61,250 (1999).

[3] The annual RMR updates consist of two parts: (1) an Informational Package, filed pursuant to Schedule F of the RMR Agreement, containing the revised Annual Fixed Revenue Requirements and Variable Operation and Maintenance Rates; and (2) a rate filing made pursuant to section 205 of the Federal Power Act, 18 U.S.C. § 824d (2000), reflecting, among other things, the revised Annual Fixed Revenue Requirements and Variable Operation and Maintenance Rates contained in the Informational Package.

[4] *See* R*eliant Energy Etiwanda, Inc.*, Docket No. ER04-959-000, delegated letter order issued July 23, 2004, accepting Reliant Etiwanda's RMR Agreement with the CAISO. At the request of the CAISO, Reliant Etiwanda returned two mothballed units to RMR service for the July 1, 2004 through December 31, 2004 period. Unlike the CAISO Pro Forma RMR Agreements with other power plant owners, Reliant Etiwanda's RMR Agreement was based, only in part, on the CAISO Pro Forma RMR Agreement. In this instance, the Reliant Etiwanda's RMR Agreement reflects the below-cost pricing agreed to as part of a settlement among Reliant Etiwanda, its affiliates, and Commission's Enforcement Division Staff. *See Reliant Energy Services, Inc.*, 105 FERC ¶ 61,008 (2003) and 108 FERC ¶ 61,278 (2004) (Reliant Settlement).

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contained in the CAISO Pro Forma RMR Agreement. Reliant Etiwanda explains that the rates currently specified in its RMR Agreement are based on the rates agreed to in the Reliant Settlement. Reliant Etiwanda states that the revised rates for Condition 2 units will not take effect if the Public Utilities Commission of the State of California (CPUC) approves a proposed Purchase and Sales Agreement between Reliant Etiwanda and Southern California Edison Company (SoCal Edison) (bilateral contract). It further states that if the CPUC approves the Purchase and Sales Agreement, the units will run under the provisions for Condition 1 units as described in the CAISO Pro Forma RMR Agreement.[5]

II. Notice of Filing and Responsive Pleadings

6. Notice of Reliant Etiwanda's filings were published in the *Federal Register*, with interventions and protests due on or before December 16, 2004.[6] The CPUC filed a notice of intervention, and the California Department of Water Resources State Water Project filed a timely motion to intervene. The CAISO, the Metropolitan Water District of Southern California (Metropolitan Water District) and SoCal Edison filed timely motions to intervene and protests. The California Electricity Oversight Board filed a motion to intervene out-of-time. Reliant Etiwanda filed an answer to SoCal Edison's protest.

III. Protests

7. The CAISO, Metropolitan Water District and SoCal Edison state that Reliant Etiwanda failed to justify the cost items and Annual Fixed Revenue Requirements in its section 205 Filing. The CAISO challenges the inclusion of approximately one million dollars in Annual Fixed Revenue Requirements for calendar year 2005 which were derived from budget projections values rather than actual costs as required by the RMR Agreement.

8. SoCal Edison challenges Reliant Etiwanda's proposed rates for Condition 2 units that will go into effect if the CPUC does not approve its Purchase and Sales Agreement with Reliant Etiwanda. SoCal Edison states that it is not appropriate that Reliant Etiwanda's Annual Fixed Revenue Requirements exceed the rates established in the Reliant Settlement. SoCal Edison also challenges Reliant Etiwanda's use of budget projections in developing its Annual Fixed Revenue Requirements rather than actual costs as required by the RMR Agreement. It argues that Reliant Etiwanda's budget projections are suspect and overstated. SoCal Edison further challenges Reliant

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[5] *See* Reliant Etiwanda's cover letter to its November 1, 2004, filing at p. 2.

[6] Docket No. ER05-138-000, 69 Fed. Reg. 67,338 (2004) and Docket Nos. ER05-138-001 and ER05-138-002, 69 Fed. Reg. 70,436 (2004).

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Etiwanda's inclusion of monies for personnel training and for engineering studies. SoCal Edison requests that the Commission not accept the proposed revisions to Reliant Etiwanda's RMR Agreement if the CPUC does not approve its Purchase and Sales Agreement with Reliant Etiwanda.

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 (2004), the CPUC's notice of intervention and the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. We will grant the California Electricity Oversight Board's motion to intervene out-of-time given its interest in this proceeding, the early stage of the proceeding, and the absence of any undue prejudice or delay. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 384.213(a)(2) (2004), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to allow Reliant Etiwanda's answer and will, therefore, reject it.

B. Commission Determination

10. Reliant Etiwanda's proposed revised RMR Agreement 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.

11. Our preliminary analysis indicates that Reliant Etiwanda's proposed revised RMR Agreement 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 proposed revised RMR Agreement for filing, as designated, suspend it for a nominal period, make it effective January 1, 2005, subject to refund, and set it for hearing and settlement judge procedures.

12. While we are setting Reliant Etiwanda's proposed revised RMR Agreement 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.[7] If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this

[7] 18 C.F.R. § 385.603 (2004).

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purpose.[8] 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.

The Commission orders:

(A) Reliant Etiwanda's proposed revised RMR Agreement is hereby accepted for filing, as designated, and suspended for a nominal period, to become effective January 1, 2005, subject to refund, as discussed in the body of this order.

(B) 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 revised RMR Agreement. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in paragraphs (C) and (D) below.

(C) 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 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) day of the date of this order.

(D) 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, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If the settlement discussions

[8] 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).

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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.

(E) If the settlement discussions fail and a formal 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 prehearing conference in this proceeding 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.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.