

110 FERC ¶ 61,400  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Williams Power Company, Inc.

Docket No. ER05-406-000

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

(Issued March 31, 2005)

1. In this order, we accept for filing and suspend for a nominal period, to become effective January 1, 2005, as requested, subject to refund, Williams Power Company, Inc.'s (Williams) proposed revised Reliability Must-Run Agreements (RMR Agreements)<sup>1</sup> with the California Independent System Operator Corporation (California ISO) for the Alamitos and Huntington Beach generating facilities. We also establish hearing and settlement judge procedures. This order benefits customers because it allows Williams to continue providing must-run generation to the California ISO 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 Williams and other power plant owners in California provide RMR service to the California ISO by dispatching designated units at certain power plants at the direction of the California

---

<sup>1</sup> The RMR Agreements generally follow a generic, standard form that was agreed to as part of a settlement approved in *California Independent System Operator Corporation*, 87 FERC ¶ 61,250 (1999). A revised, generic standard form that was agreed to as part of a second offer of settlement was approved in *California Independent System Operator Corporation*, 93 FERC ¶ 61,089 (2000).

ISO.<sup>2</sup> Those agreements require that, whenever the California ISO 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.<sup>3</sup>

3. The California ISO elected to extend the RMR Agreements for one Alamitos unit and two Huntington Beach units for the 2005 calendar year.<sup>4</sup> As a result, on December 30, 2004, Williams submitted a section 205 filing to update certain rates and terms of service in its RMR Agreements along with its Informational Filing.

4. Williams states that its Informational Filing details and supports its proposed Annual Fixed Revenue Requirements and Variable O&M Rates for each of the generating units. Additionally, Williams states that the revised rate sheets update schedule A (unit characteristics, limitations and owner commitments), schedule B (monthly option payment), schedule C (variable cost payment), schedule D (start-up payment), and the “notice” information reflected in schedule J. Williams states that pursuant to the terms of the existing RMR Agreements, the rates proposed in the informational filing and the section 205 filing have a January 1, 2005 effective date.

5. Williams notes that it has been granted two extensions of time to submit the schedule F informational filing and related revised tariff sheets. The extensions were

---

<sup>2</sup> As specified in the RMR Agreements, units operate under one of 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-California ISO 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 California ISO, 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 California ISO.

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

<sup>4</sup> The prior agreement for the calendar year 2004 was accepted in *Williams Power Company, Inc.*, 106 FERC ¶ 61,188 (2004) (*Williams I*).

granted to permit Williams to initiate, and interested parties to complete, settlement discussions and negotiations on the informational filing. However, the parties were unable to reach an agreement in principle prior to the December 31, 2004 deadline.

6. Williams contends that, due to competitive concerns, the attachments to its filing containing unit specific operating characteristics (Attachments B through J) should not be made available to the public.

## **II. Notice of Filing**

7. Notice of Williams' filing was published in the *Federal Register*, 70 Fed. Reg. 3,014 (2005), with interventions and protests due on or before January 21, 2005. The Public Utilities Commission of the State of California (California Commission) filed a notice of intervention. The California Independent System Operator Corporation (California ISO) and Southern California Edison Company (SoCal Edison) filed timely motions to intervene. The California Electricity Oversight Board (CEOB) filed a motion to intervene and protest. The California ISO, SoCal Edison, and California Commission (collectively, Joint Parties) filed a joint protest and request for 45-day comment period.

8. On February 3, 2005, Williams filed an answer stating that it consents to the requested extension of the comment period. The Commission subsequently issued a notice extending the time to file comments to February 14, 2005.

9. On February 15, 2005, Williams filed a motion for leave to answer and an answer.

## **Protests**

10. The Joint Parties state that Williams has failed to provide the full information required by schedule F of the RMR Agreements. The Joint Parties state that schedule F requires that the informational filing include: (1) detailed workpapers showing the derivation of costs under the formula for determining annual revenue requirements; (2) a clear identification of the depreciation rates reflected in the claimed costs for the cost year; (3) a comparison of the major components of the resulting revenue requirement for the relevant cost year with the corresponding components of the revenue requirements that result from the application of the formula using costs relating to the preceding calendar year; and (4) such additional documentation as to specific items of costs required by the formula.

11. However, the Joint Parties argue, Williams' filing lacks sufficient detail to determine if the rates are appropriate and reasonable. In addition, they argue, Williams' filing does not include sufficient information to determine the appropriateness of the values of depreciation expense, depreciation reserve and deferred income taxes. Furthermore, the Joint Parties contend, Williams has not fully explained or provided

supporting data for: (1) calculation of target available hours; (2) pre-paid start-up cost calculation; (3) emissions expenses; and (4) annual non-fuel start-up costs. Moreover, the Joint Parties disagree with the value that Williams set for return and income tax allowance and state that Williams should be required to recalculate the value. They also state that Williams' filing contains proposed changes to the fixed option payment factors in table B-O of schedule B, which they argue the RMR Owner (Williams) does not have the right to change. Finally, the Joint Parties argue that schedule B paragraph 8 limits the annual section 205 filing to tables B-1 through B-6.

12. The CEOB also asserts that there are a number of issues with Williams' filing including: (1) whether Williams' proposed 55 percent fixed option payment factor is unduly high; (2) whether a net incremental cost methodology should be used instead of the proposed Annual Fixed Revenue Requirements; (3) the appropriate treatment of expenses related to capital improvements; and (4) whether the costs associated with plant retirement are being over-collected. The CEOB requests that the Commission accept and suspend Williams' proposed filing, set the matter for hearing, and suspend that hearing process for 90 days to provide the parties additional time to attempt to reach settlement.

13. The Joint Parties argue that Williams improperly marked certain schedule F and supporting data as confidential. The Joint Parties state that this is inappropriate and note that the Commission has already once rejected Williams' attempt in a prior schedule F filing to keep schedule F data confidential.<sup>5</sup>

### **Williams' Answer**

14. In its answer, Williams request that the Commission stay any action on the instant filing pending the completion of settlement discussions and permit the parties to complete the discovery process. Williams states that the parties have continued settlement discussions and that Williams is optimistic that the parties will be able to reach an agreement on the instant filing, as they have been able to do on prior RMR filings.<sup>6</sup> Accordingly, Williams requests that the parties be given until April 1, 2005 to continue and complete settlement discussions.

15. Williams further states that after discussions with AES Southland, LLC, the owner of the RMR units, without conceding that it is inappropriate to designate RMR

---

<sup>5</sup> *Williams I*, 106 FERC ¶ 61,188 at P 15 .

<sup>6</sup> *See Williams I*, 106 FERC ¶ 61,188; *Williams Power Company, Inc.*, 105 FERC ¶ 61,165 (2003).

information confidential, Williams agrees to lift the confidential designations attached to the specific schedules and information contained in the RMR filing.

### **III. Discussion**

#### **Procedural Matters**

16. 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 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. § 385.213(a)(2)(2004), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Williams' answer because it has provided information that assisted us in our decision-making process.

#### **Commission Determination**

17. Williams' proposed revised RMR Agreements raise 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.

18. Our preliminary analysis indicates that Williams' proposed revised RMR Agreements have 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 Agreements for filing, as designated, suspend them for a nominal period, make them effective January 1, 2005,<sup>7</sup> as requested, subject to refund, and set them for hearing and settlement judge procedures.

19. While we are setting Williams' proposed revised RMR Agreements 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, 18 C.F.R. § 385.603 (2004). 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

---

<sup>7</sup> See *Central Hudson Gas & Electric Corp.*, 60 FERC ¶ 61,106 at 61,338, *reh'g denied*, 61 FERC ¶ 61,089 (1992) (stating that the Commission will grant waiver of the 60-day prior notice requirement when there is a contractual commitment as to the effective date which the Commission has already accepted.)

judge for this purpose.<sup>8</sup> 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.

20. Finally, since Williams has agreed to lift the confidential designation attached to the specific schedules and information contained in its filing, we will dismiss as moot Williams' request for confidential treatment.

The Commission orders:

(A) Williams' proposed revised RMR Agreements are 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 Agreements. 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.

---

<sup>8</sup> 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](http://www.ferc.gov) – click on Office of Administrative Law Judges).

(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 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.

(F) Williams' request for confidential treatment is hereby dismissed as moot, as discussed in the body of this order.

By the Commission.

( S E A L )

Linda Mitry,  
Deputy Secretary.