

**UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION**

Duke Energy Oakland LLC)	Docket No. ER98-3416-000
Duke Energy Morro Bay LLC)	Docket No. ER98-3417-000
Duke Energy Moss Landing LLC)	Docket No. ER98-3418-000

**MOTION OF
THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
TO FILE PROTEST OUT OF TIME**

Pursuant to Rule 212 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §§ 385.212, the California Independent System Operator Corporation ("ISO"), hereby moves for leave to file a Protest out of time in the above-entitled proceedings.

In these dockets, Duke Energy Morro Bay LLC, Duke Energy Moss Landing LLC, and Duke Energy Oakland LLC (collectively, "Duke") seek market-based rate authorization for sales of four ancillary services -- Regulation, Spinning Reserve, Non-spinning Reserve, and Replacement Reserve, each as defined in the ISO Tariff (collectively, the Regulation and Reserve Services). Duke seeks such authority during times when it is not obligated to sell that particular ancillary service under its Must-Run Agreements. (Duke Energy Morro Bay is not a party to a Must Run Agreement.)

The ISO submitted Motions to Intervene in the above-entitled proceedings on July 8, 1998.¹ With its Motions to Intervene, the ISO included comments in which it reiterated its belief, noted in filings regarding previous requests by other companies for market-based rate authority, that the thinness of the market for Regulation and Reserve Services during certain hours would allow sellers to command exorbitant prices, and that market power in Regulation and Reserve

¹ The Motion to Intervene in Duke Energy Morro Bay was submitted one day out of time.

Services could therefore not be properly evaluated absent a time-differentiated study. The ISO also recognized, however, that the Commission had recently rejected the ISO's argument that a time-differentiated study is necessary. See *AES Redondo Beach, L.L.C., et al.*, 83 FERC ¶61,358 (June 30, 1998) ("June 30th Order"). The ISO therefore informed the Commission that the ISO would continue to monitor the situation and, to the extent the ISO through its market monitoring function has concerns with the operation of these markets, would apprise the Commission and perhaps request relief.

Events subsequent to the submission of the intervention have demonstrated that an unconditional grant of the market-based rate authority requested by Duke would have enormous adverse consequences for the California market. The ISO therefore seeks to protest Duke's filings at this time. The ISO should be granted leave to protest out of time to present to the Commission data bearing directly on the untoward consequences of granting the unconditional market-based rate authority sought in these dockets, which data were not available at the time the ISO filed its Motions to Intervene. No party will be prejudiced, however, because this motion is only 8 days out of time and because the market issues that form the basis for the protest were described in the ISO's Motion to Intervene.

CONCLUSION

WHEREFORE, the ISO respectfully requests that the Commission grant it leave to file a protest out of time in the above-entitled proceedings.

Respectfully submitted,

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Date: July 16, 1998

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the forgoing document upon each person designated on the official service list compiled by the Secretary in this Docket No. ER98-3416-000, ER98-3417-000, and ER98-3418, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §385.2010 (1997).

Dated at Washington, D.C. on this 16th day of July, 1998.

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