

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

Duke Energy Morro Bay LLC)	Docket No. ER99-1380-000
Duke Energy Moss Landing LLC)	Docket No. ER99-1381-000
Duke Energy Oakland LLC)	Docket No. ER99-1382-000
)	(Not Consolidated)
)	

**MOTION TO INTERVENE AND COMMENTS OF
THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION**

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214, and the Commission's January 26, 1999 Notices of Filing, the California Independent System Operator Corporation ("ISO") hereby moves to intervene and submits comments in the above-captioned proceedings.

I. COMMUNICATIONS

Please address communications concerning this filing to the following persons:

N. Beth Emery Vice President and General Counsel Roger E. Smith, Regulatory Counsel The California Independent System Operator Corporation 151 Blue Ravine Road Folsom, CA 95630 Tel: (916) 351-2334 Fax: (916) 351-2350	Edward Berlin Kenneth G. Jaffe Sean A. Atkins Swidler Berlin Shereff Friedman, LLP 3000 K Street, N.W., #300 Washington, D.C. 20007 Tel: (202) 424-7500 Fax: (202) 424-7643
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II. BACKGROUND

On January 20, 1999, Duke Energy Morro Bay, LLC ("DEMB"), Duke Energy Moss Landing LLC ("DEML"); and Duke Energy Oakland LLC ("DEO") (collectively the "Duke Companies") filed in the above-captioned dockets unexecuted umbrella service agreements

which would designate the ISO as a customer under DEMB's Amended FERC Electric Rate Schedule No. 2, DEML's Amended FERC Electric Rate Schedule No. 3, and DEO's Amended FERC Electric Rate Schedule No. 3 respectively.¹ In the January 20 transmittal letters for these unexecuted agreements, the Duke Companies state that "Under the service agreement[s], [the Duke Companies] will, from time-to-time, sell Regulation, Spinning Reserve, Non-Spinning Reserve and Replacement Reserve to the ISO through its ancillary services auction." The Duke Companies request effective dates of December 21, 1998 for the DEML unexecuted agreement and March 22, 1999 for the DEMB and DEO unexecuted agreements.

III. BASIS FOR MOTION TO INTERVENE

The ISO is a non-profit public benefit corporation organized under the laws of the State of California and responsible for the reliable operation of a grid comprising the transmission systems of San Diego Gas & Electric Company, Southern California Edison Company, and Pacific Gas and Electric Company. To support reliability, the ISO is also responsible for procurement of Ancillary Services on behalf of Market Participants. The unexecuted umbrella service agreements filed in the above-captioned dockets would designate the ISO as a purchaser of the Ancillary Services it so procures and a customer under the Duke Companies' FERC electric rate schedules. The ISO therefore has an interest in this proceeding which cannot be adequately represented by any other party. Accordingly, the ISO requests that it be permitted to intervene herein with full rights of a party.

¹ The Commission accepted these rate schedules for filing in Duke Energy Oakland LLC et al. 84 FERC ¶ 61,186 (1998).

IV. COMMENTS

The unexecuted umbrella service agreements initially filed in these proceedings are premised on the inaccurate proposition that the ISO is a customer or purchaser of Ancillary Services. The Commission has recognized on numerous occasions that the ISO procures Ancillary Services only on behalf of Market Participants and that such procurement does not make the ISO a purchaser of such services.² The ISO is therefore not properly a party to service agreements of the type filed by the Duke Companies on January 20.

The Duke Companies recently contacted the ISO to discuss various issues related to the proposed service agreements in the above-captioned proceedings. The Duke Companies indicated that they would file amendments to the umbrella service agreements in the above-captioned dockets. Under these amended agreements the ISO would no longer be designated as a purchaser of Ancillary Services or a signatory to those agreements. The ISO is currently engaged in discussions with the Duke Companies through which they seek to resolve any issues relating to the proposed service agreements in the above-captioned proceedings. Pending the outcome of those discussions, the ISO reserves the right to supplement or modify its pleadings to address the amended umbrella service agreements or any substantive issue arising in this proceeding in the future.

² See, e.g., *Pacific Gas And Electric Co. et al.*, 81 FERC ¶ 61,122 at 61,496 (1997) ("The ISO should not be deemed to procure ancillary services on its own behalf since the ISO is not a participant in the market place. The ISO is appropriately securing the necessary ancillary services on behalf of the Scheduling Coordinators since it is the Scheduling Coordinators who will utilize these services.")

V. CONCLUSION

Based on the foregoing, the ISO respectfully requests that the Commission permit it to intervene and that it be accorded full party status in this proceeding.

Respectfully submitted,

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Date: February 10, 1999

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service lists compiled by the Secretary in these Docket Nos. ER99-1380-000, ER99-1381-000; and ER99-1382-000, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.2010 (1998).

Dated at Washington, D.C. on this 10th day of February, 1999.

Sean A. Atkins

February 10, 1999

David P. Boergers
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Re: Duke Energy Morro Bay LLC
Duke Energy Moss Landing LLC
Duke Energy Oakland, LLC

Docket No. ER99-1380-000
Docket No. ER99-1381-000
Docket No. ER99-1382-000
(Not Consolidated)

Dear Secretary Boergers:

Enclosed for filing is one original and 14 copies of the Motion to Intervene and Comments of the California Independent System Operator Corporation in the above-referenced docket. An additional copy of the filing is also enclosed. Please stamp the additional copy with the date and time filed and return it to the messenger.

Thank you for your assistance in this matter.

Respectfully submitted,

Sean A. Atkins

Attorney for the California
Independent System Operator Corporation