

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

Duke Energy Moss Landing LLC and)	Docket Nos. ER98-2668-009
Duke Energy Oakland LLC)	ER98-2669-008
)	ER99-1127-007
)	ER99-1128-007
)	ER98-4296-006
)	ER98-4300-006

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

Pursuant to Rules 211 and 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”), 18 C.F.R. §§ 385.211 and 385.214, and the Commission’s April 18, 2000 “Notice of Filing,” the California Independent System Operator Corporation (“ISO”) hereby protests and moves to intervene in the above-captioned proceeding. In support thereof, the ISO states as follows:

I. COMMUNICATIONS

Please address communications concerning this filing to the following persons:

Roger E. Smith, Senior Regulatory Counsel	J. Phillip Jordan
Deborah Le Vine, Director of Contracts & Compliance	Rebecca A. Blackmer
The California Independent System Operator Corporation	Swidler Berlin Shereff Friedman, LLP
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II. BACKGROUND

On April 14, 2000, Duke Energy Moss Landing LLC and Duke Energy Oakland LLC (collectively, "Duke Energy") tendered for filing with the Commission a refund report in compliance with the Commission's order¹ approving Duke Energy's Offer of Settlement ("Settlement") filed in Docket Nos. ER98-2668-000, *et al.*, on November 16, 1999. The refund report reflects a refund by Duke Energy to the ISO of \$2,075,042 for Duke Energy's reliability must-run units ("RMR Units") for the period October 1, 1999 through December 31, 1999.

III. MOTION TO INTERVENE

The ISO is a non-profit public benefit corporation organized under the laws of the State of California. It is responsible for the reliable operation of a grid comprising the transmission systems of Pacific Gas and Electric Company ("PG&E"), San Diego Gas & Electric Company, and Southern California Edison Company, as well as for the coordination of the competitive electricity market in California. Approval of Duke Energy's Settlement placed into effect changes to the payment for RMR services. As the sole purchaser of Duke Energy's RMR services and recipient of any refunds resulting from the Settlement, the ISO has a substantial interest in this proceeding. Further, because the ISO is charged with the nondiscriminatory operation of the ISO Controlled Grid, the ISO's participation in this proceeding is in the public interest. Accordingly, the ISO requests that it be permitted to intervene in this proceeding with full rights of a party.

IV. PROTEST

Pursuant to the terms of the Settlement, all charges under Duke Energy's Revised RMR Rate Schedules affected by the terms of the Settlement's Fixed Option Payment Factors ("FOPF") provision were to be recalculated as though the revised FOPFs were in place and effective on October 1, 1999. Any differences between the charges resulting from such recalculation and the charges previously paid for the period beginning October 1, 1999, would result in a refund or surcharge, as appropriate, with interest computed at the Commission's refund rate, compounded quarterly.

PG&E is filing a protest to Duke Energy's refund report contending that Duke Energy applied incorrect Hourly Availability Charges for the Oakland Units 1-3 in calculating refund amounts for the October-December 1999 refund period. In addition, PG&E questions Duke Energy's interest calculations for the Moss Landing and Oakland Units. PG&E requests that the Commission require Duke Energy to resubmit the refund report with the corrected refund and interest calculations for the Moss Landing and Oakland Units. For the reasons stated in PG&E's protest, the ISO files its protest in support of PG&E.

¹ Duke Energy Moss Landing LLC, 90 FERC ¶ 61,073 (2000) (Letter Order).

V. CONCLUSION

Wherefore, for the foregoing reasons, the ISO respectfully requests that the Commission permit it to intervene, that it be accorded full party status in this proceeding, and that the Commission require Duke Energy to resubmit the refund report with the corrected refund and interest calculations for the Moss Landing and Oakland Units.

Respectfully submitted,

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Counsel for the California Independent
System Operator Corporation

Date: May 4, 2000

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, DC, on this 4th day of May, 2000.

Rebecca A. Blackmer

May 4, 2000

VIA MESSENGER

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

Re: **Duke Energy Moss Landing LLC and Duke Energy
Oakland LLC, Docket Nos. ER98-2668-009, *et al.***

Dear Secretary Boergers:

Enclosed for filing are one original and fourteen copies of the Protest and Motion to Intervene of the California Independent System Operator Corporation in the above-cited proceedings. Two additional copies of the filing are also enclosed. I would appreciate your stamping the additional copies with the date filed and returning it to the messenger.

Respectfully submitted,

Rebecca A. Blackmer
Counsel for the California Independent System
Operator Corporation