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October 22, 2002

OFFICE OF THE SECRETARY
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FEDERAL ENERGY
REGULATORY COMMISSION

Honorable Magalie R. Salas
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

RE: Duke Energy Oakland, LLC, et al., Docket Nos. ER02-10-000,
ER02-240-000, et al.; and ER02-1478.

Dear Secretary Salas:

In accordance with the provisions of Rule 602 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("Commission"), 18 C.F.R. § 385.602 (2002), Duke Energy Oakland, LLC ("DEO"), the California Independent System Operator Corporation (the "ISO"), and Pacific Gas and Electric Company ("PG&E") (collectively, the "Parties") hereby submit for filing in the above-referenced dockets an original and fourteen copies of an Offer of Settlement that resolves all issues related to DEO in Docket No. ER02-10-000 (DEO's Annual Fixed Revenue Requirement filing under Schedule F of its Reliability Must Run ("RMR") contract with the ISO) and all issues in Docket No. ER02-240-000, *et al.*, as consolidated with Docket No. ER02-1478-000.¹ The Offer of Settlement is comprised of this Transmittal Letter, an Explanatory Statement, and a Settlement Agreement ("Settlement") with appendices.

Contents of Submission

Enclosed with this filing are the following:

- (1) An Explanatory Statement (Attachment 1);
- (2) The Settlement with a revised RMR Schedule F and proposed revisions to other RMR Schedules appended thereto (Attachment 2);
- (3) A draft Commission letter order approving the settlement with a diskette containing the draft order in MS Word format (Attachment 3).

As indicated in the enclosed Explanatory Statement, this Offer of Settlement is supported by all Parties to this proceeding. The Parties diligently have worked toward the settlement of these matters on an informal basis over a period of months, and thus request

¹ The Parties note that upon the approval of this filing and a companion filing for Duke Energy South Bay, LLC, ("DESB") submitted on September 26, 2002 in Docket Nos. ER02-10-000 and ER02-239, *et al.*, all issues relating to both DEO and DESB in ER02-10-000 will be fully and finally resolved.

that the Commission give this Offer of Settlement expedited consideration to provide all Parties the ability to move forward with important economic decisions that currently depend on the resolution of these issues.

In accordance with the provisions of Rule 602(c)(iii), the Parties submitting this Offer of Settlement state that this filing contains copies of, or references to, all documents relevant to this Offer of Settlement.

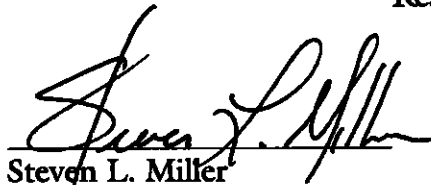
Service

A copy of this submission is being served on all participants in the referenced proceeding and on all other persons required to be served pursuant to Rule 602(d) of the Commission's Rules of Practice and Procedure.

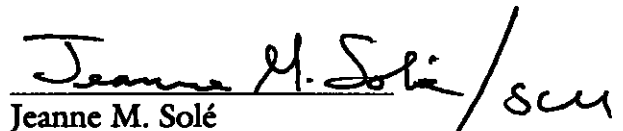
Notice Regarding Filing Comments to Offer of Settlement

In accordance with Rule 602(d), Duke hereby informs all participants in this proceeding that comments on the Offer of Settlement and Settlement Agreement are due by November 11, 2002 and reply comments are due by November 21, 2002. The Parties request adherence to this comment period as provided in Rule 602(f)(2) in order to expedite the conclusion of this matter.

Respectfully submitted,



Steven L. Miller
*Attorney for
Duke Energy Oakland, LLC*



Jeanne M. Solé
*Attorney for
California Independent System
Operator Corporation*



Shiran Kochavi
*Attorney for Pacific Gas and
Electric Company*

Attachments

cc: Service List

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FEDERAL ENERGY
REGULATORY COMMISSION

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Duke Energy Oakland, LLC, et al.) Docket Nos. ER02-10-000
ER02-240-000, et al.
ER02-1478-000

**EXPLANATORY STATEMENT
IN SUPPORT OF OFFER OF SETTLEMENT**

Pursuant to Rule 602(c)(1)(ii) of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”), 18 C.F.R. § 385.602(c)(1)(ii) (2001), Duke Energy Oakland, LLC (“DEO”), the California Independent System Operator Corporation (the “ISO”), and Pacific Gas and Electric Company (“PG&E”) (collectively, the “Parties”), hereby submit this Explanatory Statement to explain the basis for and significance of the attached Settlement Agreement (“Settlement”), submitted to resolve certain issues in the above-captioned proceedings.¹ The Settlement intends to resolve all DEO-related issues in Docket No. ER02-10-000, and all issues in Docket Nos. ER02-240-000, et al. and ER02-1478-000. This Explanatory Statement and the Settlement constitute the Offer of Settlement between the Parties (“Offer of Settlement”). This Explanatory Statement is not intended to alter any of the provisions of the Settlement and is provided solely for compliance with Rule 602(c)(1)(ii) of the Commission’s rules.

I. BACKGROUND

DEO is the owner of the Oakland generating station (“Oakland”), located in Oakland, California. Since April 1, 1998, when the ISO commenced operations, all of Oakland’s

¹ While not parties to the attached Settlement, the California Electricity Oversight Board (the “EOB”) and the California Public Utilities Commission (“CPUC”) have authorized the Parties to state that the EOB and CPUC do not oppose the Settlement.

units have been designated by the ISO as necessary for local reliability needs and thus Oakland has been operating under a Reliability Must-Run Service Agreement (“Oakland RMR Agreement”) between the ISO and DEO. The Oakland RMR Agreement authorizes the ISO to call on Oakland’s units to provide specified levels of energy and ancillary services and, in return, requires the ISO to make certain fixed and variable-cost payments to DEO. Under Section 5.2.8 of the ISO tariff, costs payable by the ISO under the Oakland RMR Agreement are passed through to PG&E.²

By an order issued on December 17, 1997, in Docket Nos. ER98-441-000, *et al.*, the Commission placed the initial RMR agreements for Oakland and other RMR units in California into effect, subject to refund, as of the date the ISO commenced operations.³ The Oakland RMR Agreement was substantially the same as RMR agreements covering other RMR units, with variations between the various agreements only for unit-specific costs and operating characteristics. On April 2, 1999, the ISO, the owners of all of the RMR units in California, the three Responsible Utilities, and other parties (including the CPUC and EOB) to Docket Nos. ER98-441-000, *et al.*, filed an offer of settlement in those dockets (the “First Stipulation”) substantially revising the standard terms of the initial RMR agreements and leaving other terms and related issues to be resolved by litigation or further settlement efforts. The First Stipulation was approved by the Commission in May 1999, and the revised terms took effect, as to the Oakland RMR Agreement, on June 1, 1999.⁴

² Section 5.2.8 provides that costs incurred by the ISO under an RMR agreement for a generating plant are to be borne by the utility in whose service territory the generating plant is located.

³ The Oakland RMR Agreement was part of Docket No. ER98-495-000.

⁴ California Independent System Operator Corp., 87 FERC ¶ 61,250 (1999). A subsequent offer of settlement, covering some of the issues not resolved in the First Stipulation, was filed on August 14, 2000 (footnote continued on next page)

Under the Oakland RMR Agreement, the ISO pays DEO various charges, including a Monthly Option Payment that is based, in part, on the Annual Fixed Revenue Requirement (“AFRR”) of the RMR units.⁵ The Oakland RMR Agreement also makes the AFRR subject to adjustment on January 1 of each year, beginning January 1, 2002, to reflect the actual costs for the 12-month period ending the previous June 30.⁶

On October 1, 2001, DEO filed in Docket No. ER02-10-000 an AFRR, with certain supporting information, for the 2002 calendar year (“Schedule F Filing”). The 2002 calendar year AFRR of \$6,775,000 represented an increase over Oakland’s AFRR for the 2001 calendar year.⁷ On December 21, 2001, the ISO, PG&E, the EOB and the CPUC protested the Schedule F Filing.

On November 1, 2001, as amended on December 11, 2001, in Docket No. ER02-240-000, et al., DEO filed revised tariff sheets reflecting its 2002 calendar year annual updates to the Oakland RMR Agreement (“Rate Filing”). Some of these revisions—specifically, those related to the Oakland RMR Agreement Schedules A and B—utilized the AFRR figure at issue in ER02-10-000. The ISO, PG&E, the EOB and the CPUC protested the Rate Filing. The protests were based, in part, on DEO’s use of the AFRR value at issue in Docket No. ER02-10-000 in the Rate Filing’s revisions to RMR Schedules A and B. The Commission accepted the Rate Filing subject to refund and the outcome of Docket No. ER02-10-000.⁸

in Docket Nos. ER98-441-000, et al., and approved in California Independent System Operator Corp., 93 FERC ¶ 61,089 (2000).

⁵ See Schedule B of the Oakland RMR Agreement.

⁶ See Schedule F of the Oakland RMR Agreement.

⁷ The same filing also included an AFRR for Duke Energy South Bay, LLC (“DESB”). This Settlement does not pertain to DESB’s AFRR.

⁸ Duke Energy Oakland LLC, 97 FERC ¶ 61,283 (2001).

On April 3, 2002, in Docket No. ER02-1478-000, DEO filed two additional revised sheets reflecting proposed 2002 calendar year updates to the Oakland RMR Agreement. The updates reflected a revised variable operating and maintenance (“VOM”) rate, and a revised start-up cost for one of Oakland’s generating units. The VOM in Docket No. ER02-1478-000 was the same as that used to calculate the AFRR in Docket No. ER02-10-000. Furthermore, the revised start up cost should have been included in the Rate Filing in Docket No. ER02-240-000, *et al.*, but was excluded because of an administrative oversight. On May 31, 2002, the Commission accepted these revisions and consolidated the case with Docket No. ER02-240-000, *et al.*, thus making the proposed 2002 calendar year updates subject to refund and the outcome of Docket No. ER02-10-000.⁹

In pursuit of a negotiated settlement, the Parties conducted informal discovery and conferred at length with regards to the issues raised in Docket Nos. ER02-10-000, ER02-240-000, *et al.*, and ER02-1478-000. The instant Settlement is the product of those discussions. The Settlement resolves all outstanding issues pertaining to Oakland in Docket No. ER02-10-000, and resolves all issues in Docket Nos. ER02-240-000, *et al.*, and ER02-1478-000.

Docket No. ER02-10-000 also includes an AFRR for DESB. This Settlement, however, does not pertain to DESB’s AFRR. Nonetheless, Commission acceptance of this Settlement and a similar settlement previously submitted in Docket No. ER02-10-000 by DESB, the ISO, and San Diego Gas & Electric Company (“SDG&E”), will resolve all issues among the Parties and SDG&E for both the DEO and DESB components of Docket No. ER02-10-000.

⁹ Duke Energy Oakland LLC, 99 FERC ¶ 61,231 (2002).

II. THE SETTLEMENT

The attached Settlement constitutes a negotiated agreement between the Parties with respect to all DEO-related issues in Docket No. ER02-10-000, and all issues in Docket Nos. ER02-240-000, et al., and ER02-178-000. The Settlement is a just and reasonable settlement and it addresses and balances the Parties' interests. The Settlement is contingent on Commission approval of the Settlement. The principal terms of the Settlement are summarized as follows:

1. DEO will reduce the AFRR amount filed in Docket No. ER02-10-000 from \$6,775,000 to \$5,338,000. This reduction is based on the following adjustments:

- a. Lowering the total A&G amount by \$1,375,000.
- b. Adjusting the amount for accumulated deferred income taxes by \$332,000.¹⁰
- c. Reducing working cash allowance by \$172,000.¹¹
- d. Reducing return on net investment by \$62,000.

2. In a Federal Power Act Section 205 filing submitted concurrently with the Offer of Settlement, DEO seeks Commission acceptance of proposed revisions to portions of Schedules A and B to the Oakland RMR Agreement. These revisions incorporate changes made necessary by the reduction of DEO's AFRR from \$6,775,000 to \$5,338,000. Drafts of these revised rate sheets are attached as Appendix B to the Settlement.

3. The Settlement shall be effective on the date the Commission issues an order approving the Settlement without modification or condition, or, if modified or conditioned, upon the date of

¹⁰ This adjustment does not proportionately reduce the AFRR but does contribute to the reduction of return in net investment in subsection (d).

¹¹ *Id.*

acceptance of such order by all of the signatories hereto (“Effective Date”). Upon the Effective Date, all charges under the RMR Rate Schedules affected by the terms of the Offer of Settlement shall be recalculated as though such terms were in place and effective January 1, 2002 and appropriate refunds will be calculated and processed.

4. Agreement to or acquiescence in the terms of the Settlement shall not be deemed in any respect to constitute an admission by any Party hereto that any allegation or contention made by any other Party in these proceedings is true or valid. The Commission’s approval of the Offer of Settlement in this case shall not constitute approval of, or precedent regarding, any principle or issue in this proceeding.

5. Resolution of any matter in the Settlement shall not be deemed to be a “settled practice” as that term was interpreted and applied in Public Service Commission of the State of New York v. FERC, 642 F.2d 1334 (D.C. Cir. 1980).

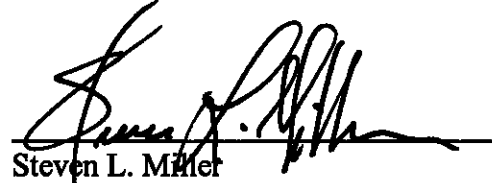
6. The discussions among the Parties that have produced the Settlement have been conducted under the explicit understanding that they were undertaken subject to Rule 602(e) of the Commission’s Rules of Practice and Procedure.

7. Nothing in the Settlement is intended to limit or affect the rights and remedies of the Parties with respect to (i) any claim that the amounts invoiced under the Oakland RMR Agreement do not comply with that agreement, or (ii) any other particular dispute not discussed in the Settlement.

III. CONCLUSION

The Parties to the Settlement believe it represents a fair and reasonable negotiated resolution and settlement of the issues set for hearing in these proceedings. Therefore, the Parties respectfully request that the Commission expeditiously approve the Settlement without condition or modification.

Respectfully submitted,



Steven L. Miller
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Washington, DC 20037-1526
(202) 955-6609

*Counsel for
Duke Energy Oakland, LLC*

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

Duke Energy Oakland, LLC, <u>et al.</u>)	Docket Nos. ER02-10-000
)	ER02-240-000, <u>et al.</u> , and
)	ER02-1478-000

SETTLEMENT AGREEMENT

Pursuant to Rule 602 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission” or “FERC”), 18 C.F.R. § 385.602 (2002), Duke Energy Oakland, LLC (“DEO”), the California Independent System Operator Corporation (the “ISO”), and Pacific Gas and Electric Company (“PG&E”) (collectively, the “Parties”) hereby submit this Settlement Agreement (the “Settlement”) to resolve certain issues in the above-captioned dockets.¹ Unless otherwise defined herein, capitalized terms used in the Settlement shall have the same meaning as those terms defined in the Oakland RMR Agreement (as defined below) and in the Master Definitions Supplement, Appendix A of the ISO Tariff.

Approval of the Settlement will avoid unnecessary and costly litigation, eliminate regulatory uncertainty, and promote administrative efficiency. Accordingly, approval of this Settlement is in the public interest.

I. BACKGROUND

DEO is the owner of the Oakland generating station (“Oakland”), located in Oakland, California. Since April 1, 1998, when the ISO commenced operations, all of Oakland’s units have been designated by the ISO as necessary for local reliability needs and thus, Oakland has been operating under a Reliability Must-Run Service Agreement (“Oakland RMR

Agreement”) between the ISO and DEO. The Oakland RMR Agreement authorizes the ISO to call on Oakland’s units to provide specified levels of energy and ancillary services and, in return, requires the ISO to make certain fixed and variable-cost payments to DEO. Under Section 5.2.8 of the ISO tariff, costs payable by the ISO under the Oakland RMR Agreement are passed through to PG&E.²

By an order issued on December 17, 1997, in Docket Nos. ER98-441-000, *et al.*, the Commission placed the initial RMR agreements for Oakland and other RMR units in California into effect, subject to refund, as of the date the ISO commenced operations.³ The Oakland RMR Agreement was substantially the same as RMR agreements covering other RMR units, with variations between the various agreements only for unit-specific costs and operating characteristics. On April 2, 1999, the ISO, the owners of all of the RMR units in California, the three Responsible Utilities, and other parties (including the CPUC and EOB) to Docket Nos. ER98-441-000, *et al.*, filed an offer of settlement in those dockets (the “First Stipulation”) substantially revising the standard terms of the initial RMR agreements and leaving other terms and related issues to be resolved by litigation or further settlement efforts. The First Stipulation was approved by the Commission in May 1999, and the revised terms took effect, as to the Oakland RMR Agreement, on June 1, 1999.⁴

¹ While not parties to this Settlement, the California Electricity Oversight Board (the “EOB”) and the California Public Utilities Commission (the “CPUC”) have authorized the Parties to state that the EOB and the CPUC do not oppose the Settlement.

² Section 5.2.8 provides that costs incurred by the ISO under an RMR agreement for a generating plant are to be borne by the utility in whose service territory the generating plant is located.

³ The Oakland RMR Agreement was part of Docket No. ER98-495-000.

⁴ California Independent System Operator Corp., 87 FERC ¶ 61,250 (1999). A subsequent offer of settlement, covering some of the issues not resolved in the First Stipulation, was filed on August 14, 2000 (continued...)

Under the Oakland RMR Agreement, the ISO pays DEO various charges, including a Monthly Option Payment that is based, in part, on the Annual Fixed Revenue Requirement (“AFRR”) of the RMR units.⁵ The Oakland RMR Agreement also makes the AFRR subject to adjustment on January 1 of each year, beginning January 1, 2002, to reflect the actual costs for the 12-month period ending the previous June 30.⁶

On October 1, 2001, DEO filed in Docket No. ER02-10-000 an AFRR, with certain supporting information, for the 2002 calendar year (“Schedule F Filing”). The 2002 calendar year AFRR of \$6,775,000 represented an increase over Oakland’s AFRR for the 2001 calendar year.⁷ On December 21, 2001, the ISO, PG&E, the EOB and the CPUC protested the Schedule F Filing.

On November 1, 2001, as amended on December 11, 2001, in Docket No. ER02-240-000, et al., DEO filed revised tariff sheets reflecting its 2002 calendar year annual updates to the Oakland RMR Agreement (“Rate Filing”). Some of these revisions—specifically, those related to the Oakland RMR Agreement Schedules A and B—utilized the AFRR figure at issue in ER02-10-000. The ISO, PG&E, the EOB and the CPUC protested the Rate Filing. The protests were based, in part, on DEO’s use of the AFRR value at issue in Docket No. ER02-10-

in Docket Nos. ER98-441-000, et al., and approved in California Independent System Operator Corp., 93 FERC ¶ 61,089 (2000).

⁵ See Schedule B of the Oakland RMR Agreement.

⁶ See Schedule F of the Oakland RMR Agreement.

⁷ The same filing also included an AFRR for Duke Energy South Bay, LLC (“DESB”). This Settlement does not pertain to DESB’s AFRR.

000 in the Rate Filing's revisions to RMR Schedules A and B. The Commission accepted the Rate Filing subject to refund and the outcome of Docket No. ER02-10-000.⁸

On April 3, 2002, in Docket No. ER02-1478-000, DEO filed two additional revised sheets reflecting proposed 2002 calendar year updates to the Oakland RMR Agreement. The updates reflected a revised variable operating and maintenance ("VOM") rate, and a revised start-up cost for one of Oakland's generating units. The VOM in Docket No. ER02-1478-000 was the same as that used to calculate the AFRR in Docket No. ER02-10-000. Furthermore, the revised start up cost should have been included in the Rate Filing in Docket No. ER02-240-000, *et al.*, but was excluded because of an administrative oversight. On May 31, 2002, the Commission accepted these revisions and consolidated the case with Docket No. ER02-240-000, *et al.*, thus making the proposed 2002 calendar year updates subject to refund and the outcome of Docket No. ER02-10-000.⁹

In pursuit of a negotiated settlement, the Parties conducted informal discovery and conferred at length with regards to the issues raised in Docket Nos. ER02-10-000, ER02-240-000, *et al.*, and ER02-1478-000. The instant Settlement is the product of those discussions. The Settlement resolves all outstanding issues pertaining to Oakland in Docket No. ER02-10-000, and resolves all issues in Docket Nos. ER02-240-000, *et al.*, and ER02-1478-000.

Docket No. ER02-10-000 also includes an AFRR for DESB. This Settlement, however, does not pertain to DESB's AFRR. Nonetheless, Commission acceptance of this Settlement and a similar settlement previously submitted in Docket No. ER02-10-000 by DESB,

⁸ Duke Energy Oakland LLC, 97 FERC ¶ 61,283 (2001).

⁹ Duke Energy Oakland LLC, 99 FERC ¶ 61,231 (2002).

the ISO, and San Diego Gas & Electric Company (“SDG&E”), will resolve all issues among the Parties and SDG&E for both the DEO and DESB components of Docket No. ER02-10-000.

II. TERMS

DEO will make the following revisions (and no other revisions whatsoever unless ordered by the Commission in its approval of the settlement) effective January 1, 2002, to the AFRR and the supporting calculations, as shown in Attachment 2 of the Schedule F Filing, and as set forth in Appendix A hereto:

1. DEO will reduce its AFRR, Line No. 1(A), from \$6,775,000 to \$5,338,000.¹⁰

This overall AFRR reduction of \$1,437,000 is based on the following specific changes that DEO is making to its Schedule F Filing:

- a) DEO will reduce its total A&G amount by \$1,375,000. This reduction is a result of (i) the removal of a \$500,000 accrual for asbestos and lead abatement, (ii) a reduction in regional office legal expense of \$53,000, and (iii) removal of \$822,000 in incentive fees paid to Duke/Fluor Daniel.¹¹ These changes reduce the amount of Line No. 2(A)(4) from \$2,148,000 to \$773,000.
- b) DEO will adjust the amount for accumulated deferred income taxes by \$332,000. This change will reduce the amount of Line No. 4(E)(1) from (\$1,510,000) to (\$1,178,000).¹²
- c) As a result of DEO’s reduction in total A&G, DEO will reduce working cash allowance by \$172,000, thus reducing the amount of Line No. 4(F)(4) from \$449,000 to \$277,000.¹³

¹⁰ All amounts in this Settlement have been rounded to the nearest thousand.

¹¹ Duke/Fluor Daniel (“D/FD”) is a joint venture of Duke Energy Corporation and Fluor Daniel, Inc.. D/FD operates and maintains the Oakland facility pursuant to a contract with DEO.

¹² The revision does not directly or proportionately reduce the AFRR in Line No. 1(A) but does contribute to the reduction of return in net investment (Line No. 3) as detailed in Subsection II.1.d.

¹³ *Id.*

- d) As a result of the above AFRR adjustments of subsections (b) and (c), DEO also will reduce its return on net investment by \$62,000. This change will reduce the amount of Line No. 3 from \$830,000 to \$768,000.

2. In a Federal Power Act Section 205 filing submitted concurrently with this Settlement, DEO seeks Commission acceptance of proposed revisions to portions of Schedules A and B to the Oakland RMR Agreement. These revisions incorporate changes made necessary by the reduction of DEO's AFRR from \$6,775,000 to \$5,338,000. Drafts of these revised rate sheets are attached hereto as Appendix B.

3. The Settlement shall be effective on the date the Commission issues an order approving the Settlement without modification or condition, or, if modified or conditioned, upon the date of acceptance of such order by all of the signatories hereto ("Effective Date"). Upon the Effective Date, all charges under the RMR Rate Schedules affected by the terms of the Offer of Settlement shall be recalculated as though such terms were in place and effective January 1, 2002, as more fully described below.

- a) Any differences between the charges resulting from such recalculation and the charges previously paid for the period commencing January 1, 2002 shall result in a refund with interest. The refund will be processed as follows:

- (1) Refunds due for each Billing Month in which a Revised Adjusted RMR Invoice had not yet been submitted to the ISO by DEO on the date (the "Refund Date") 30 days after the Effective Date shall be submitted in accordance with Article 9.1(b)(ii); that is, DEO shall submit a Revised Adjusted RMR Invoice that reflects the rates set forth in this Offer of Settlement.

To the extent that the total amount of the Revised Adjusted Invoice shows credit due to ISO, such credit amount shall be paid to the ISO, on the date payment of the Revised Adjusted RMR Invoice for RMR services is due, by wire

transfer or such other method as the ISO and DEO may agree upon.

- (2) Refunds due for all Billing Months in which a Revised Adjusted RMR Invoice has already been submitted to the ISO by DEO on the Refund Date shall be shown as a credit against the charges on the first Estimated RMR Invoice for RMR services issued by DEO after the Refund Date and shall be paid as a credit against the charges on the subsequent Revised Estimated RMR Invoice.

DEO shall credit the full refund amount due regardless of the level of the charges on that invoice; to the extent that credit of such refund amounts (including applicable interest) exceeds amounts due to DEO, such portion shall be paid to the ISO, on the date that payment of the Revised Estimated RMR Invoice for RMR services is due, by wire transfer or such other method as the ISO and DEO may agree upon. In no event shall the refund for these Billing Months be issued later than 30 days after the Refund Date.

- (3) To support the amounts to be credited, DEO shall, for each applicable Billing Month:
- (a) compute and set forth the difference between (i) the amounts payable by the ISO to DEO in accordance with the rates in effect prior to the approval date of this Offer of Settlement, and (ii) the amounts payable by the ISO to DEO in accordance with the rates that result from this Offer of Settlement;
 - (b) compute, set forth and add interest to the difference calculated in accordance with (a) above, with interest computed pursuant to Section 35.19a of the Commission's Regulations, 18 C.F.R. § 35.19a¹⁴; and
 - (c) set forth the total amount of the refund; and

¹⁴ For Billing Months described by paragraph (2), the dates used to calculate interest for each Billing Month are the Revised Estimated RMR Invoice payment date for the applicable Billing Month and the Revised Estimated RMR Invoice payment date for the invoice on which the refund is credited. For Billing Months described by paragraph (1), interest is calculated in accordance with the invoice template.

- (d) include this supporting documentation with the invoice on which each refund amount is credited.
- (4) No later than the date (the "Report Date") 15 days after the final refund is credited, DEO shall prepare and provide to the Parties a refund report with a level of detail sufficient to permit verification of the accuracy of the amounts refunded.
- (5) The ISO will revise its RMR Settlement Database to reflect the amount that DEO actually received for each Billing Month.
- (6) In the event that, in the future, a Prior Period Change is required for a matter other than an adjustment resulting from this Offer of Settlement, and a Prior Period Change Worksheet is submitted by DEO, in accordance with Article 9.1(g), that includes any Billing Month for which a refund was provided in accordance with this refund section, DEO shall show the actual amount paid for the applicable Billing Month(s) in the Revised Adjusted columns of the Prior Period Change Worksheets.
- (7) In no event shall the calculation of the refund amount, the refund amount actually paid by DEO or the accompanying Refund Report, include any charge, credit, offset or any other adjustment that is not listed in the above subsections 3. a) (1) through (6).

B. Reservations

1. Agreement to or acquiescence in this Settlement shall not be deemed in any respect to constitute an admission by any Party hereto that any allegation or contention made by any other Party in these proceedings is true or valid. In reaching the Settlement, the Parties specifically agree that the Settlement represents a negotiated agreement for the sole purpose of settling certain issues, as described herein, in the captioned dockets. No signatory, participant or affiliate of any of the Parties shall be deemed to have approved, accepted, agreed to, or consented to any fact, concept, theory, rate methodology, principle or method relating to

jurisdiction, prudence, reasonable cost of service, cost classification, cost allocation, rate design, tariff provisions, or other matters underlying or purported to underlie any of the resolution of the issues provided herein. The Commission's approval of the Settlement shall not constitute approval of, or precedent regarding, any principle or issue in this proceeding.

2. The Parties agree that the resolution of any matter in the Settlement shall not be deemed to be a "settled practice" as that term was interpreted and applied in Public Service Commission of the State of New York v. FERC, 642 F.2d 1334 (D.C. Cir. 1980).

3. The discussions among the Parties that have produced the Settlement have been conducted on the explicit understanding that they were undertaken subject to Rule 602(e) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.602(e) (2002), and the rights of the Parties with respect thereto shall not be impaired by the Settlement.

4. Notwithstanding any provision of the Settlement, nothing herein is intended to limit or affect the rights and remedies of the Parties with respect to any claim that the amounts invoiced under the Oakland RMR Agreement do not comply with that contract. Further, the instant Settlement is not intended to limit or affect the rights and remedies of the Parties with respect to any other particular dispute not discussed in the Settlement.

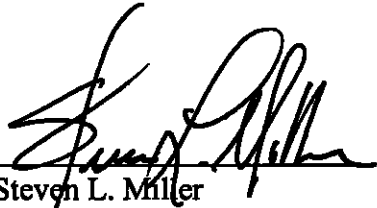
C. Execution in Counterparts

This Settlement may be executed in counterparts by each Party, each of which shall be deemed to be an original, but together shall constitute one and the same instrument.

D. Successors and Assigns

The rights conferred and the obligations imposed on any Party by this Settlement shall inure to the benefit of and be binding on that Party's successors in interest or assignees as if such successor or assignee was itself a Party hereto.

Signed and dated this 22nd day
of October, 2002



Steven L. Miller
Attorney for
Duke Energy Oakland, LLC

Jeanne M. Solé
Attorney for
California Independent System
Operator Corporation

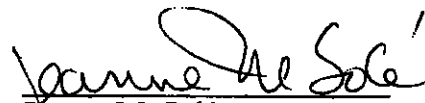
Shiran Kochavi
Attorney for Pacific Gas and
Electric Company

D. Successors and Assigns

The rights conferred and the obligations imposed on any Party by this Settlement shall inure to the benefit of and be binding on that Party's successors in interest or assignees as if such successor or assignee was itself a Party hereto.

Signed and dated this 17th day
of September, 2002

Steven L. Miller
Attorney for
Duke Energy Oakland, LLC



Jeanne M. Solé
Attorney for
California Independent System
Operator Corporation

Shiran Kochavi
Attorney for Pacific Gas and
Electric Company

D. Successors and Assigns

The rights conferred and the obligations imposed on any Party by this Settlement shall inure to the benefit of and be binding on that Party's successors in interest or assignees as if such successor or assignee was itself a Party hereto.

Signed and dated this 7 th day
of September, 2002

Steven L. Miller
Attorney for
Duke Energy Oakland, LLC

Jeanne M. Solé
Attorney for
California Independent System
Operator Corporation



Shiran Kochavi
Attorney for Pacific Gas and
Electric Company

Annual Fixed Revenue Requirement

DUKE ENERGY OAKLAND
 Period ended June 30, 2001
 Thousands of Dollars

Schedule F, Article II Part B: Determination of Annual Revenue Requirement

Shaded cells are input values.

	AFRR As filed	Settlement Adjustments	Revised AFRR	Comments
1(A)	\$ 6,775	\$ (1,437)	\$ 5,338	
1(B)	\$ -	\$ -	\$ 201,151	
1(C)	\$ 65,157	\$ (1,437)	\$ 63,720	
2(A)(1)(a)	\$ 59,824	\$ -	\$ 59,824	
2(A)(1)(b)	\$ -	\$ -	\$ -	
2(A)(1)(c)	\$ -	\$ -	\$ -	
2(A)(1)(d)	\$ -	\$ -	\$ -	
2(A)(1)	\$ 59,824	\$ -	\$ 59,824	
2(A)(2)	\$ -	\$ -	\$ -	
2(A)(3)	\$ -	\$ -	\$ -	
2(A)(4)	\$ -	\$ 773	\$ 773	Adjustments to A&G expenses
2(A)	\$ 61,972	\$ (1,375)	\$ 60,597	
2(B)(1)	\$ -	\$ -	\$ 2,030	
2(B)(2)	\$ -	\$ -	\$ -	
2(B)(3)	\$ -	\$ -	\$ -	
2(B)(4)	\$ -	\$ -	\$ -	

Annual Fixed Revenue Requirement (AFRR) is the difference between Total Annual Revenue Requirements (Section 1(C)) and Total Annual Variable Costs (Section 6(F))

Variable O&M Rate (\$/MWh) is the ratio of Annual Variable O&M Expenses (Section 6(A)) to Annual Net Generation.

Total Annual Revenue Requirements is the sum of Operating Expenses (Section 2) and Return and Income Tax Allowance (Section 3).

Steam Production O&M (Accounts 500-515)
 Hydro Production O&M (Accounts 535-545)
 Other Power Generation O&M (Accounts 546-554)
 Other Power Supply Expenses (Accounts 555-557)
 Total Production O&M Expenses
 Transmission O&M Expenses (Accounts 560-573)
 Distribution O&M Expenses (Accounts 580-598)
 Administrative and General (Accounts 920-935)

Total O&M Expenses

Production Plant Depreciation
 Transmission Plant Depreciation
 Distribution Plant Depreciation
 General and Intangible Plant Depreciation

Annual Fixed Revenue Requirement

DUKE ENERGY OAKLAND
 Period ended June 30, 2001
 Thousands of Dollars

Schedule F, Article II Part B: Determination of Annual Revenue Requirement

Shaded cells are input values.

	AFRR As filed	Settlement Adjustments	Revised AFRR	Comments
2(B) Depreciation Expenses (Accounts 403-407)	\$ 2,030	-	\$ 2,030	
2(C)(1) Property and Property-Related Taxes	\$	-	\$ 325	
2(C)(2) Payroll and Labor-Related Taxes	\$	-	\$ -	
2(C)(3) Other Taxes	\$	-	\$ -	
2(C) Taxes other than Income Taxes (Account 408.1)	\$ 325	-	\$ 325	
2(D) Revenue Credits (Accounts 451, 453-456), show as negative	\$	-	\$ -	
2(E) Treatment of Capital Leases	\$	-	\$ -	
2 Operating Expenses	\$ 64,327	(1,375)	\$ 62,952	
3.1 Product of Allowable Pre-Tax Rate of Return (Section 5) and Net Investment (Section 4)	\$ 830	(62)	\$ 768	
3.2.a <i>t</i> is the effective, combined state and federal income tax rate			0.00%	
3.2.b ITC Amortization of investment tax credits (Account 411.4)	\$	\$	\$ -	
3.2 [ITC Amortization] / (1 - <i>t</i>)	\$ -	\$	\$ -	
3 Return and Income Tax Allowance	\$ 830	(62)	\$ 768	
4(A)(1) Production Plant Investment (Accounts 310-316, 330-336, 340-346, 106 & 114)	\$	-	\$ 36,410	
4(A)(2) Transmission Plant Investment (Accounts 350-359, 106 & 114)	\$	-	\$ -	
4(A)(3) Distribution Plant Investment (Accounts 360-373, 106 & 114)	\$	-	\$ -	
4(A)(4) General and Intangible Plant Investment (Accounts 389-399, 301-303, 106 & 114)	\$	-	\$ -	
4(A) Gross Plant Investment	\$ 36,410	-	\$ 36,410	

Annual Fixed Revenue Requirement

DUKE ENERGY OAKLAND
Period ended June 30, 2001
Thousands of Dollars

Schedule F, Article II Part B: Determination of Annual Revenue Requirement
 Shaded cells are input values.

	AFRR As filed	Settlement Adjustments	Revised AFRR	Comments
4(B)(1) Production Plant Depreciation Reserve	\$	-	\$ 32,151	
4(B)(2) Transmission Plant Depreciation Reserve	\$	-	\$ -	
4(B)(3) Distribution Plant Depreciation Reserve	\$	-	\$ -	
4(B)(4) General and Intangible Plant Reserve	\$	-	\$ -	
4(B) Depreciation Reserve, show credit as positive and debit as negative	\$ 32,151	-	\$ 32,151	
4(C) CWIP, Construction Work in Progress for pollution control (Account 107)	\$	-	\$ -	
4(D) PHFU, Plant Held for Future Use (Account 105)	\$	-	\$ -	
4(E)(1) Production Plant ADIT	\$	332	\$ (1,178)	Correction of ADIT balance
4(E)(2) Transmission Plant ADIT	\$	-	\$ -	
4(E)(3) Distribution Plant ADIT	\$	-	\$ -	
4(E)(4) General and Intangible Plant ADIT	\$	-	\$ -	
4(E) ADIT, accumulated deferred income taxes (Accounts 190, 281-283, 255), show credit as positive and debit as negative	\$ (1,510)	332	\$ (1,178)	
4(F)(1) Fuel Stocks (Account 151)	\$	-	\$ 539	
4(F)(2) Plant Materials and Supplies (Accounts 154 & 163)	\$	-	\$ -	
4(F)(3) Prepayments (Account 165)	\$	-	\$ -	
Purchased Power	\$	-	\$ -	
O&M Expenses (Section 2(A)) - total Annual Fuel Costs (Section 6(C)(1)) - Purchased Power	\$ 3,590	(1,375)	\$ 2,215	

Annual Fixed Revenue Requirement

DUKE ENERGY OAKLAND
 Period ended June 30, 2001
 Thousands of Dollars

Schedule F, Article II Part B: Determination of Annual Revenue Requirement

Shaded cells are input values.

	AFRR As filed	Settlement Adjustments	Revised AFRR	Comments
4(F)(4) Working Cash Allowance is one-eighth of above amount	\$ 449	\$(172)	277	Affect of other adjustments on Working Cash Allowance
4(F)(i) Unamortized Deferred Costs	\$ [shaded]	\$ -	\$ -	
4(F) Working Capital	\$ 988	\$(172)	\$ 816	
4 Net Investment is Gross Plant Investment - Depreciation Reserve + CWIP + PHFU - ADIT + Working Capital.	\$ 6,757	\$(504)	\$ 6,253	
5(b) 30% of the Increase in yield on 10-year U.S. Treasury Bonds Allowable Pre-Tax Rate of Return is 12.25% plus Increase in yield	\$ [shaded]		0.03%	
5	12.28%		12.28%	
Annual Variable O&M Expenses - Owner may choose Option 1 or Option 2				
6(A) Select Option 1 or Option 2	\$ [shaded]		2	
Annual Variable O&M Expenses	\$ -	\$ -	\$ -	
Initial Variable O&M Rate	\$ [shaded]	\$ -	\$ -	
Annual Variable O&M Expenses - Option 1: Initial Variable O&M Rate * Net Generation (Section 1(B))	\$ -	\$ -	\$ -	
6(A)(1) Variable Production O&M Expenses	\$ [shaded]	\$ -	\$ -	
6(A)(2) Variable A&G Expenses	\$ [shaded]	\$ -	\$ -	
Annual Variable O&M Expenses - Option 2: Explain Classification of Expenses as fixed or variable	\$ -	\$ -	\$ -	

Annual Fixed Revenue Requirement

DUKE ENERGY OAKLAND
 Period ended June 30, 2001
 Thousands of Dollars

Schedule F, Article II Part B: Determination of Annual Revenue Requirement
 Shaded cells are input values.

	AFRR As filed	Settlement Adjustments	Revised AFRR	Comments
6(B)(1)	\$ 61,972	\$ (1,375)	\$ 60,597	
6(B)(2)	\$ 58,382	-	\$ 58,382	
6(B)	\$ 3,590	\$ (1,375)	\$ 2,215	
6(C)(1)			\$ 58,382	
6(C)(2)			\$ -	
6(C)(3)	\$ 58,382	-	\$ 58,382	
6(D)			\$ -	
6(E)			\$ -	
6(F)	\$ 58,382	-	\$ 58,382	

Total O&M Expenses (Section 2(A))
 Sum of Annual Variable O&M Expenses (Section 6(A)), Annual
 Variable Fuel Costs (Section 6(C)(3)), Annual Emissions Costs
 (Section 6(D)) and Annual Non-Fuel Start-Up Costs (Section
 6(E))
 Annual Fixed O&M Expenses is difference between 6(B)(1) and
 6(B)(2)
 Total Annual Fuel Costs (Account 501 or 547)
 Annual Fixed Fuel Costs
 Annual Variable Fuel Costs
 Annual Emissions Costs
 Annual Non-Fuel Start-Up Costs
 Total Annual Variable Costs is the sum of Annual Variable O&M
 Expenses (Section 6(A)), Annual Variable Fuel Costs (Section
 6(C)(3)) and Annual Emissions Costs (Section 6(D))

13. Owner's Repair Cost Obligation

Owner's Repair Cost Obligation in 2002 is: \$66,450.

14. Existing Contractual Limitations and Other Contract Restrictions on Market Transactions

None

15. Applicable UDC Tariff(s)

PG&E Schedule S – Standby Service: applicable to Schedule D and Schedule E

PG&E Schedule A1 – Small General Service: applicable to Schedule D

Issued by: Randall J. Hickok
Managing Director

Effective: January 1, 2002

Issued on: October 22, 2002

Equation B-5

$$\text{Hourly Availability Rate} = \frac{\text{Annual Fixed Revenue Requirement}}{\text{Target Available Hours}}$$

Annual Fixed Revenue Requirement is set forth in Section 7 below.

Target Available Hours are set forth in Section 6 below.

- * For units under Condition 1, the Fixed Option Payment Factor is set forth in Table B-0 below:

Table B-0

Unit	Fixed Option Payment Factor
1	0.75
2	0.75
3	0.75

For Units under Condition 2, the Fixed Option Payment Factor is 1.

The Hourly Availability Charges for the Contract Year are set forth in Table B-1 below:

Table B-1

		Condition 1	Condition 2
Unit 1		\$188.28	\$251.03
Unit 2		\$171.20	\$228.27
Unit 3		\$164.33	\$219.10

- B. Unit Availability Limit is defined in Article 1 of the Agreement.
 - C. Maximum Net Dependable Capacity is Shown in Section 1 of Schedule A.
3. The Monthly Surcharge Payment is calculated in accordance with Equation B-6 below:

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 Managing Director

Effective: January 1, 2002

Issued on: October 22, 2002

All other Capital Items, the Surcharge Payment Factor shall be as agreed to by Owner and ISO. If the Owner and ISO do not agree on the Surcharge Payment Factor, the Surcharge Payment Factor shall Equal the Fixed Option Payment Factor, unless the Owner demonstrates in ADR that it would not have installed the proposed Capital Item in accordance with Good Industry Practice but for its obligations to the ISO under this Agreement, in which case the Surcharge Payment Factor shall be as determined in ADR.

For Units under Condition 2, the Surcharge Payment is 1.

The Hourly Capital Item Charges for the Contract Year are set forth in Table B-2 below:

Table B-2

Unit	Capital Item Project No.	Annual Capital Item Cost	Condition 1 Surcharge Payment Factor	Condition 1 Hourly Capital Item Charge	Condition 2 Hourly Capital Item Charge
1	1	34,456	0.75	3.65	4.86
2	N/A	N/A	N/A	N/A	N/A
3	N/A	N/A	N/A	N/A	N/A

B. Unit Availability Limit is defined in Article 1 of the Agreement.

C. Maximum Net Dependable Capacity is Shown in Section 1 of Schedule A.

5. The Monthly Nonperformance Penalty is calculated pursuant to Section 8.5 using the following variables:

A. Hourly Penalty Rate

A Unit's Hourly Penalty Rate for each Contract Year is the lesser of (a) the Unit's Hourly Availability Rate for the Contract Year (calculated pursuant to Item 2.A above), or (b) three times the Unit's Hourly Availability Charge for the Contract Year (as shown in Table B-1 above).

The Hourly Penalty Rates for the Contract Year are set forth in Table B-3 below:

Table B-3

	Condition 1	Condition 2
Unit 1	\$251.03	\$251.03
Unit 2	\$228.27	\$228.27
Unit 3	\$219.10	\$219.10

Issued by: Randall J. Hickok
 Managing Director

Effective: January 1, 2002

Issued on: October 22, 2002

B. Hourly Surcharge Penalty Rate

A Unit's Hourly Surcharge Penalty Rate for each Capital Item for each Contract Year is the lesser of (a) the corresponding Hourly Capital Item Rate for the Contract Year (calculated pursuant to item 4.A above), or (b) three times the applicable Hourly Capital Item Charge for the Contract Year (as shown in Table B-2 above). The Hourly Surcharge Penalty Rates for the Contract Year are set forth in Table B-4 below:

Table B-4

Unit	Capital Item Project No.	Hourly Capital Item Rate	Condition 1 Hourly Surcharge Penalty Rate	Condition 2 Hourly Surcharge Penalty Rate
1	1	4.86	4.86	4.86
2	N/A	N/A	N/A	N/A
3	N/A	N/A	N/A	N/A

6. Target Available Hours

A Unit's Target Available Hours for each Contract Year are calculated in accordance with the equation B-10 below:

Equation B-10

$$\text{Target Available Hours (TAH)} = \text{Hours in the Calendar Year} - (\text{Average Other Outage Hours} + \text{Long -Term Planned Outage Hours})$$

Average Other Outage Hours means the average annual Other Outage Hours for the Unit during the 60-month period ending June 30 of the previous calendar year.

Long-term Planned Outage Hours means the Long-term Planned Outage Hours for the Contract Year scheduled with ISO pursuant to Section 7.2(a). For periods prior to December 31, 1998, Other Outage Hours shall exclude a planned interruption, in whole or in part, in the electrical output of a Unit to permit Owner to perform a major equipment overhaul or inspection or for new construction work, but only if the outage lasted 21 or more consecutive days.

Long-term Planned Outage Hours scheduled for a Contract Year shall be subject to the Long-term Scheduled Outage Adjustment pursuant to Section 8.6 of the Agreement.

The Average Other Outage Hours, Long-term Planned Outage Hours and Target Available Hours for each Unit for the Contract Year are Shown in Table B-5 below:

Issued by: Randall J. Hickok
 Managing Director
 Issued on: October 22, 2002

Effective: January 1, 2002

Table B-5

Unit	Average Other Outage Hours	Long-term Planned Outage Hours	TAH
1	1,672	0	7,088
2	965	0	7,795
3	639	0	8,121

For the purposes of calculating Target Available Hours for the Contract year ending December 31, 1999, (a) Average Other Outage Hours shall be calculated using the average annual Other Outage Hours for the Unit during the 60-month period ending December 31, 1998, and (b) Long-term Planned Outage Hours shall be Calculated using the hours scheduled for performing Long-term Planned Outages as if the Agreement had become effective on January 1, 1999.

7. Annual Fixed Revenue Requirement (AFRR)

The Annual Fixed Revenue Requirement for each Unit is set forth in Table B-6 below. For any Contract Year commencing on or after January 1, 2002, the Annual Fixed Revenue Requirement shall be determined by the Formula Rate set forth in Schedule F, unless Owner files a superseding rate schedule under Section 205 of the Federal Power Act.

Table B-6

Unit	Annual Fixed Revenue Requirement
1	\$ 1,779,333.34
2	\$ 1,779,333.33
3	\$ 1,779,333.33

8. Limited Section 205 Filing for an Extension of Contract Term

If ISO has extended the term of this Agreement pursuant to Section 2.1(b), then not later than October 31 of the expiring Contract Year, Owner shall make a filing with FERC under Section 205 of the Federal Power Act containing the values in Tables B-1 through B-6 for the ensuing Contract Year.

In the event that a Long-term Planned Outage that is scheduled for the last quarter of the expiring Contract Year is postponed or rescheduled after October 31 of such year to the ensuing Contract Year, Owner shall make an additional Section 205 filing to revise the values in Tables B-1 through B-5 to reflect such rescheduled Long-term Planned Outage Hours.

Issued by: Randall J. Hickok
Managing Director

Effective: January 1, 2002

Issued on: October 22, 2002

**FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426**

In Reply Refer To:
Docket Nos. ER02-10-000
ER02-240-00 et al., and
ER02-1478-000

_____, 2002

Dickstein Shapiro Morin & Oshinsky LLP
ATTN: Steven L. Miller
Attorney for Duke Energy Oakland, LLC
2101 L Street, N.W.
Washington, D.C. 20037-1526

Dear Mr. Miller:

1. On October 22, 2002, you filed a settlement agreement among Duke Energy Oakland, LLC ("DEO"), the California Independent System Operator Corporation (the "ISO"), and Pacific Gas and Electric Company ("PG&E") (collectively, the "Parties").
2. The subject settlement is in the public interest and is hereby approved. The Commission's approval of this settlement does not constitute approval of, or precedent regarding, any principle or issue in these proceedings. The Commission retains the right to investigate the rates, terms and conditions under the just and reasonable and not unduly discriminatory or preferential standard of Section 206 of the Federal Power Act, 16 U.S.C. 824e.
3. Any amounts collected in excess of the settlement rates shall be refunded together with interest computed under Section 35.19a of the Commission's Regulations, 18 C.F.R. § 35.19a, in accordance with the terms of the settlement. Within thirty (30) days after making such refunds, DEO shall file with this Commission a compliance report documenting such refunds. DEO shall furnish copies of the report to all parties herein.

By direction of the Commission.

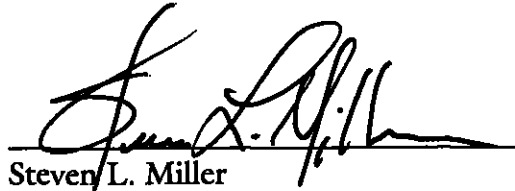
Magalie R. Salas
Secretary

cc: All Parties

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document has been served this day by first class mail, postage prepaid, upon each person designated on the official service lists compiled by the Secretary in these proceedings.

Dated at Washington, D.C. this 22nd day of October, 2002.

A handwritten signature in black ink, appearing to read "Steven L. Miller", written over a horizontal line.

Steven L. Miller
Dickstein Shapiro Morin & Oshinsky LLP
2101 L Street, N.W.
Washington, D.C. 20037