

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

Duke Energy South Bay, LLC                    )       Docket No. ER04-134-000

**JOINT MOTION FOR EXTENSION OF TIME FOR PROTESTS**

Pursuant to Rule 212 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”), 18 C.F.R. § 385.212 (2003), the California Independent System Operator Corporation (“ISO”), 1/ San Diego Gas & Electric Company (“SDG&E”), the California Public Utilities Commission (“CPUC”) and the California Electricity Oversight Board (“EOB”) (collectively the “Parties”) hereby move for an extension of time to file protests in the captioned proceeding. In support thereof, the Parties state as follows:

**I. BACKGROUND**

On October 31, 2003, Duke Energy South Bay, LLC (“DESB”) filed, pursuant to Section 205 of the Federal Power Act (“FPA”), revisions to certain Reliability Must-Run Rate Schedules of its Reliability Must Run Agreement (“RMR Agreement”) with the ISO for Contract Year 2004 for the South Bay Power Plant (“§ 205 Filing”) and information supporting the proposed changes to its Annual Fixed Revenue Requirements (“AFRR”) pursuant to Schedule F of DESB’s RMR Agreement (“Schedule F Filing”) (collectively the

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1/ The ISO is concurrently filing a motion to intervene in this matter.

“DESB Filing”). The DESB Filing was made to comply with the terms of a settlement agreement approved by the Commission <sup>2/</sup> under which each RMR Owner is required to adjust rates annually, beginning with calendar year 2002, using the rate formula set forth in Schedule F of the RMR Agreement. The DESB Filing also was made in compliance with a Settlement Agreement pending before the Commission in Docket No. ER03-117-000, pursuant to which the ISO, SDG&E and DESB have reached a settlement regarding the AFRR for Contract Year 2004.

Specifically, on October 2, 2003, DESB, SDG&E and the ISO filed an Offer of Settlement (the “Settlement”) in Docket No. ER03-117 (DESB’s Annual § 205 and Schedule F Informational Filing for the South Bay RMR Agreement for Contract Year 2003), which, in part, establishes the AFRR for Contract Year 2004. Additionally, the Settlement requires DESB to file, on October 31, 2003, (1) an informational filing as required under Schedule F reflecting the 2004 Settlement AFRR and (2) revisions to certain RMR rate schedules sheets of its RMR Agreement reflecting 2004 AFRR and other annual updates. DESB made such filing in this proceeding. While not parties to the Settlement Agreement, the EOB and the CPUC authorized the ISO, DESB, and SDG&E to state that EOB and CPUC do not oppose the Settlement Agreement.

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<sup>2/</sup> California Independent System Operator Corp., 87 FERC ¶ 61,250 (1999).

The DESB Filing is intended to comply with requirements in Schedule F of the RMR Agreement to provide information supporting updated Annual Fixed Revenue Requirements (“AFRR”) and Variable O&M Rates for its RMR units to be effective January 1, 2004. The DESB Filing applies the settlement amounts from the pending settlement where applicable for purposes of the Schedule F AFRR calculation. The DESB Filing also seeks, pursuant to Section 205 of the FPA, to make certain updates to the rates that either (1) result from the settlement AFRR and Variable O&M Rates or (2) are otherwise provided for on an annual basis in the RMR Agreement. In addition, the DESB Filing updates a number of RMR Agreement Schedules: including the Operational and Regulatory Limitations of RMR Units, including Monthly Reserve MWh for Air Emission Limitations, Contract Service Limits and Owners Repair Cost Obligation in Schedule A, the values in Tables B-1 through B-6 in Schedule B, and the Pre-paid Start-up Charges in Schedule D.

On November 7, 2003, the Commission issued a “Notice of Filing” setting November 21, 2003 as the final date for interventions and protests.

## **II. BASIS FOR MOTION FOR EXTENSION OF TIME**

The pending Settlement is an integral part of the DESB Filing in this proceeding, and the Parties cannot conclusively determine whether they have any questions or concerns with the DESB Filing until the Commission acts on the Settlement. Accordingly, the Parties hereby request that the Commission

toll the time frame for filing protests until after it takes action on the Settlement. The Parties request that once the Commission acts on the Settlement, that the Commission grant a 45-day period for the Parties to file protests in accordance with the provisions of Schedule F of the RMR Agreement. Schedule F, Article I, Part B of the RMR Agreement specifies the time allowed for the Commission, the ISO, SDG&E, the EOB and other affected parties to review the proposed rates filed under Schedule F. Article I, Part B of Schedule F provides, in the relevant part:

(i) discovery requests by the FERC staff and affected parties shall be made within 20 days of the filing, with responses by the Owner due within 35 days of the filing, and (ii) protests, if any, by affected parties shall be filed with the FERC within 45 days of the filing.

Accordingly, in accordance with the RMR Agreement, for matters relating to a Schedule F informational filing, a protest should be due within 45 days of the filing. The parties to the original *pro forma* RMR Agreement, including DESB, contemplated that additional time (45 days versus 21 days) would be necessary to review the Schedule F proposed rate changes. Additional time is necessary in order to allow the parties to obtain further information, and work out among themselves any discrepancies in the data provided.

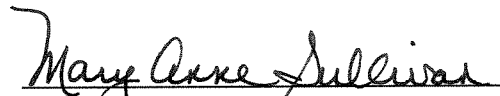
Moreover, allowing the 45 days set forth in the RMR Agreement serves the public interest because it will substantially increase the likelihood that parties will be able to work out any discrepancies and thus potentially avoid protests.

Duke Energy South Bay, LLC has indicated that it does not oppose this motion. The Parties, by this Motion, do not seek to alter the proposed January 1, 2004 effective date of the rate sheets included in the DESB Filing.

### III. CONCLUSION

For the foregoing reasons, the Parties respectfully request that the Commission toll the deadline for filing protests until the Commission has acted on the Settlement and, grant the requested extension of time requiring data requests to be made within 20 days, data responses due within 35 days, and protests, if any, due within 45 days of the date of Commission acts on the Settlement in Docket No. ER03-117.

Respectfully submitted



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Dated: November 21, 2003

## CERTIFICATE OF SERVICE

I hereby certify that I have this 21st day of November, 2003 caused to be served a copy of the forgoing Motion for Extension of Time upon all parties listed on the official service list compiled by the Secretary of the Federal Energy Regulatory Commission in this proceeding.



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