UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Duke Energy South Bay, LLC	**)**	**Docket No. ER03-117-000**

JOINT PROTEST OF CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION, CALIFORNIA ELECTRICITY OVERSIGHT BOARD, AND SAN DIEGO GAS & ELECTRIC COMPANY

Pursuant to 18 C.F.R. § 385.211, the California Independent System Operator Corporation (the "ISO"), the California Electricity Oversight Board (the "EOB"), and San Diego Gas & Electric Company ("SDG&E") (collectively "Joint Parties") hereby submit their joint protest of the filing submitted in this docket on October 31, 2002 by Duke Energy South Bay, LLC ("DESB").[1] As described more fully below, DESB's filing conflicts in certain aspects with the contract pursuant to which it was filed.

I. BACKGROUND

As stated in the October 31 filing, DESB proposes therein to revise certain schedules to the Reliability Must Run ("RMR") contract between DESB and the ISO, which governs aspects of the operation of DESB's South Bay generation plant at Chula Vista,

[1] The ISO, the EOB, and SDG&E have previously moved to intervene in this proceeding

California.[2] Those modifications reflected in Appendix A of the filing are submitted pursuant to the settlement approved in California Independent System Operator Corp., 87 FERC ¶ 61,250 (1999). Additionally, pursuant to Schedule F of the RMR contract, DESB submits, in Appendix B to the filing, a revised Annual Fixed Revenue Requirement ("AFRR") for use in determining certain charges under the contract. DESB proposes that the revised figures in Appendix A and Appendix B take effect on January 1, 2003.

II. BASIS FOR PROTEST

Since the filing of the revised schedules, the ISO and SDG&E have requested certain additional data and clarification from DESB with respect to the information contained in its October 31 filing. DESB has responded to these requests. To date, however, the parties have been unable to resolve all of the issues that have arisen with respect to the filing. The unresolved issues include, but are not limited to, the following:

1. DESB has stated that Unit 4 of the South Bay plant will be placed in cold shutdown status for 2003.[3] On that basis, in calculating the 2003 AFRR for the remaining units at South Bay, DESB has allocated among those units certain common plant costs that were previously allocated to Unit 4. The Joint Parties believe that such an allocation conflicts with the formula rate methodology provided in Schedule F. Under that methodology, revenue requirements for each RMR unit for each year are to be determined on the basis of the 12-month period ending June 30 of the prior year. In this instance, because Unit 4 was operational throughout the 12-month period ending June 30, 2002, the revenue requirements for the

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[2] Under Section 5.2.8 of the ISO tariff, costs paid by the ISO under the contract are passed through to SDG&E.

[3] Duke's treatment of Unit 4 for 2003 could be regarded as a unilateral attempt to reduce the maximum net dependable capacity ("MNDC") for Unit 4 to zero.

remaining units during that period did not include the common costs at issue; those costs would be properly allocated to Unit 4 in accordance with Schedule F. Accordingly, those costs are not properly included in the remaining units' AFRR for 2003 as DESB has proposed. Nor has DESB satisfactorily documented the total figure for common costs, however such costs are allocated.

2. On page 1 of Article 1, Part B(1) of Appendix B to the October 31 filing, there is a line item for Maintenance of Electric Plant - Other Expense of $20,995,266. Review of details provided by DESB indicates a total of approximately $8.7 million in maintenance charges that DESB included in the AFRR filing rather than submit for approval on Schedule L-1 (Request for Approval of Capital Items or Repairs) and in accordance with Article 7 of the RMR contract. These charges are as follows:

Boiler	$2.779 million
Condenser	$0.664 million
Fuel Oil System	$1.185 million
Gas Turbine	$0.836 million
Steam Turbine Generator	$3.255 million
Total	$8.719 million

Portions, if not all, of these charges, should be removed from the Schedule F AFRR filing and treated as capital expenses.

3. In response to data requests, DESB has stated that South Bay's share of Regional Office allocation/Outside Legal Services was calculated to be $3,210,962. In the filing, the Regional Office allocation factor for 2003 is reported as 20.65%. This implies that the total Regional Office charges for outside legal services are on the order of $15.5 million dollars. For

the 2002 AFRR filing (Docket No. ER02-10-000), DESB reported the Regional Office total charges of $9.833, with $6.17 million allocated to California plants, at a similar 20.67% allocation factor for South Bay. DESB has not provided details of outside legal services incurred by the Duke Energy Regional Office. In the 2002 AFRR filing, this single category accounted for approximately 50% of the total Regional Office costs. DESB has not demonstrated that these costs were prudently and reasonably incurred before passing them on to ratepayers.

4. As noted above, other cost figures in DESB's filing have not, to date, been satisfactorily explained.

Overall, the items discussed in points 1 through 4 above result in costs that substantially exceed costs allowed pursuant to Schedule F. Assuming that 50 percent of the costs included in Item 2 are Capital Items, points 1 through 3 would result in an AFRR in excess of $10 million dollars above the amount allowed by Schedule F. In addition, further discovery may reveal additional costs that do not comply with Schedule F.[4] Because DESB's rates are substantially above the rates allowable under Schedule F and are not just and reasonable, they should be rejected outright, or, at a minimum, suspended and made subject to refund pending further proceedings.

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4 Further, the costs proposed by DESB for 2003 are 46% higher than the costs as settled in Docket No. ER02-10-000 for 2002: the settled AFRR costs for 2002 were $25.3 million for RMR services from the South Bay Units 1-3 and the Combustion Turbine ("CT"), whereas in the filing for 2003 in the instant case, DESB proposes an AFRR of $36.8 million for service from exactly the same facilities.

CONCLUSION

In light of the foregoing, ISO, the EOB, and SDG&E respectfully request that the Commission reject DESB's Section 205 filing and its informational filing pursuant to Schedule F for 2003 rates since DESB's proposed rates significantly exceed rates that are just and reasonable, and consistent with Schedule F. DESB's Section 205 filing, if not rejected, should be suspended and allowed to go into effect subject to refund. The parties should be given an additional 60 days to resolve their differences and, absent such resolution, the proceeding should be set for hearing.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this 17th day of December 2002, served by first class mail, postage prepaid, a copy of the foregoing upon all parties listed on the service list compiled in this proceeding.

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Stuart J. Evans