

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

Duke Energy South Bay, LLC )

Docket No. ER06-115-000

**MOTION TO INTERVENE AND PROTEST  
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 (2005), the California Independent System Operator Corporation (“CAISO”) submits this Motion to Intervene and Comments. In support thereof, the CAISO states as follows:

**I. Description of the Proceeding**

On October 31, 2005, Duke Energy South Bay, LLC (“DESB”) submitted, pursuant to Section 205 of the Federal Power Act (“FPA”), revisions to certain of the rate schedules under its Reliability Must-Run Service Agreement (“RMR Agreement”) between DESB and the CAISO for DESB’s South Bay Facility (“South Bay”) (“2006 RMR Filing”). DESB states that its filing updates certain RMR rate schedules for the 2006 RMR Contract Year, including Schedule A, Description of the Facility, and Schedule B, Table B-6, Annual Fixed Revenue Requirement (“AFRR”). DESB requests a January 1, 2006 effective date for the revised schedules. Additionally, DESB submitted an informational filing detailing and supporting the proposed changes to its AFRR, pursuant to Schedule F of DESB’s RMR Agreement (“Schedule F Filing”).

The Commission issued a Combined Notice of Filings, setting November 21, 2005 as the comment date for interventions and protests in this proceeding.

## II. Description of the CAISO and Communications

The CAISO is a non-profit public benefit corporation organized under the laws of the State of California with a principal place of business at 151 Blue Ravine Road, Folsom, CA 95630. The CAISO is the Control Area Operator responsible for the reliable operation of a grid comprising of the transmission systems of a number of utilities including San Diego Gas & Electric Company (“SDG&E”), as well as the coordination of the ancillary services and real-time electricity markets in California.

The CAISO requests that all communications and notices concerning this motion and these proceedings be provided to:

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Please place each of the above persons on the official service list for this proceeding pursuant to Rule 2010 of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.2010 (2005).

### **III. Motion to Intervene**

South Bay is located within SDG&E's transmission system and is needed to maintain system reliability in the San Diego area. As the Control Area Operator responsible for maintaining reliability of SDG&E's transmission system and as the counter party to the RMR Agreement, the CAISO has a unique interest in any Commission proceeding concerning proposed changes to the RMR Agreement. Accordingly, the CAISO has a direct and substantial interest in the proposed changes in this proceeding and requests that it be permitted to intervene with full rights of a party. Because no other party can adequately represent the CAISO's interests in this proceeding, the CAISO's intervention is in the public interest and should be granted.

### **IV. Protest**

Based on its initial review of DESB's 2006 RMR Filing, certain of the proposed revisions do not appear to comply with the terms of the RMR Agreement.

#### **A. Unsupported Modification of Amortization Period**

DESB proposes to update its AFRR for Contract Year 2006. The AFRR for each RMR unit is to be determined annually using the formula rate set forth in Schedule F of the RMR Agreement. A component of the AFRR calculation is the depreciation reserve, which is the accumulated provision for depreciation and amortization. DESB's depreciation reserve must be computed using the

depreciation rate determined annually based on the fixed mortality characteristics (e.g., service lives, retirement date, net salvage ratios) for South Bay. <sup>1/</sup> DESB's mortality characteristics are set forth on Exhibit B to Schedule F. DESB may not change its depreciation rates and/or the mortality characteristics except as authorized by the Commission pursuant to a section 205 or 206 filing.

In calculating its AFRR for Contract Year 2006, DESB made an adjustment to its accumulated depreciation/amortization based on a change to the amortization period without first changing the mortality characteristics for South Bay. <sup>2/</sup> Accordingly, CAISO requests that the Commission direct DESB to make a section 205 filing to amend its mortality characteristics for South Bay to support its proposed adjustment to the accumulated depreciation for Contract Year 2006.

Absent a Commission-approved change to the mortality characteristics to support a change in the amortization period for South Bay, DESB's proposed AFRR has not been shown to be just and reasonable. Accordingly, CAISO requests that the Commission rule that the proposed changes set forth in DESB's 2006 RMR Filing have not been shown to be just and reasonable, suspend the rate schedules subject to hearing, and establish a refund date that is the same as the proposed effective date, January 1, 2006.

#### **B. Unsupported Modification to Description of Facility**

In Schedule A, Section 1, DESB seeks to unilaterally modify the method for allocating the AFRR from an allocation based on "capacity" to an

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<sup>1/</sup> See RMR Agreement, Schedule F, Art. II, Part C, § 1(B).

<sup>2/</sup> See DESB Schedule F Filing at Appendix B, Enclosure 3, p. 2.

allocation based on “service hours.” DESB elected to use capacity in lieu of service hours to allocate its AFRR for its RMR units when it entered into the RMR Agreement with the CAISO. Now, DESB seeks to amend the RMR Agreement through its annual limited section 205 filing, which, pursuant to the RMR Agreement is restricted to changes to the Contract Service Limits and Owner’s Repair Cost Obligation. <sup>3/</sup> Certainly DESB may seek to amend the RMR Agreement by making a filing under Section 205 or 206 of the Federal Power Act, however, such filing would have to include support for the proposed amendment. DESB has provided no support or justification in its 2006 RMR Filing for changing the method of allocating the AFRR. The CAISO has raised this issue with DESB, and it is the CAISO’s understanding that DESB intends to file a substitute tariff sheet to revert back to the prior designation, capacity, for allocating the AFRR. Should the DESB not file a substitute tariff sheet, then the CAISO requests that the Commission reject this change as an unauthorized and unsupported amendment to the terms of the RMR Agreement.

## **V. Conclusion**

For the foregoing reasons, the CAISO respectfully requests that the Commission grant the CAISO’s motion to intervene in the above-captioned proceeding with full rights of a party and, in consideration of the CAISO’s Protest, rule that the rate schedules set forth in DESB’s filing have not been shown to be just and reasonable; suspend the rate schedules subject to hearing and establish a refund date equal to the proposed effective date, January 1, 2006.

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<sup>3/</sup> RMR Agreement at § 4.11 and 7.5(k).

Respectfully submitted

/s/ Karin L. Larson

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Counsel for  
California Independent System  
Operator Corporation

Dated: November 21, 2005

## CERTIFICATE OF SERVICE

I hereby certify that I have this 21st day of November, 2005 caused to be served a copy of the forgoing Motion to Intervene and Protest upon all parties listed on the official service list compiled by the Secretary of the Federal Energy Regulatory Commission in this proceeding.

/s/Karin L. Larson  
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