

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

<b>Duke Energy Oakland LLC</b>	<b>)</b>	<b>Docket No. ER98-3416-000</b>
<b>Duke Energy Morro Bay LLC</b>	<b>)</b>	<b>Docket No. ER98-3417-000</b>
<b>Duke Energy Moss Landing LLC</b>	<b>)</b>	<b>Docket No. ER98-3418-000</b>

**REHEARING REQUEST OF  
THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION**

Pursuant to Rule 713 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.713, the California Independent System Operator Corporation (“ISO”) requests rehearing of the Commission’s August 17, 1998, Order in the above-captioned proceedings.

**Background**

On June 18, 1998, Duke Energy Morro Bay LLC, Duke Energy Moss Landing LLC, and Duke Energy Oakland LLC (collectively, “Duke”) filed a request that the Commission grant them authority to charge market-based rates for four services: Regulation, Spinning Reserve, Non-Spinning Reserve, and Replacement Reserve (collectively, “Regulation and Reserve Services”). The ISO was granted leave to intervene. The ISO, while expressing support for market-based rates when the seller has demonstrated its inability to exercise market power, argued that, absent time-differentiated studies, Duke could not make that demonstration. Accordingly, the ISO asked the Commission to defer the grant of authority for market-based rates until such studies had been submitted or, alternatively, to authorize the ISO to place a cap on Ancillary Services bids.

In its August 17, 1998, Order, the Commission granted Duke authority to charge market-based rates for Regulation and Reserve Services in the ISO control area. 84 FERC ¶ 61,186 (1998). The Commission noted that it had, in the July 17, 1998,

Order in *AES Redondo Beach, et al.*, 84 FERC ¶ 61,046 at 61,197, 61,199 (1998), granted the ISO authority to place a cap on bids for these services. 84 FERC ¶ 61,186 at 61,961.

## Discussion

In its Protest in these proceedings, the ISO brought to the Commission's attention the ISO's concerns that the unconditional grant of market-based rate authority to sellers would have extremely serious consequences in the ISO's Regulation and Reserve Services markets, permitting the exercise of market power, and producing extraordinarily high market clearing prices in some hours. The ISO noted that the markets for Regulation and Reserve Services were hourly markets, and asked the Commission to defer granting the requested authorizations, which are not supported by the types of analyses that are required to demonstrate the absence of market power in the discrete markets for Regulation and Reserve Services – i.e., time-differentiated studies. The ISO noted that its concerns had become more acute after a series of Orders in which the Commission granted a number of applicants the authority to sell Regulation and Reserve Services at market-based prices. See *AES Redondo Beach, L.L.C., et al.*, 83 FERC ¶ 61,358 (1998); *El Segundo Power, L.L.C. et al.*, 84 FERC ¶ 61,011 (1998); *Ocean Vista Power Generation, L.L.C. et al.*, 84 FERC ¶ 61,013 (1998).

In these Orders, the Commission also reached a broader conclusion with respect to Replacement Reserve, stating:

Replacement Reserve Service, however, is not an ancillary service under Order No. 888. Thus, the Applicants may sell Replacement Reserve Service under their previously-authorized market-based rates and do not require separate authorization here.

83 FERC ¶ 61,358 at 62,446.

Subsequent to those orders, the markets for Regulation and Reserve Services experienced serious price spikes. The enormous impact on California consumers of the market-based rate authority, and the market forces that have engendered this market distortion, were described in the ISO's Emergency Motion for Stay, Notice of

Action Taken, Request for Rehearing, And Motion for Clarification regarding those Orders.<sup>1</sup> In response to the ISO's Emergency Motion, the Commission issued a July 17, 1998, Order in *AES Redondo Beach, et al.*, 84 FERC ¶ 61,046 at 61,197, 61,199 (1998), granting the ISO interim authority to place a cap on Ancillary Service bids, including Replacement Reserves.

Recent studies submitted by the ISO's Market Surveillance Committee and the California Power Exchange's Market Monitoring Committee in Docket Nos. ER98-2843-000, *et al.*, demonstrate that there continue to be insufficient bids during certain hours in the Regulation and Reserve Services markets to create a truly competitive market. The ISO therefore remains concerned that its authority to place caps on bids in those markets is only temporary. Should the Commission terminate that interim authority, the market conditions described in the ISO's attached request for rehearing of the June 30 Order will once again prevail.

In response to the current market conditions and the Commission's July 17 Order, the ISO has undertaken and planned a number of initiatives to move toward a more competitive Ancillary Services market. These initiatives are described in the Comments of the California Independent System Operator Corporation on Reports Regarding Ancillary Services Market Operation, filed in Docket Nos. ER98-2843-000, *et al.*, a copy of which is attached hereto as Appendix B and incorporated herein by reference. Until these initiatives have achieved their intended effect, however, the potential exercise of market-based power remains a reality in the Regulation and Reserve Services markets.

The ISO therefore urges the Commission to reconsider its decision to grant market-based rate authority to Duke for the sale of Ancillary Services, including Replacement Reserve, without either requiring a time-differentiated market power study or granting the ISO continued authority to cap bids.

## **Conclusion**

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<sup>1</sup> To avoid repetition, a copy of the ISO's Emergency Motion is attached as Appendix A and incorporated herein by reference.

WHEREFORE, the ISO respectfully requests that the Commission condition Duke's requested market-based rate authority for Regulation, Spinning Reserve, Non-Spinning Reserve and Replacement Reserve services on either (1) the submittal of a time-differentiated market power study demonstrating Duke's lack of market power for such services, or (2) the continued authority of the ISO to impose a cap on bids for these services.

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Respectfully submitted,

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Date: September 16, 1998

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## CERTIFICATE OF SERVICE

I hereby certify that I have this day served the forgoing document upon each person designated on the official service list compiled by the Secretary in this Docket No. ER98-3106-000 in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §385.2010 (1997).

Dated at Washington, D.C. on this 16<sup>th</sup> day of September, 1998.

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Michael E. Ward