

UNITED STATES OF AMERICA 105 FERC ¶ 63,021
FEDERAL ENERGY REGULATORY COMMISSION

Duke Energy South Bay, LLC

Docket No. ER03-117-000

CHIEF JUDGE'S CERTIFICATION
OF UNCONTESTED SETTLEMENT

(Issued November 13, 2003)

TO THE COMMISSION:

INTRODUCTION

1. On October 2, 2003, Duke Energy South Bay LLC ("DESB"), the California Independent System Operator Corporation ("CAISO"), and San Diego Gas & Electric Company ("SDG&E") (collectively "the Parties") submitted an Offer of Settlement that resolves all issues in this proceeding. On October 22, 2003, the Commission Trial Staff filed comments in support of the Proposed Settlement. On October 23 and on November 5, 2003, DESB filed supplements to its Explanatory Statement in support of the Offer of Settlement.

CASE SUMMARY

2. This proceeding involves a dispute concerning a Reliability-Must-Run ("RMR") Agreement between DESB and the CAISO. DESB is the lessee and operator of the South Bay generating station at Chula Vista, California. DESB and other power plant owners in California provide RMR service to the CAISO by dispatching designated units at certain power plants at the direction of the CAISO. The RMR contract authorizes the CAISO to call on South Bay Units to provide specified levels of energy and ancillary services and requires the CAISO to make specified fixed and variable-cost payments to DESB. Under Section 5.2.8 of the CAISO Tariff, costs payable by the CAISO under the RMR contract for South Bay are passed through to SDG&E, the utility in whose service territory the generating plant is located. As required in the RMR Agreement, the CAISO designated DESB's facilities for RMR service for the 2003 calendar year.

3. On October 31, 2002, pursuant to Schedule F, DESB submitted to the Commission an Informational Package which included the proposed changes to its AFRR (Annual Fixed Revenue Requirement) and Variable Operation and

Maintenance (“O&M”) rates for the year 2003, reflecting the updated AFRR and other annual updates. The AFRR of \$36,847,000 for DESB’s RMR Units for Contract Year 2003 represented an increase over the AFRR of \$25,306,000 in effect for the RMR Units for Contract Year 2002.

4. On January 30, 2003, 102 FERC ¶ 61,087, the Commission accepted DESB’s filings subject to refund and the outcome of Docket No. EL02-15-000. The Commission directed that a hearing be held but held the hearing in abeyance to provide the parties time to resolve the outstanding issues. The Commission also directed DESB to file its RMR Agreement in compliance with the requirements of Order No. 614.¹ On March 31, 2003, DESB filed an unexecuted RMR Agreement incorporating the format changes mandated by the Commission in Order 614. On May 21, 2003, the Commission accepted DESB’s RMR Agreement as being in compliance with Order No. 614.

5. The parties engaged in settlement discussions and the Chief Judge continued deferment of the hearing procedures on April 1, May 28, and July 16, 2003, in order to permit additional settlement negotiations. The settlement discussions culminated in the instant settlement filed on October 3, 2003.

SUMMARY OF PROPOSED SETTLEMENT

6. The principal terms of the Proposed Settlement are summarized as follows:

7. DESB revised the 2003 AFRR in order to include the South Bay Unit No. 4-specific costs that were excluded in the initial filing. The AFRR including South Bay Unit 4-specific costs (“Revised AFRR”) is \$44,293,000. When the Revised AFRR is allocated among the units, the result is AFRR of \$34,549,000 applicable to DESB’s RMR Units compared to the \$36,847,000 applicable to the RMR Units in the original filing.

8. Effective January 1, 2003, DESB will make several revisions to its Revised AFRR. The resulting AFRR (“2003 AFRR”) is \$40,849,000. When the 2003 AFRR is allocated among the units, AFRR of \$31,862,000 is applicable to DESB’s RMR Units. This overall reduction from the Revised AFRR is based on DESB’s reduction of total fixed operating expenses from \$38,969,000 to \$35,577,000. This reduction is derived by DESB reducing its Production O&M by \$1,837,000,

¹ Designation of Electric Rate Schedule Sheets, Order No. 614, FERC Stats. & Regs., Regulations Preambles July 1996-December 2000 ¶ 31,096 (2000).

and A&G by \$1,555,000. The reduction in total fixed operating expenses results in a reduction of DESB's working cash allowance of \$424,000 and of its return on net investment of \$52,000.

9. DESB also seeks Commission acceptance of proposed revisions to portions of its Schedules A and B to the RMR contract in the rate schedule sheets filed in this docket, effective January 1, 2003 (RMR Rate Sheets) and additional changes to be effective December 1, 2003, necessitated by the changes in DESB's settled AFRR and revisions to certain operations characteristics. Article II specifies that upon the Commission's acceptance of the revised RMR rate schedules, the original filed corresponding RMR rate sheets will be deemed withdrawn and will have no further effect. In addition, the Proposed Settlement explains that DESB will recalculate all charges under the RMR rate schedules affected by the Settlement as though such terms were in place and effective January 1, 2003, and will recalculate and process appropriate refunds as described in the Proposed Settlement.

10. The parties have agreed that recovery of the annual fixed cost of the South Bay Unit No. 4 selective catalytic reduction equipment will be appropriate, should South Bay Unit No. 4 be re-designated as an RMR Unit.

11. The Proposed Settlement describes the AFRR to be used to update the rates for Contract Year 2004. It specifies that the 2004 AFRR is \$41,611,000, reflecting a 1.9% increase over the 2003 AFRR of \$40,849,000. On October 31, 2003, DESB will file an informational filing as required by Schedule F reflecting the 2004 AFRR and revisions to certain RMR rate schedule sheets of its RMR Agreement reflecting the 2004 AFRR and other annual updates.

12. The Proposed Settlement allocates the AFRR among the South Bay units for the 2003 and 2004 Contract Years.

13. The remaining portions of the Proposed Settlement address general reservations provide for the effectiveness of the Proposed Settlement upon its acceptance by the Commission, as well as other general miscellaneous provisions.

COMMENTS

14. On October 22, 2003, counsel for the Commission Trial Staff filed comments supporting the Proposed Settlement. No reply comments were filed. The Commission Trial Staff noted in its comments that the Explanatory Statement failed to address the procedures for certification of uncontested settlements outlined in the Chief Judge's Notice to the Public issued on October 15, 2003. The Commission Trial Staff also noted that the draft letter order submitted by DESB

contains no reference to the Commission's hearing order which made the instant docket subject to the outcome of Docket No. EL02-15-000. The Chief Judge notes that on October 23 and on November 5, 2003, DESB filed supplements to its Explanatory Statement addressing the procedures set forth in the Chief Judge's October 15, 2003, public notice. DESB also attached a revised draft letter order to its November 5 supplement referencing the Commission's hearing order which made this docket subject to the outcome of Docket No. EL02-15-000. No reply comments were filed.

DISCUSSION AND CERTIFICATION

15. After a full consideration of the provisions of the Proposed Settlement, the Chief Judge finds that it provides a fair resolution of the all the issues set for hearing and recommends that the Commission approve it.

16. The issues underlying the Proposed Settlement present no major implications. The issues presented in the Proposed Settlement raise a policy implication respecting the calculation of the AFRR. The issue raised is what fixed costs are included in the AFRR calculation when a non-RMR unit at the facility is removed from service and placed in an extended shut down status for the Contract Year but was in service during the Cost Year. DESB placed South Bay Unit 4 in extended shut down status on January 1, 2003. The unit was returned to service in July 2003. As part of the Proposed Settlement, the parties (DESB, CAISO, and SDG&E) agreed on an AFRR calculation that pertains only to the Settlement period.

17. The resolution of this proceeding, specifically, whether the Commission accepts the AFRR proposed by the settling parties for Contract Year 2004, will affect the Commission's acceptance of AFRR for Contract Year 2004 in a related rate filing which is pending before the Commission in Docket No. ER03-___000. No other pending cases may be affected by the resolution of the present proceeding.

18. The Proposed Settlement does not involve issues of first impression and there are no previous reversals on the issues involved in this proceeding.

19. The Parties (DESB, CAISO and SDG&E) agree the RMR Agreement that is the subject of this proceeding does not have Mobile-Sierra language making it the standard of review, but rather, that this proceeding is subject to the just and reasonable standard.

20. Pursuant to 18 C.F.R. § 385.602(g)(1), I hereby certify for the Commission's consideration as an uncontested offer of settlement:

- (A) The cover, letter, Explanatory Statement, and Settlement Agreement submitted on October 2, 2003.
- (B) The Supplements to the Explanatory Statement filed on October 23, 2003 and on November 5, 2003.
- (C) Initial Comments of the Commission Trial Staff filed on October 22, 2003;
- (D) All pleadings, orders and other documents of record in this proceeding; and
- (E) The attached draft letter order of the Commission approving the Proposed Settlement.

Curtis L. Wagner, Jr.
Chief Administrative Law Judge

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FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

In Reply Refer To:
Docket No. ER03-117-000

Dickstein Shapiro Morin & Oshinsky
Attn: Mark L. Perlis
Attorney for Duke Energy South Bay, LLC
2101 L Street, N.W.
Washington, DC 20037-1526

Dear Mr. Perlis:

1. On October 2, 2003, you filed a Settlement Agreement among Duke Energy South Bay, LLC (“DESB”), the California Independent System Operator Corporation (“CAISO”), and San Diego Gas & Electric Company (“SDG&E”) (collectively, the “Parties”). On October 22, 2003, counsel for the FERC Trial Staff filed comments not opposing the proposed settlement. No other comments were filed. On November 13, 2003, the Chief Judge certified the Offer of Settlement to the Commission as uncontested.
2. The subject settlement is in the public interest and is hereby approved. Any determinations made in this filing are subject to the outcome of Docket No. EL02-15-000. The Commission’s approval of this settlement does not constitute approval of, or precedent regarding any principle or issue in this proceeding. 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(2002).
3. On October 2, 2003, DESB submitted revisions to Schedules A and B of its Reliability Must Run Service Agreement with the CAISO requesting that the revised sheets, included in the filing become effective as of January 1, 2003. The Commission will consider DESB’s proposed tariff revisions in a separate letter order.

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4. 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 fifteen (15) days after making such refunds, DESB shall file with the Commission a compliance report documenting such refunds. DESB shall furnish copies of the report to all parties in this proceeding.

5. This letter order terminates Docket ER03-117-000.

By direction of the Commission.

Secretary

cc: All Parties

Laurence G Chaset, Staff Counsel
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