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September 26, 2002

Honorable Magalie R. Salas
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

RE: Duke Energy Oakland, LLC, et al., Docket No. ER02-10-000
Duke Energy South Bay, LLC, Docket Nos. ER02-239-000, et al.

Dear Secretary Salas:

In accordance with the provisions of Rule 602 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("Commission"), 18 C.F.R. § 385.602 (2002), Duke Energy South Bay, LLC ("DESB"), the California Independent System Operator Corporation (the "ISO"), and San Diego Gas & Electric Company ("SDG&E") (collectively, the "Parties") hereby submit for filing in the above-referenced dockets an original and fourteen copies of an Offer of Settlement that resolves all issues related to DESB in Docket No. ER02-10-000 (DESB's Annual Fixed Revenue Requirement filing under Schedule F of its Reliability Must Run ("RMR") contract with the ISO) and all issues related to DESB's Annual Fixed Revenue Requirement in its annual update filing in Docket Nos. ER02-239-000, et al. The Offer of Settlement is comprised of this Transmittal Letter, an Explanatory Statement, and a Settlement Agreement with appendices.

Contents of Submission

Enclosed with this filing are the following:

- (1) An Explanatory Statement (Attachment 1);
- (2) A Settlement Agreement with a revised RMR Schedule F and proposed revisions to other RMR Schedules appended thereto (Attachment 2);
- (3) A draft Commission letter order approving the settlement with a diskette containing the draft order in MS Word format (Attachment 3).

As indicated in the enclosed Explanatory Statement, this Offer of Settlement is supported by all Parties to this proceeding. The Parties diligently have worked toward the settlement of these matters on an informal basis over a period of months, and thus request that the Commission give this Offer of Settlement expedited consideration to provide all Parties the ability to move forward with important economic decisions that currently depend on the resolution of these issues.

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In accordance with the provisions of Rule 602(c)(iii), the Parties submitting this Offer of Settlement state that this filing contains copies of, or references to, all documents relevant to this Offer of Settlement.

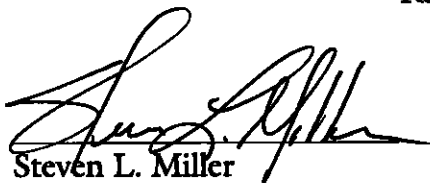
Service

A copy of this submission is being served on all participants in the referenced proceeding and on all other persons required to be served pursuant to Rule 602(d) of the Commission's Rules of Practice and Procedure.

Notice Regarding Filing Comments to Offer of Settlement

In accordance with Rule 602(d), DESB hereby informs all participants in this proceeding that comments on the Offer of Settlement and Settlement Agreement are due by October 16, 2002, and reply comments are due by October 28, 2002. The Parties request adherence to this comment period as provided in Rule 602(f)(2) in order to expedite the conclusion of this matter.

Respectfully submitted,



Steven L. Miller
*Attorney for
Duke Energy South Bay, LLC*

Jeanne M. Solé
*Attorney for
California Independent System
Operator Corporation*

Nicholas W. Fels
*Attorney for San Diego Gas &
Electric Company*

Attachments

cc: Service List

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

Duke Energy Oakland, LLC, et al.
Duke Energy South Bay, LLC

) Docket No. ER02-10000
Docket Nos. ER02-239000
ER02-239001
ER02-239002

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**EXPLANATORY STATEMENT
IN SUPPORT OF OFFER OF SETTLEMENT**

Pursuant to Rule 602(c)(1)(ii) of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”), 18 C.F.R. § 385.602(c)(1)(ii) (2001), Duke Energy South Bay, LLC (“Duke”), the California Independent System Operator Corporation (the “ISO”), and San Diego Gas & Electric Company (“SDG&E”) (collectively, the “Parties”), hereby submit this Explanatory Statement in support of the Offer of Settlement, submitted to resolve certain issues in the above-captioned proceedings.¹ The attached Settlement Agreement and two appendices constitutes the Offer of Settlement in this case. This Explanatory Statement is not intended to alter any of the provisions of the Settlement Agreement or its appendices, and is provided in accordance with the Commission’s rules.

I. BACKGROUND

DESB is the lessee and operator of the South Bay generating station (“South Bay”) at Chula Vista, California. Since April 1, 1998, when the ISO began operations, some or all of the capacity of South Bay has been designated by the ISO as necessary for local reliability needs and thus has been subject to a “reliability must run” (“RMR”) contract between the ISO

¹ While not Parties to the attached Settlement Agreement, the California Electricity Oversight Board (the “EOB”) and the California Public Utilities Commission (“CPUC”) have authorized the Parties to state that the EOB and CPUC do not oppose the Settlement Agreement.

and the plant operator.² Broadly speaking, the RMR contract authorizes the ISO to call on South Bay units to provide specified levels of energy and ancillary services and requires the ISO to make specified fixed and variable-cost payments to DESB. Under Section 5.2.8 of the ISO tariff, costs payable by the ISO under the RMR contract for South Bay are passed through to SDG&E.³

By order issued December 17, 1997 in Docket Nos. ER98-441-000, *et al.*, the Commission placed the initial RMR contracts for South Bay and other RMR units in California into effect, subject to refund, as of the date the ISO began operations.⁴ The South Bay contract was in substantially the same form as other contracts covering other RMR units, with variations for unit-specific costs and operating characteristics. On April 2, 1999, the ISO, the owners of all of the RMR units in California, the three Responsible Utilities, and other parties to Docket Nos. ER98-441-000, *et al.*, (including the CPUC and EOB) filed an offer of settlement in those dockets (the "First Stipulation") substantially revising the standard terms of the contract, but leaving a number of issues subject to litigation or further settlement efforts. The First Stipulation was approved by the Commission in May 1999, and the revised contract terms (the "South Bay RMR Contract") took effect, as to South Bay, on June 1, 1999.⁵

² SDG&E owned and operated the plant until April 22, 1999, at which time the plant was conveyed to the Unified Port District of San Diego, which leased the plant to DESB. For the period April 1, 1998 through December 31, 2001, the ISO designated all of the units at South Bay as RMR units. Effective January 1, 2002, Unit No. 4 ceased to be subject to such designation; however, this unit may be subject to such designation again in future years.

³ Section 5.2.8 provides that costs incurred by the ISO under an RMR contract for a generating plant are to be borne by the utility in whose service territory the generating plant is located (the "Responsible Utility").

⁴ The docket for the contract covering South Bay, then owned by SDG&E, was Docket No. ER98-496-000.

⁵ California Independent System Operator Corp., 87 FERC ¶ 61,250 (1999). A subsequent settlement (the "Second Stipulation"), covering some of the issues not resolved in the First Stipulation, (footnote continued on next page)

Under the revised contract, the ISO pays DESB various charges, including a Monthly Option Payment that is based, in part, upon the Annual Fixed Revenue Requirement (“AFRR”) for the RMR units.⁶ The contract provides, however, that the AFRR is subject to adjustment on January 1 of each year, beginning January 1, 2002, to reflect actual costs for the 12-month period ending the previous June 30.⁷

On October 1, 2001, DESB filed in Docket No. ER02-10-000 a revised AFRR, with certain supporting information. The revised AFRR, \$42,611,000, represented an increase over the AFRR then in effect for South Bay.⁸ On December 21, 2001, the ISO, SDG&E, the EOB and the CPUC protested DESB’s filing.

On November 1, 2001, as amended on November 29, 2001, and December 11, 2001, in Docket Nos. ER02-239-000, ER02-239-001, and ER02-239-002, respectively, DESB filed revised tariff sheets reflecting its Year 2002 annual updates to its RMR Agreement. Some of these revisions—specifically, those related to RMR Schedules A and B—utilized the AFRR figure at issue in ER02-10-000. The ISO, SDG&E, the EOB and the CPUC protested DESB’s filing. The protests were based, in part, on DESB’s use of the AFRR at issue in ER02-10-000 in its revisions to Schedule A and B.⁹ On February 1, 2002, the Commission accepted DESB’s filings subject to refund and the outcome of Docket Nos. ER02-10-000 and EL02-15-000.¹⁰

was filed on August 14, 2000 in Docket Nos. ER98-441-000, *et al.*, and approved in California Independent System Operator Corp., 93 FERC ¶ 61,089 (2000).

⁶ See Schedule B of the RMR contract. The contract, without certain schedules, is Appendix A to the Second Stipulation.

⁷ See Schedule F of the RMR contract.

⁸ The same filing included a revised AFRR for Duke Energy Oakland, LLC (“DEO”). This Offer of Settlement does not relate to that revision.

⁹ In ER02-239-000, SDG&E also protested DESB’s use of the Fixed Option Payment Factor (“FOPF”) in calculating the hourly availability charge in the Schedule B revisions. The FOPF is the (footnote continued on next page)

The Parties have cooperated through informal discovery and conferred at length as to the issues raised in Docket Nos. ER02-10-000, ER02-239-000, ER02-239-001, and ER02-239-002. The instant Settlement Agreement is the product of those discussions, and resolves all of the outstanding issues pertaining to the South Bay facility in ER02-10-000, and all issues related to DESB in Schedule B of DESB's annual filing in ER02-239-000, ER02-239-001, and ER02-239-002. Additionally, it incorporates changes to the AFRR that arise as a result of the Parties' June 25, 2002 settlement filing in this proceeding and Docket No. ER98-496-000 ("Schedule H filing"), resolving the extent to which costs of storing fuel-oil for South Bay and the costs associated with barge-delivery facilities may be included in the DESB AFRR for 2002, and years thereafter.

II. THE SETTLEMENT

The attached Settlement Agreement and two appendices constitutes a definitive negotiated agreement between the Parties with respect to outstanding issues in Docket Nos. ER02-10-000, ER02-239-000, ER02-239-001, and ER02-239-002. It results in a just and reasonable settlement that addresses and balances all Parties' interests. The principal terms of the Settlement Agreement are briefly summarized as follows:

- DESB will reduce its AFRR amount filed in ER02-10-000 from \$42,611,000, to \$36,933,000. This overall AFRR reduction is based on DESB's reduction of its total fixed operating expenses from \$36,334,000 to \$31,048,000. This reduction in DESB's total fixed operating expenses is derived by DESB reducing its Production O&M by \$2,193,000; A&G by \$3,064,000; and Property Tax by \$29,000.

subject of a complaint pending in Docket No. EL02-15-000. This settlement neither addresses the fixed option payment issues in ER02-239-000, nor affects any of the Parties' rights in EL02-15-000.

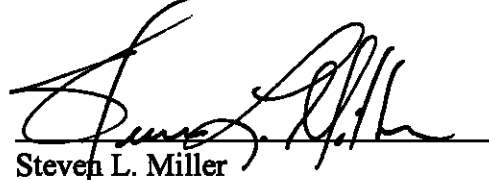
¹⁰ Duke Energy South Bay LLC, 98 FERC ¶ 61,110 (2002).

- As a result of DESB's reduction in total fixed operating expenses, DESB also will reduce its working cash allowance by \$657,000 and its return on net investment by \$81,000.
- DESB will incorporate all relevant terms from its Schedule H Settlement that affect the calculations and/or figures used in its AFRR, effective January 1, 2002, and thereafter.
- In an FPA Section 205 filing submitted concurrently with this Settlement, DESB seeks Commission acceptance of proposed revisions to portions of Schedules A and B to the RMR contract. These revisions incorporate changes made necessary by the reduction of DESB's AFRR from \$42,611,000 to \$36,933,000. Drafts of these revised rate sheets are attached as Appendix B to the Settlement.
- Within 30 days of the Commission's approval, without material condition, of the terms of the Offer of Settlement, all charges under the RMR Rate Schedules affected by the terms of the Offer of Settlement shall be recalculated as though such terms were in place and effective January 1, 2002, and appropriate refunds will be calculated and processed in a timely manner.
- Agreement to or acquiescence in the terms of the Settlement Agreement shall not be deemed in any respect to constitute an admission by any Party hereto that any allegation or contention made by any other Party in these proceedings is true or valid. The Commission's approval of the Offer of Settlement in this case shall not constitute approval of, or precedent regarding, any principle or issue in this proceeding.
- Resolution of any matter in the Settlement Agreement shall not be deemed to be a "settled practice" as that term was interpreted and applied in Public Service Commission of the State of New York v. FERC, 642 F.2d 1334 (D.C. Cir. 1980).
- The discussions among the Parties that have produced the Settlement Agreement have been conducted on the explicit understanding that they were undertaken subject to Rule 602(e) of the Commission's Rules of Practice and Procedure.
- Nothing in this settlement is intended to limit or affect the rights and remedies of the Parties with respect to any particular dispute not discussed in the Settlement Agreement, including the issues in Docket No. EL02-15-000.

III. CONCLUSION

The Parties to the Settlement Agreement believe that it represents a fair and reasonable negotiated resolution and settlement of the issues set for hearing in this proceeding. Therefore, the Parties respectfully request that the Commission expeditiously approve the Settlement Agreement without condition or modification.

Respectfully submitted,



Steven L. Miller
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(202) 955-6609

*Counsel for
Duke Energy South Bay, LLC*

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

Duke Energy Oakland, LLC, <u>et al.</u>)	Docket No.	ER02-10-000
Duke Energy South Bay, LLC)	Docket Nos.	ER02-239-000
)		ER02-239-001
)		ER02-239-002

SETTLEMENT AGREEMENT

Pursuant to 18 C.F.R. § 385.602, Duke Energy South Bay, LLC (“DES”) the California Independent System Operator Corporation (the “ISO”), and San Diego Gas & Electric Company (“SDG&E”) (collectively, the “Parties”) hereby submit this Settlement Agreement (the “Settlement”) to resolve certain issues in the above-captioned dockets.¹

I. BACKGROUND

DESB is the lessee and operator of the South Bay generating station (“South Bay”) at Chula Vista, California. Since April 1, 1998, when the ISO began operations, some or all of the capacity of South Bay has been designated by the ISO as necessary for local reliability needs and thus has been subject to a “reliability must run” (“RMR”) contract between the ISO and the plant operator.² Broadly speaking, the RMR contract authorizes the ISO to call on South Bay units to provide specified levels of energy and ancillary services and requires the ISO to make specified fixed and variable-cost payments to DESB. Under Section 5.2.8 of the ISO

¹ While not signatories to this Settlement Agreement, the California Electricity Oversight Board (the “EOB”) and the California Public Utilities Commission (“CPUC”) have authorized the Parties to state that the EOB and CPUC do not oppose this Settlement Agreement.

² SDG&E owned and operated the plant until April 22, 1999, at which time the plant was conveyed to the Unified Port District of San Diego, which leased the plant to DESB. For the period April 1, 1998 through December 31, 2001, the ISO designated all of the units at South Bay as RMR units. Effective January 1, 2002, Unit No. 4 ceased to be subject to such designation; however, this unit may be subject to such designation again in future years.

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tariff, costs payable by the ISO under the RMR contract for South Bay are passed through to SDG&E.³

By order issued December 17, 1997 in Docket Nos. ER98-441-000, *et al.*, the Commission placed the initial RMR contracts for South Bay and other RMR units in California into effect, subject to refund, as of the date the ISO began operations.⁴ The South Bay contract was in substantially the same form as other contracts covering other RMR units, with variations for unit-specific costs and operating characteristics. On April 2, 1999, the ISO, the owners of all of the RMR units in California, the three Responsible Utilities, and other parties to Docket Nos. ER98-441-000, *et al.*, (including the CPUC and EOB) filed an offer of settlement in those dockets (the “First Stipulation”) substantially revising the standard terms of the contract, but leaving a number of issues subject to litigation or further settlement efforts. The First Stipulation was approved by the Commission in May 1999, and the revised contract terms (the “South Bay RMR Contract”) took effect, as to South Bay, on June 1, 1999.⁵

Under the revised contract, the ISO pays DESB various charges, including a Monthly Option Payment that is based, in part, upon the Annual Fixed Revenue Requirement (“AFRR”) for the RMR units.⁶ The contract provides, however, that the AFRR is subject to

³ Section 5.2.8 provides that costs incurred by the ISO under an RMR contract for a generating plant are to be borne by the utility in whose service territory the generating plant is located (the “Responsible Utility”).

⁴ The docket for the contract covering South Bay, then owned by SDG&E, was Docket No. ER98-496-000.

⁵ California Independent System Operator Corp., 87 FERC ¶ 61,250 (1999). A subsequent settlement (the “Second Stipulation”), covering some of the issues not resolved in the First Stipulation, was filed on August 14, 2000 in Docket Nos. ER98-441-000, *et al.*, and approved in California Independent System Operator Corp., 93 FERC ¶ 61,089 (2000).

⁶ See Schedule B of the RMR contract. The contract, without certain schedules, is Appendix A to the Second Stipulation.

adjustment on January 1 of each year, beginning January 1, 2002, to reflect actual costs for the 12-month period ending the previous June 30.⁷

On October 1, 2001, DESB filed in Docket No. ER02-10-000 a revised AFRR, with certain supporting information. The revised AFRR, \$42,611,000, represented an increase over the AFRR then in effect for South Bay.⁸ On December 21, 2001, the ISO, SDG&E, the EOB and the CPUC protested DESB's filing.

On November 1, 2001, as amended on November 29, 2001, and December 11, 2001, in Docket Nos. ER02-239-000, ER02-239-001, and ER02-239-002, respectively, DESB filed revised tariff sheets reflecting its Year 2002 annual updates to its RMR Agreement. Some of these revisions—specifically, those related to RMR Schedules A and B—utilized the AFRR figure at issue in ER02-10-000. The ISO, SDG&E, the EOB and the CPUC protested DESB's filing. The protests were based, in part, on DESB's use of the AFRR at issue in ER02-10-000 in its revisions to Schedules A and B.⁹ On February 1, 2002, the Commission accepted DESB's filings subject to refund and the outcome of Docket Nos. ER02-10-000 and EL02-15-000.¹⁰

The Parties have cooperated through informal discovery and conferred at length as to the issues raised in Docket Nos. ER02-10-000, ER02-239-000, ER02-239-001, and ER02-239-002. The instant Settlement is the product of those discussions, and, in conjunction with the

7 See Schedule F of the RMR contract.

8 The same filing included a revised AFRR for Duke Energy Oakland, LLC. This Settlement does not relate to that revision.

9 In ER02-239-000, SDG&E also protested DESB's use of the Fixed Option Payment Factor ("FOPF") in calculating the hourly availability charge in the Schedule B revisions. The FOPF is the subject of a complaint pending in Docket No. EL02-15-000. This settlement neither addresses the fixed option payment issues in ER02-239-000, nor affects any of the Parties' rights in EL02-15-000.

10 Duke Energy South Bay LLC, 98 FERC ¶ 61,110 (2002).

Schedule H Settlement described below, resolves all of the outstanding issues pertaining to the South Bay facility in ER02-10-000, and, thereby, all issues related to DESB's use of the AFRR in DESB's annual filing in ER02-239-000, ER02-239-001, and ER02-239-002. Additionally, it incorporates changes to the AFRR that arise as a result of the Parties' June 25, 2002 settlement filing in Docket Nos. ER02-10-000 and ER98-496-000 ("Schedule H Settlement"), resolving, among other things, the extent to which costs of storing fuel-oil for South Bay and the costs associated with barge-delivery facilities may be included in the DESB AFRR for 2002, and years thereafter.

II. TERMS

As a result of negotiations among the Parties, DESB will make the following revisions effective January 1, 2002, to its AFRR filed in ER02-10-000, and the supporting calculations shown on Attachment 2 of that filing, as set forth in Appendix A hereto:

1. DESB will reduce its AFRR amount on Line No. 1(A) from \$42,611,000 to \$36,933,000. This overall AFRR reduction is based on DESB making the following specific changes to its AFRR filing:

- a) DESB will reduce its total fixed operating expenses from \$36,334,000¹¹ to \$31,048,000. This new figure is derived by reducing DESB's Production O&M by \$2,193,000; A&G by \$3,064,000; and Property Tax by \$29,000.
 - (1) DESB's reduction in Production O&M reflects expenditures that will be recovered through a capital surcharge. Expenditures recovered through the capital surcharge are composed of amounts incurred for major overhauls of the South Bay Units 2 and 3, totaling

¹¹ Total fixed operating expenses are not reported as a separate item on Attachment 2 . They are derived, however, from Operating Expenses on Line No. 2, less Variable Operating Expenses on Line No. 6(B)(2).

\$797,404 and \$899,003, respectively, and amounts incurred for a major repair of the South Bay combustion turbine ("CT") totaling \$496,828. The Parties have agreed that amounts for Units 2 and 3 will be recovered over a 5-year period using a Required Revenue Requirement Percentage of 29.32% per year. Amounts for the CT will be recovered over a 7-year period through a Required Revenue Requirement Percentage of 22.68% per year. As a result of these changes in Production O&M, DESB will reduce the amount in Line No. 2(A)(1)(a) from \$289,033,000 to \$286,840,000.

- (2) DESB's reduction in A&G reflects a decrease of \$3,064,000. This figure results from a negotiated \$620,000 reduction of costs for regional office legal expenses from \$1,084,000 to \$464,000, removal of a \$500,000 accrual for asbestos and lead abatement, and removal of \$1,944,000 in incentive fees paid to Duke/FluorDaniel.¹² As a result of these changes in A&G, DESB will reduce the amount in Line No. 2(A)(4) from \$14,027,000 to \$10,963,000.
 - (3) DESB's reduction in Property Tax reflects a negotiated reduction of \$29,000. As a result of this change, DESB will reduce the amount in Line No. 2(C)(1) from \$1,035,000 to \$1,006,000.
- b) As a result of DESB's reduction in total fixed operating expenses, DESB will reduce working cash allowance by \$657,000, thus reducing the amount in Line No. 4(F)(4) from \$3,842,000 to \$3,185,000.
 - c) As a result of DESB's reduction in total fixed operating expenses, DESB will reduce its return on net investment by \$81,000, thus reducing the amount in Line No. 3 from \$5,966,000 to \$5,885,000.
 - d) DESB will incorporate the following terms from its Schedule H Settlement that affect the calculations and/or figures used in its AFRR, effective January 1, 2002, and thereafter.
 - (1) As reflected in paragraph II 6. of the Schedule H Settlement, the DESB shall revise the AFRR for South

¹² Duke/Fluor Daniel ("D/FD") is a joint venture of Duke Energy Corporation and Fluor Daniel, Inc.. D/FD operates and maintains the South Bay facility pursuant to a contract with DESB.

Bay, effective January 1, 2002, to reflect a useable fuel-oil volume of 100,000 barrels.

- (a) DESB further agrees that it is not entitled to include "heel" inventory in the 2002 AFRR calculation. This revision will reduce the value for Fuel Stocks (Line No. 4(F)(1)) as originally filed in Docket No. ER02-10-000, by \$2,540,000.
- (b) The reduced fuel-oil inventory also will reduce the Schedule F ad valorem taxes by \$29,000 (Line No. 2(C)(1), as discussed above), and return on investment on fuel inventory by \$311,000 (Line No. 3).
- (c) Further, as reflected in paragraph II 7. of the Schedule H Settlement, DESB shall not, in future annual filings pursuant to Schedule F of the South Bay RMR Contract be entitled to recover from any of the parties to this Settlement a return on an oil inventory of more than 100,000 barrels of useable fuel-oil at South Bay unless the ISO requests or directs DESB to acquire such additional volumes. In any future annual filing pursuant to Schedule F, the inventory cost of the fuel-oil chargeable to the ISO shall be based on the quantity of useable fuel-oil at South Bay on the June 30 immediately preceding the annual filing. If the inventory of fuel-oil at South Bay does exceed 100,000 useable barrels, for purposes of calculating the fuel-oil inventory component of AFRR, the costs of such inventory shall be multiplied by a fraction, the numerator of which is 100,000, and the denominator of which is the total number of barrels of useable fuel-oil. The fuel-oil transportation cost included in the fuel-oil inventory shall not exceed \$1.50 per barrel for AFRR purposes.

2. In a filing under Section 205 of the Federal Power Act submitted concurrently with this Settlement, DESB seeks Commission acceptance of proposed revisions to portions of Schedules A and B to the RMR contract. These revisions incorporate changes made necessary by the reduction of DESB's AFRR from \$42,611,000 to \$36,933,000. Drafts of these revised rate sheets are attached hereto as Appendix B.

3. Upon approval of the Offer of Settlement by the Commission without material condition, all charges under the RMR Rate Schedules affected by the terms of the Offer of Settlement shall be recalculated as though such terms were in place and effective January 1, 2002, as more fully described below.

a) Any differences between the charges resulting from such recalculation and the charges previously paid for the period commencing January 1, 2002 shall result in a refund with interest. The refund will be processed as follows:

(1) Refunds due for each Billing Month in which a Revised Adjusted RMR Invoice had not yet been submitted to the ISO by DESB on the date (the "Refund Date") 30 days after this Offer of Settlement is approved by the Commission without material condition shall be submitted in accordance with Article 9.1(b)(ii); that is, DESB shall submit a Revised Adjusted RMR Invoice that reflects the rates set forth in this Offer of Settlement.

To the extent that the total amount of the Revised Adjusted Invoice shows credit due to ISO, such credit amount shall be paid to the ISO, on the date payment of the Revised Adjusted RMR Invoice for RMR services is due, by wire transfer or such other method as the ISO and DESB may agree upon.

(2) Refunds due for all Billing Months in which a Revised Adjusted RMR Invoice has already been submitted to the ISO by DESB on the Refund Date shall be shown as a credit against the charges on the first Estimated RMR Invoice for RMR services issued by DESB after the Refund Date and shall be paid as a credit against the charges on the subsequent Revised Estimated RMR Invoice.

DESB shall credit the full refund amount due regardless of the level of the charges on that invoice; to the extent that credit of such refund amounts (including applicable interest) exceeds amounts due to DESB, such portion shall be paid to the ISO, on the date that payment of the Revised Estimated RMR Invoice for RMR services is due, by wire transfer or such other method as the ISO and DESB may agree upon. In no event shall the refund for these Billing Months be issued later than 30 days after the Refund Date.

- (3) To support the amounts to be credited, DESB shall, for each applicable Billing Month:

 - (a) compute and set forth the difference between (i) the amounts payable by the ISO to DESB in accordance with the rates in effect prior to the approval date of this Offer of Settlement, and (ii) the amounts payable by the ISO to DESB in accordance with the rates that result from this Offer of Settlement;
 - (b) compute, set forth and add interest to the difference calculated in accordance with (a) above, with interest computed pursuant to Section 35.19a of the Commission's Regulations, 18 C.F.R. § 35.19a¹³; and
 - (c) set forth the total amount of the refund; and
 - (d) include this supporting documentation with the invoice on which each refund amount is credited.
- (4) No later than the date (the "Report Date") 15 days after the final refund is credited, DESB shall prepare and provide to the Parties a refund report with a level of detail sufficient to permit verification of the accuracy of the amounts refunded.
- (5) The ISO will revise its RMR Settlement Database to reflect the amount that DESB actually received for each Billing Month.
- (6) In the event that, in the future, a Prior Period Change is required for a matter other than an adjustment resulting from this Offer of Settlement, and a Prior Period Change Worksheet is submitted by DESB, in accordance with Article 9.1(g), that includes any Billing Month for which a refund was provided in accordance with this refund section, DESB shall show the actual amount paid for the applicable

¹³ For Billing Months described by paragraph (2), the dates used to calculate interest for each Billing Month are the Revised Estimated RMR Invoice payment date for the applicable Billing Month and the Revised Estimated RMR Invoice payment date for the invoice on which the refund is credited. For Billing Months described by paragraph (1), interest is calculated in accordance with the invoice template.

Billing Month(s) in the Revised Adjusted columns of the
Prior Period Change Worksheets.

B. Reservations

1. Agreement to or acquiescence in this Settlement shall not be deemed in any respect to constitute an admission by any Party hereto that any allegation or contention made by any other Party in these proceedings is true or valid. In reaching the Settlement, the Parties specifically agreed that the Settlement represents a negotiated agreement for the sole purpose of settling certain issues, as described herein, in the captioned dockets. No signatory, participant or affiliate of any of the Parties shall be deemed to have approved, accepted, agreed to, or consented to any fact, concept, theory, rate methodology, principle or method relating to jurisdiction, prudence, reasonable cost of service, cost classification, cost allocation, rate design, tariff provisions, or other matters underlying or purported to underlie any of the resolution of the issues provided herein. The Commission's approval of the Settlement shall not constitute approval of, or precedent regarding, any principle or issue in this proceeding.

2. The Parties agree that the resolution of any matter in the Settlement shall not be deemed to be a "settled practice" as that term was interpreted and applied in Public Service Commission of the State of New York v. FERC, 642 F.2d 1334 (D.C. Cir. 1980).

3. The discussions among the Parties that have produced the Settlement have been conducted on the explicit understanding that they were undertaken subject to Rule 602(e) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.602(e) (2002), and the rights of the parties with respect thereto shall not be impaired by the Settlement.

4. Notwithstanding any provision of the Settlement, nothing herein is intended to limit or affect the rights and remedies of the Parties with respect to any claim that the amounts invoiced under an RMR contract do not comply with that contract.

5. In Docket No. EL02-15-000, the ISO, the CPUC, the EOB, and SDG&E (among others) have filed a complaint alleging that the currently effective method of determining the Fixed Option Payment Factor for purposes of Schedule B of the RMR contracts for the South Bay units and other units is unjust and unreasonable, and, should be calculated on the basis of a different methodology. DESB has urged that the complaint be dismissed. The instant Settlement is not intended to affect in any way the outcome of that proceeding, and the Parties specifically reserve their rights and positions therein. Further, the instant Settlement is not intended to limit or affect the rights and remedies of the Parties with respect to any other particular dispute not discussed in the Settlement Agreement.

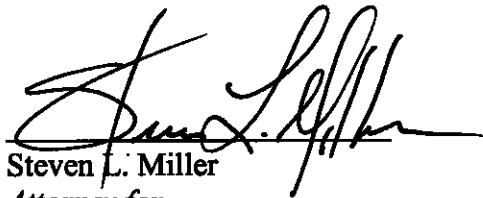
C. Execution in Counterparts

This Settlement may be executed in counterparts by each Party, each of which shall be deemed to be an original, but together shall constitute one and the same instrument.

D. Successors and Assigns

The rights conferred and the obligations imposed on any Party by this Settlement shall inure to the benefit of and be binding on that Party's successors in interest or assignees as if such successor or assignee was itself a Party hereto.

Signed and dated this 22th day
of September, 2002



Steven L. Miller
Attorney for
Duke Energy South Bay, LLC

Jeanne M. Solé
Attorney for
California Independent System
Operator Corporation

Nicholas W. Fels
Attorney for San Diego Gas &
Electric Company

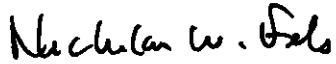
D. Successors and Assigns

The rights conferred and the obligations imposed on any Party by this Settlement shall inure to the benefit of and be binding on that Party's successors in interest or assignees as if such successor or assignee was itself a Party hereto.

Signed and dated this 17 th day
of September, 2002

Steven L. Miller
Attorney for
Duke Energy South Bay, LLC

Jeanne M. Solé
Attorney for
California Independent System
Operator Corporation



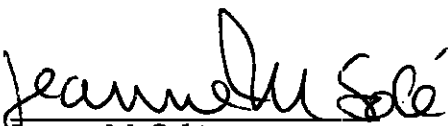
Nicholas W. Fels
Attorney for San Diego Gas &
Electric Company

D. Successors and Assigns

The rights conferred and the obligations imposed on any Party by this Settlement shall inure to the benefit of and be binding on that Party's successors in interest or assignees as if such successor or assignee was itself a Party hereto.

Signed and dated this 11th day
of September, 2002

Steven L. Miller
Attorney for
Duke Energy South Bay, LLC



Jeanne M. Solé
Attorney for
California Independent System
Operator Corporation

Nicholas W. Fels
Attorney for San Diego Gas &
Electric Company

Annual Fixed Revenue Requirement

DUKE ENERGY SOUTH BAY
 Period ended June 30, 2001
 Thousands of Dollars

Schedule F, Article II Part B: Determination of Annual Revenue Requirement
 Shaded cells are input values.

	AFRR As filed	Sch H Settlement Adjustments	AFRR After Sch. H Adjustments	Other Settlement Adjustments	Revised AFRR	Comments
1(A)	\$ 42,611	\$ (340)	\$ 42,271	\$ (5,338)	\$ 36,933	
1(B)	SEE NOTE	SEE NOTE	SEE NOTE	SEE NOTE	SEE NOTE	
1(C)	\$ 0.00	\$ -	\$ 0.00	\$ -	\$ 0.00	
2(A)(1)(a)	\$ 317,613	\$ (340)	\$ 317,273	\$ (5,338)	\$ 311,935	
2(A)(1)(b)	\$ 289,033	\$ -	\$ 289,033	\$ -	\$ 289,033	Overhaul or repair expenditures recovered through capital surcharge rate
2(A)(1)(c)	\$ -	\$ -	\$ -	\$ -	\$ -	
2(A)(1)(d)	\$ -	\$ -	\$ -	\$ -	\$ -	
2(A)(1)	\$ 289,033	\$ -	\$ 289,033	\$ (2,193)	\$ 286,840	
2(A)(2)	\$ -	\$ -	\$ -	\$ -	\$ -	
2(A)(3)	\$ -	\$ -	\$ -	\$ -	\$ -	
2(A)(4)	\$ 14,027	\$ -	\$ 14,027	\$ -	\$ 14,027	Adjustments to A&G expenses
2(A)	\$ 303,060	\$ -	\$ 303,060	\$ (5,257)	\$ 297,803	

Annual Fixed Revenue Requirement (AFRR) is the difference between Total Annual Revenue Requirements (Section 1(C)) and Total Annual Variable Costs (Section 6(F))

Variable O&M Rate (\$/MWh) is the ratio of Annual Variable O&M Expenses (Section 6(A)) to Annual Net Generation.

Total Annual Revenue Requirements is the sum of Operating Expenses (Section 2) and Return and Income Tax Allowance (Section 3).

Steam Production O&M (Accounts 500-515)

Hydro Production O&M (Accounts 535-545)
 Other Power Generation O&M (Accounts 546-554)
 Other Power Supply Expenses (Accounts 555-557)
 Total Production O&M Expenses
 Transmission O&M Expenses (Accounts 560-573)
 Distribution O&M Expenses (Accounts 580-598)
 Administrative and General (Accounts 920-935)

Annual Fixed Revenue Requirement

DUKE ENERGY SOUTH BAY
 Period ended June 30, 2001
 Thousands of Dollars

Schedule F, Article II Part B: Determination of Annual Revenue Requirement
 Shaded cells are input values.

	AFRR As filed	Sch H Settlement Adjustments	AFRR After Sch. H Adjustments	Other Settlement Adjustments	Revised AFRR	Comments
2(B)(1) Production Plant Depreciation	\$ 2,400	-	\$ 2,400	-	\$ 2,400	
2(B)(2) Transmission Plant Depreciation	\$ -	-	\$ -	-	\$ -	
2(B)(3) Distribution Plant Depreciation	\$ -	-	\$ -	-	\$ -	
2(B)(4) General and Intangible Plant Depreciation	\$ -	-	\$ -	-	\$ -	
2(B) Depreciation Expenses (Accounts 403-407)	\$ 2,400	-	\$ 2,400	-	\$ 2,400	
2(C)(1) Property and Property-Related Taxes	\$ 1,006	-	\$ 1,006	-	\$ 1,006	Ad valorem tax on oil inventory
2(C)(2) Payroll and Labor-Related Taxes	\$ -	-	\$ -	-	\$ -	
2(C)(3) Other Taxes	\$ -	-	\$ -	-	\$ -	
2(C) Taxes other than Income Taxes (Account 408.1)	\$ 1,035	(29)	\$ 1,006	-	\$ 1,006	
2(D) Revenue Credits (Accounts 451, 453-456), show as negative	\$ -	-	\$ -	-	\$ -	
2(E) Treatment of Capital Leases	\$ 4,841	-	\$ 4,841	-	\$ 4,841	
2 Operating Expenses	\$ 311,336	(29)	\$ 311,307	(5,257)	\$ 306,050	
3.1 Product of Allowable Pre-Tax Rate of Return (Section 5) and Net Investment (Section 4)	\$ 6,277	(311)	\$ 5,966	(81)	\$ 5,885	
3.2.a <i>f</i> is the effective, combined state and federal income tax rate	\$ 0.00%	-	\$ 0.00%	-	\$ 0.00%	
3.2.b ITC Amortization of investment tax credits (Account 411.4)	\$ -	-	\$ -	-	\$ -	
3.2 [ITC Amortization] / (1 - <i>f</i>)	\$ -	-	\$ -	-	\$ -	
3 Return and Income Tax Allowance	\$ 6,277	(311)	\$ 5,966	(81)	\$ 5,885	
4(A)(1) Production Plant Investment (Accounts 310-316, 330-336, 340-346, 106 & 114)	\$ 50,133	-	\$ 50,133	-	\$ 50,133	
4(A)(2) Transmission Plant Investment (Accounts 350-359, 106 & 114)	\$ -	-	\$ -	-	\$ -	

Annual Fixed Revenue Requirement

DUKE ENERGY SOUTH BAY
 Period ended June 30, 2001
 Thousands of Dollars

Schedule F, Article II Part B: Determination of Annual Revenue Requirement
 Shaded cells are input values.

	AFRR As filed	Sch H Settlement Adjustments	AFRR After Sch. H Adjustments	Other Settlement Adjustments	Revised AFRR	Comments
4(A)(3) Distribution Plant Investment (Accounts 360-373, 106 & 114)						
4(A)(4) General and Intangible Plant Investment (Accounts 389-399, 301-303, 106 & 114)						
4(A) Gross Plant Investment	\$ 50,133	-	\$ 50,133	-	\$ 50,133	
4(B)(1) Production Plant Depreciation Reserve						
4(B)(2) Transmission Plant Depreciation Reserve						
4(B)(3) Distribution Plant Depreciation Reserve						
4(B)(4) General and Intangible Plant Reserve						
4(B) Depreciation Reserve, show credit as positive and debit as negative	\$ 14,208	-	\$ 14,208	-	\$ 14,208	
4(C) CWIP, Construction Work in Progress for pollution control (Account 107)						
4(D) PHFU, Plant Held for Future Use (Account 105)						
4(E)(1) Production Plant ADIT						
4(E)(2) Transmission Plant ADIT						
4(E)(3) Distribution Plant ADIT						
4(E)(4) General and Intangible Plant ADIT						
4(E) ADIT, accumulated deferred income taxes (Accounts 190, 281-283, 255), show credit as positive and debit as negative	\$ (2,393)	-	\$ (2,393)	-	\$ (2,393)	
4(F)(1) Fuel Stocks (Account 151)						
4(F)(2) Plant Materials and Supplies (Accounts 154 & 163)						
4(F)(3) Prepayments (Account 165)						

Reduction of inventory to 100,000 barrels of usable oil

Annual Fixed Revenue Requirement

DUKE ENERGY SOUTH BAY
 Period ended June 30, 2001
 Thousands of Dollars

Schedule F, Article II Part B: Determination of Annual Revenue Requirement
 Shaded cells are input values.

	AFRR As filed	Sch H Settlement Adjustments	AFRR After Sch. H Adjustments	Other Settlement Adjustments	Revised AFRR	Comments
Purchased Power		-	-	-	-	
O&M Expenses (Section 2(A)) - total Annual Fuel Costs (Section 6(C)(1)) - Purchased Power	\$ 30,733	-	\$ 30,733	\$ (5,257)	\$ 25,476	
Working Cash Allowance is one-eighth of above amount	\$ 3,842	-	\$ 3,842	\$ (657)	\$ 3,185	Affect of other adjustments on Working Cash Allowance
4(F)(4)						
4(F)(i)	\$ 12,802	-	\$ 12,802	-	\$ 12,802	
4(F)	\$ 12,802	\$ (2,540)	\$ 10,262	\$ (657)	\$ 9,605	
4	\$ 51,120	\$ (2,540)	\$ 48,580	\$ (657)	\$ 47,923	
5(b)	0.03%	-	0.03%	-	0.03%	
5	12.28%	-	12.28%	-	12.28%	
6(A)	\$ 2,388	-	\$ 2,388	-	\$ 2,388	
6(A)	\$ 2,388	-	\$ 2,388	-	\$ 2,388	

Annual Fixed Revenue Requirement

DUKE ENERGY SOUTH BAY
 Period ended June 30, 2001
 Thousands of Dollars

Schedule F, Article II Part B: Determination of Annual Revenue Requirement
 Shaded cells are input values.

	AFRR As filed	Sch H Settlement Adjustments	AFRR After Sch. H Adjustments	Other Settlement Adjustments	Revised AFRR	Comments
6(A)(1)	\$ -	-	\$ -	-	\$ -	-
6(A)(2)	\$ -	-	\$ -	-	\$ -	-
6(B)(1)	\$ -	-	\$ -	-	\$ -	-
6(B)(2)	\$ 303,060	-	\$ 303,060	(5,257)	\$ 297,803	
6(B)	\$ 275,002	-	\$ 275,002	-	\$ 275,002	
6(C)(1)	\$ 28,058	-	\$ 28,058	(5,257)	\$ 22,801	
6(C)(2)	\$ 272,327	-	\$ 272,327	-	\$ 272,327	
6(C)(3)	\$ 272,327	-	\$ 272,327	-	\$ 272,327	
6(D)	\$ -	-	\$ -	-	\$ -	-
6(E)	\$ 287	-	\$ 287	-	\$ 287	287
6(F)	\$ 274,715	-	\$ 274,715	-	\$ 274,715	

Variable Production O&M Expenses
 Variable A&G Expenses
 Annual Variable O&M Expenses - Option 2: Explain Classification
 of Expenses as fixed or variable
 Total O&M Expenses (Section 2(A))
 Sum of Annual Variable O&M Expenses (Section 6(A)), Annual
 Variable Fuel Costs (Section 6(C)(3)), Annual Emissions Costs
 (Section 6(D)) and Annual Non-Fuel Start-Up Costs (Section 6(E))
 Annual Fixed O&M Expenses is difference between 6(B)(1) and
 6(B)(2)
 Total Annual Fuel Costs (Account 501 or 547)
 Annual Fixed Fuel Costs
 Annual Variable Fuel Costs
 Annual Emissions Costs
 Annual Non-Fuel Start-Up Costs
 Total Annual Variable Costs is the sum of Annual Variable O&M
 Expenses (Section 6(A)), Annual Variable Fuel Costs (Section
 6(C)(3)) and Annual Emissions Costs (Section 6(D))

NOTE: AFRR calculation changed to also subtract Annual Non fuel Start-Up Costs from Section 6(E). These costs are recovered through Schedule D.

11. **Minimum Off Time**

Unit	Hours
SY1	48.0
SY2	48.0
SY3	48.0
SYCT	0.5

12. **Contract Service Limits**

Unit	Maximum Annual MWh	Maximum Annual Service Hrs	Maximum Annual Start-ups
SY1	672,260	7,717	15
SY2	628,368	7,099	20
SY3	611,748	6,531	27
SYCT	4,015	277	79

13. **Owner's Repair Cost Obligation**

Owner's Repair Cost Obligation for the Current Year is \$684,030.

14. **Existing Contractual Limitations and Other Contract Restrictions on Market Transactions**

15. **Applicable UDC Tariff(s)**

Schedule D – Schedule AL-TOU, General Service – Large - Time Metered, Transmission Service.

Issued by: Randall J. Hickok
Managing Director

Effective: January 1, 2002

Issued on: September 26, 2002

Where:

Hourly Availability Rate is Calculated in Accordance with Equation B-5 below.

Equation B-5

$$\text{Hourly Availability Rate} = \frac{\text{Annual Fixed Revenue Requirement}}{\text{Target Available Hours}}$$

Annual Fixed Revenue Requirement is set forth in Section 7 below.

Target Available Hours are set forth in Section 6 below.

For Units under Condition 1, the Fixed Option Payment Factor is set forth in Table B-0 below:

Table B-0, Fixed Option Payment Factor

Unit	Fixed Option Payment Factor
SY1	0.3
SY2	0.3
SY3	0.3
SYCT	0.3

For Units under Condition 2, the Fixed Option Payment Factor is 1.

The Hourly Availability Charges for the Contract Year are set forth in Table B-1 below:

Table B-1, Hourly Availability Charges (\$/Hr)

Unit	Condition 1	Condition 2
SY1	\$268.92	\$896.38
SY2	\$278.32	\$927.72
SY3	\$333.14	\$1,110.47
SYCT	\$26.06	\$86.85

- B. Unit Availability Limit is defined in Article 1 of the Agreement.
- C. Maximum Net Dependable Capacity is Shown in Section 1 of Schedule A.

Issued by: Randall J. Hickok
 Managing Director

Effective: January 1, 2002

Issued on: September 26, 2002

For Units under Condition 1, the Surcharge Payment Factor for all Capital Items covered by the Small Project Budget shall be the Fixed Option Payment Factor. For all other Capital Items, the Surcharge Payment Factor shall be as agreed to by Owner and ISO. If the Owner and ISO do not agree on the Surcharge Payment Factor, the Surcharge Payment Factor shall equal the Fixed Option Payment Factor, unless the Owner demonstrates in ADR that it would not have installed the proposed Capital Item in accordance with Good Industry Practice but for its obligations to the ISO under this Agreement, in which case the Surcharge Payment Factor Shall be as determined in ADR. For Units under Condition 2, the Surcharge Payment Factor is 1.

The Hourly Capital Item Charges for the Contract Year are set forth in Table B-2 below.

Table B-2

Unit	Capital Item Project No.	Annual Capital Item Cost	Condition 1 Surcharge Payment Factor	Condition 1 Hourly Capital Item Charge	Condition 2 Hourly Capital Item Charge
SY2	2001 -1	\$837,679	0.30	\$29.74	\$99.13
SY3	2001 -2	\$1,477,692	0.30	\$53.77	\$179.24
SY2	2002-1	\$233,799	0.30	\$8.30	\$27.67
SY3	2002-2	\$263,588	0.30	\$9.59	\$31.97
SYCT	2002-3	\$112,681	0.30	\$4.29	\$14.31

B. Unit Availability Limit is defined in Article 1 of the Agreement.

C. Maximum Net Dependable Capacity is Shown in Section 1 of Schedule A.

5. The monthly Nonperformance Penalty is calculated pursuant to Section 8.5 using the following variables:

A. Hourly Penalty Rate

A Unit's Hourly Penalty Rate for each Contract Year is the lesser of (A) the Unit's Hourly Availability Rate for the Contract Year (calculated pursuant to Item 2.A above), or (b) three times the Unit's Hourly Availability Charge for the Contract Year (as shown in Table B-1 above).

The Hourly Penalty Rates for the Contract Year are set forth in Table B-3 below:

Table B-3, Hourly Penalty Rate

Unit	Condition 1	Condition 2
SY1	\$806.75	\$896.38
SY2	\$834.95	\$927.72
SY3	\$999.42	\$1,110.47
SYCT	\$78.17	\$86.85

Issued by: Randall J. Hickok
 Managing Director

Effective: January 1, 2002

Issued on: September 26, 2002

B. Hourly Surcharge Penalty Rate

A Unit's Hourly Surcharge Penalty Rate for each Capital Item for each Contract Year is the lesser of (a) the corresponding Hourly Capital Item Rate for the Contract Year (calculated pursuant to Item 4.A above), or (b) three times the applicable Hourly Capital Item Charge for the Contract Year (as shown in Table B-2 above). The Hourly Surcharge Penalty Rates for the Contract Year are set forth in Table B-4 below:

Table B-4

Unit	Capital Item Project No.	Hourly Capital Item Rate	Condition 1 Hourly Surcharge Penalty Rate	Condition 2 Hourly Surcharge Penalty Rate
SY2	2001-1	\$99.13	\$89.22	\$99.13
SY3	2001-2	\$179.24	\$161.31	\$179.24
SY2	2002-1	\$27.67	\$24.90	\$27.67
SY3	2002-2	\$31.97	\$28.78	\$31.97
SYCT	2002-3	\$14.31	\$12.88	\$14.31

6. Target Available Hours

A Unit's Target Available Hours for each Contract Year are calculated in accordance with the Equation B-10 below:

Equation B-10

$$\text{Target Available Hours (TAH)} = \frac{\text{Hours in the Calendar Year} - (\text{Average Other Outage Hours} + \text{Long-Term Planned Outage Hours})}{\text{Average Other Outage Hours}}$$

Average Other Outage Hours means the average annual Other Outage Hours for the Unit during the 60-month period ending June 30 of the previous calendar year.

Long-term Planned Outage Hours means the Long-term Planned Outage Hours for the Contract Year scheduled with ISO pursuant to Section 7.2(a). For periods prior to December 31, 1998, Other Outage Hours shall exclude a planned interruption, in whole or in part, in the electrical output of a Unit to permit Owner to perform a major equipment overhaul or inspection or for new construction work, but only if the outage lasted 21 or more consecutive days.

Long-term Planned Outage Hours scheduled for a Contract Year shall be subject to the Long-term Scheduled Outage Adjustment pursuant to Section 8.6 of the Agreement.

The Average Other Outage Hours, Long-term Planned Outage Hours and Target Available Hours for each Unit for the Contract Year are shown in Table B-5 below:

Issued by: Randall J. Hickok
 Managing Director

Effective: January 1, 2002

Issued on: September 26, 2002

Table B-5

Unit	Average Other Outage Hours	Long-term Planned Outage Hours	TAH
SY1	250	0	8,510
SY2	310	0	8,450
SY3	516	0	8,244
SYCT	885	0	7,875

For the purpose of calculating Target Available Hours for the Contract Year ending December 31, 1999, (a) Average Other Outage Hours shall be calculated using the average annual Other Outage Hours for the Unit during the 60-month period ending December 31, 1998, and (b) Long-term Planned Outages as if the Agreement had become effective on January 1, 1999.

7. Annual Fixed Revenue Requirement (AFRR)

The Annual Fixed Revenue Requirement for each Unit is set forth in Table B-6 below. For any Contract year commencing on or after January 1, 2002, the Annual Fixed Revenue Requirement shall be determined by the Formula Rate set forth in Schedule F, unless Owner files a superseding rate schedule under Section 205 of the Federal Power Act.

Table B-6, Annual Fixed Revenue Requirement

Unit	Annual Fixed Revenue Requirement
SY1	\$7,628,611
SY2	\$7,839,056
SY3	\$9,154,333
STCT	\$683,944

8. Limited Section 205 Filing for an Extension of Contract Term

If ISO has extended the term of this Agreement pursuant to Section 2.1(b), then not later than October 31 of the expiring Year, Owner shall make a filing with FERC under Section 205 of the Federal Power Act containing the values in Tables B-1-B-6 for the ensuing Contract Year.

In the event that a Long-term Planned Outage that is scheduled for the last quarter of the expiring Contract Year is postponed or rescheduled after October 31 of such year to the ensuing Contract Year, Owner shall make an additional Section 205 filing to revise the values in Tables B-1 through B-5 to reflect such rescheduled Long-term Planned Outage Hours.

Issued by: Randall J. Hickok
 Managing Director

Effective: January 1, 2002

Issued on: September 26, 2002

**FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426**

In Reply Refer To:
Docket Nos. ER02-10-000 and
ER02-239-000, et al.

_____, 2002

Dickstein Shapiro Morin & Oshinsky LLP
ATT: Steven L. Miller
Attorney for Duke Energy South Bay, LLC
2101 L Street, N.W.
Washington, D.C. 20037-1526

Dear Mr. Miller:

1. On September 26, 2002, you filed a settlement agreement among Duke Energy South Bay, LLC (“DESB”), the California Independent System Operator Corporation (the “ISO”), and San Diego Gas & Electric Company (“SDG&E”) (collectively, the “Parties”).
2. The subject settlement is in the public interest and is hereby approved. The Commission’s approval of this settlement does not constitute approval of, or precedent regarding, any principle or issue in these proceedings. 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. 824c.
3. 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 thirty (30) days after making such refunds, DESB shall file with this Commission a compliance report documenting such refunds. DESB shall furnish copies of the report to all parties herein.

By direction of the Commission.

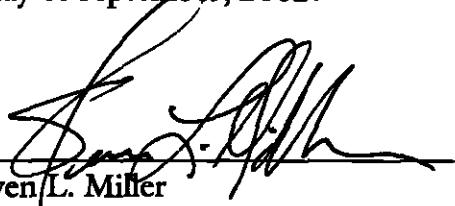
Magalie R. Salas
Secretary

cc: All Parties

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document has been served this day by first class mail, postage prepaid, upon each person designated on the official service lists compiled by the Secretary in these proceedings.

Dated at Washington, D.C. this 26th day of September, 2002.

A handwritten signature in black ink, appearing to read "Steven L. Miller", written over a horizontal line.

Steven L. Miller
Dickstein Shapiro Morin & Oshinsky LLP
2101 L Street, N.W.
Washington, D.C. 20037