

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

Duke Energy Oakland, LLC) Docket No. ER03-116-000

JOINT MOTION FOR EXTENSION OF TIME FOR PROTESTS

Pursuant to Rule 212 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("Commission"), 18 C.F.R. § 385.212, the California Independent System Operator Corporation ("ISO")¹, Pacific Gas and Electric Company ("PG&E") and the California Electricity Oversight Board ("EOB") hereby move for an extension of time to file protests in the above-captioned proceeding.² In support thereof, the Parties state as follows:

I. BACKGROUND

On October 31, 2002, Duke Energy Oakland, LLC ("DEO") submitted an informational rate filing proposing rate revisions under its Reliability Must-Run ("RMR") Agreement with the ISO ("DEO Filing").³ The DEO Filing relates to RMR Agreement as to the Oakland Power Plant. The filing was made to comply with the terms of a settlement agreement approved by the Commission⁴ under which each RMR Owner is required to adjust rates annually, beginning with calendar

¹ The ISO today filed a motion to intervene in this matter.

² The California Public Utilities Commission and Duke Energy Oakland LLC have indicated that they do not oppose this motion.

³ Because the generating units covered by these agreements must operate at certain times for the reliability of the transmission grid, they are referred to as "reliability must-run" or "RMR" units and the agreements covering them are referred to as "RMR Agreements." Other capitalized terms that are not defined in this filing have the same meaning set forth in the Master Definitions Supplement, Appendix A to the ISO Tariff.

⁴ *California Independent System Operator Corp.*, 87 FERC ¶ 61,250 (1999).

year 2002, using the rate formula set forth in Schedule F of the RMR Agreement. The DEO Filing is intended to comply with requirements in Schedule F of the RMR Agreement to provide information supporting updated Annual Fixed Revenue Requirements ("AFRR") and Variable O&M Rates. The DEO Filing also seeks pursuant to Section 205 of the Federal Power Act ("FPA")⁵ to make certain updates to the rates that either 1) result from the new AFRR and Variable O&M Rates or 2) are otherwise provided for on annual basis in the RMR Agreement.

Schedule F establishes the procedures and methodology for determining the AFRR and Variable O&M Rates for facilities designated as RMR Units. The DEO Filing is intended to provide updated cost information used in determining the AFRR and the Variable O&M Rates for its RMR Units to be effective January 1, 2003. In addition, the DEO Filing updates a number of RMR Agreement Schedules: including the Contract Service Limits and Owners Repair Cost Obligation in Schedule A, the values in Tables B-1 through B-6 in Schedule B, and the Prepaid Start-up Charges in Schedule D.

On November 6, 2002, the Commission issued a "Notice of Filing" setting November 21, 2002, as the final date for interventions and protests.

II. BASIS FOR MOTION FOR EXTENSION OF TIME

The Commission, in its November 6 Notice in this proceeding, allowed the standard 21 days for the filing of interventions and protests. However, Schedule F, Article I, Part B of the RMR Agreement specifies the time allowed for the

⁵ 18 USC § 824d.

Commission, the ISO, PG&E, the EOB and affected parties to review the proposed rates filed under Schedule F. Article I, Part B of Schedule F provides, in relevant part:

(i) discovery requests by the FERC staff and affected parties shall be made within 20 days of the filing, with responses by the Owner due within 35 days of the filing, and (ii) protests, if any, by affected parties shall be filed with the FERC within 45 days of the filing.

Accordingly, in accordance with the RMR Agreement, as to the matters relating to the Schedule F Informational Package, a protest should be due within 45 days of the filing, or on December 17, 2002. The parties to the original *pro forma* RMR Agreement, including DEO, contemplated that additional time would be necessary to review the Schedule F proposed rate changes. Additional time is necessary in order to allow the parties to obtain further information, as necessary, and work out among themselves any discrepancies in the data provided. Moreover, allowing the time set forth in the RMR Agreement serves the public interest because it will substantially increase the likelihood that parties will be able to work out any discrepancies and thus potentially avoid protests.

Further, it would promote regulatory efficiency to extend the time to file protests as to the other items in the DEO Filing as well, to provide the ISO, PG&E, the EOB and other affected parties with additional time in which to explore resolution of other outstanding issues. In 2002, the Parties were able to resolve with DEO Schedule F and other Schedule update issues simultaneously in the case of most RMR Agreements. Accordingly, the Parties consider that

extending the deadline for protests in this proceeding as to all issues could expedite the process for resolving all RMR Agreement update issues.

III. CONCLUSION

For the foregoing reasons, the Parties respectfully request that the Commission extend the time for filing protests until December 17, 2002.

Respectfully submitted,

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Date: November 14, 2002

Counsel for Pacific Gas and
Electric Company



November 14, 2002

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

Re: **Duke Energy Oakland, LLC**
Docket No. ER03-116-000

Dear Secretary Salas:

Enclosed please find an electronic filing in the above-captioned proceeding of the Joint Motion for Extension of Time for Protests. Thank you for your attention to this filing.

Respectfully submitted,

Jeanne M. Solé
Counsel for the California Independent
System Operator Corporation

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Folsom, CA, on this 14th day of November, 2002.

Jeanne M. Solé