

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

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

**JOINT PROTEST OF THE  
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION,  
PACIFIC GAS AND ELECTRIC COMPANY AND THE  
CALIFORNIA ELECTRICITY OVERSIGHT BOARD**

Pursuant to Rule 211 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("Commission"), 18 C.F.R. § 385.211, the Commission's November 6, 2002 Notice of Filing, and the Commission's November 21, 2002 Notice of Extension of Time, the California Independent System Operator Corporation ("ISO"), Pacific Gas and Electric Company ("PG&E") and the California Electricity Oversight Board ("EOB") hereby submit a protest in the above-captioned proceeding.

**I. BACKGROUND**

On October 31, 2002, Duke Energy Oakland, LLC ("DEO") submitted an informational rate filing proposing rate revisions under its Must-Run Service Agreement ("RMR Agreement") with the ISO for the Oakland Power Plant ("DEO Filing").<sup>1</sup> The DEO Filing was made in accordance with the terms of a settlement agreement approved by the Commission<sup>2</sup> under which each RMR Owner is

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<sup>1</sup> 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.

<sup>2</sup> *California Independent System Operator Corp.*, 87 FERC ¶ 61,250 (1999).

required to annually adjust rates under the RMR Agreement using the rate formula set forth in the agreement's Schedule F ("Schedule F"). The DEO Filing intends to comply with Schedule F's requirements that an RMR Owner provide information supporting its 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")<sup>3</sup> 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 under 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 intends to provide the updated cost information used in determining the AFRR and the Variable O&M Rates for DEO's designated 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. On November 13, 2002, the EOB filed a motion to intervene in this proceeding. On November 14, 2002, the ISO filed a motion to intervene in this proceeding. On November 21, 2002, PG&E filed a motion to intervene in this proceeding. On November 14, 2002, the ISO, PG&E and the EOB filed a motion for an extension

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<sup>3</sup> 18 USC § 824d.

of time to file protests until December 17, 2002. On November 21, 2002, the Commission granted this motion and established December 17, 2002 as the deadline for the submission of protests in this matter.

## **II. PROTEST**

Over the past several weeks, the ISO, EOB and PG&E have undertaken discovery related to the DEO Filing. Nonetheless, a number of issues remain outstanding and provide the basis for this protest. The outstanding issues are as follows:

- DEO has failed to adequately justify the amount set forth under Administrative and General expenses ("A&G"). The amount set forth for this category, \$1,072,000, is \$299,000 more than the 2002 settled amount. As part of the 2002 settlement, DEO agreed to remove certain amounts, originally included in its 2002 informational filing, which the ISO, PG&E and the EOB considered inappropriate, including an accrual of asbestos and lead abatement, certain regional office legal expenses not directly associated with the operation of the Oakland Power Plant, and incentive fees paid to Duke/Fluor Daniel. The ISO, EOB and PG&E have not been able to confirm through the discovery process whether the 2003 A&G amount includes any of the above items or any other inappropriate items. To the extent any such inappropriate items are included, the rates in the DEO Filing are unjust and unreasonable.
- DEO has failed to adequately justify the amount set forth under Operation and Maintenance ("O&M") costs. The O&M costs listed in the DEO Filing more than doubled from \$2.2 million in 2002 to \$4.6 million in 2003. No adequate

justification has been provided to support this substantial increase. To the extent the O&M costs increase cannot be justified, the rates in the DEO Filing are unjust and unreasonable.

Overall, the items discussed above result in costs that could substantially exceed costs as allowed pursuant to Schedule F. By way of example, the rates proposed for 2003 are \$7.6 million, whereas in a settlement recently filed with the Commission, the rates for the Oakland Power Plant in 2002 would be \$5.3 million. Because DEO's proposed rates are substantially above the rates allowable under Schedule F, they are not just and reasonable, and the ISO, PG&E and the EOB request that the Commission reject them outright. Further, the ISO, PG&E and the EOB request that, if the Commission accepts the DEO Filing, it suspend the rates, make them subject to hearing and refund, and establish January 1, 2003 as the refund date. Last, the ISO, PG&E and the EOB request that if the Commission accepts the rates, before instituting any hearings in this proceeding, it give the parties sixty days to attempt to resolve their differences.

### **III. CONCLUSION**

For the foregoing reasons, the ISO, PG&E and the EOB respectfully request that (i) the Commission reject the DEO Filing; (ii) if the Commission accepts the DEO Filing, it suspend the rates, make them subject to hearing and refund, and establish January 1, 2003 as the refund date, and (iii) if it

accepts the DEO Filing, the Commission, before instituting any hearings in this proceeding, give the parties sixty days to attempt to resolve their differences.

Respectfully submitted,

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Date: December 17, 2002



December 17, 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 Protest of the California Independent System Operator Corporation, Pacific Gas and Electric Company and the California Electricity Oversight Board. 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 17th day of December, 2002.

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Jeanne M. Solé