

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

Duke Energy South Bay, LLC)	Docket Nos. ER98-496-012
)	ER98-2160-010
)	

**MOTION TO INTERVENE AND PROTEST OF
THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION**

Pursuant to Rules 211 and 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”), 18 C.F.R. §§ 385.211 and 385.214, and the Commission’s September 20, 2000 “Notice of Filing,” the California Independent System Operator Corporation (“ISO”) hereby protests and moves to intervene in the above-captioned proceeding. In support thereof, the ISO states as follows:

I. COMMUNICATIONS

Please address communications concerning this filing to the following persons:

Roger E. Smith,
Senior Regulatory Counsel
Deborah Le Vine, Director of
Contracts & Compliance
The California Independent System
Operator Corporation
151 Blue Ravine Road
Folsom, CA 95630
Tel: (916) 608-7135
Fax: (916) 608-7222

J. Phillip Jordan
Rebecca A. Blackmer
Swidler Berlin Shereff Friedman, LLP
3000 K Street, NW, Suite 300
Washington, DC 20007
Tel: (202) 424-7500
Fax: (202) 424-7643

II. BACKGROUND

On September 15, 2000, Duke Energy South Bay, LLC (“Duke Energy”) tendered for filing with the Commission a refund report in compliance with the Commission’s order¹ approving Duke Energy’s Offer of Settlement (“Settlement”) filed in Docket Nos. ER98-496-008 and ER98-2160-006 on March 31, 2000. The refund report reflects a refund by Duke Energy to the ISO of \$7,939,999.58 for Duke Energy’s reliability must-run units (“RMR Units”) for the period October 28, 1999 through August 31, 2000.

III. MOTION TO INTERVENE

The ISO is a non-profit public benefit corporation organized under the laws of the State of California. It is responsible for the reliable operation of a grid comprising the transmission systems of Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company, as well as for the coordination of the competitive electricity market in California. Approval of Duke Energy’s Settlement placed into effect changes to the payment for RMR services. As the sole purchaser of Duke Energy’s RMR services and recipient of any refunds resulting from the Settlement, the ISO has a substantial interest in this proceeding. Further, because the ISO is charged with the nondiscriminatory operation of the ISO Controlled Grid, the ISO’s participation in this proceeding is in the public interest. Accordingly, the ISO requests that it be permitted to intervene in this proceeding with full rights of a party.

IV. PROTEST

Pursuant to the terms of the Settlement, all charges under Duke Energy's Revised RMR Rate Schedules affected by the terms of the Settlement's Fixed Option Payment Factors ("FOPF") provision were to be recalculated as though the revised FOPF were in place and effective on June 1, 1999. Any differences between the charges resulting from such recalculation and the charges previously paid for the period beginning June 1, 1999, would result in a refund or surcharge as appropriate, with interest computed at the Commission's refund rate.

The California ISO believes that, while Duke Energy has multiplied the numbers correctly in arriving at their refund figure, two percentages used by Duke Energy in making that calculation were incorrect, resulting in a smaller refund. The ISO believes that the Availability Payment percentage was actually lower than what Duke Energy has reported. The ISO also believes that the percentage used for Non-Performance Penalty is not accurate. The error in these two percentages used in calculating the refund has resulted in a smaller overall refund figure.

The ISO has previously disputed the percentages used to calculate the Availability Payment and Non-Performance Penalty and Duke Energy has been aware of the dispute since July 1999. However, no steps have been taken by

¹ Duke Energy South Bay, LLC, 92 FERC ¶ 61,155 (2000) (Letter Order).

Duke Energy to correct either the Availability Payment or Non-Performance Penalty percentages. The ISO is therefore requesting that the Commission set up a procedure by which the conflicting numbers noted above can be resolved.

V. CONCLUSION

Wherefore, for the foregoing reasons, the ISO respectfully requests that the Commission permit it to intervene, that it be accorded full party status in this proceeding, and that the Commission set up a procedure by which the disagreement over percentages used in the calculation of the Settlement refund can be resolved and the appropriate refund given to the Responsible Utility.

Respectfully submitted,

Roger E. Smith, Senior Regulatory
Counsel
Deborah Le Vine, Director of
Contracts and Compliance
California Independent System
Operator Corporation
151 Blue Ravine Road
Folsom, CA 95630
Tel: (916) 608-7135
Fax: (916) 608-7222

J. Phillip Jordan
Rebecca A. Blackmer
Swidler Berlin Shereff Friedman, LLP
3000 K Street, NW, Suite 300
Washington, DC 20007
Tel: (202) 424-7500
Fax: (202) 424-7643

Counsel for the California Independent
System Operator Corporation

Dated: October 6, 2000

