



# CALIFORNIA ISO

California Independent  
System Operator

April 5, 2004

The Honorable Magalie Roman Salas  
Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, DC 20426

**Re: Duke Energy Oakland, LLC, Docket No. ER01-3034-003**

Dear Secretary Salas:

Enclosed for electronic filing please find a Request for Rehearing of the California Independent System Operator Corporation, Pacific Gas and Electric Company, the California Electricity Oversight Board and the California Public Utilities Commission in the above-referenced dockets.

Thank you for your assistance in this matter.

Respectfully submitted,

*/s/ Sidney L. Mannheim*

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Sidney L. Mannheim  
Counsel for The California Independent  
System Operator Corporation

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

**Duke Energy Oakland, LLC ) Docket No. ER01-3034-003**

**REQUEST FOR REHEARING OF THE  
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION  
PACIFIC GAS AND ELECTRIC COMPANY  
THE CALIFORNIA ELECTRICITY OVERSIGHT BOARD AND  
THE CALIFORNIA PUBLIC UTILITIES COMMISSION**

**I. INTRODUCTION**

Pursuant to Section 313(a) of the Federal Power Act, 16 U.S.C. § 8251 (a), and Rule 713 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission) 18 C.F.R. § 385.713, the California Independent System Operator Corporation (CAISO),<sup>1</sup> Pacific Gas and Electric Company (PG&E), the California Electricity Oversight Board and the California Public Utilities Commission (Joint Parties) hereby request that the Commission grant rehearing of its “Order on Compliance Filing” issued on March 5, 2004 in the above-captioned proceeding (March 5 Order). The Commission should grant rehearing, reject Duke’s compliance filing for the reasons stated in Joint Parties’ prior protest, and order Duke to refund the appropriate amount of \$24,395,577, plus interest, and to file a revised Refund Report.

On April 3, 2002, Duke Energy Oakland, LLC (Duke Energy) filed a refund report itemizing amounts it may owe to PG&E under a revised Reliability Must-Run (RMR)

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<sup>1</sup> Capitalized terms not otherwise defined herein are defined in the Master Definitions Supplement, ISO Tariff Appendix A, as filed on August 15, 1997, and subsequently revised.

Agreement with the CAISO in compliance with a February 1, 2002 Order in this proceeding.<sup>2</sup>

On April 24, 2002, the Joint Parties filed a joint protest challenging Duke Energy's calculations (Joint Protest). Because the time period at issue in Duke Energy's RMR refund report includes the time period from October 1, 2000 through December 31, 2001 (the Refund Period in the California Refund Proceeding, Docket Nos. EL00-95-045 and EL00-98-042), the Commission rejected Duke Energy's April 3, 2002 RMR refund report and directed it to recalculate the RMR refund amounts due in this proceeding within 30-days of the date a final order issues in the California Refund Proceeding. March 5 Order at P 1 and Ordering Paragraph B.

## II. SPECIFICATION OF ERROR

The March 5 Order rejecting Duke Energy's RMR refund report is inconsistent with the Commission's finding in its March 26, 2003 order in the California Refund Proceeding that RMR services provided through contract path (cost-of-service) pricing are not subject to price mitigation. "Order on Proposed Findings on Refund Liability," 101 FERC ¶ 61,317 at P 5.Q (2003) (Refund Order). Accordingly, the Commission should not delay the consideration of Joint Parties' protest and direct Duke to refund the appropriate amount of \$24,395,577, plus interest, and to file a revised Refund Report.

## III. DISCUSSION

As set forth in the March 5 Order, under the RMR Agreement, an RMR unit may operate under either Condition 1 or Condition 2. When operating under Condition 2, the RMR owner receives a "cost-of-service" rate for the RMR service specified in the RMR Agreement. March 5 Order at P 3. (When operating under Condition 1, the RMR owner can elect the "contract" path and receive the "cost-of-service" rate *or* the "market" path under which the RMR owner retains

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<sup>2</sup> Duke Energy Oakland, LLC, 98 FERC § 61,114 (2002) (February 1 Order).

market revenues from participation in the market.) All of Duke Energy's units operated under Condition 2 for the time period in issue. *Id.* When the CAISO dispatches a Condition 2 unit, the owner submits a bid for the required amount of energy in the "next available market." *Id.* The RMR owner then invoices the CAISO based on the contract rate set forth in the RMR Agreement; the CAISO bills the responsible utility, in the case of Duke Energy, PG&E; the responsible utility then pays the invoice amount to the CAISO; and the CAISO then pays the RMR owner. *Id.*

[A]ny amounts received by or due to Duke Energy in connection with market transactions are referred to as Scheduling Coordinator Credits (SC Credits) and must be applied as credit on Duke Energy's RMR invoices to the CAISO. This procedure is intended to ensure that Duke Energy, as a Condition 2 owner, is not paid more than once for the energy dispatched and paid for by the CAISO, . . . ." [*Id.* at P 4.]

In its April 3, 2002 RMR refund report, Duke Energy maintained, among other things, that the SC Credit portion of the RMR invoices were "incalculable" at the time due to the California Refund Proceeding because the market clearing prices, upon which the SC Credits are based, are being litigated. *Id.* at P 9. Consequently, Duke Energy claimed to owe no refund under the RMR Agreement. *Id.*

The Joint Protest, on the hand, noted then when it originally submitted its invoices for the time period from October 2000 through January 2001, Duke Energy properly included \$24,909,930 in SC Credits, but that its refund report did not reflect the SC Credits, and claimed that Duke Energy owed \$24,393,577 for this time period. *Id.* at P 12. For the February 2001 through December 2001 time period, the CAISO rejected Duke Energy's invoices because it did not apply the required SC Credits at all. *Id.* at P 14.

The Commission properly rejected Duke Energy's RMR refund report, but it did so for the wrong reason. The March 5 Order mistakenly asserts that SC Credits in Duke Energy's

refund report “must be based upon the market clearing prices set in the California Refund Proceeding . . . .” *Id.* at P 17. The Refund Order, however, is clear that RMR services provided through contract path (cost-of-service) pricing are not subject to mitigation. Refund Order at P 5.Q.<sup>3</sup> Accordingly, the market payments to Duke Energy that form the basis for the SC Credits will not be mitigated and there is no reason to delay consideration of the merits of the Joint Protest until the final order issues in the California Refund proceeding.<sup>4</sup>

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<sup>3</sup> Market payments to RMR units operating under Condition 1 and electing the market payment option will be mitigated. Refund Order at 5.Q.

<sup>4</sup> As noted in the Joint Protest there are ongoing disputes among Duke Energy, PG&E and the CAISO including, but not limited to, whether certain dispatches during the time period in issue should be classified as RMR or Out-of-Market (OOM), that remain in dispute. Joint Protest at 4.

**IV. CONCLUSION**

WHEREFORE, for the foregoing reasons, the Joint Parties respectfully request that the Commission grant this request for rehearing.

April 5, 2004

Respectfully Submitted,

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**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 the above-captioned docket.

Dated at Folsom, California, on this 5<sup>th</sup> day of April, 2004.

*/s/ Sidney L. Mannheim*

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Sidney L. Mannheim

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