

FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

March 28, 2005

In Reply Refer To:  
Duke Energy South Bay, LLC  
Docket Nos. ER98-496-012  
and ER98-2160-010

Dickstein, Shapiro, Morin and Oshinsky  
2101 L Street, N.W.  
Washington, D.C. 20037-1526

Attention: Mark L. Perlis, Esquire.

Reference: Compliance Refund Report

Dear Mr. Perlis:

1. On September 15, 2000, you submitted, on behalf of Duke Energy South Bay, LLC (DESB), a Refund Report filed in compliance with a Commission letter order approving a settlement (Settlement) issued in these proceedings on August 1, 2000.<sup>1</sup> The Refund Report is accepted as in compliance with the letter order approving the Settlement.

2. The Settlement modified the Fixed Option Payment Factor (FOPF) associated with a Reliability Must Run Agreement (RMR Agreement) between the California Independent System Operator Corporation (CAISO) and DESB.<sup>2</sup> Under the Settlement, all charges under the RMR Agreement affected by the modified FOPF

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<sup>1</sup> *Duke Energy South Bay, LLC*, 92 FERC ¶ 61,155 (2000).

<sup>2</sup> The Reliability Must Run Agreement (RMR Agreement) provides the rates, terms, and conditions under which DESB provide RMR service to the CAISO by dispatching designated generating units at the direction of the CAISO. The RMR Agreement follows a generic, standard form agreement agreed to as part of a settlement in *California Independent System Operator Corporation*, 87 FERC ¶ 61,250 (1999).

were to be recalculated as though the revised FOPF had been effective on June 1, 1999. Any difference between the charges resulting from the recalculation and the charges already paid for the period beginning June 1, 1999 and ending December 31, 1999, were required to be refunded to the CAISO.

3. Notice of this compliance filing was issued on September 15, 2000, with comments, protests, or motions to intervene due on or before October 6, 2000. The CAISO filed a motion to intervene and protest DESB's filing. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2003), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

4. DESB filed an answer to the CAISO's protest. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2003), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept DESB's answer because it has provided information that assisted us in our decision-making process.

5. In its protest, the CAISO states that while DESB has multiplied the numbers correctly, two percentages (the non-performance penalty and availability penalty) used by DESB in making the refund calculation were incorrect, thereby resulting in a smaller refund figure. Further, the CAISO states that although it had previously disputed these percentages, DESB had failed to correct either percentage. The CAISO requests that the Commission set up a procedure by which the disagreement over the percentages used in the calculation of the Refund Report can be resolved.

4. In its answer, DESB states that it did not intend that the Refund Report would resolve any of the outstanding billing disputes between DESB and the CAISO for the period covered by the Refund Report. Additionally, DESB states that the Parties (CAISO and DESB) agree that the Refund Report correctly reflects the substitution of the FOPF adopted in the Settlement and that the Parties acknowledge there are outstanding disputes, including those identified in the CAISO's protest. Further, DESB states that the Parties have agreed to procedures for addressing the disputed percentages, separately from the refunds described in the instant compliance filing, and that the Parties will make appropriate payments among themselves, to the extent the amount of such refunds is revised pursuant to the agreed-upon procedures.

5. We find DESB's Refund Report to be in compliance with the letter order approving the Settlement.

By direction of the Commission.

Magalie R. Salas,  
Secretary.